STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0584
A20-0592
A20-0594

State of Minnesota,
Respondent,

vs.

Sharmake Mohamed Aden,
Defendant, (A20-0584),

Casey James Eide,
Defendant, (A20-0592),

Tiesha Monique Moore,
Defendant, (A20-0594),

Midwest Bonding,
Appellant.

Filed December 28, 2020
Affirmed
Frisch, Judge

Stearns County District Court
File Nos. 73-CR-16-4188, 73-CR-18-6262;
73-CR-16-3757, 73-CR-16-3843, 73-CR-16-4955,
73-CR-16-7833, 73-CR-16-11501, 73-CR-17-1235;
73-CR-15-4683, 73-CR-17-3889, 73-CR-17-4600,
73-CR-17-8205, 73-CR-17-9328, 73-CR-17-10225

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Frisch, Judge.

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

FRISCH, Judge

In these consolidated appeals, appellant argues that the district court abused its discretion by failing to forgive greater portions of bond-forfeiture penalties. We affirm.

FACTS

Appellant Midwest Bonding, LLC challenges the district court's decisions to impose penalties when partially reinstating and discharging appearance bonds in the criminal proceedings of three defendants: Sharmake Mohamed Aden, Casey James Eide, and Tiesha Monique Moore. We summarize the record with respect to each defendant in turn.

State v. Sharmake Mohamed Aden

The state charged Aden in two criminal proceedings with aiding and abetting theft, domestic assault by strangulation, and violation of a domestic-abuse no-contact order, in violation of Minn. Stat. §§ 609.52, subd. 2(a)(1) (2014), 609.2247, subd. 2, .75, subd. 2(b) (2016). In September 2018, Midwest posted a $19,000 bond to secure Aden's future appearances, and the district court scheduled a hearing for November 19.

On November 15, Midwest attempted to contact Aden and his indemnitor to ensure Aden's appearance for the upcoming hearing. Midwest did not contact Aden directly.

Aden failed to appear at the hearing, and the district court issued an order indicating that the bond would be forfeited if Aden did not return to custody within 60 days. Midwest attempted to contact Aden, searched electronic jail records, and hired a fugitive-recovery agency to aid its search. Midwest eventually learned that Aden was likely residing in the Minneapolis-St. Paul area.

In mid-February 2019, the district court filed an order forfeiting the bond. On February 24, the Hennepin County Sheriff's Office arrested Aden on a warrant. Three days later, Hennepin County transferred custody of Aden to Stearns County. On May 7, Midwest filed a petition to reinstate and discharge the appearance bond and provided an affidavit setting forth its prehearing efforts to ensure Aden's appearance and posthearing efforts to locate and produce Aden. Aden pleaded guilty to a charge in a separate proceeding, and the district court thereafter dismissed the charge for aiding and abetting theft.

The district court considered the four factors set forth by the supreme court in *Shetsky v. Hennepin County (In re Shetsky)*, 60 N.W.2d 40, 46 (Minn. 1953), granted Midwest's petition in part, reinstated and discharged $5,000 of the bond, and imposed a $14,000 penalty. Midwest filed a motion to reconsider, which the district court denied.

State v. Casey James Eide

The state charged Eide in six criminal proceedings with check forgery, aiding and abetting the possession or sale of a stolen check, third-degree sale of a controlled substance, and fifth-degree possession of a controlled substance, in violation of Minn. Stat. §§ 152.023, subd. 1(1), 609.05, subd. 1, .528, subd. 2, .631, subd. 3, (2014), 152.025,

subd. 2(1) (2016). In November 2017, Midwest posted a $25,000 bond to secure Eide's future appearances, and the district court scheduled a hearing for May 3, 2018.

On May 2, Midwest unsuccessfully attempted to contact Eide to ensure his appearance at the hearing scheduled for the following day. Eide failed to appear, and he again failed to appear for a hearing on May 22. The next day, the district court issued an order indicating that the bond would be forfeited if Eide did not return to custody within 60 days. On September 6, the district court ordered the $25,000 appearance bond forfeited.

