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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIELSON NATIONAL INSURANCE  
COMPANY,

Defendant and Appellant.

A140100

(Alameda County  
Super. Ct. No. H51499A)

In this bail forfeiture appeal, Danielson National Insurance Company appeals from a summary judgment entered on September 27, 2013, in favor of the County of Alameda and against appellant after a forfeiture of its bail bond posted on a defendant in a criminal case. Appellant argues summary judgment was improperly entered because the trial court did not declare a forfeiture of bail in open court as required pursuant to Penal Code section 1305.<sup>1</sup> We agree, and accordingly, reverse the summary judgment and remand to the trial court with directions to vacate the forfeiture and exonerate the bond.

**Factual and Procedural Background<sup>2</sup>**

Appellant Danielson National Insurance Company, as surety, issued a \$300,000 bail bond on behalf of Sidney Ray Poe Jr. (defendant), who was charged with committing several felony offenses including four counts of attempted murder (§§ 187, subd. (a), 664) on March 18, 2011.

<sup>1</sup> All further unspecified statutory references are to the Penal Code.

<sup>2</sup> We set forth only those facts necessary to resolve this appeal.

On March 18, 2013, at 1:30 p.m., the court received a call that the jury had reached a verdict. Everyone appeared except defendant. Defense counsel informed the court that defendant was on his way to the courthouse but by 3:00 p.m. defendant had not appeared. Because there was a shortage of deputies in the building, the court proceeded to accept the jury's verdict in defendant's absence. After the jury left the courtroom, the court declared in open court: "Counsel, at this time [defendant's] bail is hereby revoked. There will be a bench warrant issued for him, and no bail." After the court made further comments unrelated to the defendant's case, defendant's "matter was concluded." The reporter's transcript is certified as a "full, true, and correct transcription" of the reporter's notes of the proceeding held on March 18, 2013. The court's minute order of the March 18, 2013 proceedings, labeled "Notice of Bail Forfeiture," states that "NOTICE IS HEREBY GIVEN that defendant failed to appear for the above-referenced proceeding on the date of March 18, 2013. Bail heretofore posted was forfeited in open Court on Bail Bond number DN500-2735542 in the sum of \$300,000.00. [¶] The Court orders a bench warrant issued for the apprehension of the defendant. Bail set at NO BAIL." The matter was continued for 185 days to September 24, 2013 for entry of summary judgment or exoneration of the bail forfeiture. Before the September 24, 2013, hearing, appellant moved to extend its time on the bail forfeiture, asking for an additional 180 days to produce defendant in court.

On September 24, 2013, after argument by counsel, the court continued the matter for three days, at which time appellant would have to produce defendant in court or the bail bond was going to be forfeited and summary judgment would be granted. Three days later, when defendant was not produced in court, the court denied appellant's motion for an extension of time, which was unopposed by the County of Alameda. The clerk of the court was directed to enter summary judgment in favor of the County of Alameda and against appellant in the sum of \$300,000. Appellant filed a timely notice of

appeal from the summary judgment.<sup>3</sup> (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 664 [summary judgment in a bail bond proceeding is “appealable where ‘the judgment was not entered in accordance with the consent given in the undertaking’ ”].)

## DISCUSSION

“Section 1305, subdivision (a), provides: ‘(a) A court *shall in open court* declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following: [¶] (1) Arraignment. [¶] (2) Trial. [¶] (3) Judgment. [¶] (4) Any other occasion prior to the pronouncement of judgment if the defendant’s presence in court is lawfully required. [¶] (5) To surrender himself or herself in execution of the judgment after appeal.’ (Italics added.) [¶] If a trial court fails to declare a forfeiture in open court, it ‘no longer retain[s] “statutory control and jurisdiction over the bond” [citation]’ and the bond is exonerated by operation of law. [Citation.] When there is no forfeiture of the bond, there is no 185–day exoneration period and no bond upon which the court can enter a summary judgment. [Citation.] The court’s ‘failure to declare a forfeiture in open court . . . result[s] in the court’s loss of jurisdiction over the bail bond.’ ” (*People v. Bankers Ins. Co.* (2010) 182 Cal.App.4th 582, 586 (*Bankers*).) “Consequently, [a] court’s ensuing judgment [is] void, and ‘ “thus vulnerable to direct or collateral attack at any time.” ’ ” (*People v. Amwest Surety Ins. Co.* (2004) 125 Cal.App.4th 547, 554.)<sup>4</sup>

Here, appellant correctly argues that despite the language in the March 18, 2013, minute order that, “Bail heretofore posted was forfeited in open Court,” the reporter’s transcript reflects the court did not do so. The court indicated on the record that bail was

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<sup>3</sup> The notice of appeal also seeks review of the court’s orders of September 24, 2013, and September 27, 2013, regarding appellant’s motion to extend time on the bail forfeiture. However, in light of our resolution of this appeal, we dismiss the appeals from those orders as moot.

<sup>4</sup> Accordingly, appellant’s request for relief on this appeal is not forfeited by its failure to raise the issue in the trial court. (*Amwest Surety, supra*, 125 Cal.App.4th at p. 550.)

being revoked, not that bail was being forfeited. (See *People v. National Automobile & Casualty Ins. Co.* (2002) 98 Cal.App.4th 277, 280-281, 285, 287, 290 [because “[r]evocation of bail and forfeiture of bail have distinct legal meanings,” court’s revocation of bail but failure to declare bail “forfeited” in open court required exoneration of the bond as a matter of law].) Moreover, nothing in the record indicates that any of the proceedings in open court were conducted outside the presence of the court reporter or not reported for any reason. (*Bankers, supra*, 182 Cal.App.4th at p. 588.) Thus, “the reporter’s transcript is entitled to greater weight than the clerk’s minutes.” (*Ibid.*; cf. *People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 706, 714 [in the absence of a reporter’s transcript, a clerk’s minute order could suffice to show bail forfeiture and need not expressly reflect that the forfeiture declaration occurred in open court].)

In sum, on this record we conclude that “[o]nce the trial court failed to declare the b[ail] forfeited in open court, the bond was exonerated by operation of law and the ensuing summary judgment was void.” (*Bankers, supra*, 182 Cal.App.4th at p. 588.)<sup>5</sup> Accordingly, we shall reverse the summary judgment and remand to the trial court with directions to vacate the forfeiture and exonerate the bond.<sup>6</sup>

### **DISPOSITION**

The appeals from the orders of September 24, 2013 and September 27, 2013, regarding appellant’s motion to extend time on the bail forfeiture, are dismissed as moot. The summary judgment on bail forfeiture, entered September 27, 2013, is

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<sup>5</sup> In light of our determination, we do not need to address appellant’s other contention.

<sup>6</sup> Appellant’s request for the return of “summary judgment funds paid” should be made in the trial court in the first instance. We express no opinion on the matter.

reversed. The case is remanded to the trial court with directions to vacate the forfeiture and exonerate the bond. Each party shall bear its own costs on appeal.<sup>7</sup>

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Jenkins, J.

We concur:

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McGuinness, P. J.

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Siggins, J.

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<sup>7</sup> In its responsive brief, the County of Alameda requests that we not award appellant costs on appeal because the county did not oppose appellant's request for relief in the trial court and does not oppose granting appellant relief on appeal. In response, appellant has withdrawn its request for costs on appeal.