

**CURBELLO V. VAUGHN, 1966-NMSC-179, 76 N.M. 687, 417 P.2d 881 (S. Ct. 1966)**

**IVA LEE CURBELLO, Plaintiff-Appellant,  
vs.  
VIVIAN MARGARITE VAUGHN, Individually and as Executrix of  
the Last Will and Testament of Edna Baker Rice,  
deceased, BELLE RIZZUTO, CLYDE H. HURLEY, E. J.  
HURLEY, EMIL HURLEY, and HAZEL THORPE,  
Defendants-Appellees**

No. 7782

SUPREME COURT OF NEW MEXICO

1966-NMSC-179, 76 N.M. 687, 417 P.2d 881

September 06, 1966

Appeal from the District Court of Quay County, Hensley, Judge

**COUNSEL**

E. P. RIPLEY, Santa Fe, New Mexico, ZINN and DONNELL, Santa Fe, New Mexico,  
Attorneys for Appellant.

HART and BROCKMAN, Tucumcari, New Mexico, Attorneys for Appellees.

**JUDGES**

COMPTON, Justice, wrote the opinion.

WE CONCUR:

David Chavez, Jr., J., M. E. Noble, J.

**AUTHOR: COMPTON**

**OPINION**

COMPTON, Justice.

{1} A basic jurisdictional question, not raised by the parties, is presented by the record on appeal. At the conclusion of the hearing on the merits, the trial court entered its decision which included its findings of fact and conclusions of law. No final judgment was entered therein carrying into effect the decision of the court; however, the appeal is

taken from the decision of the court. Clearly, the trial court retains exclusive jurisdiction of the case until the entry of a proper judgment or order.

**{2}** Appeals will lie only from a formal written order or judgment signed by the judge and filed in the case, or entered upon the record of the court and signed by the judge. Section 21-2-1(5)(1), N.M.S.A. 1953 Comp., Rule 5(1) of the Supreme Court Rules; State v. Morris, 69 N.M. 89, 364 P.2d 348; D. M. Miller & Co. v. Slease, 30 N.M. 469, 238 P. 828. Compare State ex rel Reynolds v. McLean, {\*688} 74 N.M. 178, 392 P.2d 12.

**{3}** There being no final judgment entered, the appeal is premature and must be dismissed.

**{4}** IT IS SO ORDERED.

WE CONCUR:

David Chavez, Jr., J., M. E. Noble, J.