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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

In Re: Kenneth Stake, Professional Bndsmn, (Eugene Manning)
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Criminal Action No. MD 124-2014

HEADNOTES

Forfeiture of Bail Bond

1. It is axiomatic that the Court has authority to order forfeiture of bail upon the violation of any condition of a bail bond. Commonwealth v. Hann, 81 A.3d 57, 65 (Pa. 2013).
2. When a defendant has breached the conditions of a bail bond and forfeiture is ordered, the Court may set aside or remit the forfeiture “if justice does not require full enforcement of the forfeiture order.” PA. R. CRIM. P 536(A)(2)(d).
3. When determining whether to remit bail forfeiture the Trial Court should consider 9 factors: (1) whether the applicant is a commercial bondsman; (2) the extent of the bondsman’s supervision of the defendant; (3) whether the defendant’s breach of the recognizance of bail conditions was willful; (4) any explanation or mitigating factors presented by the defendant; (5) the deterrence value of forfeiture; (6) the seriousness of the condition violated; (7) whether forfeiture will vindicate the injury to public interest suffered as a result of the breach; (8) the appropriateness of the amount of the recognizance of bail; and (9) the cost, inconvenience, prejudice or potential prejudice suffered by the State as a result of the breach. Hann, 81 A.3d at 67-68.
4. Bail bond was subject to forfeiture where bail bondsman posted bail for Defendant, Defendant willfully breached the conditions of his bail by committing new crimes and contacting the victim, and the bail bondsman failed to supervise Defendant while Defendant was released on bail.

Appearances:

Zachary Ian Mills, Esq., *District Attorney’s Office*

David Keller, Esq., *Counsel for Kenneth Stake*

OPINION

Before Herman, P.J.

Before the Court is the Commonwealth’s Petition for Forfeiture of Bond wherein the Commonwealth requests forfeiture of \$5,000 bail that Kenneth Stake (“Mr. Stake”) posted for Eugene Manning (“Defendant”) after Defendant violated bail conditions that were imposed at the time bail was initially set. Mr. Stake seeks remittal of the forfeiture arguing that justice does not require full enforcement of forfeiture. For the reasons that follow we find that full enforcement of forfeiture is warranted.

PROCEDURAL HISTORY

The Commonwealth filed its Petition for Forfeiture of Bond on May 1, 2013. On May 22, 2013 Mr. Stake filed a Reply to Petition for Forfeiture of Bond. A hearing on this matter was held on March 20, 2014 and the parties were given the opportunity to submit briefs. Mr. Stake filed his brief on April 3, 2014 and the Commonwealth filed its brief on April 10, 2014. The matter is now ready for decision.

STATEMENT OF THE CASE

In Case No. 1674 of 2011 Defendant was charged with 2 counts of Stalking under 18 Pa.C.S. § 2709.1. On September 8, 2011 Defendant's bail was set at \$5,000. Conditions of bail required Defendant to refrain from contacting Pamela Ross ("the victim") and to refrain from engaging in further criminal activity. The next day, on September 9, 2011, Mr. Stake posted bail for Defendant. While out on bail Defendant was charged on May 1, 2012 and May 4, 2012 in Case Nos. 1169 of 2012 and 1173 of 2012 with Stalking and Harassment of the same victim in Case No. 1674 of 2011 in which he was released on bail on September 9, 2011. Defendant was ultimately convicted of 1 count of Stalking and 28 counts of Harassment on the new charges.

DISCUSSION

In its Petition for Forfeiture of Bond the Commonwealth seeks forfeiture of \$5,000 that Mr. Stake posted for Defendant's bail. "In every case in which a defendant is released on bail, the conditions of the bail bond shall be that the defendant will . . . refrain from criminal activity." PA. R. CRIM. P. 526. Prior to a defendant being released on bail the defendant and the surety are required to sign the bond verifying the type of bail, the bail conditions, and the consequences of failing to comply with the bail bond. PA. R. CRIM. P. 525(D)-(E); Commonwealth v. Hann, 81 A.3d 57, 66 (Pa. 2013). Further, upon providing the bail the surety agrees that he "is liable for the full amount of the monetary condition in the event the defendant fails to appear or comply as required by these rules." PA. R. CRIM. P. 535(B); Hann, 81 A.3d at 66.

