NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 0772

STATE OF LOUISIANA

VERSUS

LAURA DOUCET

Judgment Rendered: December 27, 2013

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 01-03-0344

Honorable Louis Daniel, Judge Presiding

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BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.

WHIPPLE, C.J.

In this appeal, a commercial surety and its agent appeal from the trial court's oral ruling denying their motion to set aside a judgment of bond forfeiture. For the following reasons, we dismiss the appeal as premature.

FACTUAL AND PROCEDURAL BACKGROUND

On January 15, 2003, the State of Louisiana filed a felony bill of information against Laura Doucet for the unauthorized use of a motor vehicle occurring on October 2, 2002, a violation of LSA-R.S. 14:68.4. At her arraignment on January 21, 2003, Ms. Doucet entered a plea of not guilty, and the trial court, in open court, set the case for trial on March 26, 2003. Later, the trial court set Ms. Doucet's bail at $18,000.00. On February 26, 2003, Ms. Doucet and A Affordable Bail Bonds, as agent for commercial surety, Allegheny Casualty Company (collectively, Allegheny), signed an $18,000.00 appearance bond, wherein they agreed to pay the full amount of the bond if Ms. Doucet did not appear in court when required. The appearance bond did not specify when Ms. Doucet was to next appear in court, but indicated the parties would be "on notice."

Ms. Doucet did not appear in court on the March 26, 2003 trial date. The trial court issued a bench warrant for her arrest and set a bond forfeiture hearing for April 17, 2003. On April 1, 2003, the East Baton Rouge Sheriff's Office personally served Allegheny with notice to produce Ms. Doucet at the April 17, 2003 hearing, but neither Ms. Doucet nor Allegheny appeared.[1] On April 22, 2003, the trial court signed a "Bond Forfeiture Judgment" in favor of the State and against Ms. Doucet and Allegheny, in solido, for $18,000.00, with interest until paid. On April 23, 2003, the clerk of court for the Nineteenth Judicial District mailed a "Notice to Surety and Agent of Judgment of Bond Forfeiture" to Ms.

[1] The record does not indicate whether Ms. Doucet received notice of the April 17, 2003 bond forfeiture hearing.

Doucet and Allegheny. The record reflects that Allegheny received the notice on April 28, 2003.

On October 6, 2003, Allegheny filed a "Motion for Judgment of Satisfaction of Judgment of Bond Forfeiture and Motion for Defendant's Surety to be Relieved," contending the April 22, 2003 bond forfeiture judgment should be deemed satisfied, and Allegheny should be relieved of liability as Ms. Doucet's surety, because Ms. Doucet was in jail in Beaumont, Texas.[2] On January 22, 2004, the trial court held a hearing on Allegheny's motion. Only the State appeared at the hearing, and the trial court, on its own motion, continued the hearing until the next day. On January 23, 2004, both the State and Allegheny were represented at the hearing, and the trial court again continued it, to the new date of March 25, 2004.

On March 25, 2004, the trial court, on motion by counsel for Allegheny, reassigned the hearing to April 21, 2004. However, Allegheny did not appear at the April 21, 2004 hearing, and, on that basis, the trial court denied Allegheny's "Motion for Judgment of Satisfaction of Judgment of Bond Forfeiture and Motion for Defendant's Surety to be Relieved." The record does not indicate if Ms. Doucet or Allegheny received notice of the trial court's April 21, 2004 ruling, and Allegheny did not contemporaneously challenge the ruling.

Almost eight years later, on February 28, 2012, Allegheny filed a "Motion to Set Aside Judgment of Bond Forfeiture." The State opposed the motion, and a

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[2] The law in effect at the time of a bond forfeiture governs the applicable procedure. See State v. Adkins, 613 So.2d 164, 165-166 (La. 1993) (per curiam). At the time of the bond forfeiture in this case, LSA-C.Cr.P. art. 345(D) provided that, if during the six-month period allowed for the surrender of a defendant, the defendant is found to be incarcerated in another parish or a foreign jurisdiction, the judgment of bond forfeiture is deemed satisfied if: (1) the defendant or his sureties file a motion in a summary proceeding within the six-month period; (2) the sureties produce adequate proof of the defendant's incarceration, or the officer originally charged with the defendant's detention verifies his incarceration; and (3) before the defendant's return, the sureties pay the reasonable cost of returning the defendant to the officer originally charged with his detention. See also LSA-R.S. 15:85(5) and 15:87(C) (2003). Allegheny also had the option of filing an appeal from the bond forfeiture judgment or separately filing an action in nullity. See LSA-R.S. 15:85 (6) and (9) (2003) and LSA-C.Cr.P. art. 345(D) (2003); also, see generally State v. Timberlake, 04-416 (La. App. 5th Cir. 10/12/04).

hearing was ultimately held on July 10, 2012. After hearing argument from counsel for the State and Allegheny, the trial court denied Allegheny's motion, but offered Allegheny a return date to "take writs." Allegheny's counsel responded that he had recently taken writs on a similar matter to this court and that this court had "sent it back" indicating that he should have appealed. Without any discussion as to the need or responsibility for a written judgment, the trial court then orally set a return date for Allegheny to file an appeal. Although the trial court later signed an order of appeal the appellate record does not include a written judgment documenting the trial court's July 10, 2012 oral ruling denying Allegheny's "Motion to Set Aside Judgment of Bond Forfeiture."[3]

