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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1044

Filed 2 July 2024

Robeson County, No. 20CRS054015

STATE OF NORTH CAROLINA

v.

ALBERT RAY LOCKLEAR, JR., Defendant,

and

TERESA A. BLUE, Bail Agent,

and

1st ATLANTIC SURETY COMPANY, Surety.

Appeal by Robeson County Board of Education from orders entered 8 May 2023
by Judge Tiffany Powers in Robeson County Superior Court. Heard in the Court of
Appeals 3 April 2024.

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

Practus, LLP, by M. Brad Hill, for defendant-appellee.

FLOOD, Judge.

The Robeson County Board of Education (the “Board”) appeals from the superior court’s orders setting aside a bond forfeiture.¹ On appeal, the Board argues the superior court erred in (1) setting aside the forfeiture and (2) considering a second, untimely motion to set aside the forfeiture. Our review of the Record reveals the superior court exceeded its statutory authority to set aside the forfeiture under these circumstances and further, that the second motion was, in fact, untimely and should not have been granted. Accordingly, we vacate the superior court’s orders.

I. Factual and Procedural Background

On 5 October 2022, Charles B. Shaw, a bail agent on behalf of 1st Atlantic Surety Company (“Surety”), posted a bond for Defendant Albert Locklear, in the amount of \$10,000. Defendant was to appear in Robeson County Superior Court on 7 November 2022 for felony probation violation charges. Defendant, however, failed to appear on 7 November 2022, and an order for his arrest was issued on 10 November 2022. That same day, the superior court judge entered a bond forfeiture notice for Defendant’s bond and set a final judgment date of 13 April 2023, the date upon which the forfeiture of the bond would become binding if no further action was taken. Notice of the forfeiture was issued to Shaw and Surety on 14 November 2022.

On the final judgment date of 13 April 2023, the day the forfeiture would

¹ Bond forfeiture funds remit to the county school fund to maintain free public schools. N.C. Const. Art. IX § 7. A county board of education may object to a motion to set aside a pending forfeiture pursuant to N.C. Gen. Stat. § 15A-544.5(d)(3). N.C. Gen. Stat. § 15A-544.5(d)(3) (2023).

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become binding, Teresa Blue, another bail agent of Surety, filed a Motion to Set Aside the pending forfeiture (the “First Motion”). Blue asserted that Defendant was in Buffalo, New York but could not be detained because the State had not entered Defendant’s arrest warrant into the Federal Bureau of Investigation’s National Crime Information Center (the “NCIC”). Attached to the First Motion was a notice sent on 20 October 2022 from the Robeson County Clerk’s Office to Defendant stating that Defendant’s case was scheduled for a hearing on 7 November 2022. Nothing else was included with the First Motion.

The Board timely objected to the First Motion on 24 April 2023. Nearly a month after the 13 April 2023 statutory deadline, Blue filed a second Motion to Set Aside the pending forfeiture (the “Second Motion”), stating that Defendant had been surrendered on 2 May 2023. Attached to the Second Motion was proof of Defendant’s surrender. The Second Motion was served upon the Board via personal delivery by Blue; however, the Board did not object to the Second Motion.

An eight-minute hearing on the Board’s objection to the First Motion was held on 8 May 2023. At the hearing, Blue restated that Defendant had been in Buffalo, New York at the time he was due to appear in court on 7 November 2022; however, Blue and Surety had not been able to apprehend Defendant and surrender him until 2 May 2023. The superior court found that Blue and Surety had established “one or more of the reasons specified in G.S. 15A-544.5 for setting aside forfeiture” and ordered the forfeiture be set aside. This order was signed 17 May 2023 (the “First

Order”).

The superior court, however, also signed the Second Motion on the same day, without any official notice to the parties, ordering the forfeiture to be set aside (the “Second Order”). The Board states it only learned of this Second Order when requesting the court file for this appeal.

The Board appealed the First Order on 6 June 2023. In its notice of appeal, the Board specified it was appealing from the First Order “entered in open court on the 8th of May 2023 and signed on May 17, 2023.”

