MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tailar Spells,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 28, 2023

Court of Appeals Case No. 22A-CR-1889

Appeal from the Marion Superior Court

The Honorable Clayton A. Graham, Judge

Trial Court Cause No. 49D33-2111-F6-36202

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] This appeal arises from a dispute between Tailar Spells ("Spells") and the State regarding whether the trial court abused its discretion in imposing costs, fines, and fees in the amount of $305. Spells argues that the trial court failed to hold an adequate and requisite indigency hearing before assessing the amount. Spells further invites us to depart from a prior panel of this court's decision in *Wright v. State*, 949 N.E.2d 411 (Ind. Ct. App. 2011). The *Wright* panel determined that bond payments could be applied to costs, fines, and fees without an indigency hearing, a holding that Spells contends is irreconcilable with the Indiana Code. We disagree with each of Spells's contentions. Accordingly, we affirm.

Facts and Procedural History

[2] Spells was arrested during the early morning hours of November 29, 2021, after an incident in which Spells spat at a police officer outside an establishment named Tiki Bob's in downtown Indianapolis. The State subsequently charged Spells with battery by bodily waste, a Level 6 felony, and resisting law enforcement, a Class A misdemeanor. Spells posted bond in the amount of $250 on the day of her arrest. As part of the process of posting bond, Spells initialed and signed a "Cash Bond" agreement. Appellant's App. Vol. II p. 24. The agreement informed Spells, inter alia, that the bond amount could be retained to "pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay." *Id*.

[3] On December 28, 2021, the trial court conducted an indigency hearing and appointed Spells a public defender. The trial court further ordered Spells to pay

a $100 supplemental public defender fee.[1] After a bench trial, the trial court found Spells guilty of battery by bodily waste[2] and then held a sentencing hearing. As part of the resultant sentence, Spells was ordered to pay $185 in court costs and a $20 fine. Thus, the sum total of Spells's costs, fines, and fees amounted to $305. The trial court later granted a request from the probation department to apply the bond amount to the court costs and fine.[3] Once the requested bond amount was applied, Spells owed $60, which she subsequently paid. Spells now appeals.

Discussion and Decision

[4] Spells raises three claims: (1) that the trial court abused its discretion when it did not hold a separate indigency hearing prior to assessing the supplemental public defender fee; (2) that the trial court abused its discretion when it did not hold such a hearing prior to assessing fees and costs; and (3) that the use of the cash bond to pay for a portion of the costs, fines, and fees "should not negate the requirement for an indigency hearing."

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[1] This is also sometimes referred to as a "recoupment fee," and is designed to defray "cost of representation by the assigned counsel . . . ." Ind. Code § 35-33-7-6.

[2] The State failed to present any evidence as to the resisting arrest charge, and the trial court found Spells not guilty of Count II.

[3] The record does not explain why, but the probation department only requested $245 of the $250 bond amount. As of the filing of this appeal, the balance of the bond amount was listed as $5. Appellant's App. Vol. II p. 14.

[5] In 2011, we decided *Wright v. State*, 949 N.E.2d 411 (Ind. Ct. App. 2011). The core holding in *Wright* was that when a defendant signs a bond agreement that notifies her that the court can retain the amount posted and put it towards fees, costs, and fines, she enters into a contract. Not only does that contract permit the use of the bond amount to satisfy the defendant's debt, we also held that it obviates the need for a further indigency finding (let alone a separate hearing). The statutes governing the assessment of these amounts,[4] we found, were simply inapplicable when a defendant signs a bond agreement. Rather, the pertinent statute is Indiana Code Section 35-33-8-3.2(a)(1).[5]

[6] Spells argues that *Wright* was wrongly decided, and that Indiana Code Section 35-33-8-3.2(a)(1) only applies to amounts a trial court is authorized to assess. Spells reasons that trial courts are not permitted to assess costs, fees, or fines without an indigency hearing. Two of the applicable statutes do not require an indigency hearing by their plain text, merely a finding. The third does, but we agree with the panel in *Wright* that reading the statute to require an indigency hearing where there is a bond agreement would render the bond agreement meaningless. The purpose of such a hearing—to determine whether the defendant can pay the costs, fees, or fines—would be frustrated by the fact that

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[4] I.C. § 35-33-7-6(c)(2); I.C. § 33-40-3-6(a)(1); I.C. § 33-37-2-3(e).