On September 12, Midwest learned that Eide had failed to appear. Midwest attempted to contact Eide and his indemnitor, searched electronic jail records, and hired a fugitive-recovery agency to locate and apprehend Eide. Midwest discovered that Eide had been arrested in Kandiyohi County on September 20, and verified that Eide would be transferred back to Stearns County.

On October 30, Eide appeared before the Stearns County District Court. Midwest posted an additional $30,000 appearance bond, and the district court scheduled another hearing for December 21. Eide again failed to appear. Midwest discovered that Eide had been arrested again in Kandiyohi County.

On January 8, 2019, the district court issued an order indicating that the $30,000 bond would be forfeited if Eide did not return to custody within 60 days. On January 15, the district court extended the forfeiture deadline of the $25,000 bond for 90 days. On January 24, Eide again failed to appear for a hearing. Midwest petitioned to reinstate and discharge the $25,000 and $30,000 appearance bonds.

After considering the *Shetsky* factors, the district court granted the petition in part, reinstated and discharged $5,000 of the $25,000 bond and $29,000 of the $30,000 bond, and imposed $20,000 and $1,000 penalties. Midwest filed a motion to reconsider, which the district court denied.

State v. Tiesha Monique Moore

The state charged Moore in six criminal proceedings with multiple counts of offering a forgery in a trial, giving a false name, driving while impaired, driving after cancellation, wrongfully obtaining public assistance, theft, aiding and abetting card fraud, and domestic assault, in violation of Minn. Stat. §§ 169A.20, subd. 1(1), (5), 171.24, subd. 5, 256.98, subd. 1(1), 609.506, subds. 2, 3, .62, subd. 2 (2014), 171.24, subd. 5, 609.2242, subd. 4, .52, subd. 2(a)(1), .821, subd. 2(1) (2016). In December 2017, Midwest posted a $75,000 bond to secure Moore's future appearances, and the district court scheduled a hearing for June 21, 2018. Two days before the scheduled hearing, Midwest attempted to contact Moore to ensure her appearance. Moore accepted Midwest's notification through an automated system.

Moore failed to appear at the June 21 hearing. Midwest attempted to contact Moore, searched electronic jail records, and hired a fugitive-recovery agency to locate and apprehend Moore. On June 26, the district court issued an order indicating that the bond would be forfeited if Moore did not return to custody within 60 days. On October 1, the district court issued an order forfeiting the bond. Midwest learned that on October 9, Moore had been arrested and returned to custody in Stearns County and was then sentenced three days later.

Midwest petitioned to reinstate and discharge the $75,000 bond. After considering the *Shetsky* factors, the district court granted the petition in part, reinstated and discharged $25,000 of the $75,000 bond, and imposed a $50,000 penalty. Midwest filed a motion to reconsider, which the district court denied.

These consolidated appeals follow.

D E C I S I O N

Midwest argues that the district court abused its discretion by failing to forgive greater portions of bond-forfeiture penalties and only partially reinstating and discharging the bonds.[1] We review a district court's decision regarding the reinstatement and discharge 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 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). For the purposes of our review, we consider the district court's initial decisions and its decisions on reconsideration. *See* Minn. R. Civ. App. P. 103.04 ("On appeal from or review of an order the appellate courts may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment.

[1] Midwest suggested at oral argument that the state forfeited all of its arguments on appeal by failing to appear in district court. Midwest did not raise the issue in any of its briefing and therefore forfeited this issue. *See State v. Tracy*, 667 N.W.2d 141, 145 (Minn. App. 2003) (holding in part that a party cannot raise a new issue at oral argument that had not been briefed).

They may review any other matter as the interest of justice may require."); *see also State v. Aden*, No. A20-0584 (Minn. App. Apr. 28, 2020) (order).

> When an action is brought in the name of the state against a . . . surety in a recognizance entered into by a party . . . in a criminal prosecution, and the penalty is judged forfeited, the 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).

