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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1139**

State of Minnesota,
Respondent,

vs.

Heriberto Natividad Campos,
Defendant,

Midwest Bonding, LLC,
Appellant.

**Filed April 20, 2020
Reversed and remanded
Slieter, Judge**

Olmsted County District Court
File No. 55-CR-18-3302

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

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

James McGeeney, Doda McGeeney, Rochester, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Midwest Bonding, LLC asserts that the district court abused its discretion by denying Midwest Bonding's petition to reinstate and discharge a bond that it posted for defendant Heriberto Natividad-Campos.¹ Because the district court made an erroneous factual finding, which taints its analysis of the four *Shetsky*² factors, we reverse and remand for the district court to reassess the factors in a manner consistent with this opinion.

FACTS

On May 10, 2018, the state charged Natividad-Campos with two counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(g) (2016), and two counts of second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(g) (2016). At his first appearance, the district court imposed unconditional bail in the amount of \$150,000 and conditional bail in the amount of \$75,000. The next day, Natividad-Campos posted a \$75,000 conditional bond through a surety other than Midwest Bonding.

Following his first appearance, Natividad-Campos's attorney filed a letter with the district court noting that his client "was detained by Immigration and Customs

¹ The caption in the district court lists defendant as "Heriberto Natividad Campos," and that spelling is used in the caption on appeal. Minn. R. Civ. App. P. 143.01 (directing that the title of an action "not be changed in consequence of [an] appeal"). Because counsel for the defendant spelled his client's name as "Natividad-Campos," we use that spelling throughout the body of this opinion.

² *Shetsky v. Hennepin County (In re Shetsky)*, 60 N.W.2d 40, 46 (Minn. 1953).

Enforcement (ICE) officers shortly after [Natividad-Campos] posted bond.” Counsel said that he did not know if ICE would transport Natividad-Campos to the scheduled rule 8 hearing.

On May 31, 2018, the state petitioned the district court for a writ of *habeas corpus ad prosequendum*³ to allow for the release and transport of Natividad-Campos from ICE custody. The district court issued the writ, which also required Natividad-Campos to be returned to ICE custody following the hearing.

The state also moved the district court to review Natividad-Campos’s release conditions and increase bail or impose other conditions deemed appropriate by the district court. Despite the writ obligation to return Natividad-Campos to ICE following the hearing, the state asserted that, if the district court did not increase Natividad-Campos’s bail, ICE would “reassume custody of the defendant and the defendant [would] be deported to Mexico at the first opportunity.”⁴ The state therefore requested that the district court increase monetary bail obligations to \$300,000 unconditional or \$150,000 conditional.

Natividad-Campos appeared with counsel at the rule 8 hearing and the district court addressed the state’s motion related to increased bail. The state asked the district court to “double” the amount of bail. The district court imposed an additional \$75,000

³ “A writ used in criminal cases to bring before a court a prisoner to be tried on charges other than those for which the prisoner is currently being confined.” *Black’s Law Dictionary* 825 (10th ed. 2014).

⁴ The state asserted in its motion that Natividad-Campos requested a removal order in an immigration proceeding, and an immigration-law judge granted Natividad-Campos’s request for his removal to Mexico.

unconditional bond requirement and set an omnibus hearing for June 26, 2018. Natividad-Campos posted the additional \$75,000 bail bond through Midwest Bonding.

On or about June 17, 2018, ICE deported Natividad-Campos from the United States. Three days later, the first surety company petitioned for reinstatement and discharge of its bond.

Because he had been deported, Natividad-Campos failed to appear for the scheduled omnibus hearing. The district court granted the petition to reinstate and discharge the first surety company's bond, forfeited Midwest Bonding's bond, and sent notice of the forfeiture.

On September 20, 2018, Midwest Bonding petitioned to reinstate and discharge its bond. Midwest Bonding asserted in an affidavit to the district court that it took steps to secure Natividad-Campos's appearance at the omnibus hearing. Midwest Bonding explained that, following notice from the district court, it started "investigative efforts to locate [Natividad-Campos] and return [Natividad-Campos] to the jurisdiction and custody of the Court." These initial steps did not succeed and caused Midwest Bonding to hire "a professional fugitive recovery agency" to find Natividad-Campos. Midwest Bonding's efforts revealed that ICE apprehended Natividad-Campos nine days *before* the omnibus hearing that Natividad-Campos missed, and 11 days *after* Midwest Bonding posted the noncash bond.

