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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0188**

State of Minnesota,
Respondent,

vs.

Donald William Langevin,
Defendant,

Integrity Bonding Company,
Appellant.

**Filed April 7, 2009
Affirmed
Stauber, Judge**

Wright County District Court
File No. 86-CR-07-6150

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and

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1192 (for respondent)

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(for appellant)

Considered and decided by Worke, Presiding Judge; Schellhas, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Appellant challenges the district court's refusal to reinstate, discharge, and refund a forfeited bond amount, arguing that (1) the district court abused its discretion by allowing the defendant's bad faith to control its decision and (2) there is no incentive for the surety to return its principal at its own expense if no part of the penalty of the bond could be remitted under equitable circumstances. We affirm.

FACTS

Appellant Integrity Bonding Company, Inc. posted a \$10,000 bond on behalf of the defendant in the underlying case, William Langevin. The defendant failed to appear at a court hearing. The district court ordered the bond forfeited. After receiving notice of the forfeiture, appellant contacted the bond co-signer twice. The bond co-signer provided appellant with one phone number and two addresses where the defendant might be found. In addition to calling the phone number and looking at the address for the defendant, appellant claims its agent performed surveillance on the two addresses, but does not elaborate on what was done during the surveillance. Appellant did not produce the defendant. And no other actions were taken to apprehend the defendant afterwards. Without appellant's assistance, police arrested the defendant approximately 42 days later. Appellant petitioned for reinstatement and discharge of the forfeited bond. The district court denied the petition. This appeal follows.

DECISION

“We review the district court’s denial of a motion to reinstate, discharge, and refund forfeited bail bonds for an abuse of discretion.” *State v. Storkamp*, 656 N.W.2d 539, 541 (Minn. 2003). The district court abuses its discretion when it bases its decision on an erroneous view of the law. *Id.*

Minn. Stat. § 629.58 states that when a person accused of a criminal act is released upon the posting of a bond and fails to perform the conditions of the bond, the bond will be defaulted. Minn. Stat. § 629.58 (2006). Upon default of a bail bond, the penalty is forfeiture of the bond amount to the court. *See id.* Courts have held that bail statutes are remedial and should be interpreted liberally to ensure that their purpose is accomplished. *Storkamp*, 656 N.W.2d at 541 (citation omitted). Part of the purpose of section 629.58 is “to encourage sureties to voluntarily pay the penalty for failing to ensure the presence of the accused without requiring that the state undergo the expense of litigation to recover the defaulted bond amount.” *Id.* at 542 (citing *Shetsky v. Hennepin County*, 239 Minn. 463, 469, 60 N.W.2d 40, 45 (1953)). It also intends “to encourage sureties to locate, arrest, and return defaulting defendants to the authorities to facilitate the timely administration of justice.” *Id.* (citation omitted).

In certain instances, mitigation of the forfeited bond amount is appropriate. Minn. Stat. § 629.59 (2006). Section 629.59 establishes the guidelines for a court to consider when deciding to mitigate a forfeiture of a bail bond. *Id.* “[T]he 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*.” *Id.* (emphasis

added). Thus, the power to forgive or reduce the forfeiture is left to the court's discretion. Courts are not to treat bail as a source of revenue or as a punishment for the surety. *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46. Additionally, courts cannot overlook the petitioner's burden of proof in establishing a justification for mitigation of forfeited bail. *Id.* at 471-72, 60 N.W.2d at 46.

When determining whether the district court abused its discretion by denying or granting a remission or mitigation of a bail forfeiture, this 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.

Storkamp, 656 N.W.2d at 542 (quoting *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46).

The district court addressed these four factors in its order. It is uncontested that the state is not significantly prejudiced. Regarding the other three factors, the district court concluded that: (1) reinstatement of the bail bond would frustrate not only the purpose of encouraging a surety to voluntarily surrender the bond amount, but also the purpose of encouraging the surety to arrest defendants who absconded; (2) appellant did not produce sufficient evidence as to its own good faith and produced no evidence on the fault and willfulness of the defendant; and (3) appellant did not produce sufficient evidence as to its own good faith effort to apprehend the defendant. The district court determined that the factors did not weigh in appellant's favor, and since appellant failed

to meet its burden of proof to justify mitigation, it would not be just and reasonable to reinstate the bond. We agree.

