

BAIL BONDS

Bail Bonds: Cash Bonds—Withholdings

Ellis v. Hunter,

3 So. 3d 373 (Fla. 5th Dist. App. 2008)

The Clerk of Court does not violate either the Florida or United States Constitutions if he or she follows Florida Statutes Section 903.286 (2007), which requires the Clerk of Court to withhold any unpaid fees, costs, or criminal penalties, including those from a criminal defendant's other cases, from the return of a cash bond posted by an individual who is not a licensed bail bondsmen.

FACTS AND PROCEDURAL HISTORY

Jack Hunter was convicted of driving under the influence of alcohol and was subsequently placed in jail. Bernard Simpkins, a former family member, posted a \$5,000 cash bond for Hunter's release from jail. The bond document signed by Simpkins specifically referenced Section 903.286, which requires the Clerk of Court (Clerk) to withhold any unpaid court fees, costs, and criminal penalties from the return of the bond posted for the defendant by anyone other than a bail bondsman. After entering a plea to the DUI charge, Hunter was assessed \$1,063.88 in fees, fines, and court costs. Hunter also had outstanding criminal penalties, unpaid fines, and court costs totaling \$3,936.12. The Clerk of Court deducted the \$1,068.88 and \$3,936.12 of unpaid costs from the cash bond leaving nothing to refund to Simpkins.

Simpkins filed a motion objecting to the Clerk's refusal to return the bond and further requested that the Clerk be required to show cause for the failure to return the bond. At trial, the court concluded that while Section 903.286 was constitutional, it applied only to fees, costs, or penalties associated with the specific case in which the bond was posted. While the court ordered the Clerk to return any money withheld that was not specifically attributable to the case for which Simpkins posted the bond, it subsequently certified the issue to the Fifth District Court of Appeal. On appeal, the Fifth District affirmed the trial court's holding

that Section 903.286 is constitutional, but reversed the trial court's limitation on the specific fees, costs, or penalties to be withheld from the bond.

ANALYSIS

In applying and interpreting Section 903.286, the court answered two certified questions. First, the court determined that Section 903.286 does not violate the constitutional provisions of due process, equal protection, eminent domain, the single subject rule, or excessive bail. Second, the court concluded that Section 903.286 applies to any and all of a defendant's unpaid court costs, fees, and criminal penalties, not just the costs and fees associated with the case for which the bond was posted.

While the court had previously considered and rejected due process, equal protection, and eminent domain challenges to Section 903.286 in *Biddle v. Ellis*, 976 So. 2d 103 (Fla. 5th Dist. App. 2008), it briefly discussed its reasoning for rejecting those specific challenges again. The court rejected Simpkins' due process claim that he was not provided adequate notice of Section 903.286's provisions or an opportunity to challenge them. In rejecting this claim, the court pointed to the following two forms of notice provided to Simpkins regarding Section 903.286's provisions: (1) the bond form Simpkins signed, and (2) the notice of Section 903.286 posted at the jail. Further, the court reiterated the common-law principle that a State's citizens are presumed to know the law once a Legislature publishes the law and affords citizens a reasonable opportunity to familiarize themselves with its terms. Finally, the court found that Section 903.286 neither prohibits an individual from challenging the bail money withheld nor contesting whether those amounts are owed by the defendant; therefore, Section 903.286 offers an adequate opportunity to be heard as due process requires.

The court also quickly dispensed with Simpkins's equal protection and eminent domain claims. Simpkins argued Section 903.286 violated equal protection because it treated licensed bail bondsmen and individuals posting cash bonds unequally. The court applied rational review to Section 903.286 because it did not produce a suspect classification, and the court found that the different treatment of bail bondsmen under Section 903.286 bore a "reasonable relation" to the statute in that bail bondsmen serve

the public interest and a legitimate state purpose by providing cash resources for arrestees to meet bail and obtain pretrial release from jail. Finally, in dismissing Simpkins' eminent domain claim, the court stated that because posting bond for an individual is completely voluntary, and those individuals posting bond are charged with notice of Section 903.286, there was no unconstitutional taking of Simpkins' bail money.

