

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

State of Ohio

Court of Appeals No. L-11-1269

Appellee

Trial Court No. CR0200703353

v.

Stephen Ramos

Defendant

DECISION AND JUDGMENT

[ABC Bail Bonds/Alleghany
Casualty Co.—Appellant]

Decided: October 26, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Larry W. Zukerman, S. Michael Lear, and Richard L. Fenbert,
for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Appellant, ABC Bail Bonds/Alleghany Casualty Company, appeals a
September 19, 2011 judgment of the Lucas County Court of Common Pleas denying its

motion for remission and release of a forfeited \$7,500 surety bond. Appellant had issued the bond to meet conditions for release of defendant, Stephen Ramos, on bail in September 2008.

{¶ 2} The trial court sentenced Ramos on a conviction of robbery, a violation of R.C. 2911.02(A)(3) on February 6, 2008. The court ordered Ramos to serve a three-year period of community control. Ramos failed to appear and report to the probation department from April 2008 to August 2008. On August 7, 2008, the trial court issued a *capias* for Ramos's arrest and set bond at \$7,500 with no ten percent.

{¶ 3} Ramos was arrested on September 3, 2008. On September 15, 2008, appellant issued the \$7,500 surety bond that was used to secure release of Ramos on bail. Ramos failed to appear for a community control violation hearing on September 30, 2008. After Ramos failed to appear at the hearing, the trial scheduled a bond forfeiture hearing for October 28, 2008. On that date, the trial court ordered the surety bond forfeited. The court ordered that a *capias* for the defendant's arrest remain outstanding.

{¶ 4} The Lucas County Sheriff's Department arrested Ramos on November 23, 2009.

{¶ 5} In August 2011, the Lucas County Clerk of Courts began efforts to collect on the October 28, 2008 judgment. On September 13, 2011, appellant filed a motion, pursuant to R.C. 2937.39, for the court to remit the order of forfeiture in full and thereby release appellant from any liability on the bond. The trial court denied the motion in a judgment filed on September 19, 2011. In the judgment, the trial court also ordered

appellant to pay the entire amount of the bond to the Lucas County Clerk of Courts within five days.

{¶ 6} Appellant filed a timely notice of appeal of the judgment to this court and moved for a stay of execution of the judgment pending appeal. We denied the motion. Appellant paid the \$7,500 sum ordered in judgment on February 8, 2012.

{¶ 7} Appellant asserts one assignment of error on appeal:

Assignment of Error No. 1: The trial court erred and abused its discretion in denying Appellant surety's motion for release of forfeited bond.

{¶ 8} A trial court's ruling on a motion to remit a forfeited bond pursuant to R.C. 2937.39 is reviewed on appeal under an abuse of discretion standard. *State v. Hardin*, 6th Dist. Nos. L-03-1131, L-03-1132, and L-03-1133, 2003-Ohio-7263, ¶ 9; *State v. Patton*, 60 Ohio App.3d 99, 101, 573 N.E.2d 1201 (6th Dist.1989). An abuse of discretion implies that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 9} We have previously identified the required analysis in deciding R.C. 2937.39 motions:

The purpose of bail is to insure that the accused appears at all stages of the criminal proceedings. *State v. Hughes* (1986), 27 Ohio St.3d 19, 20, 501 N.E.2d 622. Furthermore, the purpose of bail is not punitive but to secure the presence of the defendant. *State v. Christensen* (Apr. 16, 1999),

2nd Dist. No. 98CA53, citing *Dudley v. United States* (5th Cir.1957), 242 F.2d 656. As a result, in determining whether to remit a forfeited bond, the trial court should consider (1) the circumstances surrounding the reappearance of the accused, including timing and whether that reappearance was voluntary; (2) the reasons for the accused's failure to appear; (3) the inconvenience, expense, delay, and prejudice to the prosecution caused by the accused's disappearance; (4) whether the surety was instrumental in securing the appearance of the accused; (5) any mitigating circumstances; and (6) whether justice requires that the total amount of the bond remain forfeited. *Hardin*, at ¶ 10, citing *State v. Am. Bail Bond Agency*, 129 Ohio App.3d 708, 712-713, 719 N.E.2d 13 (10th Dist.1998).