Appellant argues that the district court allowed the defendant's bad faith to control its decision. The defendant's willfulness or bad faith is attributable to the surety. *Shetsky*, 239 Minn. at 474, 60 N.W.2d at 48. In this case, the defendant did not explain his failure to appear in court. While appellant may not have produced evidence as to the fault and willfulness of the defendant, such bad faith can be inferred from the defendant's actions to abscond without offering a justifiable cause. *See id.*

Appellant is correct in stating that a defendant's bad-faith conduct cannot trump the surety's good-faith apprehension when the state is not prejudiced. *Storkamp*, 656 N.W.2d at 542–43. But in its arguments, appellant mischaracterizes the district court's conclusions. The district court did not conclude that the defendant's bad faith in failing to appear controlled its decision, or that it required automatic forfeiture of the entire bail amount. Instead, the district court remained unconvinced that appellant demonstrated a good-faith effort to perform as surety. This conclusion is not the same as appellant's suggestion that it exerted a good-faith effort but the defendant's willful, bad-faith conduct outweighed those efforts. *See id.*

The facts support the district court's conclusion. First, after receiving notice of the forfeited bond, appellant's efforts to locate and apprehend the defendant consisted of contacting the co-signer twice, calling the phone number, looking at the address for the defendant, and claiming that its agent performed surveillance on the two addresses. Appellant did not elaborate on what was done during the surveillance or state how much

it had invested in locating the defendant. Second, appellant did not produce evidence that it took any other actions to ensure the defendant's court attendance prior to the bond's forfeiture or to apprehend the defendant afterwards. Finally, it was the police, not appellant, who apprehended the defendant and brought him into custody; appellant did not assist in the defendant's arrest. Appellant has failed to demonstrate that it exerted more than a mere token effort to apprehend the defendant.

Appellant also argues that the district court's refusal to reinstate the bond removes the surety's incentive to return its principal at its own expense. Incentives for sureties to apprehend a fleeing defendant will be undermined if the statute is interpreted too narrowly. *See Shetsky*, 239 Minn. at 469, 60 N.W.2d at 45 (noting that part of the remedial purpose that encourages the surety to pay the penalty without putting the state to expense of litigation "would largely be defeated if a surety making a voluntary payment thereunder were to be penalized by a construction which denied him all right of remission for justifiable cause"). But this is not to say that the consequence of forfeiture for defaulted bond under section 629.58 has no effect at all. *Id.* at 474, 60 N.W.2d at 48 (affirming the district court's denial of application for return of forfeited bail amount).

The district court applies section 629.59 to forgive or reduce the penalty when it is "just and reasonable" to do so, not necessarily every time a surety exerts any effort, however minimal, to locate and apprehend an absconded defendant. Minn. Stat. § 629.59; *Storkamp*, 656 N.W.2d at 541. A surety is not automatically entitled to have a bond reinstated, discharged, and the forfeited amount refunded. Appellant, as the petitioner, has the burden of proof to establish justification to reinstate the bail bond.

Storkamp, 656 N.W.2d at 542. Appellant did not produce sufficient evidence of its own good-faith efforts. We note that the district court's refusal to grant reinstatement of the bond amount when the surety has failed to provide evidence of its good-faith effort supports, rather than defeats, the remedial purpose of section 629.58.

The district court based its decision not on the willfulness or bad faith of the defendant, but on appellant's failure to produce sufficient evidence of its good-faith efforts to perform as surety. Therefore, appellant failed to meet its burden of proof to establish a justification for mitigating the forfeiture. The district court's refusal to grant reinstatement of the bond amount under these circumstances does not constitute an abuse of the court's discretion to forgive or mitigate the forfeited bond amount when just and reasonable.

Affirmed.