

2014 IL App (2d) 130712-U
No. 2-13-0712
Order filed April 17, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of McHenry County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 12-TR-41425
)	
MARK W. WALTERS,)	Honorable
)	Joel D. Berg,
Defendant-Appellee.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court properly granted defendant's petition to rescind his summary suspension under section 11-501.1(d) of the Vehicle Code: because defendant used controlled substances pursuant to a lawful prescription, his use was not unlawful and thus did not support the suspension.

¶ 2 The State appeals the judgment of the circuit court of McHenry County granting defendant's petition to rescind the summary suspension of his driver's license, contending that the trial court erred in allowing defendant to show that his use of controlled substances was lawful because it was pursuant to a lawful prescription. Because the trial court did not err in that regard, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant's driver's license was summarily suspended pursuant to section 11-501.1(d) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501.1(d) (West 2012)), for his "unlawful use" of controlled substances. He filed an amended petition to rescind his summary suspension, contending that his use of controlled substances was not unlawful, as defined by the Illinois Controlled Substances Act (Act) (720 ILCS 570/100 *et seq.* (West 2012)), because he had used the controlled substances pursuant to a lawful prescription.

¶ 5 The following evidence comes from the hearing on the petition to rescind. On June 14, 2012, at approximately 2:40 a.m., Officer Steven Johnson of the McHenry County Conservation District police department was driving his squad car when he observed a vehicle being driven south in the northbound lanes of traffic. When he attempted to stop the vehicle, it left the roadway, drove onto the sidewalk, then drove in reverse toward his squad car. The vehicle eventually stopped partially on the sidewalk.

¶ 6 As Officer Johnson approached the vehicle, defendant exited from the driver's side. Defendant was not wearing any shoes or socks, and his black sweatpants were on backward. He tripped and stumbled as he walked and had difficulty maintaining his balance. Defendant had "heavy, droopy eyelids," spoke with a "thick" tongue, and drooled. Defendant denied that he had been drinking, but stated that he had taken "six to seven Lithium pills, Adderall and painkillers." Defendant failed field sobriety tests. Officer Johnson, who did not smell the odor of an alcoholic beverage, arrested defendant for driving under the influence.

¶ 7 Following the arrest, defendant agreed to submit to blood and urine testing. The test results showed that defendant had ibuprofen, chlorpheniramine, clozapine, dihydrocodeine, and lorazepam in his urine. Officer Johnson initiated a summary suspension proceeding, because he

believed that lorazepam was a controlled substance. Lorazepam is a generic version of a medication known as Ativan. Lorazepam and dihydrocodeine are both controlled substances under the Act. See 720 ILCS 570/210(c)(13), 212(b)(2) (West 2012). Clozapine is not a controlled substance, and ibuprofen and chlorpheniramine are over-the-counter substances.

¶ 8 According to defendant, he had a prescription for Ativan (lorazepam), Hydrocodone (dihydrocodeine), and clozapine. He had taken Ativan and Hydrocodone on the day he was stopped by Officer Johnson. He denied taking any medications not prescribed, other than an over-the-counter antihistimine.

¶ 9 After the close of defendant's case, the State moved for a directed finding, contending that defendant failed to establish a *prima facie* case that his use of the controlled substances was lawful. In that regard, the State argued that there was no evidence as to the date of the prescription, who prescribed the medication, and whether defendant was allowed to take the medication and drive.

¶ 10 The trial court denied the motion for a directed finding. In doing so, it found that defendant made a *prima facie* showing that his use of the controlled substances was lawful, because he had a prescription for them.

¶ 11 Following completion of the State's case, the trial court granted defendant's petition to rescind. It found that defendant proved that he had taken the controlled substances pursuant to a lawful prescription and that the State failed to prove that defendant's use of the controlled substances was otherwise unlawful.

¶ 12 The State then filed a motion to reconsider. The trial court denied it, and the State filed this timely appeal.

¶ 13

II. ANALYSIS

¶ 14 On appeal, the State contends that the trial court erred in interpreting section 11-501.1(d) to permit defendant to show that his use of the controlled substances was lawful because he had taken them pursuant to a lawful prescription. More specifically, it argues that such an interpretation runs afoul of the purpose of a summary suspension, which is to prevent impaired driving pending the disposition of a related driving-under-the-influence charge. It further posits that such an interpretation will lead to the absurd result that a person will be able to have his summary suspension rescinded “simply because of having prescriptions for the controlled substance or substances that caused intoxication.” Finally, it asserts that, because the Compassionate Use of Medical Cannabis Pilot Program Act (Medical Cannabis Act) (410 ILCS 130/30(a)(5) (West Supp. 2013)) expressly does not prevent the imposition of criminal or civil penalties for using cannabis in violation of section 11-501 of the Vehicle Code (625 ILCS 5/11-501 (West 2012)), we should interpret section 11-501.1(d) harmoniously and conclude that use of a controlled substance pursuant to a lawful prescription is not a basis to rescind a summary suspension.