Here, Defendant was charged with stalking and bail was set at a monetary value of \$5,000. Mr. Stake, acting in the capacity of a surety, posted \$5,000 bail bond for Defendant. One of the conditions necessarily imposed was that Defendant was to refrain from engaging in any criminal activity. PA. R. CRIM. P. 526. Furthermore, Defendant was to refrain from contacting the victim. Mr. Stake agreed to these terms and the possible

consequence of forfeiture of the \$5,000 he posted if Defendant did engage in criminal activity or contact the victim while out on bail. PA. R. CRIM. P. 525(D)-(E); Pa. R. Crim. P. 535(B). It is undisputed that Defendant did in fact engage in the crimes of Stalking and Harassment of the victim while out on bail, thus violating the terms of his bail bond and subjecting Mr. Stake's \$5,000 to forfeiture. We now turn to the ultimate question of whether Mr. Stake is entitled to remission of the forfeiture.

When a defendant has violated a condition of a bail bond and forfeiture of the bail is ordered, the Court may set aside or remit the forfeiture "if justice does not require full enforcement of the forfeiture order." PA. R. CRIM. P. 536(A)(2)(d). The decision of whether to grant or deny remission of forfeiture lies within the sound discretion of the Court. Hann, 81 A.3d at 65. The Court's discretion extends to remission of all or part of a forfeiture. Id. at 67. Furthermore, it is axiomatic that the Court has authority to order forfeiture of bail upon the violation of any condition of the bail bond. Id. at 65. The evaluation of whether forfeiture or remission of forfeiture is proper must be made on a case-by-case basis. Id. at 67.

Recently, the Supreme Court of Pennsylvania has laid out the framework by which potential remission of bail forfeiture is to be analyzed by the Trial Court. While not an exhaustive list, the Supreme Court listed 9 factors to consider when determining whether forfeiture should be remitted:

- (1) whether the applicant is a commercial bondsman;
- (2) the extent of the bondsman's supervision of the defendant;
- (3) whether the defendant's breach of the recognizance of bail conditions was willful;
- (4) any explanation or mitigating factors presented by the defendant;
- (5) the deterrence value of forfeiture;
- (6) the seriousness of the condition violated;
- (7) whether forfeiture will vindicate the injury to public interest suffered as a result of the breach;
- (8) the appropriateness of the amount of the recognizance of bail; and
- (9) the cost, inconvenience, prejudice or potential prejudice suffered by the State as a result of the breach.

Id. at 67-68.

(1) Whether Mr. Stake is a Commercial Bondsman

A surety's status as a "bondsman" tends to lean in favor of forfeiture. Id. at 69. The reasoning behind this is that a bondsman is in the business of posting bail bonds and his motive behind such posting is purely monetary in nature. Id. The status of bondsman imputes knowledge of his responsibilities and the consequences of a defendant's failure to abide by the

conditions of the bail bond. Therefore, a commercial bondsman engages in the bail bond business with an understanding of the business risk that comes along with it. Id.

Here, it is clear that Mr. Stake is a commercial bondsman. He is in the business of posting bail bonds. He had no prior relationship with Defendant and his sole purpose of posting bail was for pecuniary gain. Therefore, this factor weighs in favor of forfeiture.

(2) The Extent of Mr. Stake’s Supervision of the Defendant

Although bondsmen do not have an affirmative duty to absolutely guarantee that a defendant will comply with bail conditions, there is “a duty on the part of the bondsman to exercise some minimal supervision over the defendant in order to accomplish’ such compliance.” Id. at 69-70 (quoting Rochelle Bail Agency, Inc. v. Maryland Nat. Ins. Co., 484 F.2d 877, 878–79 (7th Cir.1973)).