II. Jurisdiction

This Court has jurisdiction to review an appeal from a final judgment from a superior court pursuant to N.C. Gen. Stat. § 7A-27(b). N.C. Gen. Stat. § 7A-27(b)(1) (2023). An order to set aside a forfeiture is a final judgment. N.C. Gen. Stat. § 15A-544.5(h) (2023). An appeal must “designate the judgment or order from which appeal is taken[.]” N.C.R. App. P. 3(d).

On appeal, the Board argues that this Court should review the Second Order, despite the Board not explicitly raising the issue on appeal because, until requesting the court file for this appeal, it was unaware a second order was signed. Blue and Surety argue, however, that because the Board failed to take appeal from the Second Order, this appeal is moot, and thus, this Court is without jurisdiction. Particularly, Blue and Surety contend that even if this Court were to grant relief from the First Order, the Second Order—which granted the same relief as the First Order—is still

in place, thus rendering the Board's appeal moot. *See Roberts v. Madison Cnty. Realtors Ass'n, Inc.*, 344 N.C. 394, 398–99, 474 S.E.2d 783, 787 (1996) (“A case is ‘moot’ when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.”).

This Court has held that “a notice of appeal should be deemed sufficient to confer jurisdiction on the appellate court [of] any issue if, from the content of the notice, it is likely to put an opposing party on guard the issue will be raised[.]” *Smith v. Independent Life Ins. Co.*, 43 N.C. App. 269, 274, 258 S.E.2d 864, 867 (1979). We may

liberally construe a notice of appeal . . . to determine whether it provides jurisdiction[.] [A] mistake in designating the judgment . . . should not result in loss of the appeal as long as the intent to appeal from a specific judgment can be *fairly inferred* from the notice and the appellee is not misled by the mistake.

Strauss v. Hunt, 140 N.C. App. 345, 350, 536 S.E.2d 636, 640 (2000). Additionally, even “if a party technically fails to comply with procedural requirements in filing papers with the court, [this Court] may determine that the party complied with the rule if the party accomplishes the ‘*functional equivalent*’ of the requirement.” *Id.* at 350, 536 S.E.2d at 640.

In *Strauss*, this Court determined that while the defendant had failed to appeal one of two orders, the order that was not appealed “was based on the same grounds as the two disputed assignments of error[.]” *Id.* at 350, 536 S.E.2d at 640. We

reasoned that it could “be plainly inferred that defendant intended to appeal” from both orders. *Id.* at 350, 536 S.E.2d at 640.

Here, the Board appealed from the only order it was aware had been signed—the First Order. Despite this technical error, the two orders are based on the same ground of disputes—ordering the forfeiture to be set aside. Like *Strauss*, in which this Court held it could be plainly inferred the defendant intended to appeal from both orders that were based on the same grounds, it can be plainly inferred here that the Board would have intended to appeal both orders, especially if the Board had known the Second Order was signed. *See id.* at 350, 536 S.E.2d at 640. Because both orders grant the same relief, this Court concludes the Board complied with the procedural rules by accomplishing the functional equivalent and appealing the relief that was granted. *See id.* at 350, 536 S.E.2d at 640.

Thus, this Court has jurisdiction to hear the appeal from both the First and Second Orders, and the appeal is not moot. *See id.* at 350, 536 S.E.2d at 640.

III. Standard of Review

This Court reviews a superior court’s order setting aside a bond forfeiture to determine whether there was “competent evidence to support the [superior] court’s findings of fact and whether its conclusions of law were proper in light of such facts.” *State v. Hinnant*, 255 N.C. App. 785, 787, 806 S.E.2d 346, 347 (2017) (citation omitted). “Questions of law, including matters of statutory construction, are reviewed *de novo*.” *Hinnant*, 255 N.C. App. at 787, 806 S.E.2d at 347–48. “Under a *de novo*

review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Parker*, 290 N.C. App. 650, 653, 893 S.E.2d 544, 547 (2023), *rev. denied*, 898 S.E.2d 308 (N.C. 2024) (citation omitted) (cleaned up).

IV. Analysis

On appeal, the Board argues the superior court erred in (1) setting aside the forfeiture and (2) considering a second, untimely motion to set aside the forfeiture.

