

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0396**

State of Minnesota,
Respondent,

vs.

Bao Thao,
Defendant,

Midwest Bonding, LLC,
Appellant.

**Filed December 6, 2021
Affirmed
Gaïtas, Judge**

Ramsey County District Court
File No. 62-CR-17-9043

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Slieter, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Midwest Bonding, LLC (Midwest) appeals from the district court's order denying its petition to reinstate and discharge two forfeited bail bonds it posted on behalf of defendant Bao Thao. We affirm.

FACTS

In 2017, respondent State of Minnesota charged Thao with first-degree drug possession. *See* Minn. Stat. § 152.021, subd. 2(a)(1) (2014). Over the course of the proceedings in Thao's case, Midwest posted three bail bonds on her behalf. Two of those bail bonds are at issue in this appeal.

Midwest posted the first of these bail bonds, in the amount of \$20,000, in January 2018. Thao then failed to appear for two hearings in February 2018. The district court left the \$20,000 bond in place, issued a bench warrant, and set an additional bail of \$10,000.

In July 2018, Midwest posted the second bail bond on Thao's behalf. It posted \$10,000, on top of the \$20,000 previously posted, so that Thao could be released from jail.

Thao failed to appear for her jury trial on January 14, 2019. The district court ordered both bail bonds, totaling \$30,000, forfeited.

On April 14, 2019, while Thao was still at large, Midwest filed a petition requesting reinstatement of the two forfeited bail bonds or more time to locate Thao. Midwest detailed its efforts to locate Thao, which consisted of calling her, electronically searching all Minnesota jails, and hiring a "professional Fugitive Recovery Agency" (the agency). According to Midwest's petition, the agency attempted contact with Thao at nine

addresses, contacted Thao's "relatives and associates," conducted "skip tracing and social media searches," and performed "rotating surveillance" that was accessible to and shared with law enforcement. Midwest's petition stated that the agency determined Thao was "staying with [her] family, more specifically [her] mother," and her family was helping her evade arrest. The district court denied Midwest's April 2019 petition.

On May 13, 2019, the Cottage Grove police arrested Thao for committing a new offense. When Thao appeared on the outstanding bench warrant for her first-degree drug possession case, the district court set a new \$20,000 bail. Midwest then posted a third bail bond of \$20,000 on Thao's behalf, which is not part of this appeal. It also submitted a second petition to reinstate and discharge the first two bail bonds that it had posted on Thao's behalf.

Thao continued to miss court appearances. Eventually, the district court also forfeited Midwest's third bail bond.

In January 2020, Midwest filed a third petition, this time requesting reinstatement and discharge of the third bond. The district court issued an order in February 2020 denying Midwest's petitions to reinstate and discharge the three bonds.

Following the district court's order, Midwest requested a hearing to address its requests for reinstatement and discharge, and a hearing was held in December 2020. In March 2021, the district court summarily denied Midwest's petition for reinstatement and discharge of the bonds.

Midwest now appeals the district court's denial of its request to reinstate and discharge the first and second of the bail bonds that it posted on Thao's behalf.

DECISION

We review a district court's decision concerning 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 it bases its conclusions on an erroneous view of the law." *Id.* Here, where there were multiple petitions and several orders, we consider both 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. They may review any other matter as the interest of justice may require.").

When a bail 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 (2020); *see also* Minn. R. Gen. Prac. 702(f) (specifying procedure for petitioning for reinstatement of forfeited bail bond). But in considering a petition for reinstatement and discharge of bail, the district court must consider the four factors identified in *In re Shetsky*, 60 N.W.2d 40, 46 (Minn. 1953). *Askland*, 784 N.W.2d at 62. The first factor is "the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant's absence." *Id.* Bail serves several purposes, including minimizing pretrial incarceration, ensuring penalty payment, and encouraging sureties "to locate, arrest, and return defaulting defendants to the authorities." *Shetsky*, 60 N.W.2d at 46; *State v. Storkamp*, 656 N.W.2d 539, 541-42 (Minn. 2003). The second factor is "the good faith of the bond company as measured by

the fault or willfulness of the defendant.” *Askland*, 784 N.W.2d at 62. This factor imputes the “[d]efendant’s willfulness or bad faith . . . 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. The final factor is “any prejudice to the State in its administration of justice.” *Id.* (citing *Shetsky*, 60 N.W.2d at 46).

The surety bears the burden of showing that the first three factors weigh in its favor. *Id.* And the respondent bears the burden of proving prejudice. *Id.*

Here, the district court addressed each of these factors. To determine whether the district court abused its discretion, we examine its assessment of each factor in turn.

1. The purpose of bail, the civil nature of the proceedings, and the cause, purpose, and length of defendant’s absence

The district court found that this factor weighed against Midwest because “the purpose of bail, assuring the reappearance of a defendant, was not achieved.” It noted that Thao missed multiple court appearances while she was released on Midwest’s bail bonds. And the district court concluded that the cause of Thao’s absence was her “bad-faith willful behavior in avoiding court,” which is imputed to Midwest under the caselaw. *See Vang*, 763 N.W.2d at 358.

