2019 IL App (1st) 181428
Opinion filed: June 28, 2019

FIRST DISTRICT
Fifth Division

No. 1-18-1428

THE CITY OF CHICAGO, a Municipal Corporation, Through Its Department of Finance, Plaintiff-Appellant, v. WENDELLA SIGHTSEEING, INC., and THE CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 17 L 050497 Honorable Carl Anthony Walker, Judge, presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court, with opinion.
Justices Hoffman and Hall concurred in the judgment and opinion.

OPINION

¶ 1 This administrative review action addressed whether Wendella Sightseeing, Inc. (Wendella), a tour boat operator, was required to collect amusement taxes from its patrons and remit them to the City of Chicago (City) for the years 2006-13, and in what amount. Wendella had failed to collect and remit any amusement taxes from 2006 to 2012; for 2012-13, Wendella collected amusement taxes from its patrons but only remitted a portion thereof to the City, after applying a credit on its patrons' behalf for the monies it had paid the City in docking fees. The City of Chicago Department of Administrative Hearings (DOAH) found that Wendella was not required to collect and remit amusement taxes from 2006 to 2012 because the amusement tax ordinance allowing for the City's levying of such taxes was preempted by 33 U.S.C. § 5(b), as

amended by section 445 of the Maritime Transportation Security Act of 2002 (MTSA) (33 U.S.C. § 5(b) (2006)). With respect to the amusement tax that Wendella actually collected from its patrons and remitted to the City in 2012-13, the DOAH found that Wendella's patrons were entitled to a credit against the tax for docking fees that Wendella had paid to the City. On administrative review, the circuit court affirmed. The City appeals, contending that the DOAH erred in finding that (1) Wendella was not required to collect and remit amusement taxes from 2006 to 2012 because the amusement tax ordinance as applied to Wendella was preempted by section 5(b) after MTSA and (2) as to the amusement tax that Wendella actually collected on its patrons' behalf and remitted to the City in 2012-13, Wendella's patrons were entitled to a credit for docking fees paid to the City. We affirm.[1]

¶ 2 For ease of analysis, we begin by setting forth the relevant law in this case.

¶ 3 I. The Ordinance and Federal Statute at Issue

¶ 4 A. The Chicago Amusement Tax Ordinance Provisions

¶ 5 Section 4-156-020(A):

> "Except as otherwise provided by this article, an amusement tax is imposed upon the patrons of every amusement within the city. The rate of the tax shall be equal to nine percent of the admission fees or other charges paid for the privilege to enter, to witness, to view or to participate in such amusement ***." Chicago Municipal Code § 4-156-020(A) (amended at Chi. City Clerk J. Proc. 48247 (Nov. 19, 2008)).

¶ 6 Section 4-156-010:

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[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

" 'Amusement' means: (1) any exhibition, performance, presentation or show for entertainment purposes, including *** riding on animals or vehicles ***." Chicago Municipal Code § 4-156-010 (amended at Chi. City Clerk J. Proc. 15024 (Nov. 13, 2007)).

" 'Patron' means a person who *** acquires the privilege to enter, to witness, to view or to participate in an amusement." Chicago Municipal Code § 4-156-010 (amended at Chi. City Clerk J. Proc. 15824 (Nov. 13, 2007)).

¶ 7 Section 4-156-030(A):

"It shall be the joint and several duty of every owner, manager or operator of an amusement *** to secure from each patron the [amusement tax] and to remit the tax to the department of revenue ***." Chicago Municipal Code § 4-156-030(A) (amended at Chi. City Clerk J. Proc. 15824-25 (Nov. 13, 2007)).

¶ 8 B. Section 5(b) After MTSA

¶ 9 Section 5(b) after MTSA provides:

"No taxes, tolls, operating charges, fees, or any other impositions whatever shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters, except for

(1) fees charged [for certain port or harbor dues];

(2) reasonable fees charged on a fair and equitable basis that—

(A) are used solely to pay the cost of a service to the vessel or water craft;

(B) enhance the safety and efficiency of interstate and foreign commerce; and

(C) do not impose more than a small burden on interstate or foreign commerce; or

(3) property taxes on vessels or watercraft, other than vessels or watercraft that are primarily engaged in foreign commerce if those taxes are permissible under the United States Constitution." 33 U.S.C. § 5(b) (2006).

¶ 10 II. Background Facts

¶ 11 Michael Borgstrom, Wendella's president, filed an affidavit and gave deposition testimony establishing the following facts.

¶ 12 Wendella operates sightseeing boat tours on the Chicago River and Lake Michigan, which both parties agree are "navigable waters subject to the authority of the United States" (hereinafter, federal waters). See *id.* During the audit period (July 1, 2006, to June 30, 2013), Wendella sold tickets to its boat tours at its ticket offices at the Wrigley Building, at kiosks near Wendella's dock on Michigan Avenue, and online. No tickets were sold onboard Wendella's tour boats.

¶ 13 Wendella licenses its main dock on the Chicago River at Michigan Avenue from the City. For decades, Wendella had entered into a series of license agreements with the City, pursuant to which Wendella pays license fees to the City for the right to operate its tour, charter, and water taxi business from the dock.

¶ 14 In June 1997, Wendella received a letter from the City's law department stating that its patrons qualified for an amusement tax credit under a then-existing provision of the Chicago Amusement Tax Ordinance, which provided that if an operator of an amusement had an

agreement with the City to pay for the operator's use of the public way, "liability under the [amusement tax] shall be reduced by the amount paid to the city pursuant to the agreement." Chicago Municipal Code § 4-156-020(G) (amended at Chi. City Clerk J. Proc. 12016 (Nov. 15, 1995)). The 1997 letter stated that under section 4-156-020(G), Wendella's patrons were entitled to a credit equal to the amount that Wendella paid the City under the license agreement for use of the City docks.

¶ 15 Relying on the 1997 letter, Wendella did not collect amusement tax from its patrons for 2006-12. During those years, Wendella calculated that its payments to the City under the various license agreements for use of the City's docking space exceeded the amount of amusement tax that its patrons owed to the City. Rather than collect amusement tax from its patrons and later give them refunds, Wendella opted not to collect the tax in the first instance. Then in 2012-13, Wendella collected amusement tax in the amount of $1,445,880 from its patrons and remitted $577,834 to the City because Wendella determined that its patrons' amusement tax liability for those years exceeded the amounts that Wendella paid to the City under the license agreement.

¶ 16 In late 2013, the City of Chicago Department of Revenue notified Wendella that it was to be audited. At the conclusion of the audit, the City issued an assessment stating that Wendella owed over $2 million in unpaid amusement tax for the years 2006-13, plus an additional $1.1 million in interest and penalties, for a total of $3,288,937.65.

¶ 17 Wendella protested the assessment, arguing that section 5(b) after MTSA preempted the City's amusement tax ordinance as it applied to Wendella's tours. Alternatively, Wendella argued for the application of the credit for the monies it had paid the City under the licensing agreement for the use of the City docks.

¶ 18 The DOAH heard Wendella's protest and the parties filed cross-motions for summary judgment. The DOAH granted Wendella's motion for summary judgment in part and denied the City's cross-motion for summary judgment in part, finding that Wendella was not required to collect and remit amusement tax for the audit years 2006-12 because the amusement tax ordinance as applied to Wendella was preempted by section 5(b) after MTSA. For the audit year 2012-13, though, Wendella was required to remit amusement taxes to the City because Wendella had actually collected them from its patrons. See Chicago Municipal Code § 3-4-280 (amended Nov. 13, 2007) ("Any tax required to be collected by any tax collector pursuant to any tax ordinance *and any tax in fact collected by a tax collector* shall be collected in trust for the city and shall constitute a debt owed by the tax collector to the city." (Emphasis added.)); Chicago Municipal Code § 4-156-030(C) (amended at Chi. City Clerk J. Proc. 76272 (May 24, 2006)) ("Every owner, manager, operator, or reseller *** who is required to collect the [amusement tax] shall be considered a tax collector for the city."). The DOAH noted that Wendella had produced an exhibit showing that it collected $1,445,880 in amusement taxes from its patrons in 2012-13 and had remitted $577,834 to the City, leaving a difference of $868,046. The DOAH found that the City was not owed the entire $868,046 because Wendella's patrons were entitled to an offsetting credit of the $734,481 in license fees which Wendella had paid to the City for use of the docking space. The balance of $133,565 (representing the difference between $868,046 and $734,481) was the amount of amusement taxes required to be remitted to the City.

¶ 19 On administrative review, the circuit court confirmed the DOAH's decision. The City filed this timely appeal.

¶ 20 III. Analysis

¶ 21 In reviewing the final decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2016)) in this case, we review the administrative decision granting Wendella's summary judgment motion in part and denying the City's cross-motion in part; we do not review the circuit court's judgment. *West Belmont, L.L.C. v. City of Chicago*, 349 Ill. App. 3d 46, 49 (2004). Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Pielet v. Pielet*, 2012 IL 112064, ¶ 29. Review is *de novo*. *Id.* ¶ 30. Where, as here, the parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record. *Id.* ¶ 28.

¶ 22 Here, the City contends that the DOAH erred by finding that section 5(b) after MTSA preempted the amusement tax ordinance as applied to Wendella for 2006-12. An administrative agency's interpretation of a statute's language constitutes a question of law that we review *de novo*. *Sloper v. City of Chicago, Department of Administrative Hearings*, 2014 IL App (1st) 140712, ¶ 15. "But we will not substitute our interpretation of a statutory provision for a reasonable interpretation adopted by the agency charged with the statute's administration." *Id.* Pursuant to *Sloper*, Wendella contends that we should give deference to the DOAH's interpretation of section 5(b) after MTSA. We disagree, as MTSA is a federal statute and Congress has not made the DOAH responsible for its administration. DOAH is also not charged with administering the amusement tax. Rather, the Chicago Municipal Code provides that the Department of Finance, through the Comptroller, has that responsibility. See Chicago Municipal Code § 2-32-080(D) (amended Nov. 21, 2017); Chicago Municipal Code § 3-4-150(B)(2) (amended Nov. 16, 2011); Chicago Municipal Code § 4-156-034 (amended Nov. 16, 2011).

Since the DOAH does not administer the amusement tax, its interpretation of the tax is not entitled to any special deference.

¶ 23 We proceed to address the preemption argument. The preemption doctrine is derived from the supremacy clause of article VI of the United States Constitution, which states that the laws of the United States "shall be the supreme Law of the Land *** any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2. State law is null and void if it conflicts with federal law. *Carter v. SSC Odin Operating Co.*, 237 Ill. 2d 30, 39 (2010). The party asserting federal preemption has the burden of persuasion. *Chicago Housing Authority v. DeStefano & Partners, Ltd.*, 2015 IL App (1st) 142870, ¶ 16.

¶ 24 A presumption exists in every preemption case that Congress did not intend to supplant state law. *Tri-State Coach Lines, Inc. v. Metropolitan Pier & Exposition Authority*, 315 Ill. App. 3d 179, 194 (2000). This presumption against federal preemption applies with special force when a matter of primary state responsibility, such as local taxation, is at stake. *Id.* Therefore, there is no federal preemption of a state or local tax unless Congress makes its intent to preempt unmistakably clear in the language of the statute. *Id.*

¶ 25 "Federal law preempts state law under the supremacy clause in any one of the following three circumstances: (1) express preemption—where Congress has expressly preempted state action; (2) implied field preemption—where Congress has implemented a comprehensive regulatory scheme in an area, thus removing the entire field from the state realm; or (3) implied conflict preemption—where state action actually conflicts with federal law." *Carter*, 237 Ill. 2d at 39-40. In the present case, the DOAH found implied conflict preemption because the plain language of section 5(b) after MTSA was in actual conflict with the amusement tax ordinance as applied to Wendella in 2006-12.

¶ 26 The City argues that the DOAH erred in finding implied conflict preemption here, as there was no conflict between the amusement tax ordinance as applied to Wendella in 2006-12 and section 5(b) after MTSA, which bars nonfederal taxes levied on any vessel, or on its passengers or crew, while the vessel "is operating" on federal waters (see 33 U.S.C. § 5(b) (2006)). Specifically, the City contends that, in 2006-12, the amusement tax was levied at the time that the ticket was purchased and that all such ticket purchases occurred on dry land before the tour began, while the boat was docked, meaning that the tax was levied *prior* to the Wendella's vessel's operation on the federal waters. Therefore, according to the City, the amusement tax ordinance did not conflict with section 5(b), which bars the levy of nonfederal taxes on vessels and their passengers and crew only if the vessels' operations are present and ongoing at the time of the levy.

¶ 27 The City's construction of section 5(b) is incorrect. When construing the meaning of a statute, our objective is to ascertain and give effect to the legislative intent. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 279 (2003). In determining legislative intent, our inquiry begins with the statutory language, given its plain and ordinary meaning, which can be found in a dictionary. *City of Charleston v. System of Administrative Hearing of the City of Charleston*, 2019 IL App (4th) 180634, ¶ 29.

¶ 28 The dictionary definition of "operating" is "engaged in active business." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/operating (last visited June 20, 2019) [https://perma.cc/E5XJ-6SAN]. For purposes of this case, then, a vessel is "operating" on federal waters when it is engaged in active business thereon. Clearly, during 2006-12, Wendella's tour boats were engaged in active business (*i.e.*, were operating) on the federal waters of the Chicago River and Lake Michigan by giving sightseeing tours thereon to paying

customers, and such operations did not cease simply because the tour boats had to dock on occasion. As correctly noted by the circuit court here, "This assertion is the equivalent to stating that a business is no longer in operation simply because it closes at the end of the day. Using such a strained definition of the phrase 'is operating' would go against the clear language and intent of the MTSA." As Wendella's vessels were operating on federal waters during 2006-12, we affirm the DOAH's finding that they and their passengers and crew were not subject to nonfederal taxation (such as the City's amusement tax) under section 5(b) during that time period.

¶ 29 Further, we would affirm the DOAH's finding that Wendella's tour boats, passengers and crew were not subject to the City's amusement tax during 2006-12 *even if* we agreed with the City's assertion that Wendella's tour boats were not actively operating on the federal waters at the precise moment that the tax was levied (*i.e.*, when the tickets were purchased on dry land while the vessels were docked). The rules of construction governing the United States Code state that, in determining the meaning of any congressional act, "words used in the present tense include the future as well as the present" unless the context indicates otherwise. 1 U.S.C. § 1 (2012). Section 5(b) after MTSA uses the present progressive tense—"is operating"—when prohibiting nonfederal taxation of vessels or water craft operating on federal waters. The present progressive tense is the verb form of the present tense that expresses actions happening now. See *What Is Present Progressive Tense? Definition, Examples of English Verb Tense*, Writing Explained, https://writingexplained.org/grammar-dictionary/present-progressive-tense (last visited June 20, 2019) [https://perma.cc/V7LY-2XYA]. By employing the present progressive tense when drafting section 5(b) after MTSA, Congress was indicating its intent not only to prohibit the City's levying of amusement taxes on Wendella's vessels, or their passengers and

crew, if the vessels are *currently* operating on a federal waterway, but also if they will be operating on such a waterway *in the future*. See 1 U.S.C. § 1 (2012). In other words, section 5(b) prohibits the City's levying of the amusement tax on Wendella's vessels, passengers, and crew, even where the tax is collected from the patrons on dry land in anticipation of the future operation of the vessel on the federal waters. Accordingly, section 5(b) after MTSA was in conflict with (and therefore preempted) the amusement tax ordinance as applied to Wendella during 2006-12.