A. First Order

“Bail bond forfeiture in North Carolina is governed by N.C. Gen. Stat. §§ 15A-544.1 – 544.8.” *State v. Roulhac*, 273 N.C. App. 396, 398, 848 S.E.2d 512, 513 (2020) (citation omitted) (cleaned up). If a defendant fails to appear in court after the execution of a bond, “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) (2023).

The court may not grant relief from a forfeiture except as provided in N.C. Gen. Stat. § 15A-544.5(b). *See* N.C. Gen. Stat. § 15A-544.5(a) (2023) (“There shall be no relief from a forfeiture except as provided in this section. The reasons for relief are those specified in subsection (b) of this section.”). Subsection (b) of Section 15A-544.5 explains the nine reasons relief may be granted:

- (1) The defendant’s failure to appear has been set aside by the court and any order for arrest issued for that failure to appear has been recalled, as evidenced by a copy of an

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official court record, including an electronic record.

(2) All charges for which the defendant was bonded to appear have been finally disposed by the court other than by the State's taking dismissal with leave, as evidenced by a copy of an official court record, including an electronic record.

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question as evidenced by a copy of an official court record, including an electronic record.

(5) The defendant died before or within the period between the forfeiture and the final judgment as demonstrated by the presentation of a death certificate.

(6) The defendant was incarcerated in a unit of the Division of Prisons of the Department of Adult Correction and is serving a sentence or in a unit of the Federal Bureau of Prisons located within the borders of the State at the time of the failure to appear as evidenced by a copy of an official court record or a copy of a document from the Division of Prisons of the Department of Adult Correction or Federal Bureau of Prisons, including an electronic record.

(7) The defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, or any time between the failure to appear and the final judgment date, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or

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certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.

(8) Notice of the forfeiture was not provided pursuant to G.S. 15A-544.4(e).

(9) The court refused to issue an order for arrest for the defendant's failure to appear, as evidenced by a copy of an official court record, including an electronic record.

N.C. Gen. Stat. § 15A-544.5(b) (2023).

A court “*lack[s] the authority to grant*” a motion to set aside if the motion is “not premised on any ground set forth in N.C. Gen. Stat. § 15A-544.5[.]” *Roulhac*, 273 N.C. App. at 400, 848 S.E.2d at 514 (citation omitted); *see also State v. Ortiz*, 266 N.C. App. 512, 518, 832 S.E.2d 474, 478 (2019) (holding that the trial court was without authority to set aside forfeiture for any reason beyond the statute). A bail agent or surety may move to set aside the forfeiture within “150 days after the date on which notice was given[.]” N.C. Gen. Stat. § 15A-544.5(d)(1a) (2023). Only one motion per forfeiture, however, may be considered by the court. N.C. Gen. Stat. § 15A-544.5(e) (2023).

When interpreting a statute, this Court looks first to the plain meaning of the statute. *State ex rel. Util. Comm’n v. Env’t Def. Fund*, 214 N.C. App. 364, 366, 716 S.E.2d 370, 372 (2011). If the statute is “clear and unambiguous[.]” we must “give effect to the plain meaning[.]” *Id.* at 366, 716 S.E.2d at 372.

In *Ortiz*, a surety company posted a \$50,000 bond for the defendant. 266 N.C.

App. at 513, 832 S.E.2d at 475. After the defendant failed to appear in court and a notice of forfeiture was entered, the surety timely filed a motion to set aside forfeiture and alleged that the defendant had been deported. *Id.* at 513, 832 S.E.2d at 475. The trial court granted the motion, and the county’s board of education appealed. *Id.* at 514, 832 S.E.2d at 475. On appeal, we held the trial court “exceeded its statutory authority provided by Chapter 15A” and vacated the order. *Id.* at 516, 832 S.E.2d at 477. We explained that “for bonds that have not become final judgments, the trial court can only ‘set aside’ a forfeiture” for any one of the specific statutory reasons laid out in N.C. Gen. Stat. § 15A-544.5(b), and deportation is not a listed reason.² *Id.* at 517, 832 S.E.2d at 477; *see also State v. Sanchez*, 175 N.C. App. 214, 218, 623 S.E.2d 780, 782 (2005) (holding that the trial court “lacked the authority to grant surety’s motion” because it “was not premised on any ground set forth” in section 15A-544.5).

