2024 IL App (4th) 230526

NO. 4-23-0526

FILED
June 11, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. STEVEN M. KOTLINSKI, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court of Winnebago County No. 23DT224 Honorable Philip J. Nicolosi, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court, with opinion.
Justice Steigmann concurred in the judgment and opinion.
Presiding Justice Cavanagh dissented, with opinion.

OPINION

¶ 1 The State appeals from the grant of defendant Steven M. Kotlinski's petition under section 2-118.1(b) of the Illinois Vehicle Code (Code) (625 ILCS 5/2-118.1(b) (West 2022)) to rescind the statutory summary suspension of his driver's license (see 625 ILCS 5/11-501.1 (West 2022)). The trial court entered what it described as a "*Madden* order" (see *People v. Madden*, 273 Ill. App. 3d 114, 652 N.E.2d 480 (1995)). The State appeals, contending the theory behind such an order is incorrect. We agree, and we thus reverse the order.

¶ 2 The issue underlying this appeal is whether, under section 2-118.1 of the Code (625 ILCS 5/2-118.1 (West 2022)), confirmation of a summary suspension by the Secretary of State (Secretary) is a prerequisite for the recission of a suspension. Under the rule in *Madden*, the "suspension may not be rescinded until it has been confirmed" by the Secretary. *Madden*, 273 Ill.

App. 3d at 116. But the hearing on a petition to rescind the suspensions must be held within 30 days of the petition's filing (625 ILCS 5/2-118.1(b) (West 2022)), unless the delay in the hearing is attributable to the petitioner (*e.g.*, *Madden*, 273 Ill. App. 3d at 115-16). The *Madden* court held that a delay resulting from the Secretary's slow confirmation of the suspension was attributable to the State. *Madden*, 273 Ill. App. 3d at 116. It concluded, because this delay made the hearing untimely, the trial court could not adjudicate the petition on the merits and instead was required to rescind the suspension based on the failure to hold a timely hearing. *Madden*, 273 Ill. App. 3d at 116. *Madden* also stated, "A suspension may not be rescinded until it has been confirmed." *Madden*, 273 Ill. App. 3d at 116. Thus, in essence, a "*Madden* order" is an order requiring recission of a summary suspension when a delay in confirmation of the suspension precludes a timely hearing on the recission petition.

¶ 3 Here, the State argues *Madden* was incorrect in holding a trial court cannot rescind a suspension until the Secretary confirms it. We agree. Section 2-118.1 provides complete directions for a trial court's review of a statutory summary suspension entered under section 11-501.1. It does not make the Secretary's confirmation of a suspension a precondition for adjudication of a recission petition. We thus reverse the entry of the "*Madden* order" and remand the cause for an adjudication on the merits.

¶ 4 I. BACKGROUND

¶ 5 On April 21, 2023, a Rockford, Illinois, police officer cited defendant on a count of driving under the influence of alcohol or other intoxicating compounds (DUI) (625 ILCS 5/11-501(a)(2) (West 2022)) and a lesser traffic offense. The arresting officer's factual summary stated defendant had been driving a vehicle that rear-ended another vehicle. The officer noted defendant's breath smelled strongly of alcohol, and he displayed other symptoms of alcohol intoxication.

Defendant refused to submit to breath testing for alcohol. The arresting officer issued the statutorily required "Warning to Motorist" (see 625 ILCS 5/11-501.1(d), (f) (West 2022)) advising defendant, because he had refused breath testing, his driver's license would be summarily suspended.

¶ 6 On April 27, 2023, defendant filed a petition to rescind the summary suspension of his license. The trial court set a hearing date of May 15, 2023, on the petition, which was continued to May 25, 2023.

¶ 7 On May 23, 2023, the Secretary sent a notice to the Winnebago County circuit clerk, stating that because of a flaw in the officer's sworn report—apparently a legibility problem with the citation number—the Secretary could not "suspend/revoke this driver." The same document contained a "Notice to Police Department," which stated: "Please provide the requested information on an *AMENDED* Sworn Report and resubmit to this office, court and driver. *The AMENDED Sworn Report must contain an updated notice date (the date the amended notice was mailed to or personally delivered to the driver!).*" (Emphases in original.)

¶ 8 The trial court then continued the matter until May 26, 2023, and then May 30, 2023. The latter continuance order noted May 30, 2023, was the "30th day." At the May 30, 2023, hearing, the parties agreed the Secretary had not confirmed the summary suspension of defendant's license. They further agreed the hearing was the last day to have a hearing on the merits.

¶ 9 The State said, notwithstanding the lack of confirmation, it was answering "ready" for a hearing on the merits of the recission petition. It noted judicial redistricting had changed what precedent was binding in Winnebago County. It argued the trial court was no longer bound by the Second District decision in *People v. Moreland*, 2011 IL App (2d) 100699, 955 N.E.2d 1218. *Moreland* notionally agreed with *Madden* but expanded upon it, stating, "[W]ithout a confirmation

of the suspension, *there is not a suspension* for the trial court to rescind." (Emphasis added.) *Moreland*, 2011 IL App (2d) 100699, ¶ 9.

¶ 10 The State contended the trial court should adopt the rule in the First District's decision in *People v. Guillermo*, 2016 IL App (1st) 151799, 54 N.E.3d 974, which rejected the principle stated in *Madden* and *Moreland*. Citing the Second District's decision in *People v. Eidel*, 319 Ill. App. 3d 496, 503 (2001), *Guillermo* held, "[A] summary suspension automatically takes effect 46 days after the officer serves the motorist with notice that his or her license is to be suspended." *Guillermo*, 2016 IL App (1st) 151799, ¶¶ 16-17. Thus, the "absence of a confirmation of suspension is of no import, as it had no impact on the court's ability to grant effectual relief," so the *Guillermo* court could not accept the defendant's contention the petition was "not ripe for adjudication." *Guillermo*, 2016 IL App (1st) 151799, ¶¶ 15-16. The State asked the court here to accept this reasoning.

