

¶ 3 Defendant appeals, asserting (1) the State forfeited any challenge to whether defendant established a *prima facie* case for rescission by failing to request a directed judgment and subsequently presenting evidence, (2) the trial court erred by finding defendant presented inadequate foundation for the admission of defendant's medical records, and (3) the court erred by excluding defendant's nonmedical expert's testimony as it related to the contents of defendant's medical records. Because we conclude defendant's case is moot, we dismiss the appeal.

¶ 4 I. BACKGROUND

¶ 5 On August 21, 2011, Trooper Andrew Hale of the Illinois State Police issued defendant a traffic ticket for driving under the influence of alcohol (DUI) (625 ILCS 5/11-501 (West 2010)), following a roadside safety check. Hale stated he had reasonable grounds to believe defendant committed a DUI because defendant (1) had red, glassy, and bloodshot eyes; (2) had a strong odor of alcoholic beverage emanating from his breath; and (3) failed the field sobriety tests. Following his arrest, defendant submitted to an evidentiary breath alcohol test, the results of which indicated defendant had a blood alcohol concentration (BAC) of 0.157. Because defendant's BAC was over the legal limit of 0.08 and the Secretary of State's records revealed defendant was not a first offender, his license was subject to a statutory summary suspension of at least one year pursuant to section 6-208.1 of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/6-208.1 (West 2010)). Defendant's statutory summary suspension was scheduled to begin October 6, 2011, with a provisional reinstatement date of October 6, 2012.

¶ 6 On September 1, 2011, defendant filed a request for a hearing to rescind his statutory summary suspension pursuant to section 2-118.1 of the Vehicle Code (625 ILCS 5/2-118.1 (West 2010)). The motion alleged, in part, the arresting officer had no reasonable grounds

to believe defendant was under the influence of alcohol, drugs, or any combination thereof. Defendant also asserted the officer failed to properly administer field sobriety and chemical testing.

¶ 7 In August 2012, the trial court conducted a hearing on defendant's petition to rescind his statutory summary suspension. Defendant first called Hale to testify. Hale testified he attended the police academy in Springfield, Illinois, in 2008, where he had the opportunity to study the 2006 National Highway Traffic Safety Administration (NHTSA) manual to learn DUI detection and the proper administration of field sobriety testing. He explained the process by which he administered the field sobriety tests to defendant.

¶ 8 Defendant sought to introduce his medical records into evidence, citing Illinois Supreme Court Rule 236 (eff. Aug. 1, 1992), but the trial court excluded the records due to lack of foundation. At the time, defendant did not have a live witness or affidavit to establish the foundation for the medical records. Defendant then called Gary Lowe, whom the parties stipulated to be an expert in the administration of field sobriety testing.

¶ 9 Lowe testified Hale made numerous mistakes when administering the field sobriety tests, mistakes which rendered the tests invalid and called Hale's reasonable suspicion into doubt. Defendant sought to proffer testimony that Lowe relied on defendant's medical records in reaching his conclusion that Hale administered the field sobriety tests improperly. The court allowed the testimony subject to a later determination of its admissibility. The court then ordered defendant to file a brief following the hearing regarding whether a nonmedical expert could be permitted to rely on medical reports in forming his opinion about the validity of field sobriety testing.

¶ 10 After defendant rested, the State called Trooper Gary Anderton to testify. The parties stipulated to Anderton's expertise in the administration of field sobriety testing and agreed to admit Anderton's affidavit, which detailed his expert opinion. Anderton opined that though Hale made some mistakes in administering the field sobriety tests, the tests were valid overall.

¶ 11 In September 2012, as ordered by the trial court, defendant filed a brief arguing Lowe should be able to base his opinion on defendant's medical records. The State did not file a brief in response. In November 2012, the court filed a written order denying defendant's motion to rescind the statutory summary suspension and striking portions of Lowe's testimony, finding (1) a nonmedical expert could not testify as to medical records; (2) the State's expert was more credible than defendant's expert; and (3) defendant's expert failed to convince the court by a preponderance of the evidence that defendant's statutory summary suspension should be rescinded. Later that month, defendant filed a motion to reconsider and to reopen proofs. Within the motion, defendant asked the court again to admit defendant's medical records and attached an affidavit from the records custodian in support of the motion. Following a March 2013 hearing, the court denied defendant's motion.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant asserts (1) the State forfeited any challenge to whether defendant established a *prima facie* case for rescission by failing to request a directed judgment and subsequently presenting evidence, (2) the trial court erred by finding defendant presented inadequate foundation for the admission of defendant's medical records, and (3) the court erred by excluding defendant's nonmedical expert's testimony as it related to the contents of defendant's medical records. During the pendency of the appeal, we asked the parties to file

supplemental briefs discussing whether the appeal is moot since the one-year statutory-summary-suspension period has lapsed. Thus, before we reach the merits of defendant's appeal, we must first determine whether it is moot.

