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NO. COA08-6

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

STATE OF NORTH CAROLINA

v.

Wake County
No. 04 CRS 74473

DANIEL ANTWANE LYNCH,
Defendant,
and

INTERNATIONAL FIDELITY
INSURANCE COMPANY and
S. DAVID BEASLEY,
Sureties.

Court of Appeals

Appeal by sureties from order entered 15 October 2007 by Judge Henry V. Barnette, Jr. in Wake County Superior Court. Heard in the Court of Appeals 21 May 2008.

Slip Opinion

Lane & Lane, PLLC, by Freddie Lane, Jr. and Meleisa C. Rush-Lane, for sureties-appellants.

Tharrington Smith, L.L.P., by Rod Malone and Robert M. Kennedy Jr., for Wake County Board of Education-appellee.

GEER, Judge.

The sureties International Fidelity Insurance Company and S. David Beasley appeal the denial of their motion for relief from a final judgment on the bond forfeiture for defendant Daniel Antwane Lynch. The sureties argue that the bond forfeiture notice was ineffective to forfeit the bond issued for "Danielle Antwane Lynch" because the name listed on the notice was "Daniel Antwane Lynch."

Since the sureties do not dispute that "Daniel Antwane Lynch" was the name of record for defendant, that they received actual notice of the bond forfeiture, and that they were aware the notice related to the bond they issued, we hold the trial court did not abuse its discretion in denying the sureties' motion for relief from the final judgment.

Facts

Defendant pled guilty and was sentenced to 36 months supervised probation for possession with intent to sell or deliver cocaine and delivery of cocaine. The judgment identified defendant as "Daniel Antwane Lynch." On 6 January 2006, defendant's probation officer filed a probation violation report, and defendant was arrested on 20 December 2006. On 22 December 2006, defendant was released from jail under a \$25,000 bond posted by the sureties. On the Conditions of Release and Release Order, defendant's name was listed as "Danielle Antwane Lynch." The name "Danielle A. Lynch" was used on the Appearance Bond for Pretrial Release.

Defendant's next scheduled court appearance was 8 February 2007. When defendant failed to appear, the clerk's office issued a Bond Forfeiture Notice on 16 February 2007. Defendant's name was listed on the forfeiture notice as "Daniel Antwane Lynch." On 16 July 2007, the date specified on the bond forfeiture notice for entry of final judgment, the sureties notified the bond forfeiture clerk of the discrepancy in defendant's name between the appearance bond and the forfeiture notice. The sureties requested that the notice be reissued, and the final judgment date be extended. The

clerk did not issue another notice, but instead hand wrote "AKA Danielle A. Lynch" on the notice next to defendant's name. The clerk initialed and dated the change and certified the sureties' copy of the notice.

The sureties objected to the alteration, but failed to file a motion to set aside the bond forfeiture and to pay the bond prior to 16 July 2007. On 17 July 2007, the clerk issued a Writ of Execution, and International Fidelity Insurance Company was prohibited from writing criminal bonds in Wake County.

At the sureties' request, the Wake County Board of Education consented to a stay of execution. The sureties filed a motion for relief from final judgment on 16 August 2007. The sole relief sought was that "the State of North Carolina be ordered to reissue the Bond Forfeiture Notice in the correct name and extend the final judgment date 150 days from the proper issuance."

In an order entered 15 October 2007, the trial court found that "all the legal documents in the court file prior to the issuance of the order for arrest for the probation violation that is the relevant charge in this matter reflected the defendant's name as 'Daniel Lynch or Daniel Antwane Lynch.'" The court concluded that the notice of forfeiture complied with the requirement in N.C. Gen. Stat. § 15A-544.3 (2007) that the notice contain the name and address of the defendant of record. The court further concluded that the sureties had been provided with the notice required by N.C. Gen. Stat. § 15A-544.4 (2007). Based on these conclusions, the trial court determined that the sureties had

not presented evidence that they were entitled to relief from the judgment and, therefore, denied the sureties' motion for relief from the final judgment. The sureties timely appealed to this Court.

Discussion

A party may obtain relief from a final judgment of forfeiture only when (1) "[t]he person seeking relief was not given notice as provided in G.S. 15A-544.4"; or (2) "[o]ther extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief." N.C. Gen. Stat. § 15A-544.8(b) (2007). Whether a party is entitled to relief from a final judgment of bond forfeiture is in the discretion of the trial court. *State v. Lopez*, 169 N.C. App. 816, 819, 611 S.E.2d 197, 199, *disc. review denied*, 359 N.C. 855 (2005). On appeal, therefore, we review the decision of the trial court for an abuse of discretion. *Id.* at 820, 611 S.E.2d at 199. A trial court may be reversed for an abuse of discretion only upon a showing that its ruling was "so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

The sureties in this case argue that they were not given the statutorily-required notice. N.C. Gen. Stat. § 15A-544.3(a) provides that if a defendant is released from law enforcement custody under a bail bond and fails to appear at his next scheduled court appearance, "the court shall enter a forfeiture for the amount of that bail bond in favor of the State against the

defendant and against each surety on the bail bond." N.C. Gen. Stat. § 15A-544.3(b) specifies the information required to be set out in the forfeiture, including the name and address of the defendant and the date on which the forfeiture will become a final judgment. N.C. Gen. Stat. § 15A-544.4 provides that the court shall provide notice of the forfeiture by sending the notice by first class mail to the defendant and each surety whose name appears on the bail bond.

The sureties contend that the forfeiture notice was "fatally defective" because the name listed on the notice was not identical to the name listed on the bond. N.C. Gen. Stat. § 15A-544.3(b)(1) requires that the name on the forfeiture be the "name . . . of record of the defendant." The sureties do not dispute that defendant's name "of record" was the name on the forfeiture. Further, they do not dispute that notice was properly mailed to them and defendant, that they received the notice, and that they knew the notice related to the bond they had issued.

Thus, there is no dispute that the forfeiture contained the information required by N.C. Gen. Stat. § 15A-544.3, that it was served in accordance with N.C. Gen. Stat. § 15A-544.4, and that the sureties received actual notice. The sureties cite no authority suggesting that a bare inconsistency in the spelling of defendant's name between the bond and the forfeiture constitutes insufficient notice under N.C. Gen. Stat. § 15A-544.4. This Court has, however, previously held that a surety is not entitled to relief even if it did not receive actual notice, so long as the forfeiture was

properly mailed. See *State v. Ferrer*, 170 N.C. App. 131, 137, 611 S.E.2d 881, 885 ("The statute does not require that the surety receive the notice of bond forfeiture for notice to be effective."), *disc. review denied*, 359 N.C. 638, 616 S.E.2d 926 (2005); *State v. Belton*, 169 N.C. App. 350, 357, 610 S.E.2d 283, 287-88 (2005) (holding certificate of service was sufficient to support trial court's finding that bond clerk mailed forfeiture notice despite evidence that surety did not receive notice).

If a failure to receive actual notice does not warrant setting aside a final judgment, then we cannot conclude that the trial court in this case abused its discretion given that there is no dispute that the sureties actually received notice of the forfeiture, and the sureties do not suggest that they did not know the notice related to the bond they issued. Since the sureties have not argued the existence of "other extraordinary circumstances" that would permit relief from final judgment pursuant to N.C. Gen. Stat. § 15A-544.8(b), we affirm the order of the trial court.

Affirmed.

Judges McGEE and STEELMAN concur.

Report per Rule 30(e).