

No. 2—10—0330

Order filed April 8, 2011

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(c)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ANTHONY GAY,)	Appeal from the Circuit Court
)	of Winnebago County.
Petitioner-Appellant,)	
)	
v.)	No. 07—MR—508
)	
THE PEOPLE OF THE STATE OF)	
ILLINOIS <i>ex rel.</i> LISA MADIGAN,)	Honorable
)	J. Edward Prochaska,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

Held: The trial court’s dismissal of petitioner’s action was not void for its failure to rule on petitioner’s motion for a substitution of judge; petitioner failed to have his motion timely set for a hearing, as required by local rule and case law, and thus was properly deemed to have withdrawn or abandoned the motion.

Pro se petitioner, Anthony Gay, appeals a judgment dismissing his petition against the People of the State of Illinois, *ex rel.* Lisa Madigan (the Attorney General). We affirm.

On September 26, 2007, petitioner, a prisoner at Tamms Correctional Center, filed a “Writ of Execution” (petition), which alleged as follows. In 2004, defendant filed a *pro se* federal civil-rights suit in the Northern District of Illinois, Western Division, against Kevin Wiegand, a

corrections officer, who was represented by the Attorney General. On August 31, 2006, the parties reached a settlement agreement (settlement) under which petitioner would receive \$495 to be set aside in an account that he would control. On November 15, 2006, the federal court approved the settlement and ordered the Attorney General to pay petitioner \$495. However, the Attorney General had not paid petitioner the money. The petition asked the trial court to enforce the settlement by ordering the Attorney General to pay \$495 into an account to be controlled by petitioner.

On November 19, 2007, the Attorney General moved to dismiss under sections 2—615 and 2—619 of the Code of Civil Procedure (735 ILCS 5/2—615, 619 (West 2008)), based on sovereign immunity. The motion contended that, because the suit was in substance an action against the State for damages based on breach of contract, the Court of Claims had exclusive jurisdiction over it.

On December 12, 2007, petitioner responded to the motion to dismiss, asking leave to file an “amended cause of action” that repeated the claim in the original petition and added two counts requesting compensatory and punitive damages against the assistant Attorney General who had negotiated the settlement, alleging that he had done so with no intention of fulfilling its terms. On February 13, 2008, petitioner filed several exhibits in support of the petition.

On March 17, 2008, petitioner filed a letter addressed to Judge Prochaska, stating that he had not heard about the status of his case, including his request to file the amended petition. On June 2, 2008, petitioner filed another letter, addressed to the circuit court clerk, stating that he had earlier moved for leave to file an amended petition and requesting a “status report.”

On September 10, 2008, petitioner moved for a substitution of judge as a matter of right (see 735 ILCS 5/2—1001(a)(2) (West 2008)). The motion did not specifically request a hearing date. However, the court set October 1, 2008, for the hearing. On that date, neither party appeared and

the case was taken off the call for that day. The record contains nothing filed between October 1, 2008, and February 12, 2010, and does not refer to any proceedings between those dates.

On February 12, 2010, the Attorney General filed a motion to dismiss that was identical to the previous one. At a hearing held February 17, 2010, petitioner failed to appear, and the court granted the motion to dismiss.

By a letter stamped “Received Mar. 08, 2010,” and file-stamped March 24, 2010, petitioner asked Judge Prochaska for an update on his case, including any action on the Attorney General’s motion to dismiss and his motions for leave to file an amended petition and for a substitution of judge. On March 19, 2010, petitioner moved to reconsider the judgment, alleging that the court had never ruled on either of his pending motions; that the dismissal was thus “void”; and that the court should rule on the pending motions. By a letter dated March 24, 2010, Judge Prochaska told petitioner that his motion for a substitution of judge had been scheduled for a hearing on October 1, 2008, “but [was] not presented because no one appeared in court.” The letter continued, “The case was dormant until [the Attorney General] filed a motion to dismiss on Feb. 12, 2010. The motion to dismiss was granted on Feb[.] 17, 2010. The case is now closed.” Petitioner timely appealed.

On appeal, petitioner argues that the judgment dismissing his petition is void because the trial court had failed to rule on his motion for a substitution of judge as a matter of right. Petitioner contends that, because the motion was meritorious, the proceedings that took place after he filed it were void. See *Illinois Licensed Beverage Ass’n, Inc. v. Advanta Leasing Services*, 333 Ill. App. 3d 927, 932 (2002). The Attorney General responds that the trial court properly granted the motion to dismiss, because petitioner failed to call his substitution-of-judge motion for a hearing in accordance with the applicable local court rule. We agree, and we also hold that the court properly ignored the motion on the ground that petitioner had abandoned it.

Under the local rule, the burden of setting a motion for hearing in a civil case is on the movant, and, if he does not obtain the setting of a hearing within 90 days from when the motion was filed, the court may deem the motion withdrawn and deny the relief requested with or without prejudice. 17th Judicial Cir. Ct. R. 10.05 (July 2005). Further, under settled case authority, the movant is responsible for asking that the trial court rule on his motion, and, if no ruling has been made on the motion, it will be presumed that the motion has been abandoned, unless circumstances indicate otherwise. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007).

Here, petitioner did not comply with the local rule requiring him to seek to obtain the setting of a hearing within 90 days after he filed his motion. Although the trial court did attempt to hold a hearing on October 1, 2008, it did not do so, and petitioner did not thereafter seek a hearing in accordance with the local rule. As important, as far as the record reveals, petitioner took no action related to his substitution motion until March 2010—more than 16 months after he filed the motion, *and* only after the trial court had dismissed the petition. The trial court properly treated the substitution motion as having been abandoned. Thus, the court did not err in granting the Attorney General's motion to dismiss.

The judgment of the circuit court of Winnebago County is affirmed.

Affirmed.