

**ILLINOIS OFFICIAL REPORTS**  
**Appellate Court**

*People v. Williams, 2012 IL App (2d) 111157*

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PAMELA WILLIAMS, Defendant-Appellant (Arwood K. Edwards, Appellant).
District & No.	Second District Docket No. 2-11-1157
Filed	July 25, 2012
Rehearing denied	August 27, 2012
Held <i>(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)</i>	The trial court did not abuse its discretion in applying the \$50,000 bail posted by defendant's brother-in-law to the restitution order entered against her when she was sentenced after pleading guilty to theft, even though the bail bond form did not strictly comply with the statute, since there was substantial compliance, the surety was put on notice that he could lose the money, and the trial court weighed the circumstances in making its decision.
Decision Under Review	Appeal from the Circuit Court of Du Page County, No. 10-CF-2421; the Hon. John J. Kinsella, Judge, presiding.
Judgment	Affirmed.

Counsel on Appeal                      George A. Thomas and Teresa L. Einarson, both of Thomas & Einarson, Ltd., of Glen Ellyn, for appellant Arwood K. Edwards.

Robert B. Berlin, State’s Attorney, of Wheaton (Lawrence M. Bauer and Sally A. Swiss, both of State’s Attorneys Appellate Prosecutor’s Office, of counsel), for the People.

Panel                                      JUSTICE SCHOSTOK delivered the judgment of the court, with opinion. Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment and opinion.

### OPINION

¶ 1                      After Arwood K. Edwards posted a \$50,000 bail bond for the defendant, Pamela K. Williams, the defendant pleaded guilty to 10 counts of theft and was ordered to pay \$1.8 million in restitution. The trial court ordered that Edwards’ \$50,000 bail bond money be applied to the defendant’s restitution. Edwards and the defendant appeal from that order, arguing that the bail bond money should have been returned to Edwards. We affirm.

¶ 2                      The defendant was charged in Du Page County with 10 counts of theft. Edwards, the defendant’s brother-in-law, provided bail money for the defendant in the amount of \$50,000. On December 8, 2010, Edwards signed a bail bond form that included a boxed-off section with the heading: “**NOTICE TO PERSON PROVIDING BAIL BOND OTHER THAN THE DEFENDANT.**” (Emphasis in original.) Below the heading, the form stated:

“I hereby acknowledge that I have posted bail for the defendant named above. I further understand that the bail may be used to pay the defendant’s attorney’s fees, fines, costs, fees or restitution to the victim and that I may lose all, or part of my money or property. I further understand that if the defendant fails to comply with the conditions of the bail bond, the court shall enter an order declaring the bail to be forfeited.”

Edwards’ signature, printed name, address, and telephone number appeared below this text, within the boxed-off section.

¶ 3                      Before Edwards signed the form, the trial court held a hearing to determine the source of the funds pursuant to section 110-5(b-5) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-5(b-5) (West 2010)). The record shows that Edwards was present at that hearing. The defendant’s attorney produced records to show that the money Edwards used to pay the bail bond was not a product of the defendant’s alleged criminal acts. At the hearing, the defendant’s attorney stated:

“MR. THOMAS [defense counsel]: Judge, also so that the record is clear, I have

informed Edwards that in the event that the defendant is convicted of any of the pending charges, that the funds \*\*\* posted as bond could be used to satisfy any orders of restitution, fines, court costs, and other fees.

THE COURT: Yes. That is the case.”

After the hearing, Edwards signed the bail bond form and provided the money, and the defendant was released on bond.

¶ 4 On April 4, 2011, the defendant pleaded guilty to the theft charges. On June 20, 2011, the defendant made a motion to exonerate the bond, and the trial court determined that the issue should be resolved after sentencing. On June 21, 2011, the defendant was sentenced to prison and ordered to pay restitution in the amount of \$1.8 million.

¶ 5 On August 8, 2011, there was a hearing on the defendant’s motion to exonerate the bond. The defendant’s attorney read a statement on behalf of Edwards that said that when he posted the bond the defendant had pleaded not guilty, and Edwards believed that the defendant was innocent. The statement went on to say that, if Edwards had known that the defendant was guilty, he would not have provided the bail money. The defendant’s attorney argued that it would be a travesty to take money from a third party who was not involved in the crimes. He additionally argued that, because Edwards had recently injured himself and had a severely disabled son, the trial court should consider these personal circumstances in determining whether equity required exoneration of the bond. Finally, the defendant’s attorney argued that using the bail money for restitution was not mandatory and that, under the circumstances, using it would be unfair.

