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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

FINANCIAL CASUALTY & SURETY,
INC.,

Defendant and Appellant.

B227986 c/w B227988

(Los Angeles County
Super. Ct. Nos. SJ3509 & SJ3510)

APPEAL from a judgment of the Superior Court of Los Angeles County,

Terry A. Bork and Wade Olson, Judges. Affirmed.

Pegg & Petersen and Brendan Pegg (substitution) for Defendant and Appellant.

Matthew J. Singer for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel and Brian T. Chu, Principal Deputy

County Counsel, for Plaintiff and Respondent.

In these consolidated appeals, defendant and appellant Financial Casualty & Surety, Inc. (Financial Casualty) seeks reversal of the summary judgment of bail forfeiture, entered in favor of defendant and respondent County of Los Angeles (County), with respect to two bail bonds issued for the same criminal defendant (but in different cases). Financial Casualty also purports to appeal from the denial of its post-judgment motions. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Bond is Issued and Forfeited

On July 29, 2009, Financial Casualty issued its bail bond for criminal defendant Jose Espinoza (defendant) in the amount of \$45,000 in one case (Case No. KA08625201); that same day, it issued a second bail bond for Espinoza in the amount of \$80,000 in a second case (Case No. KA08628801). Espinoza failed to appear in both matters on November 9, 2009, and the bonds were both ordered forfeited on that date. Under Penal Code section 1305, Financial Casualty had 180 days (extended by 5 days to allow for mailing of the notice of forfeiture) to obtain Espinoza's presence. If it succeeded in doing so, the bond forfeitures would be vacated. (Pen. Code, § 1305, subd. (c).) If, at the expiration of the 180-day period, the bond forfeitures had not been set aside, the court would be required to enter a summary judgment against Financial Casualty in the amount of the bonds plus costs. (Pen. Code, § 1306.) The 180-day period is not absolute; under Penal Code section 1305.4, Financial Casualty could file a motion, based on good cause, for an order extending the 180-day period for an additional 180 days.

2. *Financial Casualty Moves to Extend Time to Find Espinoza*

On May 14, 2010, Financial Casualty timely moved to extend the 180-day period for an additional 180 days, on the basis that it had been diligent in its efforts to locate and apprehend Espinoza, and it believed it was likely that it could successfully do so if an extension were granted.¹ The motion was supported by a declaration of Fugitive Recovery Agent Mario Hernandez, detailing his efforts to locate and apprehend Espinoza. There is no dispute that Hernandez's efforts have been diligent; therefore, we do not focus our discussion on all of Hernandez's unsuccessful efforts. Instead, we focus on those leads Hernandez obtained which seemed viable.

Hernandez learned, from Espinoza's uncle, that Espinoza is often in the company of his brother. Hernandez conducted surveillance at Espinoza's brother's home; while he did not see defendant there, neighbors confirmed that he had been there recently. Further surveillance did not result in contact with Espinoza. Thereafter, Espinoza's uncle informed Hernandez that Espinoza's girlfriend, Marie, lives in Fontana. The uncle provided the name and rough location of her apartment complex. He also indicated that Marie drove a blue Honda Accord. Hernandez found the apartment complex. The apartment manager confirmed that he had seen Espinoza there. Hernandez discovered a blue Honda Accord with no license plate parked in the complex. His agents conducted surveillance and saw a woman enter the Accord and

¹ Financial Casualty filed the same motion in both cases. We refer to the motion in the singular, with the understanding that our discussion applies to the identical motion filed in both cases. This is true with respect to all motions filed in these matters.

drive away. They followed the vehicle, “but lost it at a red light.” Surveillance continued at the apartment complex, but Hernandez and his agents never saw defendant.

