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UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Plaintiff/Appellee*,

v.

BETTER BAIL BONDS, *Defendant/Appellant*.

No. 1 CA-CV 12-0784
FILED 12-5-2013

Appeal from the Superior Court in Maricopa County
No. CR2001-013347
The Honorable Brian S. Rees, Commissioner

AFFIRMED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Kim Felcyn

Counsel for Plaintiff/Appellant

Marc J. Victor, P.C., Phoenix
By Marc J. Victor

Counsel for Defendant/Appellee

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MEMORANDUM DECISION

Presiding Judge Winthrop delivered the decision of the Court, in which Judge Johnsen and Judge Thompson joined.

WINTHROP, Presiding Judge:

¶1 Better Bail Bonds (“Bondsman”) appeals the judgment of the trial court ordering forfeiture of an appearance bond on Jesus Arturo Zamora. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In August 2001, Zamora was arrested in Maricopa County for possession and transportation of narcotic drugs for sale, which are class two felonies. In September 2001, after his release from custody, Zamora was indicted by a grand jury. A Maricopa County warrant was issued for Zamora’s arrest, permitting his re-release after posting a \$75,000 bond.

¶3 In January 2012, Zamora was finally arrested on the outstanding warrant by a federal officer with Immigration and Customs Enforcement (“ICE”) in Pima County. Suspecting Zamora was in the United States illegally, ICE lodged an immigration detainer while placing him in the custody of Pima County. The next day, at Zamora’s initial appearance, the Pima County court affirmed the \$75,000 bond on his 2001 Maricopa County warrant. During his 2012 arrest and initial appearance, Zamora used an alias, though at least one document from Pima County lists his real name. The immigration detainer lists Zamora as “Guadalupe Zamorano Labrada.” Similarly, the Pima County booking documents list Zamora as “Guadalupe Zamora Labrada,” which Pima County used in its communication with Maricopa County and later with Bondsman.¹

¹ Although Bondsman contends that the judge who conducted Zamora’s initial appearance at the Pima County court exclusively referred to Zamora by his alias, the transcript does not support that contention.

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¶4 After the initial appearance, the Pima County Adult Detention Center contacted the Maricopa County Superior Court to arrange a pick-up. Meanwhile, two indemnitors contacted Bondsman to secure Zamora's release under his alias, using cash and two Tucson houses as collateral. Satisfied with its background check, Bondsman posted the bond. The next day, two officers from the Maricopa County Sheriff's Office took custody of Zamora but learned in transit that bond had been posted and they no longer had legal custody of Zamora. Because of the immigration detainer, the officers turned Zamora over to ICE's Phoenix Office as a "courtesy drop off." Zamora was later deported to Mexico.²

¶5 In February 2012, Zamora failed to appear for his Maricopa County arraignment, and a bench warrant was issued for his arrest. At the resulting bond forfeiture hearing in September, the trial court ordered the entire appearance bond forfeited. Bondsman then filed a timely notice of appeal. We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9 and Arizona Revised Statutes ("A.R.S.") § 12-2101(A)(1) (West 2013).³

ANALYSIS

¶6 Bondsman argues that the trial court abused its discretion by ordering the bond forfeited, because Zamora was not eligible for bail and therefore the bond was *void ab initio*. Bondsman also argues that the trial court should have exercised its discretion under Arizona Rule of Criminal Procedure 7.6(d) to exonerate the bond because of Zamora's deportation and his use of an alias.

¶7 "[A] proceeding for a forfeiture of bail is civil in its nature even though it originates in a criminal proceeding." *State ex rel. Ronan v. Superior Court*, 96 Ariz. 229, 231, 393 P.2d 919, 920 (1964). On appeal, we examine the evidence in the light most favorable to support the judgment

² No documents in the record provide proof of Zamora's deportation, though transcripts from the evidentiary hearing and bond forfeiture hearing reflect the trial court's determination that Zamora had been deported.

