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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

THE NORTH RIVER INSURANCE
COMPANY,

Defendant and Appellant;

BAD BOYS BAIL BONDS,

Real Party in Interest and
Appellant.

B271985

(Los Angeles County
Super. Ct. Nos. OSJ1825,
GA093074)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kerry R. Bensinger, Judge. Affirmed.

Jefferson T. Stamp for Defendant, Real Party in Interest, and Appellants.

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

I. INTRODUCTION

Defendant, The North River Insurance Company (North River), and real party in interest, Bad Boys Bail Bonds (Bad Boys), appeal from a summary judgment on a bail bond forfeiture under Penal Code section 1306.¹ Prior to the judgment, the trial court erred in determining the latest permissible date for the period during which the surety could surrender the criminal defendant or establish other grounds that support vacating the forfeiture. Nevertheless, we cannot find reversible error because even if the trial court had granted an extension to the latest permissible date, appellants have not established a ground for vacating the forfeiture. Furthermore, summary judgment was not premature because it was entered the day after the 180-day extension period—as measured from the date of the extension order—elapsed. We affirm.

II. BACKGROUND

On April 25, 2014, the Los Angeles County District Attorney's Office filed a criminal complaint against Michael Shanazari for felony assault with intent to commit rape, sodomy,

¹ Further statutory references are to the Penal Code.

and oral copulation; kidnapping; and false imprisonment by violence. On May 12, 2014, Bad Boys, acting as the agent for North River, posted a \$150,000 bail bond for Shanazari's release from custody. On February 18, 2015, without excuse, Shanazari failed to appear for a setting of violation hearing. The trial court issued a bench warrant and ordered the bond forfeited.

On February 26, 2015, a notice of forfeiture was mailed to North River and Bad Boys. Under section 1305,² the period during which the forfeiture would be vacated if Shanazari appeared or another legally sufficient excuse is demonstrated—180 days plus 5 days for mailing of the notice—was set to expire August 30, 2015.

Section 1305.4 permits the trial court to grant an extension of up to 180 days for good cause. At the time of the proceedings in this case, there was a split of authority as to whether such an extension is measured from the date of the expiration of the initial appearance period, or, instead, from the date that the trial court grants the extension, which may be up to 30 days after the

² Section 1305, subdivision (c)(1) provides in pertinent part: "If the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required under subdivision (b), the court shall, on its own motion at the time the defendant first appears in court on the case in which the forfeiture was entered, direct the order of forfeiture to be vacated and the bond exonerated." Section 1305, subdivision (b)(1) provides in relevant part: "If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for mailing."

expiration of the initial appearance period under section 1305, subdivision (j).

On August 27, 2015, Bad Boys filed a timely motion to extend the 185-day period pursuant to section 1305.4, arguing that the court should grant a 180-day extension measured from the date of the order granting that extension. The district attorney did not oppose an extension. However, the district attorney filed a letter arguing that any extension was properly measured from the expiration of the initial appearance period of 180 or 185 days.

At a September 25, 2015 hearing, the trial court found good cause to grant the extension. The trial court determined that the more persuasive authority favored measuring the extension period from when the initial 185-day period had expired, not from the date of the extension order. The trial court set the deadline for the extended appearance period at February 26, 2016.

Shanazari did not appear voluntarily or in custody by February 26, 2016. Accordingly, on March 24, 2016, the trial court entered summary judgment against North River pursuant to section 1306 for forfeiture of the \$150,000 bail bond plus \$370 in costs.

On December 8, 2016, our Supreme Court resolved the split of authority as to section 1305.4 in *People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35 (*Financial Casualty*). Our Supreme Court held: “Section 1305.4 provides that the trial court, on a motion to extend the initial appearance period, ‘may order the period extended to a time not exceeding 180 days *from its order.*’ (Italics added.) This language plainly measures the allowable period of extension from the date of the trial court’s extension order, not from the end date of the initial appearance

period. Section 1305.4's reference to the court's 'order' cannot reasonably be read as referring to the initial period's end date, which is in no sense an order." (*Id.* at p. 43.)

III. DISCUSSION

A. *The Bail Bond Forfeiture Statutes*

Our Supreme Court has succinctly explained the functioning of our state's bail bond statutes: "While bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature. [Citation.] 'The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court.' [Citations.] 'In matters of this kind there should be no element of revenue to the state nor punishment to the surety.' [Citation.] Nevertheless, the 'bail bond is a contract between the surety and the government whereby the surety acts as a guarantor of the defendant's appearance in court under the risk of forfeiture of the bond.' [Citation.] Thus, when there is a breach of this contract, the bond should be enforced. [Citation.]" (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657-658 (*American Contractors*).)

"When a person for whom a bail bond has been posted fails without sufficient excuse to appear as required, the trial court must declare a forfeiture of the bond. (§ 1305, subd. (a).) The 185 days after the date the clerk of the court mails a notice of forfeiture (180 days plus five days for mailing) to the appropriate parties is known as the appearance period. (§ 1305, subd. (b).)