The district court granted Midwest Bonding's petition. The state filed an objection and the district court set the matter for a hearing.

At the hearing on the bond forfeiture, the district court heard arguments from the state and Midwest Bonding. Following the hearing, the district court vacated its previous order and forfeited bond. The district court found, upon review of the *Shetsky* factors, that Midwest Bonding failed to meet its burden to justify reinstating the bond and therefore forfeited its bond. This appeal follows.

DECISION

Appellate courts “review a denial of a petition for reinstatement of a forfeited bail bond for abuse of discretion.” *See State v. Askland*, 784 N.W.2d 60, 62 (Minn. 2010). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

“By accepting a premium and agreeing to act as a surety, a bond writing company undertakes to ensure that a defendant will personally appear to answer the charges against him.” *State v. Williams*, 568 N.W.2d 885, 888 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997). If a defendant fails to appear and the 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 (2018).

In *Shetsky*, the supreme court identified four factors to guide district court’s consideration of whether it should reinstate a forfeited bond. The factors are:

[1] the *purpose of bail* and the civil nature of the proceedings and the burden of proof as well as the *cause, purpose, and length of 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] the *prejudice*—by way of delay or otherwise—to *the state*, in its administration of justice.

60 N.W.2d at 46 (emphasis added). The *burden of proof* is on the applicant to establish a justification for a mitigation of forfeited bail. *Id.* Except that the state bears the burden to establish prejudice. *Askland*, 784 N.W.2d at 62.

Before turning to the district court’s specific analysis on the *Shetsky* factors, it is necessary to address the district court’s finding, which affects its analysis of the first three factors. The district court found that Natividad-Campos obtained the bond from Midwest Bonding “to assure his transfer back into ICE custody and eventual removal from the United States.”

Appellate courts “give great deference to a district court’s findings of fact and will not set them aside unless clearly erroneous.” *See State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008). A reviewing court will not disturb factual findings unless it is “left with the definite and firm conviction that a mistake has been made.” *See id.* (quotation omitted). If reasonable evidence supports the district court’s factual findings, then the reviewing court “will not disturb those findings.” *See id.*

After examining the record, we conclude that the district court’s factual finding is unsupported and therefore the finding is clearly erroneous.

First, the plain language in the writ of *habeas corpus* issued by the district court to compel his appearance at the rule 8 hearing, shows that regardless of whether Natividad-

Campos paid additional bail, he would be transported back to ICE custody after the hearing. Nothing in the record indicates that had Natividad-Campos not posted the additional bail, ICE would not have sought his return to custody as the writ required. This evidence therefore is contrary to the district court's finding. The record instead suggests that the additional bail posted by Natividad-Campos had no impact on the decision of ICE to deport Natividad-Campos.

Second, the record does not show whether Natividad-Campos knew that securing the bond for his release from Olmsted County would precipitate his deportation before his criminal proceedings. Following the rule 8 hearing, the district court set the omnibus hearing for June 26, 2018. The record does not support a finding that Natividad-Campos expected that posting bail would result in his immediate deportation. Nothing in the record indicates what the ICE deportation timeline was. Rather, the record suggests, consistent with the information available to the state and the district court based on the writ language, that law enforcement would return Natividad-Campos to ICE following the rule 8 hearing and that ICE deported Natividad-Campos nine days before the scheduled omnibus hearing.

Having concluded that the record does not support the district court's finding that Natividad-Campos posted bail to flee the jurisdiction, we now consider the *Shetsky* factors.

