

No. 1-13-0829

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILLINOIS DEPARTMENT OF HEALTHCARE)	Appeal from the
AND FAMILY SERVICES <i>ex rel.</i> JOENE)	Circuit Court of
HANHARDT,)	Cook County.
)	
Petitioner-Appellee,)	No. 06 D 10710
)	
v.)	
)	Honorable
ROBERT J. TRINZA,)	Ledia J. Gonzalez-Santiago
)	Judge Presiding.
Respondent-Appellant.)	

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Following the filing of a petition for rule to show cause, the circuit court properly concluded that respondent owed unpaid child support and properly denied motion to reconsider that finding, where the circuit court correctly concluded that the child support had been ordered in a judgment for dissolution of marriage, that judgment had become final, and the evidence clearly reflected that the child support had not been paid.

¶ 2 This appeal arises out of a petition, filed by petitioner-appellee, the Illinois Department of Healthcare and Family Services *ex rel.* Joene Hanhardt (the Department), for rule to show cause why respondent-appellant, Robert J. Trinza (Robert), should not be held in contempt for his failure to pay \$25,099.53 in child support owed to his ex-wife, Joene Hanhardt (Joene). This

figure represented the amount due to Joene under the terms of a previously entered judgment for dissolution of marriage. Robert thereafter paid that amount, but also filed a motion to reconsider the circuit court's findings. That motion was denied, and Robert has now appealed from both the original order and the order denying his motion to reconsider. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 This matter proceeded in the circuit court over the course of more than six years, developing a significant record on appeal. We recite here only those facts necessary for our resolution of the issues raised on appeal.

¶ 5 The record reflects that Robert and Joene were married in 1982 and had four children together. Joene initiated divorce proceedings in 2006, and following a trial taking place on multiple dates in 2009 and 2010, the circuit court entered a judgment for dissolution of marriage and custody judgment (dissolution judgment) on July 1, 2010. In the dissolution judgment, the circuit court—*inter alia*—awarded custody of Robert and Joene's two minor children to Joene and ordered Robert to pay child support. In reaching its conclusions, the circuit court specifically found that while Joene's testimony at trial was "for the most part, credible," Robert's testimony was "far less than credible throughout the trial," particularly with respect to financial matters.

¶ 6 With respect to Robert's child support obligation, the circuit court's dissolution judgment found that Robert was an attorney employed by the firm of Robbins, Salomon & Patt (RSP), and earned \$160,000 per year in base compensation. Robert was also entitled to a percentage of the fees collected by RSP for clients Robert brought to the firm (origination compensation) and of the fees produced by Robert in excess of a set annual amount (production compensation). The

circuit court's dissolution judgment provided that Robert would be obligated to pay to Joene, as child support, 20% of his net base salary and 20% of his future origination and production compensation.

¶ 7 In addition, the circuit court concluded that Robert's previously earned origination and production compensation totaled \$105,628.83, as of February 28, 2010. The circuit court noted that while Robert was evasive as to whether he had already received these funds, Robert ultimately conceded at trial that he had not yet demanded payment of those funds from RSP. Thus, the circuit court concluded that Robert was attempting to "appear to have a reduced income for purposes of evading or minimizing his financial responsibilities." After further finding that "[t]here is no doubt that the ROBERT will zealously seek payment of these monies once this case is completed" the circuit court concluded that these funds must be included in Robert's income. Therefore, the dissolution judgment provided that "ROBERT shall pay to JOENE, within seven (7) days of the date of the entry of this Judgment for Dissolution And Custody Judgment, twenty percent (20%) of the net amount of \$105,628.83 that [RSP] owes Robert in origination and production compensation for his employment through February 28, 2010 as child support." Robert was also directed to provide Joene with timely, periodic "reconciliation statements" from RSP reflecting any future origination or production income he earned, with such information to be held confidential.

