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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1356**

State of Minnesota,
Respondent,

vs.

Clarence Joseph Gill, Jr.,
Defendant,

Midwest Bonding, LLC,
Appellant.

**Filed March 9, 2020
Affirmed
Kalitowski, Judge***

Hennepin County District Court
File No. 27-CR-18-242

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

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

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

Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and
Kalitowski, Judge.

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Midwest Bonding, LLC, (Midwest), challenges the district court's order denying its petition to reinstate and discharge a forfeited bond. We affirm.

DECISION

Midwest argues that the district court abused its discretion when it declined to reinstate and discharge a forfeited bail bond it had posted for Clarence Joseph Gill, Jr. We review a district court's denial of a petition for reinstatement of a forfeited bail bond for an abuse of discretion. *State v. Askland*, 784 N.W.2d 60, 62 (Minn. 2010). A district court abuses its discretion when it bases its conclusions on an erroneous view of the law. *Id.*

Under Minnesota law, when a defendant is released on bond and fails to perform on the conditions of the bond, the bond is forfeited. Minn. Stat. § 629.58 (2018). But, upon request, a district court may forgive the bond or reduce the amount forfeited if doing so would be “just and reasonable” under the circumstances of the case. Minn. Stat. § 629.59 (2018). Generally, the surety—here, Midwest—has the burden to show the circumstances that make reinstatement just and reasonable. *In re Shetsky*, 60 N.W.2d 40, 46 (Minn. 1953). In considering whether to reinstate a bond after forfeiture, Minnesota courts balance the four *Shetsky* factors:

- [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 [sic] 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.

Id. at 46.

In its petition to reinstate Gill’s bond, Midwest submitted a three-page affidavit written by its managing member and a verification of surrender and custody form filled out by the fugitive recovery agent hired by Midwest, which was dated ten days after Gill was apprehended by police officers. Relying on this record, the district court addressed the *Shetsky* factors. Concluding that more factors weighed against reinstating and discharging the bond, the district court denied Midwest’s petition.

A. The first *Shetsky* factor.

The district court concluded that the first *Shetsky* factor—the purpose of bail and the cause, purpose and length of a defendant’s absence—weighed against reinstatement. In considering the purpose of bail, courts seek to ensure prompt administration of justice by “encourag[ing] a surety to voluntarily pay the penalty for the failure to ensure the presence of the accused without requiring the state to undergo the expense of litigation to recover the defaulted amount.” *State v. Vang*, 763 N.W.2d 354, 358 (Minn. App. 2009). Another purpose of the bail system is to encourage sureties to locate and return defendants. *Id.*

When addressing the first *Shetsky* factor, the district court found that “Gill’s abuse of his procurement of bail in attempting to and actually delaying court proceedings for several months belies the intended purpose” of bail bonds, and held that this factor weighed against reinstatement of bail.

Midwest argues that the district court based its finding on an erroneous view of the law, alleging that the actions of the surety in locating and returning the defendant should be addressed in the second factor, and not in the first factor. But our caselaw has addressed the efforts of the surety in tracking the defendant under the first factor. *See, e.g., State v. Rodriguez*, 775 N.W.2d 907, 913 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010) (discussing the surety’s efforts in keeping track of the defendant when analyzing the first *Shetsky* factor).

Here, the district court noted that Gill delayed court proceedings for several months, directly challenging the purpose of bail in ensuring the prompt administration of justice. We conclude that the district court did not base this finding on an erroneous view of the law because the record indicates that Gill delayed proceedings for five and a half months. Thus, as this court stated in *State v. Williams*, “the fact remains that [defendant] failed to make his scheduled court appearances,” delaying the proceedings. 568 N.W.2d 885, 888 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997). Because Gill’s conduct delayed the swift administration of justice, the district court did not abuse its discretion in finding that the first factor weighed against reinstatement of the bond.