DISCUSSION

Appellate courts have the duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. Gaten v. Tangipahoa Parish School System, 2011-1133 (La. App. 1st Cir. 3/23/12), 91 So.3d 1073, 1074. An appeal can be taken only from a **signed** final judgment. See LSA-C.C.P. art. 1911;[4] Wynne v. Parlay's, Inc., 97-1170 (La. App. 4th Cir. 11/5/97), 701 So.2d 1369, 1370. Any appeal taken in a case where there is no signed final judgment is

[3] Before Allegheny's appeal was lodged in this court, the State filed a "Motion for Revival of Judgment" in the trial court seeking to have the April 22, 2003 "Bond Forfeiture Judgment" revived before it prescribed. On April 12, 2013, the trial court signed an "Order" reviving the April 22, 2003 judgment for ten additional years. (Although the trial court's April 12, 2013 Order purports to revive the judgment "dated 17 APRIL 2003," the revived judgment ordering the forfeiture was actually signed on April 22, 2003, after having been rendered in open court on April 17, 2003.) On May 10, 2013, this court issued a "Notice of Lodging" indicating Allegheny's appeal had been lodged and referencing the trial court's April 12, 2013 Order reviving the bond forfeiture judgment. However, in its appellate brief, Allegheny assigns error to the trial court's July 10, 2012 oral ruling denying Allegheny's motion to set aside the bond forfeiture, and, on appeal, neither Allegheny nor the State mentions the trial court's April 12, 2013 Order. In fact, Allegheny notes in its appellate brief to this court that "[t]here is no written judgment[.]" Thus, clearly it is the trial court's July 10, 2012 ruling denying Allegheny's "Motion to Set Aside Judgment of Bond Forfeiture" for which review is sought in this appeal.

[4] Louisiana Code of Civil Procedure article 1911 provides:

> Except as otherwise provided by law, every final judgment shall be signed by the judge. For the purpose of an appeal as provided in Article 2083, no appeal may be taken from a final judgment until the requirement of this Article has been fulfilled. No appeal may be taken from a partial final judgment under Article 1915(B) until the judgment has been designated a final judgment under Article 1915(B). An appeal may be taken from a final judgment under Article 1915(A) without the judgment being so designated.

premature, and this court has no jurisdiction over it. See Love v. AAA Temporaries, Inc., 2000-0638 (La. App. 1st Cir. 9/28/01), 809 So.2d 292, 294; Inge v. St. Paul Fire and Marine Insurance Company, 434 So.2d 198-199 (La. App. 1st Cir. 1983). A ruling denying a surety's motion to set aside a judgment of bond forfeiture must be in the form of a written judgment signed by the trial judge. State v. Ramee, 05-748 (La. App. 5th Cir. 2/3/06), 922 So.2d 1247, 1248; State v. Koroma, 544 So.2d 539, 540 (La. App. 5th Cir. 1989); State v. Shief, 534 So.2d 513, 514 (La. App. 5th Cir. 1988).[5]

In this case, the appellate record does not include a written judgment signed by the trial court documenting the purported July 10, 2012 denial of Allegheny's "Motion to Set Aside Judgment of Bond Forfeiture." Thus, Allegheny's appeal is premature, and this court has no jurisdiction over it. Accordingly, this appeal is dismissed.[6]

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[5] Compare State v. Ainsworth, 04-177 (La. App. 5th Cir. 6/29/04), 878 So.2d 864, 865, n.2, where even though no separate written judgment appeared in the record, the Fifth Circuit addressed the merits of an appeal when the trial court's ruling denying the surety's motion to set aside a bond forfeiture judgment was evidenced by a minute entry and in the transcript of the hearing where the trial judge had ruled in open court.

[6] In some instances, a defective final judgment from which an appeal has been taken can be "cured" by the execution of a new judgment, without the necessity of dismissing the appeal. For example, see State ex rel. AC v. MD, 2010-1799 (La. App. 1st Cir. 6/17/11), 70 So.3d 159, 161 n.4 (appeal maintained after supplementation of record with judgment containing appropriate decretal language). In the present case, however, the record contains no written judgment at all. In the Ramee case cited in the body of this opinion, the Fifth Circuit dismissed a surety's appeal as premature due to the lack of a signed judgment. Later, however, the surety timely applied for a rehearing and attached a certified copy of a written judgment. On rehearing, the Ramee court noted that the filing of the written judgment had cured the prematurity of the appeal and then granted the rehearing for the purpose of setting the case for argument. Ramee, 922 So.2d at 1248 (on rehearing). We decline to follow such a practice, noting that, were the trial court herein to now sign a judgment denying Allegheny's "Motion to Set Aside Judgment of Bond Forfeiture," the signing of a written judgment alone would be insufficient to allow this court to exercise appellate jurisdiction under the procedural posture of this case. Because no written judgment has apparently been signed (in contrast to the situation where a written judgment has been signed, but contains defective wording), the delays for filing a motion for new trial and an appeal have never begun to run. Thus, this court could not exercise appellate jurisdiction, and this appeal could not proceed, without documentation in the appellate record demonstrating that a written judgment has been signed, that the trial court's notice of judgment has been issued, and either that the delay for applying for a new trial has run, or that a timely filed motion for new trial has been acted upon by the trial court. See LSA-C.C.P. arts. 1913 and 1971, et seq.

CONCLUSION

For the above and foregoing reasons, this appeal is hereby dismissed as premature. Costs of the appeal are assessed to appellants, A Affordable Bail Bonds and Allegheny Casualty Company.

APPEAL DISMISSED.