¶ 8 While it is not included in the record on appeal, the record reflects that Robert filed a posttrial motion attacking the dissolution judgment. In August of 2010, Robert also filed a "supplement" to his posttrial motion. Therein, Robert—*inter alia*—contended that the circuit court erroneously found that he was owed previously earned origination and production compensation from RSP, and that the dissolution judgment therefore "unfairly and unjustifiably

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requires Robert to pay out money to Joene in consideration of money that he has not received and will not receive."

¶ 9 On October 5, 2010, the circuit court entered an order granting in part and denying in part Robert's posttrial motion. After noting that Robert was improperly attempting to "re-litigate the entire trial" and that the court had previously found him to lack credibility regarding financial matters, the circuit court granted Robert relief with respect to two unrelated issues and denied Robert's posttrial motion "as to all other requests." With respect to Robert's request that the requirement that he pay Joene " 'RSP related' compensation" be vacated, the trial court concluded that Robert must pay child support and that he must therefore pay "child support from his compensation at RSP." The circuit court's order never specifically vacated any portion of its dissolution judgment regarding Robert's origination and production income, and concluded by noting that the dissolution judgment "makes clear that he need only pay pursuant to child support guidelines, and only on monies that are paid or due and owing to him."

¶ 10 On November 4, 2010, Robert filed a notice of appeal challenging both the original dissolution judgment and the partial denial of his posttrial motion. However, after Robert failed to timely file a record on appeal, this court dismissed Robert's appeal for want of prosecution in an order entered on April 18, 2011.

¶ 11 On January 18, 2012, the Department initiated the postdissolution proceeding that forms the basis of this appeal. Specifically, on that date the Department filed both a petition to intervene on behalf of Joene and a petition for a rule to show cause. The Department's filings alleged—*inter alia*—that: (1) Joene had not received her share of the \$105,628.83 that RSP owed Robert for origination and production compensation earned prior to February 28, 2010, as mandated by the dissolution judgment; and (2) Robert had never provided Joene with any of the

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timely, periodic reconciliation statements required by the dissolution judgment. The Department therefore asked the circuit court to enter "an order to show cause why [Robert] should not be held in contempt of Court for the willful refusal to obey its order of July 1, 2010 to pay [Joene] twenty percent of the net amount of \$105,628.83 owed to [Robert] as origination and production compensation as of February 28, 2010," or to provide the required reconciliation statements. The allegations included in the Department's petition for rule to show cause were verified and certified by Joene.

¶ 12 Robert filed a response to the Department's petition for rule, in which he contended that the original dissolution judgment had been modified by the circuit court's October 5, 2010, order to reflect that he only owed child support on "monies that are paid or due and owing to him." After further contending that he was "not owed, nor has he been paid" any compensation above his base salary, Robert asked the circuit court to deny the Department's petition in all respects.

¶ 13 On April 23, 2012, the circuit court entered a written order finding that a *prima facie* case of indirect civil contempt had been shown by the Department's verified petition and that a rule to show cause would be entered against Robert. The matter was thereafter continued to August 6, 2012, for a hearing on the Department's petition for rule.

¶ 14 No report of proceedings for that date is included in the record on appeal, but the record reflects that the circuit court entered an order on that date finding that, "after having heard the arguments of [the Department] and [Robert's] counsel in chambers at a pre-hearing conference": (1) any finding of contempt against Robert would be entered and continued to August 20, 2012; (2) Robert was to pay Joene \$25,099.53 within 14 days; (3) this amount represented the amount Robert owed Joene as child support for 20% the \$105,628.83 in origination and production compensation owed to Robert prior to February 28, 2010, pursuant to the dissolution judgment

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(\$21,125.77), plus "9% interest based on 2 years of non-payment;" (4) Robert's failure to pay the \$25,099.53 within 14 days would "result in [Robert] being held in willful contempt on the next court date;" (5) if Robert did not pay the amount owed to Joene and appear at the next court date, a "body attachment" would be issued; and (6) within two days, Robert was to ask RSP to produce reconciliation statements reflecting Robert's RSP income for the years 2010 through 2012.

