2014 IL App (2d) 130467-U
No. 2-13-0467
Order filed March 31, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. PARTHASARATHY AGRAWAL, Defendant-Appellant.	)	Appeal from the Circuit Court of Du Page County. No. 13-CF-363 Honorable Robert G. Kleeman, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Trial judge's reaction to his mistaken belief that defense counsel had lied to him at a prior court date denied defendant a fair hearing on his petition to rescind his summary suspension such that the cause must be remanded for a new hearing before a different judge.

¶ 2 Defendant, Parthasarathy Agrawal, appeals the trial court's denial of his petition to rescind his statutory summary suspension and his motion to reconsider. We vacate and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 Defendant was arrested and charged with multiple offenses, including driving under the influence of drugs (625 ILCS 5/11-503(a)(1) (West 2012)), on February 17, 2013. Defendant

filed a petition to rescind his statutory summary suspension on February 20, raising six grounds for the rescission of his suspension, including that he had not been served with the "Notice of Summary Suspension Form." Pursuant to the State's motion, the case was called for hearing on defendant's petition on March 5, 2013. However, the State noted that the court file did not contain the Secretary of State's confirmation of defendant's suspension. When asked by the trial court if he wished to be heard, defense counsel, Stephen Klein, stated that, pursuant to *People v. Moreland*, 2011 IL App (2d) 100699, if the court file does not contain the confirmation, the hearing on a petition to rescind should be continued until the 30th day after the defendant filed his petition. Noting that it had "looked at this [case] once in the past" and had "some concerns" about the analysis contained therein, the trial court took a break to review the case. Upon returning, the court asked the State if it wished to be heard on the issue. The State responded, "No, Judge. The only issue, I believe it is saying to kick it out to the 30th day." While suggesting that "you can make an argument that that's *dicta*," the trial court conceded that "it does seem pretty clear that the second district is saying precisely what Mr. Klein said." The court therefore continued the case for hearing on defendant's petition until March 22, 2013, the 30th day after defendant filed his petition for rescission.

¶ 5 On March 22, the parties agreed that the court file contained the confirmation, and the hearing on defendant's petition was held. Defense counsel made a short opening statement:

> "I just wanted to state that petitioner anticipates there's going to be a lot of evidence supporting multiple charges in this cause for probable cause; however, this is a summary suspension hearing. We are only challenging reasonable grounds for arrest for DUI, drugs. And we believe the evidence will show that, despite having probable cause

for many other charges in this case, there [were] not reasonable grounds to place Mr. Agrawal under arrest for DUI and request a breath, blood or urine test."

¶ 6 Defendant then called Officer McLaughlin of the Naperville police department. After questioning McLaughlin about the events leading to defendant's arrest and the field sobriety tests administered, counsel began a line of questioning regarding whether defendant was served with the Law Enforcement Sworn Report. The State objected, and defense counsel noted that he had asserted in the petition that defendant had not been served with the report. The trial court stated that it thought that the only issue was probable cause but that maybe it "misunderstood" counsel. The court then asked for the State's response:

"My response is in regard to the Moreland issue that this began with. Counsel represented that the defendant was served with a sworn report, and we didn't have a confirmation, which is the essence of a Moreland issue. And now we're going to turn around and challenge that he was never served with a sworn report and try to go through the Naperville Police Department's process for serving sworn reports."

Defense counsel had no response when asked by the trial court. The following then took place:

"THE COURT: You better have a response because she's absolutely right. I believe you told me your client was served with a sworn report and now you're taking the position that you filed a pleading and are persisting in a pleading that says he didn't file a sworn report. And I've had this conversation with you, sir.

You know what? We are going to take a break. I'm going to get the Canons of Ethics, and we're going to read them one more time.

MR. KLEIN: Your Honor, I can withdraw.

THE COURT: You don't have to withdraw. Be quiet. I'll be right back."

¶ 7 After taking a recess, the trial court returned and read aloud portions of rule 3.3 of the Illinois Rules of Professional Conduct[1]:

"THE COURT: All right. I'm going to read them again.

Illinois Rule of Conduct 3.3: In appearing in a professional capacity before a tribunal, a lawyer shall not make a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false.

