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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

INTERNATIONAL FIDELITY
INSURANCE COMPANY,

Defendant and Appellant.

B229001

(Los Angeles County
Super. Ct. No. OSJ1270)

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry A. Bork, Judge, and Jeffrey M. Harkavy, Commissioner. Affirmed.

Nunez & Bernstein and E. Alan Nunez for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, Ruben Baeza, Jr., Assistant County Counsel, and Liliana Campos, Senior Associate County Counsel, for Plaintiff and Respondent.

International Fidelity Insurance Company (IFIC) appeals from a summary judgment entered upon forfeiture of a bail bond it issued. IFIC contends that the trial court erred by denying its motion to vacate forfeiture and exonerate the bail bond because the bond had been exonerated by operation of law when the trial court allowed the defendant one additional week to make progress toward satisfying a condition of his probation, which IFIC contends was a reinstatement of the defendant's previously revoked probation. We disagree and affirm.

BACKGROUND

On July 14, 2009, Anthony Carl Burfford pleaded no contest to a violation of Vehicle Code section 23152, subdivision (a). (All undesignated date references are to 2009.) Commissioner Jeffrey Harkavy suspended imposition of sentence and placed Burfford on summary probation for 36 months on a variety of terms and conditions that included a fine or community service or jail time, completion of a nine-month alcohol education program and enrollment in such a program within 21 days, completion of a Mothers Against Drunk Driving (MADD) Victim Impact program, and payment of specified fees and assessments. The court ordered Burfford to appear on August 25 for "proof of completion," but he failed to appear. The trial court's minute order for August 25 states, "Probation revoked. [¶] As to count (01): [¶] In chambers, court reviews file and finds that the defendant has failed to comply with the court's order to pay the fees, complete community service, complete alcohol program and MADD. Defendant fails to appear, bench warrant is ordered issued. Bail amount is \$35000.00."

Burfford was subsequently arrested on the bench warrant and an IFIC bail bond was posted by bail agent EZ Bail Bond Agency on November 3 for Burfford's release from custody. Burfford was ordered to appear on November 20, and he did so. Burfford's attorney told Commissioner Sharon Lewis Miller that Burfford's wife had suffered a medical emergency, and Burfford had not been able to do "anything he was obligated to do." Commissioner Miller ordered probation to remain revoked and continued the matter to December 11 before Commissioner Harkavy to set a date for a

probation violation hearing. Commissioner Miller told Burfford, “I can’t speak for Commissioner Harkavy, but if I were you, I would have something done by that date.”

Burfford appeared on December 11 before Commissioner Harkavy and explained that, due to his wife’s cancer diagnosis, he had been unable to enroll in the required programs. He asked for an additional 60 days to comply with the conditions of probation. The commissioner noted that for five months Burfford had done nothing toward satisfying his probation conditions, and said, “Let’s talk about jail.” The commissioner nonetheless continued the probation violation hearing to December 18 and ordered Burfford to appear that day and either “be enrolled in everything or be prepared” to go to jail. The court’s minute order for December 11 states, in pertinent part, “Probation remains revoked. [¶] Defendant to enroll in alcohol program, MADD and community service or county jail will be imposed.”

Burfford failed to appear on December 18 for the continued probation violation hearing. The court issued a bench warrant and ordered forfeiture of the bail bond. Notice of the forfeiture order was mailed by the clerk the same day. The 180-day appearance period provided by Penal Code section 1305, subdivision (c) (with extension by five days due to mailing of the notice of forfeiture) thus expired on June 21, 2010. (All undesignated statutory references are to the Penal Code.)

On June 21, 2010, EZ Bail Bond Agency filed a motion to vacate the forfeiture, reinstate, and exonerate the bond or extend the appearance period under section 1305.4. The motion included a declaration by Jacquelyn Deloatch describing EZ Bail Bond Agency’s efforts to locate “Defendant Simpson [*sic*]” from “August 17, 2009 [*sic*],” through “December 12, 2009 [*sic*].” The hearing on the motion was continued from July 12, 2010, to August 23, 2010, at which time the motion for an extension was denied and the remainder of the motion was continued to September 27, 2010.

Prior to the continued hearing date, counsel for IFIC filed supplemental points and authorities, arguing that the court lost jurisdiction over the bond on December 11 when it reinstated Burfford’s probation by giving him another opportunity to enroll in the

programs that were conditions of his probation. The trial court denied the motion to vacate forfeiture and exonerate the bond, stating that Burfford's probation had been revoked before the bond issued, it remained revoked throughout the ensuing proceedings, and it was not reinstated when the court allowed Burfford one more week to enroll in the required program.

