

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

State of Ohio

Court of Appeals No. S-10-016

Appellee

Trial Court No. 09 TRD 2589

v.

Rachard D. Huffman

Defendant

DECISION AND JUDGMENT

[Peggy "Hollies" Mayo dba
Mayo Bail Bonds-Appellant]

Decided: October 15, 2010

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

Loretta A. Riddle, for appellant.

* * * * *

HANDWORK, J.

This case is before the court as an accelerated appeal from a judgment of the Sandusky County Court No. 1. Appellant, Peggy "Hollies" Mayo, d.b.a. Mayo Bail Bonds, asks this court to consider the following assignments of error:

"1. Sandusky County Court No. 1 abused its discretion by not following statutory procedure when, inter alia, the court found that the bond had been forfeited prejudiced the rights of the bail bondswoman when the magistrate or clerk of courts fails to follow R.C. 2937.36.

"2. The municipal [sic] trial court erred, abused its discretion and lacked jurisdiction by ordering a bail bondswoman who posted a bond in municipal [sic] court to pay costs and other associated bills of the Sandusky County Sheriff for a warrant issued in the court of common pleas. The court further abused its discretion by not granting Mayo's [Civ.R.] 60(B) motion to vacate."

On June 16, 2009, Rachard Huffman was stopped on the Ohio Turnpike in Sandusky County, Ohio. As a result of the stop, Huffman was charged with a violation of: (1) R.C. 4513.361, furnishing false information to avoid a citation; (2) R.C. 4510.11, driving under suspension; and (3) R.C. 2925.03, possession of MDMA (ecstasy) in five times the bulk amount, a felony of the second degree. Huffman failed to appear in Sandusky County Court No. 1 on June 24, 2009. Therefore, a warrant was issued and bond set at \$1,000; that warrant was subsequently recalled. On June 30, Huffman appeared in court and pled "not guilty." He was appointed counsel and released on his own recognizance.

On July 2, 2009, however, Huffman did not appear for a preliminary hearing. The trial court dismissed the felony charge and amended the bond to \$2,000 cash/surety. On July 3, 2009, appellant posted the bond. Huffman again failed to appear at a July 20,

2009 pretrial hearing. Therefore, the trial court revoked the bond and set a forfeiture of bond hearing for August 13, 2009. On that date, appellant appeared before the trial court without Huffman. As a consequence, the trial judge ordered the bond forfeited and set a September 10, 2009 hearing date for the purpose of determining the amount forfeited. Appellant again appeared before the judge without Huffman. The court again ordered that the bond be forfeited, but did not determine the amount to be forfeited.

In late September, Huffman was arrested and transported by the Sandusky County Sheriff from West Virginia to Sandusky County and held, without bond, until his pretrial. He later entered a plea of guilty to the charge of driving a motor vehicle while under suspension.

The court below subsequently held a hearing on appellant's request "to discharge the surety from the bond." No transcript of this proceeding was filed in the record on appeal. On February 11, 2010, the trial judge ordered a bond forfeiture in the amount of \$767.50. This figure is comprised of the monies expended by the Sheriff of Sandusky County in bringing Huffman back to Sandusky County from West Virginia. Appellant filed a motion asking the court to reconsider its decision or, in the alternative, dismiss the judgment against her due to fraud and/or lack of jurisdiction. There is no judgment on this motion in the record of this case. Appellant filed a timely notice of appeal from the forfeiture order on March 12, 2009.

In her first assignment of error, appellant urges that the trial court "abused its discretion" by failing to follow R.C. 2937.36, which provides, in pertinent part:

" Upon declaration of forfeiture, the magistrate or clerk of the court adjudging forfeiture shall proceed as follows:

"(A) * * *

"(B) * * *

"(C) As to recognizances he shall notify the accused and each surety by ordinary mail at the address shown by them in their affidavits of qualification or on the record of the case, 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 therefrom as in civil cases. The proceeds of sale shall be received by the clerk or magistrate and distributed as on forfeiture of cash bail."

In other words, appellant asserts that she was denied due process because she was never served with a 20 day notice of the forfeiture proceedings, thereby depriving her of the right to show good cause. It is undisputed that appellant was present at both the August 13 and September 10, 2009 hearings; thus, she had actual notice of those proceedings and was not prejudiced by the trial court's failure to strictly comply with

R.C. 2937.36. See *Toledo v. Floyd*, 6th Dist. No. L-08-1364, 2009-Ohio-5507, ¶ 9, citing *State v. Ramey*, 6th Dist. No. L-08-1040, 2008-Ohio-3275, ¶ 12. For this reason, appellant's first assignment of error is found not well-taken.

In her second assignment of error, appellant argues that the trial court erred and abused its discretion in ordering her to pay costs incurred by the sheriff in bringing Huffman back from West Virginia when she had already paid those costs in the "municipal court."¹ She also refers to her "motion to vacate," meaning her motion for reconsideration, which was filed seven minutes before her notice of appeal on March 12, 2010.

Initially, we note that a motion for reconsideration of a final order and any materials attached thereto must be considered a nullity. *Pitts v. Dept. of Transp.* (1981), 67 Ohio St.2d 378, 381; *Kanfield-Pelow v. Upton*, 6th Dist. No. L-04-1061, 2005-Ohio-1030, ¶ 11. Moreover, even though appellant's motion asserts that the sheriff committed "fraud upon the court" in the amount of fees he incurred in going to and bringing Huffman back from West Virginia, we cannot treat her motion for reconsideration as a Civ.R. 60(B) motion to vacate. A party seeking Civ.R. 60(B) relief must establish one of the grounds for relief "by operative facts presented in a form that meets evidentiary standards such as affidavits, depositions, transcripts of evidence, written stipulations or other evidence given under oath. *Countrywide Home Loans v. Barclay*, 10th Dist. No.

¹There is no evidence in the record of this case tending to show that it was ever prosecuted in the municipal court.

04AP-171, 2004-Ohio-6359, ¶ 9. Appellant failed to present such evidentiary materials in her motion to vacate.

Finally, once appellant filed her notice of appeal, she deprived the trial court of its jurisdiction to rule on her motion. See *State v. Scheutzman*, 4th Dist. No. 07CA22, 2008-Ohio-6096, ¶ 6 (Filing a notice of appeal deprives a trial court of jurisdiction to grant any relief inconsistent with an appellate court's ability to affirm, modify, or reverse the judgment being appealed.) For all of the foregoing reasons, appellant's Assignment of Error No. 2 is found not well-taken.

The judgment of Sandusky County Court No. 1 is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT AFFIRMED.

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, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.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.
