

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALLEGHENY CASUALTY  
COMPANY,

Defendant and Appellant.

B276929

(Los Angeles County  
Super. Ct. Nos.  
SJ4122 & LA076042)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dorothy C. Kim, Judge. Affirmed.

John Mark Rorabaugh and Crystal L. Rorabaugh for Defendant and Appellant.

Mary C. Wickham, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, Jessica C. Rivas, Deputy County Counsel, for Plaintiff and Respondent.

---

Allegheny Casualty Company (Allegheny) appeals from the trial court's denial of its motion to set aside summary judgment on a bail bond it posted for Eduard Isabekian. It contends the trial court twice lost jurisdiction over the bond and therefore, had no authority to order entry of summary judgment. We affirm the judgment.

### **FACTUAL SUMMARY**

The details of the underlying proceedings are presented in greater detail below as a part of our discussion of the issues raised by Allegheny. For purposes of this factual summary, it is sufficient to say that Allegheny posted a bail bond for Isabekian in the amount of \$250,000 in December 2013. Isabekian thereafter appeared for eight scheduled hearings from December 2013 to April 2014. He failed to appear at two required court hearings in June 2014, however, and his trial counsel explained he was unable to walk due to an injury. Isabekian again appeared in court on July 1, 2014. He subsequently failed to appear at a pretrial conference without excuse on September 11, 2014. As a result, his bail was ordered forfeited and summary judgment was ultimately entered in September 2015 after the trial court tolled the time to enter summary judgment. Allegheny appealed.

### **DISCUSSION**

On appeal, Allegheny argues the trial court first lost jurisdiction when it failed to declare the bond forfeited at Isabekian's missed appearance on June 25, 2014, because there was insufficient excuse for his absence. It also argues the trial court lost jurisdiction by failing to enter summary judgment within 90 days of the expiration of the appearance period. The record supports neither assertion.

## I. Standard of Review

Bail forfeitures are governed by Penal Code section 1305 et seq.,<sup>1</sup> which have been described as jurisdictional prescriptions which render a summary judgment on the bail bond void if they are not followed. (*People v. Ranger Ins. Co.* (2003) 108 Cal.App.4th 945, 951, fn. omitted.) 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. The North River Ins. Co.* (2011) 200 Cal.App.4th 712, 717 (*North River*).)

In addition, the law traditionally disfavors forfeitures of bail. (*People v. United Bonding Ins. Co.* (1971) 5 Cal.3d 898, 906.) As a result, “sections 1305 and 1306 dealing with forfeitures of bail bonds must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture. [Citation.]” (*People v. Surety Ins. Co.* (1982) 136 Cal.App.3d 556, 561; see *People v. Wilshire Ins. Co.* (1975) 46 Cal.App.3d 216, 220.)

A trial court’s denial of a motion to set aside an order of forfeiture is typically reviewed under an abuse of discretion standard. (*People v. Accredited Surety & Casualty Co.* (2004) 132 Cal.App.4th 1134, 1139–1140 (*Accredited Surety*).) The complaining party has the burden to establish an abuse of discretion, and unless a clear case of abuse is shown or there has been a miscarriage of justice, a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power. (*Id.* at p. 1140; see *County of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 944–945.) When the evidence is undisputed, however, a Court of Appeal applies the de

---

<sup>1</sup> All further section references are to the Penal Code unless otherwise specified.

novo standard of review. (*People v. International Fidelity Ins. Co.* (2010) 185 Cal.App.4th 1391, 1395.)

## **II. The Trial Court Was Not Required to Forfeit Bail on June 25, 2014**

Allegheny contends the trial court was required, but failed, to declare the bond forfeit under section 1305, subdivision (a)(1) on June 25, 2014, because it found insufficient excuse for Isabekian's failure to appear in court on that date. As a result, it lost jurisdiction and the subsequent bail forfeiture ruling was invalid. The record belies this assertion.

### **A. Underlying Proceedings**

On June 18, 2014, Isabekian failed to appear for a pretrial conference. His counsel informed the trial court that he was unable to walk due to an injury. The court ordered a bench warrant issued and held to June 25, 2014. On that date, Isabekian again failed to appear and his counsel again informed the court he could not walk for four weeks. The court asked for medical documentation to support this assertion, noting that if he was unable to walk, he would be unable to come to court and waive his appearance under section 977. While they waited for a fax from Isabekian's doctor, the parties and the court discussed the bench warrant. After hearing the prosecutor's argument in favor of the issuance of a bench warrant and defense counsel's plea to wait a short time to issue it, the trial court decided to hold the bench warrant until July 1.

Minutes after the court made its ruling, it received a faxed letter from Isabekian's chiropractor. The following colloquy occurred:

“The Court: Let's go on the record and recall the matter of Mr. Isabekian. [¶] By fax, I just received a letter

from a chiropractor stating that Mr. Isabekian had sustained acute lower back pain due to a slip on a wet floor. It says that he can't walk for more than five minutes. I think he can—there is nothing in this report that suggests to me that he can't make a court appearance, so—

[The Prosecutor]: Certainly he can make an appearance in a wheelchair, your honor.

