2016 IL App (2d) 160017-U
No. 2-16-0017
Order filed June 27, 2016



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* RILEY B., a Minor. | ) | Appeal from the Circuit Court |
| | ) | of Winnebago County. |
| | ) | |
| | ) | No. 14-JA-0307 |
| | ) | |
| (The People of the State of Illinois, | ) | Honorable |
| Petitioner-Appellee, v. Jessica Stuckey, | ) | Francis M. Martinez, |
| Respondent-Appellant.) | ) | Judge, Presiding. |

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not err in continuing hearings beyond the statutory period. Further, the trial court's finding that the minor was neglected was not contrary to the manifest weight of the evidence. Affirmed.

¶ 2 Respondent, Jessica Stuckey, appeals the circuit court's decision finding her son, R.B., neglected. Respondent argues that there was no good cause to continue the adjudicatory and disposition hearings beyond the relevant statutory period following R.B.'s removal from the home. In addition, respondent argues that the court's finding that R.B. was neglected was contrary to the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 3, 2014, the State filed a petition alleging that five-day-old R.B. was neglected. Specifically, the petition alleged that R.B.'s sibling, T.V., age 23 months, died on December 5, 2013, while in the care of respondent and her paramour, the cause of death remained undetermined, and child abuse had not been excluded as a possible cause of death. Further, the petition noted that T.V. had presented at 23 months old with several unexplained bruises, scratches, and hair loss, and that she then died from undetermined causes a few days later. Accordingly, the petition alleged that R.B. was neglected in that his environment was injurious to his welfare and placed him at risk of harm. Respondent stipulated to probable cause, and the Department of Children and Family Services was granted temporary guardianship and custody over R.B.

¶ 5 On November 19, 2014, the court determined that the 90-day period for commencing the adjudicatory hearing would expire on December 2, 2014. The court stated that, on its own motion, it would continue the adjudicatory hearing for an additional 30 days for "breathing room." Respondent's counsel inquired as to the good cause for the continuance; the court responded, "[t]he good cause shown is my schedule, the court's resources. It is just that simple." Ultimately, however, the court asked respondent's counsel if he would waive the 90-day period and agree to trial commencing on December 3, 2014, the 91st day. Counsel stated that he did not want to waive anything; however, he also relented, stating, "If you are available on the 3rd ***." The court shuffled cases on its calendar and scheduled the adjudicatory hearing for December 3, 2014. The court informed the parties that it could give them the balance of that morning, but the courtroom was not open in the afternoon, as he was "a part-time guy." When asked about setting additional dates beyond December 3, 2014, due to the complexity of the case, the court stated that the next dates would probably be in January and they would have to "take it as it comes."

¶ 6 Respondent's attorney also inquired concerning missing discovery, *i.e.*, another coroner's review of the Winnebago County Coroner's autopsy of T.V. The State, represented by assistant State's Attorney Michael Girgenti, represented that it was unaware of the status of that review, and it was not certain that the review would be completed before the adjudicatory hearing, but, if so, it would turn over the results. The court informed respondent that, if the evidence was presented prior to the trial, barring it would be "very unlikely;" rather, the court would allow respondent a continuance to "digest it." Respondent's counsel said that he understood.

¶ 7 On December 3, 2014, the assistant State's Attorney, Brenda Quade, informed the court that *she* had just discovered that there had been a review of the Winnebago County Coroner's autopsy of T.V. by forensic pathologist Dr. Vincent Tranchida, chief medical examiner of Dane County, Wisconsin. Apparently, on June 18, 2014, the Winnebago County Coroner's Office contacted Tranchida to review T.V.'s case. Tranchida did so, and his report had, since August 2014, been in the possession of another assistant State's Attorney, Marilyn Hite Ross, who had not been aware that there was a juvenile neglect case pending. Accordingly, Quade, who was recently assigned to the case, had not been informed of its existence until "a couple of days ago," when having a conversation with two other assistant State's Attorneys. Quade received a copy of the report the day before hearing and tendered a copy to all parties the day of the hearing. The State represented that Tranchida's report drew different conclusions than those drawn by Winnebago County coroner, Dr. Mark Peters, and Tranchida would, therefore, be a critical witness to the State's case, if not its primary and possibly sole witness. Quade requested a short continuance because Tranchida was not available to testify that day.