After rejecting the due process, equal protection, and eminent domain challenges against Section 903.286, the court considered and dispensed with Simpkins' claim that Section 903.286 and its enacting legislation violated the single subject clause, Article III, Section 6, of the Florida Constitution. The single subject clause requires (1) the law embrace one subject only; (2) the law include only matters properly related to the subject; and (3) the title of the law briefly express the subject. The court determined that Section 903.286 complied with all three of the single subject clause's requirements. The short title of Chapter 05-236, "[a]n act relating to the state judicial system," briefly expresses the subject of the law, without stating any other subject. Further review of the full title and the statute's provisions revealed that all the provisions logically and naturally relate to the functioning and funding of various facets of the judicial system. Specifically, Section 903.286 involves securing funds for the judicial system by assuring criminal defendants are actually paying their overdue fees. Consequently, neither the enacting legislation nor Section 903.286 violated the single subject rule of the Florida Constitution.

The court finally considered and rejected Simpkins' claim that Section 903.286 violated the Florida and United States Constitutions' prohibitions against excessive bail. After reviewing the relevant authorities that considered similar statutes to Section 903.286, the court determined that (1) a bond can be applied to the payment of fines or costs upon a criminal defendant's conviction if expressly permitted by statute; and (2) when a statute requires that a criminal defendant's court costs, fees, or criminal penalties be withheld from the return of bond, the statute does not violate excessive bail if (a) the bond's amount is not calculated based on the pending costs, fees, or penalties, and (b) the reason for granting bail is only to protect the public and secure the defendant's appearance. In the present action, Section 903.286 ex-

pressly requires the Clerk to withhold the return of unpaid costs, fines, and penalties from a criminal defendant's bail. Further, the court recognized that Section 903.286 neither requires nor permits a trial court to consider the defendant's unpaid costs or fees in determining the bond's amount nor requires or permits a trial court to consider the unpaid costs or fees in granting a defendant bail. Nothing in the record suggested that the bond's amount or the granting of bail were based on Hunter's unpaid assessments, therefore the court found no violation of the Florida or United States constitutional prohibitions against excessive bail.

After dispensing with the constitutional challenges to Section 903.286, the court broadly interpreted it to apply to all outstanding fees owed by the defendant, including fees from other cases. The court first considered the plain language of the statute, which specifically states that "sufficient funds to pay *any* unpaid court fees, court costs, and criminal penalties,' shall be withheld from the return of a cash bond . . . [and] . . . if the bond funds are insufficient 'to pay *all* unpaid court fees,'" the clerk will set up a payment plan or obtain the payment from the defendant. *Ellis*, 3 So. 3d at 384 (quoting Fla. Stat. § 903.286). The court found the plain language of the statute clearly established the Legislature's intent that Section 903.286 be used as a means of securing all of a defendant's unpaid assessments with the court. Additionally, the court pointed to other statute Sections, such as Section 903.105(5), in which the Legislature restricted the use of cash bond to pay only assessments associated with the case for which the bond was posted, yet it failed to use this restrictive language in Section 903.286. Finally, the court recognized that its broad interpretation of Section 903.286 was consistent with the statute's purpose to ensure criminal penalties are collected from defendants to secure sufficient funding for our judicial system.

SIGNIFICANCE

Ellis confirms that Section 903.286 does not violate federal or Florida constitutional concepts of due process, equal protection, or eminent domain. Further, this case concludes that Section 903.286 also does not violate the single subject clause of the Florida constitution or federal or state prohibitions against excessive bail. Finally, this case establishes that Section 903.286 requires the Clerk of Court to withhold all of the criminal defendant's un-

paid costs, fees, and criminal penalties from the return of the bail to any individual other than a licensed bail bondsman.