The testimony of Mr. Stake at the forfeiture hearing evinced no supervision by Mr. Stake over Defendant while he was out on bail. Mr. Stake plainly admits that he “exercised little supervision over [Defendant].”¹ In fact, Mr. Stake employed even less than “little supervision” over Defendant. Mr. Stake testified that after signing the bail paperwork and meeting with Defendant he had absolutely no contact with Defendant until Defendant had already violated the terms of his bail and was re-incarcerated on the new charges. Supervision without communication is undeniably impracticable. Defendant was released on bail on September 9, 2011 and violated his bail conditions by committing related crimes approximately 8 months later on May 1 and May 4, 2012. During this 8 month period when Defendant was free on bail Mr. Stake did not contact or implement any type of supervision over Defendant.

(3) Whether Breach of Bail Conditions was Willful and (4) Any Explanation or Mitigating Factors Presented by Defendant

The Supreme Court noted that these two factors need not be discussed at length as any evidence relating to the willfulness of the breach of bail conditions and any mitigation by either Mr. Stake or Defendant himself is self-explanatory.

It is undisputed that the Defendant’s breach of the conditions of bail was willful. Defendant violated the condition of his bail that mandated he refrain from criminal activity and not contact the victim. In May of 2012 while out on bail Defendant was charged with Stalking and Harassment of

¹ Mem. for Bondsman Kenneth Stake on Commonwealth’s Pet. for Forfeiture of Bond (hereinafter “Stake’s Memo”) at 3.

the very same victim in the case for which Mr. Stake previously posted bail. These offenses are obviously willful acts and therefore a willful breach of the terms of Defendant's bail.

Defendant suggests that mitigating circumstances surrounding Defendant's breach of bail conditions calls for remission of forfeiture arguing that Defendant appeared in Court when required to and no degree of supervision by Mr. Stake would have kept Defendant from engaging in criminal behavior while out on bail. This position however is without merit as it directly correlates to Mr. Stake's sedentary supervision of Defendant. One cannot know what he does not seek knowledge of. Mr. Stake testified that he had no contact with Defendant at all during the time he was free on bail. Defendant's plan to stalk the victim may well have been obvious but Mr. Stake would not have been aware of any potential breach of bail condition because he did not communicate with Defendant. Prior to the new charges Defendant apparently contacted the victim several times which formed the basis for the new charges. Had Mr. Stake inquired Defendant very well may have shared such information with Mr. Stake. Furthermore, prior to posting bail Mr. Stake did not read the affidavit of probable cause which would have informed him of the nature of the crime Defendant was charged with along with the facts and circumstances surrounding the charge. Mr. Stake testified that the only information about the case he received was from Defendant himself. Mr. Stake cannot disregard pertinent information available to him that would have alerted him as to Defendant's potential preconceived tendency to contact the victim, especially here in a Stalking case, and then later claim such information would not have aided him in supervising Defendant. While Mr. Stake undoubtedly did not directly cause Defendant to commit a crime while out on bail, it is painstakingly obvious that Mr. Stake failed to avail himself of vital information relevant to Defendant's charges that would have aided him in properly supervising Defendant. Accordingly, we find Defendant's willful breach of the conditions of bail and the lack of mitigating factors favor forfeiture of bail.

