

Affirmed and Opinion filed May 24, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00816-CR
NO. 14-00-00817-CR
NO. 14-00-00818-CR
NO. 14-00-00820-CR
NO. 14-00-00821-CR
NO. 14-00-00822-CR
NO. 14-00-00833-CR
NO. 14-00-00834-CR
NO. 14-00-00835-CR
NO. 14-00-00836-CR
NO. 14-00-00887-CR
NO. 14-00-00922-CR
NO. 14-00-00923-CR
NO. 14-00-00960-CR
NO. 14-00-01004-CR
NO. 14-00-01005-CR
NO. 14-00-01006-CR
NO. 14-00-01008-CR
NO. 14-00-01009-CR
NO. 14-00-01010-CR
NO. 14-00-01011-CR
NO. 14-00-01012-CR
NO. 14-00-01038-CR
NO. 14-00-01043-CR
NO. 14-00-01045-CR
NO. 14-00-01046-CR
NO. 14-00-01047-CR
NO. 14-00-01048-CR
NO. 14-00-01049-CR
NO. 14-00-01050-CR

THE STATE OF TEXAS, Appellant

V.

**TONY FIGGERS, AHMAD COLLINS, BOBBY MORRIS, JUAN RANGEL,
ELWOOD WEBBER, VICENTE RAMIREZ, MELVIN THOMAS, ALBERT
WILLIAMS, STEVE ROY GARCIA, SAMUEL JACKSON, JR., DEJESUS RAMIREZ,
STEVEN MATTHEWS, DEBRA BLAISDELL, JOHN ESTERS, LILLIE HOLT,
DERRIK MURPHY, GEORGE LEE PHILLIPS, ESTEBAN RODRIGUEZ,
MECHELE SAMUDIO, FRANK AYALA, ANTHONY WILLIAMS, JERAMY STEEN,
BEAU BRACKETT, ANTHONY WHITE, JOHNNY ELWOOD BYRD, PRINCIPALS
and ISAIAH R. JONES, SURETY, Appellees**

**On Appeal from the County Court at Law No. 2
Brazos County, Texas**

**Trial Court Cause Nos. 3164-94, 2854-93, 2058-96, 2134-96, 3224-95, 3824-95,
2729-95, 908-95, 1041-95, 1042-95, 761-94, 998-96, 1040-95, 2372-97, 1212-96,
1382-96, 1377-96, 900-96, 1383-96, 2838-96, 44-96, 1458-96, 410-96, 1165-96, 2279-
96, 2456-96, 45-96, 2340-96, 926-95, 2504-96**

OPINION

The State appeals from the grant of thirty motions for summary judgment in bond forfeiture cases. In three points of error, the State claims the trial court erred in ruling that each bond was invalid, and in entering summary judgment in Brazos County cases in which no motion for summary judgment has been filed. We affirm.

Each one of the thirty cases began as an underlying criminal case in which Melvin Bowser, an employee of J & J Bail Bonds, signed a bail bond for a criminal defendant. Each of the defendants failed to appear to answer the criminal charges against him or her. A judgment nisi was entered against each criminal defendant and Isaiah Jones as surety. Isaiah Jones, d/b/a J & J Bail Bonds challenged the validity of the bonds under article 17.08(4) of the Texas Code of Criminal Procedure. Jones filed a motion for summary judgment in each case alleging he was not liable for bonds he did not sign. The trial court granted summary judgment

from which the State appeals.

Article 17.08(4) requires that a bail bond “be signed by name or mark by the principal and sureties, if any, each of whom shall write thereon his mailing address.” This provision requires that the surety sign the bond personally, rather than permitting an agent for the surety to sign the bond. *Ex parte Meadows*, 129 Tex. Crim. 297, 87 S.W.2d 254 (1935); Op. Tex. Att’y Gen. No. MW-507 (1982); *Tietz v. State*, 744 S.W.2d 353, 354 (Tex. App.—Austin 1988, no pet.). A licensed corporate surety may have authorized agents sign bonds in its behalf, but an individual surety may not do so according to article 17.08(4) of the Code of Criminal Procedure. Op. Tex. Att’y Gen. No. MW-507. If the surety does not sign the bond, the bond is invalid. *Tietz*, 744 S.W.2d at 354.

The State claims, however, that Melvin Bowser was a registered agent of J & J Bail Bonds pursuant to local rules of the Brazos County Bail Bond Board. Those rules provide, in pertinent part:

No agent of a licensee will be permitted to sign as surety any bail bond unless the agent is listed as such in the application for a license submitted by the licensee.

* * * * *

Each licensee who permits his designated agents to sign as surety on bail bonds must have a power of attorney on file with the Sheriff’s Office before these agents will be permitted to sign as sureties on any bail bonds.

* * * * *

All licensees and agents are required to have on file in the Sheriff’s Office a signature card before they will be permitted to sign any bail bond as surety.

The State contends that, pursuant to the above local rule, Melvin Bowser was listed as a person who would be processing bonds in Jones’ applications for licenses. Jones gave Bowser power of attorney to act as his bonding agent and Bowser’s signature card was on file in the sheriff’s office. The State further contends that through the Bail Bond Act, the legislature has authorized local bail bond boards to promulgate local rules allowing an agent

to sign the bond for the surety. *See* TEX. REV. CIV. STAT. ANN. art. 2372p-3.

Although article 2372p-3 grants the Brazos County Bail Bond Board power to supervise and regulate the bonding business, it does not allow the board to adjust the requirements of a valid bond. In counties where a bail bond board exists, the board may only adopt such rules as are authorized by and are consistent with statutory authority, and may not adopt rules that impose additional burdens, conditions, or restrictions in excess of or inconsistent with statutory provisions. *Texas Fire & Cas. Co. v. Harris County Bail Bond Bd.*, 684 S.W.2d 177, 178 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.) (Holding a local rule of the Harris County Bail Bond Board requiring a \$100,000 security deposit invalid because it imposed additional burdens on bail bond applications when the statutory minimum deposit is \$5000). Therefore, the portions of the local rules of the Brazos County Bail Bond Board that allow an agent of an individual licensee to sign a bail bond do not supersede article 17.08(4). Because article 17.08(4) requires the signature of the surety for the bonds to be valid, the trial court properly ruled that the bonds were invalid.

In moving for summary judgment, the movant has the burden of establishing that there are no genuine issues of material fact as to any of the essential elements of the cause of action, and that he is entitled to judgment as a matter of law. *Alvarez v. State*, 861 S.W.2d 878, 880 (Tex. Crim. App. 1992). The essential elements of the State's cause of action in a bond forfeiture proceeding are a valid bond and the judgment nisi. *Id.* To obtain a summary judgment, a defendant must either negate at least one element of the plaintiff's theory of recovery or plead and prove each element of an affirmative defense. *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex. 1996). Here, appellees negated the element of a valid bond, therefore the summary judgment was proper. Appellant's first two points of error are overruled.

In its third point of error, the State claims the trial court erred in entering summary judgment in all Brazos County cases when summary judgment motions were filed in only part of the cases. The State claims the trial court's ruling granted summary judgment to Jones for all of the causes of action pending between the two parties. Having reviewed the record, we find nothing in the trial court's judgment that could be construed to reflect that the trial court

granted summary judgment in any cases that were not before it. Because the record does not reflect appellant's contention, we overrule the third point of error.

The judgment of the trial court is affirmed.

PER CURIAM

Judgment rendered and Opinion filed May 24, 2001

Panel consists of Justices Anderson, Hudson and Seymore.

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