¶ 11 Defendant argued the trial court should continue to follow *Madden*. However, his argument was closer to the *Moreland* court's conclusion that a summary suspension could not become effective without the Secretary's confirmation (*Moreland*, 2011 IL App (2d) 100699, ¶ 9). He contended a suspension was only "hypothetical" until it was confirmed:

> "The [c]ourt, in *Guillermo*, [relied on the self-executing nature of the summary suspension] in reasoning that the confirmation of the summary suspension is not needed for the matter to be r[ipe] and to proceed to hearing. I take issue with that line of reasoning because a document[, *i.e.*, the notice to the motorist] is just a piece of paper, you can, you can call it self-executing all you want, but there needs to be work done in the [Secretary's office], essentially, it's the [Secretary] that processes the suspension.

> So if nothing has been processed, *i.e.*, confirmed, regardless of the self-executing nature of the document, there's nothing—there's no suspension and it has to be processed, and for there to be a petition to rescind the statutory summary suspension, there must be a suspension, not some hypothetical self-executing document. Because we, we've seen it time and time before where something happens down in Springfield, something doesn't get processed, this—perhaps the defendant, not in this case, but, hypothetically, the defendant should be suspended and yet he gets pulled over and the officer runs his *** license, and nothing shows up. So the document isn't what suspends the license; it's someone in Springfield processing the document is what triggers the suspension.
>
> So until it is confirmed, it is only hypothetically self-executing because it must be executed and confirmed."

¶ 12 Defendant argued the order required under *Madden* and *Moreland* could be entered the same day. He suggested the effect of such an order would be "that the suspension, if it is confirmed at some later date, [would] be rescinded."

¶ 13 The trial court entered an order in defendant's favor. It read as follows:

> "Parties appear for [statutory summary suspension] hearing on [the] 30th day [since the recession petition's filing]. State answers ready for hearing citing [*Guillermo*]. [Defendant] asks for *Madden* Ruling. After arguments by parties, court grants *Madden* order over State's objection because there is no confirmation [of the suspension] on file by [Secretary]."

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, the State notes the Fourth District has not addressed whether confirmation of a summary suspension is a prerequisite for recission. It asks us to adopt the rule in *Guillermo* as the better reasoned position. Defendant has not filed a response. We hold *Guillermo* reached the proper result when it allowed trial courts to hold recission hearings before confirmation of the suspension by the Secretary. We thus reverse the grant of recission based on the *Madden* rule and remand the cause for a hearing on the merits.

¶ 17 *Madden* categorically states a statutory summary suspension *cannot be rescinded* unless it is confirmed. *Madden*, 273 Ill. App. 3d at 116. *Moreland* goes further, stating categorically *no suspension exists* until the Secretary confirms it. *Moreland*, 2011 IL App (2d) 100699, ¶ 9. However, neither case offers a rationale for either principle. We consider defendant's argument in the trial court: he suggested, consistent with *Moreland*, that no certainty exists as to whether a suspension will take effect until the Secretary has confirmed it, making a preconfirmation adjudication of a recission petition premature. See *Moreland*, 2011 IL App (2d) 100699, ¶ 9. We conclude, regardless of whether the Secretary's confirmation is required for a summary suspension, no basis exists for *Madden*'s conclusion a suspension cannot be rescinded until it is confirmed.

¶ 18 The dissent contends section 2-118.1 is a provision authorizing administrative review by the trial court of the *Secretary's confirmation* of the statutory summary suspension. It therefore asserts, because the Secretary had not confirmed the suspension, the court lacked jurisdiction to act on defendant's recission petition. Although we are inclined to agree that section 2-118.1 authorizes what is effectively a form of administrative review, we conclude the plain language of the section restricts the trial court to reviewing the law enforcement agency's reasons for seeking the suspension. The section does not require the Secretary to have confirmed the

suspension before the court may adjudicate the petition on its merits. We thus conclude the court had jurisdiction to address defendant' petition.

¶ 19 A. The Trial Court's Subject Matter Jurisdiction

¶ 20 When a trial court lacks subject matter jurisdiction over a claim, the sole power it has is to dismiss the claim. See, *e.g.*, *Board of Education of Woodland Community Consolidated School District 50 v. Illinois State Charter School Comm'n*, 2016 IL App (1st) 151372, ¶ 30, 60 N.E.3d 107 (when the trial court lacked subject matter jurisdiction in an administrative review case, its only power was to dismiss the case). Further, when a trial court lacks jurisdiction, although we have jurisdiction of an appeal of its final order, our authority is limited to addressing the trial court's lack of jurisdiction. "[A]n appellate court has *no authority* to address the substantive merits of a judgment entered by a trial court without jurisdiction." (Emphasis added.) *People v. Bailey*, 2014 IL 115459, ¶ 29, 4 N.E.3d 474. We will explain why the trial court had jurisdiction before addressing further issues in the appeal.

¶ 21 1. *Statutory Summary Suspensions Under Section 11-501.1*

¶ 22 An understanding of section 11-501.1, which provides for statutory summary suspensions, is necessary background to interpreting section 2-118.1, which governs the review of such suspensions. We therefore summarize section 11-501.1 before addressing the substance of section 2-118.1.

¶ 23 When drivers are arrested for DUI, arresting officers may request they submit to chemical testing, such as breath tests or blood tests, for intoxicants. 625 ILCS 5/11-501.1(a) (West 2022). If such a driver refuses to submit to testing or if he tests above the legal alcohol or cannabis limits or tests positive for another intoxicant, the officer must "submit a sworn report to the circuit

court of venue and the Secretary," stating the reason for the suspension. 625 ILCS 5/11-501.1(d) (West 2022).

