

**NORRIS V. MCDONALD, 1921-NMSC-037, 27 N.M. 116, 196 P. 514 (S. Ct. 1921)**

**NORRIS  
vs.  
McDONALD**

No. 2550

SUPREME COURT OF NEW MEXICO

1921-NMSC-037, 27 N.M. 116, 196 P. 514

March 18, 1921

Appeal from District Court, Otero County; M. C. Mechem, Judge.

Action by William T. Norris against D. A. McDonald for specific performance. Judgment for defendant, and plaintiff appeals.

### **SYLLABUS**

#### **SYLLABUS BY THE COURT**

Findings of fact by a trial court will not be disturbed on appeal, where such findings are supported by substantial evidence, and where the trial court heard the testimony and saw the witnesses.

### **COUNSEL**

E. L. Medler and W. Joe Bryan, both of El Paso, Texas, for appellant.

J. L. Lawson, of Alamogordo, and Holt & Sutherland, of Las Cruces, for appellee.

### **JUDGES**

Roberts, C. J. Reynolds and Parker, JJ., concur.

**AUTHOR: ROBERTS**

### **OPINION**

{\*116} {1} OPINION OF THE COURT. This action was instituted by appellant to enforce specific performance of a verbal contract, under which it was claimed that appellee had agreed to make a written lease for certain real estate located in Alamogordo, N.M. Appellee answered, denying the material allegations of the complaint, and set up that

the lease was for one year, and that appellant had failed to pay the rent, and by counterclaim he asked judgment for the rent {<sup>\*</sup>117} due and a lien upon certain property in the building on the premises. The court, after hearing the evidence, made findings and rendered judgment for the appellee.

{2} In this court appellant argues that the findings made by the court were contrary to the weight of the evidence. We have read the record, and find that the evidence was conflicting, and that the findings made by the court are supported by substantial evidence. It has been uniformly held in this court that findings of fact by a trial court will not be disturbed, where such findings are supported by substantial evidence, and where the trial court heard the testimony and saw the witnesses. *Byerts v. Schmidt*, 25 N.M. 219, 180 P. 284; *Springer v. Wasson*, 25 N.M. 379, 183 P. 398.

{3} The judgment of the trial court will therefore be affirmed; and it is so ordered.