

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Allied Fidelity Ins. Co. v. State

415 So. 2d 109 (Fla. Dist. Ct. App. 1982) · No. Nos. 81-2052 and 81-2127 to 81-2129 · Decided June 15, 1982

SUMMARY

The Florida Third District Court of Appeal held that the 72-hour written notice requirement for notifying a bail surety of a forfeiture under section 903.26(2), Florida Statutes (1979), is directory rather than mandatory. Late notice therefore did not prevent the trial court from entering judgment on the forfeitures. The court also concluded that Allied Fidelity failed to demonstrate specific prejudice warranting vacation of the judgments and affirmed.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Daniel S. Pearson; Hubbard, C.J.; Ferguson, J.
JURISDICTION	Florida
DECIDED	June 15, 1982
DOCKET	Nos. 81-2052 and 81-2127 to 81-2129
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals by a bail-bond surety from judgments entered against it on unpaid bond forfeitures.
STANDARD OF REVIEW	The court reviewed whether the statutory notice violation barred judgment on the forfeitures and whether the trial court abused its discretion in refusing to vacate the judgments.
PRECEDENTIAL VALUE	Published Florida Third District Court of Appeal opinion; precedential within the court's jurisdiction unless subsequently limited or overruled.
PARTIES	Allied Fidelity Insurance Company v. The State of Florida, for the Use and Benefit of Dade County

TOPICS

- statutory interpretation
- legislative intent
- bail
- forfeiture
- appellate procedure

PRACTICE AREAS

- bail bond forfeiture
- statutory interpretation
- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether a trial court may enter judgment against a bail-bond surety when written notice of forfeiture was not provided within the seventy-two-hour period in section 903.26(2), Florida Statutes (1979).
2. Whether Allied's generalized assertions of prejudice from late forfeiture notice required the trial court to vacate the forfeiture judgments.

HOLDINGS

1. The notice requirement in section 903.26(2), Florida Statutes (1979), is directory rather than mandatory; failure to provide written notice within seventy-two hours does not prevent the trial court from entering judgment on an already-declared forfeiture.
2. Allied's generalized affidavits did not establish specific prejudice, and the trial court did not abuse its discretion by refusing to vacate the forfeiture judgments.

KEY QUOTATIONS

“Whether “shall” is mandatory or discretionary will depend, then, upon the context in which it is used and the legislative intent expressed in the statute.” (at 111)

“The first of these notices, as Section 903.26(1) expressly states (“... bond shall not be forfeited unless”), is a condition precedent to forfeiture of the bond.” (at 111)

“The second notice, however, advising the surety of the fait accompli of forfeiture, is, definitively, not a condition precedent to forfeiture.” (at 111)

“There is no logical reason for the requirement of additional written notice at all; the forfeiture occurs in open court and is a matter of public record.” (at 112)

FACTUAL BACKGROUND

Allied Fidelity issued bail bonds securing the appearances of defendants in four criminal cases. The surety received the required advance notices of the defendants' scheduled appearances, but the defendants failed to appear and the bonds were forfeited. Written notices of those forfeitures were sent to Allied more than seventy-two hours after forfeiture, and Allied submitted generalized affidavits asserting prejudice from the delay.

PROCEDURAL HISTORY

Allied Fidelity was the surety on bail bonds in four criminal cases. After the defendants failed to appear despite notice, the trial court declared the bonds forfeited and entered judgments against Allied. Notices of forfeiture were sent four to six days, or more than seventy-two hours, after the forfeitures. Allied appealed, arguing that the delayed notices violated section 903.26(2), Florida Statutes (1979), and required vacation of the judgments.

DISPOSITION

affirmed

CASES CITED

- Neal v. Bryant, 149 So. 2d 529 (Fla. 1962)
- St. Petersburg v. Siebold, 48 So. 2d 291 (Fla. 1959)
- Palm Springs General Hospital, Inc. of Hialeah v. State Farm Mutual Automobile Insurance Co., 218 So. 2d 793 (Fla. 3d DCA 1969)
- S.R. v. State, 346 So. 2d 1018 (Fla. 1977)
- Gilliam v. Saunders, 200 So. 2d 588 (Fla. 1st DCA 1967)
- White v. Means, 280 So. 2d 20 (Fla. 1st DCA 1973)
- Gillespie v. County of Bay, 112 Fla. 687, 151 So. 10 (1933)
- Mitchell v. Duncan, 7 Fla. 13 (1857)
- Reid v. Southern Development Co., 52 Fla. 595, 42 So. 206 (1906)
- Fraser v. Willey, 2 Fla. 116 (1848)
- Schneider v. Gustafson Industries, Inc., 139 So. 2d 423 (Fla. 1962)
- Estate of Maltie, 404 So. 2d 384 (Fla. 4th DCA 1981)
- Schaefer v. State, 369 So. 2d 443 (Fla. 3d DCA 1979)
- Bailey v. State, 282 So. 2d 32 (Fla. 1st DCA 1973)
- Ramsey v. State, 225 So. 2d 182 (Fla. 2d DCA 1969)
- Weaver v. State, 370 So. 2d 1236 (Fla. 2d DCA 1979)
- Ryan v. State, 380 So. 2d 539 (Fla. 5th DCA 1980)
- Resolute Insurance Co. v. State, 290 So. 2d 114 (Fla. 1st DCA 1974)

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