

2014 IL App (1st) 122033-U
No. 1-12-2033
June 30, 2014

THIRD DIVISION

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
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. YT 21486345
)	
JANA JAKOVENKO,)	The Honorable
)	Bridget Hughes,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* When a defendant prematurely files a petition to rescind the suspension of her driving privileges, before service of the notice of a statutory summary suspension, the court will construe the petition as filed on the date the State serves the notice of statutory summary suspension. If the trial court fails to hear the petition to rescind the suspension within 30 days of filing, the court must grant the petition.

¶ 2 The State summarily suspended Jana Jakovenko's driving privileges. She appeals from the denial of her petition to rescind the suspension. We agree with Jakovenko that section 2-

118.1 of the Illinois Vehicle Code (Code) (625 ILCS 5/2-118.1(b) (West 2012)) required the court to grant the petition to rescind due to the failure to hold a hearing within 30 days after filing. Accordingly, we reverse the trial court's judgment.

¶ 3

BACKGROUND

¶ 4

On April 11, 2012, a police officer stopped Jana Jakovenko and charged her with driving under the influence. On April 20, 2012, Jakovenko filed a petition to rescind the summary suspension of her driving privileges. The case came before the court on May 22, 2012. The State on that date served Jakovenko in court with notice of the proposed suspension and a sworn report of the officer who stopped her. The State asked to proceed immediately to a hearing on the petition to rescind the summary suspension. Defense counsel argued that the court could not hear the petition because the Secretary of State had not filed a confirmation of the summary suspension. The judge agreed with defense counsel and said, "I'm not going to have a hearing." The prosecutor moved to strike Jakovenko's petition to rescind the suspension, but the trial court denied the motion. Defense counsel pointed out that the Code required a hearing within 30 days of the filing of the petition to rescind. The court nonetheless set June 25, 2012, 34 days after the first court date, as the next court date. The State did not request an earlier date.

¶ 5

The Secretary of State filed the confirmation of the suspension on June 18, 2012. A different judge presided at the hearing on June 25. Defense counsel argued that the Code required the court to grant the petition to rescind the suspension due to the untimeliness of the hearing. The trial court denied the motion. Jakovenko then pled guilty to the charge of driving under the influence of drugs. The trial court sentenced Jakovenko to 1 year of

supervision, 40 hours of community service, and payment of \$1835 in fines, fees and costs. Jakovenko now appeals.

¶ 6

ANALYSIS

¶ 7

On appeal, as in the trial court, Jakovenko relies on *People v. Moreland*, 2011 IL App (2d) 100699, as authority for reversal due to untimeliness of the hearing. Because Jakovenko presents only an issue of law, we review the trial court's judgment *de novo*. *Moreland*, 2011 IL App (2d) 100699, ¶ 5.

¶ 8

In *Moreland*, a police officer stopped Moreland on May 1, 2010, and immediately served him with a notice of summary suspension and a sworn report charging him with driving under the influence. *Moreland*, 2011 IL App (2d) 100699, ¶ 2. On May 4, 2010, Moreland filed a petition to rescind the suspension of his driving privileges. At the first court date, May 21, 2010, Moreland pointed out that the Secretary of State had not filed a confirmation of the suspension. The court did not hear the petition to rescind the suspension on that date. On May 24, 2010, the Secretary of State filed the confirmation of the suspension. At the next court date, on June 4, 2010, Moreland moved to rescind the suspension on grounds that the court failed to hear the petition within the 30-day period set in section 2-118.1 of the Code. The trial court granted Moreland's petition to rescind and the State appealed.

¶ 9

The appellate court applied section 2-118.1(b), which provided:

"Within 90 days after the notice of statutory summary suspension *** served under Section 11-501.1, the person may make a written request for a judicial hearing in the circuit court of venue. *** Within 30 days after receipt of the written request or the first appearance date on the Uniform Traffic Ticket issued pursuant to a violation of Section 11-501, or a similar provision of a

local ordinance, the hearing shall be conducted by the circuit court having jurisdiction." 625 ILCS 5/2-118.1(b) (West 2012).

¶ 10 The *Moreland* court found that the trial court failed to hold the hearing within 30 days after Moreland filed his petition, and therefore the statute required the trial court to grant the petition to rescind the suspension. *Moreland*, 2011 IL App (2d) 100699, ¶ 8; see *People v. Schaefer*, 154 Ill. 2d 250, 262 (1993). The court noted that "without a confirmation of the suspension, there is not a suspension for the trial court to rescind." *Moreland*, 2011 IL App (2d) 100699, ¶ 9, citing *People v. Madden*, 273 Ill. App. 3d 114, 116 (1995). The *Moreland* court explained the proper procedure for hearing a petition filed before the Secretary of State has confirmed the suspension of driving privileges:

"If a defendant files a petition before the Secretary confirms the suspension, the trial court should simply continue the hearing to a date 30 days after the petition is filed. On that hearing date, if the Secretary has not confirmed the suspension, the suspension will be rescinded per *Madden*. However, if the Secretary has confirmed the suspension, the defendant will receive the prompt hearing to which he is entitled under section 2-118.1(b)." *Moreland*, 2011 IL App (2d) 100699, ¶ 12.