Goes on to say about filings that: At trial the lawyer shall not allude to any matter that the lawyer does not reasonable [*sic*] believe is relevant or will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness.

And it goes on—and I got to put my hand on it—that you're not to file pleadings that are not founded in good faith, in fact or law, or reasonable extensions of existing law.

And I'd like to know your response to that, Mr. Klein, because she's right. I've been through this before. And I understand you can file things in the alternative, but I grow increasingly weary of lawyers filing petitions saying: I believe nothing was filed when one week ago you stood—when nothing was served and one week ago you stood before me and said it was served. It seems that either then or now you've either filed or made a false statement to me. I don't know how I can conclude anything else.

MR. KLEIN: First, your Honor, I do apologize.

[1] The Illinois Rules of Professional Conduct had been repealed by administrative order of the supreme court and replaced by the Illinois Rules of Professional Conduct of 2010. See Ill. S. Ct., M.R. 3140 (eff. Jan. 1, 2010).

THE COURT: You don't have to apologize. This is not the first time I've been down this road. I've had it up to here. You cannot walk into a courtroom and lie to me. And you can't file pleadings that you know are not true.

MR. KLEIN: I do not recall making that statement.

THE COURT: I do.

MR. KLEIN: I do believe—

THE COURT: Tell you what. We're going to get a transcript of this, and we'll have a conversation further. How about that?

MR. KLEIN: Your Honor, I believe when you tell me you said it. I do not recall.

THE COURT: You better believe it because I recall it. Good for you.

MR. KLEIN: And I'm agreeing with your Honor. I'm saying I'm withdrawing the question. You are correct, and I am wrong.

THE COURT: It doesn't solve the issue, Mr. Klein, because I have to tell you something: I take pride in our profession. I really do. I am proud to be a lawyer. I am proud to be a trial judge. I get tired of people who take our profession and just besmirch it by their conduct. And one of the things that people talk about when they talk about lawyers is they're not to be trusted. God help us. I can't imagine why.

You have an obligation not to come in here and lie to me. And you come in here, and you file a petition that you know is false; and you do nothing to correct it. You stand here and say: That's my claim.

And the State goes, Judge, Mr. Klein, said something else the other week.

You're like: Oh, forget that.

> And I'm supposed to be okay with it. I'm not okay with it. Whether or not I report you to the ARDC, I'm going to think about over the lunch hour, but I am not okay with it. It will not happen again or I will deal with you. I hope I am making myself crystal clear.
>
> MR. KLEIN: Yes, your Honor.
>
> THE COURT: Ask another question.
>
> MR. KLEIN: I have no further questions.
>
> THE COURT: You have no further questions; correct?
>
> [ASSISTANT STATE'S ATTORNEY] MS. JOHNSTON: Correct.
>
> THE COURT: Do you want to present any other evidence?
>
> MR. KLEIN: No, your Honor. I rest.
>
> THE COURT: Motion is denied."

¶ 8 On April 5, 2013, defendant, through attorney Donald Ramsell, filed in open court a motion to reconsider the denial of the summary suspension petition and for a new summary suspension hearing in which defendant requested, among other things, that the trial court voluntarily recuse itself from the case. When informed that the motion included the request for recusal, the trial court stated, "Well, I don't intend to recuse myself." The court then set the petition for hearing on April 12, 2013.

¶ 9 At the hearing, defendant, again represented by Ramsell, noted that the record now contained copies of the transcripts from the summary suspension hearing. The trial court clarified that defendant did not seek a substitution of judge for cause but sought the trial court's voluntary recusal. The court then stated that, when defendant filed his motion, "I indicated I don't intend to do that. And I'm not going to grant that request." The State then argued:

MS. ENGLISH: Judge, I would just point out that initially when this case was before your Honor, I believe on March 5th, there was an issue that was raised by defense counsel regarding a possible Moreland violation. And when that issue is raised, it's implicit and it's inherent by raising that issue that a sworn report has been received. There's not going to be a confirmation if there's no sworn report that's served.

