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Opinion No. 04-173

Assessment of Court Costs Upon Judgment of Forfeiture of Bail Bond

QUESTION

Does Tenn. Code Ann. § 40-11-201 prohibit the assessment of court costs in addition to the amount of a final judgment on the forfeiture of a bail bond for failure of a defendant to appear?

OPINION

No. The context of Tenn. Code Ann. § 40-11-201 limits the liability of a bail bondsman to the amount of the bail bond when the bail bondsman is liable for the expenses of returning a bonded defendant for trial from another jurisdiction where the defendant has been detained. Tenn. Code Ann. § 40-11-139 specifically allows a court to enter judgment against a bail bondsman for the amount of bail and costs of the proceedings.

ANALYSIS

Tenn. Code Ann. § 40-11-201 provides that “a conditional judgment may be entered against a defendant and his sureties” when a defendant fails to appear as required. When a conditional judgment is entered, the bail bond remains in effect until the defendant appears before the court or until the defendant is detained in another jurisdiction and a detainer is filed with the detaining authority. Upon the filing of the detainer, the bail bondsman and any sureties are responsible for the return of the defendant to the court upon release by the detaining authority. However, the liability of the bondsman for the transportation costs associated with the return of the defendant under these circumstances “shall not exceed the amount of the bail bond.” Further, the statute establishes that “[a]fter trial, however, if it is necessary to return the principal to the detaining authority in another jurisdiction, all expenses incurred in such return shall be paid by the state of Tennessee.” The limitation of this statute refers to the liability of the bail bondsman for the costs of transporting a delinquent defendant back to the court which granted bail. This provision does not limit the court’s assessment of costs otherwise associated with the court’s proceedings.

Tenn. Code Ann. § 40-11-139 states the process whereby bail may be forfeited and states the liability of a surety for both the bail amount and costs of proceedings:

(a) If the defendant whose release is secured [by bail bond] does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited. . . . The defendant's surety will be served with scire facias upon the forfeiture entered.

(b) After the expiration of one hundred eighty (180) days from the date:

(1) The surety is served with scire facias;¹ or

(2) Scire facias is returned to the clerk unserved or undelivered;

the court may enter judgment for the state against the defendant and the defendant's sureties for the amount of the bail and costs of the proceedings.

Further, Tenn. Code Ann. § 40-11-203 addresses the exoneration of the bail bondsman upon the surrender of a defendant who previously violated the conditions of bail. Under such conditions, the bail bondsman may be exonerated from the forfeiture of the bail bond. Additionally, the court has discretion to relieve the bail bondsman from liability for the payment of all costs.

The language of Tenn. Code Ann. §§ 40-11-139 and 202 clearly demonstrates that the Tennessee courts have the authority to assess court costs upon entry of a final order declaring bail to be forfeited.

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¹Tenn. Code Ann. § 40-11-202 states that “[a] scire facias shall issue as heretofore to notify the defendant and the defendant's sureties to show cause why such judgment shall not be made final.”

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