The Court: There is something more substantial than the paragraph I received that would be necessary if we're going to delay this any further."

The trial court then reiterated its earlier ruling to hold the bench warrant until July 1. The criminal index showed the court ordered "bail to stand." Isabekian appeared for the hearing on July 1, and the bench warrant was ordered quashed.

Summary judgment was later entered after Isabekian failed to appear without excuse in September. Allegheny moved to set aside the summary judgment, vacate the forfeiture, and exonerate bail. It argued that the summary judgment was void because the trial court was required to order bail forfeited when Isabekian first failed to appear without sufficient excuse on June 25, 2014. According to Allegheny, the trial court found Isabekian's inability to walk an insufficient excuse for his failure to appear on that day and should have ordered bail forfeited then.

The motion to set aside summary judgment was heard by a different judge, the Honorable Dorothy Kim, who declined to interpret the trial court's comments in the way urged by Allegheny. She instead concluded the trial court had found the chiropractor's note insufficient for "any further" delay, implicitly finding it was sufficient to excuse his absence on June 25, and denied the motion to set aside.

## **B. Applicable Law**

In general, if a bailed defendant fails to appear for a scheduled court hearing, the trial court is required to enter the nonappearance in the minutes of the court and immediately forfeit the bail with notice to the surety and its agent. (§ 1305, subd. (a)(1); *People v. United Bonding Ins. Co.*, *supra*, 5 Cal.3d at p. 907; *People v. American Bankers Ins. Co.* (1989) 215 Cal.App.3d 1363, 1366.) If, however, “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.” (§ 1305.1.) The entire record may be considered to determine whether sufficient excuse may exist and the excuse need not be expressly set out in the minutes. (*People v. Amwest Surety Ins. Co.* (1997) 56 Cal.App.4th 915, 922.) The determination of whether an excuse is sufficient is within the trial court’s discretion and decided on a case-by-case basis. (*People v. Harco National Ins. Co.* (2005) 135 Cal.App.4th 931, 934.)

## **C. Legal Analysis**

Allegheny concedes, “it would have been rational to believe that a sufficient excuse . . . existed for the defendant’s failure to appear” based solely on the representation by counsel that Isabekian was unable to walk. However, Allegheny argues the trial court changed its mind about the sufficiency of Isabekian’s excuse after it received the chiropractor’s letter. It contends the trial court found the letter to be an insufficient excuse for Isabekian’s failure to appear on June 25 and thus it was required to order forfeiture of the bond. Allegheny interprets the trial court’s comment—“there is nothing in this report that suggests to

me that he can't make a court appearance"—to mean it found the letter insufficient to excuse Isabekian's absence on June 25. We are not persuaded.

Taken in context, it is evident the trial court was interrupted by the prosecutor in the process of stating that a better showing was necessary for any further delay. Isabekian had a reasonable explanation for his nonappearance that day, based on the letter from his chiropractor that he could not walk. The record shows the trial court found good cause existed to excuse Isabekian's absence on June 25. There is nothing in the record to contradict the court's order for "bail to stand," as reflected in the minutes for June 25. We conclude the trial court properly exercised its discretion on June 25, 2014, when it declined to order bail forfeited. Accordingly, the trial court retained its jurisdiction over the bond under section 1305.1 and properly declared it forfeited when Isabekian subsequently failed to appear without excuse.

### **III. The Hearing for the Motion to Vacate Was Properly Extended Past the Appearance Period**

Allegheny next contends the summary judgment entered by the trial court on September 18, 2015, was untimely because it was not entered within 90 days after the date upon which it may first be entered as required by section 1306. The record does not support Allegheny's contention.

#### **A. Underlying Proceedings**

On February 19, 2015, Allegheny's bail agent timely filed a motion to vacate forfeiture and exonerate bail. The motion came on for hearing on March 10, 2015. At the hearing, the trial court was presented a death certificate from Armenia, which was translated to English, and indicated Isabekian had died.

The People contended the death certificate was not credible. It noted that Isabekian's death was sudden and unexpected, and came only shortly after jail house calls were provided by the People in discovery which strengthened the case against him. The People also presented evidence that the death certificate was notarized by someone in Armenia who had been accused of fraud. Four articles from the websites of nonprofit groups and news organizations were presented to the trial court which accused the notary of taking bribes and ratifying transfers of property based on invalid documents. The trial court took the matter off calendar to allow the bail agent an opportunity to provide further evidence. The appearance period expired on March 19, 2015, without another hearing.

On March 24, 2015, Allegheny's bail agent filed a "motion for reconsideration" of the trial court's denial of the motion to vacate the forfeiture and exonerate the bond. It provided information that the notary had never been prosecuted or convicted of the fraud she was accused of committing. On April 15, 2015, the trial court denied the motion on the ground that the notarized documents and signatures were from a foreign official and not authenticated by a United States foreign service officer, as is required. (Evid. Code, § 1454; *Estate of Chichernea* (1967) 66 Cal.2d 83, 86, fn. 2.)

The court then twice tolled the time for entry of summary judgment, presumably to entertain further argument from Allegheny. Summary judgment was ordered to be entered on September 16, 2015, and the clerk mailed a notice of summary judgment to the bail agent and Allegheny two days later. The summary judgment was paid in full on September 23, 2015.



