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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-757

Filed 21 March 2023

Wake County, No. 15 CRS 220984

STATE OF NORTH CAROLINA

v.

DAVID ANTONIO MADRID, Defendant, 1<sup>st</sup> ATLANTIC SURETY COMPANY,  
Surety, and DELTON R. CAUDLE, Bail Agent,

v.

WAKE COUNTY BOARD OF EDUCATION, Judgment Creditor.

Appeal by surety from an order entered 24 February 2022 by Judge Mark A.  
Sternlicht in Wake County Superior Court. Heard in the Court of Appeals 22  
February 2023.

*The Law Offices of Elston, Donnahoo & Williams, P.C., by Brian D. Elston, for  
surety-appellant.*

*Tharrington Smith, L.L.P., by Rod Malone and Richard A. Paschal, for Wake  
County Board of Education and Wake County District Attorney N. Lorrin  
Freeman, for the State.*

WOOD, Judge.

Article 26 of our State's Criminal Procedure Act outlines the law pertaining to bail. Among its provisions, Section 15A-544.8 allows a trial court, in its discretion, to relieve a surety from a final bond forfeiture judgment. In the present matter, we must determine whether the trial court properly applied this statute when it denied a surety relief from bond forfeiture.

### **I. Background**

The State charged and arrested David Antonio Madrid, Jr. ("Defendant") with felonious hit and run involving serious injury or death on 19 September 2015. That same day, the U.S. Department of Homeland Security issued an Immigration Detainer for Defendant who was a citizen of Honduras. On 5 October 2015, Delton Caudle, a bail agent with 1st Atlantic Surety ("Surety"), executed a \$100,000 bond for Defendant. Defendant was then released from jail on bond. Surety alleges that this bail agent violated Surety's policy when he executed a large bond without prior authorization from Surety. Defendant was to appear before the Wake County Superior Court on 26 March 2018. The record is devoid of an explanation of the significant time gap from the date of Defendant's arrest until the date he was scheduled to appear in court.

Defendant did not appear before the trial court on his scheduled court date. The trial court noted the word "Deported" appeared near the case listing on the court calendar. The trial court issued a notice of bond forfeiture that could be set aside if, among other things, Surety could locate and surrender Defendant by 31 August 2018.

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*Opinion of the Court*

Surety failed to locate Defendant by 31 August 2018 and, therefore, paid the \$100,000 bond forfeiture.

On 11 February 2019, Surety submitted a Notice of Defendant's Incarceration to the Wake County District Attorney's Office. At that time, Defendant was in the custody of U.S. Immigration and Customs Enforcement in Los Fresnos, Texas. In the following months, Surety requested that the Wake County District Attorney's Office arrange for the extradition of Defendant back to North Carolina before ultimately filing a motion for relief from final judgment with the trial court on 9 August 2019. Surety argued that it was entitled to relief on the basis of "extraordinary circumstances."

The trial court denied Surety's motion for relief on 24 February 2022. In its order, the trial court relied on *State v. Navarro*, 247 N.C. App. 823, 787 S.E.2d 57 (2016) to support a list of factors that it used in determining whether Surety's situation rose to the level of "extraordinary circumstances" required by statute.

Upon consideration of these factors, the Court concludes in its discretion that in light of the inconvenience to the State and the courts caused by Defendant Madrid's failure to appear, Surety's professional status, the risk assumed by Surety, and Surety's lack of evidence of its diligence in staying abreast of Defendant Madrid's whereabouts before his court date, Surety has not established the existence of extraordinary circumstances that entitle Surety to relief.

Surety appealed from this order as a final judgment of the Superior Court. N.C. Gen. Stat. § 7A-27(b) (2022); § 15A-544.8(f).

## **II. Standard of Review**

A trial court's denial of a motion for relief from judgment is reviewed for abuse of discretion. *State v. Edwards*, 172 N.C. App. 821, 825, 616 S.E.2d 634, 636 (2005). "A trial court may be reversed for abuse of discretion only 'upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.'" *State v. Escobar*, 187 N.C. App. 267, 271, 652 S.E.2d 694, 698 (2007) (quoting *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985)).

A trial court's conclusions of law "are reviewable *de novo*." *State v. Belton*, 169 N.C. App. 350, 356, 610 S.E.2d 283, 287 (2005). "Under a *de novo* standard of review, this Court considers the matter anew and freely substitutes its own judgment for that of the trial court." *Reese v. Mecklenburg Cnty.*, 200 N.C. App. 491, 497, 685 S.E.2d 34, 38 (2009) (citations omitted).