In the present case, no evidence attached to the First Motion aligns with any of the nine statutory reasons to set aside a forfeiture. The only evidence provided was the notice from the court to Defendant regarding the date of Defendant’s court appearance and Blue’s allegations that Defendant could not be picked up due to the arrest warrant not being entered into the NCIC. Neither of these pieces of evidence satisfy any of the nine reasons under N.C. Gen. Stat. § 15A-544.5(b). While the

² In *Ortiz*, there was no final judgment of forfeiture, as a motion to set aside had been filed as of the final judgment date. *See* N.C. Gen. Stat. § 15A-544.6 (2023) (“A forfeiture entered under G.S. 15A-544.3 becomes a final judgment of forfeiture without further action by the court . . . if . . . [n]o motion to set aside the forfeiture is pending on that date.”).

superior court is required to issue an order for arrest, which it did here, under N.C. Gen. Stat. § 15A-544.5(b), the superior court is not required to enter the warrant into the NCIC. *See* N.C. Gen. Stat. § 15A-544.5(b).

Thus, because no competent evidence supports the superior court's finding, the superior court exceeded its authority to set aside the forfeiture. For that reason, we vacate the First Order. *See Hinnant*, 255 N.C. App. at 787, 806 S.E.2d at 347; *see also Ortiz*, 266 N.C. App. at 516, 832 S.E.2d at 477.

B. Second Order

“A motion to set aside . . . may be filed at any time before the expiration of 150 days after the date on which notice was given[.]” N.C. Gen. Stat. § 15A-544.5(d)(1a). Our courts are “without authority . . . to extend the time limits proscribed [in N.C. Gen. Stat. § 15A-544.5(d)].” *State v. Williams*, 218 N.C. App. 450, 452, 725 S.E.2d 7, 9 (2012). Parties, however, are not without relief after the 150 days. Under N.C. Gen. Stat. § 15A-544.8, a surety or bail agent may request relief from the court *after* a final judgment on the forfeiture has been entered. *See* N.C. Gen. Stat. § 15A-544.8 (2023).

In *Williams*, a surety company filed a motion to set aside the day after the 150-day statutory limit expired. *Id.* at 452, 725 S.E.2d at 9. The surety company had surrendered the defendant on the last day of the statutory period but did not file the motion until the following day due to the courthouse being closed in the evening. *Id.* The trial court denied the motion to set aside. *Id.* at 451, 725 S.E.2d at 8. On appeal,

we affirmed the trial court’s denial, holding that “[b]ecause the statute is clear and unambiguous, we are without authority to interpret N.C. Gen. Stat. § 15A–544.5(d) to extend the time limits[.]” *Id.* at 450, 452, 725 S.E.2d at 9.

Here, Blue and Surety filed the Second Motion almost a month after the 150-day statutory time limit had expired. Thus, the superior court was without authority to grant the untimely Second Motion. *See id.* at 450, 452, 725 S.E.2d at 9; *see also* N.C. Gen. Stat. § 15A-544.8. For that reason, we vacate the Second Order.

V. Conclusion

We hold the superior court exceeded its statutory authority to set aside the forfeiture when the moving party failed to prove any of the nine statutory reasons for setting aside forfeiture under N.C. Gen. Stat. § 15A-544.5(b). Additionally, where the statute is clear and unambiguous regarding time limits, the superior court may not consider a motion to set aside pursuant to N.C. Gen. Stat. § 15A-544.5 that was filed after the 150-day period. Where the superior court exceeded its authority, we vacate its orders.

VACATED.

Judge ARROWOOD concurs.

Judge WOOD dissents in separate writing.

Report per Rule 30(e).

WOOD, Judge, dissenting.

The purpose of the bond statutes is to “protect the State's interest in releasing criminal defendants before trial while ensuring that those defendants return to court for their criminal proceedings.” *State v. Lemus*, 273 N.C. App. 155, 162, 848 S.E.2d 239, 244 (2020) (citations omitted). When Defendant was surrendered and taken into custody after he failed to appear in court, the purpose of the bond was fulfilled.

