

LOCAL NEWS

Stay granted in bail bond fee dispute

County's \$60 charge for sending certified letters to bondsmen contested

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By Donna Fielder / Staff Writer

The 2nd Court of Appeals in Fort Worth has temporarily ordered Denton County to refrain from collecting thousands of dollars in disputed processing fees from bail bondsmen Eydie and Vic Burgess or suspending their licenses until the appeals court makes a final determination on the issue.

The Burgesses have attacked the legality of the fees in a lawsuit in district court, and have asked for a temporary injunction halting collection until the issue is settled.

Visiting Judge John Narsutis denied the temporary injunction, and the Burgesses appealed that decision to the state appeals court. This stay from the appeals court does not reverse Narsutis' denial of the injunction, but it enjoins the county from collecting the fees or penalizing the Burgesses for nonpayment until the appellate court makes a final decision on that procedural appeal.

At issue are the \$60 fees the county charges every time a clerk sends a certified letter to any bail bond company to alert the company that a client has failed to show up for a scheduled court appearance and that the company is in danger of forfeiting the bond put up to assure that appearance. The bail bondsman must then find the client and get him to court or forfeit the bail.

The county charges that fee in other cases in which it sends certified letters, and a Burgess victory in the suit could benefit every bail bond company in the county as well as numerous individuals in civil actions.

The Burgesses are challenging the legality of the \$60 fee, alleging that the law mandates charging only the actual cost of sending a certified letter, which is about \$5. The county says the charge is fair.

The Burgesses, who own Eydie's Bail Bonds and Burgess Bail Bonds, have refused to pay the \$60 assessment in more than 200 cases, and if the appeals court does not decide in their favor, they will owe between \$13,000 and \$14,000 on the cases and could lose their bondsman licenses.

In August, Narsutis ruled against the motion for a temporary injunction preventing the county from action on those affected cases until a final ruling on the lawsuit.

His written opinion appeared to say that reasonable costs should include capital costs, personnel costs or other overhead costs — the wages and benefits paid to employees, the cost of equipment, software, communications, transportation, filing and storage associated with the preparation and service of citation by certified mail.

“There is no requirement that government be efficient, and I take judicial notice as well of the fact that

inefficiency is endemic in government,” the judge wrote.

During a hearing that preceded the ruling, Precinct 1 Constable Jim Dotson testified that he is a member of an advisory committee for county commissioners that sets fees for notifications in person by a constable.

He said he does not believe that fee list given to commissioners for their consideration even contained a fee for certified mail.

The committee’s work was just for personal notification by a constable, he testified.

Richard Gladden, the attorney for the Burgesses, played a tape of the commissioners’ proceedings during which the fee list was agreed upon. There was no discussion or consideration, and the entire vote lasted less than a minute.

District Clerk Sherry Adlestein testified that it takes a clerk three to five minutes to prepare a citation for mailing; that it costs about 80 cents per letter to use a special computer program that produces the letters; and that postage costs as little as \$5 and as much as \$9.

She testified that no one told her to charge \$60 per letter.

Earlier this month, lawyers in the suits made oral arguments on the stay before the appeals court.

A recording of the proceedings is posted on the court’s website for the general public to hear.

During the proceedings, the appellate judges appeared to sharply question county attorneys about the reasoning used to come up with the fees.

Gladden said the judges’ reaction to his arguments as opposed to the arguments of county lawyers was encouraging.

County lawyer Hardy Burke did not respond to a telephone call seeking comment.

Gladden said the stay pending the final decision in the appeal leads him to believe that the judges will find in favor of the Burgesses.

The appeal was necessary because of county sovereignty and immunity rules that make it impossible for the Burgesses to recover money they paid in the event that they win the lawsuit, Gladden said.

That money would be forfeited to the county even if the county loses. So they have not paid the fees and are depending on the stay to save their bondsman licenses while the courts decide the final outcome.

If the county loses the lawsuit, it will be liable for \$20,000 to \$30,000 of the Burgesses’ attorney fees.

If the county loses, it could appeal to the Texas Supreme Court, Gladden said. He expects a decision on the appeal in about a month.

After that, a trial date will have to be set in the original court for the judge's decision on the facts of the case.

“The tenor of the oral argument that we had on March 2 as well as the decision of the order yesterday staying further proceedings makes me very confident that the trial court's decision not to enter a temporary injunction will be reversed,” Gladden said. “I also believe that the court of appeals will rule that the alleged waste that is ‘endemic’ in Denton County government on which the trial court based this decision when determining the amount of necessary cost for certified mail will be disapproved.

“Under applicable law, the court could not or would not have granted the stay unless it has determined that my clients were likely to prevail on the merits of the case. And that is the same issue the court will decide when it ultimately renders its decision.”

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