¶ 15 On August 20, 2012, the circuit court entered two more relevant orders. In the first, the court ordered Robert to pay \$25,099.53 to Joene by the end of the day and to provide the Department—within three days—with reconciliation statements from RSP reflecting his total compensation after February 28, 2010. In the second order, the court found that only by immediately paying Joene would "any finding of contempt be dissipated," and only by immediately paying Joene and timely providing the Department with the reconciliation statements from RSP would the circuit court find that Robert was "not in willful contempt."

¶ 16 The record reflects that Robert did pay Joene \$25,099.53, as mandated by the circuit court's orders. On September 5, 2012, however, Robert filed a motion to reconsider the circuit court's August 6, 2012, order. Therein, Robert contended that the original dissolution judgment and the court's subsequent October 5, 2010, order imposed upon him an obligation "to pay child support only to the extent that he actually received or is owed 'origination ' or 'production' compensation." Robert further asserted that he was neither paid nor owed any such compensation, with the motion contending that those assertions were supported by an affidavit and a reconciliation statement provided by RSP's chief operating officer.¹ The motion therefore

¹ The affidavit and the reconciliation statement themselves are not contained in the record on appeal, with Robert's motion contending that they were originally filed under seal pursuant to the terms of the dissolution judgment.

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asked the circuit court to vacate its August 6, 2012, order, as that order improperly required Robert to "pay child support based upon \$105,628.83 of 'additional' compensation that he had never received; nor is he owed this 'additional' compensation."

¶ 17 The Department filed a written response to Robert's motion, wherein it contended that the August 6, 2012, order had actually been entered by the agreement of the parties. The Department further asserted that, while Robert had complied with that order by paying Joene, he had not provided the Department any of the required reconciliation statements until he included them as attachments to his September 5, 2012, motion to reconsider.

¶ 18 A hearing on the motion to reconsider was held on April 4, 2013. At that hearing, the circuit court refused to allow Robert to introduce the proffered evidence regarding whether or not he was ever paid or owed any origination or production income from RSP in 2010. Robert therefore provided two offers of proof which indicated that both he and RSP's chief executive officer would testify that Robert was not paid and was not owed any such income in 2010. In a written order entered the same day, the circuit court denied Robert's motion to reconsider. In that order, the circuit court also noted that Robert's ongoing child support obligation had terminated and all matters involving the Department were concluded. Robert filed a notice of appeal on March 6, 2013.

¶ 19

II. ANALYSIS

¶ 20 On appeal, Robert challenges that portion of the August 6, 2012, order requiring him to pay Joene \$25,099.53, as well as the February 4, 2013, order denying his motion to reconsider that decision. We find Robert's contentions on appeal to be unfounded.

¶ 21 We first consider Robert's related arguments that: (1) the original dissolution judgment and the October 5, 2010, order granting in part and denying in part his posttrial motion made it

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clear that Robert was only required to pay child support on any additional origination and production income that he had actually been paid or was owed; and (2) he could not have been properly ordered to pay any such child support in the instant contempt proceeding, where he had never actually been paid or earned any such income. We disagree.

¶ 22 The original dissolution judgment and the order granting in part and denying in part Robert's posttrial motion were entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (Marriage Act). 750 ILCS 5/101, *et seq.* (West 2010). Section 505(b) of the Marriage Act provides that the "[f]ailure of either parent to comply with an order to pay support shall be punishable as in other cases of contempt." 750 ILCS 5/505(b) (West 2010). Furthermore, the Department was authorized by the Illinois Public Aid Code to file, on behalf of Joene, the instant petition for rule to show cause why Robert should not be held in contempt for failing to comply with those orders. 305 ILCS 5/10-1, *et seq.* (West 2010). Furthermore, it is well recognized that:

" 'The power to enforce an order to pay money through contempt is limited to cases of willful refusal to obey the court's order.' [Citation.] The failure to make support payments as ordered is *prima facie* evidence of contempt. [Citation.] Once the party bringing the contempt petition establishes a *prima facie* case, the burden shifts to the alleged contemnor to prove that the failure to make support payments was not willful or contumacious and that there exists a valid excuse for his failure to pay. [Citation.] '[W]hether a party is guilty of contempt is a question of fact for the trial court, and * * * a reviewing court will not disturb the finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion.' [Citation.]" *In re Marriage of Barile*, 385 Ill. App. 3d 752, 758-59 (2008).