As an initial matter, a careful review of the record reveals that the Board failed to correctly designate the order from which it appeals. The Board specifically appealed the order entered on 17 May 2023, not the order entered on 8 May 2023. For the reasons explained herein, I would hold that the motion to set aside forfeiture was timely and included sufficient evidence to establish grounds to set aside, as it was properly amended by the filing of the second motion to set aside. Therefore, I would affirm the trial court’s 8 May 2023 order. I would further hold that the trial court’s second, additional order to set aside forfeiture, entered on 17 May 2023, was superfluous and of no effect, as the first order entered resolved all issues relevant to the action. Because the second order entered on 17 May 2023 is moot, the Board’s appeal is moot and should be dismissed. Therefore, I respectfully dissent from the majority opinion holding to vacate the orders to set aside forfeiture.

I. Background

Albert Ray Locklear, Jr. (“Defendant”) was arrested and in the custody of

Robeson County Detention Center, where his pre-trial release was contingent upon posting a \$10,000.00 secured bond. On 5 October 2022, Charles B. Shaw, a bail agent on behalf of 1st Atlantic Surety Company (“Surety”), posted Defendant’s bond. Defendant failed to appear on 7 November 2022 for his scheduled trial. The trial court issued an order for his arrest on 10 November 2022. The Robeson County Clerk of Court entered a bond forfeiture notice, with a final judgment date of 13 April 2023, and served both Shaw and Surety with the forfeiture notice on 14 November 2022.

On 13 April 2023, Teresa A. Blue, (“Blue”), an agent acting on behalf of Surety, filed a Motion to Set Aside or in the alternative, a Motion for Relief (“Motion One”). Motion One was not on the pre-printed standard AOC-CR-213 form. Motion One alleged, “Surety attempted to have [D]efendant detained because he was in Buffalo NY and returned to NC, however the State had failed to record the order of arrest with the Federal Bureau of Investigation’s National Crime Information Center (NCIC).” Motion One included documentation of Defendant’s notice of his scheduled appearance on 7 November 2022. On 24 April 2023, the Robeson County Board of Education (“Board”) filed an objection to Motion One and noticed the objection for hearing on 8 May 2023.

On 2 May 2023, Surety surrendered Defendant to the Robeson County Sheriff and he was taken into custody that same day. On 5 May 2023, Blue filed a Motion to Set Aside Forfeiture (“Motion Two”) on the pre-printed AOC-CR-213 Bond Forfeiture Notice form (“the Form”). Blue on behalf of Surety noted that Defendant had been

surrendered by the Surety and attached documentation of Defendant's surrender to the Robeson County Sheriff. The majority refers to the form filed on 5 May 2023 as "Motion Two"; however, I would hold it operated as an "Amendment to the Motion to Set Aside Forfeiture." The 5 May 2023 motion contained the statement: "Also see motion to set aside dated 4-13-23." Additionally, "Motion Two" included proof of service on the Board evidenced by a signed certificate of service certifying that Blue had personally delivered a copy of "Motion Two" to both the district attorney and the attorney for the Board. The form contains a section titled, "Objection and Notice of Hearing" where the Board may note its objection. Beside this section a handwritten note stated: "see objection dated 4-24-23." On 8 May 2023, the trial court held a hearing on the Board's objection to set aside the bond forfeiture.

At the hearing, an agent on behalf of Surety informed the trial court that Defendant was working in New York on the date of his scheduled appearance. The agent explained the many attempts Surety had made to have Defendant's arrest warrant entered in the NCIC system so that law enforcement in New York could pick up Defendant and Surety could then surrender him to the Robeson County Sheriff. Due to the failure to enter Defendant's order for arrest in NCIC, Surety lacked the authority to apprehend Defendant which delayed his return and surrender to North Carolina authorities until 2 May 2023. The agent further informed the trial court that Defendant had been arrested and surrendered prior to the hearing. After reviewing the evidence and arguments from the parties, the trial court ordered the

forfeiture to be set aside.

Following the hearing, on that same day, the trial court found that “the moving party has established one or more of the reasons specified in G.S. 15A-544.5 for setting aside the forfeiture” and ordered that the forfeiture be set aside. The trial court filled out the appropriate finding on the Form in the box titled Order on Objection (“Order One”) and signed and filed the order. On 17 May 2023, the trial court signed and filed an additional order (“Order Two”) also purporting to set aside the forfeiture stating “[t]his Court finds that the moving party has established one or more of the reasons specified in G.S. 15A-544.5 for setting aside that forfeiture” and “it is [ordered] that the Motion is allowed.” On 6 June 2023, the Board filed a notice of appeal of the 17 May 2023 order.