¶ 30 Finally, we note that, in addition to prohibiting the levying of nonfederal taxes on a vessel that is operating on federal waters, or on its passengers or crew, section 5(b) also prohibits such taxation if the vessel is "under the right to freedom of navigation on those waters." 33 U.S.C. § 5(b) (2006). There is no dispute here that the Wendella tour boats had the right to freely navigate the federal waters during 2006-12 and, as such, that section 5(b) after MTSA prohibited the City from levying amusement taxes on the boats or on their passengers and crew. Accordingly, the amusement tax ordinance providing for the levying of amusement taxes on Wendella's patrons was in conflict with, and preempted by, section 5(b) after MTSA during 2006-12.

¶ 31 The City argues, though, that there was no conflict between section 5(b) after MTSA and the amusement tax ordinance during 2006-12 because they each addressed different classes of persons; specifically, section 5(b) prohibited the City's taxation of "passengers" of vessels on federal waters (see *id.*), whereas the amusement tax ordinance taxed the vessel's "patrons" and not its "passengers" (see Chicago Municipal Code § 4-156-010 (amended at Chi. City Clerk J. Proc. 15824 (Nov. 13, 2007))). The City's argument is unavailing. The amusement tax ordinance defines "patron" as a "person who *** acquires the privilege to enter, to witness, to view or to

participate in an amusement." *Id.* In context, Wendella's "patrons" are persons who acquire the privilege to "enter" its tour boats, thereby becoming passengers on the boats. Thus, the term "patron" as used in the amusement tax ordinance and the term "passengers" as used in section 5(b) after MTSA are synonymous here, and the amusement tax ordinance that allows for the City to levy amusement taxes on Wendella's patrons was in conflict with (and therefore preempted by) section 5(b) after MTSA during 2006-12.

¶ 32 Accordingly, we affirm the DOAH's finding that Wendella was not required to collect and remit amusement taxes from 2006 to 2012 because the amusement tax ordinance as applied to Wendella was preempted by section 5(b) after MTSA.

¶ 33 Next, we consider the DOAH's finding that for 2012-13, when Wendella actually collected the amusement taxes from its patrons and remitted a portion of them to the City, that the patrons were entitled to offset some of those taxes by taking the amusement tax credit provided for in the 2008 version of section 4-156-020 of the amusement tax ordinance. Chicago Municipal Code § 4-156-020 (amended at Chi. City Clerk J. Proc. 15824 (Nov. 13, 2007)) The City contends that the DOAH erred by finding that the patrons were entitled to take the 2008 amusement tax credit[2].

¶ 34 In arguing for the credit, Wendella relies on the 1997 letter from the City stating that Wendella's patrons qualified for the credit under section 4-156-020(G) of the amusement tax ordinance, then in effect. Chicago Municipal Code § 4-156-020(G) (amended at Chi. City Clerk

[2]Wendella filed no cross-appeal arguing that the DOAH erred in finding that for 2012-13, federal preemption did not apply because under section 3-4-280 of the Chicago Municipal Code (Chicago Municipal Code § 3-4-280 (amended Nov. 13, 2007)), Wendella was required to remit the taxes that it actually collected from its patrons for that year. Accordingly any such contention is forfeited. We address only the City's contention, raised on its appeal, that the 2008 amusement tax credit did not apply here to reduce the amount of tax required to be remitted for 2012-13.

J. Proc. 12016 (Nov. 15, 1995)). The 1997 version of section 4-156-020(G) provided that where an amusement operator had an agreement with the City to pay for the operator's use of the public way, "liability under the [amusement tax] shall be reduced by the amount paid to the city pursuant to the agreement." *Id.* The City's letter informed Wendella that pursuant to the 1997 version of section 4-156-020(G), its patrons were entitled to a credit equal to the amount that Wendella paid the City under the license agreement for the use of the City docks.