Financial Casualty’s motion was set for hearing on June 9, 2010. The previous day, counsel for Financial Casualty telephonically informed the court that he was unable to appear due to a family medical emergency. The matter was continued to July 1, 2010.²

3. *Financial Casualty Supplements its Motion*

A hearing was held on July 1, 2010. Just prior to the hearing, on June 29, 2010, Financial Casualty filed a supplement to its motion, consisting of a further declaration of Hernandez, setting forth his efforts to locate and apprehend Espinoza subsequent to his initial declaration.³ Hernandez had been contacted by a neighbor of defendant, who

² A motion for extension of time is to be heard within 30 days of the expiration of the 180-day period. (Pen. Code, § 1305, subd. (i).) This 30-day period may be extended upon a showing of good cause. (*Ibid.*) There is no dispute that such good cause existed in this case.

³ It is not at all clear that this information was properly before the trial court. Even though the trial court may *hear* a motion to extend the 180-day period after the 180-day period has expired, the inquiry on such a motion is focused on the efforts made by the bail agent to apprehend the defendant *during* the 180-day period. (*People v. Ranger Ins. Co.* (2007) 150 Cal.App.4th 638, 649-650; *People v. Seneca Ins. Co.* (2004) 116 Cal.App.4th 75, 82-83.) This is true even if the event occurring between the expiration of the 180-day period and the hearing on the motion is the actual apprehension of the criminal defendant; the defendant’s apprehension after the 180-day period does not cure a failure to demonstrate good cause for extending the 180-day period itself. (*People v. Ranger Ins. Co.*, *supra*, 150 Cal.App.4th at p. 641; *People v. Seneca Ins. Co.*, *supra*, 116 Cal.App.4th at p. 83.) In this case, the trial court indicated that it considered Financial Casualty’s supplemental declaration, and there was no argument before the trial court that it should not do so. We therefore consider it on appeal.

confirmed seeing defendant leave his home and enter a blue Honda Accord driven by a woman. Further surveillance at Marie's apartment did not result in locating defendant. Indeed, although agents followed Marie from her car in order to determine her apartment number, they "lost sight of her." They ultimately asked some nearby "kids," who gave them two different apartment numbers for Marie. On June 6, 2010, defendant's uncle informed Hernandez that the family would be having a birthday party for a relative at defendant's brother's house on June 19. Defendant's uncle believed it "more than likely" that defendant would attend. Hernandez's agents conducted surveillance at the home, and spotted the blue Honda Accord approaching the residence. It was driven by a woman and appeared to have a male passenger; the driver and

We note, however, that the supplemental declaration was not part of the record on appeal. In light of the trial court's indication that it had relied on this declaration, we asked Financial Casualty to supplement the record on appeal with the missing document. Our request was made by letter dated March 8, 2012, and stated that Financial Casualty could supplement the record on or before March 26, 2012. On the date the supplement was due, Financial Casualty filed a substitution of counsel. There was no request for additional time to comply with the court's request. In an abundance of caution, the clerk of this court telephoned new counsel for Financial Casualty, to ensure that new counsel was aware of this court's request. Counsel verbally indicated that something would be filed by March 30, 2012. That date was a court holiday. Nothing was filed by the next court day, April 2, 2012. Indeed, Financial Casualty filed nothing until *April 10, 2012*, the day of oral argument. On that date, Financial Casualty filed a "Supplement to Record on Appeal," containing the missing June 29, 2010 supplement to Financial Casualty's extension motion. The filing in this court contained neither an explanation for the delay in filing nor a request for the untimely filing to be considered. Indeed, Financial Casualty made only an oblique reference to this court's earlier request for the document, stating, "Since the Court has requested the Supplement as constituting an important part of the record on appellant's appeal, it would be impartial to proceed with oral argument without [it]." Clearly, this court would be well within its discretion to reject the untimely filing. However, as we ultimately conclude that the June 29, 2010 supplement to Financial Casualty's extension motion provides further support for the trial court's denial of the motion, we will consider it.

passenger were, in fact, Marie and Espinoza. Agents attempted to detain the pair once the driver had parked the car. As they neared the Honda, Espinoza spotted the agents, jumped from the car, and ran toward an apartment complex. Hernandez followed, but lost Espinoza; a further search of the apartment complex failed to locate him. Marie was detained for questioning. She lied to Hernandez about her knowledge of Espinoza and her own address. Hernandez “knew she was lying and she was being uncooperative,” so let her go.

