



THORNBURG v. STATE

2024 OK CIV APP 30

Case Number: [121736](#)

Decided: 10/02/2024

Mandate Issued: 10/24/2024

DIVISION I

THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION I



Cite as: 2024 OK CIV APP 30, __ P.3d __

See Okla. Sup.Ct.R. 1.200 before citing.

DANA THORNBURG, Appellant,

v.

STATE OF OKLAHOMA, Appellee.

APPEAL FROM THE DISTRICT COURT OF
GARFIELD COUNTY, OKLAHOMA

HONORABLE PAUL K. WOODWARD, TRIAL JUDGE

AFFIRMED

Nicholas S. Lee, LEE LAW FIRM, PLLC, Oklahoma City, Oklahoma, for Appellant,

Sean K. Hill, GARFIELD COUNTY DISTRICT, ATTORNEY'S OFFICE, Enid, Oklahoma, for Appellee.

THOMAS E. PRINCE, JUDGE:

¶1 Dana Thornburg (Appellant) has appealed the trial court's denial of her Motion to Exonerate Bond, in which she sought to exonerate the surety bond posted on behalf of Defendant, Jianguo Zeng, who failed to appear at a scheduled hearing. Thornburg alleged that Zeng had been deported to China, not only delaying her efforts to locate Zeng, but making his return an impossibility of his return due to China's extradition policies. Based thereon, Thornburg argued the existence of "good cause" pursuant to [59 O.S. § 1332](#), leading to her Motion to Exonerate Bond. The trial court denied Thornburg's Motion, citing to the State's oral objection that the bondsman "assumed the risk of bonding a foreign national," and it is the trial court's denial of her Motion to Exonerate Bond from which Thornburg sought appellate review.

BACKGROUND

¶2 Dana Thornburg served as the bail bondsman for Jianguo Zeng, a Chinese national in the United States on a work visa. Thornburg posted a surety bond for Zeng in case No. CF-2022-142, in the District Court of Garfield County, on May 12, 2022, in the amount of \$75,000. Zeng thereafter appeared before the trial court seven (7) times. He failed to appear for the pretrial conference on May 15, 2023. The trial court entered a bench warrant and bond forfeiture on that date (i.e., May 15, 2023).

¶3 On May 20, 2023, Thornburg received notice of the bond forfeiture and began her efforts to locate Zeng, first by contacting all of Zeng's known phone numbers and addresses. ¹ Upon learning that Zeng's phone number had been disconnected and that he no longer resided at the address given, Thornburg requested the Garfield County Sheriff's Office to enter Zeng in the National Crime Information Center (NCIC) database. On June 15, Thornburg hired a bounty hunter, Frank Torres, to locate Zeng and return him to custody in Garfield County. Through his connections with federal law-enforcement agencies, Torres

learned that Zeng had been deported to China on or about May 12, 2023, after his work visa had been revoked, and that the Chinese government would not permit a bounty hunter from the United States to enter into China to bring a Chinese national back to the United States, nor would China extradite Zeng to face his pending criminal charges.

¶4 On August 11, 2023, Thornburg requested an extension of the 90-day forfeiture time in order to continue her search for Zeng, which the trial court granted, extending the deadline to September 28, 2023. On September 14, 2023, Thornburg filed a Motion to Exonerate Bond, alleging that Zeng's deportation and Thornburg's subsequent efforts to return Zeng to custody constituted "good cause" to exonerate the surety bond. The State of Oklahoma filed no response to Thornburg's Motion. The trial court conducted a hearing on Thornburg's Motion to Exonerate on October 2, 2023. Neither party disputed the facts, but the State of Oklahoma orally objected to Thornburg's Motion to Exonerate, contending that the bondsman assumed the associated risk when bonding a foreign national. The trial court, ultimately, denied Thornburg's Motion to Exonerate Bond and Thornburg initiated this timely appeal.

