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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
)	Cook County.
v.)	
)	Nos. TW-075-011
)	TW-075-012
)	TW-075-013
JONATHAN CACIOPPO,)	
)	The Honorable
Defendant-Appellant.)	Russell Hartigan,
)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Harris, P.J., and Quinn, J., concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court properly denied a request to rescind the statutory summary suspension of defendant's driving privileges where his attorney acquiesced in an untimely hearing date and therefore the delay was attributable to defendant.

¶ 2 Defendant Jonathan Cacioppo's driving privileges were summarily suspended due to his drunk driving arrest, and he requested rescission of the statutory summary suspension. The circuit court denied rescission on the ground that defendant's hearing was untimely and in violation of section 2-118.1(b) of the Illinois Vehicle Code (Code) (625 ILCS 5/2-118.1(b) (West

2008)) because it took place more than 30 days after he had filed his petition for rescission.

¶ 3 Defendant has appealed, contending that the delay in holding the rescission hearing beyond the 30-day period prescribed by section 2-118.1(b) of the Code was not attributable to him because defense counsel wanted a hearing date to be scheduled within 30 days of the filing of the petition for rescission.

¶ 4 Defendant was arrested for driving while under the influence of alcohol (DUI) at 12:25 a.m. on February 18, 2011 (citation number TW-075-012), and he was informed that his driving privileges would be suspended. Defendant was also charged with violating an ordinance requiring two headlights (citation number TW-075-011) and failure to wear a seat belt (citation number TW-075-013). Defendant was required to appear in court on April 18 for the DUI and the headlight charges, and on February 18 for the seat belt charge. Defendant admits that he appeared *pro se* on those first two court dates.

¶ 5 The half-sheet, the transcripts, and defendant's two written requests for rescission disclose the following. On April 18, 2011, defendant made a *pro se* motion for a continuance to May 25, 2011. On April 21, 2011, through counsel, defendant filed a written petition in the circuit court of Cook County to rescind the statutory summary suspension of his driver's license. 625 ILCS 5/2-118.1(b) (West 2008). A note at the end of the petition stated that the hearing would be held within 30 days after receipt. Although defendant wanted the hearing to be held within 30 days, he was not prepared to go forward that day (on April 21) and therefore Judge Propes continued the summary suspension hearing to May 25, 2011.

¶ 6 Defendant also filed a second written motion to rescind the statutory summary

suspension. In that motion, which was undated and lacked a file-stamp, defendant alleged that he had appeared at the first two court dates without counsel. On April 21, 2011, defense counsel personally filed an appearance and a petition to rescind the statutory summary suspension and did not agree to the May 25 date. Rather, defense counsel was merely filing the petition and stating that she would "'certainly be ready within the 30 days.'" The court indicated that it was a "by agreement" date from April 21 through May 25, which defendant claimed contradicted the April 21 transcript. On May 25, a different judge and a different assistant State's Attorney were present in court. They did not have transcripts of the previous proceedings. Defendant alleged that he never waived his right to a hearing within 30 days of the filing of his petition on April 21, 2011. Defendant maintained that the delay from April 21 through May 25 was not attributable to him, and that it violated his right to due process.

¶ 7 The transcripts reflect that on April 21, 2011, defense counsel stated that defendant had appeared in court *pro se* "the other day and got it continued to May 25th." Defense counsel said that "[t]hey" had sent her over to "conform" [*sic*] the court date. The court granted defendant leave to file the petition to rescind and asked the State what date it wanted. The assistant State's Attorney said that it (meaning the statutory summary suspension) started on April 5 and that he needed time to calculate the 30th day, or that they could go by agreement to "that date." Defense counsel said that she unfortunately could not agree. The assistant State's Attorney said that defendant could not answer ready on the petition to rescind, and that they could go by agreement to May 25. The court stated, "You understand that you have to answer ready to have a petition." Defense counsel responded that she was not sure which rule that was. The assistant State's

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Attorney then said:

"Well, if you were to answer ready right now it would be your burden to go forward and you have no witnesses, therefore you would loose [*sic*]."

¶ 8 Defense counsel stated:

"You can right [*sic*] it up however you want to write it, Judge. May 25th is the date."

¶ 9 The assistant State's Attorney then asked that it be by agreement or defendant's motion. Defense counsel stated that she was filing her petition "today," and the court asked her if she was ready to proceed. Defense counsel responded that she was not ready to proceed but that she certainly could be ready "within the 30 days that the date was set." The court asked defense counsel if she wanted "a sooner date than May 25th." Defense counsel answered, "If they want to do it within 30 days then I would suggest we pick a date." The assistant State's Attorney then said that 30 days did not begin to run "until it goes motion state or order of court. If you're not ready then it goes motion defendant or by agreement." The court then said that if the State was comfortable "with that we'll leave it on May 25th." Defense counsel replied, "That's fine, Judge."

