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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1056**

State of Minnesota,  
Respondent,

vs.

Robert Brent Lee,  
Defendant,

Freedom Bail Bonds, et al.,  
Appellants.

**Filed April 27, 2010  
Affirmed  
Minge, Judge**

Ramsey County District Court  
File No. 62-T7-08-600452

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

Robb Olson, Robb Olson Law Office, White Bear Lake City Prosecutor, White Bear Lake, MN (for respondent)

Frank Arend Schulte, St. Paul, MN (for appellant)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Wright, Judge.

## UNPUBLISHED OPINION

MINGE, Judge

Appellant bail-bonding company claims that the district court abused its discretion in denying a request for reinstatement of a \$1,000 bond when a defendant, who failed to appear in court, was apprehended by law enforcement two weeks later in a neighboring county and jailed there on unrelated charges. We affirm.

### DECISION

The issue before us concerns the reinstatement of appellant Freedom Bail Bonds' \$1,000 bond for the appearance of criminal defendant Robert Brent Lee.<sup>1</sup> By agreeing to act as surety, a bail-bonding company promises that the defendant will personally appear to answer the state's charges. *State v. Williams*, 568 N.W.2d 885, 888 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997). If the defendant fails to appear, the court may forfeit, forgive, or reduce the bond on terms that are "just and reasonable." Minn. Stat. § 629.59 (2008). The surety bears the "burden of proof to establish a justification for a mitigation of forfeited bail." *Shetsky v. Hennepin County*, 239 Minn. 463, 472, 60 N.W.2d 40, 46 (1953). In reviewing this type of decision, the court of appeals will not reverse absent an abuse of discretion. *State v. Vang*, 763 N.W.2d 354, 357 (Minn. App. 2009).

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<sup>1</sup> The record in this proceeding is limited. Appellant sought bond reinstatement by written submissions. In lieu of a record, the facts considered on appeal were agreed to by the parties and approved by the district court pursuant to Minn. R. Civ. App. 110.04. We reference those facts throughout this opinion.

To determine whether a district court abused its discretion in refusing to reinstate the bail bond, a reviewing court analyzes the so-called *Shetsky* factors. *Williams*, 568 N.W.2d at 888 (citing *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46). Those factors include (1) the purpose of the 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 to apprehend the defendant; and (4) any prejudice suffered by the state in its administration of justice. *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46.

*Purpose, Burden of Proof, Length, and Cause of Absence*

The main 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.” *Id.* Bail is also intended to relieve the state of the need to detain the defendant by “placing him in the protective custody of a surety—a jailer of his own choosing—to insure his presence for trial at the call of the court without in any way delaying, impairing, or unduly burdening the administration of justice.” *Id.* Bail does not have the primary purpose of raising state revenue or punishing the surety. *Id.* Thus, the amount forfeited must be proportionate to the prejudice suffered by the state. *Farsdale v. Martinez*, 586 N.W.2d 423, 426 (Minn. App. 1998).

Here, appellant received notice of the defendant’s failure to appear and of the forfeiture, but made no showing of any efforts to locate the defendant. Two weeks later, the defendant was arrested and jailed for a separate crime in Washington County. Appellant does not establish why it did not or was not able to locate the defendant. The

purpose of the bond and risk to appellant of forfeiture is to provide an incentive to assist law enforcement. Appellant has the burden of proof regarding its diligence and the circumstances of the defendant's absence. Although the time the defendant remained at large was short, the size of the bond is modest and appellant has not met its burden of showing why the purpose of the bond would not be compromised by its reinstatement.

#### *Defendant's Fault or Willfulness*

The agreed facts do not reveal the defendant's motivations or the circumstances of the nonappearance. They do show, however, that the defendant had notice of the hearing and failed to appear. Where no evidence demonstrates a justifiable reason for evading proceedings, and there was no notification to the court or other authorities of safety risks for the defendant, the district court may consider this factor as a basis for not reinstating the bond. *See Shetsky*, 239 Minn. at 473, 60 N.W.2d at 47 (finding no abuse of discretion in refusal to reinstate bond when defendant claimed safety and due process reasons for fleeing but did not present evidence supporting contentions).

#### *Surety's Good Faith*

Even when bondsmen have exerted effort to retrieve an absent defendant, this court has still upheld the refusal of the district court to reinstate the bond. *See, e.g., Williams*, 568 N.W.2d at 888; *State v. Rodriguez*, 775 N.W.2d 907, 913-14 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010). Appellant had two weeks before defendant was arrested and does not claim to have taken any steps, even preliminary, to assist in the defendant's capture.

### *State's Prejudice*

Appellant claims the state experienced no prejudice because the defendant was eventually apprehended and served prison time that would equal the sentence for his domestic-assault charge. As noted in *Shetsky*, however, prejudice to the state includes the delay and thwarting of the administration of justice, as well as the expense incurred by the state in apprehending the defendant. 239 Minn. at 474, 60 N.W.2d at 48. Here, although the administration of justice was only briefly impeded, the prosecution was delayed. The state apprehended the defendant on the unrelated charge in a neighboring county. Although the prejudice in this case is not as severe as it would be if the defendant were unavailable for an indefinite period, the state has had to take additional steps to complete the prosecution.

In sum, our consideration of the *Shetsky* factors leads us to conclude the district court did not abuse its discretion in denying appellant's request for bond reinstatement.

### *Contract Defense – Impossibility*

Appellant additionally argues that “the defendant’s imprisonment in another jurisdiction made it impossible for [appellant] to perform under the terms of the bail bond.” Besides applying the *Shetsky* factors, this court will consider principles of contract law when reviewing petitions to discharge bail bonds. *Rodriguez*, 775 N.W.2d at 910-11 (adopting district court’s conclusion that “bail bond is a contract because there is an exchange of promises and consideration among the surety (the bonding company), the principal (the defendant) and the creditor (the court)”). Under the law of contracts, a promisor is excused from performing if objective and unforeseen circumstances cause

performance to be impossible or unduly burdensome. *Powers v. Siats*, 244 Minn. 515, 520-21, 70 N.W.2d 344, 348 (1955) (citing 6 Williston, *Contracts* § 1931 (rev. ed., 1938); Restatement of Contracts § 454-69 (1932)).

Appellant's contract argument misconstrues its obligations under a bail-bond suretyship. Under the surety agreement, "the surety/bonding company receives a premium and *promises to the Court that the defendant will appear, or that the face amount of the bond will be paid.*" *Rodriguez*, 775 N.W.2d at 911 (adopting district court language) (emphasis added). Thus, the performance promised under the contract is the defendant's appearance at a time certain or appellant's payment, not the defendant's retrieval following a failure to appear.

Appellant claims it was not given a chance to capture the defendant after his absence, but that difficulty goes to whether the district court should forgive the payment obligation as provided under the statute, not whether the obligation is excusable under the common law of contracts. Because the contracted-for performance was the appearance of the defendant or payment, appellant's impossibility defense is not persuasive. No facts establish unreasonable or unexpected obstacles that would have prevented the defendant's appearance on March 4, 2009. It was therefore not an abuse of discretion for the district court to deny appellant's request.

**Affirmed.**

Dated: