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3-10-0187

Order Filed April 7, 2011

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IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	For the 13th Judicial Circuit
	)	LaSalle County, Illinois
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-DT-651
	)	
ADAM NELSON,	)	
	)	Honorable William P. Balestri,
Defendant-Appellant.	)	Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Holdridge and Lytton concurred in the judgment.

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**ORDER**

*Held:* Although the local administrative rule requiring petitioners to submit a petition to rescind summary suspension on a form provided by the county was not unduly burdensome on its face, in this particular case, the method in which the rule was imposed denied the defendant his right to a timely hearing. The trial court is reversed.

Following the denial of his motion to dismiss/rescind a statutory summary suspension of his license, defendant Adam Nelson brought this appeal in which he alleges the State failed to timely bring his petition to a hearing. Although Nelson was apprised when an earlier petition he filed was dismissed without prejudice that under the local rules of LaSalle County he was required to use provided forms to submit a petition to rescind, Nelson argues the local rules are invalid because they

improperly place an additional burden on a defendant who wishes to rescind his summary suspension. Nelson reasons that because the local rules are invalid, the trial court erred in dismissing his first petition and therefore, any delay in bringing the petition to rescind to a hearing was the fault of the State and his later motion should have been granted. We consider the local rule at issue on its face does not impose additional substantive burdens on a petitioner, however, in the instant case, under the analysis that follows, we find Nelson was denied his right to a timely rescision hearing and we reverse the trial court.

#### FACTS

On November 14, 2009, defendant Adam Nelson was arrested for driving under the influence of alcohol. 625 ILCS 5/11-101(a)(2) (West 2006). At that time, Nelson was served with a notice of summary suspension of his driver's license. Nelson's appearance date was set for January 4, 2010. On November 24, 2009, Nelson filed a petition to rescind the summary suspension and served a copy on the State. On November 30, 2009, the trial court dismissed Nelson's petition without prejudice "for failure to follow administrative order in LaSalle County using forms provided by LaSalle County." On January 14, 2010, Nelson filed a petition "to dismiss/rescind" statutory summary suspension in which he alleged that after he filed his November 24, 2009, petition to rescind, the State failed, as required under statute, to timely bring the petition to a hearing. On January 28, 2010, the trial court denied Nelson's January 14 petition and he followed with this appeal. Nelson's "Notice of Appeal" indicates he is seeking an appeal of the trial court's order of January 28, 2010.

#### ANALYSIS

As a threshold procedural issue, the State asserts we do not have jurisdiction over this appeal because either 1) the trial court's November 30, 2009, dismissal of Nelson's petition without

prejudice was not a final and appealable order or 2) Nelson failed to timely appeal the trial court's November 30, 2009, order. We agree that the trial court's November 30, 2009, order was not an appealable order. See *Schal Bovis, Inc. v. Casualty Insurance Co.*, 314 Ill. App. 3d 562, 568 (1999) (regardless of the words of dismissal used by the trial court, if the dismissal is because of a deficiency which could be cured by simple technical amendment, the order is not the subject of appeal). In this case, the trial court dismissed Nelson's first petition for the technical reason that it was not in conformity with local LaSalle County rules. The trial court specifically indicated the dismissal was without prejudice. We consider, however, that Nelson is not appealing the trial court's November 30, 2009, order, but rather is appealing the order of January 28, 2010, a dismissal order that is undisputedly final and appealable. Nelson indicates in his "Notice of Appeal" that he is appealing the trial court's January order. Moreover, Nelson's appeal of the January order was timely filed on February 25, 2010. See *In re C. J.*, 325 Ill App. 3d 502, 505 (2001) (in the absence of a properly filed notice of appeal, a reviewing court has no jurisdiction). For these reasons, we consider we are with jurisdiction to entertain the instant appeal.

In its January 28, 2010, order, the subject of this appeal, the trial court denied Nelson's January 14, 2010, motion to dismiss his summary suspension. In his January motion and in this appeal, Nelson asserts the State failed to timely bring his initial petition to a hearing as required by state statute and for this reason, the trial court erred in failing to dismiss the summary suspension. The State retorts that any delay in failing to bring the petition to a hearing was due to Nelson's failure to submit a petition to rescind on the proper LaSalle County forms after, for that reason, the trial court denied his November 24, 2009, petition without prejudice. Nelson further argues that because the local rule requiring the use of a specific form to bring his petition was an improper additional burden on him that is not required by state statute, the trial court erred in dismissing his November

petition and the burden to timely bring the hearing remained with the State.