¶ 8 Respondent's counsel objected to the continuance and moved that the new evidence be barred due to the failure to disclose it for several months. Although counsel was not alleging

improper conduct, as Quade did not know about the report personally, the State had a responsibility to timely disclose the results, which were received in August. Respondent further objected that, because of the report, the State would seek to amend the neglect petition, further delaying the adjudicatory hearing. Finally, respondent moved to dismiss the case based on the neglect petition's failure to state a cause of action.

¶ 9 At the court's prompting, Quade stated that she was willing to partially commence the adjudicatory hearing by submitting evidence for the court's consideration; specifically, a certified copy of Peters' forensic pathology report.

¶ 10 The court granted the State's motion for a continuance, noting that barring evidence is a remedy of last resort and would be extreme, given that there was no evidence of misconduct on the State's part. Further, the court noted that the concern in a juvenile case is the welfare of the minor, and "the only way to assure the court of the minor's welfare and reunify the family without fear is for a full and fair hearing." The court specified the good-cause basis for the continuance:

> "COURT: I think the good cause -- the good cause shown is the dissemination of the new review of the autopsy. I don't think there's been a second autopsy of this child.
>
> COUNSEL: Right, there has not.
>
> COURT: We're not being - - correct. The review by the doctor in Madison which comes to other conclusions which essentially created newly discovered evidence and specifically what appears to be a number of documents involving medical records that may be exculpatory to the [S]tate - - I mean to the respondent parents, so finding that that evidence needs to be disseminated, I find good cause for the continuance."

¶ 11 Thereafter, the parties appeared on December 22, 2014, for a discovery status and filing of an amended neglect petition. Both the State and respondent were having difficulty scheduling witnesses. Respondent's counsel noted that the case had already been extended, over objection, outside of the statutory time frame, and he objected to any continuance that would push the case to March. The case was therefore set for January 23, 2015; however, that date was later struck and re-set for January 30, 2015.

¶ 12 On January 30, 2015, Tranchida began testifying, and respondent commenced cross-examination. The State filed a third amended neglect petition. Respondent moved to dismiss it for failure to state a cause of action, but the court denied the motion. The adjudicatory hearing was continued to February 18, 2015. Thereafter, over the course of several months, the court made various scheduling decisions based upon factors such as its availability, discovery progress, or witness availability. Apparently respondent did not renew motions to dismiss the case; however, respondent's counsel consistently objected to the continuances, as the hearing had been extended "way beyond the time frame" in which it should have been conducted. The court noted that respondent had preserved a continuing objection to the timeliness of the hearing. On various occasions, the court highlighted that it had a duty, under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq*. (West 2012) (Juvenile Court Act)), to afford a full and fair hearing to all parties, that this case was not a criminal one, and that it wanted all available information before determining whether the child was in an abusive or neglectful environment. With those principles in mind, the court made various decisions with respect to evidence and continuing the case, sometimes over respondent's objection, but also, at times, ruling in respondent's favor by denying the State's motion to extend its case. For example, on March 27, 2015, the State requested leave to continue its case to May 1, 2015. Respondent "strenuously objected," with

counsel arguing that the court had already continued the case four times and had "stretched the concept of good cause shown in an effort to – to accomplish what the court believes is a fair and just result ***." Respondent asked that the case not be continued again, noting "due process requires that[,] at some point in time[,] time frames be observed no matter what the consequences are." The court ultimately agreed with respondent, noting that "the court has to balance the best interests of a minor but the court has to respect the procedural rights of the respondents. The best interest of a minor weighs heavily on the court but it can't be used as a crutch to enable a lack of due diligence." The court therefore denied the State's request for a continuance. The State rested its case on April 2, 2015 (although its later motion to re-open the case to introduce indicated packets was granted on June 5, 2015).

