

GENERAL NO. 2-09-1064
APPELLATE COURT OF THE STATE OF ILLINOIS
SECOND JUDICIAL DISTRICT

CITY OF NAPERVILLE,)	
)	
Plaintiff-Appellee,)	Appeal from DuPage County
)	Circuit Court 18 th District
)	Circuit Court Case No: 09 DT 2695
-vs-)	Honorable Cary Pierce
)	Judge Presiding
CINDY ANDERSON-HAYDU,)	Date of Notice of Appeal: 10-01-09
)	
Petitioner-Defendant-Appellant.)	

BRIEF AND ARGUMENT OF PETITIONER- APPELLANT
CINDY ANDERSON-HAYDU

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Oral Argument Requested

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NATURE OF THE CASE

This is an appeal by the Petitioner-Defendant (hereinafter referred to as the "Petitioner") from a final judgment denying her Petition to Rescind a Summary Suspension. (C. 25) The material facts that form the basis of this appeal are undisputed. The Petitioner was arrested on July 3, 2009 for DUI in Will County by a City of Naperville police officer. (C. 1-4) Although all of the conduct that formed the DUI occurred in Will County, the police officer and the City of Naperville filed the Law Enforcement Sworn Report (C. 7), the Complaint (C.1, C.4), and the Uniform Traffic Tickets (C. 2-3) in DuPage County. The Secretary of State filed a Confirmation of Summary Suspension in the Circuit Court of DuPage County issuing the defendant a 1 year suspension beginning August 19, 2009. (C. 17) Additionally, the Bail Bond issued by Naperville commanded the Petitioner-Defendant to appear in DuPage County for her arraignment date on the DUI on August 4, 2009. (C. 5) The Petitioner filed a Petition to Rescind Summary Suspension on July 10, 2009 (C. 9-10) and appeared in court on August 4, 2009 for a timely summary suspension hearing. (C. 40-152. At the hearing, the Petitioner made a motion to rescind/dismiss based on the fact that the City brought the suspension proceedings in the wrong county, and that the proper venue was Will County. The Defendant filed two motions related thereto (C. 19 and C. 20-30). After multiple continuances, the trial court denied the defendant's motion to rescind based upon improper venue on September 29, 2009. (C. 160-163)

The Defendant filed her timely Notice of Appeal on October 1, 2009. (C. 36)

ISSUES PRESENTED FOR REVIEW

- I. WHETHER THE TRIAL COURT ERRED IN REFUSING TO RESCIND A SUMMARY SUSPENSION WHERE THE RELATED DUI OCCURRED ENTIRELY IN WILL COUNTY, BUT THE CITY BROUGHT ALL OF THE CHARGES IN DUPAGE COUNTY?**

JURISDICTIONAL STATEMENT

This appeal is taken as a matter of right under Supreme Court Rules 301 and 303(a)(1), which govern appeals from final judgments in civil proceedings. Supreme Court Rule 301 provides that every final judgment of a circuit court in a civil case is appealable as of right. 155 Ill.2d R. 301. Rule 303(a)(1) provides, in relevant part, that the notice of appeal from final judgments in civil cases “must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from.” 155 Ill.2d R. 303(a)(1).

The judgment denying the Petitioner-Defendant’s Petition to Rescind was entered on September 29, 2009 (C. 161) The Notice of Appeal was timely filed with the clerk of the circuit court on October 1, 2009. (C. 36)

STANDARD OF REVIEW

There are no disputed facts related to this appeal. The question of venue is purely a legal one. When the facts are not in dispute, and the issue involved is wholly a question of law, then the appeal question should be reviewed *de novo*. *People v. Krueger*, 175 Ill.2d 60, 64, 675 N.E.2d 604 (1996). Thus, this appeal should be reviewed under the *de novo* standard.

STATEMENT OF FACTS

On July 3, 2009 Officer Kowal of the City of Naperville was travelling on southbound on Route 59 approaching 111th Street, behind a vehicle driven by the Defendant Cindy Anderson-Haydu, when he saw it weaving. (C. 88-90; C.118) The vehicle then turned into a subdivision on a street called Champion. (C. 91) Kowal then stopped the vehicle, made observations of the defendant consistent with DUI, and arrested her thereafter. (C. 93-112) All of the events, according to Officer Kowal, took place in Will County. (C. 112)

Although all of the conduct that formed the DUI occurred in Will County, the police officer and the City of Naperville filed the Law Enforcement Sworn Report (C. 7), the Complaint (C.1, C.4), and the Uniform Traffic Tickets (C. 2-3) in DuPage County. The Secretary of State filed a Confirmation of Summary Suspension in the Circuit Court of DuPage County issuing the defendant a 1 year suspension beginning August 19, 2009. (C. 17) The Uniform Traffic Tickets alleging Improper Lane Usage(s) on southbound Route 59 and on eastbound Champion alleged that the conduct occurred in Will County. (C.2-3) The DUI Complaint had an 'X' next to Will County crossed out, and an 'X' next to DuPage County in its stead. (C.1) The Bail Bond issued by Naperville commanded the Petitioner-Defendant to appear in DuPage County for her arraignment date on the DUI on August 4, 2009. (C. 5)

