

**HUNKER
vs.
VEEDER et al.**

No. 3245

SUPREME COURT OF NEW MEXICO

1927-NMSC-054, 32 N.M. 452, 259 P. 431

August 26, 1927

Appeal from District Court, Mora County; Armijo, Judge.

Action by Sarah L. Veeder, individually and as executrix of the estate of Elmer Veeder, deceased, and others, against George H. Hunker. From an adverse judgment, plaintiff appeals.

SYLLABUS

SYLLABUS BY THE COURT

1. An appeal will be dismissed where no cost bond has been filed.
2. Where a party appeals in his individual capacity from a judgment in which he is also a party as executor, a cost bond is required.

COUNSEL

Hanna & Wilson, of Albuquerque, for appellants.

Hunker & Noble, of East Las Vegas, for appellee.

JUDGES

Parker, C. J. Bickley and Watson, JJ., concur.

AUTHOR: PARKER

OPINION

{*452} {1} OPINION OF THE COURT A motion to dismiss the appeal in this case has been filed, based upon various grounds, only one of which need be noticed. Neither a

supersedeas bond nor a cost bond has been filed, although the time within which the same was required by chapter 43, Laws of 1917, has long since expired. Under our previous decisions, this is fatal to the appeal. See *Abo Land Co. v. Dunlavy*, 27 N.M. 202, 199 P. 479; *Hernandez v. Roberts*, 24 N.M. 253, 173 P. 1034; *Hubert v. American Surety Co.*, 25 N.M. 131, 177 P. 889.

{2} It appears that appellant was a party to the proceeding below, both individually and as executrix of the will of Elmer Veeder, deceased, but the appeal was taken and allowed to her in her individual capacity only. This being true, bond was required. *Baca v. Winters*, 26 N.M. 340, 192 P. 479; *In re Henriques*, 5 N.M. 169, {453} 21 P. 80.

{3} It follows that the appeal must be dismissed and the cause remanded, and it is so ordered.