

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re FORFEITURE OF BAIL BOND.

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant

v

DEMEKCO MONERICK MOTTEN,

Defendant,

and

LEO'S BAIL BONDS AGENCY COMPANY,  
INC.,

Appellee.

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UNPUBLISHED  
December 18, 2012

No. 307055  
Wayne Circuit Court  
LC No. 08-019334-FH

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In re FORFEITURE OF BAIL BOND.

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRODERICK WATSON,

Defendant,

and

LEO'S BAIL BONDS AGENCY COMPANY,  
INC.,

Appellee.

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No. 307059  
Wayne Circuit Court  
LC No. 09-006373-FH

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, the Wayne County Prosecutor appeals by right the trial court's orders to pay a total of \$3,000 in sanctions to defendants Demekco Monerick Motten and Broderick Watson's surety, Leo's Bail Bonds Agency Company, Inc. (surety), for filing a frivolous motion. We reverse.

### I. BASICS FACTS AND PROCEDURAL HISTORY

In Docket No. 307055, Motten was arrested in 2008 and charged with possession of a firearm by a felon, carrying a concealed weapon, and felony-firearm. The trial court fixed his bail at \$15,000 and allowed him to post a 10 percent deposit bond. On November 28, 2008, Motten obtained a bond posted by the surety, which deposited \$3,750 cash or 1/4 of the \$15,000 bail amount as provided for under MCL 765.6(2). On March 17, 2010, Motten failed to appear for trial. Over one year later, on March 31, 2011, the court entered a default against Motten, revoked his release, issued a warrant for his arrest, and declared his bond forfeited. The court also ordered the surety to appear on May 20, 2011, to show cause why judgment should not be entered against it for the full amount of the forfeited bond.

In Docket No. 307059, Watson was arrested in January 2009 and charged with failing to pay child support. On March 4, 2009, he obtained a \$2,400 cash bond posted by the surety and was released from custody. Subsequently, Watson pleaded to a delayed sentence, which required him to pay his child support arrearages within a set period of time and to attend status conferences. In September 2010, Watson failed to appear for a scheduled status conference. The trial court revoked his release, ordered him to be taken into custody, and declared his bond forfeited. The court also ordered the surety to appear at a bond forfeiture hearing on May 20, 2011, to show cause why judgment should not enter against it for the full amount of the forfeited bond.

In both cases, after the trial court entered its orders declaring defendants' bonds forfeited, the surety moved to deny entry of judgment for the amount of the forfeited bond. Its sole argument was that the court failed to provide it with immediate notice of defendants' defaults, waiting over one year after Motten failed to appear and over six months after Watson failed to appear, instead of the requisite seven days as required under MCL 765.28(1).<sup>1</sup> The surety argued that the untimely notice impaired its ability to perform its duties under the bond contracts.

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<sup>1</sup> MCL 765.28(1), provides, in pertinent part:

If default is made in any recognizance in a court of record, the default shall be entered on the record by the clerk of the court. *After the default is entered, the court shall give each surety immediate notice not to exceed 7 days after the date of the failure to appear.* The notice shall be served upon each surety in person or left at the surety's last known business address. Each surety

The prosecutor and the surety had stipulated to adjourn the May 20, 2011, bond forfeiture hearing, but the court never signed the order and decided to proceed in their absence. Motten's defense attorney, who had not been noticed on the motion, was present and revealed that Motten had been in federal custody since 2009. According to defense counsel, he previously informed the prosecutor that defendant Motten was in federal custody and the prosecutor told him he would "writ him out a couple times." Following the hearing, the court, based on Motten's status in federal custody, dismissed its prior order forfeiting his bond.<sup>2</sup>

Watson appeared on his own initiative at the May 20, 2011, bond forfeiture hearing and explained that he believed he did not have to attend the scheduled conference because he had made all of the required child support payments pursuant to his delayed sentence agreement. Following the hearing, the court dismissed its prior order forfeiting Watson's bond based on his appearance in court. On May 23, 2011, the original trial court presiding over the felony non-support case entered an order dismissing Watson's case.

Thereafter, on June 13, 2011, the prosecutor moved to set aside the trial court's May 20, 2011, dismissal of its orders forfeiting the respective bonds. Unaware of the court's reasons for dismissing the bond forfeitures and relying on the surety's motions to deny judgment, the prosecutor argued that the failure to notify the surety of defendants' defaults in a timely manner as required under MCL 765.28(1) did not preclude the court from entering judgment against the surety for the amount of the forfeited bonds. In response, the surety again maintained that the court's failure to timely notify it of defendants' defaults materially impaired its ability to perform its duties under its contract. Neither party mentioned Motten's status in federal custody or the dismissal of Watson's criminal case in their pleadings.

