

2012 IL App (2d) 120177-U  
No. 2-12-0177  
Order filed July 23, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> REBECCA C., RACHEL C. and AMOS C., Minors	)	Appeal from the Circuit Court of Winnebago County.
	)	
	)	Nos. 09-JA-68
	)	09-JA-69
	)	09-JA-70
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Shana C., Respondent-Appellant).	)	Honorable Patrick L. Heaslip and Mary Linn Green, Judges, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

**ORDER**

*Held:* The trial court properly found respondent unfit where the evidence was clear and convincing that she failed to maintain a reasonable degree of interest, concern or responsibility as to the minors' welfare; she did not comply with court orders regarding counseling and psychological evaluations and she continued to allow the minors to have contact with their father despite court orders.

The trial court properly terminated respondent's parental rights where the State proved by a preponderance of the evidence that it was in the minors' best interests to allow adoption by their foster father, who was their maternal uncle, with whom they had lived for two and one-half years.

¶ 1 Respondent, Shana C., appeals from the trial court's order entered February 10, 2012, terminating her parental rights. She argues that: (1) the State failed to prove that she was unfit by clear and convincing evidence; and (2) the State failed to prove by a preponderance of the evidence that termination of respondent's parental rights was in the minors' best interest. We affirm.

¶ 2 I. BACKGROUND

¶ 3 This appeal involves three minors: Rebecca C., Rachel C. and Amos C. Shana C. is the mother and Javier C. is the father of all three. On March 2, 2009, the State filed three neglect petitions alleging each minor to be neglected, based on three identical counts. Count I alleged the minors' environment was injurious to their welfare because the minors' parents engaged in domestic violence in the presence of the minors; count II alleged that the minors' environment was injurious to their welfare because Shana was aware that their father, Javier, had been indicated by DCFS for sexual penetration to a minor but she continued to allow him to reside with the minors; and count III alleged that the minors' environment was injurious to their welfare because Javier was indicated by DCFS for sexual penetration to a minor and he had failed to successfully complete sex offender treatment.

¶ 4 Two shelter care hearings were held, on March 2 and April 7, 2009, Judge Patrick L. Heaslip, presiding. At the first hearing, the trial court found probable cause to believe that the minors were neglected but found no urgent and immediate necessity, and awarded guardianship and custody to Shana. Javier was ordered to move out and have no contact with the minors' residence. DCFS was given discretion to allow supervised visitation between Javier and the minors. The matter was continued for pre-trial conference on April 17, 2009.

¶ 5 On April 7, at the second hearing, DCFS investigator Steve Jackson testified that he was contacted by a Dr. Ferry from Rockford Health System about a visit from Shana on April 2. Dr. Ferry told him that Shana had become verbally and physically combative when she was told that Amos did not need asthma medication. Dr. Ferry questioned Shana about a mark above Amos's eye, and Shana stated that he had hit his head on a wall the day before. Dr. Ferry also told him that she was called later that day by the Rockford Police Department because Shana filed a police report accusing Dr. Ferry of assaulting her.

¶ 6 Jackson further testified that when a DCFS caseworker visited Shana's home, Javier was sitting in a car on the driveway outside Shana and the minors' home. Jackson decided to take the minors into protective custody and out of Shana's care because of the incident at the doctor's office and because of Javier's presence at the house after the court ordered no contact with the minors.

¶ 7 Shana testified that Dr. Ferry told her Amos did not have ADD or ADHD and that she asked Dr. Ferry for a copy of Amos' paperwork but Dr. Ferry declined. Dr. Ferry then slammed the office door and assaulted her in front of Amos. She stated she had "bruises" and "scratches all over." Shana went to the emergency room where the social worker called the police. She also testified that Amos hit his head the day before at a walk-in clinic when he got excited and started running around because he didn't want to have them draw a blood specimen. She also stated that the minors saw Javier when they "looked out the window."

