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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

THE NORTH RIVER INSURANCE
COMPANY,

Defendant;

BAD BOYS BAIL BONDS,

Real Party in Interest and Appellant.

B238210

(Los Angeles County
Super. Ct. No. SJ003670)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bruce F. Marrs and Lia R. Martin, Judges. Affirmed.

Jefferson T. Stamp; Law Offices of Gregory J. Charles and Gregory J. Charles for Real Party in Interest and Appellant.

No appearance for Defendant.

John F. Krattli, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and Melissa A. McCaverty, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Real Party in Interest Bad Boys Bail Bonds (Bad Boys) appeals from a summary judgment entered in favor of plaintiff County of Los Angeles (County) based on the failure of Peter Hanson (Hanson) to appear in court. The judgment followed the denial of Bad Boys' motion to extend the forfeiture period pursuant to Penal Code section 1305.4.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 29, 2010, Bad Boys issued a \$40,000 bail bond to secure Hanson's appearance in court. Hanson failed to appear on January 26, 2011, and the court ordered his bail forfeited. On February 2, 2011, the clerk of the court served the surety, The North River Insurance Company, and Bad Boys by mail with notice that they had 185 days in which to surrender Hanson to the court, by August 6, 2011.

Robert E. Halstead (Halstead), a bail agent with eight years' experience as a fugitive recovery agent, commenced an investigation to locate Hanson after he failed to appear in court. On February 28, 2011, Halstead visited the address of the co-signer Kristin Pomrehn (Pomrehn) in Monrovia. This was Hanson's last known address. Halstead discovered that Hanson and Pomrehn moved out the prior November.

On March 1, 2011, Halstead interviewed Hanson's parents in San Marino. Halstead learned that Pomrehn had reported Hanson missing. Halstead spoke to Hanson's sister, who told him that Hanson was an alcohol and drug user. She informed Halstead that the sheriff in Mariposa County had a video of Hanson breaking into a vacant cabin on the same day he disappeared.

¹ All further statutory references are to the Penal Code unless otherwise specified.

Halstead made phone contact with Pomrehn on March 29, 2011 and interviewed her on March 30. She had returned to Southern California from Mariposa County after Hanson disappeared. She told Halstead she was convinced Hanson was dead.

On April 12, 2011, Halstead met with Hanson's best friend, Dale Hubbard, and Hubbard's mother in Altadena. They last saw Hanson in December 2010 and both believed he was dead. Halstead learned that the Mariposa County Sheriff had requested Hanson's dental records for identification of a deceased male body found in San Bernardino County. The dental records comparison was negative.

On June 23, 2011, Halstead discovered Pomrehn's current residence in Covina. On June 27, she allowed Halstead to search the residence, and he found no evidence regarding Hanson.

In the conclusion of his declaration, Halstead reported his opinion that Hanson's friends and family believed that he was missing and presumed dead. Halstead declared his opinion that, if given an extension of time, he would be able to return Hanson to the county jail or submit a death certificate.

On July 22, 2011, Bad Boys filed a motion to extend time pursuant to section 1305.4.² The court found no good cause to extend time and the motion was denied. The court ruled that "I think you've had ample time. You've had well over 6 months to locate this individual. And you don't have any leads that I can see from the declaration of Mr. Halstead. So the motion to extend another — any time will be denied. I don't see a rational basis for doing that."

² Section 1305.4 states: "Notwithstanding Section 1305, the surety insurer, the bail agent, the surety, or the depositor may file a motion, based upon good cause, for an order extending the 180-day period provided in that section. The motion shall include a declaration or affidavit that states the reasons showing good cause to extend that period. The 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. A motion may be filed and calendared as provided in subdivision (i) of Section 1305."

DISCUSSION

A. Denial of Bad Boys' Request to Extend the Exoneration Period

The denial of an extension motion under section 1305.4 is reviewed under an abuse of discretion standard. (*People v. Alistar Ins. Co.* (2003) 115 Cal.App.4th 122, 127.) Bad Boys contends that the trial court abused its discretion in denying the request to extend the exoneration period. We disagree.

Bad Boys relies on *People v. Accredited Surety & Casualty Co., Inc.* (2006) 137 Cal.App.4th 1349. In *Accredited*, the appellate court reversed the trial court's denial of an extension of time to vacate the forfeiture of a bail bond. (*Id.* at p. 1352.) The Court of Appeal, citing the policy that the law disfavors forfeitures and favors returning fleeing defendants to custody, found that the bail agent's declaration in support of the motion for extension described in sufficient detail his efforts to locate the defendant and apprehend him during the initial 180 days. The bail agent's declaration provided reasonable assurances that he could bring the defendant to custody in another 180 days. At various times during the first 180 days, the bail agent knew where the defendant was, what he was doing and whom he was with. A few times the defendant had successfully fled from and eluded the agent. And 18 days before the agent signed his declaration, he learned the defendant was at an apartment in Sacramento. (*Id.* at p. 1359.)