II. Analysis

A. Jurisdiction

In its notice of appeal, the Board designates the “Surety’s motion to set aside, entered in open court on the 8th day of May 2023, and signed on May 17, 2023” as the order from which it now appeals. Thus, the Board specifically appeals the Second Order but not the First Order. The majority accepts the Board’s argument that it served notice of appeal from the only order that it knew had been signed, the Second Order. In doing so, the majority concludes this Court has jurisdiction to hear the appeal from both orders, as “it can be plainly inferred here that the Board would have intended to appeal both orders” if it was aware of the First Order and because both

orders grant the same relief. However, I disagree. In my view, even if the Board did not know about Order One when it was entered, the Board's failure to amend its notice of appeal once it discovered Order One existed results in it having appealed from an order rendered moot under the facts of this case.

It is well-established that the notice of appeal must "designate the judgment or order from which appeal is taken." N.C. R. App. P. 3(d). Surety argues "[t]he failure to notice appeal of both orders is fatal to this Court's jurisdiction over the order that was not appealed." In support, Surety contends that because the Board presented arguments on appeal as to Order One and Order Two, the Board cannot now claim on appeal that it made a mistake when designating the judgment. I agree. The notice explicitly limited review to Order Two and therefore, this Court lacks jurisdiction to hear arguments concerning Order One.

A case is considered moot when "a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Lange v. Lange*, 357 N.C. 645, 647, 588 S.E.2d 877, 879 (2003) (citation omitted). "Conversely, when a court's determination can have a practical effect on a controversy, the court may not dismiss the case as moot." *Id.* Here, it cannot be held that this Court's determination on Order Two can have a "practical effect" on the bond forfeiture issue since Order One was filed first and set aside forfeiture. Rather, a holding that conflicts with the disposition of Order One would lead to further controversy and confusion. For this reason, I would hold that because the Board only

appealed from Order Two, this case should be dismissed as moot.

Furthermore, as Surety correctly contends, a court may only consider one motion to set aside per forfeiture. N.C. Gen. Stat. § 15A-544.5(e). Here, it is evident the trial court considered Motion Two as an amendment to Motion One. Therefore, it properly considered one motion only, “Motion Two,” in its determination that forfeiture should be set aside, as memorialized in Order One. Thus, the trial court lacked jurisdiction to enter Order Two and anything beyond Order One was outside the scope of the trial court’s authority. Absent jurisdictional authority, Order Two was moot long before reaching this Court. Notwithstanding that mootness prohibits further review by this Court, I address the majority’s remaining analysis.

B. Bond Forfeiture Purpose and Procedure

The goal of a bail bond is to “secure the appearance of the principal in court as required.” *State v. Hollars*, 176 N.C. App. 571, 574, 626 S.E.2d 850, 853 (2006) (citation omitted). “By recognizance of bail in a criminal action the principal is, in the theory of the law, committed to the custody of the surety.” *State v. Vikre*, 86 N.C. App. 196, 199–200, 356 S.E.2d 802, 805 (1987) (citation omitted). Thus, when the bail agent on behalf of Surety posted the bond for Defendant, Defendant was released into Surety’s custody and it became responsible for his required appearance on 7 November 2022, and consequently, accountable for his failure to appear. *Id.* at 200, 356 S.E.2d at 805.

If a defendant is released upon the posting of a bail bond and subsequently fails 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.” *State v. Roulhac*, 273 N.C. App. 396, 398, 848 S.E.2d 512, 513 (2020) (citing N.C. Gen. Stat. § 15A-544.3(a)).

A forfeiture entered under [Section] 15A-544.3 becomes a final judgment of forfeiture on the one hundred fiftieth day after notice is given under [Section] 15A-544.4 if (1) no order setting aside the forfeiture under [Section] 15A-544.4 is entered on or before that date; and (2) no motion to set aside the forfeiture is pending on that date.

State v. Smith, 272 N.C. App. 193, 199, 845 S.E.2d 473, 477 (2020) (citations and internal quotations omitted). Section 15A-544.5 provides the exclusive method for relief from forfeiture prior to the forfeiture becoming a final judgment. N.C. Gen. Stat. § 15A-544.5(a).