The Petitioner filed a Petition to Rescind Summary Suspension on July 10, 2009 (C. 9-10) and appeared in DuPage County circuit court (pursuant to the Bail Bond) on August 4, 2009 for a summary suspension hearing. (C. 40-152). At the hearing, the Petitioner made a motion to rescind/dismiss based on the fact that the City brought the suspension proceedings in the wrong county, and that the proper venue was Will County. The Defendant filed two motions related thereto (C. 19 and C. 20-30). The summary suspension hearing and motion proceeded with evidence that same day. (C. 40-152) The trial court then took the matter of venue under advisement. After multiple continuances, the trial court denied the defendant's motion to rescind based upon improper venue on September 29, 2009. (C. 39, 160-163)

The Defendant filed her timely Notice of Appeal on October 1, 2009. (C. 36)

ARGUMENT

I. THE TRIAL COURT ERRED IN REFUSING TO RESCIND A SUMMARY SUSPENSION WHEN THE CITY OF NAPERVILLE BROUGHT THE DUI CHARGES IN THE WRONG COUNTY OF VENUE (DUPAGE), AS THE DUI OCCURRED ENTIRELY IN WILL COUNTY .

In the trial court, the evidence irrefutably establishes that the entire alleged DUI-related offenses occurred in Will County. The Illinois Constitution guarantees the defendant the right to a trial in a criminal case in the county where the offense occurred. Thus, the City of Naperville wrongly filed the criminal charge of DUI in DuPage County, when proper venue laid in Will County.

Since the Defendant did not receive a summary suspension hearing in the *proper* county of venue within 30 days of filing her Petition to Rescind, she is entitled to a rescission. Because the City of Naperville filed all of the paperwork for this matter in DuPage County, the Petitioner

was forced to file her petition in DuPage County as well, thus destroying her right to a hearing in the proper county of venue.

This case appears to be one of first impression for Illinois Courts. In this case, Anderson-Haydu was arrested for DUI and the accompanying traffic violations within the City of Naperville, but also entirely in Will County. Naperville is in both Will and Dupage Counties. The parties stipulated that the violations, traffic stop and arrest all occurred entirely within Will County. The traffic tickets (C. 2-3) issued to Anderson-Haydu all indicated that the violations occurred in Will County.

Under the Illinois Motor Vehicle Code, DUI is generally a criminal Class A misdemeanor offense. 625 ILCS 5/11-501 (b-2). The City of Naperville has adopted portions of the Motor Vehicle code, including the DUI provision, pursuant to the authority under 625 ILCS 5/20-204. In this case, Anderson-Haydu is charged with a Naperville local ordinance DUI under Title 11, Chapter 1, Section 5/11-501 (a) 2 of the Naperville Municipal Code, which is also a Class A misdemeanor criminal offense. These violations occurred entirely within Will County.

Article 1, Section 8 of the Illinois Constitution provides:

“In Criminal Prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the appearances of the witnesses on his or her behalf; to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.”

Likewise, the Illinois Code of Criminal Procedure provides that “criminal actions shall be tried in the county where the offense was committed, except as provided by other law....” 720 ILCS 5/1-6. Therefore, the correct venue for the criminal DUI case standing alone is Will County. In the related summary suspension, 625 ILCS 5/11-501.1 (d) states that the “law enforcement officer shall immediately submit sworn report to the circuit court of venue”.

By adopting the Illinois Motor Vehicle Code in its entirety, Naperville is compelled to provide the petitioner with all of the rights and obligations to which she is accorded thereunder, including the right to have the DUI matters heard in the proper county of venue. See, e.g. *Village of Mundelein v. Hartnett*, 117 Ill.App. 3d 1011, 73 Ill.Dec. 285, 454 N.E.2d 29 (2d Dist. 1983); *Village of Palatine v. Regard*, 136 Ill.2d 503, 145 Ill.Dec. 919, 557 N.E.2d 898 (1990).

The issue of whether a city or territory can prosecute a person for a crime in any one of the two counties where the city is located has been decided against the municipalities for over 100 years. In *Buckrice v. People* 110 Ill. 29 (1884) the Illinois Supreme Court held that the constitutional right to trial in the county where the crime occurred prevailed over a statute that allowed a prosecution to take place in either of two counties where the offense was committed “within 100 rods” of the county line. In *People ex. Re. Smith v. Rodenberg* 254 Ill. 386, 98 N.E. 764(1912), the Illinois Supreme Court held that the City Court Act, which authorized a city to prosecute crimes in a ‘city court’, did not allow that city to prosecute crimes committed in one part of the city which was in a different county than where the crime had occurred, even though part of the city limits was in each county. Therefore any attempt by the City of Naperville herein to cite to a statute or ordinance as support for a claim that the City can prosecute a criminal DUI or a DUI-related summary suspension in a county other than the county where the offense is alleged to have occurred is contrary to at least 125 years of Illinois constitutional jurisprudence.

Section 11-501.1 of the Illinois Motor Vehicle code provides for the suspension of driving privileges for either failing or refusing to submit to chemical testing “*if arrested, as evidenced by the issuance of a uniform traffic ticket, for an offense as defined in Section 11-501 or a similar provision of a local ordinance.*” 625 ILCS 5/11-501.1. The motorist may then file a Petition to Rescind the summary suspension and request a hearing. Such hearings are governed

by section 2-118.1 of the Motor Vehicle Code which provided that the petition shall be filed and the hearing will take place in the “*circuit court of venue.*” 625 ILCS 5/2-118.1. The statute creating the summary suspension proceeding is sui generis. Practical considerations alone make it clear that the legislature intended that the summary suspension and the criminal DUI would be heard in the same county.

i. THE SUMMARY SUSPENSION ACT AND THE CRIMINAL DUI ARE IRREFUTABLY TIED TOGETHER, SO THAT VENUE FOR THE SUMMARY SUSPENSION HEARING IS CONTROLLED SINGULARLY BY THE COUNTY OF VENUE FOR THE CRIMINAL DUI CASE

The summary suspension act provides that a summary suspension should be held on the “first appearance date on the Uniform Traffic Ticket”. 625 ILCS 5/2-118.1(b) In *People v. Mizaur* 376 Ill.App. 3d 1066, 315 Ill.Dec. 856, 877 N.E.2d 1185 (2d Dist. 2007) the Second District Appellate Court interpreted this phrase to include the arraignment date that is set out on a DUI Bail Bond. Clearly, the legislature intended that the venue for the summary suspension hearing would be the same as that for the criminal DUI, by connecting the arraignment date on the criminal case to the hearing date for the summary suspension. To hold otherwise would create the absurd possibility of requiring a defendant to appear in DuPage for arraignment, and at the same time appear in Will County for the summary suspension, or risk a warrant or forfeiture of their rights. This court’s recent decision in *People v. Mizaur*, provides instructive guidelines in attempting to determine the legislative intent of the phrase “circuit court of venue” in section 2-118.1. In *Mizaur*, the issue before this court was whether the hearing date delineated on a bail bond is considered the same as the “first appearance date on the Uniform Traffic Ticket” for purposes of a summary suspension hearing pursuant to section 2-118.1, the same section at issue herein. *People v. Mizaur*, 376 Ill. App. 3d 1066, (2nd Dist., 2007). In *Mizaur* as in the present

case, the Uniform Traffic Tickets provided the court clerk would notify defendant of his court date by mail but his bail bond set a court date 35 days after the date of arrest. Defendant filed his petition to rescind the summary suspension the following day. On his first court date, which was 34 days after the petition was filed, defendant moved to rescind the summary suspension because a hearing was not conducted within 30 days after the first court date. This court ultimately decided that the term “first appearance date listed on the Uniform Traffic Ticket” had to be read to include a court date set on a bail bond instead to avoid the absurd result of a defendant escaping the consequences of a suspension merely because no court date was listed on the ticket.

Mizaur at 1068. As this court noted therein:

“the best indication of the legislature’s intent is the language used in the statute, which must be given its plain and ordinary meaning. (Citations omitted). Ordinarily, when the statutory language is unambiguous, courts must construe the statute as written, without resorting to other aids of construction. However, the courts must construe the acts to reflect the obvious intent even if the words of a particular section must be read as modified or altered so as to comport with the legislative intent. (Citation omitted). Courts must construe the statute as a whole, bearing in mind the subject that the statute addresses and the legislature’s apparent intent in enacting it.” *Mizaur, supra*, at 1068 citing *People v. Bywater*, 223 Ill 2d. 477, (2006).

ii. PRACTICAL CONSIDERATIONS ALONE SUGGEST THAT BOTH PROCEEDINGS WERE INTENDED TO BE HEARD IN THE SAME COUNTY

First, the issue of police manpower and witness availability suggest that both proceedings be heard under one roof, and often during the same court dates or proceedings. Having the same arresting officer appear in two different counties for the one DUI would exhaust municipal finances, and create possible conflicts in the court's scheduling. Secondly, municipal prosecutors might have to double the staff of attorneys in order to appear in two counties at once. Third, the attorneys fees to an accused might needlessly increase as the lawyers travel to distant locations and counties. Fourth, frequently plea bargaining ensues where the disposition of both the suspension and the criminal case are used to help resolve an entire case. Finally, although there is

no collateral estoppel between these two proceedings, it is not uncommon for both sides to settle disputed issues in the criminal case after the same judge has heard the evidence during the summary suspension matter.