4. *The Motion is Denied and Summary Judgment is Entered*

At the hearing, the court denied the motion for an extension of time, concluding that the record demonstrated that all prior efforts made to obtain Espinoza’s presence “have been unsuccessful and there’s no reason [to believe] that they would be anything but unsuccessful were time extended any further.” The court stated, “So you’ve had roughly seven months to get him if you were going to get him. You are apparently unable to do so.” The court also noted that Espinoza had ties to Mexico, although that clearly was not the sole basis for the trial court’s ruling.

Shortly after the court denied Financial Casualty’s motion, Financial Casualty’s counsel learned that Hernandez had been trying to reach him, as, on the day before the hearing, Hernandez had made additional progress in attempting to apprehend Espinoza.⁴

⁴ Hernandez was again unsuccessful. He had followed Espinoza and Marie to Marie’s apartment. Hernandez knocked on the door and asked Marie about Espinoza’s whereabouts. Marie said that he was upstairs taking a shower. As Hernandez went upstairs, Marie yelled to Espinoza, at which time he jumped out the window. Hernandez saw Espinoza run to Marie’s car and drive away.

Financial Casualty's counsel had been unaware that the agent had tried to reach him prior to the July 1, 2010 hearing, as he had lost his mobile telephone.

On July 7, 2010, as the bonds had been ordered forfeited, and the statutory time elapsed without the forfeitures being set aside (or the time extended), summary judgment was entered in favor of the County of Los Angeles on both bonds. That same day, notice of entry of judgment and demand for payment was mailed to Financial Casualty. The process for entry of summary judgment in a bail forfeiture matter is initiated by a clerk's (form) application for entry of judgment. The application is assigned a new, civil, case number, and the judgment is entered in the civil matter, not the initial criminal matter. Once the summary judgment is entered, a notice indicating "STOP! Summary Judgment has been entered, make no further orders re bond motions" is sent to the criminal court.

5. *Financial Casualty Moves for Reconsideration and to Vacate in Criminal Court*

On July 12, 2010, Financial Casualty filed a motion for reconsideration/motion to vacate. The motion was filed in the criminal matter in which the bond had been forfeited, not the civil matter in which summary judgment had been entered. Financial Casualty argued that new evidence established that Espinoza was not, in fact, in Mexico, and that it could have presented that evidence at the July 1, 2010 hearing had counsel not lost his mobile phone. As such, it sought reconsideration of the order denying it an extension of the 180-day period, and/or relief due to inadvertence of counsel under Code of Civil Procedure section 473.

At the hearing on July 28, 2010, the trial court declined to hear the motions. It indicated, “I have inside the case file a big notice that since summary judgment has been entered, I’m to make no further orders relating to bond motions.” As a result, the trial court indicated that “the matter will go off calendar as being improvidently set in this particular court.” The trial court added, “And I want to invite you folks to renew your activities downtown [in the civil court which had entered the summary judgment].”

6. *Financial Casualty Moves for Reconsideration in Civil Court*

Financial Casualty did not take the court’s advice and immediately renew its motion in the proper venue. Instead, on August 17, 2010, Financial Casualty filed, in the civil matter, a motion to reconsider the summary judgment.⁵ The motion argued that the (civil) summary judgment should be set aside in order to allow the criminal court to hear Financial Casualty’s original motion for reconsideration/motion to vacate.⁶ On September 17, 2010, the trial court denied the motion, on the basis that Financial Casualty’s initial motion for reconsideration followed the entry of summary judgment, and was therefore untimely.

On October 8, 2010, Financial Casualty filed a notice of appeal from the July 7, 2010 judgment, in each case. Financial Casualty did not identify in its notice of appeal

⁵ The motion was titled “Motion to Set Aside Summary Judgment on Bond Forfeiture”; yet the caption itself indicated that the motion was brought pursuant to Code of Civil Procedure section 1008 (wrongly identified as Penal Code section 1008). At no time did the motion argue for relief under Code of Civil Procedure section 473.

