IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
January 12, 2016 Session

IN RE: CHRIS HIGHERS BAIL BONDS, et al.

Appeal from the Circuit Court for Rutherford County
No. F65176 David M. Bragg, Judge

No. M2015-00801-CCA-R3-CD – Filed March 29, 2016

Appellants are ten bail bonding companies that each posted a portion of a defendant's $1 million bond. After the defendant failed to appear for trial and absconded from the state, the bond was forfeited. When the defendant was apprehended almost two years later, some of the Appellants filed separate petitions for exoneration of the forfeited bond. After a hearing, the trial court denied the petitions. Upon our review of the record, it appears that three of the Appellants—Neal Watson Bonding, Lucky's Bonding, and Anytime Bail Bonds—never filed petitions with the trial court; therefore, we dismiss their appeals. As to the remaining seven Appellants, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part, Remanded in Part, Dismissed in Part

TIMOTHY L. EASTER, J., delivered the opinion of the Court, in which THOMAS T. WOODALL, P.J., and JOHN EVERETT WILLIAMS, J., joined.

Dicken E. Kidwell and David O. Haley (on appeal), Murfreesboro, Tennessee, for the appellants, Chris Highers Bail Bonds, Cumberland Bonds, James C. Climer Bail Bonding Company, Alsup Bonding, Norton Bonding Company, Butler Bail Bonding, Neal Watson Bonding, Lucky's Bonding, Tony Campbell Bail Bonding, and Anytime Bail Bonds.

Herbert H. Slatery III, Attorney General and Reporter; Sophia S. Lee, Senior Counsel; Jennings Jones, District Attorney General; and Sarah N. Davis, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural Background

Stephen Eugene Beck ("Beck"), was indicted on three counts of rape of a child by the Rutherford County Grand Jury during the September 2010 session. He was released on an appearance bond of $1 million. Appellants, ten bail bonding companies, agreed to act as sureties and posted partial bonds in amounts ranging from $50,000 to $300,000. On August 8, 2011, Beck failed to appear for his trial. The trial court issued a capias for his arrest and entered a conditional forfeiture on each of the bonds. Appellants were each served with a writ of scire facias on August 9, 2011, informing them of the conditional forfeiture.

In late January and early February of 2012, Appellants filed separate motions for an extension of time, and the trial court granted each Appellant an additional 60 days in which to surrender Beck. After a hearing on March 26, 2012, at which Appellants chose not to present any proof as to the possible location of Beck and their efforts to apprehend him, the trial court denied the request of Appellants for a further extension of time. In its ruling, the trial court said, "if [Beck] is returned sometime within the next three months or six months, [Appellants] can petition the Court, and the Court will return, in accordance with prior case law, that part which it feels like it can to offset this tremendous amount." The trial court retired Beck's case and entered a final judgment of forfeiture against him and his sureties on April 16, 2012.

Appellants Highers and Cumberland filed an answer to the conditional forfeitures on April 9, 2012, asserting that no valid scire facias had been issued or served on the sureties. Appellant Climer filed an identical answer on May 3, 2012. The trial court found that the assertion that Appellants had not received adequate notice was without merit and was waived by Appellants' prior appearances in court on the matter.

Over two years later, on July 24, 2014, Beck was apprehended in Wilmington, North Carolina, by agents of the Tennessee Bureau of Investigation ("TBI") and the United States Marshal's Service and was returned to Rutherford County. Appellants Highers, Cumberland, Campbell, Climer, Alsup, Norton, and Butler each filed a petition for exoneration of the forfeited bonds with the trial court. A hearing was held on the petitions on March 23, 2015.

At the hearing, various agents for Appellants' respective companies testified as to their history with Beck and their efforts to apprehend him. Bonding agents and bounty hunters were sent to several states following leads as to Beck's location. Some of the agents suspected that Beck's family was helping him elude capture. However, Beck's family claimed not to know his location, and he did not appear at a family member's

funeral. Some of the agents claimed that they were asked by law enforcement to "back off" their efforts to locate Beck, though others denied that such a request was made.

