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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0734**

State of Minnesota,
Respondent,

vs.

Pedro Calachij Hernandez,
Defendant,

KSI Bail Bonds,
Appellant.

**Filed January 29, 2018
Affirmed
Johnson, Judge**

Stearns County District Court
File No. 73-CR-15-9030

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,
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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

KSI Bail Bonds posted a \$25,000 bond to allow Pedro Calachij Hernandez to be
released on bail. Hernandez later failed to appear for an omnibus hearing, and a warrant

for his arrest was outstanding for nearly a year. While Hernandez was at large, the district court revoked the bond and ordered the bond's surety to pay \$25,000 to the court administrator. Hernandez then was arrested in Arizona and extradited to Minnesota. After Hernandez's return, KSI moved to reinstate and discharge the bond. The district court denied the motion. We conclude that the district court did not abuse its discretion by denying KSI's motion to reinstate and discharge the bond. Therefore, we affirm.

FACTS

The complaint in this case alleges that Hernandez was drinking at a bar in the city of Melrose on the evening of October 4, 2015, and that he and his girlfriend got into an argument when Hernandez refused to allow her to drive them home. The complaint further alleges that Hernandez drove at 90 miles per hour for approximately five minutes while threatening his girlfriend that he would kill her. After receiving a report of Hernandez's threat, a deputy sheriff apprehended him, observed indicia of intoxication, arrested him, and administered an implied-consent advisory, but Hernandez refused to submit to a breath test. The state charged Hernandez with three offenses: (1) making threats of violence, in violation of Minn. Stat. § 609.713, subd. 1 (2014 & Supp. 2015); (2) refusal to submit to a chemical test, in violation of Minn. Stat. § 169A.26, subd. 2 (2014); and (3) operating a motor vehicle under the influence of alcohol, in violation of Minn. Stat. § 169A.27, subd. 2 (2014).

At Hernandez's first appearance, the district court released him on specified conditions, including the requirement that he post a bail bond in the amount of \$25,000. KSI posted a bond on his behalf in that amount. The bail-bond form, which was signed by

Hernandez and KSI, states that KSI would be required to pay the amount of the bond to the district court “if the Defendant fails to personally appear in Court at such times and on such dates as specified by the Court.”

On January 8, 2016, Hernandez failed to appear for an omnibus hearing. Three days later, the district court issued a warrant for his arrest. Six months later, on July 26, 2016, the district court filed an order stating, “The bond shall be forfeited in 60 days if the Defendant hasn’t been turned into custody by the bonding company or has not voluntarily returned to custody.” The court administrator gave KSI notice of the July 26, 2016 order on August 2, 2016.

On August 25, 2016, KSI moved to reinstate and discharge the bond. KSI’s motion was based on a one-paragraph affidavit of an employee, which states:

We have been in touch with the co-signer for this matter and she informed us that Mr. Pedro Calachij Hernandez went back to Quchia, Guatemala due to his father, Francisco Hernandez, being in the hospital there for a cancer & infection of the groin & has been there since the late Dec 2015/early Jan 2016. Mr. Hernandez’s brother confirms this info about their father and Mr. Hernandez is down there to donate blood to him. We have been in contact with Mr. Hernandez monthly since the warrant was issued, being told that he would be returning soon for these charges. We are filing this motion due to these statements of returning home to be untrue.

The district court denied the motion on September 13, 2016.

Hernandez did not appear within 60 days. On October 12, 2016, the district court issued an order stating that, in light of Hernandez’s failure to comply with the conditions of the bond, the surety, U.S. Specialty Insurance Company, shall pay \$25,000 to the court administrator within 90 days.

On January 6, 2017, the district court quashed the warrant for Hernandez's arrest because he had been arrested in Arizona and extradited to Minnesota. On the same date, the district court conducted another bail hearing and set bail at \$500,000.

On January 18, 2017, KSI submitted a \$25,000 payment to the court administrator. On the same date, KSI again moved to reinstate and discharge the bond. KSI did not submit any additional evidence; it simply relied on the one-paragraph affidavit that had been submitted with its first motion to reinstate and discharge the bond. At a motion hearing on February 9, 2017, KSI's attorney stated that KSI previously had traced Hernandez's telephone calls to verify that he was in Guatemala. The district court denied KSI's motion in a five-page order and memorandum. KSI appeals.

D E C I S I O N

KSI argues that the district court erred by denying its second motion to reinstate and discharge the \$25,000 bond.

If a bail bond is forfeited because a defendant fails to appear for a court hearing, "the court may forgive or reduce the penalty according to the circumstances of the case and the situation of the party on any terms and conditions it considers just and reasonable." Minn. Stat. § 629.59 (2016). A district court may order reinstatement of the bond "on such terms and conditions as the court may require, but only with the concurrence of the chief judge and upon the condition that a minimum penalty of not less than ten percent (10%) of the forfeited bail be imposed." Minn. R. Gen. Pract. 702(f).