## **B. Applicable Law**

Generally, if a criminal defendant out on bail fails to appear when lawfully required to do so, the trial court must declare bail forfeited. (§ 1305, subd. (a)(1).) Once bail has been forfeited, the clerk must mail a notice of forfeiture to the surety. (§ 1305, subd. (b).) The surety then has 180 days (plus five days for mailing), known as the appearance period, to bring the defendant into court. (See § 1305, subd. (c); *People v. Tingcungco* (2015) 237 Cal.App.4th 249, 253; *North River*, *supra*, 200 Cal.App.4th at p. 717.)

If the defendant appears or is returned to custody within the appearance period, no motion for relief is necessary by the surety. (*People v. Indiana Lumbermens Mutual Ins. Co.* (2010) 49 Cal.4th 301, 304–305.) On the other hand, if he does not appear or is not returned to custody within the statutory period, section 1305 allows the surety to request relief from forfeiture due to the defendant’s temporary or permanent disability. (§ 1305, subs. (d)-(e); *Accredited Surety*, *supra*, 132 Cal.App.4th at p. 1139; *People v. American Bankers Ins. Co.* (1991) 233 Cal.App.3d 561, 570.) It is the surety’s obligation “ ‘to establish by competent evidence that its case falls within the four corners’ ” of section 1305. (*Accredited Surety*, at p. 1139, italics omitted.) Under subdivision (j) of section 1305, “[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 trial court must enter summary judgment against the surety “within 90 days after the date upon which it may first be entered.” (§ 1306, subd. (c); *People v. Financial Casualty & Surety Inc.* (2017) 14 Cal.App.5th 127, 133.) The date upon

which summary judgment may first be entered is typically the date of the expiration of the appearance period, if no extensions have been granted. If the trial court fails to enter summary judgment within that 90-day period, its authority expires and the bail is exonerated. (§ 1306, subd. (c)(1).)

### **C. Legal Analysis**

The parties agree that the 180-day appearance period expired on March 19, 2015. The parties also agree the bail agent's motion to vacate forfeiture was timely filed and heard. The parties disagree, however, about the effect the bail agent's "motion for reconsideration" had on the proceedings. Allegheny contends the motion for reconsideration is what it is entitled: a motion for reconsideration under section 1008. Further, that because it was filed five days after the appearance period had expired, it was untimely and an untimely section 1008 motion does not toll the 90-day period within which the trial court must enter summary judgment. (*People v. Financial Casualty & Surety Inc.*, *supra*, 14 Cal.App.5th at p. 133.) By Allegheny's calculation, the trial court had to enter summary judgment by June 18, 2015, 90 days after the appearance period elapsed on March 19. It thus lacked jurisdiction when it instead entered summary judgment on September 16, 2015.

County counsel, on the other hand, argues the motion for reconsideration was mislabeled; it was instead a court-ordered supplemental brief to the motion to vacate, which was timely filed within the appearance period. As a result, the 90-day period was tolled pursuant to section 1305, subdivision (j), which permits the trial court to extend a hearing on a timely filed motion.

We agree with county counsel. “The nature of a motion is determined by the nature of the relief sought, not by the label attached to it. The law is not a mere game of words.” (*City & County of S. F. v. Muller* (1960) 177 Cal.App.2d 600, 603; *Fountain Valley Chateau Blanc Homeowner’s Assn. v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 753 [“There is precedent for looking to the substance of a . . . motion rather than just its title.”].)

The record reflects the trial court did not rule on Allegheny’s bail agent’s motion to vacate. Instead, it took the matter off calendar to give the bail agent a chance to obtain further information on the notary and provide other helpful evidence regarding Isabekian’s death. It was within the trial court’s discretion to extend the time for hearing under section 1305, subdivision (j). The bail agent complied with the court’s request when he filed the so-called motion for reconsideration. In it, he addressed each of the articles which accused the notary of fraud or taking bribes and explained the facts underlying the accusation. He also asserted none of the accusations led to a conviction or charges against the notary. Moreover, despite the title he gave it, the bail agent specifically argued the second motion was made under section 1305, subdivision (d)(1) and (d)(2),<sup>2</sup> not section 1008, and was timely made on March 10, 2015. The motion filed by the bail agent on March 25 was thus not a motion for reconsideration of a ruling the trial court did not

---

<sup>2</sup> Section 1305, subdivisions (d)(1) and (d)(2) direct the court to vacate the forfeiture of the bail if the court finds, within the 180-day appearance period, that the defendant is deceased and his absence is without connivance of the bail.

make. It instead was further briefing to support a pending motion which was timely filed.

Accordingly, the trial court retained jurisdiction under section 1305, subdivision (j), to consider a motion filed within the 180-day period, but heard after expiration of the appearance period. Its subsequent entry of summary judgment was valid.

### **DISPOSITION**

The summary judgment granted in favor of the People of the State of California is affirmed. The People shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278.)

BIGELOW, P.J.

We concur:

GRIMES, J.

ROGAN, J.\*

---

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