

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/30/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CV 11-0815
)
Appellee,) DEPARTMENT T
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
BANKER'S INSURANCE COMPANY and) Rule 28, Arizona Rules
FITZGERALD ALL STATE BAIL BONDS,) of Civil Appellate
) Procedure)
Appellants.)
)
)
)
_____)

Appeal from the Superior Court in Yavapai County

Cause No. V1300CR201180098

The Honorable Warren R. Darrow, Judge *Pro Tem*

AFFIRMED

Sheila Sullivan Polk, Yavapai County Attorney Prescott
By Thomas M. Stoxen, Deputy County Attorney
Attorneys for Appellee

Clifford M. Sherr, Phoenix
Attorney for Appellants

D O W N I E, Judge

¶1 Banker's Insurance Company and Fitzgerald All State
Bail Bonds (collectively, "Surety") appeal the superior court's

judgment forfeiting a portion of an appearance bond. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 Eric Woodward was released from custody on a \$20,000 appearance bond posted by Surety on February 19, 2011. Woodward thereafter failed to appear for a court hearing on March 28, 2011; a bench warrant for his arrest issued the next day. The court mailed a copy of the minute entry from the March 28 hearing to Surety. The minute entry stated that Woodward had failed to appear and that a warrant would issue on March 29.

¶13 Surety apprehended Woodward in California and surrendered him to the Yavapai County Sheriff on April 27, 2011. The next day, Surety moved to exonerate the appearance bond. The court set a bond forfeiture hearing for June 13, 2011. The State opposed Surety's motion to exonerate, and Surety filed a reply in support of its request.

¶14 At the bond forfeiture hearing, Surety avowed that it had apprehended Woodward in California and transported him back to Yavapai County. Surety asked the court to exonerate the bond in full. The court instead ordered \$7500 of the bond exonerated and \$12,500 forfeited.

¶15 Surety filed a motion for new trial, which the court

denied. This timely appeal followed.¹ We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(5)(a).

DISCUSSION

¶16 We review an order forfeiting a bond for an abuse of discretion, but we interpret rules governing appearance bonds *de novo*. *State v. Old W. Bonding Co.*, 203 Ariz. 468, 471, ¶ 9, 56 P.3d 42, 45 (App. 2002) (citation omitted). We review the record from bond forfeiture proceedings "in the light most favorable to supporting the trial court's judgment." *In re Bond Forfeiture in Pima County Cause No. CR-20031154*, 208 Ariz. 368, 369, ¶ 2, 93 P.3d 1084, 1085 (App. 2004).

¶17 "The primary purpose of an appearance bond is to assure a defendant's appearance at the trial or other hearings." *State v. Bonds*, 201 Ariz. 203, 208, ¶ 19, 33 P.3d 537, 542 (App. 2001). In considering forfeiture, courts may consider "all the relevant circumstances, including, for example, the defendant's willfulness in violating the order to appear, the effort and expense expended by the surety in trying to locate and apprehend the defendant, any intangible costs, or any other aggravating or mitigating factors that prevented the defendant from appearing."

¹ The initial order denying the new trial motion was unsigned. We issued an order revesting jurisdiction in the superior court, which filed a signed judgment on February 13, 2012.

In re Bond Forfeiture, 208 Ariz. at 370, ¶ 5, 93 P.3d at 1086 (citing *Old W. Bonding Co.*, 203 Ariz. at 475, ¶ 26, 56 P.3d at 49).

¶8 On appeal, we do not re-weigh the relevant factors to determine whether we would reach the same decision as the trial court. *Cf. State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984) (citation omitted); *Quigley v. City Court (Sommer)*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982) ("A difference in judicial opinion is not synonymous with 'abuse of discretion.'"). And, as previously noted, we view the record in the light most favorable to affirming the trial court's decision. *In re Bond Forfeiture*, 208 Ariz. at 369, ¶ 2, 93 P.3d at 1085.

