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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1123

Filed 21 May 2024

Robeson County, No. 22CR53350

STATE OF NORTH CAROLINA, Plaintiff,

v.

DANIEL LOVE, Defendant,

and

YAZMINE MCLEAN, Bail Agent,

and

PALMETTO SURETY CORPORATION, Surety.

Appeal by defendant from order entered 24 August 2023 by Judge Diane P. Surgeon in Robeson County Superior Court. Heard in the Court of Appeals 17 April 2024.

No brief for the State-appellee.

No brief for pro se defendant-appellee.

No brief for pro se/bail agent Yazmine McLean.

No brief for pro se/surety Palmetto Surety Corporation.

Schwartz Law, PLLC, by E. Alexander Grosskurth and Richard A. Schwartz, for respondent-appellant Robeson County Board of Education.

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GORE, Judge.

The Robeson County Board of Education (the “Board”) appeals from a district court order granting Surety’s Motion to Set Aside a bond forfeiture. The Board contends the trial court lacked statutory authority to set aside the bond forfeiture under N.C.G.S. § 15A-544.5(f). We agree, and therefore, vacate the trial court’s Order.

On 29 March 2023, Bail Agent Yazmine McLean posted a \$4,000 bond for defendant Daniel Love on behalf of Palmetto Surety Corporation (“Surety”). On the Conditions of Release and Release Order filed 30 March 2023, the trial court expressly found that “defendant was arrested and surrendered after failing to appear as required under a prior release order,” and that “[t]his was the defendant’s second or subsequent failure to appear in this case.” Defendant was then called and failed to appear again on 19 April 2023. The trial court ordered the bond forfeited on 21 April 2023.

On 21 June 2023, Bail Agent Bartholomew Dixon filed a timely Motion to Set Aside the bond forfeiture on Surety’s behalf claiming that a set aside was proper under N.C.G.S. § 15A-544.5(b)(2). Bail Agent Dixon attached a printout from the Automated Criminal/Infractions System (“ACIS”) that showed defendant’s underlying criminal case had been resolved by a voluntary dismissal on 14 June 2023.

The Board timely filed an objection to surety's motion on 11 July 2023.¹

After a hearing on the matter, and in a written order entered 23 August 2023, the trial court found that Surety had established grounds for the set aside under § 15A-544.5(b)(2) and granted the motion. On 18 September 2023, the Board timely filed notice of appeal to this Court from the trial court's Order. "An order on a motion to set aside a forfeiture is a final order or judgment of the trial court for purposes of appeal." N.C.G.S. § 15A-544.5(h) (2023). Thus, this Court has jurisdiction to hear the Board's appeal pursuant to N.C.G.S. § 7A-27(b)(2).

On appeal, the Board contends the trial court lacked statutory authority to grant relief from a bond forfeiture under § 15A-544.5(f). We agree.

"When the trial court sits without a jury, the standard of review for this Court is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *State v. Dunn*, 200 N.C. App. 606, 608 (2009) (citation omitted).

"In North Carolina, forfeiture of an appearance bond is controlled by statute." *State v. Robertson*, 166 N.C. App. 669, 670 (2004). Section 15A-544.5(a) provides that "[t]here shall be no relief from a forfeiture except as provided in this section[.]" and that "[s]ubsection[] (f) . . . of this section appl[ies] regardless of the reason for relief given or the procedure followed." § 15A-544.5(a). Subsection (f) states:

¹ The Board is authorized to object to motions to set aside filed by sureties and to appeal district court orders setting aside forfeitures pursuant to N.C.G.S. § 15A-544.5(d)(3) and (h).

No forfeiture of a bond may be set aside for any reason in any case in which the surety or the bail agent had *actual notice* before executing a bail bond that the defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed. *Actual notice* as required by this subsection shall only occur *if two or more failures to appear are indicated on the defendant's release order* by a judicial official. The judicial official shall indicate on the release order when it is the defendant's second or subsequent failure to appear in the case for which the bond was executed.

§ 15A-544.5(f) (emphasis added).

Here, the record shows defendant was called twice, and he twice failed to appear in this case. Defendant's two previous failures to appear resulted in orders for his arrest, and ultimately, civil judgments of bond forfeiture. Defendant was released on bond once again on 29 March 2023. The Conditions of Release and Release Order filed 30 March 2023 clearly indicates that "defendant was arrested and surrendered after failing to appear as required under a prior release order[.]" and that "[t]his was defendant's second or subsequent failure to appear in this case."

Under the plain language of § 15A-544.5(f), and in accordance with our decision in *State v. Hinnant*, "a properly marked release order is *per se* sufficient evidence of 'actual notice.' The State is not required to produce any additional evidence—including evidence that the surety or bail agent actually saw the release order before executing the bail bond." 255 N.C. App. 785, 790–91 (2017).

Surety does not contest that it had actual notice of defendant's two previous failures to appear, and Surety has not offered proof that the release order was

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otherwise inaccurate. Here, as stated in *Hinnant*, “the record on appeal shows that the *only* evidence before the trial court related to the issue of notice was the *exact* evidence required to show ‘actual notice’ under N.C.G.S. § 15A-544.5(f).” *Id.* at 971.

Thus, we determine that the record conclusively establishes that the trial court lacked authority to set aside the forfeiture of a bond “for any reason” because “the surety or the bail agent had *actual notice* before executing a bail bond that . . . defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed.” § 15A-544.5(f) (emphasis added). We, therefore, vacate the trial court’s Order.

VACATED.

Judges CARPENTER and WOOD concur.

Report per Rule 30(e).