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NO. COA05-1100

NORTH CAROLINA COURT OF APPEALS

Filed: 18 April 2006

STATE OF NORTH CAROLINA

v.

Davidson County
No. 01 CR 006744

TERRY ANN WALKER,
Defendant.

Appeal by judgment creditor from order entered 24 May 2005 by Judge April C. Wood in Superior Court, Davidson County. Heard in the Court of Appeals 20 March 2006.

Brinkley Walser, PLLC, by David E. Inabinett and Bradley S. Hunt, for Davidson County Board of Education, judgment creditor-appellant.

No brief for Dexter Lee Trogdon, surety-appellee.

WYNN, Judge.

Section 15A-544.5(f) of the North Carolina General Statutes requires "only that the State must prove that the defendant 'had already failed to appear on two or more prior occasions' before forfeiture of the bond becomes absolute." *State v. Poteat*, 163 N.C. App. 741, 747, 594 S.E.2d 253, 256 (2004) (citation omitted). Here, as Defendant had already failed to appear on two or more prior occasions, and the professional bondsman had reasonable notice of this, the trial court abused its discretion in setting

aside the bond forfeiture.

The facts relevant to this appeal are as follows: On 18 May 2001, Terry Ann Walker was cited by a City of Thomasville police officer for shoplifting and concealment of goods. She pled guilty and was ordered to pay costs, a twenty-five dollar fine, was given a suspended sentence and placed on unsupervised probation for 24 months. On 1 December 2004, an order was issued for Walker's arrest for failure to appear pursuant to a violation of a court order issued and served for failure to comply with the judgment. Walker was placed under a \$500.00 secured bond and scheduled to appear in District Court, Davidson County on 3 December 2004. Bond was posted by a professional bondsman on 2 December 2004.

On 14 January 2005, an order was issued for Walker's arrest for failure to appear in court on that date. Pursuant to the order for arrest, bond was set at \$4,500. On 28 January 2005, an order was issued for Walker's arrest for failure to appear in court on that date. Pursuant to the order for arrest, bond was set at \$4,500. Walker was arrested on 31 January 2005. Walker was placed under a \$4,500.00 secured bond and scheduled to appear in District Court, Davidson County on 25 February 2005. The order listed her offense as "FTA" [Failure to Appear].

On 25 February 2005, an order was issued for Walker's arrest for failure to appear in court on that date. Pursuant to the order for arrest, bond was set at \$7,500. Walker was served with the order for arrest on 2 March 2005. Walker was placed under a \$2,500.00 secured bond and scheduled to appear in District Court,

Davidson County on 8 March 2005. Her offenses were listed as "Bond Surrender: FTA." On the same date, Walker was also placed under a \$7,500 secured bond and scheduled to appear in District Court, Davidson County on 8 March 2005. Her offense was listed as "FTA."

On 6 March 2005, an appearance bond for pretrial release was posted by Appellee, Dexter Lee Trogdon, a professional bondsman, for the purpose of securing Walker's appearance in court. Bond was in the amount of \$3,000.00. Walker's offenses were listed as "FTA BOND FTA." On 8 March 2005, an order was issued for Walker's arrest for failure to appear on that date. The order for arrest was served on Walker on 11 March 2005. On 9 March 2005, a bond forfeiture notice was issued as a result of Defendant's failure to appear on 8 March 2005. On 28 April 2005, Trogdon filed a motion to set aside the bond forfeiture notice on the grounds that "[a]ll charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State taking a dismissal with leave[.]" The Board objected to the motion. On 24 May 2005, the District Court found that Trogdon had established one or more of the reasons specified in section 15A-544.5 of the North Carolina General Statutes for setting aside the forfeiture. The trial court therefore allowed the motion and ordered that the forfeiture be set aside. The Board appeals.

The Board's sole argument on appeal is that the trial court abused its discretion by setting aside the bond because Trogdon had notice that Walker had failed to appear on three occasions prior to

the posting of the bond at issue here.

Pursuant to *Poteat*, 163 N.C. App. at 747, 594 S.E.2d at 256, and section 15A-544.5(f) of the North Carolina General Statutes, we reverse. Section 15A-544.5(f) of the North Carolina General Statutes provides that:

No More Than Two Forfeitures May Be Set Aside Per Case. -- In any case in which the State proves that the surety or the bail agent had notice or actual knowledge, before executing a bail bond, that the defendant had already failed to appear on two or more prior occasions, no forfeiture of that bond may be set aside for any reason.

N.C. Gen. Stat. § 15A-544.5(f) (2005). In *Poteat*, this Court construed section 15A-544.5(f) as requiring "only that the State must prove that the defendant 'had already failed to appear on two or more prior occasions' before forfeiture of the bond becomes absolute." *Id.* at 747, 594 S.E.2d at 256. *Poteat* is factually similar to the instant case. As in *Poteat*, the record here shows that Walker failed to appear on at least two prior occasions. When Trogdon executed the appearance bond for Walker in Davidson County on 6 March 2005, both the release order and the appearance bond order contained the notation "FTA" in the section of the order labeled "offenses." In *Poteat*, this Court stated that a professional bondsman, such as Trogdon is here, should reasonably be expected to understand that the notation "FTA" stands for "failure to appear." *Id.* at 746-47, 594 S.E.2d at 256. Thus, Trogdon was on notice of Walker's prior failure to appear. In *Poteat*, this Court concluded that the bondsman,

upon discovering that *Poteat* had at least one

prior failure to appear, [] through the exercise of proper diligence could have readily discovered the earlier bond forfeiture notices, arrest warrants, and orders for Poteat's arrest, any of which would have indicated that Poteat had a second prior failure to appear. These are all public documents and were all part of Poteat's Alamance County court file. Mathis' situation as a professional bondsman, albeit one who writes bonds primarily in Mecklenburg and Union counties, cast upon him the duty of inquiring further into this matter's Alamance County background before executing the appearance bond at issue.

Id. Similarly, here, with notice that Walker had a prior failure to appear, Trogdon could have discovered through the exercise of proper diligence that Walker had a second prior failure to appear. Thus, because Walker had two prior failures to appear, the bond forfeiture became absolute. Therefore, the trial court abused its discretion by setting aside the bond forfeiture. Accordingly, the trial court's order setting aside the bond forfeiture is reversed and the bond forfeiture is reinstated.

Reversed.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).