¶ 8 The trial court found there was probable cause to believe the minors were neglected, and awarded temporary custody of the children to DCFS with discretion to place them with a responsible relative or traditional foster care. DCFS was given discretion to allow supervised visitation between Shana and the minors.

¶ 9 On July 24, August 20, and September 16, 2009, an adjudicatory hearing was held on the neglect petition. Social worker Marcel Tishman testified that in 2002 she was employed by DCFS as an investigator. She interviewed the three minors, each of whom disclosed sexual abuse by Javier. At that time, Shana disclosed prior incidents of domestic violence by Javier. A safety plan was put in place that required that the minors have no contact with Javier. Referrals for community services were made at that time. As an investigator, Tishman did not follow up on the family file. Someone else at DCFS would have followed up and, after 30 days, the safety plan would have lapsed.

¶ 10 City of Rockford police officer Timothy Campbell testified that, on February 13, 2009, he responded to a domestic battery call at the home of Javier and Shana. When he arrived, Javier was present in the home. Javier told him that he had a verbal argument with Shana, and that she grabbed him and pushed him and then left with the children. Campbell stated that Shana returned shortly thereafter. Shana told Campbell that Javier lunged toward her, struck nose with an open hand, then grabbed her around the neck and pinned her in her chair. She grabbed him and pushed him away and was able to get up. She started to gather the minors to leave the house, when Javier struck her on the side of her face with a belt.

¶ 11 Campbell further testified that Amos and Rachel told him that they saw their father grab their mother around her neck and choke her. Rachel told him that this was a “common thing to happen in that household.”

¶ 12 Colette Hennigan, DCFS caseworker, testified that on February 26, 2009, she visited the residence to investigate the domestic violence incident. During this visit, all three minors told her they had witnessed Javier hit Shana. In the course of her investigation, she interviewed Javier, who

denied knowledge of a previous investigation or allegation of sexual abuse. He also denied any incidents of domestic violence.

¶ 13 On October 15, 2009, the minors were adjudicated neglected as to all three counts of the neglect petition.<sup>1</sup> After a dispositional hearing, the trial court found Shana to be an unfit parent, citing her credibility, failure to keep her children safe, domestic violence, and failure to cooperate with DCFS as reasons of its finding of unfitness. Custody and guardianship of the minors were granted to DCFS with discretion to place them with a relative or in foster care. Shana was ordered to remain free of all illegal drugs and alcohol, comply with random drug drops and breathalyzer testing, cooperate with her caseworker, and submit herself to all requested assessments and follow up with recommended treatment.

¶ 14 At the permanency review on May 11, 2010, the caseworker for Catholic Charities, Amanda Morelock, testified that Shana had supervised visitation with the minors once a week at Catholic Charities. This had been changed from twice a week and being supervised by Shana's brother, the foster father, because of "concerns" with the visits and about Shana's unpredictability and demeanor toward the caseworkers. Shana had been asked to participate in domestic violence group counseling through WAVE (Working Against Violent Environments) and individual counseling at Catholic Charities. She was also asked to do a psychological evaluation. Morelock testified that she just discovered that Shana was attending WAVE counseling, but that Shana had not reported this to Catholic Charities.

¶ 15 Shana was first referred for individual counseling in June 2002 when Javier was indicated by DCFS for sexual abuse. She started attending in November 2009 but had not attended since

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<sup>1</sup>On this date, Shana was held in direct contempt of court and sentenced to 24 hours in jail.

March 23, 2010. She was not successfully discharged and the counselor recommended a psychological evaluation.

¶ 16 Morelock testified that Shana believed that her children all had asthma and needed medication. A doctor had examined them and determined they did not need medication. Shana then “got really upset” and said that “we were trying to hurt her children.” Shana’s attitude was described as hostile, uncommunicative, defensive and combative.

¶ 17 Shana testified that the caseworker always laughed at her “like it’s a joke.” She stated that she “always call [*sic*] these people, but they don’t return my phone calls.” She stated that she was attending WAVE and that it was “going great.”