So although counsel didn't explicitly state on the record we're in receipt of a sworn report, by raising that Moreland issue, they did, in fact, implicitly or inherently—I guess acquiesced that a sworn report was received."

The State further argued that, although defendant did not state that he had been served with the sworn report, "that was the essence of the argument."

¶ 10 Defendant began his rebuttal argument as follows:

"MR. RAMSELL: All right. So I've sifted through their arguments, and apparently implicit in their lack of a comment is that they agree that Ms Johnston [the assistant state's attorney at the March 22 hearing] falsely stated to the Court that Mr. Klein had said on March 5th that the Defendant was served with a sworn report and they have not denied that the Court unfortunately respectfully on a minimum of five or six occasions made actual statements of fact stating that Mr. Klein had on March 5, 2013 stated that he had informed the Court that the Defendant was served with a sworn report.

*** Whether something was assumed, implied, et cetera, the State's Attorney and the Court falsely accused the Defendant's attorney of making a statement before the tribunal. And it's not there and it never was there."

¶ 11 Defense counsel then began an analysis of *Moreland*, arguing that the fact that a confirmation was not present in the court file "does not mean that you have to be served with a

sworn report in order to insist that all the remaining elements of the procedure be followed." The following then took place:

THE COURT: Are you sure about that?

MR. RAMSELL: Yeah, I'm confident of that.

THE COURT: Okay.

MR. RAMSELL: I don't have a case that I can quote, but—

THE COURT: I do. Finish your arguments. I have it, and you were the attorney on it. Go ahead.

MR. RAMSELL: Is that the case that was—

THE COURT: I don't want to—Finish your argument.

MR. RAMSELL: Well, I know that case because that case if it was with Justice—with Judge Burke—

THE COURT: No.

MR. RAMSELL: Okay.

THE COURT: Finish your argument."

¶ 12 Counsel continued his argument until the following colloquy took place:

¶ 13 "THE COURT: Anything else? You're repeating yourself. I've heard you tell me it's a false statement fourteen times now.

¶ 14 MR. RAMSELL: Well, six.

¶ 15 THE COURT: No. I've been keeping track. Go. Anything else?

¶ 16 MR. RAMSELL: No. I meant you said he made a false statement six times.

¶ 17 THE COURT: No. You said that how many times today? Is there anything else? You're repeating yourself. Anything else you want to argue today because I'm ready to rule?

¶ 18 MR. RAMSELL: Not at this time. I have nothing further.

¶ 19 THE COURT: All right. The defense—And this is what absolutely just continues to flabbergast me is [*sic*] I've listened to this argument. And whether Mr. Klein made the statement, my client was served with a sworn report or not, it was clearly implied what he was doing. And I underscore this because I don't see from anywhere from defense that they understand in any fashion what I'm talking about.

¶ 20 To wit, Mr. Ramsell said today that the issue is not whether or not he was served, the issue is whether or not it was filed. And I've done my research. I read these cases as they come down. And in the case of People v. Davis, 212 Ill. App. 2d 110 581 [*sic*] filed June 27, 2012, the Second District addressed Moreland and an issue that's I think on point."

¶ 21 The court then analyzed and discussed *Davis*, concluding that, "despite what Mr. Ramsell said today that the key inquiry is filing, the Second District says the key inquiry is service." The court then stated:

"I don't expect the attorneys appearing before me to have the Second District's cases memorized, but in this case I find it worthy of note that the attorney for the Appellant was Stephen J. Klein of Ramsell and Associates. Mr. Klein's well aware of the Second District's opinion in Davis. ***

Mr. Ramsell's statement of the law today in my opinion was absolutely false. Don't shake your head at me, Mr. Ramsell. You're on thin ice. Was absolutely false.

Service is the issue. I knew it. The State knew it. Mr. Klein knows it. Mr. Ramsell should know it, but maybe he doesn't. That's the issue.

Mr. Klein stood before me and said, there's no—On the first date, there's no confirmation in the file. I invoke Moreland. Under the teaching of Davis, he has not even properly filed a petition and he should know that if he's not been served with a sworn report. If he's not been served with a sworn report and there's no confirmation in the file, there is [sic] no grounds to file the petition. Under the teaching of Davis, the petition is not properly filed. He stands before me and says, I'm invoking Moreland. I foolishly accepted that he understood the law and was invoking Moreland and under Davis had been served with a sworn report.

