



State v. Auber

2024-Ohio-1318 (2024) | Cited 0 times | Ohio Court of Appeals | March 21, 2024

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT BELMONT COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

TIMOTHY MICHAEL AUBER,

Defendant

AND

AMERICAN FIRE INSURANCE COMPANY

AND

A-1 BAIL BONDS, INC. (AND TOM COTA, LICENSED SURETY BAIL AGENT),

Appellants.

OPINION AND JUDGMENT ENTRY Case No. 23 BE 0024

Criminal Appeal from the Court of Common Pleas of Belmont County, Ohio Case No. 19 CR 51

BEFORE: Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT: Dismissed. Atty. J. Kevin Flanagan, Belmont County Prosecuting Attorney and Atty. Jacob Manning, Assistant Prosecuting Attorney, for Plaintiff-Appellee

Atty. Gary Rosenhoffer, for Appellants



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Dated: March 21, 2024

PER CURIAM.

{¶1} Appellants American Fire Insurance Company, A-1 Bail Bonds, Inc. and Tom Cota, licensed surety bail agent, posted a surety bond for Timothy Michael Auber in a matter where he was criminally charged. Appellants filed an appeal following the denial of a motion for remission of the bond by the trial court. However, for the reasons set forth herein, this appeal is moot and must be dismissed.

History of the Case

{¶2} A review of the procedural posture underlying this appeal is necessary to fully understand our decision in this matter. Auber was charged with two counts of aggravated possession of drugs, a fifth-degree felony in violation of R.C. 2925.11(A)(1)(a), and one count of aggravated possession of drugs, a third-degree felony in violation of R.C. 2925.11(A) and R.C. 2925.11(C)(1)(b). On February 21, 2019, Auber waived his right to a preliminary hearing in the Eastern Division County Court in Belmont County and the case was bound over to the Grand Jury of Belmont County and the Belmont County Court of Common Pleas. Auber was released on a recognizance bond.

{¶3} On May 14, 2019, a bind-over review hearing was scheduled to be held in the Belmont County Court of Common Pleas. Auber failed to appear, and a warrant was issued for his arrest. On November 5, 2020, the trial court scheduled a second review hearing after 2020 and Auber continued to be held without bond. Due to injuries sustained in a traffic accident that occurred while he was in custody, Auber was unable to attend the November



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9 hearing and the matter was again rescheduled.

{¶4} On November 12, 2020, the bind-over review hearing was held. The State

planned to present the charges against Auber to the Grand Jury on December 7, 2020.

and imposed other

conditions. On November 17, 2020, Appellants posted a surety bond for Defendant Auber

and he was released.

{¶5} On November 23, 2020, another warrant was issued for Auber due to his

failure to meet with his pretrial supervisor. On January 11, 2021, Auber appeared before

the trial court for a review of his bond. The bind-over review hearing was rescheduled at

bond.

{¶6} On January 25, 2021, Auber failed to appear for the bind-over review

hearing. His previously reinstated bond was revoked. The trial court scheduled a bond

show cause as to why the surety should not be Ordered to pay the amount of the bond to

the C

{¶7} On January 29, 2021, Appellants filed a motion seeking release from their

obligations pursuant to the surety bond posted for Auber. On the same day, the trial court

{¶8} On March 1, 2021, the bond forfeiture hearing was held. Appellant Cota

appeared without counsel. Following the hearing, the trial court issued a judgment entry

providing: and forfeit that amount to the Clerk. However, the Court will stay execution of the forfeiture Order to permit the surety to capture Defendant. That is, the forfeiture Order is

stayed until Monday, March 29, 2021, at 1:00 p.m. If Defendant is not in custody of the



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Belmont County Sheriff by then, Tom Cota is Ordered to pay the amount of \$10,000.00

As Auber was not apprehended, on March 30, 2021, the trial court

issued a show cause entry when the payment was not made.

{¶9} On April 16, 2021, Appellants filed a motion seeking release of their

obligations associated with bond. On the same day, the trial court conducted a

show cause hearing. Appellant Cota and Appellant A-1 appeared for the hearing. The

trial court issued an entry in which it provided two alternative options for Appellants to

resolve the contempt charge. The parties elected the second:

The second was an agreed stay of execution of the forfeiture Order followed

by a stipulated and Ordered forfeiture date. Both sides agreed to this

second option and to the following stipulated terms:

1. Execution on the forfeiture Order is stayed until Friday, June 11, 2021,

at 12:00 p.m.;

2. be vacated and both sureties will be released from further responsibility;

and

3. will pay and forfeit the amount of \$10,000.00 to the Clerk on or before

Monday, June 14, 2021. (April 20, 2021 Trial Court Judgment Entry.)

