

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-10-025

Appellee

Trial Court No. 09 CR 071

v.

James L. Barnes

Defendant

DECISION AND JUDGMENT

[Hollies Mayo dba Mayo Bail
Bonds-Appellant]

Decided: February 18, 2011

* * * * *

Thomas L. Steirwalt, Sandusky County Prosecuting Attorney, and
Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Loretta A. Riddle, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, Hollies Mayo, dba Mayo Bail Bonds, appeals the May 6, 2010 judgment of the Sandusky County Court of Common Pleas which ordered forfeiture of

the \$30,000 bond posted on behalf of defendant, James Barnes. Because the trial did not abuse its discretion, we affirm.

{¶ 2} In the underlying case before the trial court, Barnes was indicted on multiple counts of cocaine trafficking. On March 27, 2009, appellant posted a \$30,000 surety bond conditioned on Barnes' appearance at all subsequent court proceedings. The court sent the defendant notices of court proceedings but they were returned as undeliverable.

{¶ 3} On July 14, 2010, appellant filed an "Affidavit of Surety," which stated:

{¶ 4} "I Hollies P.J. Mayo of Mayo Bail Bonds & Surety, Inc. 2703 Merriweather Road, P.O. Box 1818, Sandusky, OH 44870 do hereby enter my request to be released as surety on a \$30,000 bond filed on 3/26/09, which I have signed for James Lamont Barnes, Defendant herein, PURSUANT TO SECTION 2937.40, ORC. The aforementioned Mr. Barnes and his fiancée Ms. Gayle Gadie has and still are providing aid as well as hiding Mr. Larry Barnes (The brother of Mr. James Barnes) from me and this court. I humbly submit this request to this Honorable Court."

{¶ 5} The request was denied, without comment, on July 23, 2009. Thereafter, on October 15, 2009, Barnes arrived one-half hour late for his jury trial. The jury had been seated and excused. Barnes was held in contempt of court and ordered jailed until jury fees and a fine were paid. The amount was paid by a family member and Barnes was released.

{¶ 6} On the January 7, 2010 trial date Barnes appeared and requested a continuance in order to retain new counsel. The court, in a written judgment entry, stated that "the defendant is being an obstructionist and the Court is of the opinion that to conduct a jury trial under these circumstances would invite reversible error of some sort." The court then discharged the jury and ordered Barnes to pay the jury fees. The court revoked Barnes' bond and ordered that he be held until the next trial date. A pretrial was then set to address Barnes' desire for new counsel.

{¶ 7} Barnes did retain new counsel. On January 12, 2010, Barnes filed a motion to reinstate bond. The motion was granted on January 25, 2010. Barnes failed to appear at his February 18, 2010 trial and a *capias* was issued. Also on February 18, 2010, the trial court notified appellant as follows:

{¶ 8} "You are hereby placed on **Notice** that unless you produce the body of the defendant in open court **on or before Monday, March 1, 2010 at 9:00 A.M.** or such later date as the Court may authorize, your said bond shall be declared **forfeit** and judgment shall be rendered against you in the sum of **\$30,000.00** in accordance with the provisions of law. (R.C. 2937.35)" (Emphasis in original.)

{¶ 9} Following the March 1, 2010 hearing where appellant failed to appear, on May 6, 2010, the trial court entered judgment in favor of the state for \$30,000. This appeal followed.

{¶ 10} Appellant raises the following three assignments of error for our consideration:

{¶ 11} "Assignment of Error No. I

{¶ 12} "The trial court erred, abused its discretion and denied surety due process by denying a surety's request for surrender of an accused in open court pursuant to R.C. § 2937.40 without affording surety an opportunity to appear in open court or granting a hearing on the request.

{¶ 13} "Assignment of Error No. II

{¶ 14} "The trial court erred, abused its discretion and violated a surety's due process right by 're-instating' a surety bond when the court revoked the bond for reasons other than a 'failure to appear' or a 'breach of the conditions' of the bond.

{¶ 15} "Assignment of Error No. III

{¶ 16} "The trial court abuses its discretion when it does not follow R.C. § 2937.36 and the period required by the statute by giving at least 20 days notice or a show cause hearing to the surety and agent before they must appear in court and be subjected to forfeiture."

{¶ 17} In appellant's first assignment of error, she argues that her affidavit requesting to be released as surety sufficiently complied with R.C. 2937.40. Thus, appellant contends that the trial court erred by denying the motion without a hearing. The section provides, in relevant part:

{¶ 18} "(A) Bail of any type that is deposited under sections 2937.22 to 2937.45 of the Revised Code or Criminal Rule 46 by a person other than the accused shall be discharged and released, and sureties on recognizances shall be released, in any of the following ways:

{¶ 19} "(1) When a surety on a recognizance or the depositor of cash or securities as bail for an accused desires to surrender the accused before the appearance date, the surety is discharged from further responsibility or the deposit is redeemed in either of the following ways:

{¶ 20} "(a) By delivery of the accused into open court;

{¶ 21} "(b) When, on the written request of the surety or depositor, the clerk of the court to which recognizance is returnable or in which deposit is made issues to the sheriff a warrant for the arrest of the accused and the sheriff indicates on the return that he holds the accused in his jail."

