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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0542**

State of Minnesota,
Respondent,

vs.

Jarrold Paul Scott,
Defendant,

Absolute Bail Bonds, Inc.,
Appellant.

**Filed December 26, 2017
Affirmed
Bjorkman, Judge**

Meeker County District Court
File No. 47-CR-15-1056

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brandi Schiefelbein, Meeker County Attorney, Lee R. Martie, Assistant County Attorney,
Litchfield, Minnesota (for respondent)

Scott A. Neilson, Henson & Efron, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and
Reyes, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant surety challenges the partial denial of its petition for reinstatement and discharge of a bail bond, arguing that the district court abused its discretion by misapplying the law. We affirm.

FACTS

In late 2015, Jarrod Scott was arrested in Meeker County and charged with second- and third-degree driving while impaired (DWI) and several related misdemeanors and petty misdemeanors. Appellant Absolute Bail Bond, Inc. posted a \$12,000 bail bond for Scott, and he was released.

Scott failed to appear for a July 13, 2016 pretrial hearing. The district court did not forfeit the bond but issued a warrant for Scott's arrest. Absolute was not aware of Scott's non-appearance or the warrant and did not search for him. Local law enforcement subsequently learned that Scott was in custody in another county and arranged for Scott to appear before the district court on August 29. Scott pleaded guilty to second-degree DWI and was released on the same bond pending sentencing.

Scott again failed to appear for the October 20 sentencing hearing. That day, the district court ordered the bond forfeited, notified Absolute of the forfeiture, and issued a warrant for Scott's arrest. Absolute attempted to locate Scott by calling the phone number it had listed for Scott, which proved incorrect, and calling Scott's mother, the co-signor on the bail bond, though it received no answer and was unable to leave her a voicemail. On November 1, Absolute used "computer based research tools" and discovered that Scott had

been arrested and jailed on new charges in yet another county on October 27. Absolute did not notify the district court that it had located Scott or procure his appearance for sentencing.

On November 29, the state dismissed this case, noting that Scott had died. Absolute learned of the dismissal and, on December 2, filed a petition to reinstate and discharge Scott's \$12,000 bail bond. In support of its petition, Absolute submitted an affidavit stating that it attempted to locate Scott after his failure to appear for sentencing, discovered that Scott was in jail and "continued to monitor the status of [the] case," and subsequently learned that Scott "was deceased after an apparent suicide while in custody." The state took no position on the petition. After a hearing, the district court determined that Absolute is entitled to only a minimal reinstatement because it (1) undertook the risk of Scott's non-appearance but made no effort to ensure his appearance, (2) made "very little effort" to locate him after the bond was forfeited, and (3) did not itemize expenses it incurred searching for Scott. The district court reinstated \$500 of the bond and forfeited and discharged the remaining \$11,500. Absolute appeals.

D E C I S I O N

We review a district court's denial of a petition to reinstate a forfeited bail bond for an abuse of discretion. *State v. Vang*, 763 N.W.2d 354, 357 (Minn. App. 2009). "A district court abuses its discretion when it bases its conclusions on an erroneous view of the law." *State v. Askland*, 784 N.W.2d 60, 62 (Minn. 2010).

Our supreme court has identified several factors that a district court must consider in deciding whether to reinstate a bail bond: the purpose of bail; the cause, purpose and

length of the defendant's absence; the fault or willfulness of the defendant, which is attributable to the bond company; the bond company's good-faith efforts to apprehend and produce the defendant; and any prejudice to the state in its administration of justice. *In re Application of Shetsky*, 239 Minn. 463, 471, 60 N.W.2d 40, 46 (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.

Absolute argues that the district court misapplied the law by weighing some of the *Shetsky* factors against reinstatement. Absolute insists that all factors favor reinstatement and that anything short of full reinstatement is an abuse of discretion. We consider each of the *Shetsky* factors in turn.

Purpose of Bail

Bail serves the dual purposes of “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). A surety agrees to act as the defendant's chosen “jailer” and “insure his presence for trial at the call of the court.” *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46. If the defendant fails to appear, bail encourages the surety “to voluntarily pay the penalty for failing to ensure the presence of the accused,” *Storkamp*, 656 N.W.2d at 542, and then locate and return the defaulting defendant as a means of potentially mitigating that penalty, *Vang*, 763 N.W.2d at 358.

In considering whether reinstatement of the bond would serve these purposes, the district court noted that Scott twice failed to appear—in July and again in October—despite the bond. It also found that Absolute did not monitor Scott's appearances to know whether

he was fulfilling the appearance obligation that Absolute insured. Based on these facts, the district court determined that reinstating and fully discharging the bond would not serve the purposes of bail.

