

2012 IL App (2d) 120259-U
No. 2-12-0259
Order filed September 17, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of De Kalb County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 11-DT-643
)	
MARGARET FINN,)	Honorable
)	William P. Brady,
Defendant-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: The trial court erred in granting defendant's petition to rescind the statutory summary suspension of her driving privileges, because the State met its burden of showing that the breath test machine used, which did automatic self-checks, was adequately checked for accuracy as required to establish a sufficient foundation for the defendant's breath test results. We therefore reversed and remanded.

¶ 1 On December 18, 2011, defendant, Margaret Finn, was arrested for driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2010)), and her driving privileges were summarily suspended (see 625 ILCS 5/11-501.1 (West 2010)). On January 12, 2012, defendant petitioned to rescind the summary suspension. The trial court subsequently granted the petition, and

the State appeals. The State argues that the trial court erred in: (1) ordering it to commence the hearing on the petition to rescind without proper notice; (2) becoming an advocate for defendant; and (3) granting the petition on the basis that the breath test was unreliable. We agree with the State's last argument and therefore reverse and remand.

¶ 2

I. BACKGROUND

¶ 3 After defendant filed the petition to rescind the summary suspension, on January 19, 2012, the State filed a motion to set a hearing date on the petition. The same day, the trial court entered an order striking a January 26 court date and continuing the case to February 10, 2012, for a "Petition Hearing on DUI SSS" "on the motion of" defendant.

¶ 4 In the interim, on February 2, 2012, defendant filed a motion to set a discovery compliance deadline and to extend the effective date of the statutory summary suspension. She alleged in relevant part that her ability to drive was crucial to be able to travel to the V.A. hospital, where her husband was receiving treatment, and to be able to take care of her elderly parents, one of whom had dementia. Defendant filed a request for an immediate hearing on the motion; the motion stated that her statutory summary suspension was going into effect that day but the next court date was not until February 10. Also on February 2, the State filed a motion for substitution of judges, alleging that Judge Klein was prejudiced against the State.

¶ 5 Later that afternoon, the parties appeared in court before Judge Klein. The parties acknowledged their pending motions, and defense counsel stated that he had received discovery that day. He stated that, in addition to discovery, his motion was to "extend the implementation of" the statutory summary suspension that had taken effect, because defendant's parents needed constant care. The State replied that "discovery has been tendered, so the only issue is going to be extending

the statutory provisions for statutory summary suspension.” Judge Klein entered an order continuing the case to the next day for a hearing before Judge Brady on the “Emergency Motion Statutory Suspension.”

¶ 6 The next day, on Friday, February 3, defendant filed an emergency motion for a statutory summary suspension hearing. She stated that her statutory summary suspension went into effect at midnight on February 2, and she reiterated the allegations about her husband and parents. Defendant alleged that she had filed an emergency motion the previous day, but it was not heard due to the State’s motion to substitute judges. She requested that the trial court set a deadline for her discovery request and extend the statutory summary suspension effective date so she could keep her driving privileges.

¶ 7 At a hearing that day, the State informed Judge Brady that it had just received the motion defendant had filed that day and was not ready to respond. The State indicated that its motion to substitute judges and defendant’s prior emergency motion were before the court. Defense counsel stated that he had received discovery, and that that day negotiation efforts had failed. Therefore, he filed his second emergency motion asking for the statutory summary suspension hearing *instanter*.

¶ 8 The State noted that defendant’s prior motion was not for a hearing on the statutory summary suspension, but rather to delay the effective date of the suspension. Defense counsel replied that he was seeking relief from the statutory summary suspension that went into effect, which included “any other relief” that would allow defendant to drive. The State objected, stating that it was not willing to waive notice on the hearing for the petition to rescind and that it was not prepared to have a hearing on the petition that day. Defense counsel acknowledged that he did not have any authority to cite for the proposition that the trial court could change the effective date of the summary

suspension. He reiterated that he “was clear yesterday” that he was asking for relief from the summary suspension.

¶ 9 The trial court stated that it fit within its schedule to begin the hearing that day, with the defendant putting on her case. If the State moved for a directed finding and the trial court granted it, the case would be done that day. Otherwise, it would continue the case until Monday, which would allow the parties time to submit case law. The trial court inquired whether the arresting officer would be available that Monday, and the State responded that it could probably have him there if he was not on vacation.

