

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 1106

STATE OF LOUISIANA

VERSUS

BRUCE A. BELL

JAW

Judgment Rendered: December 23, 2008

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 381,268

Honorable Elaine W. DiMiceli, Judge

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State – Appellee

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Defendants – Appellants
Seneca Ins. Co., Craig Miner
d/b/a Craig Minor Bail Bonds

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

*Parro, J., concurs and assigns reasons.
McCland, J. concurs.*

WELCH, J.

Seneca Insurance Company and Craig Miner d/b/a Craig Miner Bail Bonds (collectively referred to herein as "Seneca") appeal a judgment denying a motion to set aside a judgment of bond forfeiture. We affirm.

BACKGROUND

The facts forming the basis for this appeal are largely undisputed. In April of 2004, Bruce A. Bell was arrested for possession with intent to distribute marijuana. On April 30, 2004, Seneca posted an appearance bond for Bell in the amount of \$30,000. The bail bond lists a Texas address for Bell.

The record reflects that the felony trial was originally set for August 23, 2004, but was continued on numerous occasions. On June 17, 2005, Bell and his attorney were present in court when the trial was continued to August 1, 2005. The court's minutes reflect that Bell was ordered to appear on July 8, 2005, to show proof that he was in the hospital on June 13, 2005, the date for which the trial had been previously set. The record contains a summons issued to Bell on June 17, 2005, ordering Bell to appear at a pre-trial conference on July 15, 2005, and to appear for the felony jury trial on August 1, 2005.

On July 15, 2005, Bell failed to appear and the court ordered that the surety bond be forfeited. On August 1, 2005, the date trial was set to begin, Bell again was not present in court, and the matter was continued to August 5, 2005. On that date, a bond forfeiture hearing was held. Thereafter, the court issued a judgment declaring the bond forfeited and entered judgment ordering Seneca to pay the sum of \$30,000, the amount of the bond, to the State. Seneca was notified of the bond forfeiture judgment by mail on August 10, 2005. Seneca did not appeal the bond forfeiture judgment within the delays set forth by law.

On May 3, 2006, Bell was arrested and detained in Harris County, Texas, pursuant to a Louisiana arrest warrant. He was extradited to Louisiana on May 16,

2006, pled guilty on July 10, 2006, and was sentenced by the trial court.

On January 28, 2008, Seneca filed a motion to set aside the judgment of bond forfeiture, urging that the original bond forfeiture judgment was faulty because it was predicated on Bell's failure to attend a pre-trial conference. Seneca insisted that the trial court lacked power to order a defendant to attend a pre-trial conference and posited that Bell's failure to attend the pre-trial conference could not serve as a basis for ordering the bond forfeited. Alternatively, Seneca argued that it was entitled to have the judgment of bond forfeiture deemed satisfied and set aside upon payment in cash of ten percent of the face amount of the bond, as set forth in La. R.S. 15:85(10)(b)(ii).¹

Louisiana Revised Statute 15:85(10) provides for the satisfaction of a bond forfeiture judgment upon the appearance or surrender of the defendant within the time periods provided for therein. Subsections (a) and (b)(i) provide for the satisfaction of a judgment of bond forfeiture by the surrender or appearance of the defendant within six months after the mailing of the notice of the signing of the judgment of bond forfeiture in connection with bonds having a face value of under \$50,000 (Subsection (a)) and over \$50,000 (Subsection (b)(i)). Subsection (b)(ii) of La. R.S. 15:85(10) states that any judgment forfeiting an appearance bond shall, at any time more than six months but within nine months after mailing of the notice of the signing of the judgment of bond forfeiture, be satisfied and set aside upon the surrender or the appearance of the defendant and the payment in cash of ten percent of the face amount of the bond. It further provides that "[t]he appearance and payment of ten percent in cash of the face amount of the bond shall

¹ We note that the version of La. R.S. 15:85(10) relied upon by Seneca did not go into effect until August 15, 2006, and the legislature specifically provided that the amendment applied only to actions filed on or after its effective date, whereas actions pending before the effective date were to be governed by prior law. 2006 La. Acts, No. 699, § 2. The prior version of La. R.S. 15:85(10) contained only one paragraph providing a six-month time period for the defendant's surrender. Because we find that the relied upon version of La. R.S. 15:85(10) is inapplicable in this case, we need not discuss any retroactivity issues that may have arisen had we reached a different result.

operate as a satisfaction of the judgment and shall fully and finally relieve the surety of any and all obligations under the bond.”

