

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-09-1183

Appellee

Trial Court Nos. CRB-07-26541-0102
CRB-07-26541-0202

v.

Joseph R. Hunter

Defendant

DECISION AND JUDGMENT

[Surety, Walmart, Inc. - Appellant]

Decided: December 31, 2009

* * * * *

David Toska, Chief Prosecutor, and Michelle Turvey-Albert,
Assistant Prosecutor, for appellee.

Martin E. Goff, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant brings this accelerated appeal from a forfeiture of bond order entered in the Toledo Municipal Court.

{¶ 2} Joseph R. Hunter was arrested and charged with domestic violence and assault on November 15, 2007. Hunter pled not guilty and was eventually released on his own recognizance. Following a series of missed court appearances, on April 20, 2008, Hunter was arrested on a bench warrant. On April 24, 2008, appellant, Walmart, Inc., posted a \$5,000 surety bond to obtain Hunter's release until a June 11, 2008 trial date.

{¶ 3} On June 11, when Hunter failed to appear, the trial court issued a bench warrant for his arrest. On June 25, Toledo police arrested Hunter. The same day, the court declared Hunter's bond forfeited. A hearing to show cause why the forfeiture should not issue was set for July 15, 2008.

{¶ 4} On July 15, 2008, even though Hunter was in custody and had previously appeared, the court ordered the bond paid within 30 days. On August 5, 2008, appellant moved to vacate the bond forfeiture order or, alternatively, that the court grant remission. Appellant subsequently paid the bond forfeiture amount.

{¶ 5} When the trial court denied appellant's motion to vacate the forfeiture, appellant instituted this appeal. In two assignments of error, appellant asserts that the trial court abused its discretion when, at the forfeiture hearing, it ordered surety forfeited even though Hunter was in custody prior to that hearing and, indeed, had made an appearance antecedent to the show cause statutory period. Moreover, the court abused its discretion in denying appellant's motion to vacate the forfeiture order or, alternatively, for remission.

{¶ 6} R.C. 2937.35 provides:

{¶ 7} "Upon the failure of the accused or witness to appear in accordance with its terms the bail may in open court be adjudged forfeit, in whole or in part by the court or magistrate before whom he is to appear. But such court or magistrate may, in its discretion, continue the cause to a later date certain, giving notice of such date to him and the bail depositor or sureties, and adjudge the bail forfeit upon failure to appear at such later date."

{¶ 8} Upon the declaration of a forfeiture, the clerk of court is directed to notify the accused and any surety for a recognizance bond, "* * * of the default of the accused and the adjudication of forfeiture and require each of them to show cause on or before a date certain to be stated in the notice, and which shall be not less than twenty nor more than thirty days from date of mailing notice, why judgment should not be entered against each of them for the penalty stated in the recognizance. If good cause by production of the body of the accused or otherwise is not shown, the court or magistrate shall thereupon enter judgment against the sureties or either of them, so notified, in such amount, not exceeding the penalty of the bond, as has been set in the adjudication of forfeiture, and shall award execution therefor as in civil cases. The proceeds of sale shall be received by the clerk or magistrate and distributed as on forfeiture of cash bail." R.C. 2937.36(C).

{¶ 9} "Pursuant to R.C. 2937.36(C), production of the body of the defendant on the date or dates specified in the notice of default and adjudication of forfeiture

constitutes a showing of good cause why judgment should not be entered against each surety of the defendant." *State v. Holmes* (1991), 57 Ohio St.3d 11, syllabus.

{¶ 10} It makes no difference whether the defendant appears as the result of the efforts of the surety or law enforcement. *State v. Williams*, 6th Dist. No. L-08-1290, 2009-Ohio-1116, ¶ 6, citing *State v. Richardson* (Aug. 13, 1982), 6th Dist. No. L-82-126.

{¶ 11} In this matter, Hunter was in custody and, indeed, had made an appearance before the trial court prior to the July 15, 2008 date set in the clerk's notice. Production of the defendant is good cause why judgment should not be entered on the forfeiture. Entry of forfeiture when the defendant has appeared prior to the noticed date constitutes an abuse of discretion. Accordingly, both of appellant's assignments of error are well-taken.

{¶ 12} On consideration whereof, the judgment of the Toledo Municipal Court is reversed. This matter is remanded to said court for further proceedings consistent with this decision. It is ordered that appellee pay court costs pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