iii. EVEN UNDER THE CIVIL RULES OF PROCEDURE, IT IS THE VENUE CHOICE OF ANDERSON-HAYDU, NOT THAT OF THE CITY OF NAPERVILLE, THAT CONTROLS HEREIN

It is the Petitioner's choice of venue that takes precedence in a civil proceeding. Here, the 'Petitioner' is the driver, Cindy Anderson-Haydu, because she carries the initial burden of proof. Cindy Anderson-Haydu did not choose DuPage County as the venue for this matter, and never did. However, because her suspension would automatically begin on August 19, 2009, and because the Petitioner cannot file a Petition to Rescind in a county where there is no DUI file to connect it to, she was forced to appear instead in DuPage County; the choice having been erroneously made by the City of Naperville.

By statute, the summary suspension hearing "shall proceed in the court in the same manner as in other civil proceedings." 625 ILCS 5/2-118.1(b); *People v. Smith*, 1996, 216 Ill.Dec. 658, 172 Ill.2d 289, 665 N.E.2d 1215, rehearing denied.

Because a statutory summary suspension hearing is a civil action, the arresting authority is placed in the position of a civil defendant. *People v. Tibbetts*, App. 5 Dist.2004, 287 Ill.Dec. 6, 351 Ill.App.3d 921, 815 N.E.2d 409.

The burden of proof is on the driver in a hearing concerning the suspension of a driver's license. *People v. Griffith*, App. 2 Dist.1987, 106 Ill.Dec. 723, 153 Ill.App.3d 856, 506 N.E.2d 430, appeal denied 113 Ill.Dec. 308, 116 Ill.2d 567, 515 N.E.2d 117; *People v. Burke*, App. 1 Dist.1991, 163 Ill.Dec. 353, 220 Ill.App.3d 839, 581 N.E.2d 304; *People v. Stein*, App. 2 Dist.1991, 156 Ill.Dec. 414, 212 Ill.App.3d 164, 570 N.E.2d 890.

The Plaintiff's right to choose a forum is a substantial one, and that choice should rarely be disturbed. *Dykstra v. A.P. Green Industries, Inc.*, App. 5 Dist.2001, 260 Ill.Dec. 261, 326 Ill.App.3d 489, 760 N.E.2d 1034, appeal denied 264 Ill.Dec. 324, 198 Ill.2d 613, 770 N.E.2d 218; *Roberts v. Illinois Power Co.*, App. 5 Dist.2000, 243 Ill.Dec. 579, 311 Ill.App.3d 458, 723 N.E.2d 1180. In considering a motion to dismiss courts give deference to the plaintiff's choice of forum because a plaintiff's right to select the forum is substantial *Woodward v. Bridgestone/Firestone, Inc.*, App. 5 Dist.2006, 306 Ill.Dec. 839, 368 Ill.App.3d 827, 858 N.E.2d 897, appeal denied 308 Ill.Dec. 334, 222 Ill.2d 603, 861 N.E.2d 665. In most cases, the plaintiff's choice of forum will prevail provided that the venue is proper and the inconvenience factors attached to that forum do not greatly outweigh the plaintiff's substantial right to try the case in a chosen forum. *Woodward v. Bridgestone/Firestone, Inc.*, App. 5 Dist.2006, 306 Ill.Dec. 839, 368 Ill.App.3d 827, 858 N.E.2d 897, appeal denied 308 Ill.Dec. 334, 222 Ill.2d 603, 861 N.E.2d 665. A plaintiff's right to select the forum is substantial; unless the factors weigh strongly in favor of transfer due to forum non conveniens, the plaintiff's choice of forum should rarely be disturbed. *Kahn v. Enterprise Rent-A-Car Co.*, App. 1 Dist.2004, 290 Ill.Dec. 812, 355 Ill.App.3d 13, 822 N.E.2d 94, appeal pending.

Since the sworn report is tantamount to a complaint, it necessarily follows that a trial court could consider alleged deficiencies in the arresting officer's sworn report in deciding whether to rescind a suspension for defective pleadings at a rescission hearing. *People v. McClain*, 1989, 132 Ill.Dec. 441, 128 Ill.2d 500, 539 N.E.2d 1247. Here, the City of Naperville filed the 'complaint' in the wrong county, and thus McClain authorizes a rescission herein for improper venue.

According to the venue statute in the Illinois Code of Civil Procedure, Will County is the proper venue as that statute fixes venue “***in the county which the transaction or some part thereof occurred out of which the cause of action arose.” 735 ILCS 5/2-101. (Emphasis supplied).