A. The purpose of bail, the civil nature of the proceedings, and the cause, purpose, and length of a defendant's absence

A defendant's release on bail serves two purposes: "relieving the accused of imprisonment and relieving the state of the burden of detaining him pending his trial." *State v. Storkamp*, 656 N.W.2d 539, 541 (Minn. 2003); *see also State v. Super*, 161 N.W.2d

832, 838-39 (Minn. 1968) (recognizing that the bail system reconciles a defendant's pretrial liberty with the state's need to ensure their return for trial). "Bail is also intended to encourage sureties to voluntarily pay the penalty for failing to ensure the presence of the accused without requiring that the state undergo the expense of litigation to recover the defaulted bond amount." *State v. Rodriguez*, 775 N.W.2d 907, 913 (Minn. App. 2009) (quotation omitted), *review denied* (Minn. Feb. 16, 2010).

The district court found that Natividad-Campos's nonappearance was a result of his own "request for removal from the country[,] and his "sole purpose" in posting bail through Midwest Bonding "was to assure his transfer back into ICE custody and eventual removal from the United States." As we have stated, the record does not support this finding. The record does support, however, a finding that ICE deported Natividad-Campos. Midwest Bonding argues that the bond should be reinstated and discharged because it is not to be faulted for Natividad-Campos's absence.

The decision taken by the federal government to deport Natividad-Campos was an act of law that prevented Midwest Bonding from meeting its obligation to ensure Natividad-Campos's attendance at his hearing. This type of legal action favors absolving Midwest Bonding's obligation. *Taylor v. Taintor*, 83 U.S. 366, 369 (1872) (recognizing that "[i]t is the settled law of this class of cases that the bail will be exonerated where the performance of the condition is rendered impossible by the act of God, the act of the obligee, or the act of the law") (footnote omitted); *see also State v. Due*, 427 N.W.2d 276, 278 (Minn. App. 1988) (recognizing that a surety's obligation may be exonerated when the

government acts in a way that prevents the surety company's ability to comply with its obligations), *review denied* (Minn. Sept. 28, 1988).⁵

As for the cause, purpose, and length of defendant's absence, as noted above, the record does not suggest that Natividad-Campos posting bail had any effect on ICE's decision to deport him. The record further does not show that Natividad-Campos's purported consent to deportation aligned with posting bail to facilitate his deportation. The record reflects that the state and the district court were aware of the ICE hold, of the obligation—per the writ—to return Natividad-Campos to ICE custody following the rule 8 hearing, and that eleven days after posting bail Natividad-Campos was deported, which caused him to miss the omnibus hearing.

B. The good faith of Midwest Bonding as measured by defendant's fault or willfulness

“[W]hen the accused 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. Examples of justifiable causes for not appearing are: “Serious illness

⁵ In removal proceedings conducted by an immigration-law judge, an alien may stipulate to removal which, it is alleged in the record, Natividad-Campos may have done. 8 U.S.C. § 1229a(d) (2012). After an immigration-law judge issues a removal order, generally, “the Attorney General shall remove the alien from the United States within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A) (2012). *But see Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84, 119 S. Ct. 936, 943 (1999) (“[T]he Executive has discretion to abandon the endeavor [of executing removal orders] . . . for humanitarian reasons or simply for its own convenience.” (footnote omitted)). Regardless of Midwest Bonding posting the noncash bond on Natividad-Campos's release, the federal government was required by law to deport Natividad-Campos within 90 days from the deportation order unless it exercised its discretion. Any steps taken by the district court or the state would have been ineffectual to keep Natividad-Campos in the United States because of the federal government's directive to remove him.

of the defendant, accident, or detention in the custody of another jurisdiction, whereby the defendant is prevented from appearing for trial as required by the terms of his bond.” *Shetsky*, 60 N.W.2d at 45 n.3. And a person may justifiably not appear when “the state has taken action making it impossible for [the surety company] to produce [the defendant].” *See Due*, 427 N.W.2d at 278.

The district court found that when Midwest Bonding posted its bond for Natividad-Campos’s release, an immigration-law judge had already issued a deportation order. Differentiating Midwest Bonding from the other surety company, the district court explained that there was information to alert Midwest Bonding about Natividad-Campos’s deportation consequences and that Natividad-Campos “acted in a deliberate and willful manner to remove himself from [the district court’s] jurisdiction” without excuse.