³ We cite the current Westlaw version of the applicable statutes and amendments because no revisions material to this decision have since occurred.

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of the trial court. *State v. Garcia Bail Bonds*, 201 Ariz. 203, 205, ¶ 5, 33 P.3d 537, 539 (App. 2001). We review the trial court's order forfeiting the bond for an abuse of discretion, and consider *de novo* the interpretation of the court rules governing bail bonds. *Id.*

I. The bond was not *void ab initio*

¶8 Bondsman argues that the bond must be exonerated because the Pima County court was statutorily obliged to find Zamora non-bailable and thus the bond was *void ab initio*. According to Bondsman, if the Pima County court had properly found Zamora non-bailable, Bondsman could not have posted the bond and would not now face forfeiture of that bond. See *State v. Swinburne*, 121 Ariz. 404, 405, 590 P.2d 943, 944 (App. 1979) (“[A] bail bond in a criminal case which is void as a statutory obligation, because taken without authority, is void for all purposes.”).

¶9 Although there is a presumption in favor of bail, see *State ex rel. Romley v. Rayes*, 206 Ariz. 58, 61-62, ¶¶ 11-12, 75 P.3d 148, 151-52 (App. 2003), there are exceptions. See *Simpson v. Owens*, 207 Ariz. 261, 270, ¶ 26, 85 P.3d 478, 487 (App. 2004). Under constitutional amendment, statute, and rule, “[a] person shall not be released on bail if the court finds . . . (1) that the proof is evident or the presumption great that the person committed a serious offense, and (2) probable cause that the person entered or remained in the United States illegally.” Ariz. R. Crim. P. 7.2(b); see also Ariz. Const. art. II, § 22; A.R.S. § 13-3961. Both elements must be met to establish an exception to bail entitlement.⁴

¶10 Bondsman appears to argue that the bond was void because, rather than presume Zamora was eligible for bail unless the exception applied, the Pima County court should have presumed that Zamora was non-bailable when he had an open warrant for serious felony offenses and an immigration detainer after being arrested by ICE. Such presumption, however, is contrary to well-settled precedent. See, e.g., *Simpson*, 207 Ariz. at 266, ¶ 15, 85 P.3d at 483 (citing *Rayes*, 206 Ariz. at 61-62, ¶¶ 11-12, 75

⁴ Under the “proof is evident or the presumption great” standard, “[t]he State’s burden is met if all of the evidence, fully considered by the court, makes it plain and clear to the understanding, and satisfactory and apparent to the well-guarded, dispassionate judgment of the court that the accused committed one of the offenses enumerated in A.R.S. § 13-3961(A).” *Simpson*, 207 Ariz. at 274, ¶ 40, 85 P.3d at 491.

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P.3d at 151-52). More importantly, although the Pima County court may have had enough evidence to find probable cause that Zamora was in the United States illegally, there was no evidence presented at the initial hearing – let alone evidence sufficient to compel a finding that the proof was evident or the presumption great – that Zamora committed the felony offenses. *See Martinez v. Superior Court*, 26 Ariz. App. 386, 387, 548 P.2d 1198, 1199 (1976) (“[T]he state has the burden of showing that the right to bail is limited rather than absolute.”). Accordingly, on this record, the trial court would have abused its discretion if it *had* found Zamora to be non-bailable.

II. The trial court did not abuse its discretion pursuant to Rule 7.6(d)(3)

¶11 Bondsman also argues that the trial court abused its discretion when it ordered the bond forfeited despite Zamora’s deportation and his use of an alias. Under Rule 7.6(d)(3), “the decision whether or not to exonerate a bond shall be within the sound discretion of the court” unless Rule 7.6(d)(1) or (2) applies. Ariz. R. Crim. P. 7.6(d)(3).