A district court’s findings on “the credibility and sufficiency of the evidence as to the cause of the defendant’s flight from the jurisdiction and of his subsequent failure to appear . . . is to be decided by the trial court in light of all the surrounding facts and

circumstances.” *Shetsky*, 60 N.W.2d at 46-47. Absent an abuse of discretion, we will not disturb the district court’s consideration of these issues. *Id.*

Midwest argues that the first factor actually weighs in its favor. It contends that the district court erred in attributing all of Thao’s missed court appearances to Midwest. It points out that, on a few occasions, Thao was technically released on different bail bonds than the two at issue here. Midwest also maintains that some courts have concluded the purpose of bail was satisfied when defendants were ultimately apprehended after failing to appear. In support of this proposition, Midwest cites *Askland*, 784 N.W.2d at 62, *Farsdale v. Martinez*, 586 N.W.2d 423, 424-25 (Minn. App. 1998), and a nonprecedential decision.¹

We see no abuse of discretion in the district court’s evaluation of the first factor. Although the district court referenced some failed appearances that did not involve the two bails bonds at issue in this appeal, the most significant missed court appearance identified—Thao’s failure to appear at her jury trial in January 2019, which resulted in her four-month absence—is attributable to Midwest. Moreover, unlike the circumstances in *Askland* and *Farsdale*, Midwest did not ultimately secure Thao’s presence. Thao was brought back to court because she was arrested for committing a new offense. Finally, the fact that a defendant was ultimately returned to court after failing to appear is not alone dispositive. While bail is intended to ensure that a defendant appears for trial, it also seeks to avoid “delaying, impairing, or unduly burdening the administration of justice.” *Shetsky*, 60 N.W.2d at 46. As the district court observed, sureties are tasked with facilitating the

¹ We are not bound by nonprecedential opinions. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).

timely administration of justice. Here, where Thao failed to appear for a jury trial and was then missing for four months, this purpose was not achieved.

2. The good faith of the bond company as measured by the fault or willfulness of the defendant

The district court found that Thao's missed court appearances, which included her jury trial, were willful acts committed in bad faith. It accordingly concluded that the second factor weighed against Midwest's petition for reinstatement and discharge.

Midwest argues that the district court erred in addressing only Thao's fault. It contends that, in considering this factor, the district court must balance the defendant's fault against the good-faith efforts made by the bonding company to secure the defendant's presence. If the district court had assessed the second factor in this fashion, Midwest argues, it would have weighed in Midwest's favor.

Midwest's argument is contrary to the law, however. The third *Shetsky* factor accounts for the bonding company's efforts to locate and produce the defendant. *See Askland*, 784 N.W.2d at 62 (explaining that third *Shetsky* factor requires consideration of the bonding company's efforts to produce the defendant). But the second factor only concerns the defendant's intent, which is then imputed to the bonding company. *Vang*, 763 N.W.2d at 358. Because the district court did not abuse its discretion in determining that Thao's failures to appear were willful and in bad faith, it did not abuse its discretion in concluding that this factor weighed against Midwest.

3. Good-faith efforts of the bond company to apprehend and produce the defendant

The district court concluded that Midwest's investigative efforts were minimal, primarily consisting of telephone calls and computer searches. Although Midwest hired a "Fugitive Recovery Agent," the district court observed that it did not provide any supporting documentation with its petition, such as an invoice detailing its expenditures. And, the district court stated, none of Midwest's efforts ultimately produced Thao.

Midwest argues that the district court's analysis was flawed. It argues that it acted in good faith because it made efforts to locate Thao. In turn, Midwest contends, the district court should have concluded that the third factor weighed in its favor.

As noted, the district court has wide discretion in considering the four *Shetsky* factors. The district court did not abuse its discretion in concluding that Midwest failed to sustain its burden of showing that the third factor weighed in its favor.

4. Prejudice to the state in its administration of justice

Finally, the district court determined that Thao's significant absences prejudiced the administration of justice. The court observed that she missed a jury trial date, her absences unnecessarily prolonged resolution of her case, and the state expended significant resources returning Thao to jail after her missed court appearances.

Midwest argues that the state bears the burden of establishing prejudice and that it failed to do so. Indeed, according to Midwest, the state did not even participate in the district court proceedings involving Midwest's petitions.

But the district court reasonably inferred from court records, including Midwest's filings, that Thao's absences delayed the disposition of the case. Moreover, Midwest's own motion papers established that the state apprehended Thao after she failed to appear for her trial. Based on these facts, which are apparent in the district court's records and Midwest's filings, the district court did not abuse its discretion in concluding that the prejudice factor weighed against Midwest.

In sum, the district court did not abuse its discretion in considering the *Shetsky* factors and determining that they weighed against reinstatement and discharge. Thus, the district court did not err in denying Midwest's petition.

Affirmed.