Absolute argues that the district court misapplied the law regarding the purpose of bail by considering its failure to take any actions to ensure Scott's appearance because a surety's only obligation is to return a defaulting defendant. We are not persuaded. While applicable caselaw tends to focus on a surety's efforts to return a defendant to custody after a non-appearance, a district court also may consider the extent of a surety's efforts to monitor the defendant and ensure he appears in court. *See State v. Rodriguez*, 775 N.W.2d 907, 913 (Minn. App. 2009) (affirming refusal to reinstate a bond in part because of a lack of prehearing efforts to ensure that the defendant appeared at trial), *review denied* (Minn. Feb. 16, 2010). After all, the principal purpose of bail is to "secure the attendance of the accused." *Shetsky*, 239 Minn. at 470, 60 N.W.2d at 46. Where, as here, a defendant has previously failed to appear in the same case, we discern no legal error by a district court considering the surety's failure to take any affirmative measures to ensure the defendant's later appearance. The purpose of bail weighs against reinstatement of the bond.

Cause, Purpose, and Length of Scott's Absence, and his Fault or Willfulness

A defendant's failure to appear in court may be justified if it is caused by serious illness, accident, or "detention in the custody of another jurisdiction, whereby the defendant is prevented from appearing." *Shetsky*, 239 Minn. at 469 n.4, 60 N.W.2d at 46 n.4. But an absence due to willfulness or bad faith on the part of the defendant is attributable to the surety. *Vang*, 763 N.W.2d at 358 (citing *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46).

The district court found that Scott was arrested on new charges and jailed in another county one week after he failed to appear for sentencing. The specific reason for Scott's non-appearance is unknown, but it is undisputed that he was not detained in another jurisdiction at that time. And the district court found several facts suggesting Scott's absence was willful: (1) Scott failed to appear once before in this case, (2) he failed to appear multiple times in other cases around the same time, and (3) his absences coincided with additional criminal conduct. The district court also found that while Scott was in custody in another jurisdiction within one week of his scheduled sentencing hearing, Absolute failed to notify the district court of his location or take any steps to secure his appearance for sentencing.

Absolute does not challenge these factual findings, but argues that the district court abused its discretion by weighing them against reinstatement because Scott's absence was brief, his failure to appear may have been justified by serious illness (based on his subsequent suicide), and his conduct in other cases should not bear on reinstatement of the bond in this case. These arguments are unavailing.

First, the brevity of Scott's absence is only part of the picture. While reinstatement may be warranted after absences far exceeding one week, *see, e.g., Askland*, 784 N.W.2d at 61 (177 days); *Storkamp*, 656 N.W.2d at 540-41 (two months), the single fact that a defendant's absence was brief no more requires reinstatement than the single fact that a defendant's absence was willful requires forfeiture, *cf. Storkamp*, 656 N.W.2d at 543 (holding that defendant's bad faith does not automatically trump other *Shetsky* factors). The district court appropriately considered the timing and the circumstances of Scott's

return to the state's custody, including Absolute's failure to advise the district court of Scott's location. Absolute contends that it was not obligated to inform the district court of Scott's location because, in its experience, "the county jails communicate with each other." But Absolute presented no evidence of such jail practices and does not dispute that the district court was unaware of Scott's location. More importantly, Absolute's obligation under the bond is to the court; Absolute agreed to secure Scott's attendance in court "at such times and on such dates as specified by the Court." *See Rodriguez*, 775 N.W.2d at 910-11 (holding that bail bond is a contract between defendant, surety, and court).

Second, this record does not indicate that Scott's apparent suicide had any bearing on his failure to appear for sentencing. A defendant's "[s]erious illness" may justify his absence from court, but the burden of proving the justification falls on the petitioner seeking bond reinstatement. *See Shetsky*, 239 Minn. at 469 n.4, 472, 60 N.W.2d at 45 n.4, 46. Absolute presented no evidence of the relationship between his death and his failure to appear in court more than one month earlier. Indeed, Absolute merely provided the district court with a local newspaper article that characterized Scott's death as a suicide. The district court appropriately noted the fact of Scott's apparent suicide without weighing it as evidence of either his willfulness or justification for failing to appear in court.

