

NO. 01-24-000724-CR
IN THE COURT OF APPEALS
FIRST JUDICIAL DISTRICT
HOUSTON, TEXAS

TRIAL COURT NO. 1657777-B

IN THE TRIAL COURT

184TH CRIMINAL DISTRICT COURT OF

HARRIS COUNTY, TEXAS

AMERICAN SURETY COMPANY, Surety { } APPELLANT

VS. { }

THE STATE OF TEXAS { } APPELLEE

APPELLANT'S BRIEF

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To the Honorable Judges of the First Court of Appeals:

Comes Now AMERICAN SURETY COMPANY DBA ALLIED BONDING AGENCY, Appellant herein, and files this its Appellate Brief and in support of its request for the new trial in Trial Court Cause No. 1657777-B, specifically complaining of the trial court's denial of its Motion for a New Trial and final judgement rendered therein, and in support thereof shows as follows:

PRELIMINARY STATEMENT

Appellant AMERICAN SURETY COMPANY DBA ALLIED BONDING AGENCY, Defendant-surety, is a licensed corporate surety in Harris Bend County, Texas and posted a bail bond in the amount of Thirty Thousand dollars for ALEJANDRO ARANDA, Defendant-principal, for a felony assault-family member-with a previous conviction in Cause Number 1657777 on or about March 29, 2021 (T-5, T-15, T-21).¹ After the Defendant-Principal was released from custody, he did fail to appear in court on August 3, 2021, but was subsequently re-arrested in Midland, Texas on September 7, 2021 for other charges and

¹The record on appeal consists of two identically catalogued Clerk's Transcripts (T), and the Court Reporter's Statement of Facts (R.R.).

a detainer was placed on him for these charges. A judicial declaration of forfeiture and judgment nisi was entered on August 4, 2021 (T-8, T-14, T-20), and the defendant-surety filed its original answer (T-27,28) and a motion for remittitur with exhibit attached verifying his incarceration on or about January 17, 2022 (T-24-26). The court set the cases for trial for June 6, 2024 with the assistant district attorney's certification that notice of said hearing would be provided to all parties pursuant to the Texas Rules of Civil Procedure (T-36-42). The assistant district attorney claims to have noticed surety herein electronically via email instead of by certified mail, return receipt requested. Defendant-surety maintains that said notice was not received by email and subsequently did not appear to contest said judgment on the trial date. The trial court entered a final judgment of forfeiture that presented and signed by the assistant district attorney, but not by the defendant-surety for court costs plus interest on the amount of the bond until arrest in Midland, Texas and for Four Thousand Eight Hundred Dollars (\$ 4,800.00) extradition expenses incurred in transporting prisoner from Midland, Texas to Houston, Texas (T-43). The defendant -surety

timely filed a motion for a new trial on June 17, 2024 (T-47-50, 57-60), and the trial court denied the same on September 9, 2024 after a hearing on the same (T-60). The defendant-surety filed its notice of appeal on September 16, 2024 (T-62), and perfected said appeal by posting the full amount of the judgment in the Registry of the Court on September 25, 2024 (T-65).

APPELLANT'S POINT OF ERROR NO. ONE

THERE IS INSUFFICIENT EVIDENCE TO SUPPORT A FINAL JUDGMENT PROVIDING FOR EXTRADITION EXPENSES IN THE AMOUNT CONTAINED IN SAID JUDGMENT AS REASONABLE AND NECESSARY COSTS TO THE COUNTY.

**Statement of Facts
Point of Error No. One**

The Judgment Nisi reflecting that the cause was called for trial and no evidence was introduced justifying the Four Thousand Eight Hundred Dollars extradition expenses from Midland, Texas to Houston, Texas, approximately 450 miles in distance, as "reasonable and necessary costs to the county for the return of the principal." The trial court

conducted a hearing on the Motion for New Trial wherein the defendant-surety complained of this matter in its request for a new trial.

ART. 22.16, Texas Code of Criminal Procedure provides:

- a) After forfeiture of a bond and before entry of final judgment, the court shall, on written motion, remit to the surety the amount of the bond, after deducting the costs of court and **any reasonable and necessary costs to the county, for return of the principal**, and the interest accrued on the bond amount as provided by Subsection c if the principal is released on new bail in the case or the case for which the bond was given is dismissed.
- b) For other good cause shown and before the entry of the final judgment against the bond, the court in its discretion may remit to the surety all or part of the amount of the bond after deducting the costs of court and **any reasonable and necessary costs to the county for the return of the principal**, and the interest accrued on the bond amount as provided by Subsection c.
- c) For the purpose of this article, interest accrues on the bond amount from the date of forfeiture in the same

manner and at the same rate as provided for the accrual of prejudgment interest in civil cases. Emphasis added.

