This opinion is nonprecedential except as provided by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
A22-0774

State of Minnesota,
Respondent,

vs.

Terry Lee Banks,
Defendant,

Bail Bonds Doctor, Inc.,
Appellant.

Filed December 12, 2022
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-22-3005

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

Kristyn Anderson, Minneapolis City Attorney, Michelle E. Johnson, Adam E. Szymanski, Assistant City Attorneys, Minneapolis, Minnesota (for respondent)

Eric A. Rice, Law Office of Eric A. Rice, LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Bail Bonds Doctor, Inc. (BBD) appeals from the district court's order denying its petition to reinstate a forfeited bail bond, arguing that the district court (1) erred

by assigning a judge other than the forfeiting judge or the judicial district's chief judge to hear BBD's petition for reinstatement and (2) abused its discretion by denying reinstatement of the bond. Because any error in judicial assignment constituted harmless error and because the district court did not abuse its discretion by denying reinstatement, we affirm.

FACTS

On February 16, 2022, respondent State of Minnesota charged defendant Terry Lee Banks with three gross misdemeanors—second-degree driving while impaired, second-degree refusal to submit to a chemical test, and driving after cancellation (inimical to public safety)—based on conduct that occurred two days earlier. The day that Banks was charged, BBD posted a $12,000 bond allowing Banks to be released from jail.

On March 9, 2022, Banks failed to appear for a scheduled hearing. A senior judge of district court, sitting by assignment in the Fourth Judicial District, issued a gross-misdemeanor bench warrant and ordered the bail forfeited. A notice of bond forfeiture was filed on March 15, 2022. On March 24, 2022, the sheriff's department located and apprehended Banks without help from BBD.

A few days later, BBD petitioned for reinstatement and discharge of the forfeited bail bond. BBD provided an accompanying affidavit from its president describing the efforts that BBD took to locate Banks after receiving the notice of bond forfeiture.

The district court issued a notice to the state, BBD, and Banks, identifying the judge assigned to consider the petition for bond reinstatement. The assigned judge was not the

bail-forfeiting judge. The following day, the district court issued an order requiring the parties to make written submissions.

BBD filed a one-paragraph written submission, which stated, in its entirety, as follows:

> In response to the Order for Written Submissions, Bail Bonds Doctor objects to [the district court judge] hearing the petition and requests that the forfeiting judge . . . or the chief judge hear it pursuant to Minnesota General Rules of Practice 702(f). Thank you for your consideration in this matter.

The state filed its written submission, arguing that denial of the petition to reinstate the bond was appropriate under the *Shetsky* factors. *See In re Shetsky*, 60 N.W.2d 40, 46 (Minn. 1953) (establishing a four-factor test for evaluating petitions for bond reinstatement).

The district court, in an order by the district court judge, denied BBD's petition. The district court first determined that it was proper for the assigned judge to hear and decide the petition. In doing so, it cited (1) a 2018 standing order issued by the then-chief judge of the Fourth Judicial District stating that bond-reinstatement petitions shall be assigned to judges in accordance with applicable Fourth Judicial District bench policy; (2) a 2021 Fourth Judicial District bench policy outlining the procedures for bond-reinstatement procedures, including judicial assignment; (3) Minnesota Statutes section 484.69, subdivision 3 (2020), addressing the administrative authority of chief judges; and (4) BBD's failure to file for removal of the district court judge within the seven-day window under Minnesota Rule of Criminal Procedure 26.03, subdivision 14(4)(a)-(c). According to the district court, the standing order and bench policy allowed for the district

court judge to be assigned and decide the petition. The district court also determined that denial of the reinstatement petition was appropriate under the *Shetsky* factors.

BBD appeals.

DECISION

BBD challenges the assignment of its bond-reinstatement petition to the district court judge, arguing that, pursuant to Minnesota General Rule of Practice 702(f), the case must be remanded to be heard by either the forfeiting judge or the chief judge. In the alternative, BBD argues that the district court's decision on the merits was an abuse of discretion and that we must reverse the decision and direct reinstatement of the bond. We address each argument in turn.

