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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

FINANCIAL CASUALTY &
SURETY, INC.,

Defendant and Appellant.

B269242

(Los Angeles County
Super. Ct. No. BA431199)

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

Law Office 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 Jessica C. Rivas, Deputy County
Counsel, for Plaintiff and Respondent.

After a bail bond has been forfeited, the bonding company has a certain amount of time—called the appearance period—in which it can seek to vacate the forfeiture on specified grounds, such as the defendant’s appearance in court. (Pen. Code, § 1305.)¹ Under certain circumstances, a court may grant a 180-day extension of the appearance period, thus allowing the bonding company additional time to move to vacate the forfeiture. (§ 1305.4.) This case concerns the proper calculation of the 180-day extension and the maximum time permitted by section 1305.4. Our Supreme Court has said the 180-day extension period is measured from the date of the trial court’s first order granting an extension of the appearance period. (*People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 43 & 46, fn. 2 (*Financial Casualty*).)

Here, appellant Financial Casualty and Surety, Inc. claims that, in ruling on its first section 1305.4 motion for an extension of the appearance period, the trial court intended to give appellant the maximum time allowed, but mistakenly granted less time because the court measured the extension from the wrong date. Assuming the trial court wanted to grant the maximum amount of time (a proposition respondent does not dispute), the extended appearance period would have expired on December 1, 2015. Seeking to capture the full 180-day extension time, appellant filed a second section 1305.4 motion on November 6, 2015, which was the same day the trial court had ruled the extended appearance period would expire. The hearing on that motion was set for December 4, 2015, i.e., after the

¹ Subsequent undesignated statutory references are to the Penal Code.

expiration of both the extension granted by the trial court (November 6) and the maximum extension the trial court could have granted (December 1). The record does not indicate (i) why appellant waited until November 6 to file its second motion, (ii) whether appellant sought to advance the hearing date to a time before December 1, or (iii) whether appellant brought or could have brought the defendant into court before December 1. The trial court denied appellant's second motion for an extension of the appearance period, summary judgment was entered, and appellant appealed.

On appeal, appellant argues the trial court erred when it denied appellant's second request for an extension of the appearance period. As discussed below, although the trial court miscalculated the maximum allowed extension period, we nonetheless conclude the court's ruling was correct. First, assuming the trial court initially intended to grant the full 180-day extension, appellant has shown no harm from the error in that there is no indication appellant could have or did bring the defendant into court before December 1, 2015. Second, at the time of the hearing on appellant's second motion, the maximum allowed extension time had in fact expired and the trial court had no authority to grant additional time. Accordingly, we affirm.

BACKGROUND

1. Forfeiture of Bail

On October 11, 2014, appellant's agent posted bail for the release of a defendant in a criminal matter. On November 5, 2014, that defendant failed to appear for a court hearing. Accordingly, that same day, the court ordered bail forfeited.

The next day, November 6, 2014, the clerk of the court mailed the notice of forfeiture to both appellant and its agent.

Thus, under section 1305, the appearance period was set to expire May 10, 2015, which was 185 days after the clerk mailed notice.

2. Appellant's First Motion to Extend the Appearance Period

On May 7, 2015, a few days before the appearance period was set to expire, appellant's agent filed a motion under section 1305.4 to extend the appearance period by 180 days from the hearing date. Almost one month later, on June 4, 2015, the trial court heard the motion and granted an extension of the appearance period to November 6, 2015.² November 6 was 365 days after the date the clerk mailed notice of forfeiture, 180 days after the initial appearance period expired, and 155 days after the trial court's June 4 order extending time.

3. Appellant's Second Motion to Extend the Appearance Period

On November 6, 2015, the day the extended appearance period was set to expire, appellant filed a second motion to extend the appearance period. In its second motion, appellant argued that, because the trial court previously granted an extension of less than the allowable 180 days under section 1305.4, the court could and should grant an additional extension for the remaining days.³ Appellant attached to its motion a declaration from a

² The record on appeal does not include a reporter's transcript from the June 4, 2015 hearing.

³ Specifically, appellant argued the trial court had granted an initial extension of 156 days, such that the court could and should grant an additional extension for the remaining 24 days of the total allowable 180 days. Although it does not affect the outcome of this appeal, we calculate the days differently, and it

fugitive recovery agent detailing the efforts made to locate the defendant. The agent indicated he had spoken with the defendant's mother, who planned to assist the agent in apprehending the defendant on October 10, 2015. However, the mother called off the plan the day before because the defendant had learned the agent was looking for him and he would no longer meet with his mother. The mother asked the agent "to please give it a couple of weeks for [the defendant] to feel comfortable again then she would assist on turning him in." Although the declaration is dated almost four weeks later, it does not disclose that any further action was taken after the mother called off the plan to take the defendant into custody.

Respondent opposed the second motion for an extension of time, arguing the maximum allowable extension of 180 days had already expired and, therefore, the trial court could order no more time.

The hearing on appellant's motion was held on December 4, 2015, at which time the trial court denied the requested extension. The trial court reasoned the allowable 180-day extension period under section 1305.4 already had expired. The court stated the maximum 180-day extension expired on November 6, 2015, which was 180 days from the expiration of the initial appearance period and 365 days from the date the clerk mailed notice of forfeiture.

Subsequently, on December 21, 2015, the trial court entered summary judgment on the forfeited bond. Appellant filed a notice of appeal, stating it was appealing from the December 4

appears on appeal appellant does as well. The initial extension was 155 days from the court's June 4, 2015 order, with 25 days remaining of the total 180 allowable days.

order denying its second motion to extend time and from the judgment.

DISCUSSION

1. The proper standard of review is de novo.

The parties disagree on the proper standard of review. Appellant states we should apply a de novo standard of review, while respondent argues we should review for an abuse of discretion.

Although respondent is correct that we apply the abuse of discretion standard to a trial court's ruling as to whether a surety has shown good cause for an extension of the appearance period (*Financial Casualty, supra*, 2 Cal.5th at p. 47), that is not the issue in this appeal. Rather, appellant appeals the trial court's interpretation of the relevant statute on undisputed facts. Accordingly, because the pertinent facts are not in dispute, we apply the de novo standard of review to the trial court's interpretation of the relevant statutory scheme. (*County of Los Angeles v. Allegheny Casualty Co.* (2017) 13 Cal.App.5th 580, 584 (*Allegheny*).)

2. Controlling Statutes and Case Law

"A 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.] When the surety breaches the contract by failing to secure the defendant's appearance, the bond generally must be enforced. [Citation.] The purpose of bail and of its forfeiture, however, is to ensure the accused's attendance and obedience to the criminal court, not to raise revenue or to punish the surety." (*Financial Casualty, supra*, 2 Cal.5th at p. 42.)

Upon request by a party and a showing of good cause, section 1305.4 permits the trial court to grant an extension of the initial section 1305 appearance period. Specifically, section 1305.4 provides: “The court, upon a hearing and a showing of good cause, may order the [appearance] period extended to a time not exceeding 180 days from its order. A motion may be filed and calendared as provided in subdivision (j) of Section 1305.”

Subdivision (j) of section 1305 provides: “A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause. The motion may be made by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney.” Thus, subdivision (j) provides a tolling period of 30 days or more in which a timely motion for extension may be heard.

After the trial court here denied appellant’s second motion for an extension of the appearance period, our Supreme Court issued its decision in *Financial Casualty, supra*, 2 Cal.5th 35, after which Division Eight of this district issued its opinion in *Allegheny, supra*, 13 Cal.App.5th 580, both of which decisions we follow here.⁴

In *Financial Casualty*, our Supreme Court addressed in part how to calculate an extension of the appearance period under section 1305.4. (*Financial Casualty, supra*, 2 Cal.5th at p. 43.) The court rejected the People’s position that the

⁴ *Financial Casualty* was issued before appellant filed its opening brief in this appeal. *Allegheny* was filed the day after respondent filed its respondent’s brief in this appeal but before appellant filed its reply brief.

maximum possible extension allowed under section 1305.4 was 180 days from the date the initial appearance period expired, regardless of when the hearing on the motion for an extension was held. (*Ibid.*) Instead, our Supreme Court held the language of section 1305.4 “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.” (*Ibid.*) Our Supreme Court also explained in a footnote that “the ‘order’ referred to in section 1305.4’s limit of extensions to 180 days ‘from its order’ is the first order extending the period, rather than any subsequent order, and that the total allowable extension is thus limited to 180 days from the date of the first extension order, regardless of how many individual extensions the court orders.” (*Id.* at p. 46, fn. 2.)

In *Allegheny*, Division Eight of this district addressed *Financial Casualty* and its application to a set of facts substantially similar to those presented here. Like appellant here, the surety in *Allegheny* filed one successful motion for an extension of the appearance period, but later failed to convince the trial court to grant a second extension. (*Allegheny, supra*, 13 Cal.App.5th at p. 583.) In granting the surety’s first motion for an extension, the trial court extended the appearance period 180 days from the date the initial appearance period expired. (*Ibid.*) Within that extended period, the surety filed a second motion for an extension of the appearance period. However, as happened here, the trial court in *Allegheny* did not hear the second motion until after both the already-extended period had expired and more than 180 days had passed since the court’s first extension order. (*Ibid.*)

On appeal, the surety argued the trial court could have and should have granted the surety's second request for an extension of the appearance period. The surety explained that, when measuring from the date of the trial court's first extension order, as opposed to the expiration of the initial appearance period, the court had granted only a 174-day extension. (*Allegheny, supra*, 13 Cal.App.5th at p. 582.) And although by the time the trial court heard the second motion for an extension, 180 days had passed since the court's first order, the surety argued it nonetheless was entitled to the remaining six days of the 180-day extension period. (*Ibid.*)

