

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 14, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-1203

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN RE THE RETURN OF BAIL IN
STATE V. CARLTON E. BAYLIS:**

FARIBA BAYLIS,

APPELLANT,

V.

STATE OF WISCONSIN,

RESPONDENT.

APPEAL from an order of the circuit court for Ashland County:
ROBERT E. EATON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 HOOVER, P.J. Fariba Baylis, pro se, appeals an order forfeiting her ex-husband, Carlton Baylis's, \$10,000 cash bond. She claims that the State "sought forfeiture proceedings against the wrong party." Because she provided

the \$10,000, she contends the forfeiture proceedings should have been brought against her. She also asserts that she was denied due process because the State did not provide her notice of its forfeiture request. Next, Fariba argues that the bail condition that Carlton not commit any crime cannot be violated by Carlton's commission of a criminal act outside Wisconsin. Finally, she contends that her counsel was ineffective. We reject her arguments. First, even if Fariba has an interest in the cash bond, the bond forfeiture proceedings were properly brought in the criminal action. The record also establishes that Fariba had actual notice of the proceedings relating to the forfeiture bond. Moreover, in *State v. West*, 181 Wis.2d 792, 796, 512 N.W.2d 207, 208 (Ct. App. 1993), we held that the bail condition that no crime be committed applied to a crime committed anywhere. Finally, her argument that she has a right to effective assistance of counsel in a civil forfeiture proceeding is undeveloped and unfounded. Accordingly, the order is affirmed.

¶2 On August 8, 1996, Carlton was charged with drug violations in Ashland County. Cash bail of \$10,000 was set on August 16 for Carlton, who was confined in a California jail. A condition of Carlton's release was that he refrain from committing crimes or engaging in criminal activity. He appeared at the bail hearing by telephone, with counsel. Fariba posted the bail, and Carlton was released.

¶3 Carlton was bound over for trial after his preliminary hearing. The arraignment was scheduled for November 20, 1996. Carlton was unable to attend the arraignment because he was in custody in Tennessee on federal drug charges. The court issued an appearance warrant for Carlton on the grounds that he failed to appear for his arraignment.

¶4 On November 25, 1996, the State moved for forfeiture of the bail, alleging that Carlton had engaged in criminal activity and failed to appear at the arraignment. Fariba, by a December 16, 1996, motion, sought return of the cash bail. A hearing was set for March 17, 1997, at which Fariba appeared by telephone with California counsel. The court was informed that Carlton was proceeding to trial on the federal drug charges and continued the matter to June 9, 1997. Fariba again appeared by telephone at the June hearing, during which the matter was again continued, to September 22, 1997, in anticipation of the resolution of Carlton's federal charges.¹ Neither Fariba nor her attorney appeared at the September 22 hearing. The court ordered the \$10,000 cash bail forfeited because Carlton failed to appear for arraignment, had failed to inform the court of his whereabouts and had engaged in criminal activity. A judgment forfeiting bail was entered on September 24, 1997.

¶5 On January 20, 1999, Fariba requested reconsideration of the judgment forfeiting the bail. The court conducted hearings on March 1 and 22. Fariba appeared by telephone and by local counsel at both hearings. The court denied her motion, and Fariba appeals that order.

¶6 Arguably, Fariba's motion to reconsider the judgment is a motion under § 806.07, STATS., which is generally reviewed under an erroneous exercise of discretion standard.² See *Edland v. Wisconsin Physicians Serv. Ins. Corp.*,

¹ Carlton was convicted of the federal drug charges and was sentenced to 30 years imprisonment on January 12, 1998.

² Fariba's motion to reconsider the judgment and return the cash bail came fifteen months after the court's order forfeiting the cash bail. She does not explain why this delay occurred, nor why she failed to appear at the September 1997 hearing set to address the court's initial decision on the bond.

210 Wis.2d 638, 643, 563 N.W.2d 519, 521 (1997). Fariba does not directly address whether the trial court properly exercised its discretion by denying her motion. Her contentions on appeal involve, in essence, statutory interpretation, the applicable legal standard and application of the undisputed facts to that standard, all of which are questions of law that we review de novo. See *Miller v. Wal-Mart Stores*, 219 Wis.2d 250, 271, 580 N.W.2d 233, 242 (1998) (statutory interpretation is a question of law we review de novo); see also *In re Jason P.S.*, 195 Wis.2d 855, 862, 537 N.W.2d 47, 49-50 (Ct. App. 1995) (determination of the proper legal standard to be applied is a question of law); *Nottleson v. DILHR*, 94 Wis.2d 106, 115-16, 287 N.W.2d 763, 768 (1980) (whether the facts found by the circuit court fulfill that legal standard is a question of law).