¶ 10 On August 9, 2011, Judge Hartigan reviewed the transcript and observed that on April 18, it was Motion Defendant for an attorney, that on April 21 leave was granted to file a petition to rescind the statutory summary suspension, and that on April 21 defendant wanted a hearing within 30 days but was not prepared that day to go forward. The court denied the motion.

¶ 11 On appeal, defendant contends that the rescission hearing was untimely because he did not receive a hearing within 30 days of his request as required by section 2-118.1(b) of the Code,

the continuance from April 21 to May 25 was not by agreement, and it was not occasioned by defendant.

¶ 12 The State responds that the issue was waived. The State argues that the court properly denied defendant's motion to rescind the statutory summary suspension of his driving privileges because defense counsel initially proposed and agreed to the May 25 date and therefore defendant has waived the issue or the hearing was timely. The State argues that the hearing was timely because defendant occasioned and agreed to the delay in that defense counsel led the court and the State to believe that the May 25 date was acceptable.

¶ 13 *De novo* review applies because the issue involves the construction of a statute, section 2-118.1(b) of the Code. *People v. Janas*, 389 Ill. App. 3d 426, 428 (2009).

¶ 14 Section 2-118.1(b) of the Code states that the circuit court having jurisdiction shall hold a hearing on the defendant's request for rescission "[w]ithin 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 ***." Pursuant to *People v. Schaefer*, 154 Ill. 2d 250, 261 (1993), and *People v. Bywater*, 223 Ill. 2d 477, 486 (2006), the hearing on a request for rescission must be conducted within 30 days of its timely filing (see also *Janas*, 389 Ill. App. 3d at 428), and the 30-day period within which the court must hold a rescission hearing commences on the date that the circuit court of venue received the request to rescind (*Bywater*, 223 Ill. 2d at 486). However, if the defendant occasions the delay in the rescission hearing beyond the 30-day deadline, there is no due process violation and he is not entitled to rescission based on an untimely hearing. *Trainor*, 156 Ill. App. 3d at 923. Alternatively, the hearing may be held on the date indicated on the

traffic citation even if that date is more than 30 days after the defendant filed his request for rescission. *People v. Miklos*, 393 Ill. App. 3d 205, 208 (2009). Circuit Court of Cook County Local Rule 11.1 provides another time frame for the hearing as well as a method for executing a written waiver of the time periods for a rescission hearing.

¶ 15 Here, defendant did not execute a written waiver of the time periods for a rescission hearing, and we will review the merits *de novo*. On April 21, 2011, defendant filed a written request for rescission of the statutory summary suspension with a request for a hearing within 30 days. Pursuant to section 2-118.1(b) as well as *Schaefer* and *Bywater*, the rescission hearing had to be held within 30 days of April 21, 2011, on or before May 21, 2011. However, on April 18, 2011, defendant appeared in court *pro se* and requested a continuance until May 25. On April 21, 2011, although defense counsel initially said that she could not agree to the May 25, 2011, date for the hearing, defendant was not prepared to proceed with the rescission hearing that day, defense counsel gave the State the opportunity to decide if the hearing should be within 30 days, and the court set the hearing date for May 25, 2011. Defense counsel ultimately relented and acquiesced in the May 25 date. Reviewed *de novo*, the record discloses that defendant occasioned the delay in the rescission hearing and the delay did not deprive him of due process of law. We would reach the same conclusion under the time frame prescribed by Cook County Circuit Court Local Rule 11.1, because defendant requested the May 25 date on April 18, and defense counsel ended up acquiescing in the May 25 date.

¶ 16 The cases cited by defendant do not compel a contrary conclusion. For example, in *Trainor*, the rescission hearing was untimely, but the defendant did not occasion the delay in the

rescission hearing. Moreover, the court held that if the delay in the rescission hearing is attributable to the defendant, there is no due process violation and he is not entitled to rescission of the statutory summary suspension based on an untimely hearing. *Trainor*, 156 Ill. App. 3d at 923. In *Schaefer*, 154 Ill. 2d at 253, cited by defendant as *People v. Puckett*, the court held that the rescission hearing must be held within the 30-day deadline except when the defendant occasioned the delay. In the present case, the defendant occasioned the delay because he obtained the continuance to a date beyond the deadline and his attorney ultimately acquiesced in that date.

¶ 17 The judgment of the circuit court is affirmed.

¶ 18 Affirmed.