On October 6, 2010, Judge Bork entered summary judgment against IFIC on the bond. IFIC filed a timely appeal.

DISCUSSION

“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. (Pen. Code, § 1305, subd. (a).) The surety that posted the bond then has a statutory ‘appearance’ period in which either to produce the accused in court and have the forfeiture set aside, or to demonstrate other circumstances requiring the court to vacate the forfeiture. 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. (§ 1306, subd. (a).)” (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657, fn. omitted.)

“While it is true that the law disfavors forfeitures, including forfeitures of bail under the bail provisions of the Penal Code, it is the burden of the surety to show that a forfeiture of its bail should be set aside.” (*People v. American Surety Ins. Co.* (2001) 88 Cal.App.4th 762, 768.)

The trial court's determination of a motion to vacate forfeiture is a discretionary ruling that will not to be disturbed on appeal unless the record reveals a patent abuse of discretion. (*People v. Accredited Surety & Casualty Co.* (2004) 132 Cal.App.4th 1134, 1139–1140.) The party challenging the trial court's ruling bears the burden of establishing a clear case of abuse of discretion. (*Id.* at p. 1140.)

Section 1195 provides, in pertinent part, “If the defendant, who is on bail, does appear for judgment and judgment is pronounced upon him or probation is granted to him, then the bail shall be exonerated”

IFIC contends that the court effectively reinstated Burfford on probation on December 11 by giving him more time to comply with his probation conditions, and this resulted in exoneration of the bail pursuant to section 1195. The County of Los Angeles disagrees, citing the trial court's express order that probation remained revoked.

Burfford was granted probation before IFIC issued its bond. Burfford's probation was summarily revoked on August 25, and IFIC posted its bond for his release from jail on November 3. Thereafter, at the bench warrant hearing on November 20, and the probation violation hearings on December 11 and December 18, the trial court expressly ordered that probation remained revoked. The court did not reinstate Burfford's probation on December 11 (or any other date), but merely continued the matter for setting the date for a probation violation hearing. The continuances provided Burfford with a little more time to begin complying with his probation conditions and perhaps avoid a formal revocation of his probation, but they did not reinstate his probation. Thus, none of the triggers for exoneration of the bail set forth in section 1195 occurred here.

IFIC argues that this case is "well-nigh identical" to *People v. Safety National Casualty Corp.* (2007) 150 Cal.App.4th 11 (*Safety*), in which the bond was found to have been exonerated by a reinstatement of probation. There, the surety posted a bond for the release of a probationer, Post, who had been arrested on a bench warrant after failing to appear in court to show that she had completed the volunteer work that was a condition of her probation. Post failed to appear on the next court date, and the court declared the bail forfeited and issued a new bench warrant. Post appeared one week later, on July 12, and the court withdrew the bench warrant, set aside the bail forfeiture, and continued the matter for one more week for Post to show proof she had enrolled in a volunteer program. The bail agent submitted written notice that it did not object to the reinstatement of bail for 10 days, and Post signed a statement on the minute order releasing her on her own recognizance. When Post failed to appear on July 19, the court ordered bail forfeited. The surety's motion to set aside the summary judgment and exonerate the bail bond was denied. (*Id.* at pp. 13–14) The appellate opinion does not indicate whether the trial court

ever revoked Post's probation or, if it did, ever ordered that her probation remained revoked. The appellate court concluded that "[a]t the July 12 hearing, the court continued Post on probation when it ordered her to appear on July 19 to provide proof of enrollment in the volunteer program. By returning Post to probation, the bail was exonerated by operation of law. Consequently, the trial court's order reinstating bail and its pronouncement of forfeiture of bail when Post failed to appear at the next scheduled hearing were void acts, as there was no obligation in existence that could be reinstated or forfeited." (*Id.* at p. 17.)

The trial court's consistent, repeated, express orders first revoking Burfford's probation and subsequently ordering that it remain revoked distinguish the present case from *Safety*. In the face of such orders, we cannot conclude that the trial court reinstated Burfford to probation merely by continuing the probation violation hearing in which it would ultimately decide whether to reinstate that probation or impose a jail sentence. Accordingly, bail was not exonerated, the trial court did not abuse its discretion in ruling upon IFIC's motion, and no ground for reversal exists.

DISPOSITION

The judgment is affirmed. The County of Los Angeles is awarded its costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.