The *Allegheny* court disagreed. The court explained that, in light of *Financial Casualty, supra*, 2 Cal.5th 35, the most important date was "the date of the first extension order." (*Allegheny, supra*, 13 Cal.App.5th at p. 586.) "Following the high court's analysis in *Financial Casualty*, the maximum extension that could have been ordered was for 180 days from that date As a result, we find that when the trial court heard Allegheny's second extension motion [which hearing was more than 180 days after the date of the first extension order], it lacked the authority to order any further extensions." (*Ibid.*) The *Allegheny* court was "convinced" our Supreme Court "meant what it said—the maximum extension period is 180 days from the first extension order. Applying those principles here, it is apparent the trial court properly denied the motion when it heard the matter on November 6, 2015, which is 197 days from the first extension order." (*Id.* at pp. 586–587.)

3. No Reversible Error

In light of the above authorities and the facts of this case, we conclude any error in calculating the initial extension of the

appearance period was harmless, and the trial court properly denied appellant's second motion for an extension of the appearance period. The date with which we are most concerned is the date of the trial court's first extension order—i.e., June 4, 2015. (See *Allegheny*, *supra*, 13 Cal.App.5th at p. 586.) Because “the maximum extension period is 180 days from the first extension order” (*ibid.*), the latest date to which the trial court could have extended the appearance period was December 1, 2015.

a. Assuming the trial court miscalculated its initial extension of time, it was harmless error.

Appellant claims and respondent does not dispute that, at the June 4 hearing, the trial court intended to give appellant the maximum extension permitted under section 1305.4. If this is accurate,⁵ the trial court erred in granting an extension only to November 6. Nonetheless, assuming the trial court intended to grant the maximum amount of time (which would have been through December 1, 2015), we conclude the court's error was harmless. The facts of this case show that, although the fugitive recovery agent was diligently and actively pursuing the defendant through the beginning of October 2015, there is no indication the agent made further efforts to apprehend the defendant, let alone take the defendant into custody, between October 9, 2015, and December 1, 2015. Thus, even if at the June 4 hearing the trial court had correctly calculated the additional 180 days to extend to December 1, 2015, there are no facts showing either the defendant would have been in custody by that date or other reasons for the forfeiture to be vacated and the

⁵ As noted above, the record on appeal does not include a reporter's transcript for the June 4, 2015 hearing.

bond exonerated. Accordingly, assuming the trial court's June 4 order miscalculated the 180-day extension period, we conclude it was harmless error and not grounds for reversal. (Cal. Const., art. 6, § 13.)

b. The trial court properly denied appellant's second motion for an extension of the appearance period.

It is significant that the hearing on appellant's second motion for an extension took place after December 1, 2015. At the time of the second hearing (i.e., December 4, 2015), the trial court could not have granted any further extension of the appearance period. Had it done so, the appearance period would have extended beyond 180 days after the court's first extension order—a result that would have been at odds with *Financial Casualty, supra*, 2 Cal.5th at pages 43 and 46, footnote 2, and in direct conflict with *Allegheny, supra*, 13 Cal.App.5th at page 586. Although it appears the trial court mistakenly believed the full 180-day extension period expired on November 6, 2015, when it in fact expired on December 1, 2015, the judgment is nonetheless correct because at the time of the December 4, 2015 hearing the 180-day extension had in fact expired and the trial court could not grant any further extension. (*Allegheny, supra*, 13 Cal.App.5th at pp. 586–587.) “[W]e cannot undo the effect of the ruling or the ensuing judgment on the ground that the court may have misapplied [the law] as long as any other correct legal reason exists to sustain” its decision. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.)

Despite the plain language of section 1305.4, appellant argues subdivision (j) of section 1305 provides an additional 30 days (or more, if good cause is shown) for hearing any timely

motion for an extension of the appearance period, even if that results in an extension beyond the “180 days from [the] court’s order” permitted by section 1305.4. The court in *Allegheny* rejected this same argument.⁶ (*Allegheny, supra*, 13 Cal.App.5th at p. 586.) If appellant were correct, a trial court could extend the appearance period beyond 180 days from the court’s initial order. As noted above, however, such a result would not comport with either *Financial Casualty* or *Allegheny*. Moreover, appellant does not explain why it waited until November 6, 2015—the final day of the initial court-ordered extension—to file its second motion or whether it sought to advance the hearing on the second motion to a date before December 1, 2015. Like the *Allegheny* court, we are not persuaded by appellant’s subdivision (j) argument.

Finally, because they did not decide the issues we address here, the cases on which appellant relies do not persuade us otherwise. (See *Allegheny, supra*, 13 Cal.App.5th at pp. 587–588 [distinguishing many of the same cases appellant cites here].)

⁶ The surety in *Allegheny* was represented by the same attorneys who represent appellant here.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.