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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1630**

State of Minnesota,
Respondent,

vs.

Timothy Clyde Askland,
Defendant,
Howe Bonding,
Appellant.

**Filed August 4, 2009
Affirmed
Stauber, Judge**

Mower County District Court
File Nos. 50CR062832; 50CR063328

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

UNPUBLISHED OPINION

STAUBER, Judge

Appellant's bail bond was forfeited when the defendant did not appear for his court hearing. Appellant claims that the district court abused its discretion by forfeiting the bond and awarding a portion of the proceeds as restitution. We affirm.

FACTS

In the fall of 2006, defendant Timothy Clyde Askland was charged in separate complaints with two counts of felony non-support of a child in violation of Minn. Stat. § 609.375, subd. 2a (2006), and one count of driving after cancellation in violation of Minn. Stat. § 171.24 (2006). On October 30, 2006, defendant appeared in custody for a rule 5 hearing, and the district court released him on his own recognizance with conditions. Defendant failed to appear for his arraignment on November 9, 2006, and a bench warrant was issued. Defendant was later apprehended and appeared before the district court on April 17, 2007. The district court set bail at \$10,000 with conditions. On April 24, 2007, appellant Howe Bonding posted a \$10,000 bail bond guaranteeing defendant's appearance in court on the charges. Defendant subsequently failed to appear for a May 24, 2007, court hearing. As a consequence of defendant's failure to appear, on June 14, 2007, the district court revoked the conditions of release and ordered the bail bond posted by appellant forfeited.

Ninety days after the forfeiture order, appellant petitioned the court for a 45-day extension of the bail bond. In its supporting affidavit, appellant stated that it had received new information that defendant had moved to the Cresco, Iowa, area, and appellant was

in the process of gathering more information about his whereabouts. Appellant also assured the court that it would forfeit the bond proceeds if defendant was not located prior to expiration of the extension. The district court granted the extension, but specifically indicated that there would be “no further extensions.” The 45 days passed without apprehension of defendant. On November 28, 2007, the court ordered the bond proceeds forfeited and directed court administration to disperse the proceeds to Mower County Human Services (MCHS). MCHS in turn released the money to the mother of defendant’s child as restitution for unpaid child support.

In November 2007, appellant received information that defendant was working for a traveling carnival company in Louisiana. On November 30, 2007, appellant’s agents apprehended defendant in Louisiana and returned him to Minnesota. Defendant later pleaded guilty to all of the charges.

Appellant petitioned for reinstatement and discharge of the bail bond based on its success in locating defendant. The district court summarily denied the petition. Appellant appealed the decision to this court, but later entered into a stipulated motion with the state to dismiss the appeal and remand for additional findings. This court granted the motion. After an evidentiary hearing, the district court again denied the motion for reinstatement and dismissal. This appeal follows.

D E C I S I O N

I.

The district court has broad discretion in deciding whether to reinstate and discharge a forfeited bail bond, and this court will not reverse its decision absent an abuse

of that discretion. *Shetsky v. Hennepin County*, 239 Minn. 463, 471, 60 N.W.2d 40, 46 (1953); *see also* Minn. Stat. § 629.59 (2006) (providing that a district 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”). A district court abuses its discretion when its ruling is based on an erroneous view of the law. *Almor Corp. v. County of Hennepin*, 566 N.W.2d 696, 701 (Minn. 1997).

In determining whether the district court abused its discretion in denying a motion to reinstate a forfeited bond, a reviewing court considers:

- (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). The applicant bears the burden of proving that reinstatement and discharge of a bail bond is justified. *Shetsky*, 239 Minn. at 472, 60 N.W.2d at 46.

In denying the motion, the court noted that (1) defendant acted in bad faith by failing to appear; (2) appellant did not move to reinstate the bond until 177 days after the order revoking the bond and 198 days after defendant’s failure to appear; and (3) the state’s interests would be harmed by reinstating the bond because the restitution award would have to be recovered in order to effectuate reinstatement.

Purpose of bail and civil nature of the proceedings

“The primary 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.* at 471, 60 N.W.2d at 46. Bail is also “intended 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.” *Storkamp*, 656 N.W.2d at 542.

Appellant claims that by securing the return of defendant and voluntarily forfeiting the bond proceeds it has accomplished the purpose of bail. But although appellant was eventually successful in apprehending defendant, bail is intended to facilitate the “*prompt and orderly* administration of justice.” *Shetsky*, 239 Minn. at 471, 60 N.W.2d at 46 (emphasis added). Returning an absconding defendant more than six months after the defendant’s scheduled appearance in court does not further this purpose. *See State v. Williams*, 568 N.W.2d 885, 888 (Minn. App. 1997) (stating that “untimely apprehension does not mandate forgiveness of the bond penalty”), *review denied* (Minn. Nov. 18, 1997).

Cause, purpose, and length of the defendant’s absence

A “[d]efendant’s willfulness or bad faith is attributable to the surety” and weighs against forgiveness of a bond penalty. *State v. Vang*, 763 N.W.2d 354, 358 (Minn. App. 2009).