¶ 23 In this matter, the circuit court's original dissolution judgment clearly stated that Robert's origination and production compensation totaled \$105,628.83, as of February 28, 2010. The original dissolution judgment further concluded that, while Robert may not yet have been paid that amount by RSP, these earnings had been earned, were owed to Robert, and must therefore be included in Robert's income for purposes of calculating child support. Therefore, the dissolution judgment clearly provided:

"ROBERT shall pay to JOENE, within seven (7) days of the date of the entry of this Judgment for Dissolution And Custody Judgment, twenty percent (20%) of the net amount of \$105,628.83 that [RSP] owes Robert in origination and production compensation for his employment through February 28, 2010 as child support."

¶ 24 We fail to see how Robert could take issue with such an interpretation of the original dissolution judgment, as this interpretation properly construes that order in a reasonable manner so as to give effect to the apparent intention of the circuit court. *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485, 494 (2009). Indeed, Robert's primary argument on appeal is that the circuit court—in the context of ruling upon the Department's petition for rule to show cause—improperly ignored the fact that the subsequent October 5, 2010, order granting in part and denying in part his posttrial motion substantially "clarified" this obligation when it concluded that the dissolution judgment "makes clear that [Robert] need only pay pursuant to child support guidelines, and only on monies that are paid or due and owing to him."

¶ 25 However, the orders of the circuit court "must be interpreted from the entire context in which they were entered, with reference to other parts of the record including the pleadings, motions and issues before the court and the arguments of counsel." *Id.* While Robert's posttrial motion challenged the dissolution judgment—*inter alia*—on the grounds that it "unfairly and

unjustifiably requires Robert to pay out money to Joene in consideration of money that he has not received and will not receive," the circuit court granted Robert relief only with respect to two unrelated issues and denied Robert's posttrial motion "as to all other requests." The circuit court also concluded that Robert was improperly attempting to "re-litigate the entire trial," and reiterated its conclusion that Robert lacked credibility as to financial matters. We therefore find nothing in the October 5, 2010, order implicitly or explicitly reflects that the circuit court reversed its original finding that "[Robert] shall pay to [Joene], within seven (7) days of the date of the entry of this [j]udgment for [d]issolution [a]nd [c]ustody [j]udgment, twenty percent (20%) of the net amount of \$105,628.83 that [RSP] owes Robert in origination and production compensation for his employment through February 28, 2010 as child support," or vacated Robert's obligation to pay that amount.

¶ 26 Moreover, the Department's petition for rule to show cause, verified and certified by Joene, asserted that Robert had in fact never paid this amount. In his written response to the petition, Robert did not challenge the contention that he had never paid this child support to Joene; rather, he simply contended—contrary to the specific findings contained in the dissolution judgment—that he was "not owed, nor has he been paid" any origination and production compensation. We therefore find that the circuit court properly concluded on April 23, 2012, that Robert's evident failure to make the required child support payments as ordered in the dissolution judgment was a *prima facie* showing that he was in contempt. *In re Marriage of Barile*, 385 Ill. App. 3d at 758-59. Thus, at the subsequent proceedings on the Department's petition, the burden shifted to *Robert* to prove that the failure to make this payment was not willful or contumacious and that there existed a *valid* excuse for his failure to pay. *Id.*

¶ 27 As intimated above, Robert's sole effort to meet this burden is his attempt to establish that he was never actually paid or owed the \$105,628.83 in origination and production compensation. This effort is completely improper.