¶ 10 The trial court further stated that the purpose of the 30-day requirement for a statutory summary suspension is to allow the defendant the opportunity to challenge the suspension prior to it going into effect, or at the earliest possible date. The trial court stated that the hearing on the statutory summary suspension was originally set for January 19; that the State knew that defendant was seeking a rescission; and someone from the State would have looked at the file because of the hearings on the case. The trial court stated that it was not putting the State at a disadvantage but instead was probably putting it at an advantage, in that the State could hear the defendant’s side and then have all weekend before presenting its case. The trial court stated that it was sure that the State was aware of the facts and circumstances of the case and could cross-examine the defense witnesses. Over the State’s objection, the trial court proceeded with the hearing.

¶ 11 Defendant then testified as follows. She lived in Sycamore. On the evening of December 18, 2011, she drank wine in Des Plaines, which was over an hour’s drive from Sycamore. Defendant did “not really” know how much wine she had consumed, but she “believe[d]” it was a “couple of glasses.” She then rode with friends from Des Plaines to Dundee, where she had parked her car.

When defendant got into her car, she did not feel intoxicated and felt that she could operate her car safely. Around midnight, she was pulled over by a deputy and arrested for DUI. She was taken to the DeKalb County Sheriff's Department, where she took a breath test. Prior to the test, she did not vomit or regurgitate anything. Defendant had chronic bronchitis, which was different from asthma, and it caused her to have a cough, mucus in her chest, and problems breathing. She took medication for it in the form of Albuterol in an inhaler. She had last used the inhaler in the afternoon of the incident, before consuming any alcohol. Defendant was also taking over-the-counter medication for a cold, which was causing her shortness of breath. Defendant was aware of the legal limit for alcohol, and she was surprised when she found out the breath test result. Defendant acknowledged that she did not know how the Breathalyzer operated internally. She did not think that she had committed the crime of DUI when she was stopped.

¶ 12 After cross-examining defendant, the State moved for a directed finding, and the trial court denied the motion. It continued the case to the following Monday for the presentation of the State's witnesses.

¶ 13 On Monday, February 6, the State renewed its motion for a directed finding, which the trial court denied. It stated that it found defendant's testimony reasonable and credible and sufficient to call into question the Breathalyzer's accuracy and shift the burden to the State.

¶ 14 The State then called its witness, DeKalb county Sheriff's Deputy Ben Hiatt, who provided the following testimony. At about midnight on December 18, 2011, he received a reckless driving call that resulted in defendant's DUI arrest. He transported her to the sheriff's department, where defendant waived her *Miranda* rights. Hiatt asked defendant if she had taken any prescription or over-the-counter medication in the last six hours, and she said no. He asked if she had diabetes,

asthma, or epilepsy, and defendant replied in the negative. Defendant did not tell him that she had chronic bronchitis, that she had been prescribed an Albuterol inhaler, or that she had used her inhaler that day. Defendant also did not request to use her inhaler. After a 20-minute observation period, during which defendant did not regurgitate or vomit, Hiatt offered her a Breathalyzer test. Hiatt testified regarding his training to administer Breathalyzer tests, and his certification was admitted into evidence.

¶ 15 Hiatt administered the breath test using an Intoxilyzer EC-IR, which was a type of machine approved by the Illinois State Police. The department had been using that type of machine for at least ten years. The machine automatically checked itself at the beginning of each month, and it was tested on December 1, 2011. It also did a self-check whenever it was turned on. Hiatt identified copies of the slips that the machine printed off dated December 1, 2011, and January 1, 2012, which indicated that it had passed the self-checks. The latter slip was later admitted into evidence. Hiatt did not know how the machine actually checked itself. If the machine did not pass its self-check, it would say that it was out of service and not allow for a breath test. It would then stay out of service until a State Police worker came and corrected the issue. Before the machine was put back into service, it would have to pass an accuracy check. The machine was never out of service between December 1, 2011, and January 1, 2012.

¶ 16 Hiatt identified a copy of the slip printed for defendant's breath test. It included her identifying information, the test date, and stated that the system check passed. Hiatt administered the test in accordance with his training. Defendant provided a sufficient breath sample for the machine to take a reading, and she did not appear to have any difficulty doing so. Her blood alcohol

reading was .124. Hiatt recorded the reading in a logbook, and a copy of the page was admitted into evidence.

