

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS,  
Appellant,  
vs.  
INTERNATIONAL FIDELITY  
INSURANCE; AND CASINO BAIL  
BONDS,  
Respondents.

No. 48724

**FILED**

JAN 07 2008

TRADIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND WITH INSTRUCTIONS

This is an appeal from a district court order granting a permanent writ of mandate that directs the municipal court to set aside a bail bond forfeiture. Eight Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

The relevant facts in this case are undisputed. Respondents International Fidelity Insurance and Casino Bail Bonds (collectively, "the Sureties") posted a \$247 bail bond with the Las Vegas Municipal Court for the release of Fanta Hammond, after she was arrested and charged with petit larceny. When Hammond failed to appear on November 1, 2005, as required, the municipal court sent a notice of intent to the Sureties stating that their bond would be declared forfeited on May 22, 2006. After Hammond failed to appear by the forfeiture date, the bond was forfeited and judgment was entered against the Sureties.

Thereafter, on June 2, 2006, the Sureties discovered that on April 18, 2006, Hammond had been arrested and booked into the Clark County Detention Center (CCDC) on an unrelated matter.

The Sureties then moved the municipal court to set aside the forfeiture under NRS 178.512((1)(a)4) because, they argued, Hammond

had failed to appear before the forfeiture date because she was being detained by civil authorities and the Sureties did not know and could not have reasonably known of this detention before the forfeiture, given that no central database of incarcerated individuals existed. The Sureties noted that in “the Las Vegas Metropolitan area alone there [were] four separate detention facilities that must be checked individually.”

The City of Las Vegas opposed the motion, arguing, in relevant part, that Hammond’s incarceration during the last 34 of the 180 plus days that the bond was in forfeiture status did not reveal why she was unable to appear before the court on November 1 or during the remaining 146 plus days of the forfeiture period before she was incarcerated. Additionally, noting that the Sureties had located Hammond in the CCDC after the forfeiture date, the City of Las Vegas argued that the Sureties offered no plausible explanation as to why they could not locate her before the forfeiture date.

After conducting a hearing, the municipal court orally denied the Sureties’ motion to set aside the forfeiture.<sup>1</sup> Thereafter, the Sureties filed a petition for a writ of mandate in the district court, challenging the municipal court’s decision. The Sureties maintained that the municipal court abused its discretion by denying their motion because at the August 2006 hearing, the Sureties had demonstrated that Hammond was incarcerated before and through the forfeiture date, and that they had thus “present[ed]” Hammond before the municipal court. The Sureties also maintained that once they had discovered that Hammond was in jail,

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<sup>1</sup>It is unclear from the record whether the municipal court entered any written order denying the Sureties’ motion to set aside the forfeiture.

they sent, on June 2, 2006, a “note” to the city bail unit notifying it of Hammond’s location in the CCDC. The City of Las Vegas answered the petition by reiterating the arguments that it had made in its earlier municipal court opposition to the petition to set aside the forfeiture.

During a district court hearing on the petition, the City of Las Vegas pointed out that it did not have a copy of the municipal court hearing transcript. Nevertheless, it maintained that the Sureties were not diligent in attempting to locate Hammond.

Despite the lack of a transcript or any written municipal court findings, the district court considered the Sureties’ petition for a writ of mandate and orally determined, during the hearing, that the Municipal Court had abused its discretion in denying the Sureties’ motion to set aside the forfeiture. The court reasoned that the City of Las Vegas “[had] an obligation to be diligent in checking to make sure [Hammond] [was] not in custody.” Presumably referring to the June 2 note that the Sureties sent to the city bail unit upon discovering Hammond’s whereabouts, the court added that the “prosecutor’s office [had] an obligation to follow up on that, and if they [were] not talking to each other that [was] not something that should be laid upon the bond company.” The court then entered a written order granting the Sureties’ petition for a writ of mandate and directing the City of Las Vegas to set aside the forfeiture. This appeal followed.

On appeal, the City of Las Vegas primarily argues that the district court could not have properly determined that the municipal court abused its discretion without having reviewed the transcript of the municipal court hearing. The City of Las Vegas further argues that the

Sureties failed to meet the requirements for post forfeiture relief under NRS 178.512.

The Sureties respond that the district court did not need the “two-page transcript” to determine that the municipal court had abused its discretion and that they offered nine exhibits in support of their petition for a writ of mandate.<sup>2</sup> The Sureties also maintain that the district court’s determination properly centered on the fact that Hammond was in CCDC custody before and after the forfeiture date.

A writ of mandate is available to compel the performance of an act that the law requires, or to control an arbitrary or capricious exercise or manifest abuse of discretion.<sup>3</sup> Because the municipal court is often required to make factual determinations regarding bail bond matters, and since the district court should not disturb those findings “unless they are clearly erroneous and not based on substantial evidence,” a writ generally

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<sup>2</sup>The exhibits submitted by the Sureties were (1) the municipal court’s notice of intent to the Sureties that their bond would be declared forfeited on May 22, 2006, (2) a CCDC “Inmate In-custody Status” sheet indicating Hammond’s April 18 arrest on the unrelated matter, (3) the district court minutes reflecting a sentencing date for the unrelated matter, (4) the June 2 note that the Sureties sent to the city bail unit allegedly notifying it of Hammond’s location in the CCDC, (5) the City of Las Vegas’ motion for entry of default judgment on the surety bond, (6) the Sureties’ motion to exonerate the bond, (7) district court minutes indicating that the sentencing date for the unrelated matter had been changed, (8) the Sureties’ motion to set aside forfeiture, (9) the City of Las Vegas’ opposition to the Sureties’ motion set aside forfeiture, and (10) the Sureties’ reply to the City of Las Vegas’ opposition.

