STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0321

State of Minnesota,
Respondent,

vs.

Jerry Deangelo Williams,
Defendant,

Midwest Bonding, LLC,
Appellant.

Filed August 21, 2023
Affirmed
Johnson, Judge

Crow Wing County District Court
File No. 18-CR-21-2478

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

Donald F. Ryan, Crow Wing County Attorney, Brainerd, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and John P. Smith, Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Midwest Bonding LLC petitioned to reinstate a $300,000 bond that was forfeited after Jerry Deangelo Williams failed to appear for an omnibus hearing in the Crow Wing County District Court. The district court granted the petition in part by reinstating and discharging $100,000 of the value of the bond but otherwise denied the petition. Midwest Bonding appeals. We conclude that the district court did not err in its analysis of the *Shetsky* factors and in its decision to only partially reinstate and discharge the bond. Therefore, we affirm.

FACTS

On July 20, 2021, the state charged Williams with stalking, domestic assault, and domestic assault by strangulation, based on the allegation that he choked his girlfriend, C.M.M., and pushed her against a wall in the home that they shared. At his first appearance on that date, which was conducted remotely by video-conference, Williams "disregarded the Court's instructions, interrupted the Court, did not answer questions, and was obstructive." The district court found Williams in direct criminal contempt of court and sentenced him to two days in the county jail.

On the same day, the district court issued a pre-trial domestic-abuse no-contact order (DANCO) that prohibited Williams from contacting C.M.M. or being present at her residence. The DANCO was served on Williams that day at 3:00 p.m. After being served, Williams telephoned C.M.M. from jail 17 times and spoke to her 13 times.

On July 21, 2021, the district court filed an order authorizing Williams's release, with conditions upon the posting of $100,000 in bail or without conditions upon the posting of $150,000 in bail. The district court also issued a second pre-trial DANCO, which prohibited Williams from contacting C.M.M. or their five children or from being present at their residence. The second DANCO was served on Williams that day at 2:15 p.m.

On July 22, 2021, the state filed an amended complaint in which it added 12 counts of violating a DANCO. On July 23, 2021, the district court filed an amended order for Williams's release, with conditions upon the posting of $200,000 in bail or without conditions upon the posting of $300,000 in bail. Five days later, Midwest Bonding posted a bond in the amount of $300,000.

On August 25, 2021, the district court conducted another hearing remotely by video-conference. Williams's internet connection was poor, and he was informed by the district court that he would need to appear in person for the next hearing. Two days later, the district court issued notice of an omnibus hearing on September 13, 2021. The notice states, near the top, in bold, capitalized, and highlighted letters, that the hearing would be "IN PERSON." On September 8, 2021, Williams's attorney submitted a letter requesting that Williams be allowed to attend the omnibus hearing remotely because he had relocated to Stearns County and lacked transportation. The district court denied the request. Nonetheless, Williams did not appear in person; instead, he attempted to appear remotely. On the day after the omnibus hearing, the district court issued a warrant for Williams's arrest.

Three months later, on December 29, 2021, the state moved for forfeiture of the bail bond based on Williams's failure to appear at the omnibus hearing and the fact that his whereabouts were unknown. The motion was heard on January 24, 2022. One day later, the district court filed an order granting the state's motion. The district court administrator gave notice to Midwest Bonding that its bond had been forfeited.

On March 19, 2022, deputy sheriffs arrested Williams at C.M.M.'s home while investigating a citizen report that he was present there.

On April 13, 2022, Midwest Bonding filed a petition asking the district court to reinstate and discharge its bond. Midwest Bonding submitted an affidavit of an officer who stated that, on January 31, 2022, Midwest Bonding began making attempts to locate Williams by trying to contact him by telephone and by "running an electronic search of all the jails in Minnesota." The officer also stated that, when initial attempts were unsuccessful, Midwest Bonding retained a professional fugitive-recovery agent, who made unspecified efforts to locate Williams.

The state opposed Midwest Bonding's petition and requested a hearing. At a hearing on August 24, 2022, the parties agreed that the petition could be resolved based on the submission of memoranda.

On December 27, 2022, the district court filed an order and memorandum in which it granted Midwest Bonding's petition in part by reinstating and discharging $100,000 of the value of the $300,000 bond. Midwest Bonding appeals.

DECISION

Midwest Bonding argues that the district court erred by granting its petition only in part and by reinstating and discharging only $100,000 of the value of the $300,000 bond.

If a bail bond is forfeited because a defendant fails to appear for a court hearing, "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 (2022). A district court may order reinstatement of the bond "on such terms and conditions as the court may require, but only with the concurrence of the chief judge and upon the condition that a minimum penalty of not less than ten percent (10%) of the forfeited bail be imposed." Minn. R. Gen. Prac. 702(f).

A district court should consider four factors, known as the *Shetsky* factors, when determining whether to grant or deny reinstatement of a bail bond:

> (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.