¶9 A court may order forfeiture of a bond, in whole or in part, when a violation "is not explained or excused." Ariz. R. Crim. P. 7.6(c)(2). The burden is on the bonding company to establish, by a preponderance of the evidence, a valid excuse or explanation for a defendant's failure to appear. *State v. Martinez-Gonzales*, 145 Ariz. 300, 302, 701 P.2d 8, 10 (App. 1985). Surety, however, presented no evidence regarding or explanation for Woodward's failure to appear. The only evidence it offered was in connection with the motion for new trial and consisted of an invoice of expenses and an affidavit detailing Woodward's apprehension. This evidence did not address the

circumstances surrounding Woodward's failure to appear or offer any "aggravating or mitigating factors that prevented the defendant from appearing." *In re Bond Forfeiture*, 208 Ariz. at 370, ¶ 5, 93 P.3d at 1086.

¶10 Surety contends forfeiture is inconsistent with the factors articulated in *Old West Bonding Co.*, specifically the public interest in ensuring a defendant's appearance. Surety contends it "rapidly apprehend[ed] and surrender[ed]" Woodward, but was nevertheless ordered to forfeit much of the bond, creating a disincentive to expend time and money apprehending absconding defendants.

¶11 A surety assumes the risk that a defendant will not appear and answer to the court. *See, e.g., In re Bond Forfeiture*, 208 Ariz. at 369, ¶ 4, 93 P.3d at 1085 (citation omitted); *State v. Affordable Bail Bonds*, 198 Ariz. 34, 39-40, ¶ 23, 6 P.3d 339, 344-45 (App. 2000) (citation omitted). A surety is responsible for knowing a defendant's circumstances and has a duty to weigh the risks associated with posting a particular bond. *In re Bond Forfeiture*, 208 Ariz. at 369, ¶ 4, 93 P.3d at 1085. The superior court here acknowledged Surety's efforts. It forfeited only a portion of the bond. We find no abuse of the court's considerable discretion in weighing the relevant factors. *See State v. Gomez*, 211 Ariz. 111, 114, ¶ 12, 118 P.3d 626, 629 (App. 2005) (an abuse of discretion occurs

only when the court's reasons "for its action are clearly untenable, legally incorrect, or amount to a denial of justice").

I. Rule 7.6

¶12 Rule 7.6(c)(1) states, in relevant part:

If at any time it appears to the court that the released person has violated a condition of an appearance bond, it shall issue a bench warrant for the person's arrest. Within ten days after the issuance of the warrant, the court shall notify the surety, in writing or by electronic means, that the warrant was issued. The court shall also set a hearing within a reasonable time not to exceed 120 days requiring the parties and any surety to show cause why the bond should not be forfeited.

¶13 Surety cites no authority for its contention that a bond forfeiture hearing must be set at the same time a warrant issues, and the rule itself imposes no such duty. Surety's reliance on *State v. Bail Bonds USA*, 223 Ariz. 394, 397, ¶ 9, 224 P.3d 210, 213 (App. 2010), is unavailing. That case merely stands for the proposition that a court must take both actions, not that it must do so simultaneously. The superior court set the bond forfeiture hearing within a reasonable time, as Rule 7.6(c)(1) requires. Surety received notice and an opportunity to be heard.

¶14 Surety's reliance on Rule 7.6(d)(1) is also unavailing. That rule states: "At any time *before violation*

that the court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond” (Emphasis added.) Woodward violated a condition of the appearance bond on March 28 when he failed to appear for a scheduled hearing. Once that violation occurred, the court was no longer mandated to exonerate the bond in full. “[A] surety does not meet its obligation pursuant to Rule 7.6 merely by surrendering a nonappearing defendant before entry of a forfeiture judgment.” *Old W. Bonding Co.*, 203 Ariz. at 473, ¶ 18, 56 P.3d at 47.

II. Motion for New Trial

¶15 An appellate court will not reverse a ruling on a motion for new trial absent a clear abuse of discretion. *State v. Neal*, 143 Ariz. 93, 97, 692 P.2d 272, 276 (1984). We find no abuse of discretion here. The motion for new trial did not address the circumstances surrounding Woodward’s failure to appear. Instead, it asserted the same arguments we have now rejected on appeal. The superior court did not abuse its discretion in denying the motion.