¶ 6 The State argued that Edwards received actual notice of the possibility that his bail money would not be returned. The State noted that Edwards was present at the hearing to determine the source of the funds. At the hearing, the defendant’s attorney stated that he had informed Edwards of the possibility that the bail money would be used for many things, including restitution. The State further argued that, even after receiving actual notice, Edwards signed the bail bond form, which contained the proper statutory notice.

¶ 7 Following arguments, the trial court denied the defendant’s motion to exonerate the bond. The trial court noted that when a surety signs he is accepting responsibility should the defendant not appear and he is willingly exposing himself to the substantial financial risk of paying the entire bond. The trial court determined that it was not obligated to consider the factors in equity when deciding whether the bail money should be returned.

¶ 8 The defendant filed a motion to reconsider on September 7, 2011, arguing that the notice given was improper because the bail bond form did not comply with the requirements of section 110-7 of the Code (725 ILCS 5/110-7 (West 2010)) and that the trial court had discretion to refund the bail money and abused that discretion by not exercising it. The State filed its response on September 14, 2011, arguing that, because both actual notice and written notice were given to Edwards, the bail money should be put toward restitution and not refunded to him. After a motion hearing on October 19, 2011, the trial court denied the motion to reconsider. Edwards and the defendant filed a timely notice of appeal.

¶ 9 The defendant and Edwards argue that, under section 110-7 of the Code (725 ILCS 5/110-7 (West 2010)), it was improper for the trial court to apply the bail money to

defendant's restitution, because Edwards was not given the written notice required under this section. They also argue that the trial court erred in determining that it did not have authority and discretion to return the bail money to Edwards. We take these arguments in turn.

¶ 10 This appeal involves an issue of statutory interpretation. Issues of statutory interpretation are questions of law, which we review *de novo*. *Krautsack v. Anderson*, 223 Ill. 2d 541, 553 (2006). The cardinal rule of statutory construction is to give effect to the intent of the legislature. *Id.* at 552. The best evidence of this intent is the language of the statute, which must be given its plain and ordinary meaning. *Id.* at 553. "In examining a statute, a court must give effect to the entire statutory scheme. Thus, words and phrases should not be construed in isolation; rather, they must be interpreted in light of other relevant portions of the statute." *Id.*

¶ 11 The language of the statute, in pertinent part, states:

"(a) The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail, but in no event shall such deposit be less than \$25. The clerk of the court shall provide a space on each form for a person other than the accused who has provided the money for the posting of bail to so indicate and a space signed by an accused who has executed the bail bond indicating whether a person other than the accused has provided the money for the posting of bail. The form shall also include a written notice to such person who has provided the defendant with the money for the posting of bail indicating that the bail may be used to pay costs, attorney's fees, fines, or other purposes authorized by the court and if the defendant fails to comply with the conditions of the bail bond, the court shall enter an order declaring the bail to be forfeited. The written notice must be: (1) distinguishable from the surrounding text; (2) in bold type or underscored; and (3) in a type size at least 2 points larger than the surrounding type." 725 ILCS 5/110-7(a) (West 2010).

¶ 12 Section 110-7(a) uses the words "shall" and "must," which are typically intended by the legislature to indicate mandatory, rather than directory, provisions. See *Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086 (2009). The defendant and Edwards argue that the heading: "**NOTICE TO PERSON PROVIDING BAIL MONEY OTHER THAN THE DEFENDANT**," violates the statutory requirement because it is not distinguishable from the text surrounding it. They argue that, because there are other bold-faced words of similar type size in a separate area of the page, the requirement that the notice type must be "at least 2 points larger than the surrounding type" is not met. See 725 ILCS 5/110-7(a) (West 2010). However, a mandatory provision does not always require strict compliance. *Behl*, 396 Ill. App. 3d at 1086. " 'Substantial compliance can satisfy even a mandatory provision.' " *Id.* (quoting *Jakstas v. Koske*, 352 Ill. App. 3d 861, 864 (2004)).

¶ 13 In determining whether Edwards received sufficient statutory notice, we find *Fehrenbacher v. Mercer County*, 2012 IL App (3d) 110479, instructive. In *Fehrenbacher*, the plaintiff was terminated from his position as Mercer County engineer. *Id.* ¶ 1. The plaintiff asserted that the county board's termination of his employment violated his due process rights, in part because the county board never filed a removal petition as required by

section 5-203 of the Illinois Highway Code (Highway Code) (605 ILCS 5/5-203 (West 2008)). *Fehrenbacher*, 2012 IL App (3d) 110479, ¶ 7. The Highway Code provided:

“Any county superintendent of highways may be removed from office by the county board for incompetence, neglect of duty or malfeasance in office. In any proceeding to remove a county superintendent of highways from office a petition shall be filed with the county board naming such officer as respondent and setting forth the particular facts upon which the request for removal is based. The county board shall set the matter for hearing not earlier than 5 days after service upon the respondent, which service shall be the same as in civil actions. The county board shall thereupon proceed to a determination of the charges and shall enter an order either dismissing the charge against the county superintendent of highways or removing him from office.” 605 ILCS 5/5-203 (West 2008).