¶ 13 Accordingly, on September 2, 2015, the court found that the State had proved by a preponderance of the evidence that R.B. was neglected in that his environment was injurious to his welfare because T.V. was more likely than not the victim of battered child syndrome. In that regard, the court stated that it relied heavily on Tranchida's testimony and report finding that T.V. suffered from battered child syndrome, which constitutes *prima facie* evidence of abuse. 705 ILCS 405/2-18(2)(a) (West 2014). The court explained that Tranchida did not perform the original autopsy, nor did he establish a cause of death for T.V. (he, like Peters, was unable to do so). However, Tranchida's review of the autopsy documents, including photographs, led him to conclude that "at the very least, the child was battered."

¶ 14 In his testimony at hearing, Tranchida supported his conclusion based on his identification of 19 blunt trauma injuries on the child, including bruises, some on the legs and body, but the majority of which were on the face, head, and ears. Tranchida also testified that the autopsy reflected hematomas or subdural hemorrhages in T.V.'s brain, which can result from

blunt force trauma or acceleration-decelerations mechanisms, such as whiplash injury. According to Tranchida, resuscitation injuries could include contusions and hematomas, but only in the perimortem state, and he identified only two injuries on T.V. that could possibly have occurred as a result of resuscitation attempts or intubation damage: an injury to the midline of the oral mucosa and one bruise. Further, Tranchida noted signs of dehydration, such as dry, cracked lips, sunken eyes, and areas of wrinkled skin (reflecting loss of elasticity, which is unusual for children), and that T.V. further suffered from, and was seeing a physician for, alopecia (hair loss) and hives, which could reflect that the child was experiencing high stress levels. While this court will not recount the details of Tranchida's findings with respect to each contusion or blunt force trauma, suffice it to say he described each injury he found on the child and concluded that, based on all factors, the child sustained multiple inflicted blunt force trauma injuries over a period of time. In sum, Tranchida opined to a reasonable degree of medical certainty that T.V. suffered from battered child syndrome, a diagnosis meaning that a child has sustained multiple blunt force trauma injuries chronically over a period of time.

¶ 15 On cross-examination, Tranchida agreed that he was familiar with the phrase "constellation of injuries," which refers to interpreting a variety of injuries as a group. He agreed that his conclusion was based, in part, on the constellation of injuries he found, such as the fact that no one fall could account for all of the bruises he found on T.V. However, Tranchida testified that the "multiple blunt trauma impacts" were the primary basis for his diagnosis. For example, Tranchida clarified that, although he saw signs of dehydration and hair loss, he could not directly tie them to any physical trauma or criminal neglect or abuse; therefore, they were diagnoses separate from those injuries upon which he relied to diagnose battered child syndrome.

¶ 16 The court ultimately found that, although the evidence was insufficient for Tranchida to establish a cause of death, he was "quite clear" that there was sufficient evidence to establish that T.V. was the victim of battered child syndrome. The court noted that Tranchida's findings were corroborated by a DCFS investigator, Judy Lundberg, who attended the autopsy and testified that she had noticed the bruising, particularly to the head and ears. The court did not find credible the testimony of T.V.'s pediatrician, Dr. John Hart, who testified that he had examined the child the day prior to her death, but he did not see evidence of abuse. In contrast to Tranchida, who saw evidence of dehydration in the child's skin, Hart, in his notes, repeatedly described the skin as normal. Further, it appeared that Hart examined T.V. with her clothes on, which could possibly have resulted in his overlooking injuries. According to the court:

> "Dr. Hart's testimony does not refute the presumption that arose when there was a diagnosis of Battered Child Syndrome. It was not sufficient. I am not convinced that Dr. Hart's examinations of the minor were thorough and appear to be rather routine, and his testimony was not convincing to the Court. He did not have any concerns about the child and saw no evidence of abuse.
>
> The Court in determining the credibility of the witnesses that have testified in this matter finds Dr. Tranchida's testimony was indeed credible. The Court places great reliance on that. The testimony of Dr. Tranchida, along with photographs of the autopsy, the extent and location of the bruising, suggest more likely than not that [T.V.] was a victim of Battered Child Syndrome. Without explanation of the extent of the injuries, the environment of [R.B.] [who would be living in the same environment in which T.V. received her injuries] is therefore injurious to his welfare."

