

WITT V. MARCUM DRILLING CO., 1964-NMSC-029, 73 N.M. 466, 389 P.2d 403 (S. Ct. 1964)

**Francis L. WITT, Plaintiff-Appellant,
vs.
MARCUM DRILLING COMPANY, Employer, and Traders & General
Insurance Company, Insurer, Defendants-Appellees**

No. 7340

SUPREME COURT OF NEW MEXICO

1964-NMSC-029, 73 N.M. 466, 389 P.2d 403

February 10, 1964

Workmen's compensation case. The District Court, Roosevelt County, E. T. Hensley, Jr., D.J., rendered judgment denying workmen's compensation benefits, and the plaintiff appealed. The Supreme Court, Noble, J., held that evidence supported trial court's finding that injury to plaintiff did not arise out of his work but did occur at a time when he was using a machine tool in violation of and contrary to instructions given him by his supervisor.

COUNSEL

Heidel & Swarthout, C. Gene Samberson, Lovington, Kermit E. Nash, Hobbs, for appellant.

Neal & Neal, Hobbs, for appellees.

JUDGES

Noble, Justice. Carmody and Chavez, JJ., concur.

AUTHOR: NOBLE

OPINION

{*467} {1} Plaintiff (appellant) while an employee of defendants (appellees) sustained an injury resulting in the amputation of his left arm below the elbow. This appeal is from a judgment denying workmen's compensation benefits.

{2} The trial court made only two findings of fact; one found the extent of the injury and the second that:

"The injury to the plaintiff did not arise out of his work, but did occur at a time which [sic] he was using a machine tool in violation of and contrary to instructions given him by his supervisor.

{3} Violation of specific instructions which limit scope or sphere of work which employee is authorized to do bars recovery of workmen's compensation for an injury so sustained. Walker v. Woldridge, 58 N.M. 183, 268 P.2d 579.

{4} Findings must be construed most strongly in support of judgment. Martinez v. Scott, 70 N.M. 354, 374 P.2d 117; Fitzgerald v. Fitzgerald, 70 N.M. 11, 369 P.2d 398; Viramontes v. Fox, 65 N.M. 275, 335 P.2d 1071; Morrison v. Rodey, 65 N.M. 474, 340 P.2d 409; Totah Drilling Co. v. Abraham, 64 N.M. 380, 328 P.2d 1083, and the facts found by the trial court are the facts upon which the case rests in the appellate court, unless they are set aside as not having substantial support in the evidence. State ex rel. Bliss v. Davis, 63 N.M. 322, 319 P.2d 207; Rogers v. Stacy, 63 N.M. 317, 318 P.2d 1116; Lumpkins v. McPhee, 59 N.M. 442, 286 P.2d 299. It therefore follows that the judgment should be affirmed if the challenged finding has substantial support. It would serve no useful purpose to detail the evidence. Suffice it to say that we have carefully reviewed the record and conclude that there is evidence which substantially supports the finding by the trial court.

{5} The conclusions of law adopted by the trial court follow from the facts found. We {468} find no merit to the contention that they are erroneous.

{6} Since recovery of compensation is a prerequisite to the allowance of attorney fees plaintiff's request for such fees must be denied.

{7} Finding no error the judgment appealed and should be affirmed.

{8} It is so ordered.