During this time, the surety on the bond is entitled to move to have the forfeiture vacated and the bond exonerated on certain grounds, such as an appearance in court by the accused. (§ 1305, subd. (c)(1).) The trial court may also toll the appearance period under certain circumstances, or extend the period by no more than 180 days from the date the trial court orders the extension, provided that the surety files its motion before the original 185-day appearance period expires and demonstrates good cause for the extension. (§§ 1305, subds. (e), [(j)], 1305.4.) [Fn. omitted.]” (*American Contractors, supra*, 33 Cal.4th at p. 658.)

“After the appearance period expires, the trial court has 90 days to enter summary judgment on the bond. (§ 1306, subds. (a), (c).) If summary judgment is not entered within the statutory 90-day period, the bond is exonerated. (§ 1306, subd. (c).) [Fns. omitted.]” (*Ibid.*)

We note that “the statutes that govern forfeiture of bail bonds must be strictly construed in favor of the surety because of the traditional abhorrence of forfeitures.” (*County of Los Angeles v. Williamsburg National Ins. Co.* (2015) 235 Cal.App.4th 944, 954 (*Williamsburg National*).) “When a statutory scheme, such as that pertaining to bail forfeiture, ‘requires a court to exercise its jurisdiction in a particular manner, to follow a particular procedure, or to act subject to certain limitations, an act beyond those limits is in excess of its jurisdiction.’ [Citations.]” (*People v. Lexington National Ins. Corp.* (2010) 181 Cal.App.4th 1485, 1489.)

Appellants raise two arguments. One contention is that summary judgment was entered prematurely because it was entered before the appearance period should have ended, had that period been calculated from the date of the extension order.

As discussed below, this argument is factually incorrect. The second argument is that the trial court lacked fundamental jurisdiction because it entered an erroneous extension order due to its legal error in calculating the starting date of the extended appearance period. We conclude that the court was not without fundamental jurisdiction. We finally address the trial court's error to the extent it is challenged directly as part of the fundamental jurisdiction argument, and we find that it was not prejudicial and therefore not reversible.

B. Summary Judgment Was Not Premature

The trial court granted a 180-day extension, but erroneously calculated it from the date of the expiration of the initial appearance period (August 30, 2015), rather than from the date the extension order was issued (September 25, 2015). (*Financial Casualty, supra*, 2 Cal.5th at pp. 43, 46 [period of extension to be measured from the date of the extension order].) The court thus ordered the extension through February 26, 2016. Appellants assert that had the additional period run from the date of the extension order, the 180-day extension period would have ended on March 24, 2016. Thus, they contend the summary judgment—which was issued on that precise date, March 24, 2016—was premature. (See *American Contractors, supra*, 33 Cal.4th at p. 660 [summary judgment under section 1306 is premature if entered on the last day of the appearance period under section 1305].)

Contrary to appellants' assertion that the last date for the extension should have been March 24, 2016, the last day of the

180-day extension should have been *March 23, 2016*.³ Even under appellants' view of the law, this fact is dispositive of their argument. Pursuant to section 1306, subdivision (a), "[w]hen any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound." The first date on which the summary judgment could have been entered under appellants' theory was March 24, 2016. This is when judgment was entered here, so the summary judgment was not premature.

C. The Trial Court Maintained Fundamental Jurisdiction Over the Bond

Appellants contend that the trial court lost fundamental jurisdiction because the 180-day appearance period extension was incorrectly calculated under section 1305.4. The extension was measured from the end of the initial appearance period when it should have been calculated from the date of the extension order. They argue the trial court's failure to comply with section 1305.4 rendered the extension order a "nullity."

A trial court's finding of good cause to grant an extension under section 1305.4 is reviewed for an abuse of discretion. (*Financial Casualty, supra*, 2 Cal.5th at p. 47.) "The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal

³ Defendant's calculation error may have resulted because 2016 was a leap year, so February had 29 days.

where no reasonable basis for the action is shown.’ [Citations.] ‘The scope of discretion always resides in the particular law being applied, i.e., in the “legal principles governing the subject of [the] action” Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an ‘abuse’ of discretion. [Citation.] . . . [¶] The legal principles that govern the subject of discretionary action vary greatly with context. [Citation.] They are derived from common law or statutes under which discretion is conferred.’ [Citation.] To determine if a court abused its discretion, we must thus consider ‘the legal principles and policies that should have guided the court’s actions.’ [Citation.]” (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) To the extent we are reviewing a trial court’s interpretation of a statute to uncontested facts, we apply a de novo review. (*Williamsburg National, supra*, 235 Cal.App.4th at p. 949.)

Appellants’ argument that the trial court lacked fundamental jurisdiction because of the erroneously calculated extension order is unpersuasive. At the time it extended the initial appearance period, the trial court had the authority to do so, and had the power to grant an extension that was less than 180 days. The court merely calculated the extension start date erroneously and gave appellants less than 180 days from the date of the extension order. In the different context of new trial motions, our Supreme Court has recently held that errors in enforcing intermediate deadlines that govern “the dynamic period of litigation itself” do not deprive a trial court of fundamental jurisdiction, though deadlines that dictate when litigation “may begin and when it must end” do so. (*Kabran v. Sharp Memorial*

Hospital (2017) 2 Cal.5th 330, 346.) Like the former errors, the trial court's error here was not one that implicated its power to act, as it had the power to enter the precise extension that it did, when it did so.