Appellant acknowledges that defendant acted in bad faith and that his conduct is imputed on it for purposes of deciding whether to reinstate a bond. But, relying on

Storkamp, appellant argues that the district court abused its discretion by basing its denial of reinstatement exclusively on defendant's bad faith in failing to appear for court.

Appellant's argument is unpersuasive for two reasons. First, the district court did not rely exclusively on defendant's bad faith. The court also cited the six-month delay in the criminal proceedings and appellant's knowledge of defendant's propensity to disregard court orders. Second, the supreme court in *Storkamp* did not indicate that bad-faith conduct alone is insufficient to deny reinstatement of the bond. Rather, it held that a court must "explain why the bad-faith conduct trumped" the other factors. *Id.* at 542.

Good-faith efforts of the surety to apprehend and produce defendant

The district court stated that appellant "arguably" made a good-faith attempt to apprehend and produce defendant, but seemed to qualify its approval of appellant's efforts by noting that a "[s]urety must be presumed to be aware of its own client's propensity to miss Court dates." As the court noted, appellant agreed to post bond with full awareness that defendant had previously failed to appear for arraignment and had twice been found in contempt for failure to comply with court-ordered child support. Therefore, appellant was on notice of defendant's prior unwillingness to comply with court orders. Furthermore, some of the evidence in the record suggests that appellant did not begin monitoring defendant's whereabouts until weeks after the district court revoked the bond.

Prejudice to the state

"The general rule is that relief from forfeiture will not be granted where the prosecution has been deprived of proof by delay or has otherwise been adversely

affected.” *Shetsky*, 239 Minn. at 470, 60 N.W.2d at 45. Focusing on the fact that court administration had already released the bond proceeds to MCHS as partial restitution for delinquent child support payments, the district court noted that if the bond were reinstated the restitution award would have to be recovered. The court feared that the county would be forced to produce the \$10,000 from its own budget because the proceeds had already been disbursed to the mother of defendant’s child, and it was unlikely that the mother would still have it in her possession.

The prejudice identified by the court is not a valid basis for denying reinstatement. The decision to release the funds did not result in any adverse consequences *to the prosecution*. Moreover, any hardship derived from the court’s erroneous decision to release the funds to the mother before the expiration of the 180-day period for appellant to petition for reinstatement. *See* Minn. R. Gen. Pract. 702(f) (providing that a surety is entitled to move for reinstatement up to 180 days after the forfeiture order). In order to preserve a surety’s right to petition for reinstatement, a court must refrain from releasing the funds until at least 180 days after the bond was forfeited.

Despite the lack of prejudice to the prosecution, the district court’s findings under the other factors are supported by the record and demonstrate that the decision to deny reinstatement and discharge of the bond was not an abuse of discretion.

II.

Appellant argues that the district court erred by ordering the release of the bond proceeds to MCHS (and thereafter to the mother) because (1) appellant’s bond contract with defendant explicitly stated that no portion of the funds could be used for restitution

or to pay court fines; (2) state law required that the bond proceeds be deposited with the state treasurer; and (3) defendant had not been convicted of the offenses at the time of the proceeds were released.

The 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.”). 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.” (quotation omitted)).

Appellant’s assertion that the district court’s distribution of the bond proceeds must comply with the terms of the bond contract is unpersuasive. When a defendant in a criminal proceeding posts a bond and fails to make a court appearance, the bond is in default. The penalty for default is forfeiture. *Storkamp*, 656 N.W.2d at 541. Once the bond is forfeited, it belongs to the court, and any contract between the bonding company and the defendant no longer controls.

Relying on Minnesota General Rule of Practice 702(g), appellant also claims that the payment of the bond proceeds to the mother of defendant’s child was error. We agree. Rule 702(g) states that “[a]ll forfeited bail money shall be deposited in the state

treasury.” Minn. R. Gen. Pract. 702(g). Forfeited bond proceeds constitute “bail” under the rule. *See Black’s Law Dictionary* 150 (8th ed. 2004) (defining “bail” 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”). Therefore, based on the express language of the rule requiring deposit of the forfeited bond with the state treasurer, the district court had no authority to award the proceeds as restitution. The state claims that Minn. Stat. § 485.018, subd. 5 (2008), grants district courts the discretion to award forfeited bond proceeds as restitution. The statute provides that:

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 (emphasis added). But payment of forfeited bond proceeds as restitution may only be made *pursuant to existing law*. *Id.* The state has failed to cite any existing law that allows a district court to award forfeited bond proceeds as restitution. Accordingly, the payment of the forfeited bond proceeds as restitution was error. But a finding of error does not end the analysis. In order for appellant to obtain relief, it must demonstrate both error and prejudice resulting from that error. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975). This it has not done. Appellant is unable to establish any harm caused by the error. Upon forfeiture of the bond, appellant no longer maintained an interest in the proceeds, and the disposition of the proceeds was irrelevant. Thus, appellant is not entitled to relief.

Finally, appellant argues that the district court erred by releasing the funds before defendant's conviction. We agree that the release of the funds was premature, but because defendant was later convicted, this error was also harmless. *See id.*

Because the district court did not abuse its discretion in refusing to reinstate and discharge the forfeited bond, and because appellant was not harmed by the erroneous and premature release of the bond proceeds to the victim of defendant's crimes, we affirm.

Affirmed.