

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 1542

STATE OF LOUISIANA

VERSUS

LAURA DOUCET

Judgment Rendered: APR 24 2015

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

Honorable Louis R. Daniel, Judge Presiding

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Counsel for Defendant/Appellant,
Laura Doucet (Allegheny Casualty Co.)

BEFORE: WHIPPLE, McCLENDON, AND HIGGINBOTHAM, JJ.

CBW
1MH
PMC

WHIPPLE, C.J.

In this appeal, a commercial surety and its agent appeal from an order of the trial court denying their motion to set aside a judgment of bond forfeiture. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

As set forth in our prior opinion in this matter, the facts and procedural history of this case are as follows:¹ 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, who was represented by a public defender, entered a plea of not guilty, and the trial court set the case for trial on March 26, 2003, giving Ms. Doucet and her counsel notice of the trial date in open court. The trial court thereafter 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 disclose when Ms. Doucet was to next appear in court, but indicated the parties would appear "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,² but neither Ms. Doucet nor Allegheny appeared.³ The trial court

¹See State v. Doucet, 2013-0772 (La. App. 1st Cir. 12/27/13)(unpublished opinion).

²Although the minute entry identifies the bond forfeiture hearing date as April 21, 2003, the March 26, 2003 minute entry, notice to surety, and judgment of bond forfeiture all indicate that the hearing was set for and held on April 17, 2003, as noticed.

ordered that the bond be forfeited and that notice issue to the principal, surety, and agent in compliance with LSA-R.S. 15:85. In accord with its ruling, on April 22, 2003, the trial court signed a “Bond Forfeiture Judgment” in favor of the State and against Ms. Doucet and Allegheny, jointly, and 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. Doucet, A Affordable Bail Bonds, and Allegheny. The record reflects that Allegheny received the notice of bond forfeiture on April 28, 2003, that the notice to A Affordable Bail Bonds was returned as undeliverable, and that the notice to Ms. Doucet was returned as undeliverable with the notation “No Such Street” marked.

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 that 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 incarcerated in Beaumont, Texas.⁴ On January 22, 2004, the trial court held a hearing on Allegheny’s motion. However, when only the State appeared at the hearing, the trial court, on its own motion, continued the hearing until the next day. On January 23, 2004, both the State and Allegheny were present or 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

³The record does not indicate whether Ms. Doucet received notice of the April 17, 2003 bond forfeiture hearing.

⁴Allegheny 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), 886 So. 2d 1165.

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 hearing was ultimately held on July 10, 2012.⁵ After hearing argument from counsel for the State and Allegheny, the trial court denied the motion. Counsel for Allegheny attempted to appeal the trial court's ruling to this court. However, the appellate record did not include a written judgment signed by the trial court documenting the July 10, 2012 denial of Allegheny's "Motion to Set Aside Judgment of Bond Forfeiture." On review, we determined that absent a signed written judgment, Allegheny's appeal was premature and this court had no jurisdiction over it. Accordingly, the appeal was dismissed. See State v. Doucet, 2013-0772 (La. App. 1st Cir. 12/27/13)(unpublished opinion).

On April 2, 2014, the trial court signed a written order denying the "Motion to Set Aside Judgment of Bond Forfeiture" and set a return date of thirty days to file an appeal. No appeal was filed by May 2, 2014, but on June 2, 2014, counsel for Allegheny filed a "Motion and Incorporated Memorandum for Leave of Court to File Out of Time Appeal." The trial court granted Allegheny's motion and ordered that the record be prepared and lodged with this court by July 14, 2014.

On appeal, Allegheny contends in its sole assignment of error that the trial court erred in denying its "Motion to Set Aside Judgment of Bond Forfeiture" and failed to properly apply the law pertaining to the forfeiture of bail bonds.

⁵The transcript contained in the record erroneously identifies the hearing date as July 10, 2010.

DISCUSSION

This case involves the interpretation of the Louisiana bond forfeiture statute and the applicable sections of the Louisiana Code of Criminal Procedure. The interpretation and application of the statutes are matters of law subject to a *de novo* standard of review. See Holly & Smith Architects, Inc. v. St. Helena Congregate Facility, Inc., 2006-582 (La. 11/29/06), 943 So. 2d 1037, 1045; State v. Lexington National Insurance Corporation, 2013-1134 (La. App. 3rd Cir. 3/5/14), 134 So. 3d 230, 232. 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).