¶ 18 The trial court found that DCFS had made reasonable efforts, but that the parents had not, and set a 12-month goal of the minors’ returning home. Shana was ordered to sign releases with WAVE so that the caseworker could verify her participation and to cooperate with the psychological evaluation if approved by DCFS.

¶ 19 On November 2, 2010, a permanency review was held. Leslie Montoya, Catholic Charities caseworker, testified that Shana was asked to participate in domestic violence classes and to cooperate with the psychological evaluation. Montoya stated that Shana had refused to cooperate, but that a few weeks before the hearing Shana had gone to the Janet Wattles Center to ask for an evaluation. The day before the hearing, Montoya learned that Shana was attending domestic violence classes at WAVE. Montoya stated that Catholic Charities would have to make a new referral for Shana to be evaluated. Shana had been having one-hour-per-week supervised visitation with all three minors, which Montoya stated were going well. Included in Montoya’s report was the

statement that Shana “was not going to do anymore services until her children were put back on their asthma medication.”

¶ 20 On May 2, 2011, a six-month permanency hearing was held before Judge Mary Linn Green. Montoya again testified. During the previous six-month period, Shana was asked to give urine drops, complete a psychological evaluation and attend domestic violence group. Montoya testified that Shana stated that she had a psychological evaluation at Glenwood Testing Center; however, Montoya testified that they would not release her records until the outstanding balance was paid. Shana had documented her attendance at domestic violence counseling from November 2010 to January 2011. Montoya then stated: “I think she continues to go. I haven’t had any more documentation, but I’m sure she can provide that to me.”

¶ 21 Montoya further stated that Shana’s visits with the minors had to end early several times because Shana was “very” hostile to Montoya or spoke inappropriately about the minors’ caregivers. Additionally, Amos refused at least four times to visit with her.

¶ 22 At the end of the hearing, the trial court found that Shana did not make reasonable efforts for the review period. The trial court stated:

“[W]e have no idea what was done at Glenwood Center. The alternative evaluation, no charge was offered and not taken advantage of. \*\*\* As far as the documentation of the domestic violence counseling, if Mom has got those in her purse, she needs to give them to the caseworker. I think there’s some gamesmanship going on here. I don’t think it’s doing anyone any good.

The court further finds the Department has made reasonable efforts during this review period, and the case has been sitting and sitting for a period of 2 years.

At this time the Court finds that it is in the best interest of the minors that their permanency goal be changed to substitute care pending Court determination of parental rights.”

¶ 23 On June 2, 2011, the State filed a motion to terminate parental rights as to all three minors, alleging, *inter alia*, that Shana had “failed to maintain a reasonable degree of interest, concern or responsibility in the minors’ welfare.” A trial commenced on November 3, 2011.

¶ 24 At the trial, Montoya testified that she had been the foster care caseworker at Youth Services Bureau (previously Catholic Charities) since July 2010. She stated that domestic violence group and individual counseling, and random drops to determine whether she was substance free, had been recommended for Shana. Shana was expected to have appropriate visitation with the minors. Montoya described appropriate visitation as maintaining a positive relationship with the children, not discussing the case with the supervising worker, meeting the child’s needs, bringing an appropriate snack and maintaining a positive attitude in front of the children. She described the rules for visitation as interacting appropriately with the children and not being aggressive towards the caseworker or any staff.

¶ 25 Montoya testified that she supervised Shana’s visits. She stated that Shana would speak out inappropriately about the foster parents, the worker, and the agency and would not respond to redirection. Shana would act aggressively toward Montoya. Montoya and her supervisor had quarterly meetings with Shana at which the expectations for visits were discussed. Shana’s behavior did not improve. Montoya described Shana’s voice, tone and demeanor at these meetings as hostile. Montoya did not do home visits because she believed it was an unsafe environment for her; this issue

was staffed with her supervisor. The previous caseworker was removed from the case because of “violent outburst [*sic*] of parents toward her.”

