

**SCHNEIDER, INC. V. SHADBOLT, 1985-NMSC-105, 103 N.M. 467, 709 P.2d 189 (S. Ct. 1985)**

**CASE HISTORY ALERT:** see [11](#) - affects 1985-NMCA-086

**SCHNEIDER, INC. and CNA INSURANCE COMPANIES, Petitioners,  
vs.  
CECIL DALE SHADBOLT, Respondent**

No. 16081

SUPREME COURT OF NEW MEXICO

1985-NMSC-105, 103 N.M. 467, 709 P.2d 189

November 21, 1985

ORIGINAL PROCEEDING ON CERTIORARI. Benjamin S. Eastburn, District Judge.

#### **COUNSEL**

Tansey, Rosebrough, Roberts & Gerding, Byron Caton, Farmington, New Mexico  
Attorney for Respondent.

William H. Carpenter, Albuquerque, New Mexico Attorneys for Respondent.

**AUTHOR:** PER CURIAM

#### **OPINION**

{\*468} PER CURIAM.

{1} This workman's compensation case was brought by Cecil Dale Shadbolt (Shadbolt) for injury that he alleged occurred on the job. The Court of Appeals affirmed the trial court award of benefits and compensation to Shadbolt. The Court of Appeals also upheld the trial court's award of attorney's fees. We granted certiorari and reverse the Court of Appeals on the issue of attorney's fees.

{2} The Court of Appeals held that even though it is the obligation of the Clerk of the Court to send the taped transcript to the Court of Appeals, that it is the "appellant's obligation to assure that the record necessary for review is sent up. If the appellant had not asked for the record, we would agree with the Court of Appeals that there is nothing to review.

{3} NMSA 1978, Crim., Child.Ct., Dom. Rel. & W/C App. Rule 208(b) (Repl. Pamp.1983) states in applicable part:

[T]he clerk of the district court shall prepare... duplicates of the recording of the **entire** proceeding.... the **clerk shall** send the original and two duplicates of the recording and log to the appellate court.... (Emphasis added.)

{4} In this case, as shown by the affidavit of the clerk, through inadvertence the tapes of the district court bearing on attorney's fees were not prepared and sent to the Court of Appeals. When it was called to the court's attention, the Court of Appeals should have obtained the record itself or notified counsel to call it to the district court clerk's attention.

{5} We have obtained the record and are forwarding it to the Court of Appeals with instructions to fully review the issues raised on appeal in regard to the attorney's fees awarded and decide that issue.

{6} IT IS SO ORDERED.