Charles A. Thomas, a detective with the Rutherford County Sheriff's Office and a deputized U.S. Marshal assigned to the Fugitive Task Force, testified for the State and explained how the Fugitive Task Force assists federal, state, and local law enforcement in apprehending fugitives. Detective Thomas worked with Agent Louis Kuykendall of the TBI to locate and apprehend Beck. Detective Thomas testified that the U.S. Marshals considered Beck's case to be "significant," and Beck was placed on the TBI's top ten most wanted list. Detective Thomas testified that he worked closely with some of the sureties and denied that he never asked them to stop their search for Beck. However, the bail bondsmen began to taper off their efforts to locate Beck toward the end. Detective Thomas testified that the information that eventually led to Beck's capture was developed internally by the U.S. Marshals and the Kentucky State Police rather than from any leads developed by Appellants.

On March 31, 2015, the trial court entered an order denying the requests of Appellants Highers, Cumberland, Campbell, Climer, Alsup, Norton, and Butler to return all or part of the forfeited bonds.[1] On April 29, 2015, a notice of appeal was filed by appellate counsel on behalf of all ten Appellants.

Analysis

As an initial matter, we note that not all of the bonding companies listed on the notice of appeal filed petitions for exoneration of their respective bonds. Appellants Neal Watson Bonding, Lucky's Bonding, and Anytime Bail Bonds have not properly availed themselves of the power of the court. Therefore, we do not have jurisdiction over the refund of those three sureties' bonds. Accordingly, the appeal is dismissed with respect to Appellants Neal Watson Bonding, Lucky's Bonding, and Anytime Bail Bonds.

With regard to Appellants Chris Highers Bail Bonds, Cumberland Bonds, Tony Campbell Bail Bonding, James C. Climer Bail Bonding, Alsup Bonding, Norton Bail Bonds, and Butler Bonding, we shall address the merits of this appeal. Appellants argue that the bond should be exonerated, in whole or in part, due to the extremely high amount of the bond and because of mandatory language used by the Tennessee Supreme Court in *Blankenship v. State*, 443 S.W.2d 442 (1969). The State responds that the trial court did

[1] Even though Appellant Tony Campbell Bail Bonding filed a petition for exoneration of his bond on November 20, 2014, and was present and presented testimony at the March 23, 2015 hearing, he was not included in the trial court's original March 31 order. This Court remanded the case to the trial court for the entry of an order disposing of Appellant Campbell's petition. On March 14, 2016, the trial court entered an order nunc pro tunc March 31, 2015, disposing of the petitions of all Appellants that had sought relief.

not abuse its discretion and that *Blankenship* does not apply because Beck was not in custody "at the time this final forfeiture was taken." *Id*. at 445. We agree with the State.

A bail bond is "a contract between the government on one side and the criminal defendant and his surety on the other, whereby the surety assumes custody of the defendant and guarantees to the State either the appearance of the defendant in court or the payment of the full amount of bail set by the court." *In re Sanford & Sons Bail Bonds, Inc.*, 96 S.W.3d 199, 202 (Tenn. Crim. App. 2002) (citations omitted). Because the risk of a defendant's flight is inherent in every bail bond agreement, it is incumbent upon the bondsman to be "'thorough . . . in assessing the risk of flight before writing the bond, [and] in keeping tabs on the defendant after the bond is written.'" *Id*. (quoting Holly J. Joiner, Note, *Private Police: Defending the Power of Professional Bail Bondsmen*, 32 Ind. L. Rev. 1413, 1422 (1999)). "'The bondsman only makes a profit when he is able to collect fees from the defendant and avoid paying the amount of the bond to the court.'" *Id*. (quoting Joiner, *supra*).

The forfeiture of bail bonds is controlled by statute. *See* T.C.A. § 40-11-201 *et seq*. The statute is permissive and confers no rights upon the sureties. *State v. Shredeh*, 909 S.W.2d 833, 835-36 (Tenn. Crim. App. 1995) (citing *Diehl v. Knight*, 12 S.W.2d 717 (Tenn. 1929)). When a defendant fails to appear in court in accordance with a bail bond agreement, Tennessee Code Annotated section 40-11-201(a) provides that a trial court may enter a conditional judgment of forfeiture against the defendant and his sureties. Upon entry of a judgment of conditional forfeiture, the trial court must issue a writ of scire facias requiring the defendant and his sureties to show cause why the judgment should not become final. T.C.A. § 40-11-202. A surety has 180 days from the date the scire facias is served to produce the defendant; otherwise, "the court may enter [final] judgment." T.C.A. § 40-11-139(b).

