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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

THE NORTH RIVER INSURANCE
COMPANY,

Defendant and Appellant;

BAD BOYS BAIL BONDS,

Real Party in Interest and
Appellant.

B236680

(Los Angeles County
Super. Ct. Nos. SJ3650, SJ3358)

APPEAL from an order of the Superior Court of Los Angeles County. Karla D. Kerlin, Judge. Affirmed.

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

John F. Krattli, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and Brian T. Chu, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

The North River Insurance Company (North River) and Bad Boys Bail Bonds (Bad Boys) appeal from the order denying their motion to set aside summary judgment. Bail was forfeited when criminal defendant Rafael Perez failed to appear in court, but the court granted a 180-day extension of the appearance period to obtain relief from forfeiture or exoneration of bail. Summary judgment was entered after the first extension of the appearance period expired, although a timely motion to extend or toll the 180-day appearance period was pending. This premature judgment was vacated on the court's own motion, and orders granting a 180-day extension *and* 180-day tolling of the appearance period were entered that same day. Subsequently, the appearance period was tolled three more times, at the expiration of which summary judgment was entered. On appeal, North River and Bad Boys contend the premature judgment was not properly vacated and is unenforceable. Alternatively, they contend that even if the first judgment was properly vacated, the second judgment is premature because the 180-day extension, which was granted at the same time the appearance period was tolled, was not credited to the appearance period. Finding no merit in either of these contentions, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 9, 2008, Bad Boys posted an \$80,000 bond for Rafael Perez in his criminal case for robbery (Pen. Code, § 211).¹ On May 16, 2008, Perez failed to appear in court, and the trial court ordered his bail forfeited. Notice of the bail forfeiture was mailed to Bad Boys on May 29, 2008. On November 21, 2008, Bad Boys timely moved under section 1305.4 to extend the time for entry of summary judgment on the bail forfeiture by 180 days. On December 10, 2008, Judge Bernal granted the motion, and Bad Boys received a 180-day extension, until June 8, 2009.

On June 5, 2009, Bad Boys moved to toll or extend the 180-day appearance period. On June 11, 2009, while the motion was still pending, Judge Clarke entered summary judgment on the bond. On June 23, 2009, Judge Bernal granted the motion to toll or extend the 180-day appearance period. Judge Bernal signed an order to toll the

¹ All statutory citations are to the Penal Code unless otherwise noted.

appearance period under section 1305, subdivision (e), and an order to extend the period under section 1305.4, both of which stated that the appearance period was extended or tolled until “12/6/09.” There was no mention of the summary judgment entered by Judge Clarke. The ruling was entered into the court’s minutes at 8:30 a.m. on June 23, 2009.

That same day, Judge Clarke signed an order stating that “[d]ue to clerical error and inadvertence, Summary Judgment was entered Prematurely. Motion filed on 06/05/09 but not enter[ed] timely. [¶] Summary Judgment issued on June 11, 2009 is vacated and set aside.” The order was memorialized in the court’s minutes, which additionally reflected that the motion to extend the appearance period had not been “enter[ed] into TCIS,” the court’s computer system. The minutes were entered at 9:00 a.m., and noted that the motion to toll or extend the appearance period had been granted by Judge Bernal.

On November 24, 2009, Bad Boys moved to toll or extend the 180-day appearance period. On January 4, 2010, Judge Bernal tolled the appearance period under section 1305, subdivision (e) for 60 days, until March 5, 2010.

On March 2, 2010, Bad Boys moved to toll or extend the appearance period. The trial court tolled the appearance period under section 1305, subdivision (e) an additional 180 days, until September 1, 2010.

On September 1, 2010, Bad Boys again moved to toll the appearance period. The trial court tolled the appearance period under section 1305, subdivision (e) an additional 180 days, until March 29, 2011.

On March 29, 2011, Bad Boys sought another 180-day tolling of the appearance period. The trial court denied the motion on June 2, 2011, and entered summary judgment on June 8, 2011.

Bad Boys and North River timely moved to vacate forfeiture and exonerate the bond, arguing that the June 11, 2009 judgment was never properly set aside, and was unenforceable as it was over two years old. (§ 1306, subd. (f).) Alternatively, they argued the June 8, 2011 judgment was premature because the June 23, 2009 orders tolling

and extending the appearance period entitled them to *both* a 180-day tolling period and a consecutive 180-day extension.²

Plaintiff County of Los Angeles's opposition contended the first judgment was properly set aside as a voidable judgment, and the second judgment was not premature.

On August 19, 2011, Judge Kerlin denied the motion. North River and Bad Boys timely appealed.