Section 15A-544.5(b) enumerates the nine reasons by which “a forfeiture shall be set aside.” N.C. Gen. Stat. § 15A-544.5(b). In relevant part, the statute states:

(3) The defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff's receipt provided for in that section.

(4) The defendant has been served with an Order for Arrest for the Failure to Appear on the criminal charge in the case in question as evidenced by a copy of an official court record, including an electronic record.

Id. If one of the statutorily enumerated reasons is met, the party seeking to set aside the forfeiture must file a written motion, including the reason for the motion and

evidence of the grounds to set aside. *Id.* § 15A-544.5(d)(1). Thereafter, the district attorney or the county board of education may file an objection to the motion. *Id.* § 15A-544.5(d)(3). If such objection is filed, a hearing on the motion and objection must be held within 30 days. *Id.* § 15A-544.5(d)(5).

C. Motion One and Motion Two

The majority concludes that, although timely, Motion One did not satisfy any of the nine reasons for setting aside forfeiture under N.C. Gen. Stat. § 15A-544.5(b) and Motion Two was filed after the 150-day statutory time limit, thus it vacated the Motions on these grounds. I respectfully disagree with this analysis.

This Court has permitted amendments to set aside motions pursuant to Rule 15, even where the amendment occurred after the final judgment date. *State v. Isaacs*, 261 N.C. App. 696, 700-02, 821 S.E.2d 300, 304-05 (2018). In *Isaacs*, the surety filed a timely motion to set aside and attached the defendant's initial arrest warrant as evidence; but the board objected to the forfeiture being set aside. *Id.* at 697, 821 S.E.2d at 302. At the hearing, which took place well-past the 150-day statutory period, the surety moved to amend its motion to attach defendant's order for arrest for the failure to appear. *Id.* Surety requested the amendment because N.C. Gen. Stat. § 15A-544.5(b)(4) requires evidence of "an official court record" of the order for arrest. *Id.* Ultimately, the trial court granted the motion to amend and allowed the surety to attach the appropriate evidence. The trial court set aside the bond forfeiture, and this Court affirmed the trial court. *Id.* at 702, 821 S.E.2d at 305.

In affirming the trial court’s order, this Court recognized that bond forfeiture proceedings are civil matters, thus the rules of civil procedure apply. *Id.* at 700, 821 S.E.2d at 304 (citation omitted). Moreover, under “Rule 15(a) of the North Carolina Rules of Civil Procedure, leave to amend a pleading shall be freely given except where the party objecting can show material prejudice by the granting of a motion to amend.” *Id.* (citation omitted). This Court acknowledged that amending a motion to set aside is at “the discretion of the trial court” and “[r]ulings on motions to amend after the expiration of the statutory period are within the discretion of the trial court.” *Id.* at 700-01, 821 S.E.2d at 304 (citations omitted).

In the present case, Motion One was timely filed on 13 April 2023. Defendant was surrendered on 2 May 2023. Motion Two, setting forth Surety’s amended reason to set aside forfeiture, was filed on 5 May 2023. The Board was served with Motion Two, as evidenced by the signed certificate of service which indicated that the agent “personally deliver[ed] a copy.” N.C. Gen. Stat. § 1A-1, Rule 5(b1) (“The certificate shall show the date and method of service” and “[e]ach certificate of service shall be signed in accordance with and subject to Rule 11 of these rules”). Further, Motion Two contained the statements “Also see motion to set aside [Motion One]” and “see objection [to Motion One]”, which put the Board on notice that Motion Two was an amendment to Motion One.

