

EDDIE DEES dba FAST ACTION BONDING, Appellant v. THE STATE OF TEXAS, Appellee

No. 503-92

COURT OF CRIMINAL APPEALS OF TEXAS

865 S.W.2d 461

September 29, 1993, Delivered

PRIOR HISTORY: Petition For Discretionary Review from the Fifth Court of Appeals. (Dallas County)

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant challenged an order from the Fifth Court of Appeals, Dallas County (Texas), which held in his bond forfeiture case that *Tex. Code Crim. Proc. Ann. art. 22.16(a)* was unconstitutional, that the portions of *Tex. Code Crim. Proc. Ann. art. 22.16(d)* were unconstitutional, that civil court costs were the appropriate costs, and that interest began to accrue on the bond from the date of the judgment nisi.

OVERVIEW: In appellant's bail bond forfeiture case, the court affirmed the lower court's holding that *Tex. Code Crim. Proc. Ann. art. 22.16(a)* was unconstitutional in its entirety, the portions of *Tex. Code Crim. Proc. Ann. art. 22.16(d)* utilizing provisions of *Tex. Code Crim. Proc. Ann. art. 22.16(c)* were unconstitutional, that that civil court costs were the appropriate costs to assess in a bail bond forfeiture proceeding, that interest began to accrue on the amount of the bond from the date of the judgment nisi. Since the court previously found Article 22.16(c) unconstitutional, any portion of another provision that relied on it was also unconstitutional. The court held that a bail bond forfeiture proceeding is a criminal law matter governed by the rules of civil procedure after entry of the judgment nisi under *Tex. Code Crim. Proc. Ann. art. 22.10* and thus civil court costs were appropriate. The court held that where the parties to the bond did not agree otherwise, interest, called "interest on the bond amount after forfeiture" began to run from the date of forfeiture, the date the judgment nisi was signed under *Tex. Code Crim. Proc. Ann. art. 22.16(e)*.

OUTCOME: On review of appellant's bond forfeiture case, the court affirmed the lower court's ruling. Portions of a bond forfeiture statute were unconstitutional. Civil court costs were the appropriate costs to assess and interest began to accrue on the bond from the date of the judgment nisi, the date of forfeiture.

COUNSEL: For Appellant: Carolyn Findley Price, Arlington, Tx.

For Appellee: John Vance, D. A. & Michael J. Watts, Asst. D. A., Dallas, Tx. Robert Huttash, State's Attorney, Austin, Tx.

JUDGES: En Banc. McCormick, Presiding Judge, Maloney, Judge dissents

OPINION BY: MCCORMICK

OPINION

[*461] OPINION ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

This is a bail bond forfeiture case. The facts are set out in the opinion of the Court of Appeals. *Dees v. State*, 822 S.W.2d 703, 704 (Tex.App.--Dallas 1991). We granted appellant's petition for discretionary review to determine (1) whether *Article 22.16(a)*, V.A.C.C.P.,¹ is unconstitutional in its entirety, (2) whether *Article 22.16(d)*, V.A.C.C.P.,² is unconstitutional in its entirety, (3) what "costs of court" are authorized in a bail bond forfeiture case, and (4) when does interest [*462] begin to accrue on the amount of the bond after forfeiture and what is the proper nomenclature for such interest.

1 Hereinafter referred to as "subsection (a)."

2 Hereinafter referred to as "subsection (d)."

The Court of Appeals held unconstitutional subsection (a) in its entirety, and the portion of subsection (d) utilizing the provisions of *Article 22.16(c)*, V.A.C.C.P. ³ *Dees*, 822 S.W.2d at 706. The Court of Appeals also held civil court costs are the appropriate costs to assess in a bail bond forfeiture proceeding, and "prejudgment interest" begins to accrue on the face amount of the bond at 6% per annum from the date of the judgment nisi. *Id.* at 706-07. We affirm the judgment of the Court of Appeals.

3 Hereinafter referred to as "subsection (c)."

After granting appellant's petition, we held in another case that subsection (a) is unconstitutional in its entirety. *Lyles v. State*, 850 S.W.2d 497, 501 (Tex.Cr.App. 1993). This was because subsection (a) could not be given any effect without utilizing the provisions of subsection (c) which we also had decided is unconstitutional in its entirety. *Id.* at 499-501; see also *State v. Matyastik*, 811 S.W.2d 102, 104 (Tex.Cr.App. 1991); *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 241 (Tex.Cr.App. 1990). Since these cases dispose of appellant's first ground for review, it is accordingly overruled.

Appellant argues if we decide subsection (a) is invalid in its entirety, we also must decide subsection (d) is invalid in its entirety to maintain "logical continuity," because, like subsection (a), subsection (d) utilizes the provisions of subsection (c). We rejected that argument in *Lyles*, because, unlike subsection (a), subsection (d) can be given effect without utilizing the provisions of subsection (c). *Lyles*, 850 S.W.2d at 497. Therefore, based on the reasoning of *Lyles*, we hold only the portion of subsection (d) that utilizes the provisions of subsection (c) is unconstitutional; the remainder of subsection (d) is constitutional. ⁴ Appellant's second ground for review is overruled.

4 Subsection (d) should now be read as follows:

"Before the entry of a final judgment against the bond, the court in its discretion may remit to the surety all or part of the amount of the bond after deducting the costs of court, any reasonable costs to the county for the return of the principal, and the interest accrued on the bond amount as provided by Subsection (e) of this article."