A district court must consider the four factors set forth in *Shetsky*, 60 N.W.2d at 46. First, the district court must consider "the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant's absence." *Askland*, 784 N.W.2d at 62. Bail serves multiple purposes: relieving a defendant and the state from the burdens of pretrial imprisonment, encouraging sureties to pay penalties when defendants fail to appear, and encouraging sureties "to locate, arrest, and return defaulting defendants to the authorities." *State v. Storkamp*, 656 N.W.2d 539, 541-42 (Minn. 2003). Second, the district court must consider "the good faith of the bond company as measured by the fault or willfulness of the defendant," *Askland*, 784 N.W.2d at 62, meaning that the "[d]efendant's willfulness or bad faith is attributable to the surety," *State v. Vang*, 763 N.W.2d 354, 358 (Minn. App. 2009). Third, the district court must consider "the good-faith efforts of the bond company to apprehend and produce the defendant." *Askland*, 784 N.W.2d at 62. Fourth, the district court must consider "any prejudice to the [s]tate in its administration of justice." *Id.* The petitioner bears the burden of proof to establish the

first three mitigating factors while the state bears the burden of proving prejudice. *See Storkamp*, 656 N.W.2d at 542.[2]

I. The district court did not abuse its discretion by reinstating and discharging only $5,000 of the $19,000 bond in Aden's cases.

Midwest argues that the district court abused its discretion because the four *Shetsky* factors did not support the $14,000 penalty and because the district court failed to justify the specific amount of the penalty. We consider Midwest's arguments in turn.

Bail's Purpose; Civil Nature; Cause, Purpose & Length of Absence

The district court recounted the various policy purposes of bail and found that: (1) Aden failed to appear, (2) he was apprehended by Hennepin County law enforcement rather than Midwest, and (3) Aden was absent for approximately 100 days. Midwest argues that Aden's 100-day absence did not undermine the policy purposes of bail because Aden was eventually apprehended and remained available for prosecution.

While it is true that bail is ultimately intended to ensure a defendant's presence for trial, its practical purpose is to prevent "delaying, impairing, or unduly burdening the administration of justice." *Shetsky*, 60 N.W.2d at 46. The mere fact that a defendant is *eventually* returned to custody does not mean that the purpose of bail has been

[2] We observe that the district court made findings regarding the *Shetsky* factors in each case, but oftentimes failed to explicitly explain how it weighed the factors individually and collectively. Findings and conclusions must be sufficient to permit meaningful appellate review, *see Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989), and clear findings and conclusions weighing the *Shetsky* factors aid appellate review. Here, while the district court did not always explicitly explain how it weighed the factors, as a whole, the district court's findings and conclusions, along with its decision to impose penalties, demonstrate the manner in which the district court weighed certain factors. These findings and conclusions are sufficient for our review.

accomplished and that full reinstatement and discharge is therefore automatic. *See, e.g.*, *id.* at 47 (considering that defendant "fled to evade and to obstruct the orderly administration of justice" regardless of eventual trial and acquittal).

Midwest's reliance on *Farsdale v. Martinez*, 586 N.W.2d 423 (Minn. App. 1998), is misplaced. In *Farsdale*, we concluded that the district court abused its discretion *in part* "because the bail bond served its primary purpose—to secure [the] respondent's appearance at trial" and forfeiture "would [have] merely serve[d] to punish appellant or increase the state's revenue." 586 N.W.2d at 425. But there, the surety's investigation and efforts led the county attorney to expand the scope of an arrest warrant, leading to the defendant's arrest in Texas and return to Minnesota. *Id.* Unlike the appellant in *Farsdale*, the efforts by Midwest did not lead the Hennepin County Sheriff's Office to arrest Aden and eventually return him to Stearns County.

Further, a defendant's ultimate availability for trial is not the only policy purpose served by bail. Bail is also intended to encourage sureties to pay penalties when defendants fail to appear and "to locate, arrest, and return defaulting defendants." *Storkamp*, 656 N.W.2d at 542. By emphasizing the fact that law enforcement—not Midwest or its agents—apprehended Aden, the district court impliedly reasoned that the bond did not serve one of its primary purposes, a decision within the discretion of the district court.

