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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1528**

State of Minnesota,
Respondent,

vs.

Danjuan Onta McClinton,
Defendant,

Midwest Bonding, LLC,
Appellant.

**Filed June 4, 2018
Reversed and remanded
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-16-6510

Michael Freeman, Hennepin County Attorney, Minneapolis, Minnesota (for respondent)

James McGeeney, Doda & McGeeney, P.A., Rochester, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Halbrooks, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges a district court order that denied as untimely its petition to
reinstate a bail bond. We reverse and remand.

FACTS

In March 2016, respondent State of Minnesota charged defendant Danjuan McClinton under Minn. Stat. § 629.14 (2016), for being “present in . . . Minnesota” after “having been charged in the State of South Dakota, and having fled that State to avoid prosecution.” The district court set bail in the amount of \$50,000, and appellant Midwest Bonding, LLC posted a \$50,000 appearance bond on McClinton’s behalf on March 11, 2016. McClinton later failed to appear for his extradition hearing on April 8, 2016, and the district court ordered the bond forfeited.

In July 2016, Midwest Bonding moved to extend the due date of the appearance bond. On August 17, the district court granted Midwest Bonding “an additional 90 days in which to bring a petition for reinstatement and discharge of a forfeited bond.” The court’s order also contained the following language: “The due date is extended to 180 days from the date of the order of forfeiture: **October 10, 2016.**”

On October 3, 2016, Midwest Bonding again moved to extend the due date of the appearance bond and also requested that the district court issue a nationwide arrest warrant based on information suggesting that McClinton was in Chicago. On October 4, the court denied the motion, stating in its order that “the due date for reinstatement of [the appearance bond at issue here] will not be extended beyond the 180 day deadline which is October 10, 2016.” The court also included the following language in its order:

As stated in the Court’s previous order dated August 17, 2016, no reinstatement of a forfeited bond shall be allowed unless the petition and affidavit are filed within 180 days from the date of the order for forfeiture. This is pursuant to Rule 702(f) of the Minnesota General Rules of Practice.

On December 14, 2016, Midwest Bonding petitioned to reinstate and discharge the appearance bond. The district court denied the motion, concluding that under Minn. R. Gen. Pract. 702(f), “no reinstatement of a forfeited bond shall be allowed unless the petition and affidavit are filed within 180 days from the date of the order for forfeiture.” The court deemed Midwest Bonding’s petition to be untimely because it was filed after the deadline in previous orders that “was clearly and unambiguously set as October 10, 2016.”

This appeal follows.¹

D E C I S I O N

Minnesota law provides that when a bail bond is forfeited, the district 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). “Rule 702(f) of the Minnesota General Rules of Practice narrows a court’s discretion.” *State v. Askland*, 784 N.W.2d 60, 62 (Minn. 2010). Rule 702(f) provides:

Any motion for reinstatement of a forfeited bond or cash bail shall be supported by a petition and affidavit and shall be filed with the court administrator. A copy of said petition and affidavit shall be served upon the prosecuting attorney and the principal of the bond in the manner required by Minn. R. Civ. P. 4.03(e)(1). A petition for reinstatement filed within ninety (90) days of the date of the order of forfeiture shall be heard and determined by the judge who ordered forfeiture, or the chief judge. Reinstatement may be ordered on such terms and conditions as the court may require. A petition for reinstatement filed between ninety (90) days and one hundred eighty (180) days from date of forfeiture shall be heard and determined by the judge who ordered forfeiture or the judge’s successor and reinstatement may be ordered on such terms and conditions as the court may require, but only with the

¹ Respondent State of Minnesota did not file a responsive brief.

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. No reinstatement of a forfeited bond or cash bail shall be allowed unless the petition and affidavit are filed within one hundred eighty (180) days from the date of the order of forfeiture.

Minn. R. Gen. Pract. 702(f). “But, under both the statute and the rule, the question of whether to reinstate a forfeited bond is committed to the sound exercise of judicial discretion.” *Askland*, 784 N.W.2d at 62.

Here, the district court ordered that the bond posted for McClinton be forfeited after he failed to appear at his April 8, 2016 extradition hearing. On August 17, the district court granted Midwest Bonding’s motion to extend the due date of the appearance bond but denied its second extension request on October 4. At the same time, the district court also denied Midwest Bonding’s request for issuance of a nationwide arrest warrant for McClinton, despite an affidavit from Midwest Bonding’s representative that stated that “[i]nformation gathered suggests that [McClinton’s] current location to be Chicago, Illinois.” The record does not reflect the district court’s reason for denying the request for a nationwide warrant.

Midwest Bonding argues that because the district court’s August 17, 2016 order extended the date for filing a petition for discharge of the bond by 90 days, the district court erred by concluding that its December 14, 2016 reinstatement petition was untimely. We agree.

Although the district court’s August 17, 2016 Order Extending Due Date of Appearance Bond properly references Minn. R. Gen. Pract. Rule 702(f), and states: “The

due date is extended to 180 days from the date of the order of forfeiture: **October 10, 2016**,” it first states “Midwest Bonding, LLC, has an additional 90 days in which to bring a petition for reinstatement and discharge of a forfeited bond.” This language created an ambiguity that Midwest Bonding had “an additional 90 days” from the date of the August 17, 2016 order “in which to bring a petition for reinstatement and discharge of the forfeited bond.” Or, as Midwest Bonding contends, the language could be construed to mean that the district court extended the due date for filing a petition to 90 days from the original due date of October 10, 2016. Because the August 17, 2016 order created an ambiguity with respect to the due date of the appearance bond, we conclude that the district court abused its discretion by denying Midwest Bonding’s reinstatement petition as untimely.

Midwest Bonding also contends that the *Shetsky* factors² “weigh in favor of reinstatement and discharge of the forfeited bail bond.” But in denying Midwest Bonding’s petition, the district court did not consider the *Shetsky* factors. We therefore reverse the district court’s denial of Midwest Bonding’s petition to reinstate and discharge the appearance bond and remand for consideration of the *Shetsky* factors. *See State v. Nelson*, 773 N.W.2d 330, 332–33 (Minn. App. 2009) (reversing the district court order reinstating

² In *In re Application of Shetsky*, 239 Minn. 463, 471, 60 N.W.2d 40, 46 (1953), the supreme court explained that, in determining whether a surety ought to forfeit a portion of a bond, the following factors are relevant: (1) the purpose of the bail, the civil nature of the proceedings, and the cause, purpose, and length of the defendant’s absence; (2) the good faith of the surety as measured by the fault or willfulness of the defendant; (3) the good-faith efforts of the surety—if any—to apprehend and produce the defendant; and (4) any prejudice to the state in its administration of justice.

appellant's bond and discharging it on payment of the penalty on the basis that rule 702(f) does not require personal service on the principal of a bond, but remanding "so that the district court may revisit its forfeiture determination in light of the factors set forth" in *Shetsky*).

Reversed and remanded.