Appellant also argues civil court costs are not authorized in a bail bond forfeiture proceeding; he argues only those court costs normally associated with criminal cases may be assessed. A bail bond forfeiture proceeding is a criminal law matter governed by the rules of civil procedure after entry of the judgment nisi. *Article 22.10*, V.A.C.C.P.; see also *State v. Sellers*, 790 S.W.2d 316, 321 (Tex.Cr.App. 1990); *Tinker v. State*, 561 S.W.2d 200, 201 (Tex.Cr.App. 1978). Therefore, we hold civil court costs may be assessed in a bail bond forfeiture proceeding after entry of the judgment nisi. See *Article 22.10*.

Appellant claims the assessment of civil court costs is not authorized under the analysis in *Camacho v. Samaniego*, 831 S.W.2d 804 (Tex. 1992). We find *Camacho* distinguishable. In *Camacho*, the El Paso County Commissioners Court imposed on bail bond issuers a bond approval fee that was collected by the Sheriff. *Id.* at 805. The Texas Supreme Court held the County could not impose, and the Sheriff could not collect, the fee because the fee was not authorized by any Texas Statute. *Id.* at 805, 815. Here, *Article 22.10* expressly authorizes bail bond forfeiture proceedings to be governed by the rules of civil procedure. ⁵ Appellant's third ground for review is overruled.

5 We also have held the civil rule setting forth the procedures for recusal of judges applies in criminal cases. *Arnold v. State*, 853 S.W.2d 543, 544 (Tex.Cr.App. 1993).

Appellant also argues interest on the bond amount should not begin to accrue until the thirtieth day after the date of forfeiture in accordance with Tex.Rev.Civ.Stat. Ann. Article 5069-1.03 (Vernon 1987). ⁶ *Article 22.16(e)*, V.A.C.C.P., provides:

"For the purposes of this article, interest accrues on the bond amount *from the date* [*463] *of forfeiture in the same manner and at the same rate as provided for the accrual of prejudgment interest in civil cases.*" (Emphasis Supplied).

Article 5069-1.03 provides:

"When no specified rate of interest is agreed upon by the parties, interest at the rate of six percent per annum shall be allowed on all accounts and contracts ascertaining the sum payable, *commencing on the thirtieth (30th) day from and after the time when the sum is due and payable.*" (Emphasis Supplied).

6 The Court of Appeals held Article 5069-1.03 applies, and neither party has complained about this holding in a petition for discretionary review. *Dees*, 822 S.W.2d at 707.

Appellant argues allowing interest on the amount of the bond to accrue from the date of the judgment nisi, as the Court of Appeals did here, ⁷ nullifies "in the same manner" language of Article 22.16(e). We disagree. Article 22.16(e) expressly provides for interest to accrue on the bond amount "from the date of forfeiture." Article 22.16(e) describes only how the interest is to accrue by "using the prejudgment interest rate in civil cases from the date of forfeiture." *Shaw v. State*, 804 S.W.2d 672, 673 (Tex.App. -Fort Worth 1991, pet. ref'd). For example, the parties could agree in the bond on how interest is calculated in which case *Tex.Rev.Civ.Stat.Ann. Article 5069-1.01(c)* would authorize the "manner" for calculating the interest. See, e.g., *Triton Oil and Gas Corp. v. E.W. Moran Drilling Co.*, 509 S.W.2d 678, 687-88 (Tex.Civ.App. -Fort Worth 1974, writ ref'd n.r.e.). We hold that when the parties do not agree otherwise, interest begins to accrue on the bond amount from the date of forfeiture.

7 822 S.W.2d at 706-07.

The next question we decide is the date of forfeiture. The Court of Appeals, in effect, held the date of forfeiture is the date the judgment nisi is entered, and we agree. *Dees*, 822 S.W.2d at 707. *Article 22.01, V.A.C.C.P.*, states that when a defendant fails to appear, a forfeiture of his bail and a judicial declaration of such forfeiture shall be taken in the manner provided in Article 22.02, *V.A.C.C.P. Article 22.02*, in effect, provides that a bail bond is forfeited when the trial court signs the judgment nisi. Therefore, we hold the date of forfeiture is the date the trial court signs the judgment nisi. ⁸ See Articles 22.01 and 22.02.

8 We also note Articles 22.01 and 22.02 appear to provide for the trial court to sign the judgment nisi on the same date the defendant fails to appear.

Finally, appellant raises the proper nomenclature of the interest for which Article 22.16(e) provides. Appellant claims the Court of Appeals erred in characterizing the interest as "prejudgment interest." See *Dees*, 822 S.W.2d at 707. He claims Article 22.16(e) provides for interest on the bond amount from the date of forfeiture, and not prejudgment interest on the judgment. See generally *Cavnar v. Quality Control Parking, Inc.*, 696 S.W.2d 549 (Tex. 1985). Article 22.16(e) expressly provides for interest on the bond amount from the date of forfeiture; therefore, we hold the proper nomenclature for such interest is "interest on the bond amount after forfeiture." This holding, however, does not affect the judgment of the Court of Appeals because the Court of Appeals actually calculated "interest on the face amount of the bond at six percent interest per annum from the date of the judgment nisi." *Dees*, 822 S.W.2d at 707. Therefore, we overrule appellant's fourth ground for review, and affirm the judgment of the Court of Appeals.

McCormick, Presiding Judge

(Delivered September 29, 1993)

En Banc

Maloney, J., dissents

White, J., not participating