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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LEXINGTON NATIONAL INSURANCE
CORPORATION,

Defendant and Appellant.

B231134

(Los Angeles County
Super. Ct. No. SJ003530)

APPEAL from a judgment of the Superior Court of Los Angeles County. Karla Kerlin, Judge. Affirmed.

E. Alan Nunez for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, Rubin Baeza, Assistant County Counsel, and William Birnie, Associate County Counsel for Plaintiff and Respondent.

In this bail forfeiture action, Lexington National Insurance Corporation (Lexington) appeals the trial court's grant of summary judgment in favor of respondent and the denial of Lexington's motion, under Penal Code section 1305.4, to extend the exoneration period for the bail bond it posted.¹ We affirm the judgment.

BACKGROUND

Lexington posted a bail bond in the amount of \$30,000 to secure the release from custody of criminal defendant Sergio Rodriguez (Rodriguez) on October 17, 2009, in criminal case No. LA063330.² Rodriguez failed to appear at a hearing in that case held on November 19, 2009, and the court issued a bench warrant for Rodriguez's arrest and ordered bail forfeited. Notice of forfeiture of the bail bond was mailed to Lexington on November 20, 2009. On June 10, 2010, the court granted Lexington's motion to extend the exoneration period on the bond until August 9, 2010.

Rodriguez appeared in court in San Fernando on the unrelated criminal matter, case No. 6GF00059, on July 8, 2010 as a result of a bench warrant having issued due to his earlier failure to appear. The court in that case reinstated probation, ordered Rodriguez to serve 90 days in Los Angeles County jail, and exonerated the bail bond.

On August 9, 2010, Lexington filed a second motion to extend the exoneration period on the bond posted in case No. LA063330. The trial court denied the motion, and summary judgment was entered on August 10, 2010.

LEXINGTON'S CONTENTIONS

Lexington contends its bond was exonerated as a matter of law under section 1305, subdivision (c)(2) when Rodriguez was arrested and placed in custody on the unrelated criminal matter in San Fernando. Lexington further contends the trial court erred by denying its second motion to extend the exoneration period on the bond.

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

² On the same day the Lexington agent posted another bond for Rodriguez in case No. 6GF00059.

DISCUSSION

I. Applicable legal principles and standard of review

The purpose of bail and its forfeiture is to ensure a criminal defendant's appearance in court and adherence to court orders. (*People v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 146, 151 (*Fairmont*).) A bail bond is a contract between the court and a surety whereby the surety promises that a defendant released from custody will appear in court when ordered. If the defendant fails to appear, the surety becomes a debtor for the bond amount. (*Ibid.*)

Bail is forfeited when a defendant fails to appear as ordered before judgment is pronounced. (§ 1305, subd. (a).) If a defendant fails to appear as ordered, a forfeiture of the bail bond may be declared, and a notice of forfeiture must be mailed to the surety. (§ 1305, subd. (b).)

After notice of forfeiture has been mailed, the surety has 180 days to secure the presence of the criminal defendant in court. (§ 1305, subds. (b)-(c).) Under section 1305, if the defendant appears, voluntarily or in custody, within the 180-day period, the court must direct the order of forfeiture to be vacated and the bond exonerated. (§ 1305, subd. (c)(1).) A bail forfeiture may also be exonerated if “within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, and is subsequently released from custody prior to an appearance in court.” (§ 1305, subd. (c)(2).)³

“The provisions of section 1305 ‘must be strictly followed or the court acts without or in excess of its jurisdiction. [Citation.]’ [Citation.] ‘The burden is upon the bonding company seeking to set aside the forfeiture to establish by competent evidence that its case falls within the four corners of these statutory requirements.’ [Citations.]” (*Fairmont, supra*, 173 Cal.App.4th at p. 152.)

³ A bail forfeiture may also be exonerated if “outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period.” (§ 1305, subd. (c)(3).)

An order denying a motion to vacate or set aside a forfeiture and exonerate the bail is generally reviewed under the abuse of discretion standard. (*Fairmont*, *supra*, 173 Cal.App.4th at p. 151.) In the instant case, however, Lexington’s contention that its bond was exonerated as a matter of law under section 1305, subdivision (c)(2) presents an issue of statutory interpretation that we review de novo. (*Fairmont*, at p. 151.) We review the trial court’s denial of Lexington’s motion to extend the 180-day exoneration period under the abuse of discretion standard. (*People v. Alistar Ins. Co.* (2003) 115 Cal.App.4th 122, 127.)

II. Section 1305, subdivision (c)(2)

Section 1305, subdivision (c)(2) requires the court to vacate an order of forfeiture and order a bail bond exonerated “[i]f, within the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, and is subsequently released from custody prior to an appearance in court.” Subdivision (h) of section 1305 provides that a “hold placed on the defendant in the underlying case while he or she is in custody on other charges” has the same effect as the defendant’s arrest.

