

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 0120

NOBEL INSURANCE COMPANY

VERSUS

STATE OF LOUISIANA

Judgment Rendered: June 11, 2010

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2006-13242

Honorable Richard A. Swartz, Judge

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BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WELCH, J.

Plaintiff, Nobel Insurance Company (Noble), appeals a summary judgment, rendered in favor of defendant, the State of Louisiana (State), dismissing a petition seeking nullification of five judgments of bond forfeiture upon finding that there was no genuine issue of material fact as to the validity of the judgments. We affirm.

BACKGROUND

In July and August of 1998, Noble placed appearance bail bonds into proceedings being held in the 22nd Judicial District Court (JDC) in favor of five criminal defendants and obtained the release of the defendants. The defendants failed to appear on hearing dates and bond forfeiture judgments were rendered against Noble in October and November of 1998. On July 27, 2006, Noble filed this lawsuit against the State, seeking to have each of the judgments declared nullities because they had been signed by the Commissioner for the 22nd JDC, James J. Gleason, III, whom, Noble claimed, lacked legal authority to sign the judgments.

Noble and the State filed cross motions for summary judgment on the legal issue of whether Commissioner Gleason had authority to sign the judgments of bond forfeiture. The State insisted that La. R.S. 13:719, which created the Office of Commissioner for the 22nd JDC, gave Commissioner Gleason the authority to render and sign judgments of bond forfeiture.¹ The State argued that the *de facto* officer doctrine applied and validated the actions performed by Commissioner Gleason under the color of his official title. Noble argued that subject matter jurisdiction to render the judgments was lacking because Commissioner Gleason was not a duly elected judge of the 22nd JDC. It also argued that although La. R.S.

¹ By Acts 2002, 1st Ex. Sess., No. 28, §§ 1 & 2, subsequent to rendition of the judgments at issue herein, LA. R.S. 13:719 was repealed and the subject matter of the statute was reenacted as La. R.S. 13:721.

13:719 vested Commissioner Gleason with authority over criminal matters, a bond forfeiture proceeding is civil in nature, and therefore, Commissioner Gleason lacked statutory authority to render the judgments. Noble argued that the *de facto* officer doctrine was not applicable because Noble was not challenging the constitutionality or legality of La. R.S. 13:721 or of Commissioner Gleason's title or office, but instead claimed that Commissioner Gleason exceeded the scope of his statutory authority by signing the judgments of bond forfeiture, and therefore, Commissioner Gleason could not have been acting as a *de facto* officer at the time he signed the judgments.

The trial court agreed with the State's position, finding that the 22nd JDC did have subject matter jurisdiction over the judgment and that when he signed the judgments of bond forfeiture, Commissioner Gleason was acting on behalf of the 22nd JDC under the authority of La. R.S. 13:719, which gave the Commissioner jurisdiction over criminal matters concurrent with that of the judges of the 22nd JDC. The court determined that Commissioner Gleason was a *de facto* officer and pursuant to the *de facto* officer doctrine, the judgments of bond forfeiture were valid. Finding no genuine issue of material fact as to the validity of the bond forfeiture judgments, the trial court granted the State's motion for summary judgment and dismissed the petition. From this judgment, Noble appealed.

DISCUSSION

In this appeal, Noble contends that Commissioner Gleason was without legal power and authority to sign the final civil judgments of bond forfeiture, and therefore, Commissioner Gleason lacked subject matter jurisdiction to render the final judgments under attack. Noble submits that the judgments are absolute nullities under La. C.C.P. art. 2002, which provides that a judgment is null when rendered by a court that does not have subject matter jurisdiction. Noble also contends that the Commissioner exceeded his express statutory authority in

adjudicating and signing the bond forfeiture judgments, as they are civil in nature, while the Commissioner's statutory authority extended only to criminal matters, and therefore, Commissioner Gleason could not have been acting as a *de facto* officer at the time he signed the judgments of bond forfeiture.

The State, on the other hand, contends that it is undisputed that the 22nd JDC had subject matter jurisdiction over this action and that Commissioner Gleason was the duly appointed Commissioner of the 22nd JDC at the time the judgments were signed. The State submits that the judgments of bond forfeiture arose from the criminal jurisdiction of the court and that La. R.S. 13:719, which gave jurisdiction to the Commissioner over all criminal matters concurrent with the trial court, authorized Commissioner Gleason to sign the judgments of bond forfeiture. Additionally, the State argues, the *de facto* officer doctrine validated Commissioner Gleason's actions.

Jurisdiction over the subject matter is the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted. La. C.C.P. art. 2. A subject matter jurisdiction challenge addresses the authority of a court to render a judgment. The 22nd JDC clearly had the legal power and authority to render judgments of bond forfeiture. Louisiana Revised Statutes 13:719 authorized the judges of the 22nd JDC to appoint Commissioner Gleason to preside over certain criminal matters. The legal issue in this case is whether the rendering of judgments of bond forfeiture is within the scope of authority vested in the Commissioner by virtue of La. R.S. 13:719. Because there are no disputed issues of material fact in this case, this legal issue is appropriate for resolution on a motion for summary judgment. La. C.C.P. art. 966.