At the July 26, 2011, hearing on the motions to set aside the court's orders dismissing the bond forfeitures, the prosecutor learned that Motten was in federal custody and the criminal case against Watson was previously dismissed. As such, the prosecutor immediately withdrew its motions to set aside the orders of dismissal in both cases.

Thereafter, the surety requested the imposition of sanctions against the prosecutor under MCR 2.114(E) in the amount of \$1,984 in each case for defending the motions to set aside the court's dismissals of its orders forfeiting the respective bonds. The surety argued that the

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shall be given an opportunity to appear before the court on a day certain and show cause why judgment should not be entered against the surety for the full amount of the bail or surety bond. If good cause is not shown for the defendant's failure to appear, the court shall enter judgment against the surety on the recognizance for an amount determined appropriate by the court but not more than the full amount of the bond, or if a surety bond has been posted the full amount of the surety bond. [Emphasis added.]

<sup>2</sup> MCL 765.28(2) provides, "the court shall set aside the forfeiture and discharge the bail or surety bond within 1 year from the date of the forfeiture judgment if the defendant has been apprehended, the ends of justice have not been thwarted, and the county has been repaid its costs for apprehending the person."

prosecutor's motions were not based on a reasonable inquiry as required under MCR 2.114(D)(2) and, had the prosecutor made a reasonable inquiry, it would have discovered that there was no basis for the entry of judgment against the surety in either case. Motten had been in federal custody since July 2009 and Watson's criminal case had been dismissed.

After conducting a hearing, the court awarded the surety costs of \$1,500 in each case, finding:

And what, what concerns me here, Mr. Kesto, is that, that your office sort of went off on a lark here to file a motion to set aside these two orders. And, and in that motion and in your appearance on the date that motion came before me, you know, there wasn't any argument about, well, we have other cost and they should be set off against the amount of the bond forfeiture and so on.

I mean what it — the way you presented it was that my order to set aside the judgment was, was wrong. And then on the morning of the hearing you recon — you know, I guess you looked at the files and realized that the motion had been — the orders had been properly entered. I mean you said as much on the record.

Well, why couldn't that have been recognized two weeks earlier?

Why wasn't Mr. Mahoney and his client notified of the fact that you realize now that you were wrong and, and saved the surety a lot of money in attorney fees.

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I will assess total attorney's fees against the Wayne County Prosecutor's Office in the amount of \$3,000 on the basis that your motion to set aside the judgments entered in this case was frivolous, and your continued position on this case.

The court then entered judgment for costs and attorney fees totaling \$1,500 under MCR 2.114(E) in each case against the prosecutor, concluding that filing the motions to set aside the court's dismissal of the prior orders forfeiting the respective bonds violated MCR 2.114(D) and "resulted in appellee-surety unnecessarily having to engage the services of its attorney."

## II. ANALYSIS

On appeal, the prosecutor argues that the trial court clearly erred in imposing sanctions against it under MCR 2.114(D) and (E). First, the prosecutor argues that sovereign immunity shields it from sanctions. Second, the prosecutor argues that, even if sovereign immunity does not apply, the trial court clearly erred in awarding sanctions under the facts of these particular cases. We find it unnecessary to address whether sovereign immunity applies because we conclude that the trial court clearly erred in awarding sanctions. Thus, even if the trial court was legally authorized to impose sanctions against the prosecutor, we conclude that, as a matter of law, the motions to set aside the court's dismissal of the prior orders forfeiting the respective bonds were not frivolous.

Our review of the issue is as follows:

Since the imposition of a sanction under MCR 2.114 is mandatory upon the finding that a pleading was signed in violation of the court rule, or a frivolous action or defense had been pled, there is no discretion for the trial court to exercise in determining if a sanction should be awarded. Rather, the relevant inquiry is whether the trial court erred in finding that the court rule had been violated and, therefore, that the imposition of a sanction was required. Since this involves a finding of fact by the trial court, that finding must be reviewed to determine if it is clearly erroneous. A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed. [*Contel Sys Corp v Gores*, 183 Mich App 706, 710; 455 NW2d 398 (1990).]

MCR 2.114(E) mandates the imposition of costs where a pleading was filed in violation of MCR 2.114(D), which, pertinent to this case, requires the pleading to be well grounded in fact after reasonable inquiry. MCR 2.114(D)(2). “The frivolous claims provisions impose an affirmative duty on each attorney to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed.” *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003).

The trial court found that the imposition of sanctions was appropriate under MCR 2.114(E) because it determined that the prosecutor failed to make a reasonable inquiry as required under MCR 2.114(D)(2) before filing its motions to set aside the court’s orders dismissing the forfeitures of defendants’ bonds. Under MCR 2.114(D)(2), appellant, as the signer of a pleading, certified that, “to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law. . . .”

The trial court failed to consider a number of factors when imposing sanctions in these cases. First, we look to the content of the surety’s underlying motion to deny entry of judgment for the amount of the forfeited bonds. The surety’s motion was brought solely on the basis that the court failed to provide it with immediate notice of defendants’ defaults as required by MCL 765.28(1). Instead of providing the surety within seven days of default, the trial court waited over one year after Motten failed to appear and over six months after Watson failed to appear. Again, MCL 765.28(1) provides, in relevant part:

If default is made in any recognizance in a court of record, the default shall be entered on the record by the clerk of the court. *After the default is entered, the court shall give each surety immediate notice not to exceed 7 days after the date of the failure to appear.* The notice shall be served upon each surety in person or left at the surety's last known business address. Each surety shall be given an opportunity to appear before the court on a day certain and show cause why judgment should not be entered against the surety for the full amount of the bail or surety bond. [Emphasis added.]

The surety's motion made no mention of the fact that Motten was in federal prison or that Watson's case had been dismissed. Thus, it appears that even the surety was unaware of the salient facts of both cases; otherwise, it would surely have appraised the court that other grounds existed for granting its motions.

Also of critical importance was the fact that the trial court did not state a reason for its dismissal in its orders. While it is true that the trial court was under no obligation to adjourn the forfeiture hearing even upon the parties' stipulation to do so, it is notable that neither the prosecutor nor the surety was present at the hearing. The trial court gleaned its facts from Motten's defense attorney and from Watson. The trial court's orders simply indicated that the surety's motions were "granted"; there was no explanation that the motions were granted for any reason other than that stated in the surety's motion to deny entry of judgment.<sup>3</sup> The prosecutor's reliance on an order that referenced only the parties' motion and response was objectively reasonable under these circumstances.

Moreover, the prosecutor's motions to set aside the court's orders dismissing the forfeitures of defendants' bonds addressed the statutory notice requirements. Relying on *In re Forfeiture of Bail Bond*, 276 Mich App 482; 704 NW2d 734 (2007), the prosecutor argued that a violation of the notice requirement was not grounds for dismissing the forfeitures. This Court has held:

We conclude that the seven-day notice provision of MCL 765.28(1) is directory, not mandatory. The statute does not contain any language precluding the trial court from entering a judgment against a surety when notice is not given within seven days after the defendant's default. In other words, nothing in MCL 765.28(1) expressly precludes the trial court from entering judgment on the recognizance after the specified seven-day notice period has elapsed. [*In re Forfeiture*, 278 Mich App at 495.]

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<sup>3</sup> The orders simply stated:

A Motion for: DISMISSAL OF BOND FORFEITURE SHOW CAUSE

\_\_\_\_\_ having been filed; and

the People having filed and [sic] answer in opposition; and the Court having reviewed the briefs and records in the Cause and being full advised in the premises;

IT IS ORDERED THAT the Motion for DISMISSAL OF BOND FORFEITURE SHOW CAUSE be and is hereby     denied     granted.

Therefore, the prosecutor's motions and arguments were well grounded in law.<sup>4</sup> We agree with the prosecutor's statement that "the reasonable inquiry requirement of MCR 2.114(D) does not create an obligation on a party to engage in speculation about the reasons a court may have had for granting a motion." As we have previously held:

The reasonableness of the inquiry is determined by an objective standard. The focus is on the efforts taken to investigate a claim before filing suit, and a determination of reasonable inquiry *depends on the facts and circumstances of the case*. The attorney's subjective good faith is irrelevant. That the alleged facts are later discovered to be untrue does not invalidate a prior reasonable inquiry. [*Harkins*, 257 Mich App at 576 (emphasis added).]

Finally, upon learning of the underlying reasons for the trial court's actions, the prosecutor immediately withdrew its motions and did not pursue the matter. We conclude that the prosecutor's motions to set aside the court's orders dismissing the forfeitures of defendants' bonds were reasonably responsive to the trial court's generic order granting the surety's motions, which were brought based on violations of the statutory notice requirements. The prosecutor's motion was well grounded in existing law. The surety does not argue that the motion was interposed for an improper purpose. Given these circumstances, the trial court clearly erred in finding that appellant violated MCR 2.114.

Reversed. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Kirsten Frank Kelly

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<sup>4</sup> We believe that *In re Forfeiture of Bail Bond* was wrongly decided. A plain reading of MCL 765.28(1) clearly provides that the seven-day notice provision is mandatory, not discretionary. The notice requirement of MCL 765.28(1) serves to allow a surety the opportunity to locate and apprehend a criminal defendant before bond is forfeited. The purpose of the notice requirement – to allow the surety to secure a criminal defendant's compulsory presence – is completely defeated if the trial court is not obligated to provide notice of the defendant's default. Nevertheless, in spite of our disagreement with the case, it remains the law and the prosecutor was well within its right to rely on the case.

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Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

M. J. KELLY, J. (*concurring*).

I concur in the result only.

/s/ Michael J. Kelly