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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

ACCREDITED SURETY &
CASUALTY CO.,

Defendant and Appellant.

B266620

(Los Angeles County
Super. Ct. Nos. BA420728
& SJ4058)

APPEAL from an order of the Superior Court of Los Angeles County, Kerry Bensinger, Judge. Affirmed.

Law Offices of John Rorabaugh, John M. Rorabaugh and Crystal L. Rorabaugh, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and Joanne Nielsen, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Accredited Surety & Casualty Co. (Accredited) appeals from the order of the trial court denying its motion to set aside the summary judgment forfeiting bail after Roger Gregorio Salinas, a criminal defendant for whom Accredited had issued a bail bond, failed to appear at his arraignment. (Pen. Code, §§ 1305-1308.)¹ Accredited contends that the court lost jurisdiction over the bond at the arraignment because Salinas's attorney failed to provide sufficient evidence of an excuse for Salinas's nonappearance to justify continuing the hearing without forfeiting bail. (§ 1305.1.) We conclude that Salinas's attorney's representation that Salinas stated he intended to appear and so there must be "some unforeseen emergency" provided the court with a reasonable basis to believe that Salinas's nonappearance may have been with sufficient excuse. Therefore, we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

On January 27, 2014, Salinas was present with privately retained counsel Jesse Terrell at his arraignment when Accredited issued a \$100,000 bail bond guaranteeing his appearance in court on February 6, 2014. Salinas failed to appear on February 6, a Thursday. Terrell stated, "I spoke to my client yesterday. He was planning on being here. The only thing, I've tried to contact him now several times and his phone is disconnected. I can't imagine any reason why he wouldn't be here, other than some unforeseen emergency. [¶] So that being the case, I would ask that if you issue a warrant, that you hold it

¹ All statutory references are to the Penal Code.

and don't revoke his bond and grant me until Tuesday morning to bring my client in." The People argued that Salinas had no communication with Terrell, to which the trial court responded, "Well, that's not true. He had a conversation with him yesterday." Finding good cause, the court issued the bench warrant and held it until Tuesday, February 11, 2014.

Salinas did not appear on February 11, 2014, and Terrell informed the trial court that he had had no further communication with his client. The court released the bench-warrant hold and forfeited bail.

The trial court notified Accredited of the forfeiture. It extended the appearance period by six months and on April 15, 2015, entered summary judgment on the forfeited bond.

Accredited moved to set aside the summary judgment, discharge the forfeiture, and exonerate the bond. Accredited argued that the trial court lost jurisdiction over the bond when it did not declare a forfeiture on February 6th, because a sufficient excuse was not presented for Salinas's first nonappearance to justify holding the bench warrant. (§ 1305.1.)

At the hearing on Accredited's motion, the trial court found this case to be more akin to *People v. Ranger Ins. Co.* (2003) 108 Cal.App.4th 945 (*Ranger*), as advocated by the County of Los Angeles (the County), than to *People v. Harco National Ins. Co.* (2005) 135 Cal.App.4th 931 (*Harco*), relied on by Accredited. The court reasoned that "[j]ust as the court in *Ranger* had a rational basis to believe there may be a sufficient excuse for [Salinas's] absence, here to[o], perhaps even more so, based upon the earlier conversation, [Salinas] specifically told the attorney the day before he was coming to the hearing. The court [here had] made a specific finding on the record and had a rational basis to believe

an emergency may have occurred that prevented [Salinas] from coming to court or that a sufficient excuse may have existed to prevent [Salinas] from coming to court.”

Accordingly, the trial court denied Accredited’s motion to set aside the summary judgment and Accredited filed its timely appeal.

CONTENTION

Accredited contends that the trial court erred in denying its motion to set aside the summary judgment, discharge the forfeiture, and exonerate the bond.

DISCUSSION

Just as it did below, Accredited contends that the trial court had no authority to enter summary judgment in April 2015. It reasons that the court lost jurisdiction to declare a forfeiture on February 11, 2014 because Terrell had offered no factual basis for an excuse on February 6, 2014 to support a finding of good cause for Salinas’s failure to appear.

“ ‘ “The law traditionally disfavors forfeitures and this disfavor extends to forfeiture of bail. Thus, Penal Code sections 1305 and 1306 dealing with forfeiture of bail bonds must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture.” ’ ’ ” (*Ranger, supra*, 108 Cal.App.4th at pp. 950-951.) We are obligated to protect the surety, “ ‘ “and more importantly the individual citizens who pledge to the surety their property” ’ ” to obtain the corporate bond on behalf of those seeking release from custody. (*Id.* at p. 951.)