¶ 11 The case now on appeal differs from *Moreland* in one significant respect. Jakovenko filed her petition to rescind the suspension not only before confirmation of the suspension, but also before the State served on Jakovenko a copy of the officer's sworn report and the formal notice of summary suspension. The prosecution points out that section 2-118.1 provides that the person who seeks to challenge a summary suspension may make a written

request for a hearing "[w]ithin 90 days *after* the notice of statutory summary suspension [is] served." (Emphasis added.) 625 ILCS 5/2-118.1(b) (West 2012).

¶ 12 We agree with the State that Jakovenko filed her petition to rescind prematurely. Under section 2-118.1, the petitioner cannot properly file the petition to rescind, and the 30 day period cannot begin to run, before the State serves on the petitioner notice of the summary suspension. See *Love v. Pullman Co.*, 404 U.S. 522, 525-26 (1972) (petition for review of employment discrimination claim filed prematurely); *Watson v. Magee Womens Hospital*, 438 F. Supp. 581, 583-84 (W.D. Pa. 1977).

¶ 13 At the hearing on May 22, 2012, the trial court acknowledged that Jakovenko had filed a written petition for a judicial hearing on the summary suspension, and the court denied the prosecution's motion to strike the petition. We see no purpose in requiring Jakovenko to refile her petition after she received formal notice of the summary suspension. See Ill. S. Ct. R. 303(a)(2) (eff. June 4, 2008) (appeal filed prematurely counts as filed once trial court disposes of all postjudgment motions); *Love*, 404 U.S. at 525-26; *Watson*, 438 F. Supp. at 583-84. We construe the petition to rescind the suspension as filed on May 22, 2012, immediately after the State served on Jakovenko the formal notice of summary suspension of her driving privileges. The court set June 25, 2012, as the next court date, and that date falls (1) more than 30 days after the filing of the petition to rescind, and (2) more than 30 days after the May 22, 2012, first appearance date on the Uniform Traffic Ticket issued pursuant to a violation of section 11-501 of the Code. Under *Madden* and *Moreland*, the Code required the trial court to grant the petition to rescind the summary suspension due to the court's failure to hear the petition on or before June 21, 2012.

¶ 14 The State asks us not to follow *Madden* and *Moreland*, and to hold instead that the trial court could have heard the petition to rescind on May 22, 2012, even though the Secretary of State had not filed a confirmation of the summary suspension. The State further contends that Jakovenko bears responsibility for the delay in the hearing on her petition, because her attorney persuaded the court that it could not hear the case on May 22. However, the Code vests the power to suspend driving privileges in the Secretary of State, and not in municipal police officers and police departments. 625 ILCS 5/2-104(a) (West 2012). The officer who filed the sworn report and department that served the notice on Jakovenko had no power to suspend her driving privileges. See 625 ILCS 5/2-104(a) (West 2012). Prior to the confirmation of the suspension, the Secretary of State had done nothing to restrict Jakovenko's driving privileges. We adhere to the holdings of *Madden* and *Moreland*, that until the Secretary of State confirms a summary suspension, "there is not a suspension for the trial court to rescind" (*Moreland*, 2011 IL App (2d) 100699, ¶ 9), and therefore the trial court cannot hear the petition to rescind the summary suspension.

¶ 15 Thus, the trial court correctly ruled that it could not hear Jakovenko's petition to rescind the suspension on May 22, 2012. Section 2-118.1 of the Code directed the court to hear the petition to rescind the suspension within 30 days of its filing. See *Moreland*, 2011 IL App (2d) 100699, ¶ 8. The State did not request a second court date within 30 days of May 22. The court failed to hold the hearing within the statutorily prescribed time, through no fault of Jakovenko. Therefore, the Code required the trial court to grant the petition to rescind the suspension of Jakovenko's driving privileges. Accordingly, we reverse the judgment of the trial court and remand for entry of a judgment granting the petition to rescind the suspension of Jakovenko's driving privileges.

¶ 16

CONCLUSION

¶ 17

Although Jakovenko prematurely filed her petition to rescind the suspension of her driving privileges, before service of the notice of suspension, we construe the petition as filed on the date she received the notice. Because the trial court failed to hear the petition within 30 days of filing, through no fault of Jakovenko, the trial court must grant the petition to rescind the suspension. Accordingly, we reverse the trial court's judgment and remand with directions to grant the petition to rescind the suspension of Jakovenko's driving privileges.

¶ 18

Reversed and remanded with directions.