ANALYSIS

¶7 Initially, Fariba claims that the bail forfeiture hearing should have proceeded directly against her and that the State's failure to serve her with notice of the forfeiture denied her due process. She offers no authority for the proposition that the forfeiture proceedings should have been filed against her. This court will not supply legal research and argument on behalf of an appellant who raises unsupported claims. See *State v. Waste Mgmt.*, 81 Wis.2d 555, 564, 261 N.W.2d 147, 151 (1978). Further, Fariba's assertion that the forfeiture proceeding should have been initiated against her would have required a separate, independent action because she is not a party to the criminal action. Yet, § 969.13(3), STATS., expressly provides that the forfeiture action may be "enforced without the necessity of an independent action."³ "Bail forfeiture

³ Section 969.13, STATS., provides, in pertinent part:

(continued)

proceedings are intended to be part of the larger criminal case.” *State v. Givens*, 88 Wis.2d 457, 463, 276 N.W.2d 790, 793 (1979).

¶8 Third, Fariba’s legal interest in the cash bail is not altogether clear. She is apparently under the mistaken impression that she was a surety in this matter. She did not post the cash bail as a surety. The court did not authorize a surety to provide the bond. *See* § 969.03(1)(d), STATS. She neither signed nor saw the bond form. Nor is Fariba a surety as defined in § 969.12, STATS., which among other things requires that a surety be a resident of Wisconsin. Fariba sent two money orders to the sheriff to enable Carlton to post his \$10,000 cash bail. Her money orders did not identify her as a surety, and one stated: “Bail for my husband ... For Carleton Baylis.” However, even if Fariba were a surety, the

(1) If the conditions of the bond are not complied with, the court having jurisdiction over the defendant in the criminal action shall enter an order declaring the bail to be forfeited.

....

(3) By entering into a bond, the defendant and sureties submit to the jurisdiction of the court for the purposes of liability on the bond and irrevocably appoint the clerk as their agent upon whom any papers affecting their bond liability may be served. Their liability may be enforced without the necessity of an independent action.

(4) Notice of the order of forfeiture under sub. (1) shall be mailed forthwith by the clerk to the defendant and the defendant's sureties at their last addresses. If the defendant does not appear and surrender to the court within 30 days from the date of the forfeiture and within such period the defendant or the defendant's sureties do not satisfy the court that appearance and surrender by the defendant at the time scheduled for the defendant's appearance was impossible and without the defendant's fault, the court shall upon motion of the district attorney enter judgment for the state against the defendant and any surety for the amount of the bail and costs of the court proceeding. Proceeds of the judgment shall be paid to the county treasurer. The motion and such notice of motion as the court prescribes may be served on the clerk who shall forth with mail copies to the defendant and the defendant's sureties at their last addresses.

forfeiture was properly initiated in the criminal action, which was a proceeding against Carlton, not her.

¶9 We also reject Fariba's contention that the failure to notify her of the forfeiture request denied her due process. First, her legal interest in the cash bail is, again, uncertain. Although Fariba may have thought she was acting as a surety, the record indicates she was not. At best, she could be characterized as someone who loaned the bail money to Carlton.

¶10 Second, the record reflects that Fariba was provided with ample notice of the proposed bond forfeiture and that she had adequate time to respond. Regardless how she obtained notice, she was aware of the State's motion to forfeit the bond and sought return of the cash bail within thirty days. She attended the first two hearings by telephone and, according to the hearing minutes, was notified in court of the continued hearing date. She failed to appear at the September 22 hearing, despite being notified of that date at the June 9 hearing. We conclude that Fariba had actual notice of the proceedings and therefore has not been deprived of her due process rights.