¶ 17 Hiatt testified that if a person stopped blowing or was not able to get enough air through the machine, the machine would say “ ‘insufficient breath’ ” and not take a sample. He would exchange the mouthpiece, the machine would purge itself, and he would try again. Three insufficient breaths in a row is counted as a “failure.” If something other than breath entered the machine, the machine would say “mouth alcohol” and not take a sample. Saliva or spit could not get into the machine itself because it would be filtered out. Hiatt was trained that a limited airway could cause a person to be unable to give a sample, but if there was enough air in the machine to take a sample, it was a correct reading. He was never taught that an inhaler could skew the results. He had known that the machine was out of service once, but it was not out of service when defendant used it.

¶ 18 The trial court questioned how long it had been since the State Police stopped testing the machines in person. Hiatt said that it was fairly recently, in 2010 or 2011.

¶ 19 The defense moved to exclude defendant’s breath slip based on foundation. The defense argued that Hiatt was trained on how to operate the machine but not on its internal mechanics, and that there was not enough foundation to substantiate that defendant’s medical condition fell within the parameters of the stereotypical person the machine was designed to test. The trial court stated that it wanted to revisit the admission of the results into evidence and asked the State to argue why it thought it had met its burden.

¶ 20 The State argued as follows. The machine was working properly based on Hiatt’s testimony of his training and experience and the presumption from the Illinois Administrative Code (Code) arising from the accuracy testing that was done before and after defendant’s test, on December 1,

2011, and January 1, 2012. Defendant did not tell Hiatt of her medical condition or medications despite his questions. Further, he did not observe her having trouble breathing, and if she had not been able to produce a sufficient breath sample, the machine would have indicated that. Defendant did not present any evidence, such as expert testimony about Albuterol, to rebut the presumption that the machine was operating properly.

¶ 21 The trial court questioned whether the machine had to be checked every 62 days. The State replied in the affirmative and stated that accuracy checks were done remotely on the 1st of each month. The trial court stated that it was aware of the evidence of the self-checks but questioned whether it could rely on them. The State stated that self-checks were approved under the Code. The trial court stated that the administrative rules did not reference “how it happens, how that works ***.”

¶ 22 The State stated that due to the “time constraints of the hearing,” it had tried to bring someone from the State Police, but no one was available. The trial court asked if someone would have been available in four days, when the hearing was originally set. The State replied that it had not anticipated having someone there on the 10th, but if it had been aware the previous Friday that the self-check was going to be an issue, it may have been able to have someone there on the 10th.

¶ 23 The defense argued that it had made a *prima facie* case and it was now the State’s burden to prove the accuracy of the test. The defense questioned the test’s accuracy based on defendant’s bronchitis and consumption of Albuterol.

¶ 24 The trial court stated that the supreme court required a *Frye* hearing in order to use HGN tests for DUI cases. It asked the State if it was aware of any court approval of the automated system check. The Stated cited section 1286.200 of the Code (20 Ill. Admin. Code 1286.200 (2009)) as

stating that a rebuttable presumption existed that the machine was accurate if four conditions were met. The trial court stated that the regulations included approval of the Intoximeter EC-IR but did not mention approving it for self-checks. The State pointed out that defendant's argument was not that the machine was not functioning accurately, but rather that her condition affected the sample. The trial court agreed but further stated that the Code did not mention that the machine was approved for both obtaining breath analysis readings and doing automated system checks. It questioned whether the science underlying the self-checks was accepted. The trial court stated that it would render its ruling after reviewing the Code and case law.