Midwest also argues that this case is factually similar to *Askland*, in which the supreme court found the district court abused its discretion by not reinstating a bond and thus remanded for reinstatement. 784 N.W.2d at 64. Midwest argues that, because the defendant in *Askland* pleaded guilty after delaying the proceeding by being absent for seven months, this court should reverse the district court because Gill delayed the proceeding by his absence for a shorter period of time. But in *Askland*, the supreme court did not discuss

the first *Shetsky* factor, and instead focused only on the fourth *Shetsky* factor—prejudice to the state. *Id.* Accordingly, we reject Midwest’s reliance on *Askland* for the assertion that the district court erred when analyzing the first *Shetsky* factor.

Therefore, we conclude that the district court did not abuse its discretion in finding that the first *Shetsky* factor weighed against reinstatement of the bond because there was no clear error in the district court’s analysis.

B. The second *Shetsky* factor.

The district court concluded that the second *Shetsky* factor weighed against reinstatement. The second *Shetsky* factor considers the good faith of Midwest as measured by the fault or willfulness of Gill, as the “[d]efendant’s willfulness or bad faith is attributable to the surety.” *Vang*, 763 N.W.2d at 358.

The district court held that this factor weighed against reinstatement because “the evidence is not indicative of any mitigating factors which lead this Court to believe Gill absconded for any reason other than willful and intentional evasion of the swift administration of justice.”

Midwest argues that the district court abused its discretion in analyzing the second *Shetsky* factor because it should have weighed Gill’s willfulness or bad faith *against* Midwest’s good faith in attempting to recover Gill. But the second *Shetsky* factor specifically addresses the fault or willfulness of the defendant, while the third *Shetsky* factor addresses the good faith of the surety in locating the defendant. As the district court weighed all four *Shetsky* factors, the district court properly considered Gill’s willfulness or bad faith in delaying the proceeding when discussing the second *Shetsky* factor. Although

Midwest is correct that a defendant's bad faith does not "automatically trump[] the surety's good-faith effort to return the defendant to justice," the district court must weigh each factor separately. *State v. Storkamp*, 656 N.W.2d 539, 543 (Minn. 2003). Because the district court did not clearly err in addressing Gill's willfulness in delaying the proceeding under the second *Shetsky* factor, we cannot conclude that the district court abused its discretion.

C. The third *Shetsky* factor.

The district court concluded that the third *Shetsky* factor was neutral, acknowledging Midwest's "attempt to apprehend Gill by employing a fugitive apprehension service," but noting that "its efforts were unsuccessful."

Midwest argues that it made good faith efforts in attempting to locate and apprehend Gill, which included hiring a fugitive recovery agent. On appeal, Midwest asserts that the fugitive recovery agent assisted in locating Gill, but does not provide any support in the record for this assertion. Instead, in Midwest's affidavit in support of its petition to reinstate the bond, Midwest's managing member stated that "the Agent was notified that the Defendant was back in the custody of the Hennepin County Sheriff having been arrested in Bloomington, Minnesota on or about February 5, 2019."

At the time Midwest moved for reinstatement of the bond, it did not allege that the fugitive recovery agent was involved in the arrest of Gill. And in its brief to this court, Midwest does not provide any support for the assertion that the agent assisted the police in locating Gill. Without more in the record to support the assertion that Midwest's agent assisted in recovering Gill, Midwest has failed to meet its burden of proving this factor

weighs in favor of reinstatement. *See Askland*, 784 N.W.2d at 62 (requiring the surety to prove the first three *Shetsky* factors). Therefore, we conclude that the district court did not abuse its discretion in its analysis of the third *Shetsky* factor.

D. The fourth *Shetsky* factor.

The district court concluded that the fourth *Shetsky* factor—prejudice to the state in its administration of justice—weighed in favor of reinstatement of the bond. Midwest does not challenge this finding. Because it is the state’s burden to prove the fourth *Shetsky* factor, *id.*, and the state did not submit a response to Midwest’s petition for reinstatement, we conclude that the district court did not clearly err in its determination.

In conclusion, because the district court did not clearly err in its *Shetsky*-factor analysis, our standard of review leads us to conclude that the district court did not abuse its discretion in denying Midwest’s request for reinstatement and discharge of the bond.

Affirmed.