¶11 Fariba next claims that the trial court erred by determining that Carlton had violated a condition of his bond by committing a crime outside Wisconsin because § 969.03, STATS., does not apply to a crime committed outside Wisconsin.⁴ She contends that Wisconsin cannot constitutionally give extraterritorial effect to its laws. She asserts that because Wisconsin's criminal law does not apply beyond the state's boundaries, Carlton could not commit a

⁴ Fariba does not address the other grounds cited by the court for forfeiting the bond. This alone is adequate for us to reject her claim that the bond's conditions were not violated. We nevertheless address her argument.

crime for purposes of the bail statute by engaging in illegal conduct outside Wisconsin. We previously rejected a similar argument.

¶12 Section 969.03(2), STATS. provides that “[a]s a condition of release in all cases, a person released under this section shall not commit any crime.” In *West*, 181 Wis.2d at 796, 512 N.W.2d at 208, we determined that the word “crime” has its ordinary meaning in the bail statute: an offense against the social order that is dealt with by community action. The statute does not condition a defendant’s release upon the requirement that Carlton not engage in activity that would constitute a crime under Wisconsin law, but rather that the defendant not commit a crime under the criminal laws of any jurisdiction.⁵ *See id.* The statute therefore does not improperly contemplate the extension of Wisconsin’s criminal law beyond this state’s boundaries.

¶13 Finally, Fariba argues that her counsel was ineffective. Although bail forfeiture proceedings are part of the underlying criminal case, they are civil in nature. *See State v. Wickstrom*, 134 Wis.2d 158, 162-64, 396 N.W.2d 188, 190 (1986). In *Village of Big Bend v. Anderson*, 103 Wis.2d 403, 308 N.W.2d 887 (Ct. App. 1981), we rejected a similar attempt to extend the right to effective assistance of counsel to the civil arena. We said:

Initially, it must be emphasized that this is not a criminal action. A defendant in a criminal prosecution is guaranteed assistance of counsel for his defense. U.S. Const. Amend. VI; Wis. Const. Art. I, § 7. *See also Powell v. Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932). Legal representation in a criminal matter “must be equal to that which the ordinarily prudent lawyer, skilled and versed in criminal law, would give to clients who had privately retained his services.” *State v. Harper*, 57 Wis.2d 543,

⁵ Fariba does not contest that Carlton violated another jurisdiction’s criminal laws.

557, 205 N.W.2d 1, 9 (1973). Representation falling below that standard may be grounds for a reversal.

A civil suit presents far different considerations. There is no express constitutional guarantee of representation by counsel in a civil matter. Unlike many criminal defendants who are represented by court-appointed counsel, parties in a civil action retain the counsel of their choice. In a criminal case, a defendant's liberty is at stake, and the prosecutorial force of the state is involved. While potentially involving large sums of money, a civil matter is not penal in nature, and the state is generally not directly involved. Despite these distinct characteristics, Anderson urges this court to define a minimum standard in the civil arena similar to that established for a criminal matter. We decline to do so.

Id. at 405-06, 308 N.W.2d at 888-89 (footnote omitted). Fariba directs us to no constitutional guarantee of representation nor to any statutory requirement that counsel be provided to her in this proceeding.⁶ Accordingly, we reject her attempt to extend the right to effective assistance of counsel to her motion to reconsider the forfeiture of Carlton's cash bail.

¶14 In conclusion, the bond forfeiture proceedings were properly brought against Carlton in the criminal action. Section 969.13, STATS., provides that bond forfeiture proceedings may be initiated in the underlying criminal action and that an independent action against Fariba was not necessary. The record established that Fariba had actual notice of the proceedings relating to the forfeiture bond. Second, the bail statute requirement that release is conditioned upon the defendant not committing additional crimes is not limited to a prohibition against violating Wisconsin law, but is a condition requiring that the defendant not commit an

⁶ Our supreme court extended the application of ineffective assistance of counsel to a paternity action based on the rationale that a "statutory provision for appointed counsel includes the right to *effective* counsel" *In re M.D.(S)*, 168 Wis.2d 995, 1004-05, 485 N.W.2d 52, 55 (1992).

offense against the social order punishable by community action in any jurisdiction. Carlton violated federal criminal laws and, as such, violated the conditions of his bond. Finally, Fariba's argument that she has a right to effective assistance of counsel in civil forfeiture proceeding is undeveloped and unfounded. Accordingly, the order is affirmed.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