We review a trial court's order applying a circuit court rule for an abuse of discretion, however, a review of the validity of the local rule is a question of law we review *de novo*. *People v. Bywater*, 358 Ill. App.3d 191, 195-96 (2005), *rev'd on other grounds, People v. Bywater*, 223 Ill. 2d 477, 487-88 (2006). The relevant state statute in this case, section 2-118.1(b) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/2-118.1(b) (West 2006)) states, in part:

“Within 90 days after the notice of statutory summary suspension [is] served under section 11-501.1, the [defendant] 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 \*\*\*, the hearing shall be conducted by the circuit court having jurisdiction.” 625 ILCS 5/2-118.1(b) (West 2006).

The local rule that formed the basis of the trial court's denial of Nelson's initial petition to rescind states:

“Petitions to Rescind Statutory Summary Suspensions filed in LaSalle County must be on the attached form provided by the LaSalle County Circuit Clerk when filed. Supplemental pleadings may be attached to that form. Only Petitions to Rescind Statutory Summary Suspensions using the attached form will be docketed for hearing by the Clerk.” 13th Jud. Cir. Ct. R. 93-33 (eff. March 10, 1993).

The LaSalle County form, which is included in the record, uses boilerplate language to list the possible reasons or issues a defendant may allege in seeking to rescind summary suspension of his

license. The form further provides for the circuit clerk's office to insert a hearing date and certify that notice has been sent to the defendant and his attorney. The form provides an original and three carbon copies. It is not a published form and is apparently provided upon request to the LaSalle County circuit clerk's office. Before submitting his petition, Nelson did an internet search for the rules of practice of the local circuit court and found no rule stipulating his petition be submitted on a particular form. The trial court provided the form to Nelson when it dismissed his petition on November 30, 2009

Under Supreme Court Rule 21(a) (Ill. S. Ct. R. 21(a) (eff. Oct. 1, 1983)) circuit courts may adopt local rules governing criminal and civil cases provided they do not conflict with supreme court rules or statutes and so far as practical, they are uniform throughout the state. *People v. Atou*, 372 Ill. App. 3d 78, 82 (2007). Specifically, circuit courts may enact rules that regulate procedure and the administration of their own business. *Bywater*, 358 Ill. App.3d at 197, *rev'd on other grounds*, *Bywater*, 223 Ill. 2d at 488. Local rules may not however, abrogate, limit or modify existing law. *Atou*, 372 Ill. App. 3d at 82. Furthermore, local rules that address, “ ‘matters of substance which impose additional burdens upon a litigant, not contemplated by the statute, are invalid.’ ” *Bywater*, 358 Ill. App.3d at 197, quoting *Kinsley v. Kinsley*, 388 Ill. 194, 197 (1944), *rev'd on other grounds*, *Bywater*, 223 Ill. 2d at 488.

In *Atou*, the court determined that a local rule requiring a defendant to serve the State with a written speedy-trial demand in open court was an invalid rule that conflicted with section 103-5(b) of the Illinois Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(b) (West 2006)), which requires only that the defendant provide the State with written notice. *Atou*, 372 Ill. App. 3d at 83. Similarly, in *Bywater*, the court reversed a trial court ruling finding applicable a local rule that imposed the additional burden on the defendant of appearing in open court to request a hearing on

a petition to rescind summary suspension of his license. *Bywater*, 358 Ill. App.3d at 197-98, *rev'd on other grounds*, *Bywater*, 223 Ill.2d at 488. As noted in *Bywater*, the Vehicle Code places no such duty on a defendant, contemplating only that a defendant make a request in writing. *Bywater*, 358 Ill. App.3d at 197-98, *rev'd on other grounds*, *Bywater*, 223 Ill.2d at 488. See also *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 358-59 (2007) (to the extent that a local rule required that responses to requests to admit be filed with the clerk and required the striking of noncomplying responses, whereas the supreme court rule did not require filing but only timely service on the other party, the local rule conflicted with the supreme court rule and impermissibly imposed additional substantive burdens on litigants).