Harris County Sheriff's Deputy Kern testified at said hearing that the costs incurred by the county was due to a contract that the county had with a private company, PTS of America, for transport of prisoners in other jurisdictions to Harris County, Texas for a flat rate of said \$ 4,800.00. This private company was utilized in this instant case instead of transport by Harris County Sheriff personnel which he acknowledged would have been substantially less expensive.

**Summary of Argument
Point of Error No. One**

Defendant-surety herein alleges and claims that the amount in the judgment of \$4,800.00 is not reasonable and necessary costs to the county as provided for by statute for the transport of a single prisoner approximately 450 miles, and that said prisoner transport by Harris county deputies and a couple of tanks of gas utilized would be substantially less than the amount charged herein. The amount charged is due to a bad contract that the county made with a private corporation and should not be passed on to the surety as a

reasonable and necessary expense as envisioned by the statute.

Argument and Authorities
Point of Error No. One

The proceedings relating to bail bond forfeitures are entirely statutory, Blue v. State, 341 S.W.2d 917, 919 (Tex. Crim. App. 1960) and after the forfeiture of a bail bond, the same rules as govern in civil cases apply, unless otherwise provided. Tinker v. State, 561 S.W.2d 200, 201 (Tex. Crim. App. 1978). Bail bond law is an unusual hybrid because the Court of Criminal Appeals applies the Rules of Civil Procedure to bond forfeiture cases unless the applicable statutes found in the Code of Criminal Procedure are found to be governing. The Court of Criminal Appeals obtains jurisdiction because forfeitures of bail bonds have been held to be criminal matters. Glenn v. State, 236 S.W.2nd 809, 810 (Tex. Crim. App. 1951). This was even originally confusing when this Court obtained jurisdiction as it was initially assigned both a civil and a criminal case number. In Jeter v. State, 86 Tex. 555, 26 S.W. 49 (Tex. S. Ct. 1894), the Court discusses at length why the forfeiture proceedings are "incidental to the criminal case"

for the reason that the cases are "too closely connected with the judgment on the bond to be separable from it." It is well established that both the bond and the judgment nisi must be introduced into evidence to support a final judgment of forfeiture. Fears v. State, 500 S.W.2d 815 (Tex. Crim. App. 1973); Purkey v. State, 494 S.W.2d 541 (Tex. Crim. App. 1973). The trial court may take judicial notice of certain matters, of course, but it is incumbent upon the State to introduce the bond and the judgment nisi to establish a prima facie case that they are entitled to reduce the temporary judgment to a final judgment. The Court has held that a trial court may judicially notice the judgment nisi and the bond itself. Hokr v. State, 545 S.W.2d 463, 465 (Tex. Crim. App. 1977).

With regard to argument and authorities as to the interpretation of what is "reasonable and necessary" extradition expenses, this appears to be a case of first impression and there are absolutely no previous rulings by any court in Texas nor any other jurisdictions that counsel herein nor others have been able to ascertain. The only case that we have discovered that is even close to interpreting costs of re-arrest of a defendant principal is

Scott, et al. v State, 137 Tex.Crim.App. 70 (1937), and that merely speaks to whether re-arrest fees are authorized to be recovered under the bond itself. We do not claim that said extradition fees are not recoverable under the statute as they clearly are but that only reasonable fees are authorized by statute. If the legislature had intended for any and all fees to be recoverable under the terms of the bail bond, they would not have inserted the word "reasonable" in the statute's verbiage. Therefore, we merely resort to logical argument that the amount claimed as reasonable (\$4,800.00) is entirely excessive under the circumstances for such a short distance within the confines of the State of Texas' boundaries.

PRAYER FOR RELIEF

WHEREFORE, for the reasons set out herein above, the appellant respectfully requests that this Honorable Court reverse the trial court's decision in Cause No. 1657777-B in that the trial court erred in granting the State of Texas a judgment for the full amount of the bond plus costs of court and \$4,00.00 as reasonable and necessary expenses incurred by the county and in denying the Appellant's Motion For New

Trial. Appellant respectfully requests that the Court further reverse and render that the State of Texas take costs of court plus prejudgment interest and an amount deemed to be reasonable and necessary extradition expenses.

Respectfully submitted

/s/ CARL R. PRUETT

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Appellant's Brief has been served upon the District Attorney of Harris County, Texas by electronic service.

/s/CARL R. PRUETT

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. PROC. 75, Appellant does not request oral argument.

/s/CARL R. PRUETT

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