¶ 17 After the September 2015, adjudication of neglect, the court held dispositional hearings in September, October, and November, 2015. On December 7, 2015, the court entered an order of disposition finding respondent unfit, unable, or unwilling to care for R.B. When announcing its decision, the court stated:

> "Since the conclusion of the evidentiary hearing [*i.e.*, November 10, 2015] and today's decision, there has been an intervening act that impacts the decision and precludes at this time the return of any guardianship. Both parents are now charged criminally with the aggravated battery to [T.V.]. The parents are charged in a three-count Information. The most serious charge in each of those Informations is a Class X felony. Their bond is set at $100,000, and they are – and the Court will note that they are both currently in custody.
>
> Now, those circumstances alone make the parents at this time unfit, unwilling or unable to properly parent the child given their status in custody; however, it's incumbent on this Court to make rulings as to the evidentiary hearing. In other words, my ruling today is not based solely on that intervening circumstance. If that intervening circumstance had not occurred, the Court would still find that the parents are unfit, unable or unwilling to properly protect or parent the child."

The court thereafter continued to announce its findings, based on the evidence presented at hearing, to support its ruling that respondent was unfit.

¶ 18 On January 5, 2016, respondent appealed. On April 15, 2016, we denied respondent's counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967).[1]

[1] We find that the *Anders* motion, subsequent briefing of the appeal, and our grant of the State's motion for an extension of time, collectively constitute good cause for our issuance of

¶ 19 II. ANALYSIS

¶ 20 A. Good Cause to Continue

¶ 21 Respondent argues first that this case "proceeded at a snail's pace," with 450 days having passed between the shelter care hearing and the court's disposition decision. Respondent recounts the scheduling delays resulting from a lack of court resources or the State's unpreparedness, asserting that those reasons did not constitute good cause for those continuances. Respondent further asserts that the delays here frustrated legislative intent to foster permanency for the child by resolving child custody proceedings on an expedited basis and, therefore, that we should dismiss the third amended neglect petition. While we do not disagree that the pace of the proceedings here was frustratingly slow, we reject respondent's argument.

¶ 22 Section 2-14 of the Juvenile Court Act provides that an adjudicatory hearing "shall be *commenced*" within 90 days of service of process of a neglect petition. (Emphasis added.) 705 ILCS 405/2-14(b) (West 2012). Then, "[o]nce commenced, subsequent delay in the proceedings may be allowed by the court when necessary to ensure a fair hearing." *Id.* Further, although the time limits are mandatory, they may be waived by consent of all parties and approval by the court. 705 ILCS 405/2-14(d) (West 2012).

¶ 23 Here, the court informed the parties that the 90-day period would expire on December 2, 2014. It explained that it might need to extend the case another 30 days, with the "good cause" being the court's own schedule and resources. However, the court then decided that, by re-arranging its calendar, it could start the adjudicatory hearing on December 3, 2014, one day

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this decision more than 150 days after the filing of the notice of appeal. See Ill. S. Ct. R. 311 (a)(5) (eff. Mar. 8, 2016).

beyond the 90-day period. Respondent concedes that, technically, her counsel agreed to the one-day delay and, further, that proceedings, however slight, then commenced on December 3, 2014. Specifically, the court asked respondent's counsel if he would waive the 90-day period and agree to trial commencing on December 3, 2014, the 91st day. Counsel initially stated that he did not want to waive anything. However, he ultimately relented, stating, "If you are available on the 3rd ***." Therefore, on December 3, 2014, the proceeding commenced, with the State introducing a certified copy of Peters' forensic pathology report. While respondent argues that the State was clearly not prepared to proceed, the fact remains that evidence was received.

¶ 24 As the adjudicatory proceedings *commenced* in an agreed, relatively timely fashion, the real issue here concerns the second part of section 2-14(b), *i.e.*, whether, once commenced, subsequent delays in the proceedings were necessary to ensure a fair hearing. Generally, whether to grant continuances is within the juvenile court's discretion and the decision will not be disturbed absent a manifest or palpable injustice. *In re Stephen K.*, 373 Ill. App. 3d 7, 27 (2007). Here, on multiple occasions, the court specified that it wanted a full and fair hearing to protect the interests of *all* parties. It noted that the concern was R.B.'s best interest, that the proceeding was not criminal or even, technically, adversarial, and that it wished to balance respondent's rights with the goal of determining whether the child was in an abusive or neglectful environment. To that end, the court continued the case to allow the State's main witness, Trachnida, to testify, but it also granted continuances to respondent for her case and witness scheduling, which occurred after the State concluded its case on April 2, 2015. Therefore, under section 2-14(b), the court did not abuse its discretion in continuing the case to ensure a full and fair hearing.

