STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0499

State of Minnesota,
Respondent,

vs.

Greshonda Machell Phillips,
Defendant,

Midwest Bonding LLC,
Appellant.

Filed December 7, 2020
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-17-19385

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 Bryan, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant surety challenges the district court's refusal to fully reinstate and discharge a bail bond. Because the district court did not abuse its discretion by reinstating only half of the bond, we affirm.

FACTS

In February 2018, appellant Midwest Bonding, LLC issued a $75,000 bond to secure defendant Greshonda Machell Phillips's release and appearance on assault and criminal-vehicular-operation charges. When Phillips did not appear for her January 2019 sentencing hearing, the district court ordered the bond forfeited and notified Midwest that it must pay the entire amount of the bond by April.

In April, Midwest petitioned the court to reinstate and discharge the bond, or to extend the payment deadline. Between April and October, Midwest submitted two additional petitions. The affidavits accompanying the petitions outline the steps Midwest took to locate Phillips, including its attempts to contact Phillips, her family, and known associates, and its search of jail records. Midwest also hired a recovery agency to track Phillips on social media—uncovering the fact she has at least six aliases—and to conduct surveillance on known addresses and establishments. The district court granted extensions in April and July, but ordered an evidentiary hearing on Midwest's third extension request.

In December, Midwest filed additional information indicating that Phillips was living in Milwaukee under an alias and had obtained a Wisconsin identification. The recovery agent was working to locate the identification number and provide it to law

enforcement. Midwest stated that this was all it could do to secure Phillips's return to Minnesota because state law prohibits recovery agents from operating in Wisconsin.

In late January 2020, Midwest advised the district court that Phillips had been apprehended in Milwaukee and returned to Hennepin County on January 14. Based on her return to custody, Midwest asked the court to reinstate and discharge the bond in its entirety. The district court declined, instead reinstating and discharging only half of the bond amount and ordering Midwest to pay $37,500. The court concluded that Phillips's one-year absence from the state and the willfulness of her absence weigh against reinstating the bond and that Midwest did not establish that reinstatement of the entire bond is just and reasonable. Midwest appeals.

D E C I S I O N

We review a district court's decision whether to reinstate a bail bond for abuse of discretion. *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).

Our supreme court has identified several factors that a district court must consider in deciding whether a surety should forfeit any portion of a bail bond: (1) the purpose of bail and the cause, purpose, and length of the defendant's absence; (2) the "good faith of the surety" measured by the fault or willfulness of the defendant; (3) the bond company's good-faith efforts to apprehend and produce the defendant; and (4) any prejudice to the state in its administration of justice. *Shetsky v. Hennepin County (In re Shetsky)*, 60

N.W.2d 40, 46 (Minn. 1953). A petitioner bears the burden of establishing that these factors favor reinstatement, but the state must prove any claimed prejudice. *Askland*, 784 N.W.2d at 62.

Midwest argues that the district court abused its discretion by determining that (1) two of the four *Shetsky* factors weigh against reinstatement, and (2) reinstatement of only half of the bond is just and reasonable. We address each argument in turn.

Purpose of Bail and the Length of Phillips's Willful Absence

The primary purpose of bail is to ensure the defendant's presence for "the prompt and orderly administration of justice." *Shetksy*, 60 N.W.2d at 46. Midwest contends the length of Phillips's absence weighs less heavily against reinstatement because she absconded after entering a guilty plea. We are not convinced for three reasons. First, none of the cases Midwest relies on involve a defendant who was on the run for a year. *See Askland*, 784 N.W.2d at 61 (approximately seven months); *Farsdale v. Martinez*, 586 N.W.2d 423, 424-25 (Minn. App. 1998) (approximately two months); *State v. Stellmach*, No. A14-0920, 2015 WL 134174, at *1 (Minn. App. Jan. 12, 2015) (three months). Second, Midwest's argument conflates the purpose-of-bail and prejudice factors. The fact Phillips pleaded guilty before fleeing the jurisdiction may reduce the prejudice to the state, but her one-year absence nevertheless undermined the purpose of bail. Third, we are persuaded that the year-long gap between her guilty plea and return to custody impeded the prompt and orderly administration of justice. *See Shetsky*, 60 N.W.2d at 48 (stating the defendant's absence of 18 months "delayed and thwarted the administration of justice").