Finally, Scott's overall willful and unlawful conduct during the relevant time period reasonably bears on the nature of his absence. While we agree with Absolute that it was not obligated to ensure that Scott complied with his release conditions, remained law abiding, and appeared in court in other cases, the undisputed fact that Scott had a habit of failing to appear in court and instead using his conditional liberty to commit new crimes

suggests his failure to appear for sentencing was willful. That willfulness is attributable to Absolute as a matter of law. *See Vang*, 763 N.W.2d at 358. But the district court went one step further, finding that Absolute should have been aware of Scott’s propensities, especially after his first non-appearance, and should have either reconsidered its decision to act as surety or tailored its efforts under the bond to account for those propensities. We see no error in the district court’s analysis or assessment that Scott’s conduct weighs against reinstatement of the bond.

Absolute’s Efforts to Apprehend and Produce Scott

The extent and nature of a surety’s efforts to secure a defendant’s return to court following a non-appearance, and the expenses incurred in doing so, are relevant to the issue of reinstatement. *See Askland*, 784 N.W.2d at 61, 63; *Storkamp*, 656 N.W.2d at 540-41. These efforts may include interviewing the defendant’s friends or family, conducting surveillance, or retaining a bounty hunter. *See Askland*, 784 N.W.2d at 61; *Vang*, 763 N.W.2d at 355-56. They may also include cooperating with law enforcement.¹ *Farsdale v. Martinez*, 586 N.W.2d 423, 425 (Minn. App. 1998).

The district court found that Absolute did nothing to locate Scott after his first non-appearance in this case and that Absolute’s unsuccessful attempts to contact Scott and his mother by phone and an online search of jail registers after his second non-appearance were no more than “minimal” efforts. It contrasted those efforts, the cost of which Absolute did

¹ In its brief, Absolute “notes that for public policy reasons, law enforcement’s involvement in an investigation or arrest of a defendant is not a reason to penalize the bonding company or co-signers.” Absolute does not identify any instances of the district court imposing such a penalty here, and none is apparent from our review.

not itemize, with various steps Absolute could have but did not undertake at the time of either non-appearance: traveling to Scott's residence or that of his (co-signor) mother, conducting interviews or surveillance, or using a "recovery agent."

Absolute argues that the district court should not have weighed Scott's first non-appearance against reinstatement because he was absent only six days before being taken into custody in another county. This argument is misplaced. The district court noted the prior non-appearance primarily as part of its determination that Absolute was on notice that Scott was likely to abscond and should have enhanced its efforts accordingly.

Absolute also argues that its relatively limited efforts to locate Scott after he failed to appear for sentencing should not have been weighed against reinstatement because those efforts were consistent with public policy and its usual practice, and commensurate with Scott's relatively brief absence from custody. We are not persuaded. Swift deployment of multiple search tools may not be Absolute's usual practice or warranted in every case,² but the district court found that Scott's record of prior non-appearances, including one while under Absolute's bond, was a factor that Absolute should have been aware of and taken into account in its efforts to apprehend and produce Scott.

Prejudice to the State in its Administration of Justice

The state claims no prejudice from Scott's absence; the district court noted this in its findings. Absolute argues that this lack of prejudice strongly favors full reinstatement and discharge of the bond, and that forfeiture would serve no purpose other than to punish

² We observe that the record is devoid of evidence of Absolute's usual practice in deploying and escalating search measures.

the surety, contrary to Minnesota law. *See Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46 (stating that the purpose of bail “is not to increase the revenue of the state or to punish the surety”). But Absolute overlooks that bond *forfeiture* is a “penalty,” which the surety is expected to pay when it fails to ensure the accused’s presence. *See Storkamp*, 656 N.W.2d at 542; *see also* Minn. Stat. § 629.59 (2016) (permitting court to “forgive or reduce the [bond-forfeiture] penalty according to the circumstances of the case”). In this proceeding, Absolute bears the burden of proof “to establish a justification for a mitigation of forfeited bail.” *Shetsky*, 239 Minn. at 472, 60 N.W.2d at 46. It is not entitled to have that penalty forgiven or reduced unless it carries that burden. The absence of prejudice to the state does not, in and of itself, mean that Absolute has done so. The district court did not abuse its discretion by determining that the *Shetsky* analysis disfavors reinstatement despite the absence of prejudice to the state.

In sum, the district court found several factors weigh against full reinstatement of Scott’s bail bond and that Absolute failed to demonstrate that its minimal efforts warrant anything more than minimal reinstatement. While another district court may have reinstated a larger percentage of the bond, the district court’s partial reinstatement, on this record, did not exceed the bounds of its broad discretion.

Affirmed.