COURT OF APPEALS
DECISION
DATED AND RELEASED

OCTOBER 14, 1997

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.**

NOTICE

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

No. 97-0217

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE FORFEITURE OF BAIL IN STATE V. RANDALL A. HUNGERFORD:

CAROLE HUNGERFORD,

APPELLANT,

RANDALL A. HUNGERFORD,

CO-APPELLANT,

V.

STATE OF WISCONSIN,

RESPONDENT.

APPEAL from an order of the circuit court for Outagamie County: DEE R. DYER, Judge. *Reversed and cause remanded.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Carole Hungerford and her son, Randall, both appeal a trial court order that declared a $25,000 bail forfeiture. As a noncommercial surety, Carole posted $50,000 in cash to release Randall from jail; the State was prosecuting him for two counts of bail jumping, and one count each of misdemeanor battery and disorderly conduct. Randall also faced two cocaine conspiracy charges in cases unrelated to the bail jumping, battery, and disorderly conduct charges. Randall's girlfriend was the victim in the misdemeanor battery and disorderly conduct cases, and the terms of his release barred him from contacting her. In violation of these no contact terms, Randall had several telephone conversations with his girlfriend and then went to her residence, with her consent, to retrieve some clothing. These contacts resulted in Carole's $25,000 bail forfeiture and caused the State to bring new bail jumping charges against Randall. On appeal, Carole argues that the $25,000 bail forfeiture is disproportionate to Randall's misconduct, her culpability, and her financial means as a noncommercial surety. She maintains that revocation of bail and other measures provide fairer sanctions. We agree that the trial court's $25,000 forfeiture did not fit Randall's misconduct, Carole's culpability, or the wide ranging equitable principles that govern bail forfeitures. We therefore reverse the trial court order and remand the matter for further proceedings.

Trial courts have discretion on bail forfeitures. *See **State v. Ascencio***, 92 Wis.2d 822, 829, 285 N.W.2d 910, 914 (Ct. App. 1979). These forfeitures, however, rest on equitable principles and must bear some proportion to the accused's misconduct. *See **id.*** at 831, 285 N.W.2d at 914. Relevant inquiries for the court include the following: (1) Was the bondsman a commercial or noncommercial surety? (2) Was the default willful? (3) Did the surety have other expenses? (4) Did the surety have knowledge of the planned default? (5) Was the

surety aware of the conditions that were violated? (6) Did the forfeiture amount to an attempt to punish the accused? (7) How did the forfeiture compare to the face amount of the bond and the reasons for setting the original amount and conditions? (8) What degree of blatancy was involved? (9) Were there extenuating circumstances? and (10) Could the surety have prevented the misconduct? ***Id.*** at 831-32, 285 N.W.2d at 915. While these factors may sometimes reduce or excuse a forfeiture, they do not turn sureties into mere indemnifiers for the prosecution's costs from a bail violation. *Cf.* ***id***. at 833, 285 N.W.2d at 915. Sureties must take their bond obligations seriously and may not indifferently disregard an accused's violations of bail conditions. *Cf.* ***id.*** Here, the trial court failed to examine and apply many of these factors in levying the $25,000 forfeiture. An award of that magnitude must rest on more than Randall's misconduct and history of bail violations.

We conclude that the ***Ascencio*** equitable principles merited a smaller forfeiture. First, the $25,000 bail forfeiture exceeded the $10,000 maximum fine for the crime of bail jumping by a factor of one and one-half; this provides a good point of reference by which to initially measure the forfeiture's basic fairness. It suggests that the forfeiture was needlessly large in comparison to the harm the forfeiture was seeking to redress. Second, Randall's girlfriend, the person whom the no contact provision was designed to protect, had a prominent role in Randall's behavior. She evidently initiated some of the contacts and even once asked the trial court to remove the no contact stipulation. By comparison, Carole evidently had little or no knowledge of these contacts and was relatively powerless to prevent them if she did. Viewed in this light, Carole's culpability in the matter compared favorably with the girlfriend's, and this was a factor that equity requires mitigate her surety liability to some degree. Third, Randall's

misconduct was of a comparatively low degree in terms of his relationship with his girlfriend. Unlike past encounters, the new ones resulted in no violence or injury. They may have violated the letter of the no contact provisions, but they were not the kind of contact that principally motivated those provisions at their inception. Fourth, Randall's bail jumping prosecution supplies a direct redress for his misconduct and somewhat neutralized the need for the court to defend the integrity of bail conditions by taking action against an innocent third-party surety.

Further, a forfeiture of this magnitude requires examination of the surety's personal circumstances. The $25,000 forfeiture fell on a noncommercial surety of limited financial means. Carole was not in the business of issuing performance bonds. She did not know the risks and responsibilities of such bonds and did not have the capital to fully assume those kinds of business risks. She expressed limited knowledge of her duties as a surety beyond the fact that she was guaranteeing her son's court appearances. She posted the money for family reasons, gained no financial advantage from the expenditure, put a large share of her own capital at risk, and borrowed $36,000 of the sum from her daughter. She also posted $30,000 bail in Randall's two drug cases, borrowing $12,000 of that sum on her credit cards, and she testified that she had $35,000 in medical bills outstanding. Carole had no experience with and little practical understanding of the no contact requirements themselves, which the bond document tersely referred to as "No Contact Provision" without explanation. She told the trial court that she did not realize such contact would trigger a bail forfeiture. For all of these reasons, we are satisfied that the $25,000 forfeiture was inequitable, outside the realm of permissible trial court discretion. On remand, the trial court must more closely examine, weigh, and apply the ***Ascencio*** equitable principles before imposing a forfeiture.

By the Court.—Order reversed and cause remanded for further proceedings.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.