STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2359

Lexington National Insurance Corporation, et al.,
Appellants,

vs.

State of Minnesota,
Respondent,

Alejandro Arellano Padilla,
Respondent.

Filed August 31, 2010
Affirmed
Hudson, Judge

Olmsted County District Court
File No. 55-CR-07-1735

Brian J. Ellsworth, David W. VanDerHeyden, VanDerHeyden Law Office, P.A., Rochester, Minnesota (for appellants)

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent State of Minnesota)

David W. Merchant, Chief Appellate Public Defender, St. Paul, Minnesota; and

Richard Kimlinger, Assistant Public Defender, Rochester, Minnesota (for respondent Alejandro Arellano Padilla)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Larkin, Judge.

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

HUDSON, Judge

In this bail-bond case, appellants surety and bondsman argue that the district court abused its discretion by refusing to vacate and discharge the bond on behalf of respondent when the state initially failed to provide notice of forfeiture to the surety. Because the district court ensured that notice was provided and did not abuse its discretion, we affirm.

FACTS

Alejandro Padilla was arrested and charged in February 2007 with first- and fifth-degree controlled-substance crime. On March 11, 2007, Padilla posted a $25,000 bail bond issued by appellant bonding company Midwest Bonding, LLC (Midwest), and appellant surety Lexington National Insurance Co. (Lexington). On June 26, 2007, Padilla failed to appear for his jury trial, and the district court issued a bench warrant and court order forfeiting his bail bond. A copy of the order forfeiting bond was sent to Midwest that day, but a copy was not sent to Lexington.

The bond was not forfeited by appellants, and a show-cause hearing was held. At the hearing, appellants argued that the bond should be reinstated and discharged because the "surety" and "bondsman" did not receive notice of the forfeiture as required by Minn. R. Gen. Prac. 702(e). The state pointed out that Midwest received notice and acted as if it was aware of the forfeiture. The district court issued an order holding that, because Lexington did not receive actual notice of the forfeiture, there was a failure to provide procedural due process to the surety. The district court therefore reinstated Padilla's bail bond. The district court also held that discharge of the bond was not appropriate because

Midwest received notice of the forfeiture. The district court then expressly put Midwest and Lexington on notice that the bond would be forfeited and gave them 30 days to request a hearing.

Appellants again moved to reinstate and discharge the bond. After another hearing, the district court denied appellants' motions and ordered the bond forfeited. This appeal follows.

D E C I S I O N

I

Appellants argue that the bail bond issued for Padilla must be reinstated because they received inadequate notice of forfeiture. By agreeing to act as a surety, a bail-bonding company promises to ensure that the defendant will appear to answer the charges against him. *State v. Williams*, 568 N.W.2d 885, 888 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997). If the defendant does not appear, the district court may forfeit, forgive, or reduce the bond on terms that are "just and reasonable." Minn. Stat. § 629.59 (2008). The surety and bondsman must receive written notice whenever a bond is forfeited. Minn. R. Gen. Prac. 702(e); *State v. Rosillo*, 645 N.W.2d 735, 738 (Minn. App. 2002) (*Rosillo I*). "Written notice is a procedural requirement to allow a surety to petition the court for reinstatement and discharge of [the] forfeited bond or to take other actions to preserve its rights." *Id.* at 738–39.

In *Rosillo I*, a defendant absconded and his bond was forfeited, but notice of the forfeiture was never sent to either the bonding company or the surety. *Id.* at 737. This court reversed and remanded the district court's denial of a motion for reinstatement and

discharge of bonds because the district court "failed to adequately consider the lack of notice to appellants and any prejudice that resulted from that lack of notice." *Id.* at 741.

Relying on *Rosillo I*, appellants argue that they received inadequate notice resulting in a denial of due process, and that the district court therefore erred in denying the motion for reinstatement and discharge of the bond. But on remand from *Rosillo I*, the district court considered the lack of notice, found that no prejudice resulted, and again denied the petition to reinstate the bond. *State v. Rosillo*, No. A03-1563, 2004 WL 1192085 at *2 (Minn. App. June 1, 2004) (*Rosillo II*), *review denied* (Minn. Aug. 17, 2004). On appeal, this court held that "appellants had no reasonable expectation that they could rely solely on notice of forfeiture to keep them advised of the case status[,]" and concluded that the district court did not abuse its discretion by declining to reinstate and discharge the bond. *Id.*

Here, Padilla's bond was initially ordered forfeited on June 26, 2007, when Padilla failed to appear for his trial. At the show-cause hearing, appellants argued that the bond should be reinstated and discharged because neither the bondsman nor the surety received written notice of the forfeiture. But, as the district court noted, although Lexington did not initially receive notice, Midwest was sent notice that same day. Appellants argue that the notice to Midwest was not notice to the "bondsman" because the notice did not name the specific company employee who wrote the bond. This narrow interpretation of the term "bondsman" is not supported by the rules or the caselaw. In the rule, the term "bondsman" is used in conjunction with the term "surety." Minn. R. Gen. Prac. 702(e). This indicates that "bondsman" simply means the entity issuing the bond, rather than the

specific agent or employee of the bonding company who signed the paperwork. *See id.* In *Rosillo I*, the court was concerned with a complete lack of notice to the bonding company, not the company agent. 645 N.W.2d at 739. Furthermore, it is impractical to require the court administrator to know the exact agent at a given bonding company who is handling a particular defendant, especially if the agent handling the defendant may change—as it did here when the first agent handling Padilla's file died. *Cf.* Minn. Stat. § 645.17 (2008) (stating that when interpreting a statute, this court presumes that the legislature does not intend a result that is unreasonable or absurd).