¶ 28 We note that the circuit court's original dissolution judgment and the order granting in part and denying in part Robert's posttrial motion were initially appealed by Robert, but his appeal was dismissed for want of prosecution. "A judgment is *res judicata* where an appeal has not been perfected, and an order from which an appeal might have been taken may not be reviewed on appeal from a subsequent order entered in the same case." *Application of Cook County Collector*, 228 Ill. App. 3d 719, 736 (1991). Furthermore, a "contempt proceeding is collateral to and independent of the case in which the contempt arises." *Busey Bank v. Salyards*, 304 Ill. App. 3d 214, 218 (1999). As such, where the underlying order was not challenged directly on appeal, it may not be collaterally attacked in proceedings on a rule to show cause for any reason other than a contention that the original judgment was void. *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 45 (2008) (citing *In re Marriage of Mitchell*, 181 Ill. 2d 169, 229 (1998)). Similarly, a party "may not collaterally attack the underlying final judgment in an appeal from an order of contempt based on the violation of that judgment." *Busey Bank*, 304 Ill. App. 3d at 218.

¶ 29 All of Robert's efforts to establish that he was never actually paid or owed the \$105,628.83 in origination and production compensation, made in the context of the proceedings on the Department's petition for rule to show cause below and before this court, are essentially collateral attacks on the dissolution judgment's finding that he was in fact owed that amount and did in fact have an obligation to pay child support on that income. Pursuant to the above authority, these collateral attacks on that judgment are improper. We therefore conclude that the

circuit court did not abuse its discretion in ordering Robert to comply with the dissolution judgment and pay Joene \$25,099.53 in child support.²

¶ 30 Lastly, we consider Robert's arguments that the trial court violated his due process rights when it: (1) entered its August 6, 2012, order without requiring the Department to offer any evidence that Robert had failed to comply with the dissolution judgment, and (2) entered both the August 6, 2012, and February 4, 2013, orders without providing Robert an opportunity to be heard or to present evidence. We reject these contentions for a number of reasons.

¶ 31 First, we note that Robert has failed to present this court with a sufficiently complete record with which to review the August 6, 2012, order regarding these contentions. The order entered on that date did not reference any objection to the Department's purported lack of evidence or any purported refusal to permit Robert to introduce any evidence, and the record on appeal does not contain a report of the proceedings from that date. It is well recognized that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Pursuant to this authority and the lack of a sufficient record on appeal, we must presume that the circuit court's August 6, 2012, order and the proceedings underlying it were both proper.

¶ 32 In fact, the record that has been provided to this court would appear to belie Robert's arguments with respect to the proceedings on August 6, 2012. The written order of that date

² While this amount included "9% interest based on 2 years of non-payment," Robert has never challenged the circuit court's calculation and we therefore need not address that calculation further.

itself indicates that it was entered only after the arguments of both Robert and the Department had been heard and considered. And, as noted above, in its response to Robert's motion to reconsider, the Department asserted that the August 6, 2012, order had actually been entered by the agreement of the parties. Robert has never specifically responded to or refuted this assertion.

¶ 33 Even more important is the fact that the record before this court does not reflect that Robert ever raised any such objections to the August 6, 2012, order below. As noted above, the record before us does not demonstrate that any objection was raised at the time the August 6, 2012, order was entered. Moreover, while Robert subsequently filed a motion to reconsider that order, that motion included no contention that the circuit court's order was entered without requiring the Department to present sufficient evidence and/or without providing Robert the opportunity to be heard or to present his own evidence. Nor were any such contentions raised at the hearing on the motion to reconsider. "Questions not raised in the trial court cannot be argued for the first time on appeal." *Parks v. Kownacki*, 193 Ill. 2d 164, 180 (2000). If—as Robert now contends on appeal—the trial court improperly refused to allow an evidentiary hearing on August 6, 2012, that issue could have and should have been raised below. As it was not, we conclude that Robert's due process challenges to the August 6, 2012, order and proceedings has been forfeited.

