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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff,

v.

KATHRYN ELISE PIERSON,

Defendant;

AMERICAN SURETY CO. et al.,

Real Parties in Interest and
Appellants.

B235886

(Los Angeles County
Super. Ct. No. SA076928)

APPEAL from an order of the Superior Court of Los Angeles County, Elden S. Fox, Judge. Affirmed.

Nunez & Bernstein and E. Alan Nunez for Appellant American Surety Company.

No appearance on behalf of Plaintiff.

No appearance on behalf of Defendant.

I. INTRODUCTION

American Surety (“the surety”) appeals from an order pursuant to Penal Code,¹ section 1300, subdivision (b) directing the return of a bail bond premium to defendant, Kathryn Elise Pierson. We affirm. The trial court did not abuse its discretion in ruling the bail agent, Aqeel Muhammad Bail Bonds (Mr. Muhammad), lacked good cause to surrender defendant to the authorities.

II. PROCEDURAL AND FACTUAL MATTERS

On January 19, 2011, Mr. Muhammad posted bail bond No. AS25-194904 in the amount of \$20,000 for defendant’s release on charges she violated section 496, subdivision (a). Defendant paid a \$2,000 premium for the bond. Mr. Muhammad also posted a \$75,000 bond for the release of defendant’s brother, who subsequently absconded. Both bonds were guaranteed by the siblings’ mother, Vera Pierson. On July 27, 2011, Mr. Muhammad had defendant arrested and surrendered to the Los Angeles County Sheriff’s Department.

On August 17, 2011, defendant appeared in court after being surrendered by Mr. Muhammad. Defendant explained to the court that she and her brother had the same bail agent. Defendant was before the court because Mr. Muhammad took her into custody while looking for her brother. This was because Mr. Muhammad said she was a flight risk. Defendant found a different company to post a bond for her release. Defendant indicated that she was about to complete community service and her case was scheduled for dismissal on September 13, 2011.

The trial court then asked defendant if Mr. Muhammad had returned her premium following her arrest and surrender to the authorities. The trial court asked whether Mr. Muhammad had filed an exoneration motion. The trial court subsequently stated,

¹ All further statutory references are to the Penal Code.

“You know, this is so unethical.” The trial court also stated that it intended to find out the status of the first bond from Mr. Muhammad. The trial court told defendant, “[H]ave a seat because I’m looking for \$2,000 to give to you.”

Mr. Muhammad appeared. The trial court stated to Mr. Muhammad’s attorney, Arpine Movsesian: “Okay. Maybe you can inquire of your client because right now I’m very close to referring this for criminal charges, so I want to find out exactly what transpired.” After conferring with her client, Ms. Movsesian explained: “Two agents surrendered [defendant], and the reasons that [defendant] provided to the court were only—was partial reasoning. [Defendant’s] brother has in fact been bailed out by [the bail agent’s] company, and the cosigner to both accounts is [defendant’s] mother, Vera Pierson, and she is basically the guarantor of both sureties. [¶] [The bail agent] has reasonable cause to believe that Ms. Pierson was involved in the flee of [defendant’s] brother, and . . . I believe the twelfth section in the bail agreement indicates that when the guarantor signs the application for surety, they must provide the bail bondsmen with proof of address and address change and phone number change. [¶] For a period of two months—or a period of one month since July 2nd when . . . [defendant’s] brother, failed to appear to court, [the bail agent] and his agents have made several attempts to contact Ms. Vera Pierson on the phone number and the address provided. They have been very unsuccessful. Basically, Ms. Pierson has disappeared and moved and not provided [the bail agent] with any information as to her whereabouts.”

The trial court asked if Mr. Muhammad’s argument was that the bond’s guarantor, Ms. Pierson, could not be located. Ms. Movsesian responded, “Absolutely, your honor.” The trial court then addressed defendant and the following occurred: “The court: At what address did your mother live? [¶] The defendant: 550 West Regent. . . . [¶] The court: How long has she resided at that location? The defendant: She just moved . . . in the weekend . . . before the arrest. [¶] The court: . . . So this is a recent move? [¶] The defendant: Yes. She moved in the Saturday or Sunday . . . before they took me into custody. [¶] The court: . . . And did your mother notify the bonding agent as to her new address? [¶] The defendant: Not to my knowledge.” Bond agents detained defendant at