If there had been proper service, as [assistant State's Attorney] Ms. English I think properly points out, there is no reason to be scrambling around or trying to get a hearing date within the 30 days provided for by Moreland. We did that. *** We have the hearing. And at the end of his direct he says—questions about I wasn't served with a sworn report. And I asked him, do you have a response to that. And his words to me before anybody read anything off, before anybody said anything, he said, quote, I have no response.

Should I have probably chosen my words more carefully the Defendant didn't say, quote, I was served with a sworn report or my client was? Probably. I regret that. But the fact of the matter is I would have been a fool to not understand under Davis and Moreland that Mr. Klein was saying I was served with a sworn report. To read this otherwise would be understanding that Mr. Klein was standing here in open court saying no confirmation was in the file, the confirmation doesn't exist, and my client was not

served with a sworn report, and I'm ignoring Davis, and there's no suspension that I'm aware of, and I'm coming in here asking for a hearing under Moreland. At a minimum in light of Davis, a case for which he was the Appellate counsel, I—there's no doubt he has an obligation to point out to me that he's not been served as Davis makes clear. ***.

I take umbrage with Mr. Ramsell's position. I take umbrage with his misstatement of the law today. I do not think that I'm not fair. I will decide this case as I do in every case. I take great exception with [*sic*] Mr. Klein's conduct. I stand by the comments that I made. Mr. Ramsell's entitled to whatever position he wants. I think Mr. Klein's conduct was not direct. It was not forthright. It violates Davis. It violates Moreland, and he knew it. And I don't have to put up with it and I won't. If it happens again, I will deal with it again. ***.

I think the People of the State have a right to expect the lawyers that appear in courtrooms to conduct themselves honorably and consistent with the Canons of Ethics. And I welcome a review of these remarks because I think what's been done here violates those canons and it makes me upset as a professional."

¶ 22 The trial court denied the motion, and defendant filed a motion for substitution of judge. This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Defendant first contends that the trial judge falsely accused defense counsel of lying and that the trial court's mistaken belief tainted the entire process and threw the validity of the process into disrepute.

¶ 25 A trial judge is presumed to be impartial; the burden of overcoming this presumption is borne by the party making the charge of prejudice. *People v. Faria*, 402 Ill. App. 3d 475, 482 (2010). Prejudice refers to a condition of mind that creates a fixed anticipatory judgment as opposed to opinions that yield to the evidence. *People v. Wright*, 234 Ill. App. 3d 880, 898 (1992) (defining prejudice in the context of a motion for substitution of judge for cause). Such prejudice must come from an extrajudicial source and result in an opinion on the merits that is based on something other than what the judge learned from participating in the case. *Id*. We must view allegations of judicial bias or prejudice in context, and we must evaluate such allegations in terms of "the trial judge's specific reactions to the events taking place." *Faria*, 402 Ill. App. 3d at 482. A display of displeasure or irritation with an attorney's behavior is not necessarily evidence of the trial judge's bias against a party or his counsel. *Id*. A trial judge's bias or prejudice is shown where there is active personal animosity, hostility, ill will, or distrust toward a party or his counsel. *People v. Shelton*, 401 Ill. App. 3d 564, 583 (2010). We will not lightly or easily reach a conclusion that a trial judge is disqualified because of prejudice; such a judgment "will be viewed by some as reflecting unfavorably upon the judge, and it tends to disrupt the orderly functioning of the judicial system." *People v. Hooper*, 133 Ill. 2d 469, 514 (1989).