⁶ Financial Casualty sought, in the alternative, an extension of the 180-day period. We note that, although additional time had elapsed from the July 1, 2010 denial, Espinoza had still eluded Hernandez.

any of the other adverse rulings. On March 2, 2012, on our own motion, this court consolidated the appeals for the purpose of oral argument and disposition in a single opinion.

ISSUES ON APPEAL

On appeal, Financial Casualty argues: (1) the (criminal) trial court abused its discretion in denying its motion to extend the 180-day deadline; (2) the (criminal) trial court erred in taking its motion for reconsideration/motion to vacate off calendar; and (3) the (civil) trial court erred in denying its motion for reconsideration. By letter sent to the parties, this court requested Financial Casualty to supplement the record with the June 29, 2010 supplement to its motion to extend the 180-day deadline. (See footnote 3, *ante.*) We also invited additional briefing on the appealability of the order taking the motion to vacate off calendar, and whether the fact that the motions for reconsideration post-dated the entry of judgment justified their denial. Although Financial Casualty submitted the missing document, neither party submitted additional briefing.

DISCUSSION

1. The Trial Court Did Not Abuse its Discretion in Denying the Motion to Extend the 180-Day Deadline

Penal Code section 1305.4 permits a bail agent to obtain an order extending the 180-day period in which to obtain the defendant's presence and vacate the bond forfeiture on a showing of "good cause." We review the denial of a motion to extend the time for an abuse of discretion. "The trial court can only be said to have abused its discretion where its decision ' "exceeds the bounds of reason, all circumstances being

considered. [Citation.]’ ” ” ” (*People v. Seneca Ins. Co.*, *supra*, 116 Cal.App.4th at p. 80.)

“[E]stablishing ‘good cause’ within the meaning of section [Penal Code section] 1305.4 requires (1) an explanation of what efforts the surety made to locate the defendant during the initial 180 days, and (2) why such efforts were unsuccessful.” (*People v. Alistar Ins. Co.* (2003) 115 Cal.App.4th 122, 127.) “[T]he appellate court must consider ‘ “ ‘all circumstances’ ” ’ in deciding whether the trial court abused its discretion in denying a request for an extension under section 1305.4 [Citation.] [¶] 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 surety is not “entitled to another 180 days simply by demonstrating it exerted some effort. 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.* (2006) 137 Cal.App.4th 1349, 1357.)

While it is true that the provisions governing forfeiture of bail bonds must be strictly construed in favor of the surety due to the traditional abhorrence of forfeitures (*People v. Harco National Ins. Co.* (2005) 135 Cal.App.4th 931, 934), the surety must nonetheless demonstrate good cause by showing *both* due diligence *and* a reasonable

likelihood of successful recapture. (*People v. Accredited Surety & Casualty Co., Inc.*, *supra*, 137 Cal.App.4th at p. 1358.)

In this case, it is undisputed that Financial Casualty established due diligence; Hernandez diligently sought Espinoza's location and capture during the initial 180-day period. However, the trial court concluded that it had failed to establish a reasonable likelihood of success if given an additional 180 days. We conclude that this determination did not constitute an abuse of discretion.

During the initial 180 days, although Hernandez had several leads on where Espinoza *recently had been seen*, Hernandez and his agents had never actually seen Espinoza. Moreover, their single attempt to follow Espinoza's girlfriend, Marie, was unsuccessful as they "lost" her car "at a red light." Hernandez's supplemental declaration reflected an additional failure to successfully follow Marie, this time on foot. Beyond that, Hernandez had been presented with a golden opportunity to arrest defendant at his relative's birthday party, having been informed in advance of the time and location of the party. Hernandez spotted Espinoza in Marie's car when they arrived at the party; unfortunately, Espinoza also spotted Hernandez and took flight. Although Hernandez chased him, Espinoza escaped. Thereafter, Hernandez spoke with Marie, who was uncooperative.⁷ Thus, by the time of the hearing, the record indicated that Espinoza had eluded Hernandez on foot, and Marie had twice eluded Hernandez and his

