

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Nos. 1D19-1381
1D19-2887
(Consolidated for disposition)

MICHAEL HARRISON, doing
business as A-AAA Harrison
Bail Bonds,

Appellant,

v.

LEON COUNTY CLERK OF THE
CIRCUIT COURT AND
COMPTROLLER,

Appellee.

On appeal from the Circuit Court for Leon County.
James C. Hankinson, Judge, for 1D19-1381.
Robert E. Long, Judge, for 1D19-2887.

October 13, 2021

PER CURIAM.

After the bond agent's clients failed to appear for court and the Clerk of Court notified him that the bonds had been forfeited, the bond agent timely paid the forfeitures. Later, his clients were recaptured and fully prosecuted, and the bond agent sought remission of the forfeitures in accordance with section 903.28(6),

Florida Statutes (2016). The Clerk of Court objected to the remission of the forfeitures because the bond agent did not file his motions for the remission within two years of the time the bond agent was notified of the forfeitures in accordance with section 903.28(1). The trial courts ultimately agreed with the Clerk that the bond agent's motions were not timely. We find that the trial courts misapplied section 903.28(1) to these cases and reverse.

The Clerk of Court reads subsection (1) as a time requirement that a bond agent must comply with in all situations in order to receive remission of a forfeiture. Because we are being asked to interpret a statute, our review is *de novo*. *State v. Purdy*, 252 So. 3d 723, 725 (Fla. 2018). When the statute is clear and unambiguous, the court need not resort to the rules of statutory construction or look behind the plain language of the statute. *State, Dep't of Highway Safety & Motor Vehicles v. Peacock*, 185 So. 3d 632, 633 (Fla. 1st DCA 2016).

Subsection (1) states:

On application within 2 years from forfeiture, the court shall order remission of the forfeiture if it determines that there was no breach of the bond.

The Clerk has argued that there was no breach of the bond because the bond agent paid the forfeiture amount. "Breach of bond" is not defined in chapter 903, Florida Statutes (2016). It is well settled law that a bond is a contract between the criminal defendant, the bond agent, and the State. *Wiley v. State*, 451 So. 2d 916, 922 (Fla. 1st DCA 1984); *State ex. rel. Gardner v. Allstar Bail Bonds*, 983 So. 2d 1218, 1219 (Fla. 5th DCA 2008); *Bush v. Int'l Fid. Ins. Co.*, 834 So. 2d 212, 214 (Fla. 4th DCA 2002); *Accredited Sur. & Cas. Co., Inc., v. State, for Use & Benefit of Hillsborough Cty.*, 383 So. 2d 308, 308 (Fla. 2d DCA 1980). The conditions of the bond can be breached by any one of those parties including a defendant who fails to appear for a court proceeding. *See Al Estes Bonding, Inc. v. Pinellas Cty. Bd. of Cty. Comm'rs*, 845 So. 2d 254, 257 (Fla. 2d DCA 2003) (finding that even though the bond was breached by the defendant for failing to appear, the agent was not entitled to remission of the bond because the agent could not procure the defendant's appearance); *Hillsborough County v. Roche Sur. &*

Cas. Co., Inc., 805 So. 2d 937, 939 (Fla. 2d DCA 2001) (“[F]ailure to pay the forfeiture constitutes a breach of the bond.”); *Wiley*, 451 So. 2d at 922 (rearrest of a defendant on the same charges he was bonded out on constitutes a breach of the contract by the State). The Legislature is presumed to know the meaning of the words it uses and to express its intent through those words. *Wyche v. State*, 232 So. 3d 1117, 1120 (Fla. 1st DCA 2017) (citing *Dadeland Depot, Inc., v. St. Paul Fire & Marine Ins. Co.*, 945 So. 2d 1216, 1225 (Fla. 2006)). Because a contract can be breached by any one of the parties to the contract, the Legislature is presumed to have been aware of this legal principle. Thus, when it chose to use the phrase “breach of bond” without any qualifications, it had to have meant that a breach by any party to the bond contract constituted a breach of the bond.

Even though the bond was breached in this case by the defendants not appearing for court, the Clerk argues that the breach of bond was cured by the bond agent when he paid the forfeiture. However, there is no statutory provision that supports the Clerk’s position. To read the statute as the Clerk requests would require us to add words to the statute. We decline and find the language in section 903.28 to be clear and unambiguous.

Because the courts in these cases misapplied section 903.28(1), we REVERSE and REMAND these cases to the courts for them to consider the bond agent’s motions on the merits.

ROBERTS, NORDBY and TANENBAUM, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Luke Newman of Luke Newman, P.A., Tallahassee; David Kemp of the Law Firm of David Kemp, PLLC, Crawfordville, for Appellant.

Ashley Moody, Attorney General, Tallahassee; James W. Pimentel, General Counsel, Leon County Sheriff's Office, Tallahassee; Stacey Allen, Leon County Clerk of Court and Comptroller's Office, Tallahassee, for Appellee.