Section 5/2-101 further provides:

“If the corporate limits of a city, village or town extend into more than one county, then the venue of an action or proceeding instituted by that municipality to enforce any fine, imprisonment, penalty or forfeiture for violation of any ordinance of that municipality, regardless of the county in which the violation was committed or occurred, may be in the appropriate court (i) in the county wherein the office of the clerk of the municipality is located...” (*emphasis added*)

The above portion of 735 ILCS 5/2-101 does not apply to a summary suspension, because it was Cindy Anderson-Haydu as the Petitioner who *instituted* the proceeding by filing a summary suspension petition. Further, Cindy Anderson-Haydu carries the burden in a summary suspension, thus placing her again in the shoes of a plaintiff, who then controls the forum of venue.

Naperville extends into both Will and DuPage County, and has its municipal clerk’s office located in DuPage County. It is on this basis only that a trial court could deny the motion to dismiss the summary suspension for improper venue. However, the Code of Civil Procedure also provides that in the event of a conflict between the venue provision contained therein and any other statute, the civil venue provision only applies to matters of procedure not regulated by other statutes. 735 ILCS 5/1-108. Since the venue for the DUI trials motions and all other proceeding are all regulated by the Illinois Constitution, this venue section is also inapplicable.

Although the law of civil venue is usually entirely different than those for criminal venue, it is obvious that a DUI --and the related summary suspension-- were intended not only to both

be heard in the same county (and the proper county would be controlled by the Illinois Constitution) but also that separating the two procedures would create absurd and impractical results.

Courts must interpret statutes in a manner that avoids absurd results. *People v. Mann*, 341 Ill. App 3d 832, (2nd Dist. 2003). Having the driver choose between appearing in DuPage County for the criminal DUI for the arraignment date, or appear in Will County for the summary suspension hearing on *that* arraignment date (because by statute the summary suspension is heard within 30 days or on the arraignment date), would be absurd.

Applying these principles, the legislature can only have intended the ‘circuit court of venue’ as used in section 2-118.1 to have the plain and ordinary it has under the Illinois Constitution; (county in which the offense is alleged to have been committed); the Illinois Code of Criminal Procedure; (county where the offense was committed); and the Illinois Code of Civil Procedure; (in the county which the transaction or some part thereof occurred). Each of these provisions specifically delineate venue in terms of the county where the offense or transaction occurred, and there is no difference whether speaking in criminal or civil terms. There is no need to resort to other aids of construction or extraneous sources. Thus “circuit court of venue” as used in section 2-118.1 can only mean the circuit court in the county where the offense occurred. To construe this provision otherwise would only lead to absurd results which the legislature cannot have intended. As stated previously, a pending criminal DUI charge is a condition precedent to a statutory summary suspension as one must be arrested for DUI to trigger the summary suspension pursuant to section 11-501.1 and the right to a hearing in the circuit court of venue pursuant to section 2-118.1. More importantly, Anderson-Haydu’s constitutional and statutory rights to have venue fixed in the county where the offense occurred on the criminal

case clearly supercede having a separate venue for a civil hearing on the summary suspension which is set simply because Naperville's corporate offices are located in DuPage County. Section 2-101 of the Code of Civil Procedure places venue alternatively where the offense occurred and where the city has its corporate offices. Furthermore, pursuant to section 735 ILCS 5/1-108 of the Code of Civil Procedure, the venue provision set forth in section 2-101 would be superceded because venue would be regulated elsewhere by the venue provisions of the Illinois Constitution and the Code of Criminal Procedure.

Petitioner Anderson-Haydu, as a result of Naperville's wrongful filing of the DUI charges in DuPage County, forced the Petitioner to appear and defend the suspension therein. Thus, the entire delay over the venue issue was attributable to Naperville, and a timely hearing could not be had in Will County until that issue was resolved. Even then, the trial court's erroneous ruling contributed to a delay, so that even to this day, the Petitioner has not received a proper and timely hearing on the summary suspension in the county of venue - i.e. Will count. Because the Petitioner was denied a timely hearing (i.e. within 30 days or on the first appearance date) in the proper county of venue, rescission is the only proper remedy. A person who is denied a timely hearing is entitled to a rescission. *People v. Schaeffer*, 154 Ill.2d 250, 182 Ill.Dec. 26, 609 N.E.2d 329 (Ill. 1993).

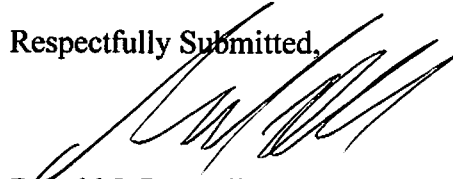
CONCLUSION

Defendant prays that this Honorable Court reverse the order entered by the trial court denying the Defendant's petition to rescind, and in its stead enter an order directing the trial court to rescind the Defendant's summary suspension.

CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the appendix, is 17 pages.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Donald J. Ramsell', written over the text 'Respectfully Submitted,'.

Donald J. Ramsell

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APPENDIX

ITEM

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Motion to Dismiss (08-04-09)

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Witness:	Keith Haydu	
Direct Examination by Mr. Ramsell		Pages C71 thru C81
Cross Examination by Mr. Disanto		Pages C81 thru C86

Witness:	Officer Kowal	
Direct Examination by Mr. Disanto		Pages C87 thru C112
Cross Examination by Mr. Ramsell		Pages C112 thru C136
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C0000153	11-09-09	Report of Proceedings from 08-25-09
C0000157	10-29-09	Report of Proceedings from 09-01-09
C0000160	10-29-09	Report of Proceedings from 09-29-09

5315

PETITION TO RESCIND STATUTORY SUMMARY SUSPENSION

July 10, 2009
Date

A536-1105-7817
Driver's License No.

DuPage
County

CINDY J. ANDERSON-HAYDU
Defendant's Name

09 DT 2695
Citation Number

CLERK OF THE
18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS
09 JUL 10 PM 4:16
FILED

I hereby petition the court to rescind the Statutory Summary Suspension heretofore issued in this case due to the issue(s) of:

I was not properly placed under arrest for an offense as defined in Section 11-501 of the Illinois Vehicle Code (Driving Under the Influence of Alcohol/Drugs) or a similar provision of a local ordinance, as evidenced by the issuance of a Uniform Traffic Ticket to other form of charge:

The arresting officer did not have reasonable grounds to believe that I was driving or in actual physical control of a motor vehicle while under the influence of alcohol and/or other drugs, or a combination thereof:

I was not properly warned by the arresting officer as provided in Section 11-501.1 of the Illinois Vehicle Code:

I did not refuse to submit to and/or complete the required chemical test or tests, pursuant to Section 11-501.1 of the Illinois Vehicle Code, upon the request of the arresting officer:

I submitted to the requested test or tests but the test sample of my blood alcohol concentration did not indicate a blood concentration of 0.08 or more, or any amount of a drug, substance, or compound in my blood or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, a controlled substance listed in the Illinois Controlled Substances Act, or an intoxicating compound as listed in the use of Intoxicating Compounds Act.

I was not served with the Sworn Report.

ATTORNEY'S SIGNATURE

5763 Rosinweed Lane
STREET ADDRESS

Naperville, IL 60564
CITY, STATE, ZIP CODE

RAMSELL & ASSOCIATES, L.L.C.
128 South County Farm Road #F
Wheaton, IL 60187
(630) 665-8780
Atty. No. 1133
s:/DUI/SSS.PET.JOAN

DUPAGE COUNTY CLERK

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

~~XXXXXXXXXXXXXXXXXXXX~~
City of Naperville
vs
Anderson-Haydu

09072695
CASE NUMBER

FILED
09 AUG -4 PM 4:10
Plus Kachiroubas
CLERK OF THE
18th JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS
File Stamp Here

~~XXXXXXXXXXXX~~
MOTION TO RESCIND BASED UPON IMPROPER VENUE

~~This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter.~~

~~IT IS HEREBY ORDERED:~~

- ① Now comes Petitioner, who moves to rescind based upon the fact that the entire offense occurred in Will County.
- ② According to the Illinois Constitution, a criminal DUI must be heard in the county where the offense occurred.
- ③ The venue for the summary suspension hearing is intended to be the same as the county where the DUI is properly heard.

Wherefore, P prays that the summary suspension be rescinded.

Name: Ramsell
DuPage Attorney Number: 1133
Attorney for: _____
Address: [Signature]
City/State/Zip: _____
Telephone Number: _____

[Signature]
Date: 8-4-09

the *proper* county of venue within 30 days of filing his Petition to Rescind, he is entitled to a rescission. Because the City of Naperville filed this matter in DuPage County, the petitioner was forced to file his petition in DuPage County as well, thus destroying his right to a hearing in the proper venue.

7. This case appears to be one of first impression for Illinois Courts. In this case, Petitioner was arrested for DUI and accompanying traffic violations in the City Naperville. Naperville is in both Will and Dupage Counties. The parties stipulated that the violations, traffic stop and arrest all occurred entirely within Will County. The traffic tickets and the Notice of Summary Suspension issued to Petitioner all indicate that the violations and arrest occurred in Will County. However Naperville's city clerk's office is located in DuPage County which is the only connection between the litigation herein and DuPage County. Likewise, the bail bond issued to Petitioner referencing the DUI and the traffic violations ordered him to appear in the Circuit Court of Dupage County. The apparently novel question presented is whether the proper venue for the statutory summary suspension hearing, itself a civil component of a criminal DUI case which is a condition precedent to a statutory summary suspension's very existence, is in Will County, where the alleged crime occurred, or in DuPage County, where the bail bond prepared by the prosecuting municipality commanded Petitioner to appear in court.
8. Under the Illinois Motor Vehicle Code, DUI is generally a criminal Class A misdemeanor offense. 625 ILCS 5/11-501 (b-2). The City of Naperville has adopted portions of the Motor Vehicle code, including the DUI provision pursuant

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to 625 ILCS 5/20-204. In this case, Petitioner is charged with a Naperville local ordinance DUI under Title 11, Chapter 1, Section 5/11-501 (a) 2 of the Naperville Municipal Code, which is also a Class A misdemeanor criminal offense. The violations occurred entirely within Will County.

9. Article 1, Section 8 of the Illinois Constitution provides:

“In Criminal Prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the appearances of the witnesses on his or her behalf; to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.”

10. Likewise, the Illinois Code of Criminal Procedure provides that “criminal actions shall be tried in the county where the offense was committed, except as provided by other law....” 720 ILCS 5/1-6. Therefore, the correct venue for the criminal DUI case standing alone is Will County.

11. By adopting the Illinois Motor Vehicle Code in its entirety, Naperville is compelled to provide the petitioner Petitioner with all of the rights and obligations to which he is accorded thereunder, including the right to have the DUI matters heard in the proper county of venue.

12. The issue of whether a city or territory can prosecute a person for a crime in any one of the two counties where the city is located has been decided against the municipalities for over 100 years. In *People ex. Re. Smith v. Rodenberg* 254 Ill. 386, 98 N.E. 764(1912), the Illinois Supreme Court held that the City Court Act, which authorized a city to prosecute crimes in a ‘city court’, did not allow that city to prosecute crimes committed in one part of the city which was in a different

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county than where the crime had occurred, even though part of the city limits was in each county.

13. Similarly, in *Buckrice v. People* 110 Ill. 29 (1884) the Illinois Supreme Court held that the constitutional right to trial in the county where the crime occurred prevailed over a statute that allowed a prosecution to take place in either of two counties where the offense was committed "within 100 rods" of the county line. Thus, any attempt by the City of Naperville herein to cite to a statute or ordinance and then argue that they can prosecute a criminal DUI or a DUI-related summary suspension in a county other than the county where the offense is alleged to have occurred is contrary to at least 125 years of Illinois constitutional jurisprudence.

14. Section 11-501.1 of the Illinois Motor Vehicle code provides for the suspension of driving privileges for either failing or refusing to submit to chemical testing "*if arrested, as evidenced by the issuance of a uniform traffic ticket, for an offense as defined in Section 11-501 or a similar provision of a local ordinance.*" 625 ILCS 5/11-501.1. The motorist may then file a Petition to Rescind the summary suspension and request a hearing. Such hearings are governed by section 2/118.1 of the Motor Vehicle Code which provided that the petition shall be filed and the hearing will take place in the "*circuit court of venue.*" 625 ILCS 5/2-118.1.

15. Where the arresting authority files the criminal charges, and thus all of the paperwork attached thereto, such as the Sworn Report and Warning to Motorist in the wrong county, the driver has no choice but to appear therein and obtain

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relief.

16. By statute, the summary suspension hearing "shall proceed in the court in the same manner as in other civil proceedings." 625 ILCS 5/2-118.1(b) People v. Smith, 1996, 216 Ill.Dec. 658, 172 Ill.2d 289, 665 N.E.2d 1215, rehearing denied.
17. Because a statutory summary suspension hearing is a civil action, the arresting authority is placed in the position of a civil defendant. People v. Tibbetts, App. 5 Dist.2004, 287 Ill.Dec. 6, 351 Ill.App.3d 921, 815 N.E.2d 409.
18. The burden of proof is on the driver in a hearing concerning the suspension of a driver's license. People v. Griffith, App. 2 Dist.1987, 106 Ill.Dec. 723, 153 Ill.App.3d 856, 506 N.E.2d 430, appeal denied 113 Ill.Dec. 308, 116 Ill.2d 567, 515 N.E.2d 117; People v. Burke, App. 1 Dist.1991, 163 Ill.Dec. 353, 220 Ill.App.3d 839, 581 N.E.2d 304; People v. Stein, App. 2 Dist.1991, 156 Ill.Dec. 414, 212 Ill.App.3d 164, 570 N.E.2d 890.
19. It is the plaintiff's choice of venue that takes precedence in a civil proceeding. Here, the 'plaintiff' is the driver, Petitioner, because he carries the initial burden of proof. Petitioner does not choose DuPage County as the venue for this matter, and never did.
20. The Plaintiff's right to choose a forum is a substantial one, and that choice should rarely be disturbed. Dykstra v. A.P. Green Industries, Inc., App. 5 Dist.2001, 260 Ill.Dec. 261, 326 Ill.App.3d 489, 760 N.E.2d 1034, appeal denied 264 Ill.Dec. 324, 198 Ill.2d 613, 770 N.E.2d 218; Roberts v. Illinois Power Co., App. 5 Dist.2000, 243 Ill.Dec. 579, 311 Ill.App.3d 458, 723 N.E.2d 1180. In considering a motion to dismiss *** courts give deference to the plaintiff's choice of forum