her residence. The bond surrender form states defendant was arrested at 4535 West 159th Street in Lawndale. Defendant's mother was renting and did not own the 550 West Regent residence. The surety also provided a bond for defendant's brother in the amount of \$70,000 to \$75,000. When she was detained, defendant described what she was told: "They indicated that Mr. Muhammad was not comfortable carrying my bond because my mother signed for both of us and they considered me a flight risk because if they couldn't trust my mother on my brother's bond, they couldn't trust my mother on my bond." Earlier defendant had explained, "[M]y brother jumped bond and we were under the same company, and since he jumped bond, they said I was a flight risk." Defendant explained what happened next, "[S]o after they picked me up, I took them to my mother's house." The bond agents spoke to defendant's mother. Defendant was then taken to jail and she explained, "They said due to the fact she didn't give them the information that they wanted, they still took me in."

The trial court stated Mr. Muhammad's veracity was at issue. This was because of the claim Ms. Pierson's whereabouts were unknown. Mr. Muhammad responded that he had tried to contact Ms. Pierson. He tried to update the information because someone at her apartment building said they saw her moving. Ms. Pierson did not notify the apartment building management she was moving out. Mr. Muhammad stated, "She took off like in a hurry, a flurry." Defendant took the agents to Ms. Pierson. But Mr. Muhammad said he could not verify that it was Ms. Pierson's permanent address. Ms. Pierson would not give out any information such as a telephone number. Mr. Muhammad "felt very uncomfortable" about Ms. Pierson's ability to perform as the guarantor under the bond.

The trial court asked whether the bond had been exonerated. Mr. Muhammad explained that he believed the bond was automatically exonerated after he surrendered defendant. The trial court explained that Mr. Muhammad should file an exoneration motion because there were two bonds on the same case number.

Ms. Movsesian subsequently argued that Mr. Muhammad had reasonable cause to surrender defendant based on Ms. Pierson's behavior. In addition, she argued

Mr. Muhammad did not have to return the premium. The trial court indicated Ms. Movsesian was correct but was concerned about what had occurred. The trial court stated: “However, what I am distressed about is the fact that this young lady who had the case pending is in the process of essentially having this case dismissed once she completes certain conditions, and she has now been required to avoid reincarceration spending another \$2,000 with another bonding company so she didn’t remain in jail. [¶] She could have been surrendered to the court. She could have been surrendered and the motion to exonerate done right away. And at this point she’s out \$2,000 on another bond, and I probably would have released her on her own recognizance.”

The trial court subsequently stated: “But I want to advise counsel and I will tell [the bail agent], if I see you in this court again with any action similar to this, I’m going to send you downtown and I’m going to write a declaration in regard to your ability to continue to do business with the Los Angeles [County] Superior Court.” The trial court instructed defendant to call the new bonding company, Bad Boy Bail Bonds, and asked if her premium could be returned as it would release her on her own recognizance. The trial court then advised Mr. Muhammad to file an exoneration motion by Friday, August 19, 2011. The trial court stated the bond would be exonerated and Mr. Muhammad would be charged fees.

On August 19, 2011, Mr. Muhammad filed the exoneration motion. The trial court initially granted the exoneration motion on condition of a payment \$1,000 in costs payable to the court clerk. The trial court stated, “If you don’t pay it, I’ll send this downtown and you won’t do business here anymore.” Mr. Muhammad asked the basis for the assessment of penalties. The trial court responded that they were pursuant to the exoneration request. The trial court added: “Take care of it or you will not do business in this county again, okay? You’re excused.”

After a recess, the following colloquy occurred: “The court: I’m glad you could make it back. I’ve got a better idea. Come on up here. [¶] Mr. Muhammad pursuant to [section] 1300, subdivision (b), rather than imposing the costs that I intend to impose, I am finding that there was not good cause for surrendering the defendant on the bond as

identified, and that is 26AS25194904. Defendant . . . made all appearances, no failures to appear. I order you to return the entire premium of \$2,000 to the defendant and/or depositor or the individual who paid the premium. You have 30 days to do that, sir. [¶] Mr. Muhammad: Didn't you rule-- [¶] The court: Now go down and complain to Judge Stone.” The trial court entered the order consistent with its oral pronouncements. The surety filed this timely appeal.