In its brief on appeal, Allegheny contends that although Ms. Doucet received notice of the March 26, 2003 court date, Allegheny never received notice of the March 26, 2003 court date. Allegheny further contends that without proper notice to it, the surety cannot be held responsible for the failure of the defendant to appear, and, thus, the order of forfeiture of the bond is improper.

In 2003, LSA-C.Cr.P. article 344, entitled, "Right to notice of time and place of defendant's required appearance," provided in part:

B.(1) When a bail bond does not fix the appearance date, and the presence is required of a person who has been released on bail, the defendant and his personal surety or the commercial surety or the agent or bondsman who posted the bond for the commercial surety, shall be given written notice of the time, date, and place the principal is required to appear.

* * *

B.(3) If the defendant appears as ordered and the proceeding is continued to a specific date, the defendant and the personal surety or the commercial surety or the agent or bondsman who posted the bond for the commercial surety need not be given notice of the new appearance date. If the defendant fails to appear as ordered, or the proceeding is not continued to a specific date, the personal surety or the agent or bondsman who posted the bond for the commercial surety shall be given notice of the new appearance date.

Additionally, at the time of the bond forfeiture herein, LSA-R.S. 15:85(1) provided:

Failure to appear and answer. If at the time fixed for appearance the defendant fails to appear and answer when called, the judge, on motion of the prosecuting attorney, upon hearing of proper evidence including: the bail contract, the power of attorney if any; and the notice to the defendant and the surety as required by Article 344 of the Code of Criminal Procedure, shall immediately and forthwith issue a warrant for the arrest of the person failing to appear and order a judgment decreeing the forfeiture of the bond and against the defendant and his sureties in solido for the full amount of the bond.

In the instant case, the “Appearance Bond” did not state an appearance date; further, notice of the March 26, 2003 hearing was not provided to Allegheny in accordance with LSA-C.Cr.P. art. 344(B)(1). Thus, when the defendant failed to appear at the March 26, 2003 hearing, the bond was not immediately subject to forfeiture pursuant to LSA-R.S. 15:85. A bench warrant, however, was issued for Ms. Doucet’s arrest, and a bond forfeiture hearing was set for April 17, 2003. On April 1, 2003, Allegheny was personally served with notice to produce Ms. Doucet at the April 17, 2003 hearing in accordance with LSA-C.Cr.P. art. 344(B)(3). However, when both Allegheny and Ms. Doucet failed to appear at the April 17, 2003 bond forfeiture hearing, the trial court then ordered that the bond be forfeited and that notice be issued to the principal, surety, and agent in compliance with LSA-R.S. 15:85.

On appeal, Allegheny contends that the bond should never have been forfeited because Allegheny did not have notice to bring Ms. Doucet to court on March 26, 2003. While we agree that the record shows Allegheny had no notice of the March 26, 2003 hearing date, we find Allegheny’s argument is misplaced. As reflected in the record, Allegheny’s appearance bond was not forfeited because Allegheny failed to appear or produce Ms. Doucet at the **March 26, 2003** hearing, but, instead, was forfeited because Allegheny failed to bring Ms. Doucet to court on **April 17, 2003**, after being properly notified to do so. The appearance bond executed by Allegheny and Ms. Doucet provides that “If defendant does not appear

in court when required, defendant and surety will be required to pay the full amount of this bond.” The judgment of bond forfeiture states that it was based on Ms. Doucet’s failure “to appear and answer” at the April 17, 2003 hearing. Because Allegheny had personal notice of the April 17, 2003 court date and failed to appear or to produce Ms. Doucet, we find no error in the trial court’s denial of Allegheny’s Motion to Set Aside Bond Forfeiture.

Additionally, Allegheny argues that it should be released from its bond obligation and the judgment of bond forfeiture should be set aside because it complied with the requirements of LSA-C.Cr.P. art. 345 by providing proof that Ms. Doucet was incarcerated in Texas on March 26, 2003.

Louisiana Code of Criminal Procedure article 345 sets forth the requirements for satisfying a judgment of bond forfeiture when the defendant is incarcerated in another parish or foreign jurisdiction. At the pertinent time in 2003, LSA-C.Cr.P. art. 345(D) provided as follows:

If during the six-month period allowed for the surrender of the defendant, the defendant is found to be incarcerated in another parish of the state of Louisiana or a foreign jurisdiction, the judgment of bond forfeiture is deemed satisfied if all of the following conditions are met:

(1) The defendant or his sureties file a motion in summary proceeding within the six-month period.