¶ 15 In reviewing a trial court’s decision on a petition to rescind a summary suspension, we apply a two-part test. *City of Highland Park v. Kane*, 2013 IL App (2d) 120788, ¶ 11. First, we consider the court’s factual and credibility findings. *Kane*, 2013 IL App (2d) 120788, ¶ 11. Second, we review the court’s ultimate legal ruling. *Kane*, 2013 IL App (2d) 120788, ¶ 11. In doing so, we are free to assess the facts as they relate to the issues and draw our own conclusions as to what relief should be granted. *Kane*, 2013 IL App (2d) 120788, ¶ 11. Thus, the court’s ultimate legal ruling as to whether the rescission was proper is subject to *de novo* review. *Kane*, 2013 IL App (2d) 120788, ¶ 11.

¶ 16 In interpreting a statute, we must ascertain and effectuate the legislature’s intent. *People v. Brown*, 374 Ill. App. 3d 385, 388 (2007). The best indicator of intent is the statutory language, which must be given its plain and ordinary meaning. *Brown*, 374 Ill. App. 3d at 388. When the language is unambiguous, we must construe it as written, without resorting to other aids of construction. *Brown*, 374 Ill. App. 3d at 388. We must construe a statute as a whole, keeping in mind the subject of the statute and the legislature’s apparent objective in enacting it. *Brown*, 374 Ill. App. 3d at 388. In doing so, we must not read into the statute any exceptions, limitations, or conditions that the legislature did not provide. *Brown*, 374 Ill. App. 3d at 388. In construing a statute to effectuate the legislative intent, we must presume that the legislature did not intend to create any absurd, inconvenient, or unjust results. *In re Marriage of Petersen*, 2011 IL 110984, ¶ 15.

¶ 17 In this case, the dispositive issue is what did the legislature intend when it used the term “unlawful” in section 11-501.1(d). 625 ILCS 5/11-501.1(d) (West 2012). Section 11-501.1(d) provides, in pertinent part, that a summary suspension is proper if a defendant submits to a test that discloses “any amount” of a drug, substance, or intoxicating compound in his breath, blood, or urine that resulted from the “unlawful use or consumption of *** a controlled substance listed in the Illinois Controlled Substances Act.” 625 ILCS 5/11-501.1(d) (West 2012). Section 11-501.1(d) thus expressly refers to the Act in qualifying a use as unlawful. Accordingly, whether a use was unlawful under section 11-501.1(d) depends upon whether the use was unlawful under the Act.

¶ 18 The Act states, in relevant part, that “[e]xcept as otherwise authorized by this Act, it is unlawful for any person knowingly to possess a controlled *** substance.” 720 ILCS 570/402 (West 2012). One of the exceptions under the Act, relevant to this case, recognizes the lawful

possession by an “ultimate user *** pursuant to a lawful prescription of a practitioner.” 720 ILCS 570/302(c)(3) (West 2012). A prescription is defined, in pertinent part, as an “order *** of a physician licensed to practice medicine *** for any controlled substance.” 720 ILCS 570/102(nn) (West 2012).

¶ 19 Interpreting the plain terms of the Act, it is clear that someone who used a controlled substance pursuant to a lawful prescription was not doing so unlawfully under the Act. That being the case, such a use cannot be unlawful under section 11-501.1(d). Therefore, defendant could obtain a rescission of his summary suspension if he could show that he used the controlled substances pursuant to a lawful prescription.

¶ 20 That conclusion is further supported by the language of section 2-118.1(b) of the Vehicle Code (625 ILCS 5/2-118.1(b) (West 2012)), which shows that the legislature contemplated such a challenge to a summary suspension. Section 2-118.1(b) expressly permits a defendant to seek rescission in a case where the summary suspension was based on an allegedly unlawful use or consumption of any amount of a controlled substance. See 625 ILCS 5/2-118.1(b)(4) (West 2012). In that regard, section 2-118.1(b) mirrors the language in section 11-501.1(d). Knowing that a use pursuant to a lawful prescription was not unlawful under the Act, the legislature recognized, via the language in section 2-118.1(b), that a defendant should be able to obtain rescission by showing that he used a controlled substance pursuant to a lawful prescription. Thus, section 2-118.1(b) bolsters our interpretation of section 11-501.1(d).

¶ 21 Our interpretation is further supported by a case interpreting similar language in section 11-501(a)(6) of the Vehicle Code (625 ILCS 5/11-501(a)(6) (West 2012)). See *People v. Rodriguez*, 398 Ill. App. 3d 436 (2009). In that case, the defendant was found guilty of driving with a controlled substance in his urine in violation of section 11-501(a)(6). *Rodriguez*, 398 Ill.