¶ 24 Next, section 11-501.1(f) states: "The law enforcement officer submitting the sworn report under paragraph (d) *shall serve immediate notice* of the statutory summary suspension *** on the person *and* the suspension *** *shall be effective as provided in paragraph (g)*." (Emphases added.) 625 ILCS 5/11-501.1(f) (West 2022). Section 11-501.1(g) of the Code provides, "The statutory summary suspension *** *shall take effect* on the 46th day following the date the notice of the statutory summary suspension *** was given to the person." (Emphasis added.) 625 ILCS 5/11-501.1(g) (West 2022). We will discuss these two sections further, but we point out these sections plainly state the officer must serve the person with notice of the suspension, and, 46 days after the notice is served, the suspension takes effect.

¶ 25 The Code further provides, on receipt of the sworn report, the Secretary has two duties. First, section 11-501.1(e) mandates, "Upon receipt of the sworn report of a law enforcement officer submitted under paragraph (d), the [Secretary] *shall enter* the statutory summary suspension *** and disqualification for the periods specified *** and effective as provided in paragraph (g)." (Emphasis added.) 625 ILCS 5/11-501.1(e) (West 2022). Second, section 11-501.1(h) mandates:

> "Upon receipt of the sworn report from the law enforcement officer, the [Secretary] *shall confirm* the statutory summary suspension *** by mailing a notice of the effective date of the suspension or revocation to the person and the court of venue. The [Secretary] shall also mail notice of the effective date of the disqualification to the person. However, should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation of

> the statutory summary suspension *** *shall not be mailed* to the person or entered to the record; instead, the sworn report shall be forwarded to the court of venue with a copy returned to the issuing agency identifying any defect." (Emphases added.) 625 ILCS 5/11-501.1(h) (West 2022).

Neither section states the Secretary's action has any bearing on when the suspension takes effect. We note the Code defines a "[s]tatutory summary alcohol or other drug related suspension of driver's privileges" as "[t]he withdrawal *by the [Secretary]* of a person's license or privilege to operate a motor vehicle on the public highways for the periods provided in Section 6-208.1." (Emphasis added.) 625 ILCS 5/1-197.5 (West 2022). However, the definition does not, by itself, specify whether the "withdrawal" occurs when the Secretary *enters* the suspension under section 11-501.1(e) or *confirms* the suspension under section 11-501.1(h).

¶ 26 2. *Review of Statutory Summary Suspensions; Section 2-118.1*

¶ 27 The center of our inquiry is section 2-118.1, which sets out a procedure by which drivers may seek rescission of the summary suspension of their drivers' licenses. 625 ILCS 5/2-118.1 (West 2022). Initially, the section restates the effective date of the suspension, adding a requirement the driver be informed he or she may petition for rescission under the section:

> "A statutory summary suspension or revocation of driving privileges under Section 11-501.1 shall not become effective until the person is notified in writing of the impending suspension *** and informed that he may request a hearing in the circuit court of venue under paragraph (b) of this Section and the statutory summary suspension or revocation shall become effective as provided in Section 11-501.1." 625 ILCS 5/2-118.1(a) (West 2022).

It then provides:

> "Within 90 days after the notice of statutory summary suspension *** *served* under Section 11-501.1, the [driver] may make a written request for a judicial hearing in the circuit court of venue. The request to the circuit court shall state the grounds upon which the [driver] seeks to have the statutory summary suspension *** rescinded. Within 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, or a similar provision of a local ordinance, the hearing shall be conducted by the circuit court having jurisdiction. This judicial hearing, request, or process shall not stay or delay the statutory summary suspension or revocation. The hearings shall proceed in the court in the same manner as in other civil proceedings." (Emphasis added.) 625 ILCS 5/2-118.1(b) (West 2022).

We note the only document section 11-501.1 requires to be "served" is the notice to the driver of the suspension required by section 11-501.1(f). 625 ILCS 5/11-501.1(f) (West 2022). Thus, the driver has 90 days after being *served* with notice by the officer to request a rescission hearing.

¶ 28 Our supreme court has held section 2-118.1(b) sometimes requires a trial court to conduct a rescission hearing before a summary suspension takes effect. See *People v. Esposito*, 121 Ill. 2d 491, 507, 521 N.E.2d 873, 880 (1988) ("[T]he hearing can be either pre- or post-suspension, and the timeliness of the review depends largely upon the driver's diligence in filing a [rescission petition]."). If the driver files a recission petition promptly on being served with notice of the suspension, the 30-day deadline for the hearing may come before day 46, upon which the suspension would take effect. See 625 ILCS 5/2-118.1(b) (West 2022).

¶ 29 Section 2-118.1(b) suggests the trial court is largely limited to considering such evidence generated at the level of the law enforcement agency: "The hearing may be conducted

upon a review of the law enforcement officer's own official reports; provided however, that the person may subpoena the officer." 625 ILCS 5/2-118.1(b) (West 2022). However, "[t]he hearings shall proceed in the court in the same manner as in other civil proceedings" (625 ILCS 5/2-118.1(b) (West 2022)), so the parties are not necessarily precluded from introducing other evidence. It also restricts the scope of the hearing to possible errors by the law enforcement officer or the entity conduction the chemical testing:

> "The scope of the hearing *shall be limited* to the issues of:
>
> 1. Whether the person was placed under arrest for an offense as defined in Section 11-501, or a similar provision of a local ordinance ***; and
>
> 2. Whether the officer had reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle upon a highway while under the influence of alcohol, other drug, or combination of both; and
>
> 3. Whether the person, after being advised by the officer that the privilege to operate a motor vehicle would be suspended or revoked if the person refused to submit to and complete the test or tests, did refuse to submit to or complete the test or tests to determine the person's blood alcohol or drug concentration; or
>
> 4. Whether the person, after being advised by the officer that the privilege to operate a motor vehicle would be suspended if the person submits to a chemical test, or tests, and the test discloses [a level of a substance inconsistent with driving] ***.
>
> * * *
>
> 5. [Whether certain conditions for a *revocation* were met.]" (Emphases added.) 625 ILCS 5/2-118.1(b) (West 2022).