(5) Deterrence Value of Forfeiture and (6) Seriousness of the Condition Violated

Deterrence value of forfeiture and the seriousness of the condition breached go hand-in-hand. The Court must consider whether the breach of bail conditions was technical or something more. *Id.* at 70. "If a violation of a condition of release is more than technical, the court may require a substantial forfeiture to deter not only the defendant but others from future violations." *Id.* (quoting *Jeffers v. United States*, 588 F.2d 425, 427 (4th Cir.1978)). Logically speaking, the seriousness of the condition breached

must be proportionate to the amount of money forfeited to effectively deter future defendants from breaching similar bail conditions. Therefore, the more serious the breach is the greater the amount of forfeiture should be. In Hann, the defendant was released on bail and killed the victim and himself an hour later. The Supreme Court noted that, “it is self-evident that violating no-contact orders, intimidating or physically harming witnesses, or committing other crimes while free on bail all constitute serious bail bond breaches, to which courts may be inclined to respond with forfeiture orders in order to deter future misconduct.” Id.

Here, while released on bail Defendant clearly breached the conditions of his bail, including a no contact provision, by committing new crimes against the very same victim whom he was charged with Stalking in his initial case. There is no doubt that a bail breach of this nature is exceptionally serious, as pointed out by the Hann Court. Furthermore, Mr. Stake himself admits the breach was serious.²

The bail breach by Defendant was more than a technical violation as he committed new crimes and contacted the victim in the case. A breach of this magnitude calls for substantial forfeiture to deter future defendants from committing similar violations of bail. Id. at 70. Mr. Stake argues that forfeiture would not deter Defendant from future breaches of bail conditions. However, we must dismiss this argument. While forfeiture may not specifically deter Defendant from future breaches, the Supreme Court makes clear that deterrence value of forfeiture is to be considered in light of deterring “not only the defendant *but others* from future violations.” Id. (emphasis added).

(7) Whether Forfeiture will Vindicate the Injury to Public Interest

The Court must also examine the public harm, if any, caused by a defendant’s violation of a bail condition. Id. However, we must be mindful that forfeiture is not meant to enrich the government or punish the defendant or bondsman. Id. Notwithstanding, “[t]here is an intangible element of injury to the public interest in almost any case where a defendant deliberately breaches a condition of his bail bond.” Id. (quoting State v. Peace, 305 A.2d 410, 411–12 (N.J. 1973)). As such, when the breach of bail conditions is willful, any harmful effects on the public must be carefully considered. Id.

As alluded to several times, Defendant was originally charged with Stalking. After being released on bail on the charge Defendant breached the no contact provision with the victim by harassing and stalking her and was charged with the same. Prior to Defendant’s initial charges the victim was receiving unwanted solicitation from Defendant. She contacted the police

² Stake’s Memo at 4.

and still Defendant's contact with the victim continued. The situation was then escalated to Defendant being arrested and charged with Stalking. At that point after the police and court system were involved public citizens would expect that an offender's criminal behavior towards a victim would cease. However, Defendant was released on bail and continued his unrelenting harassment of the victim. The conditions of Defendant's bail when he was released on the initial charges were clear. He was to, *inter alia*, stay away from the victim and refrain from criminal activity. Defendant failed to comply with those requirements. Mr. Stake argues that the public was vindicated because Defendant was ultimately convicted of the new charges. We disagree. The public may have been vindicated for the actual offenses Defendant committed while out on bail, but the public was not vindicated for the breaches themselves. Defendant's deliberate harassment and stalking of the victim while out on bail caused injury to the public's faith in our criminal justice system by allowing a defendant to further injure a previous victim who was supposedly protected under a bail condition. Accordingly, for purposes of vindication of the public, forfeiture is appropriate. We note that in considering this factor we lean towards forfeiture not to punish Mr. Stake or Defendant, but to maintain the public's trust, reliance, and confidence in our criminal justice system.

