

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000461-MR

CANDY HARVEY AND  
MELDRUM J. HARVEY, M.D.

APPELLANTS

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID H. JERNIGAN, JUDGE  
ACTION NO. 04-CR-00151

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AFFIRMING

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BEFORE: LAMBERT AND VANMETER, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

LAMBERT JUDGE: Candy and Meldrum J. Harvey appeal from an order forfeiting a \$50,000 appeal bond. For the reasons herein, we affirm the circuit court's forfeiture order.

### **Background**

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<sup>1</sup>Senior Judge William L. Knopf, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

After a jury returned guilty verdicts against the defendant, Meldrum Greg Harvey, who is not a party to this appeal, for raping and sodomizing a child under the age of twelve, the circuit sentenced him to forty years' imprisonment. Pending appeal, the court granted bail secured by a \$50,000 cash bond posted by the appellants, Candy and Meldrum J. Harvey.

The Supreme Court of Kentucky affirmed the defendant's conviction on November 22, 2006, and the circuit court ordered the defendant to report to jail at which time the bail bond would be released. The defendant failed to report and the Commonwealth moved for forfeiture of the bond. After conducting a hearing, the court learned that the defendant's whereabouts remained unknown and that he had been indicted for bail jumping. Consequently, the circuit court ordered that the entire bond be forfeited.<sup>2</sup>

Subsequent to the circuit court's forfeiture order and the initiation of this appeal, the Kentucky Supreme Court vacated its opinion affirming the defendant's conviction due to a procedural error, only to issue another opinion again affirming the conviction. Neither party indicates that these actions have any bearing on the appeal from the circuit court's forfeiture order.

### **Analysis**

We review bond decisions solely for abuse of discretion. *Commonwealth v. Peacock*, 701 S.W.2d 397, 398 (Ky. 1985). Having considered the appellants' three

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<sup>2</sup>According to appellant's brief, the defendant subsequently surrendered himself on July 17, 2007, to the Muhlenberg County Sheriff and is presently in custody.

theories of error, we hold that the circuit court did not abuse its discretion by ordering the forfeiture of the entire bail bond upon the defendant's failure to report to custody once his conviction was affirmed.

First, we reject the appellants' contention that, after the defendant's conviction was affirmed on appeal, the circuit court's order stating, "the defendant's bond is revoked and the defendant shall report to the Muhlenburg County Detention Center to commence serving his sentence . . ." indicated its intent to release the appellants as sureties. This is so because the same order also states, "**upon defendant's incarceration**, bond shall be released to the party posting same or assignee." In short, the circuit court made clear its intent that the appellants, who are the parties that posted the bail bond, would only be released upon the defendant's surrender. *See Crouch v. Crouch*, 201 S.W.3d 463, 465 (Ky. 2006) (noting that a reviewing court "must find the intent of the ordering court.") And as the defendant did not surrender, the circuit court's order does not serve to release the appellants from their bond.

Second, we also reject the appellants' contention that the order requiring the defendant to report to jail constituted a change in the conditions of his bail necessitating a hearing. To the contrary, the original bail order specifically stated as a condition of bail that: (1) the defendant have no contact with the victim's family; (2) the defendant have no unsupervised visits with any unrelated female under 12; and (3) "the defendant shall report to jail **when ordered**." (Emphasis added.) Thus, far from changing the conditions of bail, the circuit court's order requiring the defendant to report to jail was merely a

directive to the defendant explicitly anticipated in the original bail order. Consequently, as no change in conditions of bail on appeal occurred here, no hearing was required on the circuit court's order requiring the defendant to report to jail.

Third, we likewise reject the appellants' contention that forfeiture of the entire bond was excessive. Indeed, at the forfeiture hearing, the appellants failed to indicate any knowledge of the defendant's whereabouts or any actions on their part to obtain his surrender. *Compare Johnson Bonding Co. v. Commonwealth*, 487 S.W.2d 911, 914 (Ky. 1972) (“little was done by the appellant[s] to return [the defendant] to [custody].”) Thus, we see no abuse of discretion by the circuit court here.

### **Conclusion**

For the foregoing reasons, we affirm the judgment of the Muhlenberg Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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