A defendant's willful absence without a justifiable excuse is "attributable to the surety." *State v. Storkamp*, 656 N.W.2d 539, 542 (Minn. 2003). Midwest does not argue that Phillips's absence was justified; it maintains that her willful absence is outweighed by its good-faith efforts to apprehend her. It is true that a defendant's willfulness does not, in and of itself, control a district court's decision "whether to reinstate, discharge, and refund" a forfeited bond. *Id.* at 543. The district court recognized this, carefully considered all of the circumstances, and found that Midwest's efforts did not outweigh the willfulness of Phillips's absence. We decline Midwest's invitation to reweigh these circumstances. *See Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 755 (Minn. App. 2019) ("We do not reweigh the evidence that was before the district court . . . .").

On this record, we conclude that the district court's assessment of the first and second *Shetsky* factors is not contrary to logic or the facts in the record, and is not based on an erroneous view of the law.[1]

Justness and Reasonableness of Reinstating Half of the Bond

Midwest asserts that the district court abused its discretion by reinstating only half of the bond. It cites rule 702 of the Minnesota General Rules of Practice for the District Courts for the proposition that the court could have, at most, forfeited ten percent of the bond. We disagree.

[1] Midwest suggests that the district court erred by relying on an unpublished opinion of this court to support its determination that a 12-month absence weighs against bond reinstatement. But district courts may consider unpublished opinions for their persuasive value. *Donnelly Bros. Constr. Co. v. State Auto Prop. & Cas. Ins. Co.*, 759 N.W.2d 651, 659 (Minn. App. 2009). Moreover, the district court's reasoning comports with precedential authority.

Rule 702 provides that reinstatement may be ordered when petitions are "filed between 90 and 180 days from the date of forfeiture . . . on such terms and conditions as the court may require . . . upon the condition that a minimum penalty of not less than ten per cent (10%) of the forfeited bail be imposed." Minn. R. Gen. Prac. 702(f). The language of the rule is clear—a district court has no discretion to impose *less* than a ten percent penalty. Rule 702 does not otherwise limit a district court's broad discretion with respect to the amount of the penalty. Accordingly, the district court did not abuse its discretion simply by imposing more than a ten percent penalty. *See Askland*, 784 N.W.2d at 62 ("A district court abuses its discretion when it bases its conclusions on an erroneous view of the law.").

Nor does the record persuade us that the district court abused its discretion by imposing a 50% penalty. The district court found that Midwest tried to locate Phillips, eventually tracing her to Milwaukee. But because Midwest was not ultimately responsible for apprehending Phillips, the district court found Midwest had not established that full reinstatement of the bond is warranted. The record supports this determination. As noted above, Midwest's submissions demonstrate incremental progress at best in locating Phillips. They do not draw a direct line between its efforts and Phillips being back in court. We discern no error in the district court's finding that Midwest was not directly responsible for apprehending Phillips.[2]

[2] Nor does Wisconsin's law prohibiting recovery agents from operating within its borders excuse Midwest from its responsibility to produce Phillips. *See State v. Due*, 427 N.W.2d 276, 278 (Minn. App. 1988) (citing *State v. Liakas*, 86 N.W.2d 373, 378 (Neb. 1957) (suggesting state action preventing the defendant's apprehension may be grounds for

In sum, Midwest has not persuaded us that the district court's reinstatement decision is illogical or unsupported by the record. It is undisputed that Midwest's bond failed to perform its essential purpose—securing Phillips's presence in court for all proceedings. Phillips willfully absconded for a year without justification and Midwest was not ultimately responsible for her apprehension. Accordingly, we discern no abuse of discretion by the district court in reinstating only half of the bond.

Affirmed.

reinstatement)), *review denied* (Minn. Sept. 28, 1988). The principle introduced by the court in *Due* applies only where the state in which the defendant is being prosecuted prevents their apprehension. *See Liakas*, 86 N.W.2d at 379 (stating the rule as "if the sovereignty to which the recognizance bond is given renders impossible the performance of the obligation, the surety will be absolved from all liability on the bond" (quoting *United States v. Vendetti*, 33 F. Supp. 34, 35 (D. Mass. 1940)).