STANDARD OF REVIEW

¶5 Thornburg's singular allegation of error on appeal is whether the trial court erred in finding that it was not good cause to exonerate a criminal defendant's bond after he had been deported. A trial court's decision whether to vacate a bond forfeiture will not be disturbed absent an abuse of discretion. *State v. Vaughn*, 2000 OK 63, ¶ 21, 11 P.3d 211, 216. Abuse of discretion review includes appellate review of both fact and law issues. *Christian v. Gray*, 2003 OK 10, ¶ 43, 65 P.3d 591, 608. An abuse of discretion occurs when a court bases its decision on an erroneous conclusion of law, or where there is no rational basis in evidence for the ruling. *Fent v. Oklahoma Natural Gas Co.*, 2001 OK 35, ¶ 12, 27 P.3d 477, 481. The burden of showing facts warranting relief from forfeiture is on the party seeking such relief. *State v. Vaughn*, 2000 OK 63, ¶ 23, 11 P.3d 211, 216 (citing *State v. Buckle*, 4 Kan.App.2d 250, 604 P.2d 743 (1979)). We will reverse a trial court's decision only where the trial court's conclusions and judgment were clearly erroneous, against reason and evidence. *Murlin v. Pearman*, 2016 OK 47, ¶ 17, 371 P.3d 1094, 1097.

ANALYSIS

¶6 As to Thornburg's sole issue on appeal, we find the trial court did not abuse its discretion by denying of her Motion to Exonerate Bond, as the trial court's decision is supported by the facts and applicable legal authority. Bond forfeiture proceedings are governed by 59 O.S. § 1332, and an order of bond forfeiture can be exonerated either by operation of law or at the trial court's discretion. 59 O.S. § 1332(A) & (C)(6). A trial court *may* vacate an order of forfeiture and exonerate the bond where the bondsman has shown "good cause" for either the defendant's failure to appear or the bondsman's failure to return the defendant to custody within ninety (90) days. 59 O.S. § 1332(C)(6). The primary purpose of § 1332, however, is to "secure the appearance of a delinquent defendant for trial" by providing a bondsman "a limited opportunity to [a]ffect the return of a delinquent defendant for trial and thus exonerate the forfeited bond." *State v. Ramos*, 2001 OK CIV APP 1, ¶ 8, 43 P.3d 414, 416.

¶7 In considering whether particular circumstances constitute "good cause" to vacate a bond forfeiture order, the Supreme Court directed trial courts to consider "all pertinent factors," but identified six factors in particular to examine: (1) whether the defendant has been returned to custody and, if so, whether the bondsman's efforts assisted in the defendant's return; (2) the nature and extent of the bondsman's efforts to locate and return the defendant to custody; (3) the length of the delay caused by the defendant's non-appearance; (4) the cost and inconvenience to the government in regaining custody of the defendant; (5) the stage of the proceedings at the time of defendant's non-appearance; and (6) the public interest and necessity of effectuating defendant's appearance. *State v. Vaughn*, 2000 OK 63, ¶ 22, 11 P.3d 211, 216.

¶8 In the instant action, Thornburg contended that Zeng's deportation constituted "good cause" to vacate the Order forfeiting bond by applying the six *Vaughn* factors, further alleging that the trial court abused its discretion by "refusing to consider and apply the law pertaining to deportation and good cause." While this specific issue (i.e. whether deportation/involuntary departure from the United States constitutes "good cause" to exonerate bond) appears to be an issue of first impression, there is existing Oklahoma jurisprudence dealing with a criminal defendant's *voluntary* departure from the United States to a foreign country after posting bail. In *State v. Torres*, 2004 OK 12, 87 P.3d 572, the trial court forfeited bond after the criminal defendant failed to appear for trial. Upon investigation, the bondsman learned the defendant was in Mexico and could only be returned after the local District Attorney's Office requested an Unlawful Flight to Avoid Prosecution (UFAP) Warrant for the

