IN THE COURT OF APPEALS OF IOWA

No. 0-653 / 90-463

FILED
JUL 26 1991
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellant,

vs.

DREINA DERRIC STRAUSS,

Defendant,

INTERNATIONAL FIDELITY INSURANCE COMPANY,

Appellee.

Appeal from the Iowa District Court for Linn County, August F. Honsell, Judge.

The State has appealed the district court's denial of its application for a judgment of forfeiture on a criminal defendant's bail bond. **AFFIRMED.**

Bonnie J. Campbell, Attorney General; Mark Joel Zbieroski, Assistant Attorney General; Denver D. Dillard, Linn County Attorney; and Scott C. Peterson, Assistant County Attorney, for appellant.

David Nadler, Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

Dreina Strauss was charged with robbery in the second degree. Her bail was set at $11,707. Strauss obtained a bail bond from the International Fidelity Insurance Company. She was released on bail pending trial.

On the day scheduled for trial, January 8, 1990, Strauss did not appear. The district court therefore ordered her bond revoked and directed the clerk of court to issue a warrant for Strauss's arrest. It is unclear whether an arrest warrant was actually issued, but Strauss did appear in court on the following day, January 9. At that time her bail bond was reset.

On February 14, 1990, Strauss entered a plea of guilty to the charge of robbery in the second degree. She was convicted and sentenced on that charge.

On February 12, 1990, the State applied for a judgment to forfeit Strauss's initial appearance bond due to her failure to appear for trial on January 8. After a hearing, the district court denied the State's request for a judgment of bond forfeiture. In so ruling, the court noted that the State did not give the surety ten days' notice of its intention to seek a forfeiture judgment, as required by Iowa Code section 811.6. The court also noted that Strauss's non-appearance lasted for only one day and that Strauss was in custody prior to the time the surety was given notice of the bond forfeiture.

The State has appealed from the district court's ruling. The State argues that a judgment of bail bond forfeiture should have issued because no cause was shown for Strauss's failure to appear for the scheduled trial date on January 8.

Proceedings for forfeiture of bail and judgment thereon are civil in nature. LaRue v. Burns, 268 N.W.2d 639, 642 (Iowa 1978). They are triable as ordinary proceedings. State v. Dodd, 346 N.W.2d 42, 43 (Iowa App. 1984). The findings of fact in this law action are binding upon us if supported by substantial evidence. Id. Statutes imposing forfeitures are strictly construed against the forfeiture, liberally toward those opposing it. Id.

A court admits a defendant to bail in order to assure his appearance in court. State v. Zylstra, 263 N.W.2d 529, 531 (Iowa 1978). The very essence of the obligation of sureties on a bail bond is that they will produce the accused in open court when his presence is required, in accordance with the terms of the bond. State v. Shell, 242 Iowa 260, 265, 45 N.W.2d 851, 854 (1951). The bail bond is a contract with the State. Dodd, 346 N.W.2d at 44.

The purpose of the criminal law is to secure the punishment of criminals, not to have the state profit financially by the forfeiture of bail. Dodd, 346 N.W.2d at 43-44, quoting State v. Thomason, 226 Iowa 1057, 1066, 285 N.W. 636, 640 (1939).

We find that the district court acted within its discretion in denying the State's application for bond forfeiture. We believe that in this case the State was not prejudiced by defendant's one-day absence. We find the trial court's factual findings to be supported by substantial evidence, and we are, therefore, bound by them. The defendant was in custody prior to the time the surety was given notice of the bond forfeiture. Also, in the underlying criminal action, Strauss was ordered to make restitution for court costs as determined by the clerk and to make restitution for the expense of a public defender. Furthermore, the surety was not given the ten-day notice referred to in Iowa Code section 811.6.

We affirm the ruling of the district court.

AFFIRMED.