¶ 30 Finally, Section 2-118.1(b) makes its only two references to the Secretary while specifying what occurs after the trial court adjudicates a recission petition: "Upon the conclusion of the judicial hearing, the circuit court shall sustain or rescind the statutory summary suspension *** and immediately notify the [Secretary]. Reports received by the [Secretary] under this Section shall be privileged information and for use only by the courts, police officers, and [Secretary]." 625 ILCS 5/2-118.1(b) (West 2022).

¶ 31 3. *Principles of Subject Matter Jurisdiction*

¶ 32 Having examined the substance of section 2-118.1, we can now address when trial courts have subject matter jurisdiction to address recission petitions filed under the section. Illinois's constitution contains a general grant to trial courts of subject matter jurisdiction over "justiciable matters." See Ill. Const. 1970, art. VI, § 9. However, this grant is restricted as to "review [of] administrative action." The first clause of article VI, section 9, of the Illinois Constitution provides: "Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction ***." Ill. Const., 1970, art. VI, § 9. The second clause provides: "Circuit Courts shall have such power to review administrative action as provided by law." Ill. Const. 1970, art. VI, § 9.

¶ 33 Our supreme court interprets the second clause of article VI, section 9, as a limitation on trial courts' general jurisdiction of justiciable matters. Thus, for instance, *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 770 N.E.2d 177 (2002), states, "With the *exception of the circuit court's power to review administrative action, which is conferred by statute*, a circuit court's subject matter jurisdiction is conferred entirely by our state constitution." (Emphasis added.) *Belleville Toyota*, 199 Ill. 2d at 334; see *Glass v. Department of*

Corrections, 2023 IL App (4th) 230116, ¶ 18 ("However, to that broad grant of jurisdiction over all justiciable matters, the Illinois Constitution makes an exception for administrative actions.").

¶ 34 a. Subject Matter Jurisdiction Exists

Under the Second Clause of Article VI, Section 9

¶ 35 We conclude section 11-501.1 of the Code requires three "administrative action[s]" (Ill. Const. 1970, art. VI, § 9). However, as we explain, section 2-118.1 only gives the trial court the authority to review one of them: the action of the law enforcement agency in submitting the sworn report for a statutory summary suspension. We further conclude the process under section 2-118.1 is a *review* of an administrative action.

¶ 36 In *Glass,* we held an "administrative action" is a "*decision* or an *implementation* relating to the government's executive function or a business's management." (Emphases added and internal quotation marks omitted.) *Glass*, 2023 IL App (4th) 230116, ¶ 19. The first such action is the law enforcement officer's *decision* to submit a sworn report to the Secretary. See 625 ILCS 5/11-501.1(d) (West 2022). The next is the Secretary's act under section 11-501.1(e) entering the suspension. The language of this section makes it clear this act is purely ministerial:

> "*Upon receipt of the sworn report* of a law enforcement officer submitted under paragraph (d), the [Secretary] *shall enter* the statutory summary suspension *** for the periods specified *** and effective as provided in paragraph (g) [basing the effective date of the suspension on the driver's receipt of notice]." (Emphases added.) 625 ILCS 5/11-501.1(e) (West 2022).

Finally, the Secretary is required to decide whether to confirm the suspension or to identify the deficiencies in the sworn report to the issuing law enforcement agency.625 ILCS 5/11-501.1(h Implicitly, the law enforcement agency may attempt to correct the defects; if it cannot, the

Secretary may decline to confirm the suspension. However, section 11-501.1 does not explicitly state what happens when the Secretary declines to confirm a suspension.

¶ 37 An examination of section 2-118.1 shows the only administrative action the trial court is permitted to examine is the decision which took place at the level of the law enforcement agency. The section specifies the "hearing may be conducted upon a review of the law enforcement officer's own official reports." 625 ILCS 5/2-118.1(b) (West 2022). However, the hearing is not a "review" in the specific sense that an appeal is a review of a decision; section 2-118.1 does not limit the hearing to review of an existing record. The section explicitly permits the petitioner to call the officer as a witness at the trial court's discretion, and it does not preclude the admission of other new evidence. 625 ILCS 5/2-118.1(b) (West 2022). It does not mention consideration of any document produced by the Secretary relating to confirmation. Thus, the focus of the hearing is directly on the decision of the law enforcement agency to submit a sworn report for a statutory suspension.

¶ 38 In holding section 2-118.1 provides for the review of an administrative action, we reject the Third District's holding in *People v. Keegan*, 334 Ill. App. 3d 1061 (2002), which implies section 2-118.1 proceedings do not constitute a *review* of the suspension. The *Keegan* court noted section 2-118.1 provides a "comprehensive procedure for the conduct of a prompt judicial hearing" for the recission of a statutory summary suspension and conceded "statutory summary suspensions are considered administrative, rather than criminal in nature," but nevertheless concluded the second clause of article VI, section 9, of the Illinois Constitution was inapplicable because section 2-118.1 "contains no basis, express or implied, for applying administrative review law." *Keegan*, 334 Ill. App. 3d at 1064-65. It indicated the application of "administrative review law" to a statutory summary suspension would involve a law which provided "merely" for "judicial review

of an underlying administrative hearing previously held before the [Secretary].” *Keegan*, 334 Ill. App. 3d at 1065.

¶ 39 At its core, *Keegan* appears to hold, although section 2-118.1 provides for a trial court to undo an administrative action, such undoing does not constitute “review,” as the term is used in the second clause of article VI, section 9. It appears to have conceived of “review” as implying a procedure akin to an appeal. *Keegan* does not supply any authority for this position, and we are not aware of any. Section 2-118.1 proceedings allow a court to review the actions and decisions which resulted in the law enforcement agency seeking a statutory suspension. We see no reason to conclude a process which allows the trial court to consider additional evidence cannot constitute review of such a decision.

¶ 40 Nevertheless, as we will discuss, if the second clause of article VI, section 9, is inapplicable, the trial court had subject matter jurisdiction under the first clause of article VI, section 9; the issues a driver may raise as bases for recission of a statutory summary suspension are all “justiciable matter[s]” under the first clause of article VI, section 9. Ill. Const. 1970, art. VI, § 9.

