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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0487**

State of Minnesota,
Respondent,

vs.

Leslie James Gahbow,
Defendant,

Midwest Bonding, LLC,
Appellant.

**Filed April 8, 2019
Affirmed
Jesson, Judge**

Mille Lacs County District Court
File No. 48-CR-15-507

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Joe Walsh, Mille Lacs County Attorney, Timothy S. Kilgriff, Assistant County Attorney,
Milaca, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

JESSON, Judge

On appeal from the district court's reinstatement and discharge of \$75,000 of a \$100,000 bail bond, appellant Midwest Bonding, LLC argues that the district court abused its discretion by failing to reinstate the entire amount of the bail bond. We affirm.

FACTS

In March 2015, defendant Leslie James Gahbow was charged with two counts of aiding and abetting second-degree murder, two counts of aiding and abetting second-degree murder while committing a felony, aiding and abetting first-degree assault, aiding and abetting aggravated robbery, aiding and abetting second-degree assault with a dangerous weapon, and failing to render aid to a shooting victim.¹ In April 2016, appellant Midwest Bonding, LLC, posted an appearance bond in the amount of \$100,000 to guarantee defendant's appearance in court. Defendant pleaded guilty on March 6, 2017, to aiding and abetting simple robbery, and signed a promise to appear later that month at the March 30 sentencing hearing. But he did not do so. A number of the victim's family members attended the sentencing hearing, only to learn the defendant had failed to appear.² At the hearing, the district court ordered the \$100,000 bond to be forfeited and issued a

¹ In violation of Minnesota Statutes sections 609.19, subdivisions 1(1) (aiding and abetting second-degree murder), 2(1) (aiding and abetting second-degree murder while committing a felony), .221, subdivision 1 (aiding and abetting first-degree assault), .245, subdivision 1 (aiding and abetting aggravated robbery), .222, subdivision 1 (aiding and abetting second-degree assault with a dangerous weapon), .662, subdivision 3(a)(2) (shooting victim—duty to render aid), .05, subdivisions 1, 2 (aiding and abetting) (2014).

² At least one member of the victim's family completed a victim impact statement prior to the hearing.

warrant for the defendant's arrest. After approximately 55 days at large, law enforcement apprehended defendant on May 23, 2017. He was sentenced on May 30, 2017.

Midwest Bonding subsequently petitioned the district court to reinstate and discharge the bail bond. In support of its petition, Midwest Bonding filed an affidavit from a managing member. According to the affidavit, Midwest Bonding contacted the defendant prior to the sentencing hearing to guarantee his appearance. Once notified that the defendant had failed to appear at the hearing, Midwest Bonding "immediately began investigative efforts to locate [d]efendant . . . includ[ing] further attempts to contact [d]efendant and [i]ndemnitor via telephone, and running an electronic search of all the jails in Minnesota for [d]efendant to ensure [he] hadn't already been brought back into custody." Midwest Bonding further asserted that it hired U.S. Bail and Fugitive Enforcement to locate defendant and that the fugitive recovery agency's efforts included "investigating the contact information collected at the time the bond was posted and [using] investigative software to search for the [d]efendant."

At the motion hearing, Midwest Bonding declined to enter any further evidence in support of its motion. The state argued that there was a significant amount of prejudice to the state because the victim's family members attended the sentencing hearing and were distressed after the defendant failed to appear. The district court granted the petition, and reinstated and discharged the bond in the reduced amount of \$75,000. Midwest Bonding appeals.

DECISION

Midwest Bonding argues that the district court abused its discretion when it imposed a 25% penalty when reinstating and discharging the bail bond.

When a defendant released on bail fails to appear, and the bail bond is forfeited, a 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 (2018); *see also* Minn. R. Gen. Prac. 702(f) (“Reinstatement may be ordered on such terms and conditions as the [district] court may require.”) We review a district court’s decision on a petition to reinstate a forfeited bond for an abuse of discretion. *State v. Askland*, 784 N.W.2d 60, 62 (Minn. 2010).