A district court should consider four factors when determining whether to grant or deny a motion to reinstate a bail bond:

(1) the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant's absence; (2) the good faith of the bond company as measured by the fault or willfulness of the defendant; (3) the good-faith efforts of the bond company to apprehend and produce the defendant; and (4) any prejudice to the State in its administration of justice.

State v. Askland, 784 N.W.2d 60, 62 (Minn. 2010) (citing *In re Shetsky*, 239 Minn. 463, 471, 60 N.W.2d 40, 46 (1953)). The party moving for reinstatement bears the burden of establishing that the first, second, and third factors favor reinstatement; the state bears the burden of establishing that the fourth factor does not favor reinstatement. *Id.* This court applies an abuse-of-discretion standard of review to a district court's ruling on a motion to reinstate a bail bond. *Id.*

In this case, the district court discussed each of the four factors before concluding that the motion should be denied. The district court's order indicates that the first, second, and third factors do not favor reinstatement and that the fourth factor favors reinstatement. The district court summarized its reasoning by stating that "there are no extenuating or mitigating circumstances which would justify a remission of any part of the bail money to the Surety" and that "the primary purpose of bail, to secure the attendance of the accused for trial, would not be served by revocation and discharging of the bond to the Surety."

KSI contends that the district court erred in its analysis of the first, second, and third factors and in its ultimate decision to deny reinstatement and discharge of the bond. We address each point in turn below.

A.

As stated above, the first factor is “the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant’s absence.” *Id.* “The primary purpose of bail in a criminal case is not to increase the revenue of the state or to punish the surety but to insure the prompt and orderly administration of justice without unduly denying liberty to the accused whose guilt has not been proved.” *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46. Bail makes it unnecessary for the state to detain a defendant and keeps the defendant in the custody of a surety to ensure the defendant’s presence for court proceedings. *Id.* If a defendant fails to appear for a court hearing, the existence of a bail bond encourages bonding companies and sureties to “locate, arrest, and return defaulting defendants to the authorities.” *State v. Storkamp*, 656 N.W.2d 539, 542 (Minn. 2003).

The district court analyzed the first factor by stating, “One of the primary purposes of bail is to encourage sureties to locate, arrest, and *return* defaulting defendants to the authorities to facilitate the timely administration of justice.” KSI contends that the district court erred in analyzing this factor because KSI “was able to promptly locate the Defendant through its investigation shortly after the Defendant’s failed appearance” and because “the Defendant was returned to custody to face the charges against him.”

KSI’s contention is not persuasive. It matters little that KSI “located” Hernandez after he failed to appear for an omnibus hearing. The purpose of bail is not merely to “encourage sureties to locate” absconding defendants but, more importantly, to encourage sureties to “arrest” and “return” them to custody. *See id.* at 542. Likewise, it matters little

that Hernandez eventually was arrested and returned by law-enforcement officers. The purpose of bail is to “encourage sureties” to achieve those ends, thereby relieving the state of the burdens of pre-trial detention or apprehension. In *Shetsky*, the supreme court stated that bail should “relieve . . . the state of the burden of detaining [the defendant] pending the trial and at the same time, by placing him in the protective custody of a surety—a jailer of his own choosing—, to insure his presence for trial at the call of the court without in any way delaying, impairing, or unduly burdening the administration of justice.” 239 Minn. at 471, 60 N.W.2d at 46. Because KSI did not introduce any evidence that its actions resulted in Hernandez’s arrest and return, KSI would receive a windfall if its bond were to be reinstated and discharged, and the purpose of bail would not be served.

Thus, the district court did not abuse its discretion by reasoning that KSI did not establish that the first factor favors reinstatement and discharge of the bond.

B.

As stated above, the second factor is “the good faith of the bond company as measured by the fault or willfulness of the defendant.” *Askland*, 784 N.W.2d at 62. If a defendant “willfully does not meet the conditions of his or her bond without a justifiable excuse, this misconduct is attributable to the surety.” *Storkamp*, 656 N.W.2d at 542. Justifiable excuses include a “[s]erious illness of the defendant” or an “accident, or detention in the custody of another jurisdiction, whereby the defendant is prevented from appearing for trial.” *Shetsky*, 239 Minn. at 469 n.4, 60 N.W.2d at 45 n.3.

The district court noted KSI’s contention that Hernandez was in Guatemala attending to his ill father. The district court stated that Hernandez “made it difficult [or]

impossible for the Surety to produce him” and that, “in 20/20 hindsight, the Court now suspects Defendant was in Tucson, AZ, where he was ultimately apprehended.” The district court reasoned that “Defendant’s conduct in residing in either Arizona or Guatemala was a willful and unjustifiable default of the bond, especially given the duration that [the arrest] warrant was in effect.”

