ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION II

CA05-977

September 26, 2007

FIRST ARKANSAS BAIL BONDS, INC.
APPELLANT

APPEAL FROM THE CLARK COUNTY CIRCUIT COURT [NO. CV-2005-21]

V.

HON. JOHN A. THOMAS, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

First Arkansas Bail Bonds, Inc., appeals from an order forfeiting two bail bonds. We find no merit in any of the several arguments presented by appellant, and we affirm.

Appellant is a bail bonding company that posted a $500,000 bond to secure Wayne F. Poland's release pending trial on forty counts of child rape. Twenty counts of possession of child pornography subsequently were added to the case, and appellant bonding company posted a second bail bond for Poland in the amount of $200,000. Poland did not appear for trial. An order for Failure to Appear and for Bondsman to Show Cause was entered on November 15, 2004, ordering appellant to appear before the trial court on January 3, 2005, to show why the bond should not be forfeited. Following a hearing, the trial court ordered on May 19, 2005, that both bonds be forfeited.

In its initial appeal, appellant asserted that the trial court erred in so doing because the bonding company was not served immediately with process in the proper form. The State

argued that the bonding company waived any defect in service by failing to raise the deficiency in an unrecorded hearing held on January 3, 2005. Appellant countered this by arguing that no waiver of the defect could have occurred because no responsive pleading was required. In an unpublished opinion issued in this case on August 30, 2006, we stated that:

> Waiver is the voluntary relinquishment of a known right, and objections to the sufficiency of process can be waived. *Adams v. Nationsbank*, 74 Ark. App. 384, 49 S.W.3d 164 (2001). Although appellant may not have been required to file a responsive pleading, it has been held that any defects in process, the return thereon, or the service thereof are cured or waived by the appearance of the defendant without raising an objection, and he is precluded from thereafter taking advantage of the defect. *Burrell v. Arkansas Department of Human Services*, 41 Ark. App. 140, 850 S.W.2d 8 (1993).

First Arkansas Bail Bonds, Inc., v. State, CA05-977 (Aug. 30, 2006). Having decided that the insufficiency of process could have been waived by appearance without objection on the part of appellant, we remanded for the trial judge to settle the record so that we could determine whether a defect in service was in fact waived on January 3, 2005. On remand, the trial court entered an order settling the record and stating that the counsel for both parties appeared in court for the January 3 hearing; that they requested to appear in chambers, but no testimony was presented; that the trial court made no findings of fact or conclusions of law; and the only possible action taken by the court was a continuance of the hearing. The record having been settled, the case is once more before us.

Our courts have long recognized that any action on the part of a defendant, except to object to jurisdiction, which recognizes the case as in court, will amount to an appearance. *Norsworthy v. Norsworthy*, 289 Ark. 479, 713 S.W.2d 451 (1986). In deciding whether a

defendant has waived his rights and entered his appearance, the determining factor is whether the defendant seeks affirmative relief, that is, whether the pleading filed is more than a defensive action. *Farm Bureau Mutual Insurance Co. v. Campbell*, 315 Ark. 136, 865 S.W.2d 643 (1993). Here, the record shows that, before any objection to service was raised with the trial court, appellant on January 28, 2005, filed a pleading that stated that it "appeared on January 3, 2005, through its agent Thom Francis and this attorney," requested an extension of time in which to apprehend Poland, and affirmatively requested that a show-cause hearing be held. Under these circumstances, where appellant admitted having entered an appearance and itself requested a hearing on the merits before raising any objection to service, we hold that appellant waived any defect in the form of service.

Appellant next contends that the trial court erred in determining the amount of the bond forfeiture judgment. It asserts that the $200,000 bond, which it posted after the State amended the information by adding twenty counts of possession of child pornography to the charges against Poland, relieved it of liability for the $500,000 bond posted to secure Poland's release on the forty counts of child rape alleged in the initial information and restated in the amended information. Appellant cites authority from foreign jurisdictions that the re-arrest of a defendant on related charges relieves the surety on the initial bond and advances arguments based on the reasoning of those cases, as well as advancing an argument based on Ark. R. Crim. P. 9.2(e). However, none of these authorities or arguments were specifically raised or ruled on below. An appellant is bound by the scope and nature of the arguments made at trial, and this point is therefore precluded from argument on appeal. *Woolbright v.*

State, 357 Ark. 63, 160 S.W.3d 315 (2004).

Finally, appellant asserts that the trial court erred in failing to give it sufficient credit for expenses incurred by appellant in attempting to locate Poland after he failed to appear. Appellant sought to recover approximately $50,000 but was allowed only $7,200. Its argument is based on the fact that there was testimony at the hearing to show that its expenses were greater than the amount of credit allowed. We find no error. Arkansas Code Annotated § 16-84-201(f) (Repl. 2006) allows, but does not require, the trial court to take into consideration the expenses incurred by the surety in attempting to locate the defendant and to allow the surety credit for the expenses incurred. Remission of the bond or any portion thereof is a matter within the trial court's discretion, and the court was not, in any event, obliged to believe the testimony of any witness regarding expenses incurred. *A-1 Bonding v. State*, 64 Ark. App. 135, 984 S.W.2d 29 (1998). On this record, there was no abuse of discretion.

Affirmed.

ROBBINS and GLADWIN, JJ., agree.