

**NOTICE**

Decision filed 08/21/25. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2025 IL App (5th) 250234-U

NO. 5-25-0234

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**NOTICE**

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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<i>In re</i> AXEL C., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Williamson County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 22-JA-38
	)	
Ty H.,	)	Honorable
	)	Amanda Byassee Gott,
Respondent-Appellant).	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Justices Barberis and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court’s fitness and best interest determinations were not against the manifest weight of the evidence. Father failed to demonstrate that he received ineffective assistance of counsel.

¶ 2 The respondent, Ty H. (Father), appeals from the circuit court’s February 27, 2025, decision to terminate his parental rights. Father additionally claims that he received ineffective assistance of counsel. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Father is the biological father of Axel C. (A.C.), born on June 30, 2022. A.C.’s biological mother, Ashley Conley (Mother), consented to A.C.’s adoption and is not a party to this appeal.

Mother and Father's relationship ended before A.C.'s birth, and A.C.'s birth certificate did not list a father.

¶ 5 On July 5, 2022, the State filed a juvenile petition for adjudication of wardship for A.C. pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2024)) based on neglect due to an injurious environment. The allegations in the petition included that Mother used methamphetamine during her pregnancy, Mother had prior involvement with the Illinois Department of Children and Family Services (DCFS), and that Mother was homeless and without items to care for A.C. The petition named Cody Wright as the putative father of A.C.

¶ 6 DCFS was granted temporary custody of A.C. on July 6, 2022, and an adjudicatory hearing was scheduled for July 14, 2022. The matter was reset to obtain service on all parties. A notice of publication was filed on July 27, 2022, along with the State's affidavit for service by publication. The State averred that Mother, Cody, and "Any and All Unknown Fathers," could not be located and process could not be effectuated personally or by certified mail as they could not be located upon a diligent inquiry. Notice was published in the Marion Star and placed on a public notice website. The certification of publication was filed on August 10, 2022. A copy of the notice attached to the publisher's certificate stated that the proceedings on the petition for adjudication of wardship would be held at the Williamson County Courthouse on September 1, 2022, at 9 a.m.

¶ 7 Mother appeared for the adjudicatory hearing held on September 1, 2022, and a default order was entered against A.C.'s father. Mother stipulated to the allegations, and an order was entered finding that A.C. was abused or neglected based on Mother testing positive for amphetamine and methamphetamine while pregnant. The circuit court additionally ordered paternity testing for Cody.

¶ 8 A dispositional hearing was held on September 22, 2022. The circuit court found that Mother and the father of A.C. were unfit to care for A.C., the proposed service plan was appropriate, and the permanency goal of A.C. returning home within 12 months was appropriate. A.C. was made a ward of the court and the Guardianship Administrator of DCFS was granted custody with the right to place A.C.

¶ 9 Cody's paternity test, filed on December 12, 2022, revealed that he was not A.C.'s biological father. On February 7, 2023, Mother informed her caseworker that Father may be the biological father of A.C. During a permanency hearing set on February 23, 2023, the circuit court entered an order for Father to submit to paternity testing. A diligent search was performed and the DCFS caseworker located Father in July of 2023. Father had been incarcerated and was on parole. The DCFS caseworker sent Father a certified letter and Father was informed that he was required to submit to paternity testing. Father confirmed that he would comply with a paternity test scheduled for October 17, 2023, and then he failed to appear. A summons was subsequently issued on October 19, 2023, and Father was personally served with the juvenile petition for adjudication of wardship on November 4, 2023.

¶ 10 Father did not appear for a permanency review hearing held on November 16, 2023. During that hearing, Mother stated that she had "no idea" if Father was A.C.'s biological father. The circuit court entered an order with the goal of substitute care pending termination of parental rights where no one was established as the father of A.C. The State filed a petition to terminate parental rights on December 12, 2023.

¶ 11 DCFS filed a permanency report on December 29, 2023, and reported that Father had not contacted DCFS after he failed to appear for a paternity test, and Father had been notified of the

scheduled permanency hearing. A certification of putative father registry search results was attached to the DCFS permanency report. No registration of a putative father was located.

¶ 12 Father appeared for a permanency hearing on January 11, 2024, and declined the appointment of counsel. Father was served at the hearing with an amended petition for termination of parental rights. Father subsequently submitted to a paternity test in January of 2024, and a genetic testing report dated February 28, 2024, confirmed that Father was the biological father of A.C. An order establishing that Father was A.C.'s biological father was entered on February 29, 2024, and Father was appointed an attorney at that time.