The case of *People v. Sandoval*, 381 Ill. App. 3d 142 (2008), *rev'd in part by People v. Sandoval*, 236 Ill. 2d 57 (2010)), on which Nelson partially relies, is of questionable precedential value. Although the *Sandoval* appellate court did find that a local rule that required speedy trial demands include case numbers was in conflict with the state statute that applied to defendants who had been committed to a Department of Corrections facility (730 ILCS 5/3-8-10 (West 2006)) (*Sandoval*, 381 Ill. App. 3d at 151), the supreme court overruled the *Sandoval* disposition in part. *Sandoval*, 236 Ill. 2d at 69. The supreme court, while passing on a determination of the enforceability of the local rule, nevertheless concluded that under section 3-8-10, some adequate indicia of identification, not necessarily case numbers, must be provided. *Sandoval*, 236 Ill. 2d at 67-68. The *Sandoval* court considered the trial court's reversal of the burden of compliance was in conflict with the legislative intent of administrative convenience of the State. *Sandoval*, 236 Ill. 2d at 67-68.

In the instant case, the local rule at issue does not impose additional substantive burdens on the defendant. Section 5/2-118.1(b) of the Vehicle Code requires the defendant to make a written

request for a judicial hearing on the summary suspension of his license. 625 ILCS 5/2-118.1(b) (West 2006). The local administrative rule merely requires that this written notice be on a form supplied by the county. The local rule does not conflict with the Vehicle Code and it is a proper attempt on the part of the county to regulate procedure and the administration of its business. The convenience of the form facilitates the defendant's filing and the trial court's response of a hearing date and proof of notice. Although the form is required by LaSalle County, the local rule specifically provides that the defendant may attach supplemental pleadings to the form and a defendant is thus not limited to the issues noted on the form. For these reasons, we consider the local rule in the instant case is not invalid.

Nevertheless, we also conclude that under the facts of this case, the failure of the State to provide Nelson with a timely rescission hearing requires the trial court's ruling be reversed. When a defendant files a petition to rescind his summary suspension with the clerk of the circuit court and sends a copy to the State, he has fulfilled his obligation under section 2-118.1(b) of the Vehicle Code. *People v. Miklos*, 393 Ill. App. 3d 205, 209 (2009). The burden then shifts to the State to ensure that a hearing is held within the time constraints set forth in section 2-118.1(b). *Miklos*, 393 Ill. App. 3d at 209. If the State fails to adhere to the hearing requirements of section 2-118.1(b), the summary suspension must be rescinded unless the delay is occasioned by the defendant. *People v. Trainor*, 156 Ill. App. 3d 918, 923 (1987). In the instant case, we consider the delay in scheduling a timely rescission hearing was not occasioned by Nelson, but rather by the State's and the trial court's process of enforcing the local procedural rule. Nelson, having searched for any local rule pertinent to his petition and finding none was not made aware of the local form until the trial court dismissed his petition to rescind the summary suspension without prejudice and ordered him to resubmit it on the "proper" form. Having received the first notice he had that a particular form was required, Nelson

was compelled to start the rescision process anew, although the movement of the State toward the summary suspension of Nelson's driver's license was not inhibited. In *Miklos*, we considered that where the State chose not to hold a hearing prior to the defendant's summary suspension but, rather, received the court's permission to reschedule defendant's hearing 36 days after he had filed his petition and 8 days after the effective date of his summary suspension, the State denied the defendant his protectible property interest in his driver's license, a violation of his due process rights. *Miklos*, 393 Ill. App. 3d at 210.

In the instant case, although Nelson filed a petition to rescind the summary suspension in accord with section 2-118.1(b) of the Vehicle Code, and in a manner timed to require a hearing before his driver's license was suspended, the trial court required Nelson to restart his summary suspension rescision petition process to comply with an unpublished procedural requirement of LaSalle County. In the meantime, the State continued its approach toward the effective date of the summary suspension of Nelson's license, "46 days after notice" from November 14, 2009, the date of the traffic citation, a process which resulted in the suspension of Nelson's driver's license without a hearing. See *Miklos*, 393 Ill. App. 3d at 209 (due process requires a prompt postsuspension hearing). For this reason, although we find the local rule of LaSalle County is not *per se* invalid, in the instant case, the execution of the rule resulted in an unacceptable violation of Nelson's right to a timely rescision hearing.

For the foregoing reasons, the judgment of the circuit court of LaSalle County is reversed.

Reversed.