

# ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR10-1269

FIRST ARKANSAS BAIL BONDS, INC.  
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** May 4, 2011

APPEAL FROM THE CLEBURNE  
COUNTY CIRCUIT COURT  
[NO. CR-2010-25]

HONORABLE JOHN DAN KEMP,  
JUDGE

AFFIRMED

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**DAVID M. GLOVER, Judge**

Appellant, First Arkansas Bail Bonds, Inc., appeals from both an August 31, 2010 order of contempt and a September 27, 2010 order denying its motion “for new trial and in arrest of judgment.” Arkansas Bail Bonds raises three points of appeal, contending that 1) the trial court acted in the absence of jurisdiction where no affidavit was presented showing any facts that, if committed, would support a finding of contempt; 2) the trial court erred in failing to advise Arkansas Bail Bonds of its rights, in ascertaining if it understood its rights, in determining if its waiver of rights was voluntary, and in finding any factual and legal basis to accept the agreement presented; and 3) the trial court erred in finding Arkansas Bail Bonds in contempt of court based upon a finding that it had not collected a ten-percent bond

premium. We must affirm the trial court's decisions without reaching the merits of appellant's arguments because we are precluded from doing so by our rules of criminal procedure.

*Background*

Mark Bufford, a defendant in a criminal case in Cleburne County, hired First Arkansas Bail Bonds to serve as his surety. On May 12, 2010, Arkansas Bail Bonds was served with a "Summons for Surety to Appear." The summons alleged that Mark Bufford had not paid the proper percentage of the premium on the bond that Arkansas Bail Bonds issued, which allowed Bufford to be released from the custody of the Cleburne County Jail. The summons ordered Arkansas Bail Bonds to appear and "show cause why it should not be removed from the list of approved bonding companies authorized to bond inmates from the Cleburne County Jail and otherwise do business in Cleburne County, Arkansas." The show-cause hearing was scheduled for July 15, 2010. Prior to the start of the hearing, however, Arkansas Bail Bonds entered into a consent order. The consent order is not captioned as such, but it is undisputed that it was agreed to by both Arkansas Bail Bonds and the State. Consequently, there was no hearing on the contempt issue, though the record reflects that the principal owner of Arkansas Bail Bonds appeared with counsel, along with the deputy prosecuting attorney, and conferred on the record with the trial court regarding the entry of the consent order.

The consent-contempt order was filed on August 31, 2010. It provided that Arkansas Bail Bonds failed to secure the required ten-percent premium on the bond from Bufford and that in failing to do so it acted in knowing and willful contempt. The trial court fined

Arkansas Bail Bonds \$1000, with \$500 suspended, conditioned upon Arkansas Bail Bonds' future compliance with the bail-bond regulation to collect the full ten-percent bond premium before contracting to serve as surety for a defendant.

After obtaining new counsel, Arkansas Bail Bonds filed a motion for new trial and arrest of judgment on September 2, 2010. In it, Arkansas Bail Bonds alleged certain acts of inducement by the deputy prosecuting attorney to enter the consent order. A hearing on the motion was held on September 16, 2010. The order denying Arkansas Bail Bonds' motion was entered on September 27, 2010. In it, the trial court explained that “[a]bsent a showing of fraud in the inducement of the original agreement, or unless both parties consent, the court is powerless to modify the ‘consent order.’” This appeal followed.

#### *Discussion*

There can be no serious dispute that the nature of the contempt at issue here is criminal contempt. Moreover, we agree with the State's position that the consent order in this case was the equivalent of a guilty plea. Rule 26.1(a) of the Arkansas Rules of Criminal Procedure provides in pertinent part: “A plea of guilty or nolo contendere may not be withdrawn under this rule after entry of judgment.” The consent order was entered on August 31, 2010. The motion for new trial and arrest of judgment, which the State fairly characterizes as an attempt to withdraw the consent order/guilty plea, was not filed until September 2, 2010. It was not timely under our rules of criminal procedure.

Moreover, there can be no appeal from a guilty plea except under the circumstances outlined in Rule 24.3 of the Arkansas Rules of Criminal Procedure, which do not apply to

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this situation, and postconviction relief pursuant to Rule 37.1 is only available to a defendant who is in custody. Arkansas Bail Bonds was merely fined.

We recognize that the trial court did not rely upon our rules of criminal procedure in denying Arkansas Bail Bonds' motions. However, we can affirm a trial court's decision if it reached the right result, even though asserting the wrong reason. *Jarrett v. State*, 371 Ark. 100, 105 n.3, 263 S.W.3d 538, 542 n.3 (2007).

Affirmed.

PITTMAN and ROBBINS, JJ., agree.