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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0980**

State of Minnesota,
Respondent,

vs.

Shawn Kevin Carlson,
Defendant,

Midwest Bonding, L. L. C.,
Appellant.

**Filed March 24, 2009
Affirmed
Connolly, Judge**

Anoka County District Court
File No. 02-CR-07-2377

Lori Swanson, Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101;
and

Robert M.A. Johnson, Anoka County Attorney, Robert D. Goodell, Assistant County
Attorney, Anoka County Government Center, 2100 Third Avenue, Suite 720, Anoka, MN
55303-5025 (for respondent)

William A. Erhart, Erhart & Associates, L.L.C., 316 East Main Street, Suite 110, Anoka,
MN 55303 (for appellant)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant's bond payment was forfeited when the defendant did not appear for his probation-violation hearing. Because the district court did not abuse its discretion in forfeiting the bond or in applying a portion of the forfeited bond to restitution owed to the victim, we affirm.

FACTS

In January 2007, defendant Shawn Carlson was charged with felony theft. The defendant pleaded guilty to felony theft and was ordered to pay \$1,200 in restitution to the victim. The defendant also received a stay of imposition of his sentence on the condition that he obey the rules of his probation and successfully complete treatment. The defendant failed to complete treatment and violated the terms of his probation. Thereafter, the district court vacated the stay of imposition and issued a warrant for the defendant's arrest.

On December 12, 2007, the defendant was arrested. The defendant was ordered to appear on December 20, 2007, for the probation-violation hearing. To guarantee the defendant's appearance at that hearing, appellant Midwest Bonding, L.L.C. executed a \$3,500 bond on the defendant's behalf. The defendant failed to appear at the hearing, and a warrant was issued for his arrest. The defendant was arrested on December 31, and the district court ordered the \$3,500 bond forfeited, with \$1,200 of the bond to be paid to the victim as restitution.

Midwest Bonding filed a petition to reinstate and discharge the appearance bond. Midwest Bonding and the state initially agreed to reinstate and discharge the bond upon payment of \$100 but the district court rejected that proposal. Hearings were then held in this matter, and the district court ultimately issued an order denying Midwest Bonding's petition for reinstatement and discharge of the forfeited bond. The district court ordered the bond forfeited as follows: "\$1,200.00 for victim restitution; \$640.00 for the cost of housing the Defendant in jail; \$100 for the cost of transporting the Defendant; and the remainder to be put in the general fund." This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by rejecting the parties' stipulation on reinstatement and discharge of the bond.

Midwest Bonding argues that the district court abused its discretion by rejecting the parties' stipulation on reinstatement and discharge of the bond. The district court concluded that based on the actual costs of transportation and housing after the defendant's arrest, the fact that Midwest Bonding put forth no effort to find the defendant after his failure to appear for the hearing, and because the contract provided that if the defendant did not appear the bond could be forfeited, the entire amount was properly forfeited, regardless of any agreement between the parties.

The district court has broad discretion in determining whether to reinstate and discharge a forfeited bail bond. Minn. Stat. § 629.59 (2008) (providing that district court "may" forgive or reduce penalty "on any terms and conditions it considers just and reasonable"); Minn. R. Gen. Pract. 702(f) (providing that "[r]einstatement 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 471, 60 N.W.2d at 46).

A. The purpose of bail, the civil nature of the proceedings, and the cause, purpose, and length of the defendant’s absence.

“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 471, 60 N.W.2d at 46. Bail is also utilized to encourage sureties to “locate, arrest, and return defendants who have absconded.” *Storkamp*, 656 N.W.2d at 543. The defendant was only out of contact for approximately 11 days. Nonetheless,

there is no evidence in the record that this was anything but an unjustified absence and Midwest Bonding took no steps to apprehend the defendant.

By accepting a premium and agreeing to act as surety, [the bonding company] undertook to ensure [the defendant] would personally appear to answer the charge against him. As such, [the 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.

State v. Due, 427 N.W.2d 276, 278 (Minn. App. 1988) (citation omitted).

By forfeiting bail in these types of cases, bonding companies are encouraged to monitor the whereabouts of their principals and act accordingly if they abscond.

B. The good faith of the surety as measured by the fault or willfulness of the defendant.

There is no evidence in the record to indicate that the defendant's absence was due to anything other than a purposeful attempt to avoid his court obligations. A willful and unjustifiable default by the defendant weighs against forgiveness of a bond penalty. *Shetsky*, 239 Minn. at 472-73, 60 N.W.2d at 47-48. Midwest Bonding has offered no evidence that the defendant's absence was anything but willful and unjustifiable.

