NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0546

STATE OF LOUISIANA

VERSUS

MITCHELL J. JOHNSON

Judgment Rendered: DEC 27 2013

* * * * * * *

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 02-06-0092

HONORABLE DONALD R. JOHNSON, JUDGE

* * * * * * *

Hillar C. Moore, III
District Attorney
and
Jaclyn C. Chapman
Sarah Tirrell
Assistant District Attorneys
Baton Rouge, Louisiana

Attorneys for Appellee
State of Louisiana

J. Rodney Baum
Baton Rouge, Louisiana

Attorney for Appellant
Allegheny Casualty Company

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

Pettigrew, J. Concurs with the results

McClendon, J. Concurs with the results

McDONALD, J.

In this suit, the trial court signed a judgment denying a motion to set aside a bond forfeiture judgment. After the appeal from this judgment was lodged, the State of Louisiana, as appellee, filed an exception of no right of action in this court, challenging a bail bondsman's interest in filing the appeal, to which a commercial surety responded by filing a motion to clarify the record on appeal. This court referred the exception of no right of action to the panel to which the appeal was assigned; granted the commercial surety's motion to clarify the record on appeal; and, ordered this court's clerk of court to correct the record to reflect that the surety was an appellant. For the following reasons, we deny the State's exception of no right of action as moot and affirm the judgment denying the motion to set aside the bond forfeiture judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On November 20, 2005, Mitchell J. Johnson was arrested in Baton Rouge, Louisiana, for possession of cocaine and a bond was set at $5,000.00. On November 22, 2005, Mr. Johnson and A Affordable Bail Bonds (AABB), as agent for commercial surety, Allegheny Casualty Company (Allegheny), signed a $5,000.00 appearance bond, wherein Mr. Johnson and Allegheny agreed to pay the full amount of the bond if Mr. Johnson did not appear in court when required. After Mr. Johnson failed to appear for his arraignment hearing, the trial court issued a bench warrant for his arrest, and on March 8, 2006, signed a bond forfeiture judgment, in favor of the State, and against Mr. Johnson and Allegheny, in solido, for $5,000.00, with interest until paid.

On May 24, 2006, Mr. Johnson voluntarily appeared in court in proper person. The trial court recalled the bench warrant for his arrest, set aside the bond forfeiture judgment, and handed him written notice to return to court for arraignment on June 12, 2006. The trial court also issued notice to AABB and

Allegheny ordering that Mr. Johnson be brought to court on that date. On June 12, 2006, Mr. Johnson appeared in court, waived formal arraignment, and entered a plea of not guilty as charged. The trial court set a motion hearing for August 28, 2006 and handed Mr. Johnson written notice to return to court on that date. The record does not indicate if the trial court issued notice of the August 28, 2006 hearing to AABB and Allegheny. After Mr. Johnson did not appear at the August 28, 2006 hearing, the trial court again issued a bench warrant for his arrest and orally ordered that a bond forfeiture judgment be rendered. On September 6, 2006, the trial court signed a bond forfeiture judgment, in favor of the State, and against Mr. Johnson and Allegheny, in solido, for $5,000.00, with interest until paid. The clerk of court sent notice of the bond forfeiture judgment to both AABB and Allegheny by certified mail, and the record indicates that they received the notices on September 25 and 26, 2006, respectively. In due course, Mr. Johnson returned to court, entered a guilty plea on the possession of cocaine charge, and the trial court sentenced him to eighteen months imprisonment.

On November 3, 2011, a movant designating itself as "A Afordable (sic) Bonding, which is underwritten by Allegheny Casualty Company" filed a motion to set aside the September 6, 2006 bond forfeiture judgment. The State filed an opposition to the motion. On November 28, 2011, the trial court held a hearing, and at the conclusion of the hearing, denied the motion in open court. The trial court set a "writ return date" of January 18, 2012, for challenge of its ruling, and counsel for AABB and Allegheny timely filed a writ application with this court.

On June 4, 2012, this court granted the writ, noted that the trial court's judgment denying the motion to set aside a bond forfeiture judgment was a final, appealable judgment, and remanded the matter to the trial court with instructions to grant "the relator," identified in the order as AABB, an appeal. **State v. Johnson**, 2012 CW 0292 (La. App. 1 Cir. 6/4/12) (unpublished action). On April 8, 2013,

the trial court signed a written judgment denying the motion to set aside the bond forfeiture judgment, and this appeal followed.