<sup>3</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

is not warranted when the municipal court's decision is supported by substantial evidence.<sup>4</sup> We review district court orders granting a petition for a writ of mandate for an abuse of discretion.<sup>5</sup>

NRS 178.512(1)(a)(4) provides that “[t]he court shall not set aside a forfeiture unless” the court finds that the defendant “[w]as being detained by civil or military authorities, but the surety did not know and could not reasonably have known of his detention” before the forfeiture. When this ground is met, the court may set aside the forfeiture if “[t]he court determines that justice does not require the enforcement of the forfeiture.”<sup>6</sup>

Upon reviewing the record and considering the parties' appellate arguments, in light of NRS 178.512(1), we are not convinced that the district court's intervention by way of extraordinary relief was warranted, for two reasons. First, the Sureties' petition was not accompanied by any copies of the municipal court hearing transcript or any other indication of the municipal court's findings.<sup>7</sup> It is unclear how

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<sup>4</sup>See International Fid. Ins. v. State of Nevada, 122 Nev. 39, 42, 126 P.3d 1133, 1134-35 (2006).

<sup>5</sup>DR Partners v. Bd. of County Comm'rs, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

<sup>6</sup>See NRS 178.512(1)(b).

<sup>7</sup>Cf. NRAP 21(a) (requiring that a petition to this court for extraordinary relief “contain . . . copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition”); accord Pan v. Dist. Ct., 120 Nev. 222, 228-29, 88 P.3d 840, 844 (2004) (emphasizing that “[p]etitioners carry the burden of demonstrating that extraordinary relief is warranted”).

the district court could have properly evaluated the petition's merits and determined that the municipal court had manifestly abused its discretion without having the municipal court's factual findings before it.<sup>8</sup> In their petition, the Sureties cited NRS 178.512(1)(a)(4), but they failed to argue whether the municipal court incorrectly found that they knew or reasonably could have known of Hammond's detention in the CCDC before the May 22, 2006 forfeiture date.<sup>9</sup>

Second, although the district court determined that the City of Las Vegas had an obligation to inform the Sureties that Hammond was incarcerated at the CCDC, the Sureties have pointed to no authority to support that conclusion, and no such authority appears to exist. Although there exists some decisional law from other jurisdictions to support the proposition that a state cannot insist that a surety produce a defendant whom the state itself already has in its custody at the time of the scheduled appearance, at least when the defendant's confinement is

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<sup>8</sup>Indeed, we have analogously recognized that when an appellant fails to include necessary documentation in the record for our review, it is necessarily presumed that the missing portion supports the district court's decision. See Prabhu v. Levine, 112 Nev. 1538, 1549, 930 P.2d 103, 111 (1996). Moreover, although the Sureties have offered a copy of the municipal court transcript for our review, we have not considered it, as it was not part of the record on appeal to the district court. Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981).

<sup>9</sup>The "note" that the Sureties sent to the city bail unit, after the May 22 forfeiture date, provides no insight as to why they could not reasonably have known of Hammond's detention in the CCDC before the forfeiture.

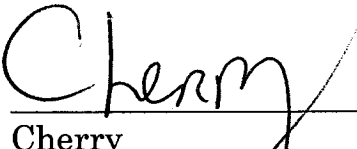
brought to the court's attention before that date,<sup>10</sup> those decisions do not excuse the surety from its obligation to produce a defendant who is incarcerated only several weeks after the scheduled appearance date or to otherwise meet statutory requirements to set aside a forfeiture.<sup>11</sup>

Accordingly, as the record does not support the district court's conclusion that the municipal court manifestly abused its discretion, we reverse the district court's order and remand this matter with instructions that the district court vacate its writ of mandate.

It is SO ORDERED.

  
\_\_\_\_\_ J.

Maupin

  
\_\_\_\_\_ J.

Cherry

  
\_\_\_\_\_ J.

Saitta

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<sup>10</sup>See, e.g., State v. Eller, 11 S.E.2d 295, 296 (N.C. 1940); Continental Casualty Co. v. People, 111 N.Y.S.2d 495, 498 (N.Y. Sup. Ct. 1952); cf. NRS 178.512(1)(a)(4).

<sup>11</sup>See NRS 178.512(1)(a)(4); cf. People v. Brown, 408 N.Y.S.2d 927, 929 (N.Y. Sup. Ct. 1978) (declining to vacate a bond forfeiture when, among other things, the surety failed to comply with a statutory requirement that good cause for the defendant's failure to appear at the scheduled time be shown, even when the defendant was subsequently arrested on an unrelated charge).

cc: Hon. Kathy A. Hardcastle, District Judge  
Las Vegas City Attorney  
Las Vegas City Attorney/Criminal Division  
Osvaldo E. Fumo, Chtd.  
Eighth District Court Clerk