Conversely, a trial court's findings of fact "are conclusive on appeal if supported by competent evidence." *Freeman v. Bennett*, 249 N.C. 180, 183, 105 S.E.2d 809, 811 (1958). "Competent evidence is evidence 'that a reasonable mind might accept as adequate to support the finding.'" *In re Foreclosure of Adams*, 204 N.C. App. 318, 321, 693 S.E.2d 705, 708 (2010) (quoting *Eley v. Mid/East Acceptance Corp.*, 171 N.C. App. 368, 369, 614 S.E.2d 555, 558 (2005)).

## **III. Discussion**

If a defendant who was released . . . upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a forfeiture for the

amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond.

N.C. Gen. Stat. § 15A-544.3(a) (2022). If the trial court enters a final judgment of forfeiture, a defendant or surety may only be relieved from forfeiting bond for one of two reasons: “[t]he person seeking relief was not given notice” of a forfeiture entry or “[o]ther extraordinary circumstances exist that the court, in its discretion, determines should entitle that person to relief.” § 15A-544.8 (2022).

In this case, proper notice is undisputed. Instead, the parties focus on the trial court’s determination of whether “[o]ther extraordinary circumstances exist.” On appeal, Defendant challenges the trial court’s use of certain caselaw to support its conclusion, the application of the forfeiture relief statute in light of the large bond, and the sufficiency of certain evidence upon which the trial court relied.

#### **A. Forfeiture Relief Caselaw**

Defendant first argues that the trial court erred as a matter of law in its reliance on *State v. Navarro*, 247 N.C. App. 823, 787 S.E.2d 57 (2016). Defendant contends that this 2016 opinion represents the culmination of tainted caselaw misinterpreting a statute revised in 2000. Defendant would have this Court uproot almost twenty years of precedent to correct this alleged error—a feat that we are prohibited from doing. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (explaining that this Court is bound by its precedent unless overruled by a higher court). Nevertheless, *State v. Navarro* correctly interprets the law related to the relief

of bond forfeiture, and we endorse its holding once more.

Prior to 1 January 2001, Section 15A-544 of our General Statutes set forth the law pertaining to a trial court's discretion to remit bond forfeiture as follows:

*For extraordinary cause shown, the court which has entered judgment upon a forfeiture of a bond may, after execution, remit the judgment in whole or in part and order the clerk to refund such amounts as the court considers appropriate. . . .*

N.C. Gen. Stat. § 15A-544(h) (emphasis added) (repealed 2000).

In *State v. Vikre*, this Court defined the above statutory term “extraordinary” as used in its ordinary meaning: “going beyond what is usual, regular, common, or customary . . . of, relating to, or having the nature of an occurrence or risk of a kind other than what ordinary experience or prudence would foresee.” 86 N.C. App. 196, 198, 356 S.E.2d 802, 804 (1987) (quoting Webster’s Third New International Dictionary (1968)).

In *State v. Coronel*, this Court applied Section 15A-544 and held that a determination of “extraordinary cause” “is a heavily fact-based inquiry and therefore, should be reviewed on a case by case basis.” 145 N.C. App. 237, 244, 550 S.E.2d 561, 566 (2001). *Coronel* outlined several factors that a trial court could consider when determining if a surety’s situation rose to the level of “extraordinary cause” under Section 15A-544. These factors are “(1) ‘the inconvenience and cost to the State and the courts,’ (2) ‘the surety’s status, be it private or professional,’ (3) ‘the risk assumed by the sureties,’ and (4) ‘the diligence of sureties in staying abreast of the defendant’s

whereabouts prior to the date of appearance.’ ” *State v. Navarro*, 247 N.C. App. 823, 831, 787 S.E.2d 57, 63-64 (2016) (quoting *Coronel*, 145 N.C. App. at 248, 550 S.E.2d at 569).

In 2000, the legislature repealed Section 15A-544 and replaced it with Sections 15A-544.1 through 15A-544.8 via the “Act to Modernize Bail Bond Forfeiture Proceedings.” 2000 N.C. Sess. Laws 638. As the name suggests, many of the changes were procedural in nature. Section 15A-544(h), allowing relief from a bond forfeiture judgment, was replaced by a similar Section 15A-544.8(b).

The court may grant the defendant or any surety named in the judgment relief from the judgment, for the following reasons, and none other:

(1) The person seeking relief was not given notice as provided in G.S. 15A-544.4. However, the court shall not grant relief under this subdivision solely due to the court’s failure to provide notice within 30 days as required by G.S. 15A-544.4(e).