¶ 25 The trial court granted defendant's petition to rescind on February 7, 2012. It entered a written order on February 9, in which it made the following findings. The testimony of both witnesses was credible. Defendant testified that she had little to drink on the evening prior to her arrest; that she had not had anything to drink for at least two hours prior to the breath test; that she had not violated any traffic laws; and that she was not under the influence of alcohol. She challenged the statutory summary suspension solely on the grounds of the breath test's accuracy. Defendant's testimony that she had little or nothing to drink before the arrest was reasonable and credible, and she established a *prima facie* case that the test result was inaccurate. The burden of proof then switched to the State to provide a sufficient foundation for the admission into evidence of the Breathalyzer results. The Code requires that accuracy checks be done in a timely fashion. Hiatt's testimony established that the Breathalyzer was not tested by a breath analysis technician as authorized by the Code, but rather by an automated system accuracy check. The Code authorized the type of machine used, but the Code "does not define or otherwise identify how the automated system check is to work or be tested" and "does not mention anything regarding the automated

system accuracy check being used in place of a breath analysis technician.” Hiatt was unaware of how the machine checked itself, and there was no testimony “as to how or if the automated system is checked for accuracy.” There was also no evidence that the scientific principles behind the automated check are sufficiently established to have gained general acceptance in the field. The State did not challenge defendant’s testimony that she was driving properly and not under the influence of alcohol, nor did it provide evidence that the automated system check used was reliable or approved by the State Police. Accordingly, the State failed to meet its burden that the machine used was adequately checked for accuracy as required to establish a sufficient foundation, and defendant’s petition to rescind was granted.

¶ 26 The State timely appealed.

¶ 27 II. ANALYSIS

¶ 28 As we find the State’s third argument on appeal dispositive, we turn to that argument. The State contends that the trial court erred in finding the Breathalyzer results unreliable and granting defendant’s petition to rescind her statutory summary suspension. A hearing on a petition to rescind a summary suspension of driving privileges is a civil proceeding in which the defendant has the burden to establish a *prima facie* case for rescission. *People v. Pollitt*, 2011 IL App (2d) 091247, ¶ 13. The burden then shifts to the State to present evidence justifying the suspension. *Id.* On review, we apply the same bifurcated standard of review that applies to motions to suppress. See *People v. Wear*, 229 Ill. 2d 545, 560-562 (2008). We defer to the trial court’s factual findings unless they are against the manifest weight of the evidence, but we review *de novo* the trial court’s determination of whether the petition to rescind should be granted. *Id.* at 561-62.

¶ 29 As part of its argument that the trial court erred in granting the petition to rescind, the State asserts that the trial court erred in finding that defendant presented a *prima facie* case based on her testimony. When a defendant challenges the results of a Breathalyzer test, as in this case, he or she must make a *prima facie* case that the test results are unreliable. *People v. Aleliunaite*, 379 Ill. App. 3d 975, 978 (2008). *Prima facie* evidence is equivalent to the amount of evidence required under the preponderance-of-the-evidence standard. *People v. Bonutti*, 338 Ill. App. 3d 333, 342 (2003). To attack breath test results, the defendant must show that the breath test was not properly administered; the result was not accurate and trustworthy; or regulations regarding such testing were violated. *People v. Barwig*, 334 Ill. App. 3d 738, 744 (2002). If a defendant fails to establish a *prima facie* case, the State is entitled to a directed finding in its favor. *Aleliunaite*, 379 Ill. App. 3d at 978. Otherwise, the burden shifts to the State to rebut the *prima facie* case. *Id.* We review a trial court's finding that the defendant presented a *prima facie* case under the manifest-weight-of-the-evidence standard. *People v. Paige*, 385 Ill. App. 3d 486, 489 (2008). For a decision to be against the manifest weight of the evidence, the opposite conclusion must be clearly evident. *Barwig*, 334 Ill. App. 3d at 743.

¶ 30 Here, the State argues the trial court's finding that defendant established a *prima facie* case is against the manifest weight of the evidence. The State maintains that many DUI defendants are "surprised" at their intoxication. The State also argues that defendant's testimony contained many gaps or inconsistencies, in that defendant: failed to mention having taken both her prescription inhaler and over-the-counter medication in response to the officer's questions; failed to mention her chronic bronchitis to the officer; did not have any difficulty producing the breath sample; and did not mention her inhaler to the officer or request to use it.