{¶10}

with the Court, advising that Auber was being held by law enforcement authorities in West

Virginia. On June 7, 2021, Appellants paid the forfeiture bond as ordered by the trial court

in the amount of \$10,000.



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{¶11} The case against Auber was ultimately resolved in Belmont County. Auber entered a guilty plea to two counts of aggravated possession of drugs in violation of R.C. 2925.11(A)(C)(1)(a), a fifth-degree felony, and one count of aggravated possession of drugs in violation of R.C. 2925.11(A)(C)(1)(b), a third-degree felony. The trial court sentenced Auber to a total term of 24 months of imprisonment.

{¶12} On May 23, 2023, Appellants filed a motion for remission, which was denied. This decision forms the basis of this appeal.

Mootness

{¶13} U.S. Bank Natl. Assn. v. Marcino, 7th Dist. No. 09 JE 29, 2010-Ohio-6512, ¶ 7. Nearly two years after payment of the forfeiture bond as ordered by the trial court, Appellants filed a motion with the trial court seeking remission. However, Appellants had voluntarily paid the \$10,000 in satisfaction of the forfeiture order on June 7, 2021.

{¶14} It is well-settled law that satisfaction of a judgment renders an appeal moot.

Blodgett v. Blodgett, 49 Ohio St.3d 243, 551 N.R.2d 1249, 1250 (1990). court rendering judgment has jurisdiction of the subject-matter of the action and of the

parties, and fraud has not intervened, and the judgment is voluntarily paid and satisfied, such payment puts an end to the controversy, and takes away from the defendant the

Id., quoting

Rauch v. Noble, 169 Ohio St. 314, 316, 8 O.O.2d 315, 316, 159 N.E.2d 451, 453 (1959),

quoting Lynch v. Lakewood City School Dist. Bd. of Edn., 116 Ohio St. 361, 156 N.E. 188



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(1927), paragraph three of the syllabus.

{¶15} There is no evidence in the record to suggest that payment of the \$10,000 involved any duress. Similarly, there is no evidence in the record to suggest this payment was made as the result of any fraudulent actions. In fact, not only did Appellants voluntarily surrender the \$10,000 bond forfeiture, they did so early. As ordered by the trial court, payment was not due until June 14, 2021. Appellants satisfied the forfeiture order on June 7, 2021. It is important to note Appellants agreed to the forfeiture payment and paid the same as a resolution of the show cause hearing held on April 16, 2021. Appellants did not seek remission of the bond pursuant to R.C. 2937.39 until nearly two years later.

{¶16} R.C. 2937.39 provides for remission as follows: After judgment has been rendered against surety or after securities sold or cash bail applied, the court or magistrate, on the appearance, surrender, or re-arrest of the accused on the charge, may (Emphasis added).

{¶17} -

appearance bond remission pursuant to R.C. 2937.39, a trial court should balance the reappearance of the accused and the efforts expended by the surety to effectuate the reappearance against the inconvenience, expense, and delay suffered by the state and

State v. Smith, 7th Dist. No. 05 JE 49, 2006- Ohio-4614, ¶ 44, quoting State v. Jackson, 153 Ohio App.3d 520, 795 N.E.2d 57, 2003-

Ohio-2213, at ¶ 9. However, Appellants did not avail themselves of this remedy.



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{¶18} If Appellants sought to recoup all or a portion of the penalty assessed, Appellants should have sought the relief afforded in R.C. 2937.39 prior to the payment of the \$10,000 judgment and certainly prior to nearly two years after such payment.

Appellant chose not to avail themselves of this statutory remedy and instead satisfied the judgment without seeking remission.

{¶19} Appellants chose to pay the forfeiture as ordered in lieu of pursuing other legal remedies to stay enforcement or to otherwise dispute the order. In addition, Appellants took no action for nearly two years after payment. The satisfaction of judgment in this case renders this appeal moot. To proceed without an actual controversy would amount to *Freedom Mtge. Corp. v. Boston*,

7th Dist. No. 14 CO 0036, 2016-Ohio-7016, ¶ 9, quoting *Cincinnati Gas & Elec. Co. v. Pub. Util. Comm.*, 103 Ohio St.3d 398, 2004-Ohio-5466, 816 N.E.2d 238, ¶ 17-18.

Dismissal is the appropriate remedy for a moot appeal.

{¶20} Therefore, this appeal is hereby dismissed. Costs to be paid by Appellants.

JUDGE CHERYL L. WAITE

JUDGE CAROL ANN ROBB

JUDGE MARK A. HANNI NOTICE TO COUNSEL

This document constitutes a final judgment entry.