The plaintiff argued that the notice he was provided did not conform to the mandates of the statute and that, therefore, his termination was improper. *Fehrenbacher*, 2012 IL App (3d) 110479, ¶ 15.

¶ 14 The *Fehrenbacher* court noted that, although the uses of the word “shall” indicated that the provisions were mandatory, substantial compliance can satisfy even a mandatory provision under certain circumstances. *Id.* The *Fehrenbacher* court employed a two-part test to find that, although in two respects the notice served on the plaintiff did not strictly comply with section 5-203 of the Highway Code, the intent of section 5-203 of the Highway Code was realized. *Id.* ¶ 16. First, the court looked to the purpose of the statute to determine whether its purpose was achieved without strict compliance. Second, the court determined whether the plaintiff suffered any prejudice from the defendant’s failure to strictly comply with the statute. See *id.* (“petitioner substantially complied with requirements of Workers’ Compensation Act to adequately fulfill the purpose of the statute and respondent was not prejudiced by petitioner’s actions” (citing *Jones v. Industrial Comm’n*, 188 Ill. 2d 314, 324-26 (1999))); see also *id.* (“substantial compliance with Probate Act was sufficient to remove executor where notice of removal was ‘substantially sufficient to insure compliance with the intent and purpose of the Probate Act’ and the executor ‘was not prejudiced by formal deficiencies in procedure’ ” (quoting *In re Estate of Abbott*, 38 Ill. App. 3d 141, 144-45 (1976))).

¶ 15 The *Fehrenbacher* court held that the purpose of the statute was achieved because the notice advised the plaintiff of the allegations against him, the date of the hearing on the allegations, and that removal was a possible outcome of the hearing. *Id.* ¶ 18. Further, the *Fehrenbacher* court found that there was no prejudice suffered by the plaintiff as a result of the notice he received—he attended the hearing with his attorney and provided testimony to refute the charges against him. *Id.* ¶ 19.

¶ 16 This case presents us with circumstances similar to those in *Fehrenbacher*. There are mandatory statutory requirements for bail bond forms just like there were for the termination of employees in *Fehrenbacher*. Therefore, we will apply the same twofold analysis to determine whether substantial, rather than strict, compliance with the mandatory requirements of the Code in this case is permissible.

¶ 17 First, we look to whether the purpose of the statute was achieved without strict compliance. Based on the plain language of the statute, the intent of the legislature was to put third parties on notice that they could lose their money if they post bail for defendants. Turning to the bail bond form at issue, the notice section of the form is boxed-off on the bottom left corner of the page. The only text in this box is the bolded heading that reads: **“NOTICE TO PERSON PROVIDING BAIL BOND OTHER THAN THE DEFENDANT.”** Below the heading, the form states:

“I hereby acknowledge that I have posted bail for the defendant named above. I further understand that the bail may be used to pay the defendant’s attorney’s fees, fines, costs, fees or restitution to the victim and that I may lose all, or part of my money or property. I further understand that if the defendant fails to comply with the conditions of the bail bond, the court shall enter an order declaring the bail to be forfeited.”

Under the above text is a block for the surety’s signature, name, address, and telephone number, all contained within the boxed-off area.

¶ 18 We find the formatting sufficient to achieve the purpose of section 110-7(a) of the Code. The boxed-off area containing the notice and signature block is the only area that applies to a surety when he or she signs the bail bond form. The notice is distinguishable because it is the only text contained within that box, the heading is bolded, and the heading type is clearly two points larger than the text under it. Regardless of what the text outside the boxed-off area looks like, any variation between the statutory requirements and the form is *de minimis*. The notice was sufficiently full and clear to disclose to a person of ordinary intelligence that there was a risk of the bail money being used to pay restitution. See *Department of Revenue v. Jamb Discount*, 13 Ill. App. 3d 430, 435 (1973).

¶ 19 Second, we turn to whether Edwards was prejudiced by the form’s failure to strictly comply with the statute. The record indicates that Edwards posted the bail money because he believed and assumed that the defendant was innocent. That belief, not a lack of notice, was what he relied on when he posted the defendant’s bond. His reliance on the belief of her innocence, coupled with our finding that the form was sufficient to serve notice, is enough to show that he was not prejudiced by the form’s failure to strictly comply with the statute. Therefore, substantial compliance with the statute is sufficient. See *Fehrenbacher*, 2012 IL App (3d) 110479, ¶ 19.

