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ANNOUNCEMENTS

Administrative Plans are to be submitted to the Supreme Court by July 1, 2015.

CRIMINAL

Brown v. State, 2015 Ark. 16 **[equal protection; statute of limitations; DNA database]** Equal protection does not require that persons be dealt with identically; it requires only that classification rest on real and not feigned differences, that the distinctions have some relevance to the purpose for which the classification is made, and that their treatment be not so disparate as to be arbitrary. Because DNA is different than other types of evidence, the General Assembly had a rational basis for treating it differently and eliminating the statute of limitations when DNA can provide the identity of an alleged perpetrator—even long after the crime has been committed. The State has a legitimate interest in identifying people who commit crimes and bringing them to justice. Thus, the statutory provisions eliminating the statutes of limitation for DNA-identified defendants found at Ark. Code Ann. §§ 5-1-509(b)(1)(B) and (j) did not violate appellant right to equal protection. (Sims, B.; CR-14-472; 1-22-15; Wynne, R.)

Affordable Bail Bonds, Inc. v. State, 2015 Ark. App. 44 **[service]** Appellant waived any objection to service of process or the alleged failure to adhere to the requirements of Ark. Code Ann.§ 16-84-207(b)(2)(B) because appellant appeared before the trial court, raised no objection to the timeliness of service or the court's jurisdiction, and specifically requested other affirmative relief from the court. (Putman, J.; CV-14-269; 1-28-15; Hixson, K.)

Albretsen v. State, 2015 Ark. App. 33 **[sufficiency of the evidence; manslaughter]** There was substantial evidence to support appellant