Last, Midwest suggests that the district court improperly relied on Aden's previous failures to appear in a separate proceeding. But Midwest concedes that the district court "d[id] not cite th[ose] fact[s] as its reasoning for imposing such a harsh penalty." The

record before us does not indicate that the district court relied on Aden's prior failures to appear, and because Midwest concedes that fact, we discern no prejudicial error.

In emphasizing the length of Aden's absence and Midwest's failure to locate and apprehend Aden, the district court acted within its discretion to implicitly weigh this factor in favor of a penalty.

The Fault or Willfulness of the Defendant

Midwest argues that this factor weighed in favor of full reinstatement and discharge because "[Aden's] willful conduct should not outweigh [Midwest's] exhaustive efforts in locating and apprehending [Aden]."

As a threshold issue, we clarify that the second *Shetsky* factor—"the good faith of the bond company *as measured by the fault or willfulness of the defendant*"—is different than the third *Shetsky* factor—a surety's "good-faith efforts . . . to apprehend and produce the defendant." *Askland*, 784 N.W.2d at 62 (emphasis added). The second factor does not concern the bond company's conduct but instead concerns the defendant's fault or willfulness, which is merely *imputed* to the bond company. *See Shetsky*, 60 N.W.2d at 48 ("His wil[l]ful and unjustifiable default as a principal of the bail bond *is chargeable to his surety*." (emphasis added)). The bond company's conduct is evaluated under the third factor.

The district court initially considered Midwest's conduct in analyzing the second factor, but on reconsideration it appropriately evaluated the defendant's conduct, finding that "[t]here is no information as to why [Aden] failed to appear at the November 19, 2018 hearing in these matters." Even so, the district court also again considered Midwest's

actions in evaluating this factor. We understand the district court's analysis (and Midwest's argument) as an attempt to immediately compare a defendant's fault to a surety's good faith within the analysis of the second factor. This approach is incorrect. Nevertheless, the district court properly noted on reconsideration the lack of information regarding the reason for Aden's absence. Midwest bore the burden of demonstrating mitigating circumstances regarding the cause for Aden's absence, *see Storkamp*, 656 N.W.2d at 542, but it failed to produce any such evidence. We are mindful that Midwest argues that Aden's "willful conduct should not outweigh [Midwest's] exhaustive efforts to locate [Aden]." But this argument concerns how the second and third *Shetsky* factors should be balanced together and essentially concedes that Aden's presumed fault weighed in favor of a penalty. The district court did not abuse its discretion by implicitly weighing this factor in favor of a penalty.

The Bond Company's Good-Faith Efforts

Midwest argues that it undertook good-faith efforts to locate and apprehend Aden, and the district court abused its discretion because Aden's fault or willfulness does not outweigh Midwest's good-faith efforts. The district court recounted Midwest's efforts to locate Aden and found that it had made "*some* good-faith efforts to produce" him. (Emphasis added.) On reconsideration, the district court added that Midwest's efforts were "much more limited" than those undertaken in *Askland*, 784 N.W.2d at 61, in which (1) witnesses detailed steps the surety took to track and apprehend the defendant, (2) the surety's bounty hunters traveled to Louisiana to apprehend the defendant, and (3) the surety provided an exhibit detailing the expenses it incurred in locating and apprehending the

defendant. The district court also emphasized that Midwest failed to produce evidence of the cost it incurred in attempting to locate, apprehend, and produce Aden.[3]

Midwest contends that a surety "complies with the good[-]faith requirement when it makes efforts to apprehend and bring a fugitive into custody after they fail to appear." But because the district court must consider a petition "in the light of the facts of the individual case," *Shetsky*, 60 N.W.2d at 46, we consider it proper for the district court to consider the *extent* of good-faith efforts in its balancing of the *Shetsky* factors. Here, the district court's comparison to more extensive efforts described in caselaw and its lukewarm characterizations of Midwest's efforts clarify that, at best, the district court weighed the factor marginally in Midwest's favor. We discern no abuse of discretion in the district court's analysis, especially when Midwest's efforts were limited to attempted contacts and digital-records searches and when Midwest failed to produce evidence of the costs it incurred.