{¶ 10} Appellant argues that the trial court abused its discretion in that it did not properly consider the established factors for R.C. 2937.39 motions in its judgment. In making that argument, appellant states that the trial court miscalculated the length of time Ramos delayed the criminal case by failing to appear at court proceedings. In its judgment, the trial court found that three years elapsed from Ramos's failure to appear for a hearing on violation of community control until his subsequent re-arrest.

{¶ 11} Appellant argues that the record demonstrates that Ramos actually delayed proceedings for a period of approximately 13 months, calculated from the failure to appear at a hearing on September 30, 2008, until Ramos's re-arrest on November 23,

2009. The state agrees, but contends that even the lesser period of delay is sufficient to support the trial court's exercise of discretion to overrule the motion for remission.

{¶ 12} With respect to other factors, appellant argues that evidence is lacking to show that delay of the hearing on violation of community control caused inconvenience, expense, or prejudice to the prosecution. Appellant also contends that there is no evidence in the record to demonstrate that the prosecution incurred significant costs or expenses in securing re-arrest of Ramos. The parties do not dispute that appellant was not instrumental in securing the appearance of Ramos.

Finding of Negligence of Surety

{¶ 13} One factor considered by the trial court in its judgment was a finding of negligence: "The Court finds that the surety was negligent in conducting a reasonable investigation concerning the issuing of the bond." Appellant argues that claimed negligence of a surety in issuing a bail bond is not a factor to be considered in ruling on motions for remission under R.C. 2937.39.

{¶ 14} Even were it a factor, appellant contends there is no evidence in the record to demonstrate that Ramos was a known flight risk. The state argues that the trial court's ruling that the surety was negligent in issuing the bond is supported by evidence in the record that appellant did not report to the probation department from April 2008 until August 2008 despite being under community control.

{¶ 15} The decision on whether or not to grant bail, including consideration of factors to determine the appropriate type, amounts, and conditions of bail is vested in the

trial court under Crim.R. 46. The fact that the surety faces a risk of forfeiture of the bond upon the defendant's failure to appear is inherent in the bail relationship and is not a basis to deny remission of forfeited bail bonds under R.C. 2937.39. *State v. McQuay*, 2d Dist. No. 24673, 2011-Ohio-6709, ¶ 6-7; *State v. Delgado*, 2d Dist. No. 2003-CA-28, 2004-Ohio-69, ¶ 18-19.

{¶ 16} The trial court's finding of negligence concerns appellant's decision to issue the bond and not conduct by it as the surety afterwards. The court did not conduct a hearing on the motion. No file materials of appellant were in evidence. On this record, we view the trial court's holding to be based upon a conclusion that appellant should have better appreciated the risk when it issued the bond that Ramos would not appear at subsequent court proceedings.

{¶ 17} In our view, such an analysis is little different from the approach rejected by the Second District Court of Appeals in *Delgado* and *McQuay* and is not relevant to the factors previously identified by this court to be evaluated and weighed in deciding motions for remission under R.C. 2937.39.

{¶ 18} In view of the trial court's errors as to the length of time Ramos delayed the criminal case by failing to appear at court proceedings and as to the factors to be considered in determining whether to grant or deny appellant's motion for remission, we find appellant's assignment of error well-taken.

{¶ 19} We reverse the judgment of the Lucas County Court of Common Pleas denying appellant's motion for remission and release. We remand this matter for a

hearing on that motion, if necessary, and for evaluation of the motion using the relevant factors. Pursuant to App.R. 24, appellee is ordered to pay the costs of this appeal.

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, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, 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>.