¶ 35 The City concedes on appeal that "[t]here is no dispute that [Wendella's patrons were] entitled to the credit during the time that this version of the credit provision controlled," which the City contends was from 1997 to 2007. However, in arguing against Wendella's patrons' use of the credit for 2012-13, the City points out that effective in 2008, section 4-156-020(G) was replaced by subsection (J) and amended to provide that, if an operator of an amusement had an agreement to use the City's property, "the patron's liability under the [amusement tax] shall be reduced by the amount paid to the city pursuant to the agreement *in connection with the same charges that create the patron's liability for the [amusement tax]*." (Emphasis added.) Chicago Municipal Code § 4-156-020(J) (amended at Chi. City Clerk J. Proc. 15824 (Nov. 13, 2007)). The City contends that the plain language of the amended version did not entitle Wendella's patrons to the credit after its 2008 effective date because the payments pursuant to Wendella's licensing agreements for use of the docking space were not "*in connection with* the same charges that create the patron's liability for the [amusement tax]." (Emphasis added.) *Id.*

¶ 36 Resolution of this issue turns on the meaning of "in connection with." We use the same rules of construction when interpreting municipal ordinances as we do when construing statutes. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 492 (2009). The primary objective of this court when construing the meaning of a statute is to ascertain and give effect to

the intent of the legislature. *Cryns*, 203 Ill. 2d at 279. In determining legislative intent, our inquiry begins with the language of the statute, given its plain and ordinary meaning, which can be found in a dictionary. *City of Charleston*, 2019 IL App (4th) 180634, ¶ 29.

¶ 37 The dictionary definition of "in connection with" is "in relation to (something)." See Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/in%20connection%20with (last visited June 20, 2019) [https://perma.cc/J32R-E9TU]. Thus, under the 2008 version of the credit (hereinafter the "amended credit"), Wendella's patrons were entitled to the amended credit for 2012-13 if Wendella could show that its payment of the licensing fees for that year was related or relevant to the charges creating the patron's liability for the amusement tax.

¶ 38 Wendella made the requisite showing that its payment of the licensing fees in 2012-13 for the right to operate its tour, charter, and water taxi business from the main dock on Michigan Avenue was related or relevant to the tour charges that created the patron's amusement tax liability, as the patrons would have been unable to participate in the amusement in the absence of Wendella's payment of the licensing fees. Accordingly, the DOAH did not err in finding that Wendella's patrons were entitled to take the amended credit in 2012-13.

¶ 39 As to the proper amount of the amended credit, the DOAH found that Wendella collected $1,445,880 in amusement taxes from its patrons in 2012-13 and had remitted $577,834 to the City, leaving a difference of $868,046. Finding that Wendella had paid $734,481 in license fees to the City for the use of its docking space, the DOAH determined that Wendella's patrons were entitled to the amended credit in that amount, meaning that the City was owed the balance of $133,565 (representing the difference between $868,046 and $734,481).

¶ 40 The City does not argue that any of the DOAH's calculations were incorrect, and therefore we affirm the DOAH's finding that Wendella owed the City $133,565 in amusement taxes collected from its patrons in 2012-13.

¶ 41 The remaining issue involves who has the right to the $734,481 left over after the $133,565 in 2012-13 amusement taxes are remitted to the City. The City argues that the $734,481 represents the tax credit belonging to Wendella's patrons, *not* belonging to Wendella itself, and therefore that Wendella has no right to retain those funds and should remit them to the City.

¶ 42 Wendella makes no specific response to the City's argument, other than to assert that it is only required to pay the City the $133,565 (representing the difference between the $868,046 collected in amusement taxes and the $734,481 credit).

¶ 43 We agree with Wendella. The DOAH found that the City was entitled only to $133,565 of the funds collected by Wendella from its patrons in 2012-13, and for all the reasons stated herein, we are affirming that order; accordingly, the City has the right to receive $133,565.

¶ 44 We note that the DOAH was not called upon to address whether Wendella should refund the $734,481 to its patrons, and therefore that issue is not properly before us on appeal. See *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 213 (2008) (an argument or issue not presented in the administrative proceedings is deemed to have been procedurally defaulted). The only issue properly before us is the one addressed to and ruled upon by the DOAH, *i.e.*, the amount of monies required to be remitted by Wendella *to the City*.

¶ 45 For all the foregoing reasons, we affirm the circuit court. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 46 Affirmed.