¶ 26 Curiously, the State has declined to address this issue other than to comment that "the trial court correctly took defense counsel to task for attempting to maintain diametrically opposed positions and not limiting the petition to rescind to the probable cause issue as he represented he would do in his opening statement." Reviewing the exchanges between the trial court, Mr. Klein, and Mr. Ramsell in context, we see more than a mere display of displeasure or irritation, as mentioned in *Faria*, or a taking to task, as argued by the State. The trial judge

made multiple accusations that what Klein and Ramsell said was "false." Not "mistaken," or "incorrect," or even simply "wrong." While "false" may include these in its definition, the more common connotation of "false" involves intentional dishonesty, and the trial court amply displayed this connotation in its criticisms. To Mr. Klein: "You cannot walk into a courtroom and *lie to me*. And you can't file pleadings that *you know are not true*." "You have an obligation not to come in here and *lie to me*. And you come in here, and you file a petition *that you know is false*." (Emphases added.) To Mr. Ramsell: "Mr. Ramsell's statement of the law today in my opinion was *absolutely false*. Don't shake your head at me, Mr. Ramsell. You're on thin ice. Was *absolutely false*." (Emphasis added.)

¶ 27 The trial judge's reaction to Klein at the initial hearing clearly shows that he reacted with more than mere irritation or displeasure. The judge decided to call Klein a liar and to read aloud from the Rules of Professional Conduct (from an outdated version that had been repealed and replaced) regarding an attorney's obligation to be truthful *before* he suggested obtaining a transcript of the prior proceedings to see what Klein actually said. Apparently, the trial judge did not feel that he actually needed a transcript, because he claimed to recall it with such accuracy that Klein "better believe it because I recall it." However, a review of the record clearly shows that Klein *never* said anything at the March 5 court date about his client being served with the sworn report. Yet the trial judge decided to berate Klein in open court, calling him a liar, accusing him of besmirching the legal profession, and bringing up the possibility of reporting him to the Attorney Registration and Disciplinary Commission. It is not surprising that Klein had no more questions for Officer McLaughlin and rested without presenting any other evidence. It is also not surprising that the State had no reason to ask McLaughlin any

questions after the judge said, "You have no further questions; correct?" The trial judge had made himself "crystal clear," as he had hoped.

¶ 28 Yet it was the trial judge himself who tired of being told that he had said something "false" or "not true," or had a "false belief," complaining to Ramsell at the hearing on the motion to reconsider, "You're repeating yourself. I've heard you tell me it's a false statement fourteen times now. *** I've been keeping track." The best the judge could do was "regret" that he should "have probably chosen my words more carefully" in that "Defendant didn't say, quote, I was served with a sworn report or my client was." The trial judge also feebly attempted to backtrack from accusations of lying by saying, "And whether Mr. Klein made the statement, my client was served with a sworn report or not, it was clearly implied what he was doing." However, there were no mere accusations of implications at the summary suspension hearing, only the trial judge's poorly chosen and incorrect words that Klein had lied to him.

¶ 29 The trial judge's actions at the hearing on the motion to reconsider further show his prejudice, going beyond any mere feelings into actions. As Ramsell made his arguments and analyzed *Moreland*, the court questioned him about his confidence in his interpretation of the law; when Ramsell said that he was confident about his interpretation but did not have a case that he could quote, the judge informed Ramsell that *he* did and that "you [Ramsell] were the attorney on it." Ramsell attempted to get the judge to tell him which case it was, but the judge twice rebuffed him, saying, "I don't want to—Finish your argument," and "No." Instead, the judge waited until Ramsell was finished to inform him that the case that he had in mind was *People v. Davis*, 2012 IL App. (2d) 110581[2], which he then analyzed in depth without ever

[2] Contrary to the trial judge's assertion, Klein, of Ramsell & Associates, LLC, not Ramsell himself, appeared for the appellant in that case. The court later corrected its false

asking Ramsell, or the State, for that matter, for an interpretation of the case, or even a response to his analysis. Indeed, Ramsell never said another word until after the motion was denied, saying, "Here's my motion for substitution for cause."

¶ 30 A trial court need not ask for counsel's interpretation of every case it cites in its rulings. However, *Davis* was the basis for the court's ruling on the motion to reconsider, so central and, apparently, self-evident, that, according to the trial judge, "I would have to be a fool to not understand under Davis and Moreland that Mr. Klein was saying I was served with a sworn report."[3] It is clear that the trial judge was more interested in playing "cat and mouse" with Ramsell than he was in finding out Ramsell's interpretation of case, in essence taunting Ramsell with "I know something you don't know."

¶ 31 The trial judge showed that he had moved beyond mere irritation in other ways. The trial judge's tirade against Klein was littered with statements such as:

> "I believe you told me your client was served with a sworn report and now you're taking the position that you filed a pleading and are persisting in a pleading that says he didn't file a sworn report. And I've had this conversation with you, sir."
>
> "I've been through this before."
>
> "I grow increasingly weary of lawyers filing petitions saying: I believe nothing was filed when one week ago you stood—when nothing was served and one week ago you stood before me and said it was served."
>
> "This is not the first time I've been down this road. I've had it up to here."

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statement.

[3] Interestingly, no one, including the trial judge, made mention of *Davis* until the court made its ruling on the motion to reconsider.

"I get tired of people who take our profession and just besmirch it by their conduct."

These statements clearly reference extrajudicial sources, whether prior cases with Klein or with other, unnamed attorneys, that affected the judge's views on this case. See *Wright*, 234 Ill. App. 3d at 898. The trial judge also made statements that implied that, in certain instances, his decisions were preordained. When Ramsell appeared on April 5 and filed the motion to reconsider and for a new summary suspension hearing, in which defendant requested, among other things, that the trial judge voluntarily recuse himself from the case, the judge announced, before he ever saw the motion, let alone heard argument on it, ""Well, I don't intend to recuse myself." Again, before Ramsell had an opportunity to argue the motion on April 12, the judge stated, "I indicated I don't intend to do that [recuse myself]. And I'm not going to grant that request."

¶ 32 We also note that the issues in this case arose only after the State and the trial judge misinterpreted Klein's opening statement at the summary suspension hearing. Klein stated:

> "I just wanted to state that petitioner anticipates there's going to be a lot of evidence supporting multiple charges in this cause for probable cause; however, this is a summary suspension hearing. We are only challenging reasonable grounds for arrest for DUI, drugs. And we believe the evidence will show that, despite having probable cause for many other charges in this case, there [were] not reasonable grounds to place Mr. Agrawal under arrest for DUI and request a breath, blood or urine test."

Contrary to the State and the judge, Klein did not say that defendant was forsaking all grounds other than probable cause. Since "this is a summary suspension hearing," Klein was urging the court to focus on only the evidence regarding reasonable grounds for arrest for DUI drugs and to disregard "the evidence supporting multiple charges in this cause" for which there was probable

cause. That a misunderstanding could arise from this is understandable and certainly not evidence of bias or prejudice. However, this misunderstanding snowballed into accusations of lies and false filings and threats of possible disciplinary action. It is the trial judge's response to the misunderstanding that is unacceptable.

¶ 33 We also note that defendant's petition to rescind, including his allegation that "I was not served with the Notice of Summary Suspension Form," was on file on March 5. The State brought up the fact that the confirmation was not in the court file. After Klein cited *Moreland* and asked that the hearing be continued until the 30th day, the trial judge stated that he had looked at *Moreland* "once in the past" and that he had "some concerns *** about the analysis." The judge and the State took the opportunity to review *Moreland*, and the State did not wish to be heard on Klein's request, stating that "[t]he only issue, I believe, it is saying to kick it out to the 30th day." The judge, while again noting that he had "all sorts of questions about the analysis," acknowledged that "it does seem pretty clear that the second district is saying precisely what Mr. Klein said." There was no debate that the court file did not contain the Secretary of State's confirmation and that "[a] suspension cannot be rescinded until it has been confirmed." See *People v. Madden*, 273 Ill. App. 3d 114, 116 (1995).

¶ 34 Yet at the hearing on the motion to reconsider, the judge thundered, "I foolishly accepted that he [Klein] understood the law and was invoking Moreland and under Davis had been served with a sworn report"[4] and "I would have to be a fool to not understand under Davis

[4] At the summary suspension hearing, the State argued, "Counsel represented that the defendant was served with a sworn report, and we didn't have a confirmation, which is the essence of a Moreland issue." The essence of *Moreland* was not proper service, improper service, or lack of service of the notice of suspension on the defendant; it was whether the Secretary of State had

and Moreland that Mr. Klein was saying I was served with a sworn report." The judge had both the petition to rescind and *Moreland* before him when he continued the matter for hearing with no objection from the State and no mention of *Davis*, let alone any mention of a perceived conflict between *Davis* and defendant's petition. The trial judge's later use of *Davis* appears to be little more than an after-the-fact attempt to justify his false accusations against Klein.