¶12 Like other causes for a defendant’s nonappearance, deportation by itself does not require exoneration of the bond. *See State v. Bail Bonds USA*, 223 Ariz. 394, 397, 224 P.3d 210, 213 (App. 2010) (citation omitted). Instead, a trial court may consider “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.” *In re Bond Forfeiture in Pima County Cause No. CR-20031154 (Pima County Bond)*, 208 Ariz. 368, 370, ¶ 5, 93 P.3d 1084, 1086 (App. 2004). Because Bondsman’s argument on the *Pima County Bond* factors largely relies on facts not in the record before us, we defer to the factual findings of the trial court. *See Garcia Bail Bonds*, 201 Ariz. at 205, ¶ 5, 33 P.3d at 539. Accordingly, we cannot conclude that the trial court abused its discretion by refusing to exonerate the bond simply because of Zamora’s deportation.

¶13 Bondsman also argues that the trial court abused its discretion when it ordered forfeiture of the bond despite evidence that the Pima County court “never sought to clarify” Zamora’s use of an alias during his 2012 initial hearing. Bondsman contends that the court’s use of Zamora’s alias resulted in two prejudicial mistakes that compel exoneration: a deficient background check and defective notice. Concerning the deficient background check, we note that a surety assumes

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the risk of a defendant's failure to appear. *See State v. Affordable Bail Bonds*, 198 Ariz. 34, 39-40, ¶ 23, 6 P.3d 339, 344-45 (App. 2000). "To alleviate that risk, a surety should exercise care in ascertaining the defendant's circumstances and community ties before executing an appearance bond." *Pima County Bond*, 208 Ariz. at 369, ¶ 4, 93 P.3d at 1085. As the trial court stated in denying exoneration, "the nature of this business[] is that [professional bondsmen] increase their risk by virtue of the speed at which they can [post bonds] in order to collect the handsome fee. And it's a risk/reward compromise." Appropriately, "no one but the surety ha[s] any duty to ascertain the wisdom or folly of contracting with the defendant to post a bond that would secure his appearance in court." *Pima County Bond*, 208 Ariz. at 369-70, ¶ 4, 93 P.3d at 1085-86. Furthermore, having decided to post a bond in a felony case for a Mexican citizen with an immigration detainer who has been "on the lam" for eleven years and could not identify a home address at his initial appearance, Bondsman should have known that Zamora's deportation was at least a possibility. *Cf. id.* at 369, ¶ 4, 93 P.3d at 1085.

¶14 Similarly, Bondsman's argument that it lacked notice about Zamora's required appearance in Maricopa County Superior Court because that court used his real name on its notice of nonappearance is unpersuasive. The duty to stay informed about Zamora's appearances rested with Bondsman. *See* Ariz. R. Crim. P. 7.1(f)(3) (a professional bondsman annually certifies that he "[a]grees to assume an affirmative duty to the court to remain in regular contact with any defendant released pursuant to an appearance bond on which the person is a surety"). Further, regardless of what name Zamora used in Pima County, he was arrested on a Maricopa County warrant bearing his real name, and Bondsman had that warrant number on its own documents. Accordingly, the trial court did not abuse its discretion, and we affirm the order of forfeiture.

III. A.R.S. § 13-3974 does not mandate exoneration

¶15 In its reply brief, Bondsman also argues that A.R.S. § 13-3974 mandates that the bond be exonerated because of Zamora's deportation. Assuming this argument is properly raised, § 13-3974 relieves a surety from liability when a defendant fails to appear because he is released to a government agency, such as ICE, rather than to the custody of the surety. A.R.S. § 13-3974(A)(3). By its own terms the statute does not apply if, as here, "[a] detainer was placed on the defendant before the bond was posted." A.R.S. § 13-3974(C)(1). As a result, the statute is inapplicable, and the judgment of the trial court is affirmed.

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CONCLUSION

¶16 The trial court did not abuse its discretion by ordering the bond forfeited, and we affirm the order of forfeiture.



Ruth A. Willingham · Clerk of the Court
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