Indeed, in *American Contractors*, *supra*, 33 Cal.4th at pages 662-663, our Supreme Court held: "[T]he court's failure to comply with section 1306 by prematurely entering summary judgment 'does not effect a fundamental loss of jurisdiction, i.e., 'an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.'" [Citation.] . . . 'Here, the trial court retained fundamental jurisdiction at the time it entered summary judgment. Under the Penal Code, a court has jurisdiction over a bail bond from the point that it is issued until the point it is either satisfied, exonerated, or time expires to enter summary judgment after forfeiture.'" (See also *County of Los Angeles v. Harco National Ins. Co.* (2006) 144 Cal.App.4th 656, 662 [finding trial court did not lack fundamental jurisdiction over bail bond even if court erred in ruling on section 1305.4 motion].) Because, under the proper construction of the law, the trial court here retained jurisdiction over the bail bond until the time expired to enter summary judgment after forfeiture, the error in the extension order did not result in the trial court losing jurisdiction over the bail bond.

Some of the substance of appellants' fundamental jurisdiction argument is actually directed at a claim that the trial court acted *in excess of* jurisdiction by erroneously calculating the extension period. Thus, they cite *People v. Ranger Ins. Co.* (1992) 9 Cal.App.4th 1302, which involved section 1305.2's requirement that a surety be notified when it must pay an assessment. (*Id.* at

pp. 1306-1307.) Because the trial court failed to provide notice of when the assessment must be paid, the Court of Appeal found the trial court acted “in excess of” its jurisdiction by entering summary judgment against the surety. (*Ibid.*) The appellate court directed the trial court to vacate the forfeiture and exonerate the bond. (*Id.* at pp. 1309-1310.)

Unlike the section at issue in *People v. Ranger Ins. Co.*, section 1305.4 did not require the trial court here to provide notice of any kind, and there is no indication that there was any failure of notice. Section 1305.4 requires the moving party to give the prosecuting agency at least 10 days notice of a hearing to extend an appearance period, but this notice is not at issue here. There is no dispute here that the trial court noticed the initial appearance period under section 1305 and the subsequent extension period.

The trial court’s error here was in its calculation of the start date of the 180-day extension period. The court stated that it was granting a 180-day extension; but, by erroneously starting that extension from the end of the initial appearance period rather than from the date of the extension order, it effectively granted a 154-day extension. This ultimate ruling was permissible, as the trial court could have simply granted a 154-day extension. A surety does not automatically receive 180 days when it shows good cause for an extension; section 1305.4 allows an extension *up to* 180 days, as it states “[t]he court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order.”

The trial court nevertheless abused its discretion by applying the wrong legal standard in measuring the extension period. (See *People v. Financial Casualty & Surety, Inc.* (2017) 10

Cal.App.5th 369, 386 [applying abuse of discretion standard of review for erroneous calculation of extension under section 1305.4].) But we may reverse such a ruling only if appellants show prejudice requiring reversal of the judgment.⁴ ““A judgment may not be reversed on appeal, . . . unless ‘after an examination of the entire cause, including the evidence,’ it appears the error caused a ‘miscarriage of justice.’ (Cal. Const., art. VI, § 13.) When the error is one of state law only, it generally does not warrant reversal unless there is a reasonable probability that in the absence of the error, a result more favorable to the appealing party would have been reached. [Citation.]” [Citation.]’ [Citation.] The appellant generally has the burden to demonstrate prejudicial error. [Citation.]” (*Williamsburg National, supra*, 235 Cal.App.4th at p. 955.)

Here, there is no evidence in the record that demonstrates prejudice. For the extension hearing, Bad Boys submitted an August 24, 2015, declaration from its investigator William Ulmer, who had discovered evidence on July 1, 2015 that Shanazari had fled to Iran in January 2015. Ulmer had obtained an address for Shanazari and planned on traveling there to continue his investigation. We have no reason to conclude that the investigator made any further progress over the next seven

⁴ “Where the court activities violate a strict statutory command designed for the surety’s protection,’ prejudice need not be shown. [Citations.]” (*County of Madera v. Ranger Ins. Co.* (1991) 230 Cal.App.3d 271, 279.) Here, there is no such violation of a strict statutory command. (Cf. *Williamsburg National, supra*, 235 Cal.App.4th at pp. 953-955 [finding § 1305.4 provided surety with statutory right to an oral hearing and it was prejudicial per se for trial court to deny].) Thus, prejudice will not be presumed here.

months. Indeed, we can conclude that the result would *not* have been more favorable to appellants if the appearance period had been extended to March 23, 2016, as it would have been absent the court's calculation error. Summary judgment was not entered until March 24, 2016, and Shanazari did not appear by that date nor is there any indication that appellants had some basis for further relief. Given the lack of prejudice demonstrated, we do not find the trial court's error reversible.

IV. DISPOSITION

The judgment is affirmed.

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RAPHAEL, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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