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NO. COA01-930

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v.

Watauga County
No. 98 CR 4437

ANTHONY MORAITIS

SURETY: MOUNTAINEER BAIL BONDS

CREDITOR: WATAUGA COUNTY BOARD
OF EDUCATION

Appeal by surety from order entered 3 April 2001 by Judge Kyle D. Austin in Watauga County District Court. Heard in the Court of Appeals 13 May 2002.

Steven M. Carlson for Mountaineer Bail Bonds, surety-appellant.

Miller & Johnson, PLLC, by Paul E. Miller, Jr., for Watauga County Board of Education, judgment creditor-appellee.

TYSON, Judge.

I. Facts

Mountaineer Bail Bonds ("Mountaineer") appeals the District Court's order denying their motion to remit judgment of bond forfeiture. The Watauga County Board of Education ("the Board") are judgment creditors and appellees in the present action by virtue of its opportunity to be heard pursuant to G.S. § 15A-544

(1999) (repealed Jan. 1, 2001).

The facts relevant to this appeal are as follows: On 24 August 1998, Anthony Moraitis was arrested for possession of marijuana. On the same day, Mountaineer posted an appearance bond in the amount of \$5000.00 and Moraitis was released. On 21 December 1998, an Order of Bond Forfeiture and Notice was entered after Moraitis failed to appear in court.

On 17 September 1999, Mountaineer filed a motion to remit bond, asking that the court strike the forfeiture and release them from any obligation to pay the bond. On 22 September 1999, the trial court entered an order remitting the amount of \$5000.00 to Mountaineer. The Board appealed the remission of the bond, and this Court vacated the trial court's order because Mountaineer's motion had not been verified.

On 8 January 2001, Mountaineer filed a motion to amend, seeking to include verification to their previously filed motion to remit bond. Also on 8 January 2001, Mountaineer filed a verified motion to remit bond separate from their motion to amend their previous motion to remit bond. On 6 February 2001, the trial court denied the motion to amend, stating that the defect in the previous motion could not be cured by amendment. The trial court further denied the verified motion to remit bond, stating that the motion "can be made only after execution on a judgment has occurred, which hasn't been done in this matter."

On 22 March 2001, a writ of execution was entered on the bond forfeiture. Finally, on 3 April 2001, the trial court entered an

order denying remission of the bond. Mountaineer appeals.

II. Issue

Mountaineer's sole argument on appeal is that the trial court abused its discretion by failing to remit the bond for extraordinary cause. Mountaineer asserts that they made diligent efforts to locate Moraitis, including contacting Moraitis' father and the District Attorney to see if they had any information regarding Moraitis' location. They were unable to quickly locate Moraitis. Mountaineer contends they then began additional efforts, including asking the District Attorney on several occasions to place Moraitis' name on the NCIC computer list. Mountaineer notes that Moraitis' name was never placed on the NCIC list, even though it would have "greatly enhanced the chance that Defendant would be apprehended and made to appear in court." Mountaineer further notes that the District Attorney's office indicated to them that they had no interest in apprehending or prosecuting Moraitis. Accordingly, Mountaineer argues that "[w]hen the State fails to take even minor simple steps which would help fulfill the basic purposes and principles underlying the forfeiture and bond statutes, extraordinary cause demands that the bond be remitted."

III. Conclusion

After careful review of the record, briefs and contentions of the parties, we affirm. This Court has stated:

it is within the court's discretion to remit judgment for 'extraordinary cause,' and we therefore review the court's decision pursuant to section 15A-544(h) for abuse of discretion. 'Extraordinary cause,' under section 15A-544(h), is cause 'going beyond what is

usual, regular, common, or customary ... of, relating to, or having the nature of an occurrence or risk of a kind other than what ordinary experience or prudence would foresee.' In determining whether the facts of a particular case constitute 'extraordinary cause,' the trial court must make 'brief, definite, pertinent findings and conclusions.'

State v. Coronel, 145 N.C. App. 237, 243, 550 S.E.2d 561, 566 (2001) (citations omitted), *disc. review denied*, 355 N.C. 217, 560 S.E.2d. 144 (2002).

Here, the trial court found as fact that Mountaineer had: (1) "made phone calls for assistance to the District Attorney's office and the Defendant's father;" (2) "asked the District Attorney's office to place the Defendant's name on the NCIC computer list," and; (3) "incurred out-of-pocket expenses and cost in his efforts to locate the Defendant, but failed to bring him in." Based on these findings, the trial court concluded that the efforts of Mountaineer did not constitute "[e]xtraordinary [c]ause' under NCGS 15A-544(h)." Mountaineer does not assign error to the trial court's findings, but argues that the court erred in concluding that the facts did not constitute extraordinary cause. We find no abuse of discretion. The crux of Mountaineer's argument is that the failure of the District Attorney to place Moraitis' name on the NCIC list, and its alleged lack of interest in apprehending and prosecuting Moraitis, constituted "extraordinary cause." The State has no affirmative duty, however, to assist a surety in locating a defendant, and Mountaineer has not shown that the State interfered with their efforts to locate the defendant. Furthermore, the efforts expended by Mountaineer to locate defendant do not appear

to be extraordinary, but rather amount to basic diligence. We affirm the order of the trial court.

Affirmed.

Judges GREENE and HUDSON concur.

Report per Rule 30(e).