¶ 26 Montoya further stated that Shana had not accepted the history of domestic violence between her and Javier so she could protect the children in the future; Shana stated it was an isolated incident that happened once. Montoya did not observe any integration of what Shana may have learned at domestic violence counseling, and she was not successfully discharged. Shana did not make any progress in services or demonstrate that she had a safe home environment for them.

¶ 27 Shana was discharged from individual counseling because of poor attendance and the counselor’s recommendation that she could not meet Shana’s needs without further insight into her mental health. Shana spent her counseling sessions venting about DCFS and the handling of her case rather than addressing her own issues or issues with the children. In 2009, Shana did have a mental health assessment at Janet Wattles that concluded she was not in need of services at that time. A second evaluation diagnosed Shana with “adult ADHD.” In November 2010, Shana did not attend an appointment for psychological evaluation that was made for her, and she did not reschedule.

¶ 28 Montoya stated that Shana and Javier had not been cooperative with Youth Services Bureau or any agency, were not willing to engage in services, did not have appropriate behavior, did not obey court orders and did not complete services. Shana had not completed enough services or made enough progress to have the children returned; she never progressed to unsupervised visitation.

¶ 29 On January 20, 2012, the trial court found that the State proved by clear and convincing evidence that Shana was unfit as alleged in counts I, III, IV and V of the petition.<sup>2</sup>

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<sup>2</sup>Count I alleged she failed to maintain a reasonable degree of interest, concern or responsibility as to the children’s welfare; count III alleged she failed to make reasonable efforts to

¶ 30 The court then proceeded to the best interests hearing. The trial court took judicial notice of the evidence and testimony from the underlying neglect proceeding; the statement of facts filed in the case; the neglect petitions and temporary custody orders; the orders of adjudication and disposition; the October 15, 2009, order finding Shana in contempt of court and her 24-hour jail sentence, and all prior orders following permanency hearings. At the hearing, Montoya testified that the minors had been in their current placement with their uncle since May, 2009. She stated that Amos was well-integrated into the foster family; Rebecca and Rachel wanted to go home with Shana. Montoya stated that the girls told the Court Appointed Special Advocate during a visit that they wanted to stay with their uncle because he would take care of them. Their foster father wanted to adopt the children. Montoya opined that all three needed stability and permanency, and that they were safe in their current placement. She further opined that they would not be safe with Shana because “the issues that brought the case into care,” *i.e.*, domestic violence, sexual abuse, and mental health, had not been addressed or corrected.

¶ 31 Montoya further stated that the children were all Jehovah’s Witnesses, while their foster family was non-practicing Christian. Montoya opined that the “foster parents respect the religion

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correct the conditions that were the basis for the removal of the children from her within nine months after an adjudication of neglected or abused minor; count IV alleged she failed to make reasonable progress toward the return of the children to her within nine months after an adjudication of neglected or abused minor; and count V alleged that she failed to make reasonable progress toward the return of the child to her during any nine month period after the end of the initial nine month period following the adjudication of neglected or abused minor.

of the children” and that if the children requested, the foster parents would be willing to take them to services.

¶ 32 Montoya believed that neither Shana nor Javier were able to provide a safe and stable home for the children. The agency had legally screened the case and was recommending adoption.

¶ 33 Shana testified that during her visits with the girls, they talked about the past; she would bring them clothes and other items; and she would give them religious materials when they requested. She stated that she knew the children had asthma and that she would take them for any “services” that were necessary.

¶ 34 The trial court adjourned until February 7. On that date, the trial court heard argument and then found it was in the best interests of the minors to terminate her parental rights.

¶ 35 Notice of appeal was timely filed.