(2) *Other extraordinary circumstances* exist that the court, in its discretion, determines should entitle that person to relief.

N.C. Gen. Stat. § 15A-544.8(b) (2022) (emphasis added).<sup>1</sup> Among the changes and relevant to our discussion, the statutory consideration “extraordinary cause” changed to “extraordinary circumstances.” Nonetheless, later cases continued to utilize the *Coronel* factors when weighing “extraordinary circumstances” as with “extraordinary

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<sup>1</sup> The last sentence of subsection (b)(1) was added in 2022, after the relevant events of this case. This addition has no effect on our rationale here.

cause.” *See, e.g., State v. Gonzalez-Fernandez*, 170 N.C. App. 45, 49, 612 S.E.2d 148, 152 (2005) (quoting *Vikre*’s definition of “extraordinary” and analogizing *Coronel*’s “instructive” caselaw); *State v. Edwards*, 172 N.C. App. 821, 827, 616 S.E.2d 634, 637 (2005) (quoting *Coronel* for the proposition “that diligence alone will not constitute ‘extraordinary [circumstances]’ ”); *State v. Escobar*, 187 N.C. App. 267, 272, 652 S.E.2d 694, 698 (2007) (citing the *Coronel* factors); *Navarro*, 247 N.C. App. at 831, 787 S.E.2d at 63-64 (restating the *Coronel* factors).

This Court’s analysis in *State v. Knight* indicates the reasoning for the statute’s unaltered treatment in our caselaw. Speaking to the trial court’s authority to remit bond forfeiture, this Court held that the relief provisions of the new statute “retained some of the discretionary language” and still “echo language found in former N.C.G.S. § 15A-544(h).” 255 N.C. App. 802, 809, 805 S.E.2d 751, 755-56 (2017). In another case, this Court recognized certain procedural differences in the new statute but found “the case law interpreting the former statutory terms instructive.” *Gonzalez-Fernandez*, 170 N.C. App. at 49 n.1, 612 S.E.2d at 152 n.1. *See also State v. Lopez*, 169 N.C. App. 816, 820, 611 S.E.2d 197, 199 (2005) (“[T]his [discretionary] language . . . also appeared in the predecessor statute[.]”).

This makes sense. The prior and subsequent sections both emphasize a trial court’s discretion to remit bond forfeiture; though, the subsequent section adds a notice requirement not present in the prior section and alters the sentence structure to allow for future additions. The slight alteration in the “extraordinary” language,



then, likely results from modernization efforts and a different sentence structure—rather than from the legislature’s intent to amend the relief standard used by our trial courts.

In sum, “extraordinary circumstances” and “extraordinary cause,” as used in Section 15A-544.8(b) and former Section 15A-544(h) respectively, bear no difference for the purposes of a trial court’s use of the *Coronel* factors to aid in its discretionary determination of whether to remit bond forfeiture. We therefore hold that the trial court’s reliance on *State v. Navarro* and application of the *Coronel* factors were appropriate. This argument is overruled.

**B. Application of N.C Gen. Stat. § 15A-544.8**

Surety next argues that the trial court failed to consider the large amount forfeited by Surety due to Defendant’s failure to appear when determining if “extraordinary circumstances” applied to the facts of this case.

As stated above, the decision to grant relief from a final judgment forfeiting bond is a matter of discretion that a trial court may exercise in extraordinary circumstances or when notice was not properly given. N.C. Gen. Stat. § 15A-544.8(b) (2022). Though non-exhaustive, the *Coronel* factors may be used by a trial court when determining if extraordinary circumstances exist. *Navarro*, 247 N.C. App. at 831, 787 S.E.2d at 63-64. These factors again are “(1) ‘the inconvenience and cost to the State and the courts,’ (2) ‘the surety’s status, be it private or professional,’ (3) ‘the risk assumed by the sureties,’ and (4) ‘the diligence of sureties in staying abreast of the

defendant's whereabouts prior to the date of appearance.' " *Id.* (quoting *Coronel*, 145 N.C. App. at 248, 550 S.E.2d at 569).

The amount that a surety forfeits due to a defendant's failure to appear is not listed among the *Coronel* factors. This is in spite of *Coronel* itself referencing the possibility. It states that, along with a surety's diligence, "the amount of expenses incurred by professional sureties due to a forfeiture" should not be considered alone. *Coronel*, 145 N.C. App. at 248, 550 S.E.2d at 569 (citing *State v. Locklear*, 42 N.C. App. 486, 256 S.E.2d 830 (1979)).

