

**FLORES V. DURAN, 1960-NMSC-135, 68 N.M. 42, 357 P.2d 1091 (S. Ct. 1960)**

**Narciso FLORES, Claimant-Plaintiff-Appellee,  
vs.  
Juan DURAN, Employer, Defendant-Appellant**

No. 6693

SUPREME COURT OF NEW MEXICO

1960-NMSC-135, 68 N.M. 42, 357 P.2d 1091

December 27, 1960

Proceeding on appeal from the District Court, San Miguel County, Garnett R. Burks, D.J. The Supreme Court, Moise, J., held that where transcript failed to disclose any order allowing appeal, as Supreme Court could not determine whether appeal had been timely allowed and whether it accordingly had jurisdiction to consider appeal, it would dismiss appeal, even though matter was not raised by appellee.

**COUNSEL**

Wright & Kastler, Raton, for appellant.

Donald A. Martinez, Las Vegas, for appellee.

**JUDGES**

Moise, Justice. Compton, C.J., and Carmody, Chavez and Noble, JJ., concur.

**AUTHOR: MOISE**

**OPINION**

{\*42} {1} The transcript filed in this cause fails to disclose any order allowing an appeal. Although appellee has not raised the issue, inasmuch as the timely allowance of an appeal is required to give this court jurisdiction, *Public Service Co. of New Mexico v. First Judicial Dist. Court*, 65 N.M. 185, 334 P.2d 713; *Chavez v. Village of Cimarron*, 65 N.M. 141, 333 P.2d 882, we are in the position of being unable to determine that jurisdiction to consider the appeal is present, and accordingly the cause should be dismissed.

{2} The praecipe filed by appellant did not request the inclusion of the order allowing the appeal if such an order was ever entered. We are fully cognizant {\*43} of the fact that Supreme Court Rule 14, subd. 3, being 21-2-1(14) subd. 3, N.M.S.A.1953, provides that

among other things the order allowing the appeal, and notice of the taking of the appeal shall be included in the transcript "whether called for by the praecipis or not." Assuming that an order allowing an appeal had been entered, it remained the responsibility and duty of the appellant to see that the transcript was properly prepared and filed, and this would include determining that the order allowing appeal had been shown therein. *Norment v. Mardorf*, 26 N.M. 210, 190 P. 733; *Buchanan v. Carpenter*, 65 N.M. 389, 338 P.2d 292.

{3} It follows from what has been said that the appeal should be dismissed. It is so ordered.