App. 3d at 437. On appeal, the defendant contended that the State failed to prove that his use of cocaine was unlawful, because it did not show that there was not any accepted medical use for cocaine. *Rodriguez*, 398 Ill. App. 3d at 438. In deciding that issue, the court had to interpret the meaning of the term “unlawful use” of a controlled substance in section 11-501(a)(6). *Rodriguez*, 398 Ill. App. 3d at 440. Because section 11-501(a)(6) expressly referred to whether the use was unlawful under the Act, the court looked to the Act for the answer. *Rodriguez*, 398 Ill. App. 3d at 440-41.

¶ 22 In doing so, the court, referring to the language in section 302(c)(3) of the Act, regarding lawful prescriptions, stated that it is not unlawful to take medication pursuant to a valid medical prescription. *Rodriguez*, 398 Ill. App. 3d at 444. Therefore, the court concluded that use of a controlled substance pursuant to a lawful prescription was a defense to a charge under section 11-501(a)(6). *Rodriguez*, 398 Ill. App. 3d at 445; see also *People v. Vente*, 2012 IL App (3d) 100600, ¶ 13 (prescription for cough medicine containing controlled substances, plus evidence that the defendant took the cough medicine pursuant to the prescription, was a defense to unlawful use under section 11-501(a)(6)).

¶ 23 We consider *Rodriguez* as strongly supporting our interpretation of the meaning of unlawful use in section 11-501.1(d). If a defendant can rely on his use of a controlled substance pursuant to a lawful prescription as a defense to a substantive charge under section 11-501(a)(6), then he certainly can do the same in seeking to rescind a summary suspension under section 11-501.1(d).

¶ 24 The State notes that section 30(a)(5) of the Medical Cannabis Act expressly permits the imposition of criminal or civil penalties for driving while using or under the influence of cannabis in violation of section 11-501 of the Vehicle Code. Thus, the State argues that a

prescription for cannabis does not make its use lawful under section 11-501(a)(6) (or section 11-501.1(d)), and the State concludes that, likewise, a prescription for a controlled substance should not make its use lawful under section 11-501(a)(6) (or section 11-501.1(d)). However, the State overlooks that, on the same day that section 30(a)(5) took effect, so did an amended section 11-501(a)(6), under which a prescription for cannabis *does* make its use lawful, as long as the user is not impaired. See 625 ILCS 5/11-501(a)(6) (West Supp. 2013). Section 11-501.1(d) was amended as well, accordingly. See 625 ILCS 5/11-501.1(d) (West Supp. 2013). Thus, the State's reliance on section 30(a)(5) is unavailing.

¶ 25 We are also not persuaded by the State's contention that our interpretation of section 11-501.1(d) will lead to the absurd result that a person cannot have his driver's license summarily suspended for his use, pursuant to a lawful prescription, of a controlled substance that caused intoxication. In addressing this contention, we disregard the reference to the use of a controlled substance that "caused intoxication." Defendant's license was not summarily suspended because of any intoxication resulting from his use of the controlled substances. Rather, his suspension was based on use alone.

¶ 26 More importantly, we emphasize that we are not holding that all a defendant needs to do to obtain rescission of a summary suspension is merely show the existence of a prescription, and that he "used" the controlled substance pursuant to that prescription. Rather, such a defendant would have to establish, by a preponderance of the evidence, a *prima facie* case for rescission (see *People v. Dittmar*, 2011 IL App (2d) 091112, ¶ 41), by showing that the prescription was lawful, the terms of the prescription, and that his use was pursuant to those terms. By that, we mean that the prescription was issued by an authorized practitioner (see 720 ILCS 570/302(c)(3) (West 2012)) and that the use of the controlled substance was within the stated parameters of the

prescription. For example, a prescription would normally provide a dosage amount or rate (*i.e.*, take every four hours, not more than six times in 24 hours), or it might prohibit the operation of a motor vehicle after taking. If so, a defendant would have to show that his use complied with each and every term of the prescription, *i.e.*, that it was a lawful use. Of course, the State then would be able to present evidence to rebut the *prima facie* case and justify the suspension. See *Dittmar*, 2011 IL App (2d) 091112, ¶ 41. Thus, submitting a prescription alone would not be sufficient to establish a proper basis to rescind a suspension.

¶ 27 Finally, we note that the State does not argue on appeal that defendant failed to prove that his prescription was lawful or that his use was not pursuant to the prescription. Instead, the State has limited its challenge to the legal issue of whether a defendant may rely on a prescription for a controlled substance to obtain a rescission of a summary suspension. Our holding resolves that issue only.

¶ 28

III. CONCLUSION

¶ 29 For the reasons stated, we affirm the judgment of the circuit court of McHenry County granting defendant's petition to rescind his summary suspension.

¶ 30 Affirmed.