The interrelationship between subdivision (c)(2) and subdivision (h) of section 1305 was the issue considered by Division Four in *Fairmont*. In *Fairmont*, the defendant failed to appear in a Los Angeles County criminal case in the City of Inglewood, and the court in that case declared a bail forfeiture and issued an arrest warrant. (*Fairmont*, *supra*, 173 Cal.App.4th at p. 150.) Approximately one month later, the defendant was arrested on a new charge in Culver City. While the defendant was in custody, the Culver City booking officer learned of the bench warrant in the Inglewood case, called the Inglewood Police Department, and was told to release the defendant on that warrant due to medical concerns. (*Ibid.*) The court in *Fairmont* concluded that although the defendant was never formally arrested for failure to appear in the Inglewood case, from the time the Culver City booking officer learned of the outstanding Inglewood warrant until the time the booking officer was told to ignore it, the defendant “was subject to a

‘hold . . . in the underlying case’ within the meaning of section 1305, subdivision (h), and thus ‘arrested in the underlying case’ under subdivision (c)(2).” (*Ibid.*)

The *Fairmont* court explained that its construction of the statute did not render the phrase “in the underlying case” as used in subdivision (h) of section 1305 surplusage because had the Culver City booking officer remained ignorant of the outstanding Inglewood warrant, the defendant’s detention “could not be attributed to ‘the underlying case.’” (*Fairmont, supra*, 173 Cal.App.4th at p. 153.) The court stated: “However, [the booking officer] was aware of the warrant, and there is no suggestion she intended to do anything but honor it until advised otherwise In contrast, where an arresting agency remains ignorant of an outstanding warrant, it cannot be said that the defendant is subject to a hold ‘in the underlying case.’” (*Ibid.*)

There is no evidence that officers that placed Rodriguez in custody in case No. 6GF00059 had any knowledge of an outstanding warrant for his arrest in case No. LA063330. Rodriguez accordingly was not subject to a hold “in the underlying case” within the meaning of section 1305, subdivision (h). (*Fairmont, supra*, 173 Cal.App.4th at p. 153.)

Notwithstanding the arresting officers’ ignorance of any outstanding warrant for Rodriguez, Lexington argues that Rodriguez’s arrest in case No. 6GF00059 should be deemed to be a hold in case No. LA063330 because the officers had a duty to check for other warrants. No statute or case authority imposes such a duty. Section 850, subdivision (c), which Lexington claims “suggests” the existence of such a duty on the part of arresting officers and authorities, does not require officers to check for the existence of other warrants. That statute provides: “When the subject of a written or telegraphic warrant or abstract of warrant is in custody on another charge, the custodial officer shall, immediately upon receipt of information as to the existence of any such warrant or abstract, obtain and deliver a written copy of the warrant or abstract to the subject and shall inform him of his rights under Section 1381, where applicable, to request a speedy trial under Section 858.7 relating to Vehicle Code violations.” (§ 850,

subd. (c).) No court has construed section 850, subdivision (c) to require authorities to check for other outstanding warrants when placing a person in custody.

The cases cited by Lexington to support its position are inapposite. *People v. Surety Insurance Co.* (1982) 136 Cal.App.3d 556 concerned a county clerk's negligence in failing to check its own records documenting that a surety had revoked a bail agent's authority to post its bail bonds before the clerk accepted an appeal bond for filing. The clerk also failed to notice that the appeal bond itself was defective on its face because the attached power of attorney bore an expired date. (*Id.* at p. 562.) After the defective bond was declared forfeited, the surety successfully moved for exoneration of the bond on the grounds that the bail agent's authority to post the bond had been revoked and the power of attorney had expired. (*Ibid.*) *People v. Surety Insurance Co.* had nothing to do with an arresting agency's obligation to check for warrants in other cases.

People v. Far West Ins. Co. (2001) 93 Cal.App.4th 791, on which Lexington also relies, is equally inapposite. In that case, a defendant charged with multiple violent crimes absconded after a surety had posted bail on his behalf. The surety's agent located the defendant in Georgia, contacted authorities in the California county where the defendant's arrest warrant was still active, and had the defendant arrested and detained by Georgia law enforcement authorities. The California law enforcement authorities failed to contact the district attorney's office and teletyped to the Georgia authorities a request for the defendant's release. The Georgia authorities then released the defendant. (*Id.* at pp. 793-794.) After the defendant's release, the surety filed a motion seeking vacation of the bail forfeiture and exoneration of the bond it had posted on the defendant's behalf. The court ordered the bond exonerated, concluding that because the California authorities' error led to the defendant's release, those authorities rather than the surety should bear the consequences of that error. (*Id.* at pp. 797-798.) No similar error occurred in the instant case.

Section 1305, subdivision (c)(2) did not require the trial court to vacate the order of forfeiture or to order Lexington's bond exonerated.

III. Request to extend exoneration period

Under section 1305.4, a surety may file a motion, based on good cause, for an order extending the 180-day exoneration period specified in section 1305. The reasons establishing good cause must be set forth in a declaration or affidavit. (§ 1305.4.) Upon a showing of good cause, a trial court may extend the 180-period by up to an additional 180 days. (*Ibid.*)

The trial court in the instant case granted Lexington's first motion to extend the exoneration period on its bond to August 9, 2010. It denied Lexington's second request for an extension at the August 9, 2010 hearing.

Lexington failed to sustain its burden of establishing an abuse of discretion by the trial court in denying Lexington's second request to extend the exoneration period. The only evidence Lexington offered to support its request for a second extension was the declaration of its bail agent, Chris Cox. In his declaration, Cox describes ongoing efforts to locate Rodriguez in the United States and in Mexico, suggests that Rodriguez was somewhere in Mexico at the time, and claims to soon be able to secure Rodriguez's return from Mexico. Rodriguez was not in Mexico at the time but was in custody in Los Angeles.

The record discloses no abuse of discretion by the trial court.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST