

FIRST ARKANSAS BAIL BONDS, INC. v.
STATE of Arkansas

07-387

284 S.W.3d 483

Supreme Court of Arkansas
Opinion delivered May 22, 2008

COURTS — BAIL — FORFEITURE OF BOND FAILED TO STRICTLY COMPLY WITH ARK. CODE ANN. § 16-84-207. — Where the circuit court entered an order to show cause but did not immediately issue a summons for the show-cause hearing, the supreme court held that the circuit court's forfeiture of appellant's bond failed to strictly comply with Ark. Code Ann. § 16-84-207; accordingly, the circuit court's forfeiture judgment against appellant was reversed.

Appeal from Sebastian Circuit Court; *James R. Marschewski*, Judge; reversed and remanded.

J. Carl Bush, for appellant.

Dustin McDaniel, Att'y Gen., by: *Karen Virginia Wallace*, Ass't Att'y Gen., for appellee.

JIM GUNTER, Justice. This appeal arises from an order of the Sebastian County Circuit Court forfeiting a \$25,000 bond posted by Appellant First Arkansas Bail Bonds, Inc. ("First Arkansas") to assure court attendance by criminal defendant Francisco Estrada. This case is one of three similar cases certified to this court by the court of appeals pursuant to Ark. Sup. Ct. R. 1-2(b)(1), (4)-(6) (2007). For the reasons set forth in *First Arkansas Bail Bonds, Inc. v. State*, 373 Ark. 463, 284 S.W.3d 525 (2008), we reverse the forfeiture judgment and remand for an order consistent with this opinion.

On May 11, 2005, First Arkansas posted a \$25,000 bail bond for Estrada's release and to assure his attendance on pending charges. Estrada failed to appear at his plea or trial request hearing before the Sebastian County Circuit Court on November 16, 2005. On November 18, 2005, the circuit court entered an order to show cause and served it on First Arkansas. On November 3, 2006, the circuit court entered a Bond Forfeiture Summons, directing the circuit clerk to notify First Arkansas to appear on December 13, 2006, to show cause why the full amount of the bond should not be forfeited to Sebastian County.

At the December 13, 2006 hearing, First Arkansas argued that the circuit court violated Ark. Code Ann. § 16-84-207(b)(2)(B) by not immediately issuing a summons for the show-cause hearing upon Estrada's failure to appear. The circuit court ruled that First Arkansas was properly notified in November 2005 via certified letter and entered an order forfeiting the \$25,000 bond. On December 14, 2006, the circuit court filed its judgment against First Arkansas. First Arkansas now brings this appeal.

On appeal, First Arkansas asserts that the November 3, 2006 summons was not "immediately issued" as required by Ark. Code Ann. § 16-84-207(b)(2)(B). In response, the State contends that (1) First Arkansas has not preserved this argument for appeal; (2) in the alternative, the November 18, 2005 order to show cause was a summons pursuant to Ark. Code Ann. § 16-84-207(b)(2)(B); and (3) even if the order to show cause were not a summons, First Arkansas received immediate notice of Estrada's failure to appear, and the circuit court's letter setting and giving notice of the show-cause hearing actually favored First Arkansas.

[1] Statutory service requirements, being in derogation of common law rights, must be strictly construed and compliance with them must be exact. See *Brennan v. Wadlow*, 372 Ark. 50, 270 S.W.3d 831 (2008); *Caruth v. Design Interiors, Inc.*, 324 Ark. 373, 921 S.W.2d 944 (1996); *Dougherty v. Sullivan*, 318 Ark. 608 (1994). For the reasons set forth in *First Arkansas Bail Bonds, Inc. v. State*, 373 Ark. 463, 284 S.W.3d 525 (2008), we hold that the circuit court's forfeiture of First Arkansas's bond failed to strictly comply with Ark. Code Ann. § 16-84-207. Accordingly, we reverse the circuit court's forfeiture judgment against First Arkansas and remand for an order consistent with this opinion.

Reversed and remanded.