Finally, the district court here adequately considered the lack of notice to Lexington. The district court acknowledged that Lexington did not receive notice, which resulted in a failure of procedural safeguards, but also noted that "reinstatement and discharge would not be appropriate because there was not a complete lack of notice as the bonding company was aware that Padilla had absconded." The district court then definitively put both Midwest and Lexington "on notice that the bail bond shall be forfeited" and gave them 30 days to request a show-cause hearing. Thus, unlike *Rosillo I*, the district court in this case considered the lack of notice to the surety and decided to allow another hearing. This court has held that notice of forfeiture given more than three years after the defendant's failure to appear is sufficient. *See State v. Due*, 427 N.W.2d 276, 278 (Minn. App. 1988), *review denied* (Minn. Sept. 28, 1988). Thus, the procedural safeguards in this case were adequate, and the district court appropriately moved on to consider whether to reinstate or discharge the bond following the second hearing.

II

This court reviews a district court's decision not to reinstate or discharge a bond for abuse of discretion. *State v. Vang*, 763 N.W.2d 354, 357 (Minn. App. 2009); *see also* Minn. Stat. § 629.59 (providing that 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"). The surety bears the burden of proving that reinstatement and discharge of a bail bond is justified. *In re Application of Shetsky*, 239 Minn. 463, 471–72, 60 N.W.2d 40, 46 (1953). "But the burden is on the State to prove any claimed prejudice." *State v. Askland*, 784 N.W.2d. 60, 62 (Minn. 2010) (citing *State v. Storkamp*, 656 N.W.2d 539, 542 (Minn. 2003)).

In determining whether the district court abused its discretion, this court considers the *Shetsky* factors:

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

State v. Rodriguez, 775 N.W.2d 907, 912 (Minn. App. 2009) (quotations omitted), *review denied* (Minn. Feb. 16, 2010).

Purpose of bail, civil nature of proceedings, and cause, purpose, and length of defendant's absence

"The primary purpose of bail . . . [is] to insure the prompt and orderly administration of justice without unduly denying liberty to the accused whose guilt has not been proved." *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46. One purpose of a bail

bond is to encourage the surety to pay the penalty for failing to ensure the defendant's presence without requiring the state to litigate to recover the defaulted amount. *Id.* at 469, 60 N.W.2d at 45. "Another is to encourage sureties to locate, arrest, and return defaulting defendants to the authorities to facilitate the timely administration of justice." *Vang*, 763 N.W.2d at 358.

Here, appellants have not achieved the purposes of bail. Appellants have not arrested or returned Padilla, whose absence has delayed the administration of justice for over two years. There was no evidence presented to the district court as to Padilla's whereabouts, and neither appellant has located Padilla. This factor weighs against reinstatement.

Good faith of surety as measured by willfulness of defendant

A defendant's willfulness or bad faith is attributable to the surety. *Shetsky*, 239 Minn. at 474, 60 N.W.2d at 48. The state has done nothing to prevent appellants from producing Padilla, and appellants have not put forth any evidence that his absence was anything but willful and unjustifiable. This factor weighs against reinstatement.

Good faith efforts to apprehend defendant

Even when efforts to retrieve a defendant have been made, this court has upheld a district court's refusal to reinstate the bond. *See, e.g.*, *Williams*, 568 N.W.2d at 888; *Rodriguez*, 775 N.W.2d at 913–14. This court recently discounted late efforts to apprehend a defendant, although made in good faith, when such efforts "were only necessary because [the surety] took so few precautions before issuing [the] bond to the

defendant and then made so little effort to keep track of him afterwards." *Rodriguez*, 775 N.W.2d at 913–14.

Here, appellants hired a fugitive recovery agent in December 2008 to locate Padilla. The agent has not located Padilla, although he stated in an affidavit that he has investigated and continues to investigate contact information contained in Midwest's bail bond application and contract, none of which is still valid. Neither appellant provided any evidence of efforts made to locate or keep track of Padilla between June 2007, when he initially absconded, and December 2008, when Midwest received notice of the first show-cause hearing. Although Lexington did not receive formal notice that Padilla had failed to appear in June 2007, the order forfeiting bond, dated June 26, 2007, was sent to Midwest on the day it was issued. Thus, while appellants made some late good-faith efforts to locate Padilla, those efforts are not so substantial as to outweigh the prejudice suffered by the state. A bonding company "cannot absolve itself of blame when it did not monitor [the defendant's] appearances and thus failed to timely learn of his nonappearance." *Due*, 427 N.W.2d at 278. Here, as in *Due*, the bonding company "was in no way prevented from learning of [the defendant's] nonappearance, a matter of public record, nor would it have been prevented from attempting to locate and arrest [the defendant] had it monitored his appearances." *Id.* This factor weighs against reinstatement.

Prejudice to the state

The prejudice-to-the-state factor is "concerned solely with prejudice to the State in prosecuting the defendant." *Askland*, 784 N.W.2d. at 63. "[W]hen the prosecution

provides evidence that it was deprived of proof or otherwise adversely affected because of the defendant's unexcused absence, this weigh[s] heavily against the remittance of the forfeited bond." *Storkamp*, 656 N.W.2d at 542. Generally, "relief from forfeiture will not be granted where the prosecution has been deprived of proof by delay or has otherwise been adversely affected." *Shetsky*, 239 Minn. at 470, 60 N.W.2d at 45. Here, Padilla is still at large. The state has been prejudiced by its inability to prosecute Padilla. This factor also weighs against reinstatement.

Therefore, the district court did not abuse its discretion by refusing to reinstate and discharge the bond in this case.

Affirmed.