¶ 41 b. Alternatively, Subject Matter Jurisdiction Exists Under the First Clause of Article VI, Section 9

¶ 42 Assuming section 2-118.1 is not a provision for the *review* of an administrative action under the second clause of article VI, section 9, and regardless of the confirmation status of the statutory summary suspension, the trial court would have subject matter jurisdiction to address a rescission petition as raising a justiciable matter under the first clause of article VI, section 9. *Belleville Toyota* held a “justiciable matter” could be “[g]enerally” defined as a “controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical

or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota*, 199 Ill. 2d at 335. This concept of justiciability contrasts with the one applicable in federal courts, where a case is not justiciable unless it is "ripe" and "not dependent on contingent future events that may not occur as anticipated, or indeed may not occur at all." (Internal quotation marks omitted.) *Trump v. New York*, 592 U.S. 125, 131 (2020) (*per curiam*). Our supreme court made this clear in *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53, 930 N.E.2d 895, 916 (2010), wherein it stated:

> "While a lack of subject matter jurisdiction cannot be forfeited [citation], [an affirmative defense such as] a lack of standing will be forfeited if not raised in a timely manner in the trial court [citations]. Ripeness, like standing, is also subject to forfeiture if not raised in the trial court."

Because a defense of lack of ripeness, unlike a lack of subject matter jurisdiction, is subject to forfeiture, ripeness cannot be a *sina qua non* of subject matter jurisdiction. In other words, Illinois courts, unlike federal courts, are not barred from considering claims relating to events which conceivably might not occur—provided the claims involved are "definite and concrete," and not "hypothetical." *Belleville Toyota*, 199 Ill. 2d at 335.

¶ 43 Even if we assume for the sake of argument that a statutory summary suspension cannot take effect until the Secretary has confirmed it, the facts which support—or fail to support—a recission petition become definite and concrete when the officer stopping the driver or the agency doing the testing either does what was required or not. That the Secretary's decision on confirmation might address overlapping issues does not change this.

¶ 44 For the reasons stated, we conclude the trial court had subject matter jurisdiction to adjudicate defendant's rescission petition. We thus may proceed to address the remaining merits

of the matter. *Cf. Bailey*, 2014 IL 115459, ¶ 29 ("[A]n appellate court has no authority to address the substantive merits of a judgment entered by a trial court without jurisdiction.").

¶ 45 B. Procedure When Only the Appellant Has Filed a Brief

¶ 46 Because only the State has filed a brief, we must apply the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976)), as we have elaborated on them in *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1098-99 (2009). Under *Talandis* principles, when we have only the appellant's brief, we may:

> "(1) *** serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) *** decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief, or (3) *** reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record." *Talandis*, 63 Ill. 2d at 577.

Here, because the Fourth District has never addressed the important procedural issue raised by *Madden* and *Guillermo*, we choose to consider the arguments defendant might have raised. For these arguments, we look to the arguments he raised in the trial court, to the comments of the court itself, and to decisions we have found. By so doing, we intend to address the merits as fully as we can with only one party's arguments before us. We note, because the dissent would have us conclude the trial court lacked jurisdiction to adjudicate defendant's petition—and thus could not grant him relief—the dissent does not in any way replace an appellee's brief.

¶ 47 C. What This Court Will Decide

¶ 48 In the trial court, defendant argued *Madden* and *Moreland* were correct in holding—in the context of an ordinary civil claim, not an administrative review case—that a recession claim is fatally premature until the Secretary confirms it. We conclude this argument is inconsistent with any principle of Illinois civil procedure. However, we also hold the cases rest on a false premise: there is nothing to rescind without the Secretary's confirmation. We conclude that under section 11-501.1(g) (concerning the effective date of the suspension) and the two subsections of section 11-501.1 which refer to section 11-501.1(g)—subsection (e) (concerning the Secretary's duty to enter the suspension upon receipt of the sworn statement) and subsection (f) (concerning the law enforcement officer's duty to serve the driver with notice of the suspension)—the suspension takes effect 46 days after the officer serves the driver with notice of the suspension.

¶ 49 D. Prematurity Is Not a Bar to Adjudication

¶ 50 Illinois law does not have a specific doctrine restricting courts to the adjudication of "ripe" cases. Instead, it has limits deriving from several sources, the two most obvious of which we already discussed: the constitutional grant to trial courts of jurisdiction over "justiciable matters" and the constitutional limit on jurisdiction of review of administrative actions. Ill. Const. 1970, art. VI, § 9. We address the remaining limits under two rubrics. One, we address the affirmative defense of lack of ripeness. See *Lebron*, 237 Ill. 2d at 253 (holding lack of ripeness, like the affirmative defense of standing, is forfeited if it is not timely raised). Two, we consider the holding of *People v. Laugharn*, 233 Ill. 2d 318, 909 N.E.2d 802 (2009), which, in essence, holds an adverse party is entitled to time to decide how it will respond; thus, a court's *sua sponte* resolution of a claim, even if it is in the adverse party's favor, is premature. We address each in turn.

¶ 51 1. *The Affirmative Defense of Lack of Ripeness*

¶ 52 First, although lack of ripeness can be raised as an affirmative defense, the trial court may not use an affirmative defense to defeat the intentions of the party to which the defense pertains. See *Lebron*, 237 Ill. 2d at 253 (implying ripeness is an affirmative defense akin to the affirmative defense of standing, as it is forfeited if it is not timely raised). In an adversary system, in both civil and criminal cases, the general rule is the parties control the issues raised in their cases, with the trial court acting only as a neutral arbiter of those issues. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). The matters trial courts may properly raise *sua sponte* are therefore limited. Under circumstances like these, the court would have to notionally raise a lack of ripeness *sua sponte* on the State's behalf. However, the true beneficiary of the court's action would be the petitioner, who would be granted relief based on the court's exercise of a defense the law did not require the State to use. Such an exercise of judicial power is inconsistent with proceedings in an adversarial system.