ANNOUNCEMENT

23. Section 5/2-101 further provides:

“If the corporate limits of a city, village or town extend into more than one county, then the venue of an action or proceeding *instituted by that municipality* to enforce any fine, imprisonment, penalty or forfeiture for violation of any ordinance of that municipality, regardless of the county in which the violation was committed or occurred, may be in the appropriate court (i) in the county wherein the office of the clerk of the municipality is located...” (emphasis added)

24. The above portion of 735 ILCS 5/2-101 does not apply to a summary suspension, because it was Petitioner, as petitioner, who instituted the proceeding by filing a summary suspension proceeding. Further, Petitioner carries the burden in a summary suspension, thus placing him again in the shoes of a plaintiff, who then controls the forum of venue.

25. Naperville extends into both Will and DuPage County, and has its municipal clerk's office located in DuPage County. It is on this basis only that a trial court could deny the motion to dismiss the summary suspension for improper venue. However, the Code of Civil Procedure also provides that in the event of a conflict between the venue provision contained therein and any other statute, the civil venue provision only applies to matters of procedure not regulated by other statutes. 735 ILCS 5/1-108. Since the venue for the DUI trials motions and all other proceeding are all regulated by the Illinois Constitution, this venue section is also inapplicable.

26. While not directly on point, this court's recent decision in *People v. Mizuar*, provides instructive guidelines in attempting to determine the legislative intent of the phrase “circuit court of venue” in section 2-118.1. In *Mizuar*, the issue before this court was whether the hearing date delineated on a bail bond is considered

DUPLICATE ORIGINAL

NA
Ramsell

ARRAIGNMENT **PLEA ENTERED**
CONFERENCE & SETTING ORDERED

- NOT GUILTY
- GUILTY
- JURY WAIVER
- DEFENDANT ADMONISHED
- PENALTY
- RIGHTS
- APPEAL
- SPEEDY TRIAL DEMAND
- STIPULATION TO FACTS

ENTER: _____
DATE TIME LOCATION JUDGE DATE

SUMMARY SUSPENSION
 RESCINDED
 CONFIRMED
ENTER: 08-04-09 CBP
JUDGE DATE

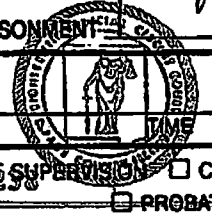
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DATE	JUDGE	MOTION BY	ORDERS OF COURT
08/04/09 CBP		Δ	file of 4/1/09 in venue v anet trigger ketala to July 03, 09 - see order, Hng sustained C I F / C - S - Hng as re: venue 08/25/09
08/25/09 CBP		Δ	C I F / Hng 4 only 09-1-09 10 ³⁰ APW
09-01-09 CBP		Δ	C I F / Hng 9-15-09 830 4002
09-15-09 CBP		Δ	argued heard July in 09-29-09 10 ³⁰ 4002 (MDDP granted) w/o presentation
09-29-09 CBP		Δ	not to hear in denied. C I F / C - S - Appeal
11/03/09 CBP		Δ	C I F / Status 12-08-09 2 ⁰⁰ 4002.

SS
10/30
4002
11/3/09 230
4002

CERTIFICATION
I, Chris Kambrouos, Clerk of the 18th Judicial Circuit Court East, DePue County, Illinois, do hereby certify that the above is a true and correct copy of the original as it appears in the records of this court.

CHRIS KAMBROUOS
Clerk



DISPOSITION
 FINDING OF NOT GUILTY
 FINDING OF GUILTY
 NOLLE PROSE
 NON SUB
 PARTI JUDGMENT
ENTER: _____
JUDGE DATE

SENTENCE
 COURT SUPERVISION
 PROBATION
 PERIODIC IMPRISONMENT
 CONDITIONAL DISCHARGE
 OTHER
 FINE \$ _____ PLUS COSTS
 COSTS ONLY
ENTER: _____
JUDGE DATE

FUTURE REPORTING DATE
DATE TIME By _____
POST JUDGMENT
CLERKS USE

DISPOSITION ON REPORTING DATE
 COURT SUPERVISION
 PROBATION
 CONDITIONAL DISCHARGE
 BOND CO.
 S.O.E.
 NO FUNDS
 P.P.
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 TERMINATED SATISFACTORILY
 REVOKED
 RESENTENCED
DATE
ENTER: _____

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