State v. Askland, 784 N.W.2d 60, 62 (Minn. 2010) (citing *Shetsky v. Hennepin County (In re Shetsky)*, 60 N.W.2d 40, 46 (Minn. 1953)). The party moving for reinstatement bears the burden of establishing that the first, second, and third factors favor reinstatement; the state bears the burden of establishing that the fourth factor does not favor reinstatement. *Id.* This court applies an abuse-of-discretion standard of review to a district court's ruling on a petition to reinstate a bail bond. *Id.*

Midwest Bonding contends that the district court erred in its analysis of each of the four *Shetsky* factors and in its ultimate decision to grant its petition only in part. We address each contention in turn below.

A.

As stated above, 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.*

"The primary purpose of bail in a criminal case is not to increase the revenue of the state or to punish the surety but to insure the prompt and orderly administration of justice without unduly denying liberty to the accused whose guilt has not been proved." *Shetsky*, 60 N.W.2d at 46. A bail bond makes it unnecessary for the state to detain a defendant and keeps the defendant in the custody of a surety to ensure the defendant's presence for court proceedings. *Id.* If a defendant fails to appear for a court hearing, the existence of a bail bond encourages bonding companies and sureties to "locate, arrest, and return defaulting defendants to the authorities." *State v. Storkamp*, 656 N.W.2d 539, 542 (Minn. 2003). In *Shetsky*, the supreme court noted that a failure to appear might be justifiable in the event of "[s]erious illness of the defendant, accident, or detention in the custody of another jurisdiction, whereby the defendant is prevented from appearing for trial as required by the terms of his bond." *See Shetsky*, 60 N.W.2d at 45 n.3.

The district court recited these purposes and stated that they were not achieved in this case. Midwest Bonding does not make any argument to the contrary. The state argues that the purpose of a bail bond was not achieved because Midwest Bonding "did not

participate in the location and arrest of" Williams, who was apprehended by deputy sheriffs without any assistance from Midwest Bonding.

The state is correct. One purpose of a bail bond is to "encourage sureties to locate" absconding defendants and, in addition, to arrest them and return them to custody, thereby relieving the state of the burdens of pre-trial detention and apprehension. *Storkamp*, 656 N.W.2d at 542. In other words, "placing [a defendant] in the protective custody of a surety—a jailer of his own choosing— . . . insure[s] his presence for trial at the call of the court without in any way delaying, impairing, or unduly burdening the administration of justice." *Shetsky*, 60 N.W.2d at 46.

In this case, the district court record indicates that Williams was at liberty for six months after failing to appear, that Midwest Bonding did not locate or return him, and that deputy sheriffs arrested him at C.M.M.'s home. Midwest Bonding did not introduce any evidence that its actions resulted in Williams's location, arrest, or return. Accordingly, Midwest Bonding's actions did not fulfill one of the key purposes of a bail bond.

Midwest Bonding contends that Williams was absent for only "53 days between the date the warrant issued and the date of his arrest," which, it asserts, is a short time period that allows for a finding that the purposes of a bail bond were satisfied. The district court rejected this argument on the ground that Williams "was at large significantly longer than two months." The state notes that an arrest warrant was first issued in September 2021, the day after the omnibus hearing, and that Williams was not arrested until March 2022, more than six months later. The state is correct. Williams's failure to appear for more than

six months supports the district court's finding that the purposes of a bail bond were not achieved.

Thus, the district court did not abuse its discretion by reasoning that the first factor does not favor full reinstatement and discharge.

B.

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. If a defendant "willfully does not meet the conditions of his or her bond without a justifiable excuse, this misconduct is attributable to the surety." *Storkamp*, 656 N.W.2d at 542.

The district court found that Williams's "failure to appear in person was willful and in bad faith" because he was aware that he was required to attend the omnibus hearing in person but did not do so. Midwest Bonding contends that Williams "did appear, albeit not in the manner the district court ordered" and that his attempt to appear remotely is a "mitigating" factor.

Midwest Bonding does not question the district court's authority to determine the manner in which a criminal defendant must appear for a court hearing. The district court clearly communicated that Williams was required to appear in person, and it is undisputed that Williams was aware of the requirement. The district court had valid reasons to require Williams to appear in person because, at prior remote hearings, he had a bad internet connection and was held in direct criminal contempt of court for uncooperative and obstructive conduct. The district court did not abuse its discretion by finding that Williams failed to appear for the omnibus hearing.

Thus, the district court did not abuse its discretion by reasoning that the second factor does not favor full reinstatement and discharge.

C.

The third factor is "the good-faith efforts of the bond company to apprehend and produce the defendant." *Askland*, 784 N.W.2d at 62.

The district court noted Midwest Bonding's evidence that it attempted to locate Williams by telephone and public-records searches and by retaining a fugitive-recovery agent. But the district court noted a lack of detail concerning "the actual effort or results." The district court found that Williams's eventual apprehension "had nothing to do with any efforts made by Midwest."