The surety may petition the trial court for relief from forfeiture. *In re Paul's Bonding Co., Inc.*, 62 S.W.3d 187, 193 (Tenn. Crim. App. 2001); T.C.A. § 40-11-204(a). The trial court must grant the surety a hearing, and "[t]he surety carries the burden of proving that its petition for exoneration should be granted." *In re Sanford & Sons Bail Bonds, Inc.*, 96 S.W.3d at 204. A surety may be exonerated from forfeiture by its surrender of the defendant to the court at any time before payment of the judgment of forfeiture. T.C.A. § 40-11-203. Otherwise, the surety must seek relief pursuant to Tennessee Code Annotated section 40-11-204, which provides:

> the judges of the general sessions, circuit, criminal and supreme courts may receive, hear and determine the petition of any person who claims relief is merited on any recognizances forfeited, and so lessen or absolutely remit the same, less a clerk's commission . . ., and do all and everything therein as they shall deem just and right, and consistent with the welfare of the

> state, as well as the person praying for relief. This power shall extend to the relief of those against whom final judgment has been entered whether or not the judgment has been paid, as well as to the relief of those against whom proceedings are in progress.

T.C.A. § 40-11-204(a); *see State v. William Bret Robinson*, No. E1999-00950-CCA-R3-CD, 2000 WL 1211316, at *2 (Tenn. Crim. App. Aug. 28, 2000) (noting that "[i]n the enforcement of forfeiture and for the exoneration of bail, the statute makes no distinction between a recognizance and a bail bond" (citing *State v. Gann*, 51 S.W.2d 490, 490 (Tenn. 1932)), *no perm. app. filed*.

The "trial court's discretion under Tenn[essee] Code Ann[otated section] 40-11-204 is broad and comprehensive, empowering trial courts to make determinations in accordance with [their] conception of justice and right." *In re Paul's Bonding Co., Inc.*, 62 S.W.3d at 194 (internal quotations and citations omitted). Accordingly, we review a trial court's determination on a petition for exoneration for an abuse of discretion. *Id.* "Under an abuse-of-discretion standard, this [C]ourt grants the trial court the benefit of its decision unless the trial court 'applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.'" *Id.* (quoting *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997)).

Even though the trial court's discretion is "broad and comprehensive," our supreme court has "narrowly circumscribed the circumstances in which a trial court possesses the authority to grant relief." *Id.*; *see State v. Frankgos*, 85 S.W. 79, 80-81 (Tenn. 1905).[2] In *Frankgos*, the supreme court held that "the power vested in the court is to be exercised *only in extreme cases*, such as where the sureties cannot produce their principal in court on account of his *death*, or some other condition of affairs, if any can exist, which make it *equally impossible* for them to surrender him." 85 S.W. at 81 (emphasis added). As the supreme court explained, "[t]o relieve sureties upon [lesser] grounds . . . would encourage defendants to forfeit their bail, and bring about a very lax administration of the criminal laws of the state." *Id.* "[T]he good faith effort made by the sureties or the amounts of their expense are not excuses" justifying exoneration of the bond. *In re Paul's Bonding Co., Inc.*, 62 S.W.3d at 194 (quoting *Shredeh*, 909 S.W.2d at

[2] Appellants argue in their reply brief that *Frankgos* is not controlling law because of the age of the case. However, *Frankgos* has not been overruled or modified by the Tennessee Supreme Court. "As an intermediate appellate court, we must abide by the Tennessee Supreme Court's decisions no matter how old they are unless they have been modified or overruled." *Ann Kosloff v. State Auto. Mut. Ins. Co.*, No. 89-152-II, 1989 WL 144006, at *4 (Tenn. Ct. App. Dec. 1, 1989) (citing *Barger v. Brock*, 535 S.W.2d 337, 341-42 (Tenn. 1976)). Additionally, *Frankgos* has been recently cited by this Court as controlling law in similar cases to the one at bar. *See, e.g.*, *State v. Taria Funyette Scott*, No. W2012-02746-CCA-R3-CD, 2014 WL 887350, at *5 (Tenn. Crim. App. Mar. 5, 2014), *perm. app. denied* (Tenn. June 24, 2014).