At the hearing on 8 May 2023, the trial court heard from both parties and considered both of Surety’s filings, respectively Motion One and Motion Two. The

Board was present at the hearing, was served with notice of the amendment, and had the opportunity to object, but failed to do so. The court recognized that Defendant was surrendered and in custody by the time of the hearing, thus satisfying N.C. Gen. Stat. § 15A-544.5(b)(3) (“[t]he defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the sheriff’s receipt provided for in that section”). Since a motion to set aside must be “premised on any ground set forth in [N.C. Gen. Stat.] § 15A-544.5” and Motion Two was premised upon N.C. Gen. Stat. § 15A-544.5(b)(3), Defendant’s surrender, the court had the statutory authority to grant the motion. Furthermore, under Rule 15, “[a] claim asserted in an amended pleading is deemed to have been interposed at the time the claim in the original pleading was interposed.” N.C. Gen. Stat. 1A-1, 15(c). Thus, Motion Two “is deemed to have been interposed” at the time Motion One was filed on 13 April 2023. *Id.* Accordingly, Motion Two operated as an amendment to Motion One and was properly before the trial court. The trial court did not abuse its discretion in granting the motion.

As noted in *Isaacs*, “[t]he [b]oard’s position to not allow an amendment tends to contradict the intended policy of the bond system: [t]he goal . . . is the production of the defendant, not increased revenues for the county school fund.” *Isaacs*, 261 N.C. App. at 702, 821 S.E.2d at 305 (citation and internal quotations omitted). As in the present case, and consistent with “the primary goal of the bond[]”, Defendant was eventually surrendered and taken into custody in the appropriate county on 2 May

2023. *Vikre*, 86 N.C. App. at 199, 356 S.E.2d at 804. When considering the purpose of the bond statutes and this Court’s precedent, I would affirm the trial court’s order to set aside the forfeiture.

D. Order One and Order Two

Lastly, the parties raise arguments on appeal concerning the trial court’s entry of two orders following the hearing. On 8 May 2023, immediately following the hearing, the trial court signed and entered Order One, ordering the forfeiture to be set aside. Order One was completed on the reverse side of an AOC Form used by Surety to file Motion Two and filled out under the “Order” section. Subsequently, on 17 May 2023, the trial court entered Order Two.

As a preliminary matter, the majority refers to Order One as the “Second Order”; however, Order One was signed and entered first, following the hearing on 8 May 2023. Similarly, the majority refers to Order Two as “First Order”, but this additional order was not signed and filed until 17 May 2023. Ultimately, the majority vacated Order Two on the basis that the trial court exceeded its authority to set aside the forfeiture, as the evidence did not “satisfy any of the nine reasons under N.C. Gen. Stat. § 15A-544.5(b).” Further, the majority vacated Order One, contending the trial court was without authority to grant Motion Two, since the 150-day statutory time limit had expired. I respectfully disagree.

As discussed *supra*, Motion Two amended Motion One, thus Motion Two did not exceed the 150-day statutory period. With proper grounds – Defendant’s

surrender – pursuant to N.C. Gen. Stat. § 15A-544.5(b)(3), the trial court properly granted Surety’s motion to set aside and denoted its ruling in Order One. Once Order One was signed and filed by the trial court on 8 May 2023, the case became final and appealable. Although the majority vacates both Order One and Order Two, I would affirm Order One and designate Order Two as “moot.”

Order One was a final order, as “[a] final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court.” *Veazey v. City of Durham*, 231 N.C. 357, 361-362, 57 S.E.2d 377, 381 (1950) (citations omitted); *see also* N.C. Gen. Stat. § 15A-544.5(h) (“An order on a motion to set aside a forfeiture is a final order or judgment of the trial court for purposes of appeal.”). Order One resolved the bond forfeiture issue and there was nothing left to be determined in the action. As a result, Order One was immediately appealable under N.C. Gen. Stat. § 7A-27(b)(2), which provides that an appeal as of right exists “from any final judgment of a district court in a civil action.” However, the Board did not appeal from Order One. Because Order One was a final order, Order Two was superfluous and had no effect on the outcome of the bond forfeiture. With the issue having been decided by an order signed and filed, Order Two had no effect and is moot.

III. Conclusion

Because the record reflects that Motion Two was an amendment to Motion One, the trial court did not abuse its discretion in allowing the amendment and

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WOOD, J., dissenting

setting aside forfeiture. Further, Order One was signed and entered the same day by the trial court following the 8 May 2023 hearing. Because Order One disposed of the bond forfeiture issue, Order Two was superfluous and moot, and thus the appeal of Order Two is moot. Accordingly, I would affirm the trial court's 8 May 2023 Order, Order One, granting Surety's motion to set aside forfeiture. Therefore, I respectfully dissent.