¶ 53 2. *Prematurity When a Party Has Not Had a Chance to Plead*

¶ 54 Second, an additional limitation on the early disposal of claims or initial pleadings is the requirement the responding parties have sufficient time to file a responsive pleading or dispositive motion. This requirement is inapplicable here because the State answered "ready" on the date set for a dispositive hearing. Our supreme court noted this third prematurity limitation when addressing the issue of whether a trial court's *sua sponte* dismissal of a frivolous initial pleading could be premature. It held, in *People v. Vincent*, 226 Ill. 2d 1, 5, 9-10, 871 N.E.2d 17, 21 (2007), under some circumstances, a trial court may properly dismiss frivolous initial pleadings *sua sponte*. In *Laugharn*, the supreme court held any such dismissal is premature when the adverse party has not had time to respond. *Laugharn*, 233 Ill. 2d at 323. *Laugharn* reasoned a party's failure

to answer or otherwise respond to an initial pleading within the time for doing so "result[s] in 'an admission of all well-pleaded facts,' which render[s] the [pleading] '*ripe for adjudication*.' " (Emphasis added.) *Laugharn*, 233 Ill. 2d at 323 (quoting *Vincent*, 226 Ill. 2d at 10). Therefore, the court's premature *sua sponte* dismissal deprived the adverse party—in *Laugharn*, the State—"of the time it was entitled to answer or otherwise plead." *Laugharn*, 233 Ill. 2d at 323. Put another way, the trial court, by prematurely dismissing the pleading, deprived the adverse party of its power to control its response to the pleading. Here, because the State answered "ready," the court clearly did not deprive the State of any control over its case.

¶ 55 Because none of Illinois's limitations on premature adjudication are applicable when the only claimed barrier to adjudication of a recission petition on its merits is the lack of confirmation of the summary suspension by the Secretary, we conclude *Madden* and *Moreland* are mistaken in barring adjudication on the merits in such circumstances. The timelines required by the statutory summary suspension procedure evince an intent to permit judicial review of the basis for summary suspension upon the filing of a petition for rescission. The administrative action to be performed by the Secretary of State goes only to the viability of the suspension if not rescinded. We thus hold the trial court here erred in declining to adjudicate the petition and instead rescinding defendant's summary suspension based on the erroneous conclusion it could not adjudicate the petition within the required 30 days. We thus reverse the court's grant of a "*Madden* order" rescinding defendant's summary suspension and remand the cause for a hearing on the merits of his petition.

¶ 56 E. Section 11-501.1(g) Determines When a Suspension Becomes Effective;

Thus, *Madden* and *Moreland* Are Wrong

¶ 57 As we noted, under *Madden*, a statutory summary suspension cannot be rescinded unless it is confirmed. *Madden*, 273 Ill. App. 3d at 116. Under *Moreland*, no suspension exists until the Secretary confirms it. *Moreland*, 2011 IL App (2d) 100699, ¶ 9. Moreover, neither case offers a rationale. However, neither holding seems justifiable without the assumption a suspension can take effect only after the Secretary confirms the suspension. This assumption is contrary to the plain language of section 11-501.1.

¶ 58 Considering subsections (e), (f), and (g) of section 11-501.1 (625 ILCS 5/11-501.1 (e), (f), (g) (West 2022)) together, we conclude their plain language requires the statutory summary suspension to take effect 46 days after the law enforcement officer serves the driver with notice of the suspension.

> "The construction of a statute is a question of law, which we review *de novo*. The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning. [Citation.] We view the statute as a whole, construing words and phrases in connection with other relevant statutory provisions rather than in isolation, while giving each word, clause, and sentence of a statute a reasonable meaning, if possible, and not rendering any term superfluous. [Citation.] 'A reviewing court may also consider the underlying purpose of the statute's enactment, the evils sought to be remedied, and the consequences of construing the statute in one manner versus another.' " *People v. Fair*, 2024 IL 128373, ¶ 61 (quoting *People v. Garcia*, 241 Ill. 2d 416, 421, 948 N.E.2d 32, 35 (2011)).

Moreover, "[w]hen the statutory language is plain and unambiguous, a court may not 'depart from a statute's plain language by reading into the law exceptions, limitations, or conditions that the legislature did not express.' " *Mosby v. Ingalls Memorial Hospital*, 2023 IL 129081, ¶ 31 (quoting *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 408, 930 N.E.2d 943, 953 (2010)).

¶ 59 The requirement that a statutory summary suspension takes effect 46 days after the law enforcement officer serves the driver with notice of the suspension is evident when one reads subsections (f) and (g) of the Code together. Section 11-501.1(f) provides: "The law enforcement officer submitting the sworn report *** shall serve immediate notice of the statutory summary suspension or revocation on the person and the suspension *** shall be effective as provided in paragraph (g)." 625 ILCS 5/11-501.1(f) (West 2022). Section 11-501.1(g) provides, "The statutory summary suspension or revocation and disqualification referred to in this Section shall take effect on the 46th day following the date the notice of the statutory summary suspension *** was given to the person." 625 ILCS 5/11-501.1(g) (West 2022). Section 11-501.1(f)'s reference to section 11-501.1(g) makes it clear the "notice of the statutory summary suspension" to which section 11-501.1(g) refers must be the notice section 11-501.1(f) requires the law enforcement officer to provide. 625 ILCS 5/11-501.1(g) (West 2022).

¶ 60 Section 11-501.1(e), concerning entry of the suspension, provides an explanation for how a statutory summary suspension can satisfy the definition of section 1-197.5 of the Code— "[t]he withdrawal by the [Secretary] of a person's license or privilege to operate a motor vehicle on the public highways" (625 ILCS 5/1-197.5 (West 2022))and occurs without any discretionary act by the Secretary. Section 11-501.1(e) provides, "Upon receipt of the sworn report of a law enforcement officer submitted under paragraph (d), the [Secretary] shall enter the statutory summary suspension *** for the periods specified *** and effective as provided in paragraph (g)."

