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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**DANIEL B. SCHUETZ**  
Franklin, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana  
Indianapolis, Indiana

**NICOLE M. SCHUSTER**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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A.R., )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 03A04-1012-JV-786  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE BARTHOLOMEW JUVENILE COURT  
The Honorable Stephen R. Heimann, Judge  
The Honorable Heather M. Mollo, Magistrate  
Cause No. 03C01-1004-JD-776

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**JUNE 7, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Senior Judge**

STATEMENT OF THE CASE

Respondent-Appellant A.R. appeals an adjudication finding him to be delinquent.

We affirm.

ISSUE

A.R. presents one issue for our review, which we restate as: whether the trial court abused its discretion by denying A.R.'s motion to continue the fact-finding hearing.

FACTS AND PROCEDURAL HISTORY

A.R. was involved in an incident that occurred on March 8, 2010, which resulted in A.R. being charged with disorderly conduct, a Class B misdemeanor, Indiana Code section 35-45-1-3 (2006), and resisting law enforcement, a Class A misdemeanor, Indiana Code section 35-44-3-3 (2006), had they been committed by an adult. A fact-finding hearing was scheduled for August 11, 2010. On August 5, 2010, A.R. filed a motion to continue the fact-finding hearing. The court granted A.R.'s motion and re-set the fact-finding hearing for October 13, 2010. Prior to commencement of the fact-finding hearing on October 13, 2010, A.R. moved again to continue the hearing. The trial court denied the motion. The fact-finding hearing was held, and A.R. was found to be delinquent. At the subsequent dispositional hearing, A.R. was given a suspended sentence and ordered to serve probation for nine months. It is from this adjudication that A.R. now appeals.

DISCUSSION AND DECISION

The sole issue presented in this appeal is whether the trial court abused its discretion by denying A.R.'s motion to continue the fact-finding hearing. Prior to the commencement of the fact-finding hearing, A.R.'s counsel requested a continuance of the hearing due to the absence of witnesses. Indiana Code section 35-36-7-1 (1981) sets forth the procedure for a continuance due to the absence of witnesses and provides, in part:

(b) If a defendant's motion to postpone is because of the absence of a witness, the affidavit required under subsection (a) must:

- (1) show the name and address of the witness, if known;
- (2) indicate the probability of procuring the witness's testimony within a reasonable time;
- (3) show that the absence of the witness has not been procured by the act of the defendant;
- (4) state the facts to which the defendant believes the witness will testify, and include a statement that the defendant believes these facts to be true; and
- (5) state that the defendant is unable to prove the facts specified in accordance with subdivision (4) through the use of any other witness whose testimony can be as readily procured.

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(d) A defendant must file an affidavit for a continuance not later than five (5) days before the date set for trial. If a defendant fails to file an affidavit by this time, then he must establish, to the satisfaction of the court, that he is not at fault for failing to file the affidavit at an earlier date.

A.R.'s request to continue the fact-finding hearing was made orally, not by affidavit, and falls outside the parameters of Indiana Code section 35-36-7-1. Rulings on nonstatutory motions for continuance are committed to the sound discretion of the trial court and will be reversed only for an abuse of that discretion and resultant prejudice.

*Watson v. State*, 776 N.E.2d 914, 920 (Ind. Ct. App. 2002). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *G.N. v. State*, 833 N.E.2d 1071, 1074 (Ind. Ct. App. 2005).

Here, the incident occurred in March 2010, and a delinquency petition was filed in April 2010. Initial and admit/deny hearings were held on May 12, 2010 and June 30, 2010, respectively. At the June 30 hearing, counsel was appointed and a fact-finding hearing was set for August 11, 2010. On August 5, 2010, A.R., by counsel, filed a motion to continue the fact-finding hearing due to the unavailability of “key witnesses.” Appellee’s App. p. 3. The court granted A.R.’s motion for a continuance and re-set the fact-finding hearing for October 13, 2010. Just prior to the commencement of the fact-finding hearing on October 13, A.R., by counsel, orally moved the court to again continue the hearing due to the absence of witnesses. A.R.’s counsel explained to the court that during the week prior, he had spoken to A.R.’s mother who indicated that some of the witnesses would be unavailable for the hearing. He also indicated that A.R.’s mother had related that the testimony of the missing witnesses would be the same as hers.

Our review of the materials on appeal leads us to conclude that the court’s denial of the request for a continuance was not against the logic and effect of the facts and circumstances before it. A.R. had been granted a continuance two months prior to the hearing at which he requested a second continuance for precisely the same reason. Further, A.R. waited until the commencement of the hearing to request a continuance when he was aware the week prior that some witnesses were unavailable for the hearing.

At the time A.R. moved for a continuance, the State's witnesses were assembled and ready to testify. In addition, according to A.R.'s mother, the testimony of the unavailable witnesses would merely be cumulative of her own testimony. A.R. has not indicated what the testimony of the absent witnesses would have been or that it would have affected the outcome. A.R. has wholly failed to show any resulting prejudice. Thus, based upon these circumstances, we find no abuse of discretion by the trial court.

### CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that the trial court did not abuse its discretion by denying A.R.'s request to continue the fact-finding hearing.

Affirmed.

BARNES, J., and BROWN, J., concur.