RESEARCH REFERENCES

- 32A Fla. Jur. 2d *Judgments and Decrees* § 276 (2009).
- 3 Fla. Jur. 2d *Appellate Review* § 320 (2009).
- 5 Fla. Prac., *Civil Practice* § 9:4 (2009).

Amy Paulke

Bail Bonds: Surety Bond Contracts—Material Breach

Matt Howard Bail Bonds v. Escambia County Clerk of Court,

13 So. 3d 109 (Fla. 1st Dist. App. 2009)

Action by the State that causes a material breach of a surety bond contract relieves the surety from all liability on the bond contract. The State's addition of a new criminal charge against the accused, which also increases the accused's potential imprisonment, results in a material change to the bond contract that releases the surety from contractual liability for that bond.

FACTS AND PROCEDURAL HISTORY

An Escambia County bail bondsman posted \$50,000 for defendant Cipriano Gongora, who was arrested for both possessing marijuana and trafficking in cocaine. The State Attorney initially charged Gongora with (1) "conspiracy to traffic in cocaine . . . a first-degree felony" and (2) "conspiracy to sell, manufacture, deliver or possess with intent to sell, manufacture, or deliver, cannabis, a third-degree felony." *Matt Howard Bail Bonds*, 13 So. 3d at 110. Several months after the execution of the bond contract between the State, Gongora, and the bondsman, the State Attorney filed an amended information with a new charge of trafficking in cocaine, a first-degree felony, in addition to the two previous felony counts.

Gongora failed to appear at a later proceeding, and the circuit court issued a Notification of Surety Bond Forfeiture requiring the estreatment of the bondsman's bond within sixty days. The bondsman filed a motion to set aside the bond estreatment, arguing

the addition of a new felony count materially changed the bond contract and thus absolved him from any contractual liability for Gongora's failure to appear at the subsequent proceeding. Finding no material change to Gongora's charges, the circuit court denied the bondsman's motion. On appeal, the First District reversed the circuit court's decision, concluding the amended information materially changed the bond contract and thus absolved the surety from all liability on the bond contract.

ANALYSIS

A surety bond is a contract between the defendant, the State, and the surety in which the surety guarantees the State that the defendant will appear at subsequent proceedings. Accordingly, if the State impedes the surety's ability to control the defendant, the State causes a material breach of the surety contract and thus discharges the surety from the duties of the bond contract. In holding the State materially breached the bond contract, the court relied on (1) the additional, more specific offense the State added to the amended information, and (2) the increased potential imprisonment Gongora faced with the additional charge.

The court rejected the State's argument that there was no material change to the surety contract because it did not add a new charge but simply clarified the original charges. The amended information added a more specific trafficking count with a specific date of commission, while the original information charged Gongora with two conspiracy counts referencing more vague date ranges. The court found the amendment of the additional charge with the specificity in its date of commission was not a clarification of the original charges but rather the addition of a new felony charge.

Further, the court specifically referenced the increased potential imprisonment Gongora faced with the additional trafficking charge. Under the original charges, Gongora faced the possibility of a mandatory fifteen-year term with a maximum imprisonment of thirty-five years. With the additional charge of trafficking, Gongora faced the possibility of another mandatory minimum fifteen-year term and an additional lengthy imprisonment.

Once a new felony charge is added to the accused's information, the potential likelihood of flight by the accused is significantly greater, thus increasing the risk originally accepted by the

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bondsman under the contract. The State's addition of a new felony charge, which increased Gongora's potential imprisonment, interfered with the bondsman's right to control Gongora and increased the risk that Gongora would flee, thus materially breaching the bond contract and absolving the bondsman from all contractual liability.

SIGNIFICANCE

This case confirms that the State's material breach of a bond contract absolves the surety from all liability on the contract. In addition, the First District determined that a court can consider whether the State added an additional, more specific charge or increased the potential length of the accused's imprisonment in determining whether the State materially altered the bond contract.

RESEARCH REFERENCES

- 14 Fla. Jur. 2d *Criminal Law Procedure* § 256 (2009).
- 8 C.J.S. *Bail* § 187 (2005).

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