¶ 15 "A case is moot where an actual controversy no longer exists or it is impossible to grant effective relief to either party." *People v. Wiley*, 333 Ill. App. 3d 861, 864, 776 N.E.2d 856, 859 (2002). A party may seek review when a case is otherwise moot where (1) the issue is capable of repetition, yet evades review; (2) it is in the public's interest to decide the issues; or (3) a party faces collateral consequences as a result of the trial court's findings. *In re Daryll C.*, 401 Ill. App. 3d 748, 752, 930 N.E.2d 1048, 1052 (2010).

¶ 16 In the present case, the parties do not dispute the period of statutory summary suspension has lapsed, which would ordinarily render the appeal moot. However, defendant asserts all three exceptions to the mootness doctrine apply to this case, which would allow this court to reach the merits of defendant's appeal. We address the exceptions to the mootness doctrine in turn.

¶ 17 A. Capable-of-Repetition-Yet-Evading-Review Exception

¶ 18 Defendant first contends this court should hear his case because the issues presented are capable of repetition, yet evade review. The fact that a person's driving privileges are eligible for reinstatement does not automatically render statutory summary-suspension hearings moot where the issue is likely to reoccur. *People v. Boyd*, 211 Ill. App. 3d 99, 100, 570 N.E.2d 8, 9 (1991). The capable-of-repetition-yet-evading-review exception to the mootness doctrine applies where "(1) the challenged action is in its duration too short to be fully litigated prior to its cessation and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again." *In re Barbara H.*, 183 Ill. 2d 482, 491, 702

N.E.2d 555, 559 (1998). The respondent must demonstrate "a substantial likelihood the issue presented by him, and resolution thereof, would have some bearing on a similar issue in a later case." *In re Joseph P.*, 406 Ill. App. 3d 341, 346, 943 N.E.2d 715, 720 (2010). In other words, respondent must show statutory or constitutional errors made during the trial court proceedings could impact a future case against respondent based on the same errors. *In re Alfred H.H.*, 233 Ill. 2d 345, 359-360, 910 N.E.2d 74, 82-83 (2009). The reviewing court should not resolve a question merely for the sake of setting precedent or to govern future cases. *People v. Meece*, 162 Ill. App. 3d 658, 660, 515 N.E.2d 1321, 1322 (1987).

¶ 19 Defendant contends the issues regarding (1) the admissibility of his medical records and (2) his expert's use of those records to formulate an opinion regarding defendant's physical ability to perform standardized field sobriety tests are likely to reoccur in future proceedings against him and should therefore be reviewed by this court. While we agree the challenged action was in its duration too short to be fully litigated prior to its cessation, we disagree there is a reasonable expectation that defendant would be subjected to the same action again.

¶ 20 The trial court based its decision on the unique facts presented in this case, including the method by which defendant attempted to introduce the medical records into evidence and the nonmedical expert's reliance on and interpretation of those medical records. Though defendant tries to interpret the court's ruling as denying defendant the ability to admit medical records, in reality, the court determined defendant failed to lay the proper foundation for the medical records. As defendant filed additional foundational evidence after the hearing, it is unlikely this same issue will present itself at future proceedings against this defendant.

¶ 21 Additionally, in this particular instance, the trial court expressed reluctance to accept defendant's nonmedical expert because defendant failed to establish field sobriety experts, such as the one proffered by defendant, routinely rely on medical records in formulating their expert opinions. The crux of the matter is defendant failed to lay the foundation necessary to allow his nonmedical expert to testify regarding his reliance on defendant's medical records. The issue of the necessary foundation required for the admission of expert testimony has been extensively reviewed and is well settled. *People v. Williams*, 238 Ill. 2d 125, 137, 939 N.E.2d 268, 274-75 (2010), *aff'd sub nom. Williams v. Illinois*, ___ U.S. ___, 132 S.Ct. 2221 (2012). Absent witness testimony that field sobriety testing experts commonly rely upon medical records in determining whether an individual is an appropriate subject for field sobriety testing, defendant cannot show the court made statutory or constitutional errors that could impact a future case against respondent based on the same errors.

¶ 22 Under the circumstances presented in this case, defendant has failed to demonstrate how the unique facts and issues presented at this stage of the proceedings are capable of repetition, yet evade review.

¶ 23 B. Public-Interest Exception

¶ 24 Defendant further argues the public-interest exception to the mootness doctrine should apply in this case. The narrowly construed public-interest exception to the mootness doctrine allows a reviewing court to consider an otherwise moot case when (1) the question presented is of a public nature, (2) a need exists for an authoritative determination for the future guidance of public officers, and (3) the question is likely to recur in the future. *Alfred H.H.*, 233 Ill. 2d at 355, 910 N.E.2d at 80. Respondent must demonstrate "a clear showing of each criterion." *In re Andrew B.*, 237 Ill. 2d 340, 347, 930 N.E.2d 934, 938 (2010).