In the instant case, while there was evidence that the bail agent had exercised due diligence to locate Hanson, the evidence was insufficient to show a reasonable likelihood of apprehension if more time was granted and thus to justify an extension of time. "These circumstances should include the reasonable likelihood the surety will capture a defendant if an additional 180 days is provided. Efforts by a surety during the first 180 days might not always translate into good cause for an extension if it is unclear that a defendant will likely be captured given more time. . . . The inquiry must be prospective as well as retrospective; otherwise, an extension does not serve the statute's policy of returning fleeing defendants to custody. That policy is best served by the surety showing

that another 180 days might be productive.” (*People v. Accredited Surety & Casualty Co., Inc.*, *supra*, 137 Cal.App.4th. at p. 1357.)

While a different judge might have reached a different result and granted an extension, that does not establish an abuse of discretion. (See *People v. Carmony* (2004) 33 Cal.4th 367, 376-377.) In denying the extension motion, the court explained its reasoning, and we can find no abuse of discretion.

At the August 25, 2011 hearing, the court noted “the family’s opinion, as referenced a little earlier, was based on the family’s thoughts that if he were alive, he would have contacted us by now. And that opinion doesn’t seem to be substantiated by any type of hard information or evidence that he was killed because of his demeanor. He likely crossed the wrong person and they killed him. That seems to be the empirical thought with basically no facts to back it up.”

Despite the family’s belief that Hanson was deceased, the evidence did not support that proposition. In the court’s view, there was not a reasonable likelihood that Hanson would have been apprehended and returned to custody if an extension were granted. The court stated: “But I’m not seeing anything in the current declaration that suggests to me that he’s got a bead [*sic*] on Mr. Hanson.” The court also did not believe that Hanson was deceased. “He tells us that as far as he can tell, a passport wasn’t used to leave the country. If everybody that left the country used a passport, it probably would be helpful. But as we know, there’s a lot of folks that go and come that don’t use passports. And I’m not seeing any hard addresses that look like they would provide concrete evidence of where Mr. Hanson is.”

The decision not to grant an extension was well reasoned, based on the evidence presented and not arbitrary. “The trial court can only be said to have abused its discretion when its decision ““exceeds the bounds of reason, all circumstances being considered. [Citation.]”” [Citation.]” (*People v. Seneca Ins. Co.* (2004) 116 Cal.App.4th 75, 80.) Hanson was a missing person and law enforcement was not able to locate him. While the bail agent certainly made a diligent effort to find and return Hanson to custody during the initial 180-day period, the trial court felt that the second prong of showing good cause, a

reasonable likelihood of apprehension if more time was granted, was not satisfied and acted within its discretion in denying the motion for an extension.

B. *Denial of the Extension Did Not Violate Due Process*

Bad Boys contends that the denial of an extension without a hearing on the merits violates due process. We disagree.

Bad Boys argues, in part, that “[u]nder [section] 1305[, subdivision](d), relief from forfeiture and exoneration of the bond are mandatory when ‘it is made apparent to the satisfaction of the court’ that the defendant [was] deceased.” Bad Boys did not file a motion within the 180-day period requesting that the forfeiture be set aside under section 1305, subdivision (d). Instead, it filed a motion to extend time. While the court had the declaration in support of the extension and part of the declaration included the suggestion that Hanson was dead, the court, in its discretion, was not convinced. Section 1305 requires “the court to consider the relief that might be appropriate [under] the circumstances” (*People v. Lexington National Ins. Corp.* (2010) 181 Cal.App.4th 1485, 1493.) The court determined that there was no basis to grant the extension requested or any other relief available under section 1305.

Bad Boys also cites *People v. Surety Ins. Co.* (1978) 82 Cal.App.3d 229 in support of its argument that the trial court denied due process. We are not convinced. In *Surety*, the court found there was not a denial of due process. The court held “[b]efore the actual forfeiture of the bond can occur, the surety is given notice of the ‘proposed action’ (by declaration of forfeiture). The ‘right to respond’ is provided by an opportunity within 180 days to move to vacate the declaration of forfeiture. Such motion results in a full evidentiary hearing before a judgment is rendered on the bond. There is no denial of due process in this procedure.” (*Id.* at p. 240.)

Bad Boys had the opportunity to bring a motion to vacate the forfeiture within the 180-day period. It chose to file only a motion to extend time under section 1305.4. Had the trial court been presented with satisfactory evidence that Hanson was deceased, it

could have considered appropriate relief. (*People v. Lexington National Ins. Corp.*, *supra*, 181 Cal.App.4th at p. 1493.)

Inasmuch as the denial of the extension did not violate due process, the resulting summary judgment did not violate due process. We therefore reject Bad Boys' contention that the summary judgment was void for lack of due process.

DISPOSITION

The judgment is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.*

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