defendant's arrest by the United States Attorney's Office. *Id.* at ¶ 3. But, the District Attorney failed to act on the request until well after the statutory timeframe allotted for the bondsman to seek exoneration of forfeited bond. *Id.* Similarly, in *State v. Salcedo-Rubio*, 2008 OK CIV APP 89, 195 P.3d 1286, the criminal defendant failed to appear for his initial arraignment after the bondsman had posted bail, after which the bondsman discovered that the defendant had fled to Mexico. *Id.* at ¶ 3. Mexican law enforcement officers, however, refused to apprehend the defendant without formal extradition papers, but the local Assistant District Attorney informed the bondsman that his office lacked the sufficient time or staff to complete the necessary extradition paperwork. *Id.* at ¶ 4.

¶9 Like the instant appeal, the bondsmen in *Torres* and *Salcedo-Rubio* relied upon the six *Vaughn* factors on appeal, focusing particularly on the second factor which considers the "nature and extent of the bondsman's efforts to locate and return the defendant to custody." *State v. Vaughn*, 2000 OK at ¶ 22, 11 P.3d at 216. The bondsmen argued that they had demonstrated "good cause" to exonerate the forfeited bond because the bondsmen had exhausted all legal steps to locate and return the defendants to custody in the United States. *State v. Salcedo-Rubio*, 2008 OK CIV APP at ¶ 9, 195 P.3d at 1289; *State v. Torres*, 2004 OK at ¶ 5, 87 P.3d at 577. Despite their best efforts to recover the defendants from Mexico, both bondsmen claimed that the impossibility of each defendants' return constituted "good cause" pursuant to § 1332(C)(6). *Id.* Both bondsmen also cited to the inaction of the local District Attorney offices in filing the respective extradition paperwork and/or necessary UFAP warrant to secure each defendants' return to the custody, contending that the inaction increased the bondsmen's risk exposure. *State v. Salcedo-Rubio*, 2008 OK CIV APP at ¶ 11, 195 P.3d at 1290; *State v. Torres*, 2004 OK at ¶ 11, 87 P.3d at 580. Nevertheless, both the *Torres* and *Salcedo-Rubio* Courts rejected the bondsmen's contentions by highlighting the discretionary nature of a trial court's decision to exonerate forfeited bond and the substantial deference appellate courts must provide to such discretionary decisions. *State v. Torres*, 2004 OK at ¶ 20, 87 P.3d at 582 ("[a]fter the ninety-day grace period has expired, the trial court retains *discretion* to vacate the bond forfeiture") (emphasis in original); *State v. Salcedo-Rubio*, 2008 OK CIV APP at ¶ 6, 195 P.3d at 1288 ("[a]ppellate courts are "obligat[ed] to accord substantial deference to the exercise of discretion by the trial court"). In considering the *Vaughn* factors, both the *Torres* and the *Salcedo-Rubio* Courts noted that no single *Vaughn* factor is determinative, and that the bondsmen's heavy reliance on only a singular factor was not sufficient to justify reversal of the respective trial court decisions. *State v. Torres*, 2004 OK at ¶ 21, 87 P.3d at 583 ("[w]e said in *Vaughn* that this list is illustrative and not exhaustive, that no single factor alone is determinative, and that the relative importance of each factor is for the trial judge to determine inasmuch as it may vary from case to case."); *State v. Salcedo-Rubio*, 2008 OK CIV APP at ¶ 8, 195 P.3d at 1289 ("[n]o one factor in and of itself is determinative and we do not prescribe the weight to be given any factor.").

