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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2058**

State of Minnesota,
Respondent,

vs.

Marvin Lynn Elgy,
Defendant,

Midwest Bonding, LLC,
Appellant.

**Filed June 17, 2019
Affirmed
Jesson, Judge**

Ramsey County District Court
File No. 62-CR-18-627

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, Erin
M. Schoenbeck, Certified Student Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

JESSON, Judge

On appeal from the district court's reinstatement and discharge of \$5,000 of a \$20,000 bail bond, appellant Midwest Bonding, LLC challenges the district court's decision to impose a \$15,000 penalty when it reinstated and discharged the bail bond. We affirm.

FACTS

In January 2018, defendant Marvin Lynn Elgy was charged with one count of felony domestic assault and one count of domestic assault by strangulation. In March 2018, appellant Midwest Bonding, LLC, posted an appearance bond in the amount of \$20,000 to ensure defendant's appearance at future proceedings. On March 29, 2018, defendant pleaded guilty to domestic assault by strangulation. But defendant failed to appear at the May 30, 2018 sentencing hearing, and the district court ordered the \$20,000 bond to be forfeited.

On June 30, 2018, defendant was arrested in Washington County. Unaware that the defendant was in custody, in August 2018, Midwest Bonding 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 and indemnitor prior to the sentencing hearing to guarantee his appearance. After learning the defendant failed to appear, Midwest Bonding began investigative efforts to locate the defendant. When its efforts proved unsuccessful, Midwest Bonding hired U.S. Bail and Fugitive Enforcement. Neither Midwest Bonding

nor the fugitive recovery agent located the defendant in the Washington County's jail until November 2018, when he was transported to Ramsey County for sentencing.

At the motion hearing, after considering both parties' arguments, the district court reinstated and discharged the bond in the reduced amount of \$5,000. Midwest Bonding appeals.

D E C I S I O N

Midwest Bonding argues that the district court abused its discretion when it imposed a 75% penalty when reinstating and discharging the bail bond.

When a bail bond is forfeited following a defendant's failure to appear, 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 proving any claimed prejudice. *Id.* We consider each of the *Shetsky* factors in turn.

The first *Shetsky* factor examines “the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant’s absence.” *Id.* Midwest Bonding asserts that the purpose of bail was satisfied because the defendant was at large for only 30 days after he had already pleaded guilty.¹

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, the bail serves a dual purposes of “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 partially satisfied because the defendant had his freedom before he pleaded guilty. But the purpose of bail was frustrated when the defendant failed to appear for sentencing and was not apprehended until 30 days later. Still, Midwest Bonding asserts that the supreme court has fully reinstated bail bonds where a defendant was at large for a longer amount of time. *See Askland*, 784 N.W.2d at 61 (about

¹ It is unclear from the record when Midwest Bonding learned that defendant was in custody in Washington County. But as of August 28, 2018, the date it petitioned the court, Midwest Bonding was unaware that defendant had been apprehended by law enforcement.

seven months); *Farsdale v. Martinez*, 586 N.W.2d 423, 424-25 (Minn. App. 1998) (about three months). But in those decisions, other factors also favored reinstatement. See *Askland*, 784 N.W.2d at 61, 63 (stating that reinstatement was warranted where bond company took steps to locate, apprehend, and deliver defendant, incurring more than \$3,000 in expenses, and the state suffered no prejudice); *Farsdale*, 586 N.W.2d at 426 (bondsman “made numerous attempts to locate respondent 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) serves to encourage “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. Here, Midwest Bonding presented no evidence that their efforts contributed to the defendant’s apprehension. Although the defendant was at large for only 30 days, because Midwest Bonding did not assist in securing the defendant’s appearance at sentencing, this first *Shetsky* factor is largely neutral.

Turning to the second *Shetsky* factor, this court considers “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. Here, two days prior to defendant’s sentencing hearing, Midwest Bonding contacted the defendant to ensure his appearance at sentencing. Defendant

accepted notification of the hearing date through an automated appointment reminder voice messaging system. Still, he failed to appear. And no reason was given for his nonappearance.² This *Shetsky* factor weighs 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. The district court found that Midwest Bonding did not meet “its burden with regard to good faith efforts in totality.” But Midwest Bonding asserts that it made good-faith efforts to locate the defendant, and as such, this factor favors reinstatement.

Without question, after the defendant failed to appear at sentencing, Midwest Bonding’s agents began investigative efforts to locate him. And when its efforts proved unsuccessful, Midwest Bonding hired a fugitive recovery agent to find the defendant. But by August 28, 2018—the date Midwest Bonding petitioned the court to reinstate and discharge the bond—neither Midwest Bonding, nor the recovery agent, had located the defendant, who had been in custody in Washington County since June 30, 2018.³

While Midwest Bonding expended some good-faith efforts to locate the defendant, it ultimately did not produce or apprehend him, despite the fact that the defendant was in custody in a neighboring county. This led the district court to note that Midwest Bonding “fail[ed] to show good faith effort to apprehend the defendant, as he was in custody in

² At the motion hearing, Midwest Bonding conceded that defendant’s nonappearance was willful.

³ At the motion hearing, counsel for Midwest Bonding referred to their investigation as “deficient” and stated that “[i]t appears that the recovery agent that we hired missed the fact that [defendant] was actually in custody when we filed our petition and affidavit.”

Washington County.” As such, because Midwest Bonding attempted to locate the defendant, but failed to find him in a neighboring county’s jail, this *Shetsky* factor is marginally in favor of reinstatement and discharge of the bail bond.

Finally, the fourth *Shetsky* factor considers whether the state was prejudiced in its administration of justice. *Askland*, 784 N.W.2d at 62. A defendant’s absence alone does not satisfy the state’s burden of demonstrating prejudice. *Id.* at 63. But prejudice to the state can be demonstrated by a loss of evidence, a loss of witnesses, or a showing that it was otherwise adversely affected. *Id.* Here, the state asserts that it was prejudiced because in the amount of time the defendant was at large—30 days—he committed two domestic abuse no-contact order violations.⁴ While Midwest Bonding is correct that the defendant is innocent of these charges until he pleads or is found guilty, the state now bears the cost of prosecuting these two violations, which would not have occurred if the defendant appeared at sentencing. Accordingly, this fourth *Shetsky* factor weighs 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 within its discretion in imposing a \$15,000 penalty.

Affirmed.

⁴ Midwest Bonding asserts that the state did not argue prejudice to the district court. But the state specifically mentioned the two new domestic abuse no-contact order violations at the bond reinstatement hearing.