(8) Appropriateness of the Amount of Bail

The amount of bail should be proportionate to the seriousness of the offenses charged. *Id.* If the bail is excessive and the Court determines that forfeiture is warranted, it may upon its own discretion remit part of the forfeiture in an amount that justice requires. *Id.*

We find that the bail amount of \$5,000 was appropriate for the initial charge of Stalking. Mr. Stake concedes that the bail amount was appropriate.³

(9) Cost, Inconvenience, and Prejudice or Potential Prejudice Suffered by the Commonwealth

While "a forfeiture amount should 'bear some reasonable relation to the cost and inconvenience to the government,' the Commonwealth is not required to produce a bill of costs. *Id.* at 68 (quoting United States v. Kirkman, 426 F.2d 747, 752 (4th Cir. 1970)). Lack of monetary loss or prejudice alone should not supplant all other concerns when the Court considers the cost, inconvenience, and prejudice endured by the Commonwealth. *Id.* at 69. Furthermore, the cost and inconvenience factor must not be summarily dismissed simply because the costs and

³ Stake's Brief at 4.

inconvenience were not substantial. Id. at 68. The Supreme Court stressed that cost, inconvenience, and prejudice is but one factor to be considered in a Court’s decision of whether justice requires full, partial, or no forfeiture of bail. Id. at 69.

Confusingly, Mr. Stake admits in the form of a stipulation with the Commonwealth that “the Commonwealth had incurred significant cost and inconvenience in prosecuting [Defendant] for the offenses committed while the Defendant was on bail in the instant case,” and then argues that the Commonwealth failed to present any evidence of cost, inconvenience, or prejudice caused by the breach of bail conditions.⁴ Notwithstanding Mr. Stake’s position, the evidence establishes that the Commonwealth did in fact sustain significant cost and inconvenience directly triggered by Defendant’s criminal behavior while free on bail. The mere commission of the 29 new crimes required the Commonwealth to commit substantial resources to the investigation, prosecution, and ultimate conviction of the new charges. While in the interest of judicial economy the 2 new cases were consolidated with the original case, the cost and inconvenience was nonetheless substantial as the Commonwealth was required to procure additional evidence for the new cases and the length of the trial was increased. Although these types of costs cannot be measured in dollars and cents, Hann does not mandate reduction of cost and inconvenience to a monetary value. Mr. Stake argues that Commonwealth v. Culver prohibits the Court from considering, in the cost and inconvenience factor, offenses committed while out on bail. 46 A.3d 786, 794 (Pa. Super. Ct. 2010). While Mr. Stake correctly points out that Culver makes such a holding, we note that Culver has been vacated by the Supreme Court and the case was remanded for consideration of forfeiture in accordance with its decision in Hann. Furthermore, while Hann did not explicitly disagree with that specific proposition by the Superior Court, it merely cites the case in recitation of the bondsman’s position in that case, arguing that *financial* detriment is required, which is unequivocally dismissed in Hann. 81 A.3d at 64. Hann makes clear that lack of pecuniary loss or monetary prejudice is not dispositive of this factor. Id. at 69.

CONCLUSION

In evaluating and weighing the foregoing factors as set forth in Hann we find that justice demands full forfeiture of the \$5,000 bail posted by Mr. Stake. We carefully considered all of the factors set forth by the Supreme Court and all factors favor forfeiture. Accordingly, the Commonwealth’s Petition for Forfeiture of Bond will be GRANTED.

⁴ Stake’s Memo at 2.

ORDER OF COURT

AND NOW, this 5th day of May, 2014, upon consideration of the Commonwealth's Petition for Forfeiture of Bond, Kenneth Stake's answer thereto, the evidence presented at hearing, and the parties' submitted written argument,

IT IS HEREBY ORDERED that the *Petition for Forfeiture of Bond* is **GRANTED** and the request of the bondsman Kenneth Stake, for remission of the forfeiture is denied pursuant to the attached Opinion. The Court directs that the surety in the amount of \$5,000 cash be forfeited and delivered to the Clerk of Courts within thirty (30) days of receipt of this Order.

Pursuant to Pennsylvania Rules of Criminal Procedure, the Clerk of Courts shall immediately docket this Order and record in the docket the date it was made. The Clerk shall forthwith furnish a notice of the Order by mail or personal delivery, pursuant to Pa.R.Crim. P. 536(A)(2)(b), to each party or attorney, and shall record in the docket the time and manner thereof.