Bail forfeitures are governed by section 1305 et seq. Sections 1305 and 1306 are “ ‘ “jurisdictional prescriptions.” ’ ” (*Ranger, supra*, 108 Cal.App.4th at p. 951.) “The trial court must

carefully follow these provisions or its acts may be found to be without, or in excess of, its jurisdiction.” (*People v. Financial Casualty & Surety, Inc.* (2017) 14 Cal.App.5th 127, 133 (*Financial Casualty*).)

Section 1305.1 enables trial courts to excuse a defendant bailee’s nonappearance at a required hearing and retain jurisdiction over the bail bond “*if the court believes sufficient excuse exists to do so.*” (*Ranger, supra*, 108 Cal.App.4th at p. 951, *italics added*.) Section 1305.1 reads: “If the defendant fails to appear . . . but the court has *reason to believe* that sufficient excuse *may exist* for the failure to appear, the court may continue the case for a period it deems reasonable to enable the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant. [¶] If, after the court has made the order, the defendant, without sufficient excuse, fails to appear on or before the continuance date set by the court, the bail shall be forfeited and a warrant for the defendant’s arrest may be ordered issued.” (*Italics added*.) “‘Accordingly, the court can continue a hearing and still retain its jurisdiction to declare a forfeiture at a later time as long as it has a reason to believe that a sufficient excuse exists for the nonappearance.’” (*Ranger, supra*, 108 Cal.App.4th at pp. 951-952.)

“Because each case presents its own unique set of circumstances the issue whether the showing of excuse is sufficient is decided on a case-by-case basis. The determination whether an excuse is sufficient is a matter within the trial court’s discretion.” (*Ranger, supra*, 108 Cal.App.4th at p. 952, *fns. omitted*.) Under the abuse of discretion standard, “[t]he trial court’s findings of fact are reviewed for substantial evidence” and “its application of the law to the facts is reversible only if

arbitrary and capricious.’ ” (*County of Los Angeles v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 538, 543, quoting from *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712.)

Accredited maintains that the facts of this case are similar to *Harco*. The record in *Harco* contained no explanation for the defendant’s nonappearance. (*Harco, supra*, 135 Cal.App.4th at p. 933.) Neither the defendant nor his attorney appeared at the first hearing on Friday and so at substitute counsel’s request, the trial court issued and held a bench warrant. The following Monday, the defendant did not appear in court and his attorney had had no contact with him, despite an attempted call, and provided no explanation for the nonappearance. (*Ibid.*) *Harco* reversed the order denying the surety’s motion to set aside the summary judgment and bail forfeiture. Citing *People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898 (*United Bonding*), the *Harco* court stated that “[a] failure to appear is *presumed* to be without excuse and the burden to prove otherwise is on the party seeking to enforce a later forfeiture.” (*Harco*, at p. 934, italics added.) The *Harco* court determined that the County had not overcome this presumption because there was no evidence whatsoever to support the trial court’s finding that the defendant’s failure to appear was sufficiently excused to justify not forfeiting bail that Friday. (*Id.* at pp. 934-935.)

Harco does not help Accredited. In discussing the presumption that a failure to appear is without excuse, *Harco* summarized the Supreme Court precedent in *United Bonding* but omitted pertinent language. The relevant quote reads in its entirety as follows: “[A] defendant’s failure to appear *without explanation* is presumptively without sufficient excuse.” (*United Bonding, supra*, 5 Cal.3d at p. 907, italics added, accord *People v.*

Allegheny Casualty Co. (2007) 41 Cal.4th 704, 716-717.) Thus, critical to the holdings in both *Harco* and *United Bonding* was the fact that on the first appearance date, counsel neither suggested nor provided the court with *any* explanation, reasonable or otherwise, to justify the defendant's failure to appear. Moreover, the trial court in *Harco* made no finding that sufficient excuse existed for not forfeiting the bail on the first appearance date. To be clear, the record was *silent* as to counsel's explanation for his client's failure to appear and so the presumption arose that the nonappearance was without excuse.

Indeed, Accredited acknowledged at oral argument here that once counsel presents an explanation, the presumption that *Harco* spoke about no longer applies. Notwithstanding this acknowledgement, Accredited continues to assert that Terrell's representations to the trial court – that Salinas told Terrell the previous day he was planning to come to court and Terrell could only imagine an unforeseen emergency prevented Salinas's appearance – was not an adequate explanation. Accredited insists that the representation was not “enough to give rise to the reasonable inference that a sufficient excuse may have existed,” absent the trial court having “prior experience with [Salinas].” In effect, Accredited invites us to reweigh the evidence by arguing that the explanation offered by counsel was insufficient to support the trial court's ruling. Yet, case law does not require prior experience with the defendant. More important, “the test is *not* whether it has been conclusively demonstrated a defendant had an actual and valid excuse for his nonappearance to justify continuing a hearing without declaring a bail forfeiture.” The standard is much lower: section 1305.1 “requires the court to only have ‘*reason to believe that sufficient excuse may exist for the*

failure to appear.’ ” (Ranger, supra, 108 Cal.App.4th at p. 953, some italics added, fns. omitted, quoting from § 1305.1.)