¶ 20 Our finding that the bail bond form substantially complied with the statute’s mandates is only strengthened by the showing of actual notice in this case. “Actual notice” can be either express (direct information) or implied (inferred from the facts). 28A Ill. L. and Prac. *Notices* § 5 (2012). Actual implied notice “is based upon the principle that a person has no right to shut his or her eyes or ears to avoid information, and then say that he or she has no notice.” 58 Am. Jur. 2d *Notice* § 5 (Westlaw update June 2012). “Statutes imposing certain technical requirements for notice may not be strictly enforced if the party seeking enforcement had actual notice and cannot show prejudice as the result of the opposing party’s failure to comply with the technical requirements.” 28A Ill. L. and Prac. *Notices* § 5 (2012) (citing *Prairie Vista, Inc. v. Central Illinois Light Co.*, 37 Ill. App. 3d 909, 912 (1976)).

¶ 21 Edwards’ presence in court during the hearing to determine the source of the funds was

sufficient to put him on actual implied notice. At that hearing, the defendant's attorney told the trial court that, in the event the defendant was convicted of any of the pending charges, the funds could be used to satisfy any orders of restitution, fines, court costs, and other fees. Edwards was present for that discussion with the judge, and he cannot now claim that he was unaware of that information prior to signing the bail bond form. Additionally, as we determined above, Edwards suffered no prejudice as a result of the form's failure to strictly comply with the statute's technical requirements. It was his own belief that the defendant was innocent, and not a shortcoming of the form, that led him to post her bond. Therefore, on these grounds as well the statute will not be strictly enforced.

¶ 22 The defendant's and Edwards' next contention is that the trial court erred in finding that it did not have discretion to return the bail money to Edwards. Specifically, they note that at the hearing on the motion to exonerate the bond the trial court stated:

“Now, we have a question of substantial restitution. And essentially, Mr. Thomas is arguing the equity weighs in favor of the surety having to—having the amount of bond posted on the bail refunded back to him, now that the Defendant's [*sic*] in custody. I don't think it's an equitable decision for me to make. I think, once the restitution figure has been posted, it's the Court's obligation to take all reasonable steps to secure the payment of that judgment that was entered. And to allow, in some discretionary or equitable manner, those funds to not be used in that fashion, I don't know that there's any authority to do that. If there is, I'll entertain it on a motion to reconsider.”

¶ 23 Section 5-5-6(e) of the Unified Code of Corrections provides that, when restitution is ordered, “[t]he court may require the defendant to apply the balance of the cash bond, after payment of court costs, and any fine that may be imposed to the payment of restitution.” 730 ILCS 5/5-5-6(e) (West 2010). Use of the permissive “may” in this section indicates that applying a bail bond to the payment of restitution lies within the discretion of the trial court. *People v. Fulkerson*, 326 Ill. App. 3d 1124, 1126 (2002).

¶ 24 The defendant and Edwards argue that the trial court failed to realize that it had the discretion to return the bail money to Edwards. We disagree. At the hearing on the defendant's motion to reconsider the exoneration of the bond, the trial court stated:

“And I guess, to the extent there's discretion, I guess you can't consider those equities. And certainly, you were asking me to; right? Pointing out the consequences of this gentleman's loss of these funds to himself and his family. So, I think that's part of the considerations, but it's certainly not the entirety. So, to the extent that there was a suggestion that there is no discretion, I think both sides are correct. I do have the discretion.

However, in exercising that discretion, I'm not persuaded to return the funds to the surety. And the court order as to this distribution of those funds for restitution will stand.”

¶ 25 The record shows that initially there might have been some confusion over the trial court's comments, but the trial court went on to explain that it realized it had discretion and that, in exercising that discretion, it did not find the defendant's argument persuasive. We find that the trial court was aware that it had discretion. Attributing less weight to Edwards'

interests, as a third party who posted bail money on behalf of the defendant, than to the other factors, such as the trial court's interest in collecting the restitution on behalf of the victims, was certainly within the trial court's discretion. Therefore, we do not find the defendant's and Edwards' argument persuasive.

¶ 26 In summary, although the bail bond form did not strictly comply with the provisions of section 110-7(a) of the Code, substantial compliance was sufficient to achieve the purpose of the statute. As a result, because there was sufficient substantial compliance to put Edwards on notice that he would be at risk of losing his money, and because his decision to post bond was not the result of any deficiency in the form of the notice, we find that Edwards suffered no prejudice. The trial court properly weighed the circumstances and exercised its discretion in choosing not to return the bail money to Edwards. We cannot say that its decision was an abuse of discretion.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 28 Affirmed.