[5] "If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted."

the trial court is already aware that there is an amount set aside which can be used for payment.

[7] Spells focuses on whether the trial court's limited inquiry into her ability to pay the supplemental public defender fee was adequate. In doing so, Spells directs us to cases finding that limited inquiries for purposes of determining indigency were insufficient. But the relevant inquiry is not whether Spells was found to be indigent. Rather, the question is whether "the court finds that the person is able to pay part of the cost of representation by the assigned counsel . . . ." Ind. Code § 35-33-7-6. Here, of course, the trial court knew that Spells could pay the $100 supplemental public defender fee, because Spells had already posted $250 in bond, and signed a contract which read that:

> [p]ursuant to Indiana Code 35-33-8-3.2, when the conditions of this bond have been fully satisfied, the court may retain all or part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

Appellant's App. Vol. II p. 24. And we have already held that nothing about the statute governing public defender fees, or the finding it requires, necessitates a separate hearing. *Cleveland v. State*, 129 N.E.3d 227, 237–38 (Ind. Ct. App. 2019). We further note that the same logic with respect to the bond amount applies with equal force to costs, fines, and fees.

[8] Thus, we conclude that neither the assessment of the costs, fines, and fees, nor the use of the bond amount to satisfy those amounts constitutes error. There

remains, however, the matter of the leftover balance. Spells still owed $60 once the bond money was exhausted. Nevertheless, Spells has already "paid the remainder of what she owed . . . ." Appellant's Br. p. 7. The record reflects that there was no outstanding balance as of the date of the filing of the appendix in this appeal.[6] We must therefore consider whether the issue regarding the remaining balance is moot.

[9] "This court will only decide real questions or controversies and will not consider moot or abstract propositions." *Hacienda Mexican Rest. of Kalamazoo Corp. v. Hacienda Franchise Grp., Inc.*, 569 N.E.2d 661, 666 (Ind. Ct. App. 1991) (citing *Int'l Harvester Co. v. Snavely*, 158 N.E.2d 802 (Ind. Ct. App. 1959)). "'The determination of mootness is not a matter which can be waived. It is the prerogative of this court to determine whether to address an issue when we are informed that the matter is no longer live or has become moot as between the parties.'" *Sherrell ex rel. Sherrell v. N. Cmty. Sch. Corp. of Tipton Cnty.*, 801 N.E.2d 693, 702 (Ind. Ct. App. 2004) (quoting *Irwin R. Evens & Son, Inc. v. Bd. of Indpls. Airport Auth.*, 584 N.E.2d 576, 581 n.3 (Ind. Ct. App. 1992)).

[10] An issue becomes moot when:

> 1. it is no longer "live" or when the parties lack a legally cognizable interest in the outcome;

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[6] The certified chronological case summary reflects that, as of August 17, 2022, there was no outstanding balance associated with the case.

> 2. the principal questions in issue have ceased to be matters of real controversy between the parties; or
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> 3. the court on appeal is unable to render effective relief upon an issue.

Id. (citing *Haggerty v. Bloomington Bd. of Pub. Safety*, 474 N.E.2d 114, 115–16 (Ind. Ct. App. 1985)).

[11] Spells asks that we "remand for a new indigency hearing[,]" and "vacate the portion[s] of [the] sentencing order" that imposed the supplemental public defender's fee, costs, and fines. Appellant's Br. pp. 7, 10, 12. We conclude that neither would constitute effective relief. A new hearing to determine whether Spells has the ability to pay an amount which she has already paid would confer no benefit. Neither would vacatur of the portions of the order requiring her to pay costs, fees, and fines which have already been paid. Removing the obligation is irrelevant if the obligation has already been met. Accordingly, we conclude that the remaining issue is moot. We affirm the trial court.

[12] Affirmed.

Vaidik, J., and Tavitas, J., concur.