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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0600**

State of Minnesota,
Respondent,

vs.

Lloyd Dale Johnson,
Defendant,

A-Affordable Bail Bonds, Inc.,
Appellant.

**Filed September 17, 2012
Remanded
Bjorkman, Judge**

Clay County District Court
File No. 14-CR-10-4728

Michelle W. Lawson, Interim Clay County Attorney, Pamela L. Harris, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Charles D. Halverson, Brainerd, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Stoneburner, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant bonding company challenges the district court's order reinstating and discharging \$5,500 of an \$11,000 bail bond, arguing that the district court abused its

discretion by denying appellant's request for full reinstatement of the bond. Because the district court erred in applying two of the bond-reinstatement factors, we remand for the district court to reconsider the extent to which the bond should be reinstated.

FACTS

Defendant Lloyd Johnson was charged with stalking and violating a domestic-abuse no-contact order, both involving J.M.K. Johnson was released on bail, and on August 3, 2011, appellant A-Affordable Bail Bonds, Inc. posted a bail bond in the amount of \$11,000 to guarantee Johnson's appearance in court.

On September 10, two witnesses reported to law enforcement that Johnson had assaulted J.M.K. in Fargo, North Dakota. Based on that incident, the state moved to revoke Johnson's bail. Because Johnson did not appear at the September 28 hearing on the motion, the district court issued a warrant for his arrest and ordered forfeiture of the bond. Johnson again failed to appear in court on November 15, when the jury trial was scheduled.

On November 20, a fugitive-recovery agent acting on appellant's behalf apprehended Johnson in the Twin Cities and transported him back to the Clay County jail. Appellant petitioned for reinstatement and discharge of the forfeited bond. The district court partially granted appellant's petition, reinstating and discharging half of the bond. This appeal follows.

DECISION

If a defendant released on bail fails to appear, the district court may forfeit, forgive, or reduce the bail bond on terms that are "just and reasonable." Minn. Stat.

§§ 629.58-.59 (2010). Four factors guide the determination whether and to what extent a forfeited bond should be reinstated:

(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 Cnty. (In re Shetsky)*, 239 Minn. 463, 471, 60 N.W.2d 40, 46 (1953)). The bond company bears the burden of establishing that these factors favor reinstatement, but the state must prove any claimed prejudice. *Id.*

We review the district court's decision on a motion to reinstate a forfeited bond for abuse of discretion. *State v. Vang*, 763 N.W.2d 354, 357 (Minn. App. 2009). A district court abuses its discretion when its ruling "is based on" an error of law. *State v. Storkamp*, 656 N.W.2d 539, 541 (Minn. 2003).

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

The purpose of a bail bond "is to secure the attendance of the accused" in court. *Shetsky*, 239 Minn. at 470, 60 N.W.2d at 46. Appellant urges that this factor should weigh "very heavily in favor of full reinstatement" because it secured Johnson less than 60 days after the arrest warrant issued. We disagree. Johnson fled prosecution and failed to appear for his bail-revocation hearing and jury trial. While his absence was not prolonged, the record amply establishes that the bond failed to fulfill its purpose of

ensuring Johnson's appearance in court. We conclude that the district court did not abuse its discretion by weighing this factor against reinstatement of the bond.

B. Good faith of bond company as measured by fault or willfulness of defendant

A defendant's willfulness or bad faith is attributable to the bond company and weighs against reinstatement of a forfeited bond. *Vang*, 763 N.W.2d at 358. The district court found that Johnson "acted in extremely bad faith once he obtained release pending trial" by fleeing prosecution for nearly two months and using his release to commit additional crimes against J.M.K. Appellant argues Johnson's failure to appear for the hearing on September 28 is "the only bad faith conduct of the defendant that can be attributed to the appellant," and that his other conduct while on bail, including the assault on J.M.K., cannot be attributed to appellant. Because the bond guaranteed Johnson's presence in court, not his good behavior while on bail, we agree. *See Shetsky*, 239 Minn. at 470, 60 N.W.2d at 46. But the record amply establishes that Johnson acted in bad faith by failing to appear for the September 28 hearing and fleeing prosecution for an additional two months. We conclude that the district court did not abuse its discretion by attributing this bad faith to appellant and weighing this factor against reinstatement of the bond.

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

The district court determined that appellant "immediately began taking steps to locate and apprehend" Johnson after learning that he had failed to appear on September 28, and found that this demonstrated good faith. However, the district court also found that appellant displayed "lack of diligence" in "allowing three individuals with criminal

records to cosign for the bond that secured [Johnson]’s release without first conducting a background check,” and found that this fact “mitigated” appellant’s good faith in seeking to apprehend Johnson.

Appellant challenges the district court’s consideration of Johnson’s cosigners, arguing that (1) the record does not support the district court’s finding that appellant failed to assess the creditworthiness of the cosigners and (2) the “adequacy or inadequacy of the surety to go after the cosigners in the event of default is not relevant to this equation nor frankly subject to the scrutiny of the court.” We agree. The record is limited, at best, with respect to appellant’s efforts to assess the creditworthiness of Johnson’s cosigners. And more important, those efforts affect only appellant’s ability to recover from the cosigners when and if it is required to pay the state on the forfeited bond; they are irrelevant to the issue of appellant’s good faith in seeking to deliver Johnson to court as promised.

Although the district court erred in considering the sufficiency of appellant’s efforts to scrutinize Johnson’s cosigners in the context of this bond-reinstatement factor, the error affects only part of the district court’s analysis. The district court indicated “concern[] about the lack of diligence displayed by [appellant] in failing to conduct a background check of the co-signers before agreeing to post the bond on [Johnson]’s behalf,” but nonetheless concluded that appellant’s “good faith actions in apprehending [Johnson] justify a reduction of the amount forfeited.” Given appellant’s exceptional diligence in apprehending Johnson, we discern no abuse of discretion in the district

court's determination that this factor weighs in favor of at least partial reinstatement of the bond.

D. Prejudice to the state

“[T]he prejudice-to-the-State factor in the *Shetsky* analysis 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.

The district court determined that the state was prejudiced because it incurred the costs of assembling jurors and witnesses for trial on November 15 (and would have to do so again) and because Johnson's absence delayed the administration of justice. Appellant argues that it was “illogical” for the state to proceed as though the November 15 jury trial would go forward because “it should have been readily apparent that without the defendant present this matter could not be ready for trial.” We agree. The state may not claim prejudice based on costs or inconvenience that it could have avoided by rescheduling the trial in light of Johnson's absence. And the state has not asserted that it was deprived of proof or that the delay had a negative impact on the victim to support a finding of prejudice. On this record, the district court abused its discretion by weighing the prejudice factor against reinstatement of the bond.

Having concluded that the district court erred in applying two of the four bond-reinstatement factors, we consider the extent to which these errors affected the district court's decision. The district court properly balanced Johnson's bad faith, attributable to

appellant, against appellant's good faith in promptly and successfully pursuing Johnson and returning him to court, and did not abuse its discretion by deciding that these factors warrant only partial reinstatement and discharge of the bond. However, we cannot determine whether the court would have reinstated more of the bond but for its improper consideration of Johnson's cosigners and its erroneous prejudice analysis. Accordingly, we remand for the district court to reconsider the extent to which the bond should be reinstated consistent with this opinion.

Remanded.