I. BBD has failed to establish that any error in the judicial assignment was not harmless.

BBD argues that the district court committed reversible error because the assignment of the district court judge to this bond-reinstatement matter violated Minnesota General Rule of Practice 702(f).

We review a district court's denial of a petition to reinstate 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 by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)). When review of a bond-reinstatement denial requires

construction of a court rule, it presents a question of law that we review de novo. *State v. Nelson*, 773 N.W.2d 330, 332 (Minn. App. 2009).

Rule 702(f) provides that "[a] petition for reinstatement filed within 90 days of the date of the order of forfeiture shall be heard and determined by the judge who ordered the forfeiture, or the chief judge." The district court judge was not the forfeiting judge or the chief judge. But the district court determined that the district court judge's assignment was permitted by the 2018 standing order issued by the then-chief judge of the Fourth Judicial District and an associated bench policy.

The standing order acknowledges rule 702(f) but states that assignment pursuant to that rule "would be impractical and result in undue delay, due to the high volume of cases and the criminal case assignment practices in the Fourth Judicial District." The standing order also recognizes that the executive committee of the Fourth Judicial District has approved a bench policy regarding judicial assignment of bond-reinstatement petitions, "which takes into account blocking practices and judicial case assignments to ensure efficient, consistent, and practicable assignment of bond petitions." Invoking the chief judge's statutory authority under Minnesota Statutes section 484.69, subdivision 3, to "assign any judge of any court within the judicial district to hear any matter in any court of the judicial district," the standing order directs that bond-reinstatement petitions filed in the Fourth Judicial District be assigned in accordance with the applicable bench policy. The bench policy, in turn, provides that the "block judge" will handle a bond-reinstatement petition if the judge is handling a criminal caseload, otherwise the clerk's office will notify

the designated "Downtown Team" judge of the filing. The district court judge was assigned the petition here because he was lead judge of the downtown criminal team.

BBD argues that the Fourth Judicial District's standing order and bench policy violate rule 702(f) and that the chief judge lacked authority to issue a standing order regarding judicial assignment in violation of the rule. In addition, BBD asserts that the 2018 standing order is no longer effective because there is a new chief judge and that BBD was unfairly deprived of the opportunity to address the standing order because it was first raised by the district court in its order denying reinstatement. The state, for its part, contends that the chief judge's standing order was a valid exercise of the statutory authority granted to chief judges by Minnesota Statutes section 484.69, subdivision 3, and that, in any event, the standing order is justified under Minnesota General Rule of Practice 1.02, which provides that "[a] judge may modify the application of [the general rules of practice] in any case to prevent manifest injustice." The state also argues that the standing order remains in effect and that BBD was given fair process.

Although the parties dispute whether error occurred in assigning the district court judge, we need not resolve the issue if the asserted error was harmless. In a civil proceeding, the mere existence of an error is insufficient to require a grant of relief; rather, the complaining party must also show that the error prejudiced the complaining party. *See* Minn. R. Civ. P. 61 (directing courts to "disregard any error" that does not affect a party's substantial rights); *see also Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (citing this aspect of Minn. R. Civ. P. 61); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (stating that, "[a]lthough error may exist, unless the error is prejudicial, no

grounds exist for reversal"). Bond-forfeiture proceedings are civil in nature; therefore, BBD bears the burden of showing both error and prejudice. *See Shetsky*, 60 N.W.2d at 46; *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr.*, 775 N.W.2d 168, 178 (Minn. App. 2009), *rev. denied* (Minn. Jan. 27, 2010).

On this record, BBD has not demonstrated prejudice. BBD had a full and fair opportunity to submit a petition for bond reinstatement with a supporting affidavit and an additional written submission for the district court's review. In addition, BBD has made no showing that assignment of the bond-forfeiting judge or the chief judge would have changed the outcome of its petition for bond reinstatement. While BBD argues that prejudice is established by the district court judge's decision on the merits, we are not persuaded. Disagreement with the ruling of a judge does not, by itself, constitute judicial bias. *State v. Sailee*, 792 N.W.2d 90, 96 (Minn. App. 2010), *rev. denied* (Minn. Mar. 15, 2011). Moreover, as we conclude in Section II below, the district court's decision on the merits was not an abuse of discretion. BBD thus has failed to carry its burden to demonstrate prejudice, and any error in assigning the district court judge to this matter constituted harmless, and not reversible, error.[1]

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[1] BBD argues that, if the record is insufficient to establish prejudice, the case should be remanded to permit BBD to further develop the record. It complains that it did not have the opportunity to develop a record because, following its objection to the district court judge's assignment, there "was no response or further discussion of that issue" until the district court's final order on the petition. But BBD had the opportunity to make a written submission beyond its mere objection and it chose not to. Moreover, BBD has not identified what evidentiary gaps it thinks it could fill on remand to demonstrate prejudice in this case.

II. The district court did not abuse its discretion by denying reinstatement.

We turn to BBD's challenge to the merits of the district court's denial of the reinstatement petition. Again, we review a district court's denial of a petition to reinstate a forfeited bail bond for an abuse of discretion. *Askland*, 784 N.W.2d at 62.

"State statute and court rule address the question of reinstatement of a forfeited bail bond." *Id.* When a bail bond is forfeited, a 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). A district court's decision is guided by four factors identified in *Shetsky*. 60 N.W.2d at 46. Those factors are:

> (1) the purpose of bail, the civil nature of the proceedings, and the cause, purpose and length of a defendant's absence; (2) the good faith of the bond company as measured by the fault or willfulness of the defendant; (3) the good-faith efforts of the bond company to apprehend and produce the defendant; and (4) any prejudice to the State in its administration of justice.

Askland, 784 N.W.2d at 62. As the petitioner, BBD bears the burden of showing that the first three factors weigh in favor of reinstatement, and the state bears the burden of proving any claimed prejudice. *See id.*

In its order denying BBD's petition for reinstatement, the district court concluded that the first three *Shetsky* factors weighed against reinstatement and that the fourth factor was "neutral." We address each factor in turn.

A. The Purpose of Bail

The first factor addresses the purpose of bail. Bail bonds serve multiple purposes, including "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" and "encourag[ing] sureties to locate, arrest, and return defaulting defendants to the authorities to facilitate the timely administration of justice." *State v. Vang*, 763 N.W.2d 354, 358 (Minn. App. 2009).

The district court determined that BBD failed to fulfill these purposes. It observed that Banks failed to appear in court and that he was located and apprehended by the sheriff's department, without BBD's assistance, a few weeks later. The district court acknowledged that Banks's "absence was short and may likely have a minimal impact on this case" but found that this first *Shetsky* factor nevertheless weighed against reinstatement.

BBD argues this factor weighs in its favor primarily for one reason: the short duration of Banks's absence. BBD emphasizes that, when it learned that Banks had failed to appear, it began "investigative efforts to locate the defendant" and, approximately two weeks after Banks failed to appear, he was located and apprehended. BBD notes that reinstatement has been ordered in cases involving absences far longer than approximately two weeks, pointing to *Askland*, where the Minnesota Supreme Court directed the district court to reinstate a bond after an absence of 177 days when the district court erroneously denied reinstatement based on error in applying the fourth *Shetsky* factor. *Askland*, 784 N.W.2d at 61-64.

But, while the length of a defendant's absence may be relevant to a district court's analysis, *Askland* does not preclude a district court from finding that the purpose of bail was not served when the defendant's absence was shorter than in that case. Here, the district

court noted that Banks's absence was brief but still concluded that BBD failed to effectuate the purpose of the bail. This determination was within the district court's discretion.