¶ 25 We further note that section 2-14(c) specifies that, for good cause shown, the court may continue the hearing for a period not to exceed 30 days, if doing so is consistent with the health, safety, and best interests of the minor. 705 ILCS 405/2-14(c) (West 2012). Section 2-14(c) states that "only *one* such continuance shall be granted," and that "neither stipulation by counsel nor the convenience of any party constitutes good cause." (Emphasis added.) *Id.* Here, the case clearly proceeded beyond 120 days. However, section 2-14(c) also provides that "good cause" shall be strictly construed and in accordance with Supreme Court Rule 231, which includes as good-cause bases: (1) the absence of material evidence; or (2) the court's own motion to continue. See Ill. Sup. Ct. R. 231 (a), (e) (eff. Jan. 1, 1970). Here, the court specified, as appropriate, that continuances were granted either because: (1) it needed to receive all pertinent evidence to ensure a full and fair hearing to all parties and so that it could determine R.B.'s best interest; or (2) on its own motion, the delay was required based on court resources.

¶ 26 Moreover, even if the requirements of sections 2-14(b) or (c) were not satisfied, there is the issue of remedy. Section 2-14(c) provides that, "[i]f the adjudicatory hearing is not heard within the time limits required by subsection (b) or (c) of this Section, *upon motion by any party* the petition shall be dismissed *without* prejudice." (Emphasis added.) 705 ILCS 405/2-14(c) (West 2012). Here, without question, respondent repeatedly objected to continuances, but respondent apparently never moved to dismiss the petition because of a failure to satisfy section 2-14's requirements. Respondent twice moved to dismiss the petition (on December 3, 2015, and January 30, 2015), but the grounds for those motions concerned the petition's alleged failure to state a cause of action, not section 2-14's time requirements. Moreover, we simply do not equate respondent's subsequent objections and argument that further continuances should not be granted, even if because the court was operating outside of the statutory time limits, as *motions*

*to dismiss the petition*. See, *e.g.*, *In re John Paul J.*, 343 Ill. App. 3d 865, 874 (2003) (failure to conduct adjudicatory hearing within 90 days forfeited where petitioner failed to file motion to dismiss petition); *In re S.W.*, 342 Ill. App. 3d 445, 452 (2003) (time requirements of section 2-14 forfeited where petitioner failed to file motion to dismiss).

¶ 27 In sum, we agree that the lengthy period of these proceedings was unfortunate. However, respondent has not demonstrated that she (or R.B) suffered manifest injustice by virtue of the delays. Frankly, this case was simply complicated, as there existed an unresolved investigation into T.V.'s death, a critical issue, given that the neglect petition was based on an anticipatory-neglect theory, *i.e.*, that, because T.V.'s environment was injurious, R.B. was neglected by virtue of being born into the same injurious environment. The trial court commenced proceedings on the 91st day, in agreement with respondent's counsel. Thereafter, the court allowed continuances as necessary to ensure a fair hearing or because it found good cause for the continuance. Respondent apparently never moved to dismiss the petition on the basis that the requirements of section 2-14 were violated. As such, we reject respondent's request on appeal that the third amended neglect petition be dismissed.

¶ 28 B. Neglect Finding

¶ 29 Respondent argues next that the trial court erred in finding R.B. neglected. Respondent argues that the court relied heavily on Tranchida's testimony, which improperly considered a "constellation of injuries" as establishing abuse or neglect. Further, respondent argues that the court ignored Hart's testimony that, on the day before her death, he did not find bruises, contusions, or other signs of neglect or abuse on T.V. Respondent argues that, by relying on a constellation of injuries, instead of evidence of abusive causation of the injuries individually, the

court's judgment that T.V. was abused must be reversed as against the manifest weight of the evidence.