¶ 13 Father's attorney was present for a permanency hearing held on July 25, 2024, and he requested a continuance because he had been unable to meet with Father prior to the hearing. The continuance was granted. During that hearing, the State also informed the circuit court that Father had not been present for the adjudication hearing because a different putative father had been named. The circuit court considered that the child had been adjudicated as neglected and a second adjudicatory hearing was not necessary. However, Father should be afforded the opportunity to comply with services before proceeding with a hearing on the termination of parental rights.

¶ 14 A hearing on the termination of Father's parental rights was held on February 27, 2025. Father's counsel raised an oral motion to dismiss the State's petition to terminate. Father argued that he had not been found unfit, unwilling, or unable to care for A.C. as the order of adjudication was entered before Father was determined to be A.C.'s biological father. The State argued that Father had been served by publication prior to adjudication. The circuit court considered that A.C.'s birth certificate did not include information on A.C.'s father, and that service to all unknown fathers through publication was proper where A.C.'s biological father was unknown at that time. The circuit court additionally noted that Mother was the primary custodial parent and abuse and

neglect findings in the adjudicatory order were based on her actions as the offending parent. The circuit court denied the oral motion to dismiss the petition for termination and proceeded with the termination hearing.

¶ 15 Brooke Copher, a child welfare specialist with DCFS, testified that she had completed an integrated assessment with Father and developed his service plan. She testified that Father's service plan included that Father was required to complete a substance abuse assessment and any recommendations, participate in parenting education, complete a mental health evaluation, participate in domestic violence services, and comply with his parole requirements. Copher met with Father and discussed the service plan on May 16, 2024, and she referred Father for services.

¶ 16 Copher testified that she did not have documentation of Father completing any services on his service plan. Father had enrolled in parenting education services, and his first session was scheduled for January 27, 2025. Father did not attend. Copher testified that Father had informed her that he had been participating in classes. Copher then requested an expedited release of records to determine whether Father was participating. According to the updated records, Father had not attended parenting classes. Father also had been referred to Centerstone of Illinois, Inc. (Centerstone) for a mental health assessment, and Centerstone did not have a record of Father completing an assessment. Additionally, Father had not completed domestic violence services.

¶ 17 Copher testified that Father received substance abuse treatment through the Egyptian Health Department at the end of January of 2025. Visitation with A.C. had gone well, but Father missed about half of the scheduled visits, and he never progressed to unsupervised or overnight visits. Copher additionally testified that Father had moved multiple times, but reported that he had his own home with a bedroom for A.C.

¶ 18 According to Copher, Father had not made an effort to establish a relationship with A.C. Father had not participated in Administrative Case Reviews (ACR), and he had not completed services even though Copher had multiple conversations with Father on the importance of complying with service requirements.

¶ 19 Father testified on his own behalf and explained that he did not initially appear for a paternity test because Mother had told him that Cody was A.C.'s father. After learning that Cody was not the father, Father decided to take the paternity test. Father was employed and had been living in the same house for approximately five months. Father was enrolled in parenting classes and began participating approximately three weeks before the fitness hearing.

¶ 20 Father testified that he was delayed in completing an assessment through Centerstone because he had an issue with his private insurance and was placed on a waitlist. Father had completed an assessment through the Egyptian Health Department. He claimed that mental health and substance abuse services had not been recommended. Father acknowledged that he had a history of substance abuse, and he received Medical Assisted Treatment (MAT) and was prescribed Suboxone. Father also testified that he had contacted the Carbondale Police Department but had a difficult time registering for their domestic violence program. Father also testified that he had health problems, including COPD, and had to cancel visits with A.C. because of his health.

¶ 21 The circuit court found that it had been a year since Father was determined to be A.C.'s biological father and Father had not completed any services. Although Father had started some services, the circuit court found that beginning services a month prior to the fitness hearing did not demonstrate that Father was maintaining a reasonable degree of interest, concern or responsibility as to A.C.'s welfare. Additionally, Father had failed to communicate with his caseworker those issues related to delays in services due to issues with his insurance. The circuit court also found it

implausible that Father was not required to complete substance abuse services based on Father's history of substance abuse.

¶ 22 Father was found unfit based on several grounds, including that Father failed to maintain a reasonable degree of interest, concern or responsibility as to A.C.'s welfare; Father failed to protect A.C. from conditions within his environment injurious to his welfare; Father failed to make reasonable efforts to correct the conditions that were the basis for the removal of A.C.; and Father failed to make reasonable progress towards the return of A.C. within any nine month period following adjudication of neglect or abuse.

¶ 23 The circuit court proceeded to the best interest hearing directly after determining that Father was unfit. Copher recommended that A.C.'s foster family be allowed to adopt. She had observed A.C. with his foster family and A.C. appeared to have a "great relationship" with everyone in the household.