¶ 25 Defendant asserts the trial court's decisions to (1) deny the admission of defendant's medical records, (2) strike defendant's nonmedical expert's testimony insofar as defendant's expert relied upon defendant's medical records in formulating his opinion, and (3) find the State did not forfeit its argument that defendant failed to meet his *prima facie* burden, meet the requirements for this exception. We disagree.

¶ 26 Defendant first argues an individual's medical records could assist the trial court in determining whether the individual had a medical condition that would skew field sobriety test results. Defendant's assertion may be true. However, this court must determine whether the issue presented is of sufficient breadth, or has a significant effect on the public as a whole, so as to satisfy the public-nature requirement of the public-interest exception. *Felzak v. Hruby*, 226 Ill. 2d 382, 393, 876 N.E.2d 650, 658 (2007). In this case, the admission of defendant's medical records was a factual issue regarding whether defendant, in this specific case, laid the appropriate foundation. The trial court's ruling did not represent a wide-reaching decision, such as announcing a *per se* ban on the use of medical records in hearings on petitions to rescind statutory summary suspensions. Therefore, defendant has failed to show this issue is of a public nature.

¶ 27 Defendant's argument that his nonmedical expert should have been permitted to testify regarding the opinion he formed, based in part on defendant's medical records, also presents a foundational issue unique to the case. The trial court expressed concerns with respect to defendant's ability to show that experts in the field of sobriety testing commonly relied upon medical records in forming their opinions, and the record reflects defendant failed to ask questions to establish that foundation. Resolution of this issue would simply provide a case-specific review and not work to address the type of broad issues contemplated by the public-

interest exception to the mootness doctrine. See *In re Stephenson*, 67 Ill. 2d 544, 550, 367 N.E.2d 1273, 1274 (1977). Thus, we conclude defendant has failed to demonstrate this issue is of a public nature.

¶ 28 Finally, defendant's assertion that the State forfeited its challenge of defendant's *prima facie* case is unique to the facts presented, and thus, fails to meet the public-interest exception. In this particular circumstance, the trial court took defendant's arguments under advisement pending further briefing from the parties before making a *prima facie* finding. Because the court made no immediate *prima facie* finding, the State did not ask for a directed finding. The sequence of events was unusual and specific to defendant's case; thus, he has failed to demonstrate this issue is of a public nature.

¶ 29 Because we conclude defendant has failed to demonstrate the issues presented on appeal are of a public nature, we need not examine the remaining criteria in holding the public-interest exception to the mootness doctrine does not apply in this case.

¶ 30 C. Collateral-Consequences Exception

¶ 31 Finally, defendant contends the collateral-consequences exception to the mootness doctrine applies. The State concedes this issue. However, because the State's concession is based on the erroneous assumption that defendant is a first offender, we reject the State's concession.

¶ 32 "The collateral consequences exception to mootness allows for appellate review, even though a court order or incarceration has ceased, because a plaintiff has suffered, or [is] threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." (Internal quotation marks omitted.) *Alfred H.H.*, 233 Ill. 2d at 361, 910 N.E.2d at 83. Both defendant and the State seem to assert defendant is a first offender such

that the outcome of the proceedings would (1) impact defendant's ability to have his license reinstated, (2) prolong the length of time his license would be suspended if he picked up a subsequent violation, (3) affect his ability to receive a judicial driving permit or Breath Alcohol Ignition Interlock Device (BAIID), (4) subject defendant to high-risk insurance rates, and (5) increase the possibility of defendant losing his job due to his statutory summary suspension. However, none of these collateral consequences cited by the parties apply to defendant because the Secretary of State's letter clearly states defendant is *not* a first offender, which is also why he faced a statutory summary suspension of 12 months rather than 6 months. See 625 ILCS 5/6-208.1 (West 2010). Under the law, drivers are classified as either first offenders or as subsequent offenders. No separate classification exists for second or third offenders that would carry additional collateral consequences for defendant.

¶ 33 Defendant cites *People v. Cooper*, 174 Ill. App. 3d 500, 503, 528 N.E.2d 1011, 1013 (1988), for the proposition that "the rescission of the summary suspension is not moot, since such a suspension may have collateral consequences." However, that partial quote is mere *dicta* and does not address the circumstances in *Cooper* that may have led to collateral consequences, such as whether defendant was a first offender. Thus, we conclude defendant has failed to establish the collateral-consequences exception to the mootness doctrine applies. Moreover, despite defendant's assertion to the contrary, the collateral consequences of a criminal conviction are irrelevant to defendant's civil statutory summary suspension, as defendant has yet to be convicted of the criminal offense of DUI.

¶ 34 Because we conclude the issues on appeal are moot, we dismiss defendant's appeal.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we dismiss defendant's appeal as moot.

¶ 37 Appeal dismissed.