STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0302

State of Minnesota,
Respondent,

vs.

Lazaro Soliz, III,
Defendant,

Thomes Bail Bonds,
Appellant.

Filed February 17, 2009
Affirmed
Toussaint, Chief Judge

Kandiyohi County District Court
File Nos. 34-CR-07-191, 34-CR-07-211, 34-CR-06-671

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Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Collins, Judge.*

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

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

TOUSSAINT, Chief Judge

Between April 2006 and March 2007, appellant Thomes Bail Bonds posted three bail bonds totaling $400,000 to insure the appearance of Lazaro Soliz III, who was charged in three separate files with felony drug offenses and witness tampering. When Soliz failed to appear at a court hearing scheduled for August 10, 2007, the district court ordered the bonds forfeited. Soliz was apprehended eight days later by county law enforcement, based on information gathered by appellant's agents regarding Soliz's whereabouts.

The district court subsequently reinstated and discharged all but ten percent, or $40,000, of the bonds. Appellant moved to reconsider the forfeiture of this $40,000. Following a hearing at which appellant presented testimony from two of its agents regarding the efforts undertaken to find Soliz and assist law enforcement in apprehending him, the district court denied appellant's motion for reconsideration.

Because the district court did not abuse its discretion in denying appellant's request to reinstate and discharge the forfeited portions of the bonds, we affirm.

D E C I S I O N

The district court has broad discretion in determining whether to reinstate and discharge a forfeited bail bond. Minn. Stat. § 629.59 (2006) (providing that district court "may" forgive or reduce penalty); Minn. R. Gen. Pract. 702(f) (providing that "reinstatement may be ordered on such terms and conditions as the court may require"). This court reviews a reinstatement decision for an abuse of discretion. *State v. Williams*,

568 N.W.2d 885, 887 (Minn. App. 1997), *review denied* (Minn. Nov. 18, 1997). The applicant bears the burden of proving that reinstatement and discharge of a bail bond is justified. *In re Application of Shetsky*, 239 Minn. 463, 472, 60 N.W.2d 40, 46 (1953).

In determining whether the district court abused its discretion, a reviewing court considers the following 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. Storkamp, 656 N.W.2d 539, 542 (Minn. 2003) (quoting *Shetsky*, 239 Minn. at 470, 60 N.W.2d at 45).

Appellant first argues that several of the district court's findings are clearly erroneous, and we agree that several findings are not entirely supported by the record.[1] But the district court's decision remains supported by other findings and by its memorandum, which sets out its reasoning and analysis of the appropriate factors. Thus, any error in these findings is harmless and does not mandate reversal of the district court's decision. *See* Minn. R. Civ. P. 61; *Hanka v. Pogatchnik*, 276 N.W.2d 633, 636

[1] In particular, finding #5 (stating that appellant took no steps to insure Soliz's appearance prior to the August 10, 2007 court date) and finding #16 (stating that appellant regarded Soliz as dangerous and did not intend to assist law enforcement in his apprehension) are inaccurate. Appellant's managing agent testified that Soliz received a telephonic reminder the day before his August 10, 2007, court date. Although the evidence suggests that the managing agent considered Soliz to be dangerous, the agent also explained that he did not personally apprehend Soliz on August 18: he was over one hour away from Soliz's location when he received the information regarding Soliz's exact whereabouts and decided to contact law enforcement to insure Soliz's arrest.

(Minn. 1979) (district court's inclusion of unsupported findings may be harmless when other findings adequately support legal conclusion).

Appellant next argues that the district court abused its discretion in requiring forfeiture of $40,000, when appellant went to "extraordinary lengths" to secure Soliz's apprehension. But the good faith of the surety is only one factor to consider when determining whether to reinstate bail bonds. Consideration of all of the factors supports the district court's decision here.

"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*, 239 Minn. at 472, 60 N.W.2d at 46. As appellant notes, Soliz was not a fugitive for a long time and was on the run for only nine days. But, "by accepting a premium and agreeing to act as surety," particularly given the seriousness of Soliz's alleged offenses and the substantial amount of the posted bonds, appellant assumed the risk that Soliz might not appear and was on notice that ensuring Soliz's appearance might require unusual effort.

Appellant concedes that Soliz acted in bad faith by failing to appear and by evading efforts to locate him for nine days. But appellant asserts that it is entitled to some credit for its efforts in sending Soliz a telephonic reminder on August 9 of his upcoming August 10 court date. By requiring forfeiture of only ten percent of the entire amount of the bonds, however, the district court did give appellant some credit for its efforts. *See Storkamp*, 656 N.W.2d at 541 (reversing district court's "automatic forfeiture

of the entire bail amount" based on evidence of defendant's bad faith). Here, the forfeiture ordered was not the entire amount of the bond amount and was not automatic, but well-reasoned and supported by findings and analysis.

Appellant asserts that its efforts to locate and assist in Soliz's apprehension after he failed to appear on August 10 were "extraordinary" and should weigh heavily in favor of full reinstatement and discharge of the bonds. But, even if appellant's efforts were extensive and extraordinary, the amount of bail involved, the seriousness of Soliz's offenses, and Soliz's known propensity for elusive behavior, support the district court's conclusion that appellant "must bear some responsibility" and that it "could have done more both before and after [Soliz] absconded."

Appellant finally asserts that the state does not claim any prejudice and this weighs in favor of full reinstatement. But, the risks taken by law enforcement to apprehend appellant, the public safety concerns arising out of Soliz's fugitive status, and the impact that Soliz's nonappearance had on the district court's scheduling and calendar are all related to the administration of justice in general.

Under these facts, we conclude that the district court did not abuse its discretion in forfeiting ten percent of the bail bonds posted by appellant.

Affirmed.