625 ILCS 5/11-501.1(e) (West 2022). Under section 11-501.1(e), the Secretary has a duty to enter a suspension upon receiving the officer's sworn report. Thus, when, as provided by section 11-501.1(g), the suspension takes effect 46 days after the officer serves it on the driver, as required by section 11-501.1(f), the Secretary will have entered the suspension and its effective date.

¶ 61 By contrast, neither section 11-501.1 nor section 2-118.1 mentions the Secretary's confirmation in connection with the effective date of the suspension. Indeed, the only place a reference to confirmation is found in either provision is in section 11-501.1(h), describing the Secretary's duties regarding confirmation.

¶ 62 Moreover, requiring the Secretary's confirmation for a statutory suspension to take effect is not necessary to satisfy the legislative purpose of sections 11-501.1 and 2-118.1. A primary purpose of section 11-501.1 is to protect those who travel on public highways by taking away the driving privileges of a particularly dangerous class of impaired drivers. *Esposito*, 121 Ill. 2d at 510. The purpose of section 2-118.1 is to afford due process to those whose licenses are summarily suspended. See *Esposito*, 121 Ill. 2d at 504-08 (holding due process requires the suspension of a driver's license be reviewable either before the suspension takes effect or reasonably promptly thereafter). Requiring confirmation for the recission to take effect is not a necessary part of the balance between removing dangerous drivers from the road and affording drivers due process. In holding sections 11-501.1 and 2-118.1 provide sufficiently prompt review of a suspension, and thus do not violate suspended drivers' due process rights, the *Esposito* court held:

> "Section 2-118.1 of the Vehicle Code mandates that a circuit court conduct a judicial hearing within 30 days after receipt of a written request from an affected driver. Actual suspension of driving privileges, however, does not take effect until

46 days after the affected driver is notified of the suspension. [Citation.] Consequently, the hearing can be either pre- or post-suspension, and the timeliness of the review depends largely upon the driver's diligence in filing a written request for a hearing." (Emphasis in original.) *Esposito*, 121 Ill. 2d at 507.

Although the *Esposito* court was addressing the 1985 versions of sections 11-501.1 and 2-118.1, the relevant portions of subsections (f) and (g) of section 11-501.1 are effectively unchanged, so the notice given by the law enforcement officer is tied to the 46 days before the suspension takes effect. Compare 625 ILCS 5/11-501.1(f), (g) (West 2022), with Ill. Rev. Stat. 1985, ch. 95½, ¶ 11-501.1(f), (g).

¶ 63 Section 11-501.1(h), concerning the Secretary's confirmation of a statutory summary suspension, provides defendant with his best argument for the proposition that confirmation is required for a statutory summary suspension to take effect. Section 11-501.1(h) provides:

> "Upon receipt of the sworn report from the law enforcement officer, the [Secretary] shall confirm the statutory summary suspension or revocation *by mailing a notice of the effective date of the suspension or revocation to the person* and the court of venue. *** However, should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation of the statutory summary suspension or revocation *shall not be mailed to the person* or entered to the record; instead, the sworn report shall be forwarded to the court of venue with a copy returned to the issuing agency identifying any defect." (Emphases added.) 625 ILCS 5/11-501.1(h) (West 2022).

Taken alone, this language suggests a driver subject to a statutory summary suspension will receive notice of the effective date of the suspension only when the suspension is confirmed. Because it would be contrary to any standard of fairness to have the suspension start without notice to the driver, section 11-501.1(h) suggests the suspension can start only after the confirmation.

¶ 64 This interpretation is inconsistent with subsections (e), (f), and (g), which, as we stated, are clear in showing the arresting officer's service of notice of the suspension is the trigger for the suspension to start after 46 days. Defendant might question how, under this interpretation, the driver is to receive notice of the suspension's effective date. But the answer to this can be found by clear implication in section 11-501.1(f) and (g). Section 11-501.1(f) requires the officer to "serve immediate notice of the statutory summary suspension," which "shall be effective as provided in paragraph (g)," in other words, 46 days later. One cannot serve notice of a suspension which takes effect on a certain date without giving notice of the suspension's effective date. If the Secretary's confirmation gives a date other than the one supplied in the notice served by the officer, the result for the driver can only be confusion.

¶ 65 In fairness, this interpretation leaves open the question of the precise role of the Secretary's confirmation in the overall statutory scheme. Although subsections (f) and (g) of section 11-501.1 are clear and mesh well with section 2-118.1, the role of section 11-501.1(h) is not immediately obvious. The dissent states it is a safeguard against defenses to the statutory summary suspension which the driver may not have noted. We lack information about the likelihood of this scenario. However, we note the safeguards provided by the process are most likely to aid those who do not file a recission petition. Moreover, the same safeguards will protect a driver whose recission petition has been denied. We understand the legislature, as a matter of

expeditiousness, to have intended the confirmation process and the section 2-118.1 rescission process to run parallel.

¶ 66 Finally, we note the outcome of this case in the trial court is an argument in favor of a reading which is wholly inconsistent with requiring the Secretary's confirmation before addressing the merits of a rescission petition. See *Fair*, 2024 IL 128373, ¶ 61 (holding we may consider the effects of competing readings of a statute when we determine which reading of a statute is the correct one). The *Madden* rule permits certain drivers to have their suspensions arbitrarily rescinded based on trivial errors in the sworn report, which are not corrected in the time permitted. Here, it seems the Secretary delayed confirmation to require the law enforcement agency to correct a crossed-out digit in the citation number. That this delay resulted in the recission of what is, as far as we know, an entirely justified suspension turns the filing of a recission petition into something resembling a game of chance. An intoxicated driver lucky enough to be the subject of a sworn report with trivial errors wins a fortuitous recission. Statutory summary suspensions are intended to remove dangerous drivers from the road, not create a lottery for those who file recission petitions.