⁷ Financial Casualty's initial motion had stated, "At the time of this filing, the defendant's acquaintances are cooperating with investigators to aid in the location and surrender of the defendant." By the time of the hearing, this was no longer true. Defendant's girlfriend was not cooperating.

agents, once on foot and once in her car (when it was not even clear that she knew she was being followed). By the time of the hearing, Marie, who clearly sought to assist Espinoza in eluding capture, had been made aware of Hernandez and knew that he could identify her car. Moreover, Espinoza had been made aware that it was no longer safe for him to attend family gatherings at his brother's home. In short, while Hernandez had obtained good information on Espinoza's location in the past, it was not likely that he could continue to do so, as Espinoza now knew that his family could not be trusted and his girlfriend's car had been identified. Moreover, Espinoza had once eluded Hernandez on foot, and nothing in the record indicated that any further pursuits would be any more successful.⁸

The trial court did not err in concluding there was no reasonable likelihood that Espinoza would be captured. Hernandez's failed attempts indicate an inability to successfully apprehend Espinoza, and each failed attempt made Espinoza better aware of Hernandez's knowledge of his whereabouts.⁹

2. *Any Error with Respect to the Motion to Vacate Is Not Before This Court*

To the extent that Financial Casualty's second motion was a motion to vacate under Code of Civil Procedure section 473, rather than a motion for reconsideration, it is unclear whether the motion was ever denied. Instead, it was simply taken off

⁸ Indeed, although Hernandez's final declaration was never considered by the trial court, it reflected another failed pursuit of Espinoza.

⁹ The trial court also noted that Espinoza had contacts in Mexico. Thus, if it appeared to Espinoza that Hernandez was getting too close, Espinoza could simply flee the country.

calendar as having been improvidently set in the wrong court, with an invitation to refile it in the correct one. Financial Casualty never refiled the motion in civil court. Thus, we have doubts that the motion was ever actually denied. Assuming, without deciding, that the order taking the motion off calendar was, in fact, a denial of the motion, Financial Casualty never appealed that denial. The denial of a motion to vacate is itself an appealable order. (Eisenberg et al, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2011) ¶ 2:171, p. 2-94 (rev. # 1, 2010).) As the denial was not identified in Financial Casualty's notice of appeal, the propriety of any such denial is not before this court.

3. *Any and All Denials of the Motions for Reconsideration Were Proper*

Financial Casualty argues that, even though the statutes governing bail forfeiture provide for the entry of summary judgment when the bond is forfeited and the 180-day period has elapsed without the forfeiture being set aside (Pen. Code, § 1306), those statutes should give way to Code of Civil Procedure section 1008, which purportedly allows a motion for reconsideration to be filed within 10 days of an adverse ruling. In other words, Financial Casualty argues that, whenever a motion to extend the 180-day period is denied, Code of Civil Procedure section 1008 provides a 10-day window within which a motion for reconsideration can be filed, so the entry of summary judgment must be delayed for at least 10 days to allow such a motion to be filed and heard.

The argument is based on a misunderstanding of Code of Civil Procedure section 1008. Code of Civil Procedure section 1008 does provide that a party whose

request for an order has been denied may seek reconsideration “within 10 days after service upon the party of written notice of entry of the order.” This does not, however, mean that the entry of judgment must be postponed until a motion for reconsideration may be filed and heard. Instead, even if a motion for reconsideration is timely filed, the court loses jurisdiction to rule on it after judgment has been entered. (*Safeco Ins. Co. v. Architectural Facades Unlimited, Inc.* (2005) 134 Cal.App.4th 1477, 1482.) In this case, both motions for reconsideration were filed after summary judgment had been entered; thus, the superior court (no matter which department) had lost jurisdiction to grant it. The trial court did not err in denying the motions for reconsideration.

DISPOSITION

The judgment is affirmed. The County shall recover its costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.