After the appeal was lodged, the State filed an exception of no right of action in this court, contending that the appeal was taken by AABB, not Allegheny, and that AABB, as the bail bonding agent, did not have a legal interest to challenge the validity of the bond forfeiture judgment. Allegheny responded by filing a motion to clarify the record on appeal, asserting that it, not AABB, had filed the appeal, that the omission of its name from its appeal brief was an "inadvertent clerical error," and asking this court to correct the appeal record to reflect such. A writ panel of this court thereafter referred the State's exception of no right of action to the panel assigned to decide the appeal; granted Allegheny's motion to clarify the record; and ordered the clerk of court's office to correct the appeal record to reflect that Allegheny was an appellant. **State v. Johnson**, 2013 CA 0546 (La. App. 1 Cir. 8/15/13) (unpublished action).

After a review of pertinent pleadings and other filings in the record, we note that the uncertainty as to the identity of the appellant in this case is due to the inconsistent drafting of pleadings by AABB and Allegheny's counsel; nevertheless, in light of our review of the record and this court's above described rulings, we conclude that Allegheny is the only appellant in this case and AABB is not a party to this appeal. Thus, we deny the State's exception of no right of action as moot and now address the merits of the appeal.

DISCUSSION

In a single assignment of error, Allegheny contends the trial court did not properly apply the law pertaining to the forfeiture of bail bonds and thus erred in denying its motion to set aside the September 6, 2006 bond forfeiture judgment. Specifically, Allegheny argues that Mr. Johnson's presence in court on May 24, 2006, to answer an outstanding bench warrant constituted a "surrender" within the

meaning of La. C.Cr.P. art. 345, and that at that time, had the trial court followed the procedure set forth in La. C.Cr.P. art. 345, it would have detained Mr. Johnson and delivered a certificate acknowledging the surrender to Allegheny, thereby exonerating Allegheny from liability on its bail undertaking. According to Allegheny, because the trial court failed to detain Mr. Johnson, the subsequent issuance of the September 9, 2006 bond forfeiture judgment was a nullity.

In opposition, the State argues that Allegheny's reliance on La. C.Cr.P. art. 345 is incorrect, because Mr. Johnson's presence in court on May 24, 2006 did not constitute a "surrender" within the meaning of that article, but instead constituted an "appearance" under former La. R.S. 15:85(10), which would have operated as a satisfaction of the judgment, but would not have relieved Allegheny of its obligations under the bond. Therefore, according to the State, the trial court did not err in denying Allegheny's motion to set aside the September 6, 2006 bond forfeiture judgment.

A judgment of bond forfeiture is not an ordinary judgment but is specifically governed by provisions contained in the Louisiana Code of Criminal Procedure and in Title 15 of the Louisiana Revised Statutes. See **State v. Wheeler**, 508 So.2d 1384, 1386 (La. 1987). These provisions must be read together to determine the rights of a surety with respect to bond forfeitures. **State v. Kerrison**, 97-1759 (La. 10/17/97), 701 So.2d 1347, 1348 (per curiam). At the time of the May 24, 2006 hearing in this case,[1] La. C.Cr.P. art. 345 provided, in pertinent part:

> (A) A surety may surrender the defendant or the defendant may surrender himself, in open court or to the officer charged with his detention, at any time prior to forfeiture or within the time allowed by law for setting aside a judgment of forfeiture of the bail bond. For the purpose of surrendering the defendant, the surety may arrest him. Upon surrender of the defendant, the officer shall detain the defendant in his custody as upon the original commitment and shall acknowledge the surrender by a certificate signed by him and

[1] The law in effect at the time of the bond forfeiture proceeding at issue applies. See **State v. Adkins**, 613 So.2d 164, 165-166 (La. 1993) (per curiam); **State v. Blair**, 93-2137 (La. App. 1 Cir. 10/7/94), 644 So.2d 703, 704, writ denied, 94-2749 (La. 1/27/95), 649 So.2d 382.

> delivered to the surety. Thereafter, the surety shall be fully and finally discharged and relieved of any and all obligation under the bond.
>
> . . . .
>
> (F) When the defendant has been surrendered in conformity with this Article ... , the court shall, upon presentation of the certificate of surrender ..., order that the surety be exonerated from liability on his bail undertaking and shall order any judgment of forfeiture set aside.

Further, former La. R.S. 15:85, which set forth the procedure for the forfeiture and collection of appearance bonds, provided, in pertinent part:

> **(10) Satisfaction of judgment of bond forfeiture**. Any judgment forfeiting the appearance bond rendered according to this Section shall at any time, within six months, after mailing of the notice of the signing of the judgment of bond forfeiture, be fully satisfied and set aside upon the surrender of the defendant or the appearance of the defendant. **The appearance of the defendant shall operate as a satisfaction of the judgment and the surrender shall operate as a satisfaction of the judgment and shall fully and finally relieve the surety of any and all obligations under the bond.** ... (Emphasis added.)