¶ 67 III. CONCLUSION

¶ 68 For the reasons stated, we reverse the recission of defendant's summary suspension and remand the cause for proceedings on his petition consistent with this decision.

¶ 69 Reversed and remanded.

¶ 70 PRESIDING JUSTICE CAVANAGH, dissenting:

¶ 71 I respectfully dissent because the circuit court had special statutory jurisdiction only to "sustain or rescind the statutory summary suspension" (625 ILCS 5/2-118.1(b) (West 2022)), and for all that appears in the record, there was no such suspension yet. I see no

provision in the Code empowering the court to issue a declaratory judgment regarding an anticipated summary suspension.

¶ 72 Until the Secretary "enter[s] the statutory summary suspension," the driver's license is not suspended. *Id.* § 11-501.1(e). A statutory summary suspension of a driver's license is an administrative action by the Secretary, not the police officer. See *id.* § 1-197.5. "Illinois courts are empowered to review administrative actions only 'as provided by law.' " *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶ 14 (quoting Ill. Const. 1970, art. VI, §§ 6, 9 (appellate court and circuit court, respectively)). "[I]n the area of administrative review," "the court's power to adjudicate [is] controlled by the legislature." *Belleville Toyota*, 199 Ill. 2d at 336. "Special statutory jurisdiction is limited by the language of the act conferring it," and "[a] court has no powers from any other source." *Illinois State Treasurer*, 2015 IL 117418, ¶ 14.

¶ 73 At the request of the licensee, the circuit court has the power to "sustain or rescind the statutory summary suspension" (625 ILCS 5/2-118.1(b) (West 2022)). This power depends on the existence of a statutory summary suspension, which, by definition, is a "*withdrawal by the Secretary of State* of a person's license or privilege to operate a motor vehicle on the public highways." (Emphasis added.) *Id.* § 1-197.5. Without such a withdrawal by the Secretary, the court is not yet vested with decision-making authority under section 2-118.1.

¶ 74 If, in the Code, the legislature had contemplated the judicial review of anticipated suspensions, the legislature surely would not have commanded the Secretary to do the following in every case, without exception:

> "Upon receipt of the sworn report from the law enforcement officer, the [Secretary] shall confirm the statutory summary suspension or revocation by

> mailing a notice of the effective date of the suspension or revocation to the person and the court of venue. The [Secretary] shall also mail notice of the effective date of the disqualification to the person. However, should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation of the statutory summary suspension or revocation shall not be mailed to the person or entered to the record; instead, the sworn report shall be forwarded to the court of venue with a copy returned to the issuing agency identifying any defect." *Id.* § 11-501.1(h).

¶ 75 It is unclear why the circuit court would need to be informed of the effective date of a rescission that the court already, by anticipation, has sustained or rescinded. Likewise, it is unclear why the Secretary should have to inform the court of defects in the sworn report if, on the basis of the sworn report, the court has already made its decision. Also, it is unclear why the licensee would need to be notified of the effective date of a suspension that the court rescinded before it was imposed. If the court could jump the gun in a rescission proceeding, subsection (h) of section 11-501.1 would make no sense. The confirmation procedure therein would be pointless. See *Van Dyke v. White*, 2019 IL 121452, ¶ 46 ("No part of a statute should be rendered meaningless or superfluous.").

¶ 76 Confirmation of the summary suspension by the Secretary—his approval or ratification of the summary suspension—is more than a formality. Section 11-501.1(h) provides that "should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation of the statutory summary suspension or revocation shall not be mailed." 625 ILCS 5/11-501.1(h) (West 2022). In deciding whether to confirm the sworn report, the Secretary evaluates it for legal sufficiency much as, in ruling upon a section 2-615

motion for dismissal (see 735 ILCS 5/2-615 (West 2022)), a circuit court evaluates a complaint for legal sufficiency. Confirmation, then, is not a *fait accompli* as soon as the police officer issues his or her sworn report. The report might be defective—that is, legally deficient on its face—and, consequently, the confirmation might not be forthcoming. Judicially reviewing a suspension before it is imposed strips away an initial layer of legal protection that the legislature quite deliberately built into the Code. The Secretary might catch a problem that the licensee would have forfeited if he or she had left it out of a petition. See *People v. Buerkett*, 201 Ill. App. 3d 140, 146 (1990).

¶ 77 So, I think that *Moreland* is right in its conclusion that, until the Secretary confirms a summary suspension, there is no summary suspension to sustain or rescind. See *Moreland*, 2011 IL App (2d) 100699, ¶ 9. I would add that, until the Secretary summarily suspends the driver's license, the circuit court lacks statutory jurisdiction to adjudicate a petition to rescind the summary suspension. Accordingly, instead of reversing the judgment, I would vacate it for lack of jurisdiction. See *Marque Medicos Fullerton, LLC v. Zurich American Insurance Co.*, 2017 IL App (1st) 160756, ¶ 25 ("[W]e are obligated to independently analyze the issue of the circuit court's subject-matter jurisdiction over plaintiffs' claims because the issue of subject-matter jurisdiction cannot be waived, stipulated to, or consented to by the parties." (Internal quotation marks omitted.)); *People ex rel. Jackson v. Mannie*, 393 Ill. App. 3d 745, 748 (2009) ("It is well established that where the circuit court lacked subject matter jurisdiction, or the inherent power to enter the particular order at issue, the court's judgment or order is void and may be attacked at any time in any court."); *People v. Anderson*, 2023 IL App (4th) 220357, ¶ 18 ("We have an independent duty to vacate void orders.").

***People v. Kotlinski*, 2024 IL App (4th) 230526**

Decision Under Review:	Appeal from the Circuit Court of Winnebago County, No. 23-DT-224; the Hon. Philip J. Nicolosi, Judge, presiding.
Attorneys for Appellant:	J. Hanley, State's Attorney, of Rockford (Patrick Delfino, David J. Robinson, and James Ryan Williams, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Attorneys for Appellee:	No brief filed for appellee.