Midwest Bonding argues that its efforts were sufficient to satisfy the third *Shetsky* factor. But Midwest Bonding's efforts are less than the efforts made by sureties in other cases. For example, in *Farsdale v. Martinez*, 586 N.W.2d 423 (Minn. App. 1998), the surety was successful on appeal because it had "made numerous attempts to locate [the defendant] through contacts with family, friends, and multi-state law enforcement," which "ultimately led to [the defendant's] arrest." *Id*. at 426. In *State v. Rodriguez*, 775 N.W.2d 907 (Minn. App. 2009), *rev. denied* (Minn. Feb. 16, 2010), the surety sent a bounty hunter to Texas in an unsuccessful attempt to find the defendant, yet the district court determined that the bonding agency's efforts were insufficient, and this court affirmed. *Id.* at 913-14. Midwest Bonding made less of an effort than the sureties in these cases.

Thus, the district court did not abuse its discretion by reasoning that the third factor does not favor full reinstatement and discharge.

D.

The fourth factor is the "prejudice to the State in its administration of justice." *Askland*, 784 N.W.2d at 62. "The general rule is that relief from forfeiture will not be granted where the prosecution has been deprived of proof by delay or has otherwise been adversely affected." *Shetsky*, 60 N.W.2d at 45.

The district court found that this factor did not weigh in favor of full reinstatement and discharge on the ground that the state was prejudiced by Williams's failure to appear. Specifically, the district court found that, "during the time the matter was delayed due to Defendant's warrant status, a minor child witness relocated out of the area and their current location is unknown." The district court's order apparently refers to a teenage child who is identified in the complaint as a person who witnessed Williams's assault of C.M.M.

Midwest Bonding argues that the district court erred in making this finding because the state did not submit any evidence to support the finding. Midwest Bonding asserts that the district court's finding is based solely on a statement by the prosecutor in a letter brief, which is not evidence. In response, the state argues that Midwest Bonding waived this argument by agreeing to the resolution of its petition without an evidentiary hearing.

Midwest Bonding did not specifically agree that the state could introduce facts into the evidentiary record in a letter brief. Midwest Bonding agreed merely that an evidentiary hearing was unnecessary and that the parties should submit written arguments. But Midwest Bonding did not object to the state's letter brief after it was filed, despite being given an opportunity to file a reply memorandum. If Midwest Bonding had objected, the state could have requested an opportunity to submit the same factual information in an

affidavit, which the district court easily could have allowed. By not objecting to the state's letter brief, Midwest Bonding has forfeited the argument that the district court erred by relying on the state's letter brief in finding prejudice. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

In any event, a district court may, in the absence of contrary evidence, accept a factual statement of an attorney, who is an officer of the court. *See Rose v. Neubauer*, 407 N.W.2d 727, 728 (Minn. App. 1987), *rev. denied* (Minn. Aug. 19, 1987). Because the factual statement in this case concerns the prosecution itself and the availability of witnesses for trial, the prosecutor surely had personal knowledge of the facts stated. In addition, we believe that including factual statements of this type in a letter brief is consistent with the typical custom and practice in bond-forfeiture proceedings.

Thus, the district court did not abuse its discretion by reasoning that the fourth factor does not favor full reinstatement and discharge.

E.

Finally, Midwest Bonding argues that the district court erred by only partially reinstating and discharging its bond. Midwest Bonding contends that the district court "offer[ed] no rationale as to why a $200,000.00 penalty is the appropriate 'equitable' relief under the unique facts of this case."

In the final paragraph of its memorandum, the district court stated:

> [T]he Court could find that a partial reduction of the forfeited bond may be appropriate. A calculation of that amount, however, could better be determined if the Court had been provided an itemization of the costs incurred by Midwest in attempting to locate and return Defendant, but none was

> provided. As such, the Court's determination is essentially one of equitable relief under the circumstances.

The district court's decision to not reinstate and discharge a larger portion of the bond is supported by this court's opinion in *State v. Vang*, 763 N.W.2d 354 (Minn. App. 2009), in which the district court partially reinstated and discharged a bond but did not reinstate and discharge a larger amount because the surety "never itemized its expenses." *Id.* at 359. This court affirmed. *Id.* Similarly, Midwest Bonding did not describe or state the amount of its expenses in attempting to locate Williams, let alone itemize the expenses. Nonetheless, the district court granted a partial reinstatement and discharge of $100,000. Midwest Bonding does not contend that it incurred expenses greater than $100,000. Given our conclusion that the district court appropriately analyzed each of the four *Shetsky* factors, the district court could have exercised its discretion to deny reinstatement and discharge of the entire bond. Accordingly, the district court did not abuse its discretion by not reinstating and discharging an amount greater than $100,000.

In sum, the district court did not err by granting Midwest Bonding's petition only in part and by reinstating and discharging only $100,000 of the value of the $300,000 bond.

Affirmed.