¶10 Further, in *Salcedo-Rubio*, a separate Division of this Court emphasized that the bondsman "undertook a calculated, bargained-for risk that [the defendant] would flee after being released from custody," knowing that the defendant was a Mexican citizen facing serious drug charges and the bondsman would have limited means of recapturing the defendant in Mexico. *State v. Salcedo-Rubio*, 2008 OK CIV APP 89, ¶ 11, 195 P.3d 1286, 1290. Even when considering the inaction by the District Attorneys' Offices as an additional factor to exonerate bail, both the Supreme Court and this Court determined that, where a bondsman alleges a state actor contributed to the circumstances which led to a criminal defendant's non-appearance, the bondsman must present competent, admissible evidence demonstrating that a state actor's action and/or inaction put the bondsman in a "substantially different position than it occupied before". *State v. Salcedo-Rubio*, 2008 OK CIV APP 89, ¶ 15, 195 P.3d 1286, 1291; *State v. Torres*, 2004 OK 12, ¶ 18, 87 P.3d 572, 582 ("Appellant offered tantalizing suggestions regarding the existence of facts critical to its case, but failed to prove those facts by admissible proof.").

¶11 In considering the *Vaughn* factors in the instant appeal, we find that Thornburg's primary reliance upon her efforts to locate Zeng and the impossibility of his return due to his deportation to China is not sufficient to demonstrate "good cause" pursuant to 59 O.S. § 1332(C)(6). Although Thornburg has certainly demonstrated the efforts she took to locate and return Zeng to custody -- thus making a showing of one of the *Vaughn* factors -- Thornburg failed to make an adequate showing of any additional *Vaughn* factors. Zeng has not been returned to custody and, based upon *Torres*' affidavit, will likely never be returned to custody. As a result, Zeng's criminal trial has been delayed for over a year and will presumably remain delayed in perpetuity. Further, the cost and inconvenience to the government to regain custody of Zeng is significant, as neither party disputed the fact that the Chinese government would not extradite Zeng back to the United States to face his pending criminal charges. While Zeng had appeared at seven of his prior court dates before failing to appear at his pre-trial conference, his deportation occurred a mere month before his criminal trial was scheduled to occur, causing his non-appearance at, arguably,

one of the more inconvenient points in his criminal proceedings thus far. Finally, Zeng was facing serious felony charges for drug trafficking prior to his deportation, and the State has expressed a clear interest in "holding [Zeng] accountable for his criminal conduct."

¶12 Although we note that the instant appeal differs from *Torres* and *Salcedo-Rubio* because Zeng's deportation was not a voluntary departure from the United States, Thornburg's application of the *Vaughn* factors was nearly identical to that of the bondsmen in *Torres* and *Salcedo-Rubio*. We reiterate that no single *Vaughn* factor alone is determinative, and we find that, like the *Torres* and *Salcedo-Rubio* Courts, Thornburg's primary reliance on a singular factor (i.e. her efforts to locate Zeng and the impossibility of his return) is not sufficient to demonstrate good cause to exonerate Zeng's forfeited bond. Thornburg assumed the burden of showing facts warranting relief from forfeiture and, as both the evidence in the record and Thornburg's brief effectively relied upon only one of the six *Vaughn* factors, we conclude that the trial court did not abuse its discretion in denying Thornburg's Motion to Exonerate Bond.

¶13 While deportation as a ground for relief from a forfeiture order is a first impression issue, our analysis is consistent with the conclusions of other state courts who have considered the issue of deportation as a "good cause" basis for exonerating a forfeited bond.² We, therefore, conclude that the impossibility of Zeng's return to Garfield County despite Thornburg's best efforts is not, alone, sufficient to constitute "good cause" to exonerate the forfeited bond. Accordingly, the trial court did not abuse its discretion in denying Thornburg's Motion to Exonerate Bond.

CONCLUSION

¶14 Based upon our consideration of the record, applicable Oklahoma case law, and a review of case law from other state courts, we find that the trial court did not abuse its discretion in denying Thornburg's Motion to Exonerate Bond for good cause. The trial court considered the circumstances of Zeng's non-appearance due to his deportation, but, ultimately, made the discretionary decision to deny Thornburg's request for relief based upon its application of the *Vaughn* factors. Accordingly, the trial court's October 6, 2023 Order denying Thornburg's Motion to Exonerate Bond is affirmed.