¶ 24 A.C.'s foster parents, James Ricci and Allison Ricci, testified for the State. A.C. was placed in their home four days after his birth. James and Allison loved A.C. and wished to pursue adoption. A.C. had his own bedroom, and he treated the children in the foster home as his siblings. The children were home schooled and socialized with other children in the community through recreational extracurricular activities. A.C. had joined his foster family on several vacations.

¶ 25 James specifically testified that he had attempted to facilitate a relationship between Father and A.C. James invited Father to attend church services with A.C., and James had made arrangements for Father to be present for A.C.'s first haircut. Father did not show.

¶ 26 The Guardian *ad litem* (GAL) testified that she had completed home visits and both Father's home and the foster home were appropriate. Father had a bedroom for A.C. and his home was safe and suitable for A.C. The GAL recommended that it would be in A.C.'s best interest to

remain with James and Allison because he had lived in the foster home since birth and had formed a bond with his foster family.

¶ 27 Father did not present testimony or any additional evidence at the best interest hearing and asked the circuit court to take judicial notice of his testimony from the fitness hearing. He argued that Father had a difficult time accessing services to be compliant with this service plan and that he was actively participating in parenting classes. Father did not have the same relationship with A.C. as the foster family because he did not have the opportunity to spend every day with A.C. Father's relationship with A.C., however, was appropriate.

¶ 28 The State argued that A.C. needed permanency. Although Father may care for A.C., it was in A.C.'s best interest for Father's parental rights to be terminated.

¶ 29 The circuit court considered the testimony presented and the best interest factors. The circuit court found that A.C.'s sense of security, familiarity, and identity were all connected to his foster family, who he had lived with his entire life. A.C. considered his foster parents as his own parents. The circuit court found that Father loved A.C., but there was minimal progress with A.C. forming a relationship with Father. The termination of Father's parental rights was determined to be in A.C.'s best interest.

¶ 30 A formal written order was entered on February 27, 2025, terminating Father's parental rights. The circuit court found that Father was unfit for failure to maintain a reasonable degree of interest, concern or responsibility as to A.C.'s welfare; Father failed to protect A.C. from conditions within his environment injurious to his welfare; failure to make reasonable efforts to correct the conditions that were the basis for removal of the A.C. during any nine-month period



following the adjudication of neglect or abuse.<sup>1</sup> The order indicated that the nine-month periods relied on by the State were September 1, 2022, through June 1, 2023, and June 2, 2023, through March 2, 2024. The written order additionally indicated that it was in A.C.'s best interests for Father's parental rights to be terminated and that the guardianship administrator for DCFS be vested with the power to consent to the adoption of A.C. This appeal followed.

¶ 31

## II. ANALYSIS

¶ 32 On appeal, Father argues that the circuit court's fitness findings and best interest determination were against the manifest weight of the evidence. Father additionally argued that he was denied effective assistance of counsel.

¶ 33 Termination of parental rights proceedings are governed by the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2024)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2024)). *In re D.T.*, 212 Ill. 2d 347, 352 (2004). A petition to terminate parental rights is filed under section 2-29 of the Juvenile Court Act, which delineates a two-step process to terminate parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2024). The State must first establish, by clear and convincing evidence, that the parent is an unfit person under one or more of the grounds enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2024)). 705 ILCS 405/2-29(2), (4) (West 2024); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Because each of the statutory grounds of unfitness is independent, the circuit court's finding may be affirmed where the evidence supports a finding of unfitness as to any one of the alleged grounds. *In re C.W.*, 199 Ill. 2d 198, 217 (2002). If the circuit court finds a parent to be unfit, then the cause proceeds to a determination

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<sup>1</sup>The circuit court's written order did not include that Father was unfit for failing to make reasonable progress towards the return of A.C.

of whether it is in the best interest of the child for the parent's rights to be terminated. 750 ILCS 50/1(D) (West 2022); *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000).

¶ 34 Each case concerning parental fitness is unique and must be decided on the particular facts and circumstances presented. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). The circuit court's finding of unfitness is given great deference because it has the best opportunity to view and evaluate the parties and their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). The circuit court's factual findings will not be reversed unless they are against the manifest weight of the evidence. *In re M.J.*, 314 Ill. App. 3d at 655.

