STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 17-38

Interpretation of "Costs of the Court Proceedings" in Tenn. Code Ann. § 40-11-120

Question

Do the "costs of the court proceedings" for which a defendant violating the conditions of his bail may be held liable under Tenn. Code Ann. § 40-11-120 include the costs of all the proceedings in the case or the costs of only the bail forfeiture proceeding?

Opinion

The "costs of the court proceedings" in Tenn. Code Ann. 40-11-120 include the costs of all the proceedings in the case and are not limited to the costs of the forfeiture proceeding alone.

ANALYSIS

Article I, § 15 of the Tennessee Constitution grants criminal defendants a right to bail except in capital cases. See Wallace v. State, 193 Tenn. 182, 185-86, 245 S.W.2d 192, 193 (1952). The current statutory framework governing pretrial release and bail in Tennessee largely originates in The Release From Custody and Bail Reform Act of 1977 ("Bail Reform Act"). 1978 Tenn. Pub. Acts, ch. 506; Tenn. Code Ann. § 40-11-101, et seq. Under its provisions, individuals charged with most criminal offenses may be released pending trial by a magistrate authorized to admit the person to bail. See Tenn. Code Ann. § 40-11-115; see also id. § 40-11-102 (defining "[b]ailable offenses"). The magistrate may order the defendant released pending trial on his personal recognizance or "upon the execution of an unsecured appearance bond in an amount specified by the magistrate." Id. § 40-11-115(a). A defendant for whom bail has been set may "execute the bail bond and deposit with the clerk of the court before which proceeding is pending a sum of money in cash equal to the amount of the bail." Id. § 40-11-118(a). After making this deposit, a defendant is released from custody but "subject to the conditions of the bail bond." Id.; see also id. § 40-11-116 (describing the conditions a magistrate may impose "to assure a defendant's appearance in court").

If a criminal defendant who has been released on his recognizance under § 40-11-115 or who has posted a bail bond pursuant to § 40-11-118 violates the conditions of his bail, Tenn. Code Ann. § 40-11-120 directs the court to enter an order "declaring the bail to be forfeited" and to provide the defendant notice of this forfeiture. The defendant must appear and surrender to the court within thirty days of the date of the forfeiture or satisfy the court that doing so would be impossible and not the defendant's fault. Id. If the defendant fails to appear or demonstrate impossibility, however, the court must "enter judgment for the state against the defendant for the amount of the bail and costs of the court proceedings." Id. (emphasis added). A defendant's cash

deposit made in accordance with § 40-11-118 "shall be applied to the payment of the judgment and costs" and the rest of the sum may be collected in the same manner as a civil judgment. *Id.*

As used in § 40-11-120, neither "costs" nor "court proceedings" are defined in the Code. Undefined words in the Tennessee Code must "be given their natural and ordinary meaning, without forced or subtle construction that would limit or extend the meaning of the language, except when a contrary intention is clearly manifest." Tenn. Code Ann. § 1-3-105(b). Interpreted according to its ordinary meaning, the term "costs of the court proceedings" encompasses all of the costs incurred in the various actions taking place within a single case.

The word "proceeding" can be used as a broad term to describe "[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment" as well as a more limited term to describe "[a]n act or step that is part of a larger action." *Black's Law Dictionary* (10th ed. 2014). Either way, the "costs of the court proceedings" in § 40-11-120 include the costs of the entire case and are not limited to the costs of the bail forfeiture proceeding. Reading "proceeding" according to its broad definition, the term "costs of the court proceedings" means the costs of the entire lawsuit, including all acts and events from beginning to end. And because § 40-11-120 refers to "proceedings" in the plural, reading "proceeding" according to its more limited definition does not alter the meaning. Use of the plural shows that the term "costs of the court proceedings" encompasses not just one "act or step" but all of the "act[s] or step[s]" that are part of the larger case.

Under Tennessee law, a bail forfeiture action is not a separate proceeding, but "an incidental proceeding" within the existing case. *State v. Sibley*, 72 Tenn. 738, 741 (1880); *see also Indemnity Ins. Co. v. Blackwell*, 653 S.W.2d 262, 264 (Tenn. Ct. App. 1983). The forfeiture of a defendant's bail deposit pursuant to § 40-11-120 is thus a distinct "act or step," a singular "proceeding," that is but one aspect of the collected "court proceedings" against the defendant. Accordingly, under the ordinary meaning of the provision, the "costs of the court proceedings" are not limited to the costs from that forfeiture proceeding but also include the costs of the other proceedings in the case.

When interpreting a provision of the Tennessee Code, "it should be assumed the legislature used each word purposefully and that those words convey some intent and have a meaning and a purpose." *Fed. Express Corp. v. Tenn. State Bd. of Equalization*, 717 S.W.2d 873, 874 (Tenn. 1986). An interpretation of § 40-11-120 must thus assume that the General Assembly "purposefully" used the plural "proceedings" and that its choice of the plural "convey[s] some intent and ha[s] a meaning and a purpose." *Id.* That assumption is bolstered in this instance because the General Assembly used the singular "proceeding" in neighboring provisions of the Bail Reform Act enacted alongside § 40-11-120 in order to limit the provisions to a single, specific "proceeding." *See* Tenn. Code Ann. § 40-11-110(b) (permitting the court to commit a material witness to custody "pending final disposition of the *proceeding* in which the testimony is needed") (emphasis added); *id.* § 40-11-118(a) (directing the defendant to deposit his bail money with "the clerk of the court before which the *proceeding* is pending") (emphasis added); 1978 Tenn. Pub. Acts ch. 506, §§ 10, 18.

The natural and ordinary meaning of "costs of the court proceedings" includes all costs of the proceedings in the case, and we can discern no contrary intention. The legislative history and

statutory context of § 40-11-120 do not suggest, let alone "clearly manifest," any intention that would undercut this ordinary meaning. Tenn. Code Ann. § 1-3-105(b). To the contrary, they support the ordinary understanding that § 40-11-120 makes a defendant who violates the conditions of his bail liable for all of the existing costs of the proceedings against him if he fails to appear upon the court's order.

The Bail Reform Act was a comprehensive measure designed to set state-wide standards for bail and professional bondsmen. *See* Op. Tenn. Att'y Gen. 15-17 (Mar. 10, 2015). Numerous provisions of the Bail Reform Act demonstrate that the General Assembly purposefully included language to ensure that the costs of court proceedings would not go unpaid as a result of a defendant's failure to comply with his bail obligations. *See, e.g.*, Tenn. Code Ann. § 40-11-121 (mandating that a defendant's bail deposit "shall be applied to the payment" of "a judgment for fine and *court costs*") (emphasis added); *id.* §§ 40-11-122(1), 40-11-138(b) (mandating that a defendant who secures bail with real estate must pay the "costs of preparation . . . and recordation" and the "costs of the release" of a deed of trust); *id.* § 40-11-139(b) (permitting the court to enter judgment against a defendant and his sureties "for the amount of the bail *and costs of the proceedings*" if the defendant violates bail) (emphasis added). And older provisions of the Code establish that the payment of costs by parties at fault has long been a principle of the bail framework. *See id.* § 40-11-203 (allowing a surety to be exonerated from bail forfeiture by the surrender of the defendant "*and the payment of all costs*" but permitting the court to relieve the bondsman of costs also "if, in the opinion of the court, the bail bondsman or surety has been in no fault") (emphasis added).

Accordingly, the "costs of the court proceedings" as used in § 40-11-120 includes the costs of all the proceedings within a case against a defendant and are not limited to the costs of the bail forfeiture proceeding alone.

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