¶ 30 The theory of anticipatory neglect seeks, in part, to protect children who have a probability of being subjected to abuse or neglect because they reside with an individual who has been found to have neglected or abused another child. *In re Arthur H.*, 212 Ill. 2d 441, 468 (2004); 705 ILCS 405/2-18(3) (West 2012) ("In any hearing under this Act, proof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible"). The neglect of one child does not conclusively establish the neglect of another child; however, under an anticipatory-neglect theory, the court is not, when faced with evidence of prior neglect by the respondents, forced to refrain from acting until another child is injured. *Arthur H.*, 212 Ill. 2d at 477. Therefore, in this case, to find R.B. neglected, the trial court needed to first find that the State established by a preponderance of the evidence that T.V. was abused or neglected, *i.e.*, that abuse or neglect was more probable than not. *In re Malik B.*, 2012 IL App (1st) 121706, ¶ 35. After finding T.V. abused or neglected, the court then, under the theory of anticipatory neglect, considered whether R.B. was at risk of harm. The court's finding of abuse or neglect will not be disturbed unless contrary to the manifest weight of the evidence, which occurs only where the finding is "manifestly unjust or palpably against the weight of the evidence and our review of the record clearly demonstrates that the opposite result was the proper one." *Malik B.*, 2012 IL App (1st) 121706, ¶ 35.

¶ 31 Here, the court's findings were not manifestly unjust or palpably against the weight of the evidence, nor can we say that the opposite result would clearly be proper. The trial court, charged with assessing witness credibility and weighing evidence (*In re Jennifer W.*, 2014 IL

App (1st) 140984, ¶ 44) found Tranchida's testimony credible. Respondent's challenge to that testimony on the basis that Tranchida improperly considered a constellation of injuries must fail. In *In re Yohan K.*, 2013 IL App (1st) 123472, ¶ 113, the case upon which respondent relies, the court found that relying on a constellation-of-injuries theory, in the absence of evidence of abusive causation, was akin to relieving the State of its burden of proof. However, in *Yohan*, the respondents presented medical evidence that explained the child's injuries. Here, there was *no* evidence providing a medical explanation for T.V.'s injuries. Respondent notes that Tranchida agreed that resuscitation attempts could have explained two of the injuries. The court could have found this theory unlikely, given that it was qualified by the fact that the injuries would have had to have been inflicted in a specific perimortem state, and unconvincing, given that the theory possibly explained only two of the numerous injuries. Further, Tranchida testified that he only considered the constellation of injuries as *part* of his conclusion, explaining that the phrase concerns the interpretation of a variety of injuries as a group, which was applicable here in the sense that no one fall could account for all of the bruises he found on T.V. However, Tranchida testified that the "multiple blunt trauma impacts" were the primary basis for his diagnosis of battered child syndrome, as opposed to other findings, such as signs of dehydration and hair loss. Battered child syndrome, by Tranchida's definition, necessarily requires the consideration of multiple blunt force trauma injuries occurring over a period of time. Thus, the diagnosis itself *required* consideration of numerous unexplained injuries. The fact that the court considered those numerous injuries, which lacked medical explanation, as more likely than not reflecting battered child syndrome, a condition constituting statutorily *prima facie* evidence of abuse or neglect, should not be conflated or confused with the concept of the constellation-of-injuries theory found improper under the facts in *Yohan*.

¶ 32 Respondent argues that the trial court ignored Hart's testimony that he did not see evidence of abuse on T.V. the day before she died. Again, the court was charged with weighing the evidence. We remain mindful that the court viewed photographs of T.V.'s body and injuries. As such, we cannot find unreasonable the court's decision to not give great weigh to Hart's testimony, where Hart did not thoroughly examine T.V., nor did he provide any medical explanation for the injuries which clearly and indisputably existed at her death. The court reasonably determined that Hart's testimony did not rebut the presumption of battered child syndrome as established by Tranchida's testimony.

¶ 33 In sum, the trial court's finding that the State proved neglect by a preponderance of the evidence was not contrary to the manifest weight of the evidence.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 36 Affirmed.