Any Prejudice to the State in its Administration of Justice

The district court found, and the parties agree, that the state suffered no prejudice. This factor weighed against imposing a penalty.

The $14,000 Penalty

Midwest additionally argues that the district court abused its discretion because it failed to explain why the $14,000 penalty was appropriate. The district court must weigh the *Shetsky* factors to determine *whether* to exercise its discretion to forgive or reduce the

[3] Midwest's counsel argued to the district court that a supporting affidavit established $1,900 in expenses, but the affidavit did not include that detail.

penalty "on *any terms and conditions it considers just and reasonable*." Minn. Stat. § 629.59 (emphasis added); *see also Askland*, 784 N.W.2d at 62 ("[T]he question of *whether* to reinstate a forfeited bond is committed to the sound exercise of judicial discretion." (emphasis added)). Although the district court did not explicitly set forth why it imposed the precise penalty, the district court's order analyzed each of the *Shetsky* factors and imposed the penalty based upon the length of Aden's absence, Midwest's failure to apprehend him, and the lack of information regarding the cause of his absence or the costs expended by Midwest. Although the better practice would include an explanation by the district court as to why it imposed the specific penalty, our caselaw does not impose such a requirement, and we therefore discern no abuse of discretion by the district court.

II. The district court did not abuse its discretion by reinstating and discharging only $5,000 of the $25,000 bond in Eide's cases.

Midwest argues that the district court abused its discretion by imposing a $20,000 penalty in Eide's cases. It does not challenge the imposition of the separate $1,000 penalty for the second bond, which is not the subject of this appeal. Again, we consider Midwest's arguments regarding the *Shetksy* factors in turn.

Bail's Purpose; Civil Nature; Cause, Purpose & Length of Absence

The district court found that (1) Eide failed to appear, (2) Midwest located Eide only after he was already in custody, and (3) Eide's failures to appear resulted in absences of 181 days and 69 days. On reconsideration, the district court added that Eide's cumulative 242-day absence was much longer than absences addressed in caselaw.

Midwest argues that the district court erroneously found that Eide was absent for 242 days rather than 141 days and that the district court should have considered only an absence period from May 3, 2018 (the date of Eide's missed appearance) through September 20, 2018, when Eide was arrested. Midwest is correct in part, but the error was harmless. The district court addressed *both* the November 17, 2017 bond and the October 30, 2018 bond. The district court ordered the November 17 bond forfeited on August 21, 2018, and therefore any delay after that forfeiture could pertain only to the *second* bond and *second* delay. Even so, Midwest is incorrect that the delay was only 141 days rather than the 181 days originally calculated by the district court. Midwest argues that the post-arrest delay was not attributable to it because Eide was "available" to Stearns County. Although a surety might not be held accountable when the state makes it impossible for a surety to produce a defendant, *see State v. Due*, 427 N.W.2d 276, 278 (Minn. App. 1988), *review denied* (Minn. Sept. 28, 1988), the 181-day delay resulted from Midwest's failure to monitor, locate, and apprehend Eide *before* his arrest in Kandiyohi County.

In any event, any calculation error was harmless. The district court specifically recognized that the 181-day delay in Eide's case exceeded the 177-day delay in *Askland*, 784 N.W.2d at 61, and the more-than-two-month delay in *Farsdale*, 586 N.W.2d at 425.

Midwest repeats the same policy arguments asserted in Aden's cases. We reject them for the same reasons: Eide's absence resulted in a lengthy delay and law enforcement—not Midwest—was ultimately responsible for Eide's apprehension. The district court did not abuse its discretion by implicitly weighing this factor in favor of a penalty.