¶ 35 The circuit court's written decision found Father unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to A.C.'s welfare (750 ILCS 50/1(D)(b) (West 2024)); Father failed to protect A.C. from conditions within his environment injurious to A.C.'s welfare (750 ILCS 50/1(D)(g) (West 2024)); and Father failed to make reasonable efforts to correct the conditions that were the basis for removal of A.C. during any nine-month period following the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(i) (West 2024)). The circuit court's oral findings during the fitness hearing additionally included that Father failed to make reasonable progress towards the return of A.C. during any nine-month period following the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2024)).

¶ 36 When determining whether Father had demonstrated interest, concern, or responsibility, the circuit court may consider evidence regarding the completion of the service plan. *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 35. This ground of unfitness is not subject to the nine-month time limitation contained in section 1(D)(m) of the Adoption Act. See 750 ILCS 50/1(D)(b) (West 2024).

¶ 37 On appeal, Father focused his argument on the circuit court’s determination that Father was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to A.C.’s welfare. Father argues that his delay in completing services was due to his late identification as A.C.’s biological father and his incarceration. However, the fitness hearing was held approximately one year after Father had been determined to be A.C.’s biological father and he had not been incarcerated during that time. Father conceded that he had not completed all service plan requirements before the fitness hearing. The circuit court was in the best position to make a credibility assessment of the witnesses, and the circuit court attributed any delays to Father where he failed to communicate with his caseworker. The DCFS caseworker testified that she did not have documentation of Father completing any services on his service plan.

¶ 38 Father does not challenge the circuit court’s findings that he had failed to protect A.C. from conditions within his environment injurious under section 1(D)(g), and he did not directly challenge the circuit court’s reasonable efforts or reasonable progress findings under section 1(D)(m) of the Adoption Act. Father forfeits any arguments that he failed to address on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (“Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.”).

¶ 39 The circuit court’s fitness determination may be affirmed where the evidence supports a finding as to any one of the alleged grounds of unfitness. *In re C.W.*, 199 Ill. 2d at 217. We have thoroughly reviewed the record on appeal and conclude that it does not demonstrate that the circuit court’s fitness decision was against the manifest weight of the evidence and Father forfeited his challenge to one or more grounds of unfitness.

¶ 40 In making a “best interest” determination, section 1-3(4.05) of the Juvenile Court Act requires the circuit court to consider specific statutory factors, in the context of the child’s age and

developmental needs. 705 ILCS 405/1-3(4.05) (West 2024). “Additionally, a court may consider the nature and length of the child’s relationship with his present caretaker and the effect that a change in placement would have upon his emotional and psychological well-being.” *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004).

¶ 41 The circuit court is not required to articulate any specific rationale for its decision, and on review we may affirm the circuit court’s decision without relying on any basis used by the circuit court. *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004). A finding that termination is in the child’s best interest will not be reversed unless it is contrary to the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1116 (2002). A determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *In re D.M.*, 336 Ill. App. 3d 766, 773 (2002).

¶ 42 Evidence was presented at the best interest hearing that both Father’s and the foster family’s home were appropriate and that A.C. had his own bedroom in both homes. A.C.’s foster family had attempted to facilitate a relationship with Father and A.C., and Father did not appear for A.C.’s first haircut. The GAL opined that it was in A.C.’s best interest to remain with the foster family due to his bond with his foster family that he has known since birth. A.C.’s foster parents would provide permanency through adoption.

¶ 43 The circuit court considered the best interest factors and found that A.C.’s sense of security, familiarity, and identity were all connected to his foster family and that A.C. had not made progress with forming a relationship with Father. The circuit court’s best interest decision was not against the manifest weight of the evidence.

¶ 44 We turn to Father’s claim of ineffective assistance of counsel. Father claims that his counsel was ineffective for failing to challenge personal jurisdiction based on improper service by

publication prior to the entry of the adjudication order, and that counsel was ineffective for failing to preserve Father’s jurisdictional objection when he appeared in January of 2024. He additionally claims that counsel was ineffective for failing to develop the evidentiary record where counsel failed to present Father as a witness and adequately develop the record.

¶ 45 Parents of the minors subject to the proceedings under the Juvenile Court Act have “the right to be represented by counsel.” 705 ILCS 405/1-5(1) (West 2024). The *Strickland* standard applies to abuse and neglect cases. *In re Kr. K.*, 258 Ill. App. 3d 270, 280 (1994). Under *Strickland v. Washington*, 466 U.S. 668 (1984), to establish a claim of ineffective assistance of counsel, the defendant must show that (1) counsel’s performance was deficient and (2) the deficient performance resulted in prejudice. *People v. Hughes*, 2012 IL 112817, ¶ 44.

¶ 46 “Both prongs of the *Strickland* test must be satisfied, and a failure to satisfy either one of the prongs precludes a finding of ineffectiveness.” *In re Ca. B.*, 2019 IL App (1st) 181024, ¶ 42. Where an ineffective assistance of counsel claim has not been raised before the circuit court, our review is *de novo*. *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24.

