

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: 08/31/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CV 09-0600
)
Appellee,)
) DEPARTMENT A
v.)
)
RANDOLPH & COMPANY BAIL BONDS,) **MEMORANDUM DECISION**
INC. and AMERICAN SURETY COMPANY,) (Not for Publication -
) Rule 28, ARCAP)
Appellants.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-123665-001 DT

The Honorable Brian S. Rees, Commissioner

AFFIRMED

Richard M. Romley, Maricopa County Attorney Phoenix
by Davina Bressler, Deputy County Attorney
Peter S. Spaw, Deputy County Attorney
Attorneys for Appellee

Clifford Sherr Phoenix
Attorney for Appellants

W I N T H R O P, Judge

¶1 Appellants Randolph & Company Bail Bonds, Inc. and
American Surety Company (collectively, "the Surety") appeal from

a judgment forfeiting a \$6300 appearance bond. For the following reasons, we affirm the trial court's order and judgment.

FACTS AND PROCEDURAL BACKGROUND

¶2 Police arrested Rodney Sheppard on April 6, 2009, for burglary and theft. On April 18, 2009, the Surety posted a \$6300 appearance bond, thus securing Sheppard's release from jail.¹ When Sheppard failed to appear at his April 22 arraignment, the court did not issue an arrest warrant; rather, it vacated and reset the arraignment for April 27. When Sheppard did not appear on April 27, the court issued a bench warrant for his arrest. Glendale police apprehended him later that day.

¶3 On August 4, 2009, the court held a bond forfeiture hearing. Tony Randolph, who is not a lawyer, appeared at the hearing on behalf of Randolph Bail Bonds. The hearing resulted in forfeiture of Sheppard's \$6300 bond because Sheppard failed to appear at his April 22 arraignment without good cause.² This

¹ The Surety issued the bond in the name of Lawrence Grant Rhodes. On April 27, 2009, the court updated the caption "to reflect the Defendant's true name as Rodney Sheppard (from Lawrence Grant Rhodes) with an AKA of Lawrence Grant Rhodes."

² The court's minute entry from the bond forfeiture hearing bases forfeiture on the April 27 date, but throughout the hearing transcript, the court refers to the April 22 arraignment date. See *State v. Leon*, 197 Ariz. 48, 49 n.3, ¶ 5, 3 P.3d 968, 969 n.3 (App. 1999) (stating that when an express conflict

appeal followed, and we have jurisdiction pursuant to Arizona Revised Statutes section 12-2101(B) (2003).

ANALYSIS

¶4 The Surety's primary argument is that it was reversible error for the court to forfeit Sheppard's bond based on his non-appearance at the April 22 hearing, which the court vacated and rescheduled. The Surety did not raise this argument before the trial court, however, and we generally do not consider issues raised for the first time on appeal. See *Englert v. Carondelet Health Network*, 199 Ariz. 21, 26, ¶ 13, 13 P.3d 763, 768 (App. 2000). Consequently, we deem the issue waived.

¶5 Further, in light of this court's recent opinion in *State v. Eazy Bail Bonds*, 224 Ariz. 227, 229 P.3d 239 (App. 2010), we hold that because the Surety did not appear through counsel in the superior court, it effectively failed to appear at all. Having failed to appear, as a matter of law, the Surety was unable to satisfy its burden of proof on the issue of good cause for Sheppard's failure to appear at his arraignment. We therefore affirm the trial court's order and judgment based on what was essentially the Surety's failure to appear.

exists between the court's oral pronouncement and a minute entry, the oral pronouncement generally controls).

CONCLUSION

¶6 For the above reasons, we affirm the trial court's order and judgment.

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
PATRICIA A. OROZCO, Presiding Judge

_____/S/_____
DANIEL A. BARKER, Judge