The Minnesota Supreme Court has identified four factors a district court must consider when reinstatement of a forfeited bail bond is requested:

- (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.

Id. (citing *In re Shetsky*, 60 N.W.2d 40, 46 (Minn. 1953)). These factors are known as the *Shetsky* factors. Midwest Bonding bears the burden of establishing the first three *Shetsky* factors, but the state bears the burden of providing any evidence of prejudice. *Id.* We consider each of the *Shetsky* factors in turn.

Midwest Bonding contends that the purpose of bail was satisfied because the defendant was only at large for 55 days after he had already pleaded guilty, and he was

apprehended and sentenced prior to the petition being filed. Conversely, the state argues that the purpose of bail was frustrated by defendant's nearly two-month long absence which unduly delayed the administration of justice.

A district court "may not treat bail as a way to increase the revenue of the state or to punish the surety." *State v. Storkamp*, 656 N.W.2d 539, 541-42 (Minn. 2003). Rather, bail serves a dual purpose: "relieving the accused of imprisonment and relieving the state of the burden of detaining him pending his trial." *Id.* at 541. The surety, then, guarantees "the accused's presence at trial without in any way impairing or delaying the administration of justice or prejudicing the state in its prosecution." *Id.*

Here, the purpose of bail was satisfied, in part, because the defendant had his freedom for almost a year before he pleaded guilty. But the purpose of bail was frustrated when the defendant failed to appear at the sentencing hearing, and was not apprehended until 55 days later. And while the Minnesota Supreme Court has fully reinstated bail bonds in situations where a defendant was at large for similar or greater periods of time,³ those decisions relied on other factors favoring reinstatement. *See Askland*, 784 N.W.2d at 61, 63-64 (bond company took steps to locate, apprehend, and deliver defendant, incurring more than \$3,000 in expenses, which warranted reinstatement in the absence of any evidence of prejudice to state); *Storkamp*, 656 N.W.2d at 540-41, 543 (bond company made "good-faith efforts" to track down and successfully apprehend defendant, incurring \$1,200

³*Askland*, 784 N.W.2d at 61 (about seven months); *Storkamp*, 656 N.W.2d at 540-41 (about two months); *see also Farsdale v. Martinez*, 586 N.W.2d 423, 424-25 (Minn. App. 1998) (about two months).

in expenses, which warranted reinstatement despite defendant's bad faith when the state was not prejudiced); *Farsdale*, 586 N.W.2d at 426 (bondsman "made numerous attempts to locate defendant through contacts with family, friends, and multi-state law enforcement" and requested that law enforcement expand the scope of their search, which led to defendant's arrest).

Further, when considering the purpose of bail, Minnesota Statutes section 629.58 (2018) encourages "sureties to locate, arrest, and return defaulting defendants to the authorities to facilitate the timely administration of justice." *Storkamp*, 656 N.W.2d at 542. And the district court appropriately found that "Midwest Bonding presented no evidence that their efforts contributed to the successful apprehension of [d]efendant by law enforcement."

When we turn to the second *Shetsky* factor, we consider "the good faith of the bond company as measured by the fault or willfulness of the defendant." *Askland*, 784 N.W.2d at 62. A willful and unjustifiable default by the defendant weighs against forgiveness of a bond penalty. *Shetsky*, 60 N.W.2d at 47-48. And when a defendant does not meet the obligation to appear without a justifiable excuse, this misconduct is attributable to the bond company. *Id.* at 48 ("[The defendant's] willful and unjustifiable default as a principal of the bail bond is chargeable to his surety.") Here, on March 6, 2017, the defendant signed a promise to appear at his March 30 sentencing date. As the district court stated, this indicates that the defendant knew he had a court date. Then, on March 28, 2017, Midwest Bonding contacted the defendant to ensure his appearance at the sentencing hearing. The defendant accepted notification of the hearing date through an automated appointment

reminder voice messaging system. But he did not appear.⁴ The first and second *Shetsky* factors together weigh against full reinstatement of the bond.