C. The good-faith efforts of the surety—if any—to apprehend and produce the defendant.

It is undisputed that Midwest Bonding made no efforts to apprehend and produce the defendant. Midwest Bonding argues that by the time it was notified that the defendant had not appeared at the probation-violation hearing, the defendant had been rearrested. Regardless, Midwest Bonding did not make a good-faith effort to apprehend and produce the defendant. “[Midwest Bonding] 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.” *Due*, 427 N.W.2d at 278.

D. Any prejudice to the state in its administration of justice.

The state has cited no prejudice beyond the costs associated with apprehending the defendant. Nonetheless, the mere lack of prejudice does not necessarily provide grounds for mitigating the bond forfeiture when measured against the defendant's willful and unjustified absence and the lack of effort by Midwest Bonding to locate and apprehend the defendant. In our consideration of all the relevant factors, the district court did not abuse its discretion in refusing to reinstate and discharge the forfeited bond.

II. The district court did not abuse its discretion by applying a portion of the forfeited bond to restitution.

Midwest Bonding argues that the district court erred by applying a portion of the forfeited bond to restitution. Midwest Bonding asserts that its contract with the defendant explicitly stated that no portion of the funds could be used for restitution or to pay court fines.¹ The overarching determination of whether forfeited bond proceeds can be applied to restitution is a question of law, which this court reviews de novo. *See Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001) (“An appellate court is not bound by, and need not give deference to, the district court’s decision on a question of law.”) (citing *Frost-*

¹ The contract stated: “This is an appearance bond only . . . and shall not be used for payment of any fines, surcharges, costs, or other financial obligation imposed upon the Defendant by the Court.” Midwest Bonding argues that allowing forfeited bonds to pay for restitution will have a significant impact on the economic calculus of how premiums for bonds are arrived at. We are sympathetic to this argument but are constrained to follow the law for the reasons articulated in this opinion.

Benco Elec. Ass’n v. Minn. Pub. Utils. Comm’n, 358 N.W.2d 639, 642 (Minn. 1984)). But if such action is not prohibited by law, we review the district court’s decision to apply the forfeited bond to restitution under an abuse-of-discretion standard. See *Langford Tool & Drill Co. v. Phenix Biocomposites, LLC*, 668 N.W.2d 438, 442 (Minn. App. 2003) (“When reviewing mixed questions of law and fact, ‘we will correct erroneous applications of law, but accord the trial court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.’” (quoting *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997))).

When a defendant in a criminal proceeding posts a bond and fails to make his court appearance, the bond is in default. The penalty for default is forfeiture. *Storkamp*, 656 N.W.2d at 540. Once the bond is forfeited, it belongs to the court, and any contract between Midwest Bonding and the defendant no longer controls. Midwest Bonding’s argument would be persuasive if the defendant had appeared at the probation-violation hearing, and the court still took money from the bond to pay the defendant’s restitution. That is not the case here. In this case, the defendant did not appear, and the bond was forfeited. As discussed above, the forfeiture was not an abuse of discretion because Midwest Bonding was unable to demonstrate mitigating factors that would justify the bond being reinstated and discharged. Once the bond is forfeited, Midwest Bonding no longer has control over how the money is distributed. Furthermore, error is never presumed on appeal, and Midwest Bonding is unable to cite statutes or caselaw stating that once a bond has been forfeited it cannot be used to pay restitution. *White v. Minn. Dep’t of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997) (quoting *Midway Ctr.*

Assocs. v. Midway Ctr., Inc., 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975)), *review denied* (Minn. Oct. 31, 1997). To the contrary, existing law seems to contemplate the payment of forfeited bail proceeds to victims:

Except for those portions of forfeited bail *paid to victims* pursuant to existing law, the court administrator shall forward all revenue from fees and forfeited bail collected under chapters 357, 487, and 574 to the commissioner of finance for deposit in the state treasury and credit to the general fund.

Minn. Stat. § 485.018, subd. 5 (2008) (emphasis added).

Bail is defined by Black’s Law Dictionary as “[a] security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear at a future time.” *Black’s Law Dictionary*, 150 (8th ed. 2004). Therefore, because bail can be in the form of a bond it appears that the legislature specifically contemplated that bond proceeds could be used to pay restitution. Based on the aforementioned statute, and the inability of Midwest Bonding to demonstrate any error involved in applying forfeited bond proceeds to restitution, the district court did not abuse its discretion in this matter.

Midwest Bonding argues that Minnesota General Rule of Practice 702(g) mandates that all bail money must be deposited in the state treasury. Minn. Stat. § 485.018, subd. 5, however, allows for money to be transferred to victims before the forfeited bail is transferred to the state treasury. “When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both.” Minn. Stat. § 645.26, subd. 1 (2008). These two provisions can be read in this manner. Rule 702(g) requires that forfeited bail

money be transferred to the general fund, but it does not prevent the district court from first ordering that restitution be paid as mandated by the legislature.

Affirmed.