

Circuit Court for Baltimore City
Case No. 115139027

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0930

September Term, 2016

4 ACES BAIL BOND, FINANCIAL
CASUALTY & SURETY, INC.

v.

STATE OF MARYLAND

Meredith,
Kehoe,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: July 25, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from the denial of a petition for remission of amounts paid by appellant, 4 Aces Bail Bonds, Inc. (“4 Aces”), in satisfaction of a bail bond forfeiture in the Circuit Court for Baltimore City. Appellant presents one question for our review, which we have revised slightly: did the circuit court abuse its discretion in denying appellant’s petition for remission?¹

For the following reasons, we affirm.

FACTUAL BACKGROUND

On April 20, 2015, Dantray King, who is not a party to this appeal, was charged in the District Court of Maryland for Baltimore City with one misdemeanor and two felony drug offenses. Bail was set at \$25,000, and on April 21, 2015, agents for Financial Casualty Insurance Co. (“Financial Casualty” or “Surety”), posted bond for Mr. King. On May 19, 2015, Mr. King was indicted and the case was transferred to the Circuit Court for Baltimore City.

When Mr. King failed to appear for trial on July 21, 2015, the circuit court issued a bench warrant and ordered the bond forfeited and payable within ninety (90) days. Appellant filed a petition for an extension time to satisfy the order of bond forfeiture, up to and including January 16, 2016, which the court granted. On January 4, 2016, appellant erroneously served the bench warrant on Mr. King’s twin brother, “Dontrey” King. On

¹ Appellant phrased the question as:

Did the trial [c]ourt act within its discretion in denying 4 Aces Bail Bonds on behalf of Crum and Forster’s Petition for Remission when a subsequent Petition to Strike and Judgment set aside from appellant was granted and the original bail was reinstated on March 16, 2016?

January 6, 2016, when it was determined that Mr. King's twin brother, Dontrey, had been arrested on the outstanding warrant, Dontrey was released from custody and a failure to appear warrant was re-issued for Mr. King.

On January 19, 2016, the circuit court entered a judgment against Surety for failure to satisfy the bail forfeiture and produce Mr. King, as required, by January 16, 2016. On March 3, 2016, Surety filed a petition to strike the forfeiture and judgment, arguing that it had served the bench warrant within the prescribed time, even though it was later determined that the warrant had been served on Mr. King's twin brother.

On March 9, 2016, Mr. King was arrested in Baltimore City on unrelated charges, and served with the bench warrant. At Mr. King's bail review hearing on March 16, 2016, the court ordered that his bail in the amount of \$25,000 be reinstated. On March 24, 2016, the court struck the March 16, 2016 bail order and set a new bail in the amount of \$25,000.

On April 1, 2016, appellant satisfied the judgment by payment of the bail forfeiture in the amount of \$26,753.42, representing the principal amount of the bail plus interest. On April 5, 2016, the circuit court denied Surety's petition to strike and set judgment aside, finding that the arrest on January 4, 2016 of Mr. King's twin brother did not relieve appellant of its obligations to produce Mr. King or pay the penalty sum on Mr. King's bail bond prior to January 16, 2016.

On April 29, 2016, appellant filed a petition for remission, requesting return of the forfeited \$25,000 on the ground that "the Forfeiture was stricken due to that it was previously reinstated." The circuit court denied the petition in an order dated November 29, 2016, which is the subject of this appeal.

DISCUSSION

A bail bond is “a written obligation of a defendant, with or without a surety or collateral security, conditioned on the appearance of the defendant as required and providing for the payment of a penalty sum according to its terms.” Maryland Rule 4-217(b)(1). If a defendant fails to appear in court as required, the court issues a warrant for the defendant’s arrest and orders forfeiture of the bail bond. Rule 4-217(i)(1). “[T]he threat of forfeiture is an incentive to the surety to ensure the accused’s timely presence at trial.” *Fin. Casualty Ins. Co. v. State*, 212 Md. App. 248, 254 (2013)(citation omitted). Should the defendant fail to appear, the surety’s incentive is “redirected from *avoiding* forfeiture to seeking the *remission* of the forfeiture by returning the absconding defendant to the jurisdiction of the court.” *Id.* (citation and internal quotation marks omitted) (emphasis in original). It is the possibility of remission of the forfeiture that serves as the inducement to the surety to have the defendant arrested and returned. *Id.* (citation omitted).

The surety has 90 days, or 180 days if the court extends the time, to satisfy the forfeiture by either producing the defendant in court or paying the penalty sum of the bond before the court will collect the forfeited bond. Maryland Code (2008, 2016 Supp.), Criminal Procedure Article (“CP”), §5-208(b)(2)(i). In the event that the defendant is subsequently returned, the court will strike the forfeiture so long as the penalty amount of the bond was paid during the 90 (or 180 day) period following the forfeiture. CP §5-208(b)(2)(ii)(1)-(3).

In the present case, appellant neither produced Mr. King nor paid the penalty sum of the bond prior to the expiration of the 180 day period. Appellant contends that “on

March 24, 2016 the forfeiture was stricken due to the fact that [the court] reinstated the previous bail for [Mr. King] on March 16, 2016. This should have relieved the surety of its obligation under the statutory time requirement.” Appellant cites no authority in support of its contention that the forfeiture was stricken when the court reinstated the previous bail, and we are aware of none.

The record contains a docket entry for March 16, 2016, indicating, “Bail Review heard & ‘Granted’ Bail Re-instated to \$25,000.00.” The docket entry contains no mention of the previous bail forfeiture, and no order that the forfeiture be stricken. One week later, there is another docket entry on March 24, 2016, stating, “Per Judge, Old Bail in the amount of \$25,000 strike [sic] due to that [it] was previously reinstated and a new Bail was set by [the court] in the amount of \$25,000.” The next line of the docket contains an entry for March 9, 2016, with a stamp entry “Bench Warrant Returned.” Contrary to appellant’s assertion, the docket indicates that on March 24, 2016, the previously reinstated *bail* was stricken, the forfeiture, however, was not stricken. Therefore, we find no merit in appellant’s contention that the forfeiture was stricken at any point, either by the court, or by operation of law.

Appellant further contends that because it erroneously produced Mr. King’s twin brother prior to January 16, 2016, “at that point the bond forfeiture should have been stricken and [j]udgment set aside should have been granted and a new 90 day default period should have been entered.” Again, appellant cites no authority in support of this position.

As we explained in *Prof'l Bail Bonds, Inc. v. State*, 185 Md. App. 226, 235 (2009):

The appellant’s obligation was not to locate the defendant. Nor was it to make a good faith effort to bring the defendant back to Maryland. Its obligation was to produce the defendant at the [courthouse] to stand trial and nothing less than that.

In *Prof'l Bail Bonds*, the appellant bondsman posted a bond in the amount of \$35,000 for the defendant, who was charged with a felony offense. *Id.* at 229. The defendant failed to appear for trial, and the court ordered the bond forfeited. *Id.* When a bounty hunter, who was retained by the bondsman, subsequently located the defendant in Honduras, the defendant informed the bounty hunter that he had no intention of returning to the United States. *Id.* at 230. Appellant petitioned to have the forfeiture stricken for cause pursuant to Rule 4-217(i)(2),² claiming that there were “reasonable grounds” for the defendant’s failure to appear because the defendant was located in Honduras and the United States did not have an extradition treaty with Honduras. *Id.* at 232-33. In rejecting the bondsman’s argument that the forfeiture should be stricken because it had exhausted all available legal options to return the defendant to Maryland, this Court explained:

The bail bond company is not being rewarded for its good faith efforts nor is it being punished for its failure. The appellant is but the agent of the defendant. It is the defendant whose malefaction brought about a forfeiture of the defendant’s bond. The defendant’s original sin remains unredeemed.

Id. at 233.

² Former Rule 4-217(i)(2), which is now Rule 4-217(i)(3), allows for the striking out of part or all of a forfeiture and judgment, and the remission of all or part of the penalty sum paid, if the defendant or surety can show “reasonable grounds for the defendant’s failure to appear.”

In this case, appellant was obligated to produce Mr. King by January 16, 2016. Appellant's apprehension and return of Mr. King's twin brother prior to that date did not constitute "reasonable grounds" for Mr. King's failure to appear, nor did it relieve appellant of its obligation to produce Mr. King. Accordingly, there was no basis in law or in fact for the court to strike the forfeiture and provide appellant with additional time to produce Mr. King following appellant's failed attempt to satisfy the forfeiture.

Finally, appellant contends that it is entitled to a refund of the forfeited bail bond pursuant to CP § 5-208(e)(3)(ii)(2), which provides that the court may refund a forfeited bond or collateral that was not paid within the required 90 or 180 days if:

- 1) on motion, the surety produces evidence that **the defendant was incarcerated** when the judgment of forfeiture was entered; **and**
- 2) the court strikes out the judgment of forfeiture for fraud, mistake, or irregularity.

(Emphasis added). In order to qualify for relief under CP § 5-208(e)(3)(ii)(2) for "fraud, mistake or irregularity," appellant was required to demonstrate that Mr. King was incarcerated when the judgment was entered, pursuant to CP § 5-208(e)(3)(ii)(1). There was no evidence in this case that appellant failed to produce Mr. King because he was incarcerated, and therefore CP § 5-208(e)(3)(ii)(2) does not apply.

We conclude that the circuit court did not abuse its discretion in denying appellant's petition for remission.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**