Louisiana Revised Statutes 13:719, in effect at the time the bond forfeiture judgments were entered, but which has been subsequently repealed, created the

Office of Commissioner for the 22nd JDC and vested the Commissioner with jurisdiction over “criminal matters,” to be concurrent with that of the judges of the 22nd JDC. La. R.S. 13:719(A), (C), & (D). It also vested the Commissioner with, subject to the other provisions of the statute, all of the powers of a judge of the district court. La. R.S. 13:719(E)(1). The statute set forth that the powers of the Commissioner, which, when hearing criminal matters, included, but clearly were not limited to, hearing preliminary motions, conducting trial and imposing sentence in misdemeanor cases, presiding over jury trials in misdemeanor cases, fixing bail in all matters, signing and issuing search warrants, and punishing for contempt of court. La. R.S. 13:719(E)(2)(d), (e), (f), (g), (h), & (i).

In **State v. O’Reilly**, 2000-2864 (La. 5/15/01), 785 So.2d 768, the Supreme Court held that the section of La. R.S. 13:719 authorizing Commissioner Gleason to conduct trials, accept pleas, and impose sentences in misdemeanor cases was an unconstitutional exercise of the adjudicatory power of the state by a non-elected official. However, the court found, because Commissioner Gleason was a *de facto* officer acting under the color of law when he presided over criminal defendants’ cases and sentenced the defendants, the Commissioner’s acceptance of a guilty plea, guilty verdict, and the sentences imposed in the misdemeanor cases before the Commissioner were valid. In so doing, the court noted:

The *de facto* officer doctrine confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person’s appointment or election to office is deficient. The *de facto* doctrine springs from the fear of the chaos that would result from multiple and repetitious suits challenging every action taken by every official whose claim to office could be open to question, and seeks to protect the public by insuring the orderly functioning of the government despite technical defects in title to office.

State v. O’Reilly, 2000-2864 at p. 12, 785 So.2d at 777 (citing **Ryder v. United States**, 515 U.S. 177, 180, 115 S.Ct. 2031, 2034, 132 L.Ed.2d 136 (1995)).

The **O’Reilly** case was relied on in **Ranger Insurance Company v. State**,

2006-487 (La. App. 3rd Cir. 10/11/06), 941 So.2d 182, to validate bond forfeiture judgments entered by the Commissioner of the 15th JDC. Therein, insurance companies filed petitions for nullity after judgments of bond forfeiture were entered in two criminal matters. Louisiana Revised Statutes 13:716 gave the Commissioner of the 15th JDC the power to perform such duties as were assigned by the chief judge of district court in accordance with rules prescribed by the elected judges of the court. The district court rules gave the Commissioner the power to handle duties assigned by the judges, including forfeiture motions. The appellate court held that the *de facto* officer doctrine validated the bond forfeiture judgments. In so doing, the court found that the Commissioner held an office created by statute and that the forfeiture judgments arose out of a proceeding over which the Commissioner had authority to preside. Therefore, the court upheld the trial court's dismissal of the insurance company's petition for nullity. **Ranger Insurance Company v. State**, 2006-487 at pp. 8-9, 941 So.2d at 188.

Noble attempts to distinguish **Ranger** on the basis that there was no express provision giving Commissioner Gleason the power to render judgments of bond forfeiture in either La. R.S. 13:719 or the court's rules. Therefore, Noble posits, Commissioner Gleason could not have been a *de facto* officer when he signed the judgments of bond forfeiture.

We disagree. Louisiana Revised Statutes 13:719 vested the Commissioner with broad jurisdiction and authority over criminal matters and gave the Commissioner concurrent jurisdiction with that of a district court judge over those matters. Regardless of how we characterize the nature of a bond forfeiture proceeding, we agree with the State's position that it is undisputed that at the time the bond forfeiture judgments were signed, Commissioner Gleason was sitting as a judge in misdemeanor criminal cases assigned to him by the district court pursuant to the authority granted by La. R.S. 13:719, and in those matters, Commissioner

Gleason had powers concurrent with those of the judges of the 22nd JDC. Commissioner Gleason's authority to sign the judgments of bond forfeiture arose from the criminal jurisdiction vested in his office by virtue of La. R.S. 13:719. As Commissioner Gleason was acting within the scope of his statutory authority when he signed the judgments at issue, even if that authority was illegally granted to him, we find that the *de facto* officer doctrine as set forth in the **O'Reilly** and **Ranger** cases applies so as to validate the bond forfeiture judgments rendered by Commissioner Gleason. Because there is no genuine issue as to the validity of the bond forfeiture judgments, we find that the trial court correctly granted the State's motion for summary judgment, thereby dismissing Noble's petition for nullity.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellant, Noble Insurance Company.

AFFIRMED.