¶ 31 “Where the motorist argues for rescission on the basis that the test results were unreliable, such evidence may consist of any circumstance which tends to cast doubt on the test’s accuracy, including, but not limited to, credible testimony by the motorist that he was not in fact under the influence of alcohol.” *People v. Orth*, 124 Ill. 2d 326, 341 (1988). A defendant’s testimony that he had little or nothing to drink prior to the arrest may be sufficient for a *prima facie* case that the breath test result was not accurate. *People v. Stanton*, 269 Ill. App. 3d 654, 657 (1995). Here, defendant testified that she had a “couple” of glasses of wine at a restaurant in Des Plaines; got a ride from there to Dundee; was aware of the legal limit of alcohol consumption; was surprised at her breath test results; had chronic bronchitis; and had used an inhaler and over-the-counter cold medicine that day. The trial court found her testimony credible. Where the trial court bases its findings on witness credibility, we may not substitute our judgment for the trial court’s judgment. *People v. Fortney*, 297 Ill. App. 3d 79, 89 (1998). Considering the self-reported amount and timing of defendant’s alcohol consumption, along with the trial court’s credibility determination, we cannot say that its finding that defendant presented a *prima facie* case is against the manifest weight of the evidence. Compare *People v. Culpepper*, 254 Ill. App. 3d 215, 217, 223 (1993) (trial court did not err in finding that the defendant had made a *prima facie* case where she testified that she drank about 1½ drinks in a 2½ hour period before her car accident, and over one hour passed before a blood sample was taken) with *Fortney*, 297 Ill. App. 3d at 88-89 (trial court did not err in ruling that the defendant failed to make a *prima facie* case where she drank three or four glasses of champagne in a 45- to 60-minute period, and she gave conflicting answers about whether she felt that she was under the influence of alcohol); see also *People v. Smolinski*, 235 Ill. App. 3d 1026, 1035 (1992) (the trial court did not err in finding that the defendant made a *prima facie* case where he testified that he

drank three martinis over a four-hour period, during which he also ate food, and that when he took the Breathalyzer test, he felt fine and did not believe that he was under the influence of alcohol).

¶ 32 The State additionally argues that the trial court erred in granting the petition to rescind on the basis that the breath test was unreliable. If a defendant makes a *prima facie* case that the breath test result did not accurately reflect his or her blood alcohol concentration, “the State can only avoid rescission by moving for the admission of the test into evidence and laying the required foundation.” *Orth*, 124 Ill. 2d at 340. The foundation consists of the evidence of the following: (1) the test was performed according to uniform standards adopted by the Department of State Police¹; (2) the operator conducting the test was certified by the Department of State Police; (3) the machine used was a model approved by the Department of State Police, was regularly tested for accuracy, and was working properly; (4) the motorist was observed for 20 minutes before the test and did not smoke, regurgitate, or drink during this time; and (5) results appearing on the machine’s printout can be identified as the test given to the motorist. *Id.* Here, the trial court found the State’s foundation for the Breathalyzer results insufficient based solely on accuracy testing, a component of the third factor.

¶ 33 Similar to the factors set forth in *Orth*, section 11-501.2(a) of the Illinois Vehicle Code states in relevant part that in a civil or criminal proceeding arising from a DUI, evidence of the concentration of alcohol in a person’s breath is admissible. 625 ILCS 5/11-501.2(a) (West 2010). It further states that chemical analysis of a person’s breath is considered valid if it was performed according to standards promulgated by the Department of State Police. *Id.* Only substantial

¹In 2001, reference to the Department of Public Health was replaced with reference to the Department of State Police in section 11-501.2(a) of the Illinois Vehicle Code (625 ILCS 5/11-501.2(a) (West 2010)). See Pub. Act 91-828, § 5 (eff. Jan. 1, 2001).

compliance with the Department's standards is required to lay a proper foundation for the admission of breath test results. *People v. Ebert*, 401 Ill. App. 3d 958, 963 (2010); see also *People v. Claudio*, 371 Ill. App. 3d 1067, 1070 (2007) (evidentiary foundation for admitting a defendant's breath test results is the same in both a summary suspension hearing and a criminal trial).