DISCUSSION

“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.” (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657.) “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. [Citation.]” (*Ibid.*) Once a notice of forfeiture is mailed by the clerk, a surety has 180 days within which to obtain relief from forfeiture or exoneration of bail. (§ 1305, subd. (c); *People v. Ranger Ins. Co.* (2002) 99 Cal.App.4th 1229, 1232, disapproved in part on other grounds in *People v. American Contractors Indemnity Co.*, at p. 663, fn. 7.) This 180-day period is often referred to as the “‘appearance’ period.” (*People v. American Contractors Indemnity Co.*, *supra*, at p. 657.) Under section 1305.4, the surety may file a motion for an order extending the appearance period. (§§ 1305, subd. (i), 1305.4.) Additionally, under section 1305, the trial court may toll the appearance period. (§ 1305, subd. (e).) “If the forfeiture is not set aside by the end of the appearance period, the court is required to enter summary judgment against the surety.” (*People v. American Contractors Indemnity Co.*, at p. 657.) On appeal from an order denying a motion to set aside a bail forfeiture, the “trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.” (*County of Los Angeles v. Fairmont Specialty Group* (2009) 173

² We have not summarized their other arguments, which are not relevant to this appeal.

Cal.App.4th 538, 543.) The bail forfeiture statutes are strictly construed in favor of the surety, because the law disfavors forfeitures, and this disfavor extends to forfeiture of bail. (*People v. Surety Ins. Co.* (1985) 165 Cal.App.3d 22, 26.)

1. The Premature Judgment Was Properly Set Aside

The trial court did not abuse its discretion when it denied the motion to set aside summary judgment and vacate forfeiture of the bond. Because there was a pending motion to extend or toll the 180-day appearance period, the first judgment entered by Judge Clarke was premature and voidable. (*People v. Aegis Security Ins. Co.* (2005) 130 Cal.App.4th 1071, 1076 [“If . . . statutorily authorized motion to extend the appearance period did not postpone the date on which the trial court could first enter summary judgment, the motion would be futile.”]; *People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at p. 663 [premature “entry of summary judgment . . . did not deprive the court of jurisdiction over the subject matter of the bail bond forfeiture or personal jurisdiction over the surety, and thus the premature entry of summary judgment was voidable, not void”].)

A trial court has authority to set aside or vacate a voidable judgment. (See *Estate of Costa* (1951) 37 Cal.2d 154, 157.) A court cannot on its own motion set aside a judgment that resulted from judicial error, but it may set aside a judgment resulting from clerical error at any time. (*Bastajian v. Brown* (1941) 19 Cal.2d 209, 214; *Estate of Remick* (1946) 75 Cal.App.2d 24, 27.) “Whether an error is judicial rather than clerical depends upon whether it was the deliberate result of judicial reasoning and determination [citation]. If an error, mistake or omission is the result of inadvertence, but for which a different judgment would have been rendered, the error is clerical and the judgment may be corrected to correspond with what it would have been but for the inadvertence [citation].” (*Estate of Sloan* (1963) 222 Cal.App.2d 283, 292.) Entry of a premature judgment is generally considered a clerical rather than judicial error. (*Estate of Costa*, *supra*, at p. 157; see also *Phillips v. Trusheim* (1945) 25 Cal.2d 913, 916-917.)

The trial court’s order and minutes show that judgment was entered only because the pending motion for an extension of the appearance period did not appear in the

court's computer system. Judge Clarke identified the error in entering judgment as "clerical error." Judge Clarke's characterization of the error is strong evidence that the error resulted from inadvertence rather than the exercise of judicial discretion, or misapprehension of the law. (*Bastajian v. Brown*, *supra*, 19 Cal.2d at p. 215 ["The facts within the personal knowledge of the judge may be considered, and in vacating or correcting a clerical error or mistake he may give effect of his own recollection. The declaration in the order vacating the judgment has a direct bearing on the existence of such error"]; *Carpenter v. Pacific Mut. Life Ins. Co.* (1939) 14 Cal.2d 704, 708-709; *Estate of Sloan*, *supra*, 222 Cal.App.2d at pp. 292-293 ["It is primarily for the trial judge to determine whether his order was an inadvertence and his conclusion as to that question will not be lightly set aside"].) Therefore, there is substantial evidence the error was clerical rather than judicial, and we can discern no abuse of discretion in denying the motion.

2. The Second Judgment Was Not Premature

On June 23, 2009, two orders were entered by the court: one purporting to toll the appearance period, and one purporting to extend it. However, both orders stated that the appearance period was tolled or extended only until December 6, 2009. North River and Bad Boys contend the "uncounted" June 23, 2009 extension should be credited to the appearance period, which when counted with the other extension and tolling orders, would extend the appearance period until September 2011, rendering the June 8, 2011 judgment premature.

A court may toll the appearance period under section 1305, or, "[n]otwithstanding Section 1305, . . . [t]he court . . . may order the [appearance] period extended." (§ 1305.4.) The only logical reconciliation of these statutes is that the appearance period may either be extended or tolled at any given time, but not both. (See *Klajic v. Castaic Lake Water Agency* (2004) 121 Cal.App.4th 5, 12-13 ["Notwithstanding" means 'without prevention or obstruction from or by' or 'in spite of' [citation]].) It is also apparent that neither order contemplated application beyond December 6, 2009, and that only one of the orders controls, rendering the other superfluous.

DISPOSITION

The order is affirmed. Respondent is awarded its costs on appeal.

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GRIMES, J.

WE CONCUR:

FLIER, Acting P. J.

SORTINO, J.*

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