BELL, V.C.J., and SWINTON, P.J. concur.

FOOTNOTES

THOMAS E. PRINCE, JUDGE:

¹ The facts surrounding Zeng's deportation and Thornburg's subsequent efforts to locate Zeng have been garnered primarily from Thornburg's Motion to Exonerate Bond and the attached affidavit by bounty hunter, Frank Torres. Beyond the State's oral objection and subsequent briefing on appeal, the State filed no other responsive pleadings, leaving us to rely solely upon Thornburg's recitation of the facts which she alleged constituted "good cause" to exonerate the forfeited bond.

² See *In re Bond Forfeiture in Pima Cnty. Cause No. CR-20031154*, 208 Ariz. 368, 370, 93 P.3d 1084, 1086 (Ct. App. 2004) (rejecting a bondsman's claim that a defendant's deportation, standing alone, excused the surety's failure to surrender the defendant); See also *People v. Albitar*, 374 Ill. App.3d 718, 724--25, 872 N.E.2d 530, 535--36 (2007) (holding that, where a bondsman failed to take reasonable efforts to either delay the defendant's deportation or notify the trial court of the defendant's pending deportation proceedings, "setting aside the forfeiture judgment and returning the bond to the surety would be inconsistent with that purpose and could potentially encourage future defendants to disregard the conditions of their bail bonds."); See also *State v. Two Jinn, Inc.*, 151 Idaho 725, 264 P.3d 66 (2011) (deportation was not an unforeseen supervening act excusing bondsman's performance where the bondsman knew or should have known of the high likelihood of the defendant's deportation, as "the risk of finding out the immigration status of a potential client for purposes of posting bond is left to the bonding company's discretion."); See also *In re Sanford & Sons Bail Bonds, Inc.*, 96 S.W.3d 199, 204--06 (Tenn. Crim. App. 2002) (concluding that a forfeited bail may be exonerated where the state aided in the deportation of the defendant, but the trial court can still consider whether the surety engaged in "reasonable efforts to monitor the defendant's movements" and whether the defendant "acquiesce[d] in deportation for purposes of avoiding criminal prosecution".); See also *Curlycan Bail Bonds, Inc. v. State*, 933 So. 2d 122 (Fla. 3d DCA 2006) (a foreign country's refusal to extradite a defendant despite an existing treaty of extradition does not entitle a bail bond surety to a remission of forfeiture of a bond it posted for the defendant).

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Oklahoma Court of Civil Appeals Cases

Cite	Name	Level
<u>2001 OK CIV APP 1</u> , <u>43 P.3d 414</u> , <u>72 OBJ 410</u> ,	<u>STATE v. RAMOS</u>	Discussed
<u>2008 OK CIV APP 89</u> , <u>195 P.3d 1286</u> ,	<u>STATE v. SALCEDO-RUBIO</u>	Discussed at Length

Oklahoma Supreme Court Cases

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<u>2001 OK 35</u> , <u>27 P.3d 477</u> , <u>72 OBJ 1185</u> ,	<u>FENT v. OKLAHOMA NATURAL GAS, CO.</u>	Discussed
<u>2003 OK 10</u> , <u>65 P.3d 591</u> ,	<u>CHRISTIAN v. GRAY</u>	Discussed
<u>2004 OK 12</u> , <u>87 P.3d 572</u> ,	<u>STATE v. TORRES</u>	Discussed at Length
<u>2016 OK 47</u> , <u>371 P.3d 1094</u> ,	<u>MURLIN v. PEARMAN</u>	Discussed
<u>2000 OK 63</u> , <u>11 P.3d 211</u> , <u>71 OBJ 1918</u> ,	<u>STATE OF OKLAHOMA v. VAUGHN</u>	Discussed at Length

Title 59. Professions and Occupations

Cite	Name	Level
<u>59 O.S. 1332</u> ,	<u>Forfeiture Procedure</u>	Discussed at Length