The Fault or Willfulness of the Defendant

The district court found that Eide's nonappearance "appear[ed] to be willful" and that Midwest failed to offer mitigating evidence. As in Aden's cases, the district court partially conflated the second and third *Shetsky* factors. But because it weighed Eide's apparent willfulness *against* Midwest's good-faith efforts, it is evident that the district court weighed this factor in favor of a penalty. The district court therefore did not abuse its discretion where Midwest failed to produce mitigating evidence regarding the cause of Eide's absence.

The Bond Company's Good-Faith Efforts

The district court found that Midwest made good-faith efforts based on its attempts to notify Eide of his hearings and its efforts to return him to custody after he failed to appear. It also concluded that Eide's apparent bad faith did not outweigh Midwest's good-faith efforts. But on reconsideration, the district court again compared Midwest's efforts to more extensive efforts in caselaw and noted Midwest's failure to produce evidence of costs incurred in attempting to find Eide.[4] Based on these findings, we infer that the district court weighed the factor marginally in Midwest's favor.

Midwest again argues that the district court abused its discretion because Midwest's good-faith efforts weighed in favor of full reinstatement and discharge. But again, we discern no abuse of discretion where the district court described Midwest's efforts as

[4] Midwest's counsel argued before the district court that it incurred $5,000 in costs, but its affidavit failed to support that amount.

"substantially less" than those set forth in *Askland* and *Farsdale*, and where Midwest failed to produce evidence of the costs it incurred.

Any Prejudice to the State in its Administration of Justice

The district court found, and the parties agree, that the state suffered no prejudice. This factor weighed against imposing a penalty.

The $20,000 Penalty

Midwest again argues that the district court abused its discretion because it failed to explain why the $20,000 penalty was appropriate. But the district court analyzed each of the *Shetsky* factors and imposed the penalty based upon the length of Eide's absence, Midwest's failure to apprehend him, and the lack of mitigating evidence regarding the cause of Eide's absence. We see no abuse of discretion in the district court's decision.

III. The district court did not abuse its discretion by reinstating and discharging only $25,000 of the $75,000 bond in Moore's cases.

Last, Midwest argues that the district court abused its discretion by imposing a $50,000 penalty in Moore's cases. Again, we consider the *Shetsky* factors.

Bail's Purpose; Civil Nature; Cause, Purpose & Length of Absence

The district court found that (1) Moore's failure to appear resulted in a 110-day absence and (2) Midwest located Moore only once she was in custody with the Stearns County Sheriff's Office. On reconsideration, the district court compared the length of Moore's absence to other cases and emphasized that Midwest played no part in apprehending Moore.

Midwest again argues that the purposes of bail were satisfied here. But again, Moore's absence was lengthy, and one of the chief purposes of bail was frustrated because Midwest played no part in apprehending Moore. We infer the district court weighed the factor in favor of a penalty, and we discern no abuse of discretion.

The Fault or Willfulness of the Defendant

Again, the district court partially conflated the second and third *Shetsky* factors, but it found that Moore's absence appeared to be willful and that Midwest failed to offer mitigating evidence regarding the reason for her absence. We infer that the district court weighed this factor in favor of a penalty and therefore properly exercised its discretion.

The Bond Company's Good-Faith Efforts

The district court found that Midwest made good-faith efforts based on its attempts to notify Moore of her hearing and its efforts to locate her after she failed to appear. It also concluded that Moore's apparent bad faith did not outweigh Midwest's good-faith efforts. On reconsideration, the district court explained that Midwest's good-faith efforts were still "quite limited" and "substantially less" than efforts described in caselaw, and it emphasized that Midwest failed to produce evidence of the costs it incurred in attempting to locate and apprehend Moore.

Any Prejudice to the State in its Administration of Justice

The district court found, and the parties agree, that the state suffered no prejudice. This factor weighed against imposing a penalty.

The $50,000 Penalty

Midwest repeats its argument that the district court abused its discretion because it failed to explain why the $50,000 penalty was appropriate. But the district court's decision followed its *Shetsky* findings and analysis, and we discern no abuse of discretion.

Affirmed.