(2) The defendant’s sureties produce to the court adequate proof of defendant’s incarceration, or the officer originally charged with defendant’s detention verifies the defendant’s incarceration. A letter of incarceration issued pursuant to this Article verifying that the defendant was incarcerated within the six-month period at the time the defendant or the surety files the motion, shall be deemed adequate proof of the defendant’s incarceration.

(3) The defendant’s sureties pay the officer originally charged with the defendant’s detention, the reasonable cost of returning the defendant to the officer originally charged with the defendant’s detention prior to the defendant’s return.

Allegheny contends that it met the first two of the three conditions set forth in LSA-C.Cr.P. art. 345(D) and that it would have satisfied the third condition at

the April 21, 2004 hearing on its Motion for Judgment of Satisfaction of Judgment of Bond Forfeiture and Motion for Defendant's Surety to be Relieved had its counsel appeared. However, because counsel for Allegheny failed to appear at the hearing, the trial court denied Allegheny's motion. Allegheny contends that it never received notice of the trial court's denial of its motion.⁶

As to these arguments, we first note that LSA-C.Cr.P. 345(D) provides that "the judgment of bond forfeiture is deemed satisfied if **all** of the following [three] conditions are met." (Emphasis added.) Allegheny concedes that it met only two of the three mandatory requirements, then failed to appear at the hearing scheduled on its own motion. Thus, Allegheny has failed to comply with the requirements of LSA-C.Cr.P. art. 345.

On appeal, Allegheny reiterates as support for its underlying Motion to Set Aside Judgment of Bond Forfeiture its argument that Ms. Doucet was incarcerated in another jurisdiction pursuant to LSA-C.Cr.P. art. 345(D). Allegheny contends that although the Motion to Set Aside Judgment of Bond Forfeiture was not filed within the six-month period allowed for the surrender of the defendant as required by LSA-C.Cr.P. art. 345(D)(1), because it never received notice of the trial court's April 21, 2004 ruling denying its Motion for Judgment of Satisfaction of Judgment of Bond Forfeiture and Motion for Defendant's Surety to be Relieved, it is not barred from now asserting this defense.

We likewise reject this argument as meritless. Pretermitted whether Allegheny received notice of the trial court's April 21, 2004 ruling in open court denying its Motion for Judgment of Satisfaction of Judgment of Bond Forfeiture

⁶We note that the record contains no request for notice by Allegheny. Moreover, a review of the record's minute entry of April 21, 2004, clearly shows that the trial court's denial in open court of Allegheny's motion was due to Allegheny's failure to appear. Further, Allegheny candidly admits in brief that it only filed its motion to set aside the judgment of bond forfeiture some eight years after the denial of its Motion for Judgment of Satisfaction of Judgment of Bond Forfeiture and Motion for Defendant's Surety to be Relieved and over nine years after the April 22, 2003 judgment of bond forfeiture, "[w]hen the surety became aware of the State's attempt to collect on the bond."

and Motion for Defendant's Surety to be Relieved, the record shows that Allegheny was allowed to re-urge its argument that Ms. Doucet was incarcerated in another jurisdiction during the six-month period allowable for the surrender of the defendant pursuant to LSA-C.Cr.P. art. 345(D) as a basis for its Motion to Set Aside Bond Forfeiture, which was heard by the trial court on July 12, 2012. Although counsel for Allegheny appeared for the hearing of said motion, Allegheny at that time again failed to satisfy the third condition of LSA-C.Cr.P. art. 345(D). In fact, when asked by the trial court at the inception of the hearing if counsel for Allegheny had any other evidence to offer, counsel for Allegheny replied, "Oh, no, sir; no other evidence." Thus, even assuming that Allegheny's claims were properly before the trial court, Allegheny again failed to satisfy all of the conditions of LSA-C.Cr.P. art. 345(D). Thus, these arguments and the assignment of error lack merit.

CONCLUSION

For the above and foregoing reasons, the April 2, 2014 order denying Allegheny's motion to set aside the April 22, 2003 (R. 25) judgment of bond forfeiture, is hereby affirmed. Costs of this appeal are assessed to appellants, Laura Doucet, A Affordable Bail Bonds and Allegheny Casualty Company.

AFFIRMED.