More on point is *Financial Casualty*, issued by the First District after the trial court’s order here. There, the defendant made an initial appearance and was ordered to appear on two future dates. After the surety posted a bail bond, the defendant failed to appear for the first of the two scheduled dates, the supervised pretrial release eligibility report hearing. Defense counsel urged the trial court not to forfeit bail, postulating that the defendant was confused by the two dates and the fact that he had already posted bail. The court accepted counsel’s explanation for the defendant’s failure to appear and did not order bail forfeited. (*Financial Casualty, supra*, 14 Cal.App.5th at p. 131.) Notably for our purposes, counsel in *Financial Casualty* had not made contact with the defendant since his release and the defendant did not have a history of appearing in court. The appellate court rejected the surety’s argument, similar to Accredited’s here, that the defense counsel’s excuse was insufficient. The *Financial Casualty* court concluded instead that counsel “*had a reasonable explanation*” for his client’s failure to appear and nothing more was required to support the trial court’s finding that a sufficient excuse existed to avoid forfeiture of the bond. (*Id.* at p. 135, italics added.) Both Accredited and the County agree that the “reasonable explanation” standard enunciated in *Financial Casualty* is sound and we find it persuasive.

Similarly, in *Ranger*, the defense counsel had not been in communication with the defendant and provided no direct evidence to explain or justify the defendant's absence. (*Ranger, supra*, 108 Cal.App.4th at p. 953.) The defendant had appeared in court nine times. At the defendant's first nonappearance, counsel stated he had tried calling every number he knew and was concerned that "something has happened." (*Id.* at p. 949.) Recognizing that "silent records provide no grounds to justify continuing a hearing without declaring a forfeiture of bail when the defendant fails to appear" (*id.* at p. 952), the *Ranger* court nonetheless affirmed the trial court's ruling that the defendant's history of making every prior appearance provided a " 'rational basis' for believing there might be a sufficient excuse for the defendant's absence." (*Id.* at p. 953, fn. omitted.)

Likewise, in *People v. Amwest Surety Ins. Co.* (1997) 56 Cal.App.4th 915, 925 (*Amwest Surety*) the appellate court held there was no loss of jurisdiction to declare a forfeiture because counsel's representation " 'there *may be an emergency*' " provided the trial court with a "sufficient basis to entertain a reasonable belief the defendant's nonappearance may have been with sufficient excuse." (*Id.* at pp. 925 & 926, italics added.) In so doing, the appellate court rejected the surety's argument (*id.* at p. 920) that the explanation offered by counsel of an unknown emergency was insufficient to support the trial court's finding that there existed sufficient excuse for the defendant's nonappearance.

Here, the facts are analogous to, and in some respects, more compelling than *Financial Casualty* and *Amwest Surety*. Terrell’s explanation that there must have been “some unforeseen emergency” provided the trial court with a reasonable basis to believe that Salinas’s nonappearance was sufficiently excused. First, Terrell had communicated with Salinas just the day before the hearing and the latter expressed his intention to appear. Second, on the morning of the hearing, Terrell took the added step of attempting to re-contact Salinas, but was unsuccessful because Salinas’s telephone had unexpectedly been disconnected. These two facts provided the trial court with sufficient evidence to agree with Terrell’s offered explanation that an “unforeseen emergency” may have caused Salinas’s nonappearance. Although Terrell did not know the exact reason for Salinas’s failure to appear, and although Salinas did not have a record of attendance in court, neither factual precision nor a history of past appearances is required. The trial court found that Terrell offered a “reasonable explanation” for Salinas’s nonattendance (*Financial Casualty, supra*, 14 Cal.App.5th at p. 135) and properly exercised its discretion in concluding there was a sufficient excuse for Salinas’s non-appearance to retain jurisdiction over the bond on February 6, 2014. (*Ranger, supra*, 108 Cal.App.4th at p. 952.) The court had jurisdiction until Salinas missed the second court date on February 11, 2014, at which point it forfeited the bond and thereafter properly entered summary judgment.

DISPOSITION

The order is affirmed. Respondent to recover its costs on appeal.

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KALRA, J.*

We concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.