Seneca insisted that the nine-month period set forth in Subsection (b)(ii) applied in this case instead of the six-month time period provided for in Subsection (a) or (b)(i). It argued that Bell was “surrendered” for the purposes of Subsection (b)(ii) when he was arrested in Texas on May 3, 2006, which occurred within nine months of the mailing of the notice of the signing of the bond forfeiture judgment, rather than when Bell was extradited to Louisiana on May 16, 2006, which occurred outside Subsection (b)(ii)’s nine-month time limit.

The trial court denied the motion to set aside the judgment of bond forfeiture. The court found that Subsection (a) of La. R.S. 15:85(10) and its six-month time limit applied because Seneca’s bond had a face value of less than \$50,000. The court further concluded, however, that even if Subsection (b)(ii)’s nine-month time limit applied, the defendant’s arrest in Texas was not a “surrender,” and therefore, there was no surrender of the defendant within nine months after the mailing of the notice of the signing of the bond forfeiture so as to authorize the setting aside the bond forfeiture judgment under that provision. This appeal, taken by Seneca, followed.

DISCUSSION

In its first assignment of error, Seneca argues that the bond forfeiture judgment was faulty because it was predicated upon Bell’s non-appearance at a pre-trial conference. Seneca contends that because the minutes of the court do not reveal that the court personally ordered Bell to appear at the pre-trial conference, his appearance was not required, and therefore, his failure to appear could not trigger the bond forfeiture. However, Seneca did not institute summary proceedings to challenge the judgment within 60 days of the mailing of the notice of the signing of the judgment of bond forfeiture as authorized by La. R.S.

15:85(5), nor did Seneca take an appeal of the judgment within the delays allowed by law as authorized by La. R.S. 15:85(6). The judgment ordering the forfeiture of the bond for Bell's nonappearance is a final judgment and has acquired the authority of a thing adjudged. Moreover, even if we considered Seneca's argument, it is clearly lacking in merit. Seneca does not argue that Bell did not have notice of the pre-trial conference, but merely claims that Bell was not obligated to attend the pre-trial conference because the court minutes do not reflect that he was so ordered. However, although the court's minutes may be silent on the issue, the State submitted a summons issued by the court on June 17, 2005, ordering Bell to appear at both the pre-trial conference and the date set for trial. Bell did not appear for the felony jury trial on August 1, 2005, and the judgment of bond forfeiture was properly entered on August 5, 2005, for Bell's failure to appear as ordered by the court for either the pre-trial conference or the felony trial.

Next, Seneca claims that Bell's detention in Harris County, Texas, constitutes a "surrender" under La. C.Cr.P. art. 345(D)² and insists that the nine-month time limit under La. R.S. 15:85(10)(b)(ii), rather than the six-month time limit under La. R.S. 15:85(10)(b)(i) applies in this case. Even if we were to read La. R.S. 15:85(10)(b)(ii) and La. C.Cr.P. art. 345(D) in the manner suggested by Seneca, it is clear that the conditions of La. R.S. 15:85(10)(b)(ii) have not been met. That provision requires the surrender of the defendant and the payment in cash of ten percent of the face amount of the bond within the nine-month period. The record contains no evidence that the ten percent amount of the bond was tendered timely. Accordingly, Seneca is not entitled to have the bond forfeiture

² Louisiana Code of Criminal Procedure article 345(D) provides that if during the six-month period allowed for the defendant's surrender, the defendant is found incarcerated in a foreign jurisdiction, the judgment of bond forfeiture is deemed satisfied if all of the following conditions are met: (1) the defendant or his sureties file a motion in a summary proceeding within the six-month period; (2) the surety produces adequate proof of the defendant's incarceration to the court; and (3) the sureties pay the cost of returning the defendant. None of these circumstances are present in this case.

judgment set aside on the basis of La. R.S. 15:85(10)(b)(ii).

For the above reasons, we conclude that the trial court correctly denied Seneca's motion to set aside the judgment of bond forfeiture and issue this memorandum opinion affirming that ruling in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.1(B). All costs of this appeal are assessed to appellant.

AFFIRMED.

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 **PARRO, J., concurring.**

I concur with the result in this case, but I believe our conclusion should be based solely on the provisions of LSA-R.S. 15:85(10) that were in effect prior to the August 15, 2006 effective date of its amendment by 2006 La. Acts, No. 699, § 1. As noted in a footnote in the opinion, Section 2 of Act 699 clearly states that the amended provisions are applicable only to actions filed on or after its effective date. Therefore, I do not believe it was necessary to address Seneca's arguments based on provisions of the statute which were added by Act 699 while this particular bond forfeiture was pending.

For this reason, I respectfully concur.