The record does not support the district court’s findings on this factor. As we explain above, the record reflects that the state and the district court were aware of the ICE hold, the need to transport Natividad-Campos back to ICE custody following the hearing, and the potential, during the pendency of his criminal proceeding, that he would be deported. With this knowledge, the state recommended and the district court set bail conditions.

The record does not provide us with an explanation of what role the posting of bail had to facilitate Natividad-Campos’s deportation. Without facts in the record, it is speculation as to whether the action taken by Natividad-Campos, attributed to Midwest Bonding, affected the timing of his deportation.

C. The good-faith effort of Midwest Bonding to apprehend and produce the defendant

Appellate courts generally consider a surety company's posthearing efforts to obtain the defendant's appearance. See *Storkamp*, 656 N.W.2d at 542-43; *Shetsky*, 60 N.W.2d at 48. But see *Rodriguez*, 775 N.W.2d at 913-14 (considering the surety company's failure to engage in prehearing efforts).

The district court found defects in this case similar to those in *Rodriguez*. The district court accepted the claims that Midwest Bonding tried to find Natividad-Campos, but found that "Midwest Bonding's attempts seem disingenuous given that [Natividad-Campos] was removed from the country by virtue of the deportation order in place at the time it chose to post [Natividad-Campos's] bond."

In *Rodriguez*, this court held that a district court did not abuse its discretion in forfeiting a bond because the surety company failed to establish a mutual mistake of fact to avoid a bail contract. 775 N.W.2d at 914. The surety company in *Rodriguez* argued that it mistook the defendant's true identity—even though it was present through an agent when the defendant identified his true name on the record. *Id.* at 909-10. Based on this mistaken name, the surety company asserted that it made good-faith efforts to find the individual named in the complaint and then, upon discovering the name as incorrect, the surety company's fugitive agent spent "about an hour's worth" of time searching under [the defendant's actual name]. *Id.* at 913. This court determined that the surety company's efforts only became necessary after the company "took so few precautions before issuing a \$50,000 bond to the defendant and then made so little effort to keep track of him

afterwards.” *Id.* at 914. As a result, this court affirmed the district court’s refusal to reinstate and discharge the bond under the *Shetsky* factors. *Id.*

Midwest Bonding described its posthearing attempts to apprehend and produce Natividad-Campos in its affidavit to the district court. Midwest Bonding learned through its posthearing investigation that ICE apprehended Natividad-Campos and deported him. Although these efforts failed to return Natividad-Campos to the district court, these efforts are not as ineffectual compared with those taken in *Rodriguez*.

Midwest Bonding’s prehearing conduct by issuing its bond is not similar to the behavior in *Rodriguez*. Unlike in *Rodriguez*, Midwest Bonding was not present at the time of the rule 8 hearing, and it is not clear that Midwest Bonding acted improperly by providing a bond, which the district court set based upon the recommendation of the state. What is clear from the record is that the state, when it sought the additional conditional bail of \$75,000, knew that Natividad-Campos was subject to deportation proceedings and that law enforcement would transport Natividad-Campos back to ICE following the rule 8 hearing.

D. Prejudice suffered by the state in its administration of justice

Midwest Bonding conceded to the district court and to this court that the state is prejudiced by Natividad-Campos’s removal from the United States. Midwest Bonding contents that prejudice which exists was caused by the government’s actions. We agree with Midwest Bonding.

We agree that the state is prejudiced by Natividad-Campos’s deportation from the United States disallowing resolution in his prosecution. What we have noted, however,

throughout this opinion is that the record does not show the degree to which Midwest Bonding's decision to provide a bond to Natividad-Campos added to this prejudice.

Because the district court made an erroneous finding regarding the purpose for which Natividad-Campos obtained a bail bond and that erroneous finding permeated the district court's analysis of the *Shetsky* factors, we conclude that the district court abused its discretion. We therefore reverse the district court's order and remand for the district court to reassess Midwest Bonding's petition for reinstatement consistent with our analysis above. The district court may in its discretion reinstate and discharge the bond or consider other remedies as it finds appropriate.

Reversed and remanded.