¶ 36 **II. ANALYSIS**

¶ 37 The Juvenile Court Act provides a bifurcated system in which parental rights can be terminated. *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203 (2008); 705 ILCS 405/2-29(2) (West 2008). First, the State must show by clear and convincing evidence that the parent is unfit. *Konstantinos H.*, 387 Ill. App. 3d at 203. “A finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act [750 ILCS 50/1(D) (West 2010)].” *Id.* at 203-04. Then, the State must show that the best interests of the children are served by severing the parental rights. *Id.* at 203. The trial court's decision to terminate parental rights involves factual findings and credibility assessments that the trial court is in the best position to make. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). Thus, the trial court's finding of unfitness will not be disturbed unless it is contrary to the manifest weight of the evidence. *Id.* “A factual

finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence presented.”

*Id.* Finally, because each case involving parental unfitness is *sui generis*, we do not make factual comparisons to other cases. *In re J'America B.*, 346 Ill.App.3d 1034, 1046 (2004).

¶ 38 Unfitness

¶ 39 Under section 50/1(D)(b) of the Adoption Act, a parent may be found unfit if he or she fails to “maintain a reasonable degree of interest, concern or responsibility as to the child’s welfare.” 750 ILCS 50/1(D)(b) (West 2010). “In evaluating an allegation under section 1(D)(b), the trial court must focus on the reasonableness of the parent's efforts and not on his success and must consider any circumstances that made it difficult for the respondent to show interest, concern, or responsibility for the well-being of the children.” *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006).

¶ 40 Shana avers that during the pendency of this case, she maintained constant contact with her children via telephone calls and bi-weekly visits. She maintains that her “strong record of maintaining contact” demonstrates a reasonable degree of concern and interest in her children, contrary to the trial court’s finding. She further avers that she complied with the service plans and court directives. She states that she attended individual counseling from November 2009 through March 2010. She also attended domestic violence counseling during the review period between May and November, 2010. She further states that at the May 2011 permanency review hearing before Judge Green, Montoya testified that Shana complied with urine drug drops and continued domestic violence classes. Shana had a psychological evaluation at Glenwood Testing Center, but the records could not be obtained as she had an outstanding balance. Another evaluation was arranged through Catholic Charities, but Shana refused to attend.

¶ 41 Shana further argues that she was frustrated after attempting, on two separate occasions, to obtain a psychological evaluation as ordered by the trial court. She explains that on the first occasion she “had attempted to obtain a psychological evaluation from a local mental health services provider but was turned away because she did not present with a severe mental illness.” She then had an evaluation “but the facility would not release records to DCFS because of [her] inability to pay.” Shana avers that when she was “[a]sked to submit to yet another psychological evaluation, [she] quite reasonably refused.”

¶ 42 The evidence adduced at the hearing belies Shana’s arguments. In June 2002, Shana was first referred for individual counseling when Javier was indicated by DCFS for sexual abuse. She never attended any counseling. After the February 2009 incidents that resulted in having her children placed with her brother as foster parent, her attendance at counseling was brief; she started in November 2009 but only attended through March 23, 2010. The evidence showed that she was not successfully discharged and the counselor recommended a psychological evaluation.

¶ 43 In November 2010, Montoya testified that she learned the day before the hearing that Shana was attending domestic violence counseling at WAVE. In May 2011, Montoya testified that Shana had documented her attendance at domestic violence counseling only from November 2010 to January 2011. While this seems to indicate an attempt to comply with court orders, Shana’s sporadic attendance and lack of documentation indicate a disdain for the system put in place for her benefit, to help her with parenting skills and to recognize and cope with domestic violence situations.

¶ 44 The record establishes that Shana was offered a psychological evaluation free of charge when it became apparent that her records could not be obtained due to her outstanding balance at Glenwood. Although she testified that she tried to obtain an “assessment” at Janet Wattles, she

refused to use the appropriate channels available to her. The psychological evaluation that was both recommended by professionals and ordered by the court was never accomplished. She seems to blame DCFS for not proceeding the way she wanted to proceed.