B. The Good Faith of the Bond Company as Measured by the Fault or Willfulness of the Defendant

Under the second factor, which measures the good faith of the bond company, the "[d]efendant's willfulness or bad faith is attributable to the surety." *Vang*, 763 N.W.2d at 358. The district court found that "[Banks's] absence was willful." BBD does not challenge this finding and concedes that this factor weighs against reinstatement. However, BBD argues that this factor alone cannot support forfeiture because the remaining factors do not. BBD's argument is unavailing because, as we explain in this opinion, the district court did not abuse its discretion in determining that this and other *Shetsky* factors support forfeiture.

C. The Good-Faith Efforts of the Bond Company to Apprehend and Produce the Defendant

The district court concluded that the third factor, the bond company's efforts to apprehend and produce the defendant, did not favor reinstatement because BBD took only "minimal steps to apprehend and produce" Banks. BBD contends that, given the short duration of Banks's absence, its efforts must be found sufficient to justify reinstatement. BBD also argues that a contrary ruling will "encourage sureties to race against law enforcement rather than work with them" in trying to locate defendants because sureties will want to themselves find the defendants in order avoid bond forfeiture.

We are not persuaded that the district court abused its discretion by finding that BBD failed to establish sufficient efforts under this factor. In the affidavit supporting BBD's reinstatement petition, BBD's president described the surety's efforts as follows:

> 6. Upon receipt of the bond forfeiture notice on March 15, 2022, [BBD] began to inquire as to the Defendant's whereabouts. [BBD's] agent left messages for both the Defendant and the cosigner of the bond indemnity agreement instructing the Defendant to turn himself in to the custody of the Hennepin County Jail.
>
> 7. When this effort was not immediately successful [BBD] referred the file to its primary recovery agent. [BBD's] investigator conducted a thorough investigation involving field interviews, phone interviews, social media investigation, comprehensive individual reports, and surveillance.

As the district court observed, the affidavit did not include itemized expenses and did not "elaborate on what information was received, how much time was spent on these matters, or how much [BBD] invested in attempting to locate the defendant." Moreover, as the district court observed, the sheriff's department located and apprehended Banks at public expense. On this record, we see no abuse of discretion in the district court's determination that BBD failed to demonstrate that its efforts weighed in favor of reinstatement.

Furthermore, we are unconvinced by BBD's argument that this ruling will encourage sureties to work against law enforcement in trying to locate defendants. Rather, as the state persuasively argues, the ruling may simply encourage sureties to supply more complete information about their efforts when they are seeking reinstatement.

D. The Prejudice to the State in its Administration of Justice

The fourth factor addresses the prejudice to the state in administering justice. The district court concluded that this *Shetsky* factor was neutral. The district court noted that the state and the courts spent time preparing for and awaiting Banks's appearance but also recognized that scheduling of the case resumed after Banks's short absence. It concluded,

"While there is no evidence showing specific prejudice to the State's case, this is a serious DWI case and critically a targeted misdemeanor by statute, which is public policy in the State of Minnesota. As a result, it is likely that the State would be able to proceed with its case despite the Defendant's brief absence, but the absence was not trivial or negligible."

BBD argues that, because the state did not present evidence of specific prejudice to the state's case, this factor must weigh in favor of reinstatement. BBD cites *Askland* in support of its argument. In that case, the supreme court reversed a district court's denial of a reinstatement petition based primarily on the fourth *Shetsky* factor when the state presented no evidence of prejudice to the administration of justice but instead asserted prejudice only because the proceeds of the forfeited bond had already been disbursed and were not recoverable. *Askland*, 784 N.W.2d at 62-63. Here, the district court did not find that the fourth factor weighed against reinstatement based on an erroneous understanding of prejudice. Rather, it determined that, in these circumstances, the fourth factor was neutral. Then, weighing the *Shetsky* factors as a whole, it decided that they favored denial of reinstatement. We see no abuse of discretion in that determination.

In sum, we conclude that any judicial assignment error was harmless and that the district court acted within its discretion by denying BBD's petition for bond reinstatement.

Affirmed.