¶ 34 We come to a similar conclusion with respect to Robert's contention that the circuit court improperly denied him due process when it denied his motion to reconsider the August 6, 2012, order without first providing him an opportunity to present the proffered testimony of either himself or RSP's chief executive officer. It is well recognized that the "purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of

existing law." *Pence v. Northeast Illinois Regional Commuter R.R. Corp.*, 398 Ill. App. 3d 13, 16 (2010). As such, it is generally recognized that arguments first raised in a motion to reconsider are deemed forfeited. See, e.g., *American Chartered Bank v. USMDS, Inc.*, 2013 IL App (3d) 120397, ¶ 13 (2013) ("Issues cannot be raised for the first time in the trial court in a motion to reconsider and issues raised for the first time in a motion to reconsider cannot be raised on appeal."); *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶ 36 (same).

¶ 35 Furthermore, "when a motion to reconsider sets new matters before the court, such as new facts or legal theories, the submitting party essentially seeks a 'second bite at the apple,' and the circuit court therefore has discretion over whether to consider the new matter as well as its decision on the motion." *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 433 (2005) (quoting *O'Shield v. Lakeside Bank*, 335 Ill. App. 3d 834, 838 (2002)). Moreover, "[w]hen a party seeks to have a motion to reconsider granted on grounds of newly discovered evidence, the movant must provide a reasonable explanation for why the evidence was not available at the time of the original hearing." *Stringer v. Packaging Corp. of America.*, 351 Ill. App. 3d 1135, 1141 (2004). The absence of such a reasonable explanation is itself a sufficient basis to reject a motion to reconsider, regardless of the contents of the newly proffered evidence. *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248 (1991).

¶ 36 Here, Robert offered no reasonable explanation to the circuit court as to why, in the context of the Department's postdissolution petition, he did not offer this evidence regarding his actual origination or production income from RSP prior to the filing of his motion to reconsider. Indeed, the primary evidence Robert sought to rely upon—the testimony of RSP's chief executive officer and the reconciliation statements—was essentially the very information that

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Robert was obligated to provide by the original dissolution judgment but had consistently failed to provide. Without being provided with any reasonable explanation as to why this evidence was not previously presented to the circuit court, we cannot say that the circuit court abused its discretion in failing to allow Robert to introduce any such evidence or to consider it in denying the motion for reconsideration.

¶ 37 Even if we overlooked all of Robert's failures to preserve his due process arguments, we would still find them unfounded. With respect to Robert's contention that the circuit court improperly entered its August 6, 2012, order without requiring the Department to offer any evidence that Robert had failed to comply with the dissolution judgment, we merely reiterate our conclusion that the Department had already established a *prima facie* case of contempt for Robert's failure to pay child support, and at that point it was Robert's burden to prove that the failure to make this payment was not willful or contumacious and that there existed a valid excuse for his failure to pay. *In re Marriage of Barile*, 385 Ill. App. 3d at 758-59.

¶ 38 With respect to Robert's argument that the circuit court denied him due process when it improperly entered both the August 6, 2012, and February 4, 2013, orders without providing Robert an opportunity to be heard or to present evidence, we note that it has long been understood that "[w]hile due process embraces an opportunity to be heard and present evidence relevant to the issues involved, it does not require the admission in evidence of proof which is not germane to the issues made by the pleadings." *Rhodes v. Anderson*, 39 Ill. App. 3d 208, 210 (1976) (quoting *Old Salem Chautauqua Association v. Assembly of God*, 16 Ill. 2d 470, 477-478 (1959)). As explained above, all of the evidence and arguments that Robert complains he was improperly denied the opportunity to present related to his own improper, collateral attack on the

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dissolution judgment. We therefore conclude that Robert cannot demonstrate that his due process rights were violated by the circuit court's refusal to consider any such evidence.

¶ 39

III. CONCLUSION

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 41 Affirmed.