First, we address Allegheny's argument that former La. C.Cr.P. art. 345 required the trial court to detain Mr. Johnson when he arrived at court to answer the outstanding bench warrant on May 24, 2006, thus effectuating a "surrender." Under the first sentence of former La. C.Cr.P. art. 345(A), a surrender of a defendant could be made by (1) a surety; (2) by the defendant himself in open court; or (3) by the defendant to the officer charged with his detention. The article does not identify to whom the defendant surrenders when he does so in open court. However, the third sentence of former La. C.Cr.P. art. 345(A) indicates that "[u]pon surrender of the defendant, the officer shall detain the defendant in his custody as upon the original commitment and shall acknowledge the surrender by certificate signed by him and delivered to the surety." Thus, detention and notice to the surety are necessary components of a surrender. Contrary to Allegheny's argument, we do not read former La. C.Cr.P. art. 345(A) as requiring the trial court to carry out these acts of detention and notice in the surrender process. Although a

court has the authority to order a defendant's detention, courts do not themselves detain defendants in their custody; rather, it is the job of "officers," such as law enforcement, to detain. Further, it is not a court's duty to issue and deliver certificates of surrender to a surety; rather, under former La. C.Cr.P. art. 345(F), it was the trial court's role to receive, not issue, the certificate of surrender and to then order: (1) that the surety be exonerated from liability on the bail undertaking, and (2) that any judgment of bond forfeiture be set aside.

Further, even if the trial court were responsible for detaining defendants and delivering certificates of surrender under former La. C.Cr.P. art. 345(A), it cannot be said that the trial court was **required** to detain a defendant when he was present in court to answer to a bench warrant; that is, if a trial court were required to effectuate a surrender each time a defendant was present in court to answer an outstanding bench warrant, prisons would be overflowing with offenders who failed to appear for their scheduled court dates. Certainly, this was not the intent of the bond forfeiture law in 2006.

Additionally, Allegheny's interpretation of former La. C.Cr.P. art. 345(A) would require that we ignore the distinction between an "appearance" and a "surrender" as those terms appear in former La. R.S. 15:85(10). Under the latter provision, it is clear that a defendant's "appearance" resulted in a satisfaction of the bond forfeiture judgment, whereas a defendant's "surrender" resulted in both satisfaction of the bond forfeiture judgment **and** release of the surety of its obligations under the bond. **State v. Reed**, 27,868 (La. App. 2 Cir. 1/24/96), 667 So.2d 586, 588, writ denied, 96-0724 (La. 4/26/96), 672 So.2d 907 (interpreting the 1994 version of La. R.S. 15:85(10) which had the same pertinent language contained in the 2006 version at issue herein). Thus, if a trial court required a surrender each time a defendant was present in court to answer to a bench warrant, then the alternative "appearance" provided in former La. R.S. 15:85(10) would be

rendered meaningless. In the interpretation of statutes, courts should give effect to all parts of a statute and should not adopt a statutory construction that makes any part superfluous or meaningless, if that result can be avoided. **Champagne v. American Alternative Insurance Corporation**, 2012-1697 (La. 3/19/13), 112 So.3d 179, 183; **Reed**, 667 So.2d at 588.

Based on our interpretation of former La. C.Cr.P. art. 345(A) and former La. R.S. 15:85(10), we conclude that Mr. Johnson's presence in court on May 24, 2006 did not constitute a "surrender," and the trial court was not itself required to detain him in its custody and to issue a certificate of surrender to Allegheny. Rather, Mr. Johnson's presence in court was an "appearance," which, under former La. R.S. 15:85(10), operated "as a satisfaction of the [bond forfeiture] judgment," but did not relieve Allegheny of its obligations under the bond. The setting aside of the bond forfeiture judgment placed Mr. Johnson and Allegheny in the same positions they occupied before the forfeiture. See **Wheeler**, 508 So.2d at 1386; **State v. Anaya**, 29,843 (La. App. 2 Cir. 9/24/97), 699 So.2d 1158, 1160. Thus, when Mr. Johnson later failed to appear at the August 28, 2006 motion hearing, the trial court properly issued another bench warrant for his arrest and properly rendered the second bond forfeiture judgment against Allegheny on September 6, 2006.

CONCLUSION

For the above reasons, we find no merit in Allegheny's challenge to the September 6, 2006 bond forfeiture judgment and conclude that the trial court properly denied Allegheny's motion to set aside that judgment. The April 8, 2013 judgment, denying Allegheny Casualty Company's motion to set aside the September 6, 2006 bond forfeiture judgment is affirmed. The State of Louisiana's exception of no right of action is denied as moot.

JUDGMENT AFFIRMED; EXCEPTION DENIED AS MOOT.