Though a trial court, in its discretion, may consider the amount forfeited by a professional surety due to a defendant's failure to appear, our caselaw does not require it. The costs associated with bond are often high for a reason, and professional sureties would do well to refrain from wagering that which they cannot afford to lose. The trial court here did not abuse its discretion by remaining silent as to its consideration of whether the amount forfeited by Surety factored in determining whether extraordinary circumstances existed.

### **C. Sufficiency of Evidence**

Finally, Surety argues that the trial court relied upon insufficient evidence (1) when it found that Defendant's failure to appear was an inconvenience and cost to the State and courts and (2) when it found that Surety assumed the risk for the bond. We review these findings in turn to determine if any competent evidence supported the trial court's findings of fact. *Freeman*, 249 N.C. at 183, 105 S.E.2d at 811.

**1. *Inconvenience to the State and Courts***

Among the other *Coronel* factors listed in its order, the trial court supported its conclusion to deny Surety relief upon a finding of “the inconvenience to the State and the courts caused by Defendant Madrid’s failure to appear.” We are reminded here that evidence may be considered competent and sufficient to support a trial court’s findings though “different inferences may be drawn.” *Williams v. Pilot Life Ins. Co.*, 288 N.C. 338, 342, 218 S.E.2d 368, 371 (1975).

Evidence presented to the trial court at the bond forfeiture relief hearing showed that, on the date Defendant was required to appear in court, he was called in open court, he failed to appear for his hearing, the trial court filed paperwork indicating that he failed to appear, and the District Attorney’s Office filed a dismissal with leave.

Surety argues that it was more convenient for the State and court to dismiss Defendant’s case, as the State did, than if Defendant were to appear. Yet, a determination of inconvenience is a matter of credibility weighed by the trial court, not this Court. *See Coronel*, 145 N.C. App. at 250, 550 S.E.2d at 570. So long as at least some competent evidence supports the trial court’s finding, we must affirm. *Freeman*, 249 N.C. at 183, 105 S.E.2d at 811. We therefore hold that the trial court relied upon sufficient evidence here to support its finding that the State and court were inconvenienced by Defendant’s failure to appear.

**2. *Assumption of Risk***

Next, Surety challenges the sufficiency of evidence used to support the trial court's finding that it had assumed the risk of the bond.

Surety cites to this Court's recent decision in *State v. Lemus* for the proposition that the State frustrated Surety's ability to properly assume the risk for Defendant's appearance. In that case, a surety executed a bond for the pretrial release of a defendant, but the State refused to release the defendant. 273 N.C. App. 155, 157, 848 S.E.2d 239, 241 (2020). Instead, the State maintained custody of the defendant until it transferred custody to U.S. Immigration and Customs Enforcement. *Id.* This Court held that the defendant was not "released" from State custody for the purposes of the bond forfeiture statute and the trial court, therefore, did not have authority to enter bond forfeiture in the first place. *Id.* at 161, 848 S.E.2d at 243. However, this Court reasoned that, "if a defendant released on bond walks out of a county jail and is immediately taken into custody by federal immigration authorities, that defendant was 'released' under our State's bail statutes because he was set free from State custody." *Id.*

Here, then, we are confronted with the permissible example hypothesized in *Lemus*. Defendant was released from State custody but, at some point afterward, was taken into the custody of federal law enforcement. The State was not required under the statute to arrange for the transfer of Defendant back to its own custody and did not do so here.

At the hearing, a Surety employee testified that a Surety bail agent executed

a \$100,000 bond for Defendant prior to his release from custody and that Surety became aware of the bond between one to six months after its execution. The employee further testified that the 19 September 2015 Immigration Detainer may have been in the court file at the time the bondsman executed the \$100,000 bond on 5 October 2015. The trial court found that Surety should have known that the Defendant was a citizen of Honduras and that the bail agent could have found the Immigration Detainer in the file before executing the bond. The trial court's finding that Surety assumed the risk for the bond was supported by competent evidence in the record.

Sufficient evidence supported the trial court's findings as to the inconvenience associated with Defendant's failure to appear and Surety's assumption of risk for the bond.

#### **IV. Conclusion**

The trial court did not misinterpret or misapply the law relating to the relief of bond forfeiture after a final judgment, nor did it abuse its discretion when it found the absence of extraordinary circumstances sufficient to merit relief from bond forfeiture. We conclude the trial court relied upon sufficient evidence to support its findings of fact.

**AFFIRMED.**

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).