KSI contends that the district court erred in analyzing this factor because Hernandez “had a justifiable excuse for his absence from court,” namely, that “he traveled to Guatemala in order to donate blood to his hospitalized father and support him and his ailing condition.” KSI also contends that Hernandez’s “capture in Arizona is consistent with his representations that he was returning to Minnesota to face the charges against him, as it is a common route back to Minnesota.”

A seriously ill father is a reason for sympathy, but it is not an adequate reason for a defendant to miss a court hearing and to remain at large for months. The justifiable excuses mentioned in *Shetsky*—a “[s]erious illness of the defendant” or an “accident, or detention in the custody of another jurisdiction”—describe situations in which a person “is prevented from appearing for trial” by factors outside his or her control. See 239 Minn. at 469 n.4, 60 N.W.2d at 45 n.3. In this case, Hernandez could have requested a continuance of the omnibus hearing, but he did not do so. See Minn. R. Crim. P. 11.06. Rather, Hernandez made the unilateral decision to leave the country and to not return for the omnibus hearing. Furthermore, Hernandez did not return to Minnesota for nearly a year. There is no evidence in the record that he was in the process of returning to Minnesota when he was apprehended in Arizona, nor was any such argument presented to the district court. That suggestion is

made for the first time by KSI's appellate counsel. We also note the district court's skepticism that Hernandez ever was in Guatemala, which is a reasonable inference in light of the limited evidence in the record and is an additional reason to find "fault or willfulness" in Hernandez's conduct. *See Askland*, 784 N.W.2d at 62.

Thus, the district court did not abuse its discretion by reasoning that KSI did not establish that the second factor favors reinstatement and discharge of the bond.

C.

As stated above, the third factor is "the good-faith efforts of the bond company to apprehend and produce the defendant." *Id.* The district court analyzed this factor by stating, "The Surety has provided little to no evidence regarding its efforts to produce the Defendant. The *only* information before the Court regarding efforts is monthly telephone calls with Defendant's relatives."

KSI contends that the district court erred in analyzing this factor because KSI contacted the co-signer on the bond, Hernandez's relatives, and Hernandez and confirmed that Hernandez was in Guatemala. KSI contends that it maintained monthly telephone contact with Hernandez and "was assured of his intent to return to face his Stearns County charges after he assisted his father."

KSI's telephone contacts with Hernandez and others do not rise to the level of "good-faith efforts . . . to apprehend and produce the defendant." *Id.* KSI's efforts are considerably less than those of the bonding agency in *Farsdale v. Martinez*, 586 N.W.2d 423 (Minn. App. 1998), which "made numerous attempts to locate [the defendant] through contacts with family, friends, and multi-state law enforcement," which "ultimately led to

[the defendant's] arrest.” *Id.* at 426. KSI's efforts also are less than those of the bonding agency in *State v. Rodriguez*, 775 N.W.2d 907 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010), which sent a bounty hunter to Texas in an unsuccessful attempt to find the defendant. *Id.* at 913-14. But the district court determined that the bonding agency in *Rodriguez* had not satisfied its burden even though it had made such an effort, and this court affirmed, reasoning that the bonding agency was aware of the defendant's place of origin at the outset and “assumed the risk that it may have to search for him there.” *Id.* In reality, KSI made no effort whatsoever to apprehend Hernandez and return him to Minnesota after learning that he had left the country and missed a court appearance.

Thus, the district court did not abuse its discretion by reasoning that KSI did not establish that the third factor favors reinstatement and discharge of the bond.

D.

As stated above, the fourth factor is the “prejudice to the State in its administration of justice.” *Askland*, 784 N.W.2d at 62. In the district court, the state did not attempt to establish prejudice. The district court determined that there was no prejudice to the state. Accordingly, the fourth factor weighs in favor of reinstatement and discharge.

E.

KSI contends that the absence of prejudice and the three other factors compel the conclusion that the bond should have been reinstated and discharged. As discussed above, KSI has failed to establish that the first, second, or third factors favored reinstatement. The presence of only one factor favoring reinstatement (*i.e.*, lack of prejudice) does not, by itself, compel the conclusion that the district court abused its discretion. *See Storkamp*,

656 N.W.2d at 542-43. In the circumstances of this case, the first, second, and third factors strongly support the district court's decision, and those three factors are not outweighed by the absence of prejudice.

Thus, in light of the purposes of bail, Hernandez's intentional decision to leave the state and not return for a year, and the lack of any effort by KSI to apprehend Hernandez and return him to Minnesota, the district court did not abuse its discretion by denying KSI's motion to reinstate and discharge the bond.

Affirmed.