III. DISCUSSION

Section 1300, subdivision (a) provides in part, “At any time before the forfeiture of their undertaking, or deposit by a third person, the bail or the depositor may surrender the defendant in their exoneration,” Thus, a bonding company has a statutory right to surrender a defendant at any time with or without cause. (*Indiana Lumbermens Mutual Ins. Co. v. Alexander* (2008) 167 Cal.App.4th 1544, 1547; *People v. Lexington National Ins. Co.* (2007) 147 Cal.App.4th 1192, 1198.) However, section 1300, subdivision (b) states that, if the surrender is without good cause, the trial court may exercise its discretion to order the premium returned to the defendant: “Notwithstanding subdivision (a), if the court determines that good cause does not exist for the surrender of a defendant who has not failed to appear or has not violated any order of the court, it may, in its discretion, order the bail or the depositor to return to the defendant or other person who has paid the premium or any part of it, all of the money so paid or any part of it.” (See *Indiana Lumbermens Mutual Ins. Co. v. Alexander*, *supra*, 167 Cal.App.4th at p. 1547.)

The Legislature's purpose in enacting section 1300, subdivision (b) is to provide a remedy against potential abuse by a bondsperson of the broad power to surrender a defendant and terminate liability prior to forfeiture. (*People v. Smith* (1986) 182 Cal.App.3d 1212, 1217; see also *Kiperman v. Klenshetyn* (2005) 133 Cal.App.4th 934, 939.) In *Smith*, the court further explained, “Prior to the enactment of section 1300, subdivision (b), a defendant surrendered without good cause had no realistic remedy

against a bondsperson unjustly enriched by such conduct.” (*People v. Smith, supra*, 182 Cal.App.3d at p. 1217; see also *Indiana Lumbermens Mutual Ins. Co. v. Alexander, supra*, 167 Cal.App.4th at p. 1547.) Section 1300, subdivision (b) sets forth two factors which may establish “good cause,” failure to appear and violation of a court order. However, a defendant’s failure to appear and violation of court orders are not the sole reasons the trial court may determine good cause exists in the exercise of its discretion. (*People v. Smith, supra*, 182 Cal.App.3d at p. 1216.) The trial court’s discretionary good cause determination must be made on a case-by- case basis. (*Id.* at p. 1217.)

The surety argues the trial court abused its discretion in ordering the premium returned to defendant. The surety argues the premium was earned as a matter of law and there was good cause to surrender defendant. We address the latter point first and conclude it was not an abuse of discretion for the trial court to find Mr. Muhammad lacked good cause to surrender defendant. The trial court found defendant had made all her court appearances and had not failed to appear. Indeed, defendant was days away from completing court ordered programs when she was taken into custody and surrendered by Mr. Muhammad. Because of the surrender, defendant had to pay another \$2,000 premium for her release. In fact, no issue was raised as to defendant’s flight risk except as to Ms. Pierson, who was the bond’s guarantor.

Rather, the flight issue arose in connection with Ms. Pierson’s move coupled with defendant’s brother’s failure to appear. According to the surety, the “bail agreement” terms required defendant and Ms. Pierson to notify Mr. Muhammad of address and telephone changes. The bail agents arrested defendant in her home. Defendant then cooperated with the bail agents in locating Ms. Pierson. Defendant took the bail agents to Ms. Pierson. In some unspecified fashion, Ms. Pierson failed to cooperate with the bail agents in connection with her son. This occurred while defendant was detained. After this alleged lack of cooperation vis-à-vis her brother, defendant was surrendered to the authorities. The surety has failed to demonstrate that the trial court abused its discretion in finding no good cause existed concerning the flight risk of defendant in this matter. No doubt, defendant’s brother was a flight risk. But based on these facts, the trial court

could rationally find no good cause was present within the meaning of section 1300, subdivision (b). Because the trial court's no good cause finding must be upheld, we need not address the surety's claim that the premium was earned as a matter of law. As the surety concedes, the return of the premium is subject to the no good cause determination. (§ 1300, subd. (b).)

Our view is that it was inappropriate for the trial court to threaten Mr. Muhammad as it did. Threatening to “refer[] this for criminal charges,” “send you downtown,” and write a declaration which would affect Mr. Muhammad's “ability to do business” with superior court were unwarranted. (Cal. Code Jud. Ethics, canon 3(D)(1); see *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 791, fn. 2.) That being said, the surety has raised no bias based contentions and given the trial court's view of the parties' statements, no abuse of discretion occurred.

IV. DISPOSITION

The order under review is affirmed.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.