¶ 34 We therefore look to the State Police's standards, as set forth in administrative regulations. Section 1286.200 of Title 20 of the Code, entitled "Equipment Approval and Accuracy," states that the "procedures contained in this Subpart are the only procedures for establishing the accuracy of breath testing instruments." 20 Ill. Admin. Code 1286.200 (2009). Section 1286.200 further states that there is a rebuttable presumption that a breath testing machine was accurate if four conditions are met, including, as relevant here, that "[a]ccuracy checks have been done in a timely manner, meaning not more than 62 days have passed since the last accuracy check prior to the subject test." *Id.*

¶ 35 Contrary to the trial court's apparent belief that the Code does not contemplate automatic or remote accuracy checks, section 1286.230, entitled "Checking Approved Evidentiary Instruments for Continued Accuracy," is clear in its acceptance of automated/automatic accuracy checks. It provides: "To ensure the continued accuracy of approved evidentiary instruments, a BAT *or automated system* shall perform accuracy checks."² (Emphasis added.) 20 Ill. Admin. Code 1286.230 (2011). This provision is in direct contradiction to the trial court's statement, in its order, that the Code "does not mention anything regarding the automated system accuracy check being used in place of a breath analysis technician." Section 1286.230 also states that "[t]he automatic accuracy checks or accuracy checks performed remotely will not be entered in the instrument logbook." 20

²"BAT" refers to a "Breath Analysis Technician." 20 Ill. Admin. Code 1286.10 (2009).

Ill. Admin. Code 1286.230 (2011).³ We note that the language quoted in this paragraph was effective October 31, 2011, well before the December 1, 2011, accuracy check and defendant's December 18, 2011, breath test. See 20 Ill. Admin. Code 1286.220, amended at 35 Ill. Reg. 18897 (eff. Oct. 31, 2011); see also 20 Ill. Admin. Code 1286.80, amended at 35 Ill. Reg. 18897 (eff. Oct. 31, 2011) (providing that beginning on January 1, 2012, new stationary breath test machines must be connected to the State Police network).

¶ 36 Defendant argues that “[r]egardless of whether the provisions of the Illinois Administrative Code contain a reference to an automated system check, the trial court was within its discretion to make a determination that the State’s evidence, or lack thereof, failed to demonstrate the reliability of the Breathalyzer results in this instance.” Although defendant invokes the trial court’s “discretion,” as stated, we review the trial court’s factual findings using a manifest-weight-of-the-evidence standard and review *de novo* the determination of whether the petition to rescind should be granted. *Wear*, 229 Ill. 2d at 561-62. Moreover, as discussed, chemical analysis of a person’s breath is considered valid if it was performed according to State Police regulations (625 ILCS 5/11-501.2 (West 2010)), so focus on the relevant sections of the Code is paramount.

¶ 37 In sum, section 1286.200 creates a rebuttable presumption that a breath testing machine was accurate if four conditions are met, the one relevant here being that accuracy checks have been done at least every 62 days. 20 Ill. Admin. Code 1286.200 (2009). In this case, the evidence showed that accuracy checks were done on December 1, 2011, and January 1, 2012, though they were done automatically. Still, section 1286.230 allows continued accuracy checks to be done either by a breath

³This sentence is also present in section 1286.220, entitled “Checking Approved Evidentiary Instruments for Accuracy.” 20 Ill. Admin. Code 1286.220 (2011).

analysis technician or an “automated system.” 20 Ill. Admin. Code 1286.230. Thus, the automatic accuracy checks here were consistent with State Police regulations, creating the rebuttable presumption that the breath test result was accurate, contrary to the trial court’s ruling. Although defendant argued that her bronchitis, use of an inhaler, and use of cold medicine were not properly accounted for by the machine, the trial court did not make any such findings, but instead incorrectly ruled that the State had not met its burden that the machine used was adequately checked for accuracy. Accordingly, the trial court erred in granting defendant’s petition to rescind her statutory summary suspension.

¶ 38 Based on our resolution of this case, we do not analyze the State’s other arguments on appeal, namely that the trial court (1) erred in ordering it to proceed with the hearing on the petition to rescind without proper notice, and (2) improperly served as an advocate for defendant by raising the issue of automated accuracy checks. However, we do note on the former issue that defendant was well-aware of the effective date of her summary suspension and the February 10 hearing date weeks in advance. Thus, for the trial court to subsequently grant her February 3 “emergency” motion based on these pre-established dates and begin a summary suspension hearing *instanter*, over the State’s objection, was inappropriate. We do not comment on whether this issue alone would warrant reversal.

¶ 39

III. CONCLUSION

¶ 40 For the reasons stated, we reverse the judgment of the De Kalb County circuit court and remand for further proceedings.

¶ 41 Reversed and remanded.