¶ 47 The adjudicatory hearing shall commence within 90 days of the date of service of process. 705 ILCS 405/2-14(b) (West 2024) “The legislature recognizes that serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor and the family and that it frustrates the health, safety and best interests of the minor and the effort to establish permanent homes.” 705 ILCS 405/2-14(a) (West 2024).

¶ 48 “A respondent or defendant may consent to personal jurisdiction by his appearance, or he may have personal jurisdiction imposed upon him by effective service of summons.” *In re M.W.*, 232 Ill. 2d 408, 426 (2009). The Juvenile Court Act provides the processes to obtain service on a parent. See 705 ILCS 405/2-15 (West 2024); 705 ILCS 405/2-16 (West 2024). Section 2-15 states

that when a petition is filed, the court must issue a summons with a copy of the petition attached. 705 ILCS 405/2-15 (West 2024). If the State is not able to obtain personal service upon the parent pursuant to section 2-15 of the Act, there are two other options. *In re Dar. C.*, 2011 IL 111083, ¶ 63. The first alternative is to serve the parent by certified mail if personal service pursuant to section 2-15 was not made “within a reasonable time or if it appears that any respondent resides outside the State.” 705 ILCS 405/2-16(1) (West 2024). The second alternative is service by publication. 705 ILCS 405/2-16(2) (West 2024).

¶ 49 After the State conducts a diligent inquiry in search of a father, memorialized that inquiry in affidavit, requested notice by publication, and proceeded with proceedings for termination of parental rights while such notice was effectuated, the State’s responsibility under the Juvenile Court Act is complete, and the State is not obligated to reopen a default judgment against all unknown fathers after a second possible father is named. *In re A.S.B.*, 293 Ill. App. 3d 836, 843 (1997). Whether the circuit court obtained personal jurisdiction over a party is reviewed on a *de novo* basis. *In re Dar. C.*, 2011 IL 111083, ¶ 60.

¶ 50 Here, Father was not named in the petition for adjudication of wardship as Mother had informed DCFS that Cody was A.C.’s biological father. Furthermore, A.C.’s birth certificate did not list a father, and Father was not listed on the putative father registry. Service was effectuated by publication on Mother, Cody, and any and all unknown fathers during the month prior to the adjudicatory hearing. Mother, the offending parent, then stipulated to the allegations of abuse and neglect at the adjudicatory hearing and A.C.’s father was defaulted.

¶ 51 Father was only located after Mother provided the name of a second possible father. On appeal, Father does not explain how his presence could have been known prior to the adjudicatory hearing and acknowledged that the State was unaware of Father’s identity until February of 2023.

This date was well over 90 days from the date that the State effectuated service by publication against all unknown fathers.

¶ 52 We additionally note that Father did not appear for a permanency hearing after he was personally served in November of 2023. Then, in January of 2024, Father appeared and declined the appointment of counsel. Father had been served by publication, served by a summons, and had appeared in court prior to counsel's appointment. Father's argument that his counsel was ineffective for failing to preserve Father's jurisdictional objection in January of 2024 is meritless.

¶ 53 Father also argues that counsel's performance was objectively unreasonable because the circuit court would have vacated or delayed proceedings had the circuit court been informed of Father's absence from the initial adjudication. However, the State had informed the circuit court that Father had not been present for the adjudicatory hearing when Father appeared in court. The circuit court found that vacating the adjudicatory order was not necessary, and the circuit court continued the State's petition to terminate parental rights for over a year to afford Father an opportunity to participate in services. Furthermore, Father's counsel raised an oral motion on February 27, 2025, and argued that Father had not been found unfit, unwilling, or unable to care for A.C. as the order of adjudication was entered before it was determined that Father was A.C.'s biological father. The circuit court rejected Father's argument because Father had been served as an unknown father by publication prior to the adjudicatory and dispositional hearings. Father has not demonstrated that counsel's performance was deficient where the circuit court had personal jurisdiction over Father.

¶ 54 We additionally reject Father claims that counsel was ineffective for failing to develop the evidentiary record for failing to present Father as a witness. The record clearly establishes that Father testified at the fitness hearing and was provided with the opportunity to explain why he had

not satisfied his service requirements. Thus, Father's ineffective assistance claims fail where he has not established that his counsel's performance was deficient.

¶ 55

### III. CONCLUSION

¶ 56 For the foregoing reasons, we affirm the judgment of the circuit court of Williamson County.

¶ 57 Affirmed.