¶ 45 Further, the record reveals that Shana repeatedly insisted that her three children had asthma and needed medication, despite the medical evidence to the contrary. Montoya testified that the minors had medical examinations and were determined not to have asthma. Shana's "concern and interest" is not reasonable when it conflicts with medical documentation; instead, Shana continued to insist that her children had asthma from infancy and that they would never be cured.

¶ 46 The following quotation succinctly expresses the rationale for our decision today:

"We recognize \*\*\* that in examining allegations under subsection 1(D)(b), a trial court must focus on the reasonableness of the parent's efforts and not the success of those efforts, and must consider any circumstances that may have made it difficult for her to visit, communicate with or otherwise express interest in her child. However, our courts have repeatedly held that a parent will not be found fit merely because she has demonstrated some interest in or affection for her child. [Citation.] Rather, her interest, concern and responsibility must be reasonable. [Citation.]" *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 90.

It is obvious that Shana has interest and affection for her three children, demonstrated by her visits with them and her appearances in court. However, the trial court's finding that the evidence of unfitness was clear and convincing was not against the manifest weight of the evidence.

¶ 47 Since there is sufficient evidence to satisfy this statutory ground, we need not consider other findings of parental unfitness. See *Katrina R.*, 364 Ill. App. 3d at 842 (on review, if sufficient

evidence is shown to satisfy any one statutory ground, we need not consider other findings of parental unfitness).

¶ 48

Best Interests

¶ 49 Shana contends that the State did not prove that it was in the best interests of the minors to terminate parental rights. The constitutionally proper standard at a best-interest hearing is proof by a preponderance of the evidence, which adequately ensures the level of certainty about the court's factual conclusions necessary to satisfy due process. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). Our standard of review of the trial court's decision is whether the findings were contrary to the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 892 (2004).

¶ 50 In the context of a best-interest determination, section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2008)) sets forth a number of factors to consider within "the context of the child's age and developmental needs." The factors include the following:

(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued

\*\*\*;

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

- (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child." Id.

¶ 51 Shana contends that these factors weigh in her favor and that the State failed to prove by a preponderance of the evidence that terminating her parental rights was in the minors' best interests. However, the evidence presented indicated that the minors' safety and welfare would be assured by their adoption by their uncle. Shana testified about their religious convictions, but the trial court gave careful consideration to this factor, and remarked that it "did not hear testimony that the children had asked to be taken to their church and were prevented from doing so. The court did hear testimony that the uncle would let them practice their religion if they wish to do that." Further, although Rebecca and Rachel had stated that they would like to go home with Shana, the trial court considered the fact that they were with their maternal uncle, with access to their biological family. They had been living with their uncle for two and one-half years, attending school and being cared for. Additionally, their uncle wished to adopt them.

¶ 52 We note that Montoya's testimony at various stages of these proceedings indicated a pattern of denial on Shana's part of events, such as the domestic violence incident, as well as of the reality of the children's medical diagnosis that they did not need asthma medication. She indicated that

both Shana and Javier focused inappropriately on irrelevancies, while ignoring agency recommendations and court orders. Shana did not cooperate until court dates were imminent, and then she proceeded according to her own agenda. However, we take most seriously the pattern of attempted manipulation of the children, and the system, as evidenced by her actions.

¶ 53 We are guided by the Illinois Supreme Court in *In re C.W.*, 199 Ill. 2d 198, 217 (2002), which stated, “at the second stage of the termination hearing, at which the court considers whether it is in the best interest of the minor that parental rights be terminated,” “the full range of the parent’s conduct can be considered.” Therefore, we find that the termination of Shana’s parental rights was not against the manifest weight of the evidence.

¶ 54

### III. CONCLUSION

¶ 55 The trial court’s decision finding respondent unfit and terminating her parental rights was not against the manifest weight of the evidence. Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

¶ 56 Affirmed.