

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TINA M. PHILLIPS, : NO. 94-21,018
Plaintiff :
 :
vs. :
 : Domestic Relations Section
THOMAS L. WINDER, :
Defendant :

OPINION AND ORDER

This matter raises an unusual but interesting question concerning bail forfeiture. The background begins with a finding of contempt for the failure of Mr. Thomas L. Winder to pay his child support. As part of the sanction, the Honorable William S. Kieser, in his Order dated February 9, 2000, provided as follows:

“As an alternate to paying the arrearage in full, that he post bond in the amount not less than \$10,000 conditioned upon his paying the sum of not less than \$1,500 per month on the first day of each month commencing March 2000 on the account of the arrearages due in this case. Said bond to be attached as good security and conditioned upon the fact that if the Defendant fails to meet any of the child support obligations imposed by the Order, or the governing Order of child support, that may then be in effect that the bond shall be forfeited and the amount applied to child support payments that are due or past due.”

Mr. Winder elected this alternative and went to a bail bondsman, Kermit Yearick. Mr. Yearick issued a standard bail bond in the amount of \$10,000. Mr. Winder then failed to meet the mandates of the Order by paying the \$1,500 per month and accordingly, a bench warrant was issued for his arrest.

The Domestic Relations Office now seeks to have the bail forfeited pursuant to the Order of February 9, 2000. Mr. Yearick, in opposition to the Petition for the Forfeiture of Bail, opines that he was contacted by Mr. Winder and he issued a standard bail bond in

the amount of \$10,000 to guarantee Mr. Winder's appearance before the Court. Mr. Yearick further indicates that he did not have a copy of Judge Kieser's Order when contacted by Mr. Winder nor did Mr. Winder in any way seek to advise him of the payment clause contained in the Order. Mr. Yearick argues that he should not be held liable for the forfeiture of a bail bond on a matter that was never covered by the bail bond.

The Domestic Relations Office argues they relied on the posting of the bail bond and therefore, when Mr. Yearick issued it, he issued it at his own peril and that he should have exercised due diligence to ascertain for exactly what purpose he was issuing the bail bond. Therefore, the loss should be sustained by Mr. Yearick.

It is acknowledged by all parties and by the Court that the bail bond does not in anyway indicate surety for the continuing payments of child support by Mr. Winder. Posting a bail bond is governed by Pa.R.C.P. 4001 et. seq. Specifically, Rule 4006 concerns the non-monetary conditions of release. Rule 4006(b.) states:

“the bail authority shall state with specificity on the bail bond any non-monetary conditions imposed pursuant to this rule”.

It thus appears that responsibility for ensuring the conditions of the bail were properly documented lies with the bail authority, which in this case is the Court of Common Pleas or one of its agents, i.e. the Office of the Prothonotary or the Domestic Relations Office. It is clear that the bail bond was accepted by the bail authority as having fulfilled the provisions of Judge Kieser's Order.

While it is arguable that bail bondsman Yearick should have exercised greater diligence in issuing a bail bond, particularly with respect to a domestic matter, it appears from the Rules of Civil Procedure the ultimate responsibility rests with the bail authority to ensure the bail bond meets the mandates of the underlying Court Order.

Accordingly, the Domestic Relations Office's Petition for a Bail Forfeiture will be denied.

ORDER

AND NOW, this day of September, 2000, for the foregoing reasons, the request of the Domestic Relations Office for forfeiture of the bail bond is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: James D. Casale, Esq.
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Hon. Dudley N. Anderson