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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1822**

State of Minnesota,
Respondent,

vs.

Felix Nosa Omoruyi,
Defendant,

DUI Bail Bonds, LLC,
Appellant.

**Filed July 23, 2018
Affirmed
Klaphake, Judge***

Hennepin County District Court
File No. 27-CR-15-4203

Susan L. Segal, Minneapolis City Attorney, Deborah A. Styles, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Craig Kurth, Minneapolis, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Hooten, Judge; and
Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

DUI Bail Bonds, LLC (DUI), challenges the district court's denial of its petition for the reinstatement and discharge of a bail bond that was forfeited after the defendant, Felix Nosa Omoruyi, failed to appear at his scheduled arraignment. Because the district court considered the appropriate factors, including the prejudice suffered by DUI due to the court administrator's failure to provide timely notice that the bond had been forfeited, we affirm.

DECISION

Felix Nosa Omoruyi posted a \$2,400 bail bond issued through DUI after police arrested him on domestic assault charges in February 2015. Omoruyi did not appear at his scheduled arraignment on March 10, 2015. The district court issued a warrant for his arrest and forfeited the bail bond that same day. About two years later, on April 5, 2017, DUI received notice that the bail bond had been forfeited. DUI hired MN Fugitive Recovery, LLC, to locate Omoruyi, but it has been unable to find him. DUI then petitioned the district court requesting that the bail bond be reinstated and then discharged. The district court denied the petition by written order, concluding that the greater weight of the *Shetsky* factors cut against reinstatement of the bail bond. DUI appeals.

DUI makes two arguments. It first argues that the court administrator's failure to notify it that the bail bond had been forfeited deprived it of procedural due process. DUI argues second that the district court abused its discretion by denying its petition for the reinstatement and discharge of the bond without considering that it was not notified of the bond's forfeiture. For both arguments, DUI relies heavily on *State v. Rosillo*, 645 N.W.2d

735 (Minn. App. 2002). We review a district court's decision denying a petition for the reinstatement and discharge of a bail bond for an abuse of discretion. *Id.* at 739.

Rosillo is instructive. In *Rosillo*, this court reviewed a district court's order denying a bondsman's petition for the reinstatement and discharge of a bail bond that the district court forfeited when the defendant failed to appear on two separate occasions. *Id.* at 737. Like DUI here, the bondsman in *Rosillo* argued that the court administrator's failure to provide notification that the bail bond it guaranteed had been forfeited denied it the right to procedural due process. *Id.* at 738. The bondsman in *Rosillo* never received notification of the forfeiture from the court administrator. *See id.* at 736. Here, the court administrator did notify DUI of the bond's forfeiture, albeit with a significant delay. But DUI makes no argument that Minn. R. Gen. Pract. 702(e)—the rule this court relied on in *Rosillo* to conclude that court administrators must notify bondsmen of forfeited bail bonds—requires that notification be provided within a specific time. As to DUI's first argument, there is no procedural due-process violation.

DUI next argues that the district court abused its discretion in denying its motion for reinstatement and discharge by considering the *Shetsky* factors. The *Shetsky* factors are a list of considerations this court and district courts will consider when reviewing and deciding motions requesting the reinstatement and discharge of bail bonds. *See id.* at 740. Contrary to what DUI argues, we have never held that anytime a court administrator fails to notify a bondsman of a bond's forfeiture the district court should not consider the *Shetsky* factors. To the contrary, in *Rosillo*, we explained that *in addition* to considering the *Shetsky* factors, a district court must consider the prejudice that the lack of notice had on the

bondsman. *See id.* We did say, however, that it is imprudent for *this court* to consider whether the district court appropriately applied the *Shetsky* factors when the district court failed to consider those factors in light of any prejudicial effect the lack of notice may have had on the bondsman. *See id.* In fact, in our instructions to the district court on remand in *Rosillo*, we explained that the district court “shall consider the prejudice suffered by appellants, if any, that resulted from the lack of notice . . . and shall consider the *Shetsky* factors.” *Id.* Here, the district court did exactly that.

When the district court was analyzing DUI’s motion, it considered the *Shetsky* factors and stated that DUI did “make efforts to apprehend and produce the defendant—including attempting to contact Defendant using the information he had provided” and that “it is not surprising” the “more than 2 years” delay in receiving the notice “did not yield results.” This is enough to demonstrate consideration of the effect of the delay. We are troubled, however, by the district court’s reliance on *State v. Due*, 427 N.W.2d 276 (Minn. 1988), as that case was decided before Minn. R. Gen. Pract. 702(e) was created. But, because the district court did consider the prejudice the delayed notice had on DUI, we cannot say that it abused its discretion.

Affirmed.