¶ 35 Further, the trial court's reliance on and application of *Davis* was misplaced, as that case is distinguishable. The question in *Davis* was whether the 30-day period for holding a hearing on a petition to rescind that had been filed before the defendant received notice of the summary suspension and had been dismissed without prejudice by the trial court began to run as soon as the defendant was served with the notice of suspension. *Davis*, 2012 IL App (2d) 110581, ¶ 19. The trial court said no, and this court affirmed, concluding that the defendant's petition was considered filed for timely hearing purposes only when the defendant filed a motion to reinstate her dismissed petition. *Id*. ¶ 23. As the defendant received a hearing on her petition within 30 days of its reinstatement, the hearing was held in a timely manner. *Id*. ¶ 28.

¶ 36 In its analysis, the *Davis* court concluded that section 2-118.1(b) of the Vehicle Code (625 ILCS 5/2-118.1(b) (West 2010)) "permits a petition to rescind a summary suspension to be properly brought only after the State has served notice of the suspension." *Id*. ¶ 22. It was this aspect of the case that the trial court in the case before us stressed. However, that was not the decision of *Davis*, the *decisis*; rather, it is part of the *ratio decidendi*, the "reason for deciding,"

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confirmed the suspension, which is a *sine qua non* for this proceeding. Although *Moreland* is dispositive of the need for a confirmation before proceeding to a hearing, it is not the paradigm with regard to the underlying facts regarding the service of the notice of suspension. It is *sui generis* relative to its underlying facts, just as each case is dependent on its own historical facts.

the "why." See *People v. Trimarco*, 364 Ill. App. 3d 549, 556 (2006). The decision in *Davis* was that the time in which to hold a hearing on a petition to rescind that was filed prior to the defendant being served with notice of the summary suspension *and that was dismissed without prejudice by the trial court* did not begin to run until the defendant reinstated her petition. *Davis* is factually distinguishable, as defendant's petition here had not been dismissed.

¶ 37 The trial judge also failed to comprehend the case of *People v. Osborn*, 184 Ill. App. 3d 728 (1989), in which this court affirmed the grant of rescission of a statutory summary suspension where the defendant had *never* been served with notice of the suspension. The ability to file a petition before receipt of the notice is a given; how else could one raise, as defendant did here, the allegation that he was not properly served with notice? *Davis* regarded this discussion in *Osborn* as *dicta* (2012 IL App (2d) 110581, ¶ 35), but it has not been overruled and has recently been cited for that holding by this court. See *People v. Grabeck*, 2011 IL App (2d) 100599, ¶ 16. Further, even though the relevant argument in *Osborn* was found to have been waived for failure to raise it in the trial court (see *Osborn*, 184 Ill. App. 3d at 729), this court deliberately analyzed and passed on the appellant's argument; as such, though the analysis was *dictum*, it was judicial *dictum* and was "entitled to much weight, and should be followed unless found to be erroneous. [Citations omitted.]" *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 236 (2010). We accord much weight to the *Osborn* decision and to the common sense idea that one must be able to file a petition to rescind prior to being served with notice.

¶ 38 Ultimately, the trial judge in this case incorrectly believed that defense counsel made a statement in court. The judge allowed this incorrect belief to snowball into accusations of lies and filing false pleadings, threats of disciplinary action, and game playing. We can have no

confidence in the integrity of the outcome of the hearings in this case in the presence of such hostility on the part of the trial judge.

¶ 39 III. CONCLUSION

¶ 40 For these reasons, the judgment of the circuit court of Du Page County is vacated, and the cause is remanded for a new hearing on defendant's petition to rescind summary suspension before a different trial judge.

¶ 41 Vacated and remanded with directions.