836). Even the inability to extradite a defendant who has fled to a foreign country does not constitute the type of "extreme case[]" contemplated by *Frankgos*. *Id*. at 195; *Shredeh*, 909 S.W.2d at 835. The rule in and public policy behind *Frankgos* apply even when the defendant has been apprehended at the time the surety files its petition. *State v. LeQuire*, 672 S.W.2d 221, 222 (Tenn. Crim. App. 1984).

Appellants insist that the amount of the bond in this case constitutes an extreme circumstance justifying exoneration, at least in part. While we agree that $1 million is a very large bond, it is no larger now than on the day Appellants decided to take the risk of writing the bond in hopes of earning a profit. We do not see how the amount of the bond, which is designed to *ensure* the defendant's appearance, makes it *impossible* for him to appear. This Court has repeatedly held that the amount of a surety's expenses does not justify exoneration of a bond. *See In re Paul's Bonding Co., Inc.*, 62 S.W.3d at 194; *Shredeh*, 909 S.W.2d at 836. In writing Beck's very large bond in this case, Appellants assumed a "calculated risk in the ordinary course of business" and "entered into an agreement to assure the presence of the defendant." *State v. Elijah D. Truitt*, No. M2005-01226-CCA-R3-CD, 2006 WL 2738876, at *4 (Tenn. Crim. App. Sept. 21, 2006). Therefore, it cannot be said that "the trial court has abused its discretion by enforcing the terms when there has been a breach of the contract." *Id*. This argument is without merit.

Appellants also argue that the mandatory language used by the supreme court in *Blankenship* requires relief in this case. In *Blankenship*, the trial court issued a final forfeiture against the defendant and his surety on October 8, 1968. 443 S.W.2d at 160. However, the defendant had been in custody continuously since March 29, 1968. *Id*. at 161. The supreme court noted that the statute in effect at the time, T.C.A. § 40-1301 (1967), used mandatory language in stating that "[o]n the filing of such detainer, the court *[s]hall* exonerate the bondsman and sureties . . . ." *Id*. at 164 (emphasis added). Because the defendant "had been apprehended and was in prison . . . at the time this final forfeiture was taken," the court held that the sureties "should not be penalized by making them pay the full amount of this bond" simply because they were negligent in failing to inform the court of the defendant's whereabouts. *Id*. at 165; *see also State v. William E. Frazier*, No. 88-266-III, 1989 WL 71032, at *3 (Tenn. Crim. App. June 29, 1989) ("Thus, it appears that at the time the judgment of final forfeiture was entered the appellant was already in custody and that officers were en route to return him to Tennessee. Therefore, the judgment of final forfeiture against the Nashville Bonding Company is reversed and this cause is remanded to the Criminal Court of Davidson County with directions to refund the amount of the bond and the costs paid by the bonding company.")

This case is distinguishable from *Blankenship* for several reasons. First, the statutory language in the current forfeiture statute is permissive rather than mandatory. *See* T.C.A. § 40-11-203(a) and -204(a). Secondly, unlike the defendants in both

Blankenship and *William E. Frazier*, the defendant in this case was not in custody, either in this state or any other (that we know of), at the time the final forfeiture was entered by the trial court. This Court has held that exoneration of the bond is left to the sound discretion of the trial court, even when a defendant is apprehended after the entry of a final forfeiture. *See LeQuire*, 672 S.W.2d at 222-23. The defendant in *LeQuire* was apprehended nearly seven months after the entry of the final forfeiture, whereas the defendant in this case was apprehended over two years later. Despite the good faith efforts of Appellants to locate Beck even after the final forfeiture was entered, we do not believe there were extreme circumstances in this case, comparable to the defendant's death, which made it impossible to surrender him before final forfeiture was entered. Therefore, we affirm the judgment of the trial court.

Conclusion

Based on the foregoing, we affirm the judgment of the trial court with respect to Appellants Chris Highers Bail Bonds, Cumberland Bonds, Tony Campbell Bail Bonding, James C. Climer Bail Bonding Company, Alsup Bonding, Norton Bonding Company, and Butler Bail Bonding. We dismiss the appeals of Appellants Neal Watson Bonding, Lucky's Bonding, and Anytime Bail Bonds because they never filed a petition for exoneration in the trial court.

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TIMOTHY L. EASTER, JUDGE