{¶ 22} Initially, we note that this court reviews the forfeiture of a surety bond using an abuse of discretion standard. *State v. Owens*, 11th Dist. No. 2003-A-0088, 2004-Ohio-5941, ¶ 12. Thus, the court's decision will not be reversed absent a showing that a trial court's attitude in reaching its judgment was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 23} In appellant's first assignment of error, she contends that, pursuant to R.C. 2937.40(A)(1)(a), she was "not afforded an opportunity to have the Court opened" and

that appellant was "precluded from having an open court in which to surrender the defendant." Appellant similarly asserted that the "Courthouse was closed to the Appellant."

{¶ 24} Upon review, we find that the above statements are contrary to appellant's assertion in her affidavit that Barnes was "hiding" from her and the court. Appellant neither requested to surrender the defendant, nor to have the clerk issue a warrant for his arrest. Accordingly, we find that the trial court did not err when it denied appellant's request to be released as surety. Appellant's first assignment of error is not well-taken.

{¶ 25} In appellant's second assignment of error she asserts that her due process rights were violated by the court's reinstatement of Barnes' bond. Appellant claims that the reinstatement was not proper because the court did not specifically state that the surety was reinstated and the bond form did not include the option of a cash bond. Alternatively, appellant argues that once Barnes' bond was revoked, appellant was discharged because "the bond no longer existed."

{¶ 26} As to appellant's first argument, Crim.R. 46(H) provides:

{¶ 27} "Unless otherwise ordered by the court pursuant to division (E) of this rule, or if application is made by the surety for discharge, the same bond shall continue until the return of a verdict or the acceptance of a guilty plea. In the discretion of the court, the same bond may also continue pending sentence or disposition of the case on review. Any provision of a bond or similar instrument that is contrary to this rule is void."

{¶ 28} Upon review, we find that the bond was properly reinstated. The bond form clearly stated that Barnes was to be released on a \$30,000 surety bond. As to appellant's second argument, absent forfeiture and payment of the forfeited sum, the bond remained in effect until a jury verdict or plea. See *Toledo v. Gaston*, 6th Dist. No. L-09-1310, 2010-Ohio-3217; Crim.R. 46(H). Finally, we note that a surety has a duty to follow the progress of a defendant's case. *State v. Stevens* (1987), 30 Ohio St.3d 25. Accordingly, appellant's second assignment of error is not well-taken.

{¶ 29} In her third and final assignment of error, appellant contends that the trial court failed to comply with R.C. 2937.36 by giving appellant less than 20 days notice of the forfeiture hearing. This statute provides, in part, that a surety shall be notified of the show cause forfeiture hearing and that the hearing "shall not be less than twenty nor more than thirty days from the date of mailing notice * * *." Appellant further argues that the trial court did not properly indicate that the February 18, 2010 notice did not properly notify appellant that a hearing was to be held.

{¶ 30} Admittedly, the notice does not comply with the 20-day requirement under R.C. 2937.36. However, appellant has failed to demonstrate how she was prejudiced by the court's failure to abide by the rule. See *Toledo v. Floyd*, 6th Dist. No. L-08-1364, 2009-Ohio-5507; *State v. Huffman*, 6th Dist. No. S-10-016, 2010-Ohio-5026. Appellant does not contend that she was not notified of the hearing; rather, she asserts that she was

not present at the hearing due to the content of the notice itself. Appellant claims that she was not aware that it was a hearing.

{¶ 31} Similar to the language used in the notice at issue, in *State v. Ward* (1978), 53 Ohio St.2d 40, the trial court notified the surety that the defendant must be produced in court by the specified date "or otherwise." *Id.* The Supreme Court of Ohio, reviewing the motion to vacate forfeiture concluded that the failure of the court to specify that the surety had the option of showing good cause for failing to produce the defendant was not prejudicial. First, the surety had the right by statute. Next, the surety provided no evidence that the defendant's whereabouts were unknown during the period. Finally, the surety provided no good cause defense to the judgment. *Id.* at 42.

{¶ 32} Interpreting *Ward*, in *State v. Martin*, 2d Dist. No. 21716, 2007-Ohio-3813, the Second Appellate District similarly held that the trial court did not commit reversible error where the notice stated only that the bond would be forfeited if the surety failed to produce the defendant by a particular date. *Id.* at ¶ 23.

{¶ 33} In the present case, appellant never requested that the order of forfeiture be vacated. Further, on appeal appellant fails to provide how she was prejudiced by the insufficient notice. Finally, pursuant to *Ward*, *supra*, the notice itself was sufficient to inform appellant of the March 1, 2010 hearing. Accordingly, we find that appellant's third assignment of error is not well-taken.

{¶ 34} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Sandusky County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.