The third *Shetsky* factor considers “the good-faith efforts of the bond company to apprehend and produce the defendant.” *Askland*, 784 N.W.2d at 62. Midwest Bonding asserts that this factor favors reinstatement because it made good-faith efforts to apprehend and produce the defendant.

While the hiring of recovery agents may demonstrate the good-faith efforts of Midwest Bonding, here there is a question of what the recovery agents actually did to locate and apprehend the defendant. In its thorough analysis, the district court found that “Midwest Bonding provided insufficient evidence to show it made good faith efforts to locate [d]efendant after he willfully failed to appear.” Specifically, the district court found that Midwest Bonding only made three phone calls—one call to the indemnitor before sentencing, one call to the defendant after he failed to appear, and one call to the indemnitor after the defendant’s failure to appear. And while Midwest Bonding hired a recovery agent to apprehend the defendant, the district court noted that Midwest Bonding provided no evidence of the specific steps the recovery agent actually took in its efforts.⁵ Ultimately, the defendant was located and apprehended by law enforcement. Midwest Bonding

⁴ At the motion hearing, Midwest Bonding conceded that the defendant’s non-appearance was willful.

⁵ The only evidence of the steps taken by the recovery agent is provided in the affidavit from the managing member of Midwest Bonding. But that individual is not an agent of the recovery agency, nor did he indicate how he knew this information.

presented no evidence that it contributed to the defendant's arrest. Overall, this *Shetsky* factor weighs slightly against full reinstatement of the bond.⁶

As to the final *Shetsky* factor, the general rule is that relief from forfeiture will not be granted when the prosecution has been deprived of proof by delay *or has otherwise been adversely affected*. *Shetsky*, 60 N.W.2d at 45. Here, the state alleges that the delay in prosecution prejudiced it because "it was incapable of administering justice in providing a prison sentence to the defendant and closure to the victim's family."⁷ A defendant's absence alone does not satisfy the state's burden of demonstrating prejudice. *Askland*, 784 N.W.2d at 63. But the question here is whether the impact on the victim can demonstrate that the state was "otherwise adversely affected." *Shetsky*, 60 N.W.2d at 45. At the sentencing that defendant failed to attend, a number of the victim's family members were present, with at least one family member having filed a victim impact statement prior to the hearing. But the family member was unable to read her statement. As the district court aptly stated, when reflecting on that sentencing hearing:

[T]here were victim's family members who were greatly distressed, who did not have the closure they might have otherwise had, because [the defendant] was not here. So, it isn't something to be taken lightly. It was a significant

⁶ Even if this factor weighs in favor of the reinstatement and discharge of the bond, a district court may deny a motion to reinstate without abusing its discretion even if the surety makes these good-faith efforts. See *State v. Williams*, 568 N.W.2d 885, 888 (Minn. App. 1997) (stating that the district court did not abuse its discretion in denying motion to reinstate even though surety assisted in apprehending the defendant), *review denied* (Minn. Nov. 18, 1997); see also *State v. Rodriguez*, 775 N.W.2d 907, 913-14 (Minn. App. 2009) (same), *review denied* (Minn. Feb. 16, 2010). And there is no authority allowing one factor to control over all *Shetsky* factors. See *Storkamp*, 656 N.W.2d at 543.

⁷ The victim was killed during the robbery to which the defendant pleaded guilty.

distressful thing for those and it was visible in the courtroom that it was distressful to them.

Still, Midwest Bonding asserts that there is no caselaw indicating that suffering by a victim's family is considered prejudice to the state. But because sentencing is a part of prosecuting the defendant, and because the family's input is part of the sentencing process, the district court could consider the suffering of the victim's family due to the defendant's failure to appear at the sentencing hearing, when analyzing prejudice to the state. This fourth *Shetsky* factor weighs marginally against full reinstatement of the bail bond.

Because the relevant factors, considered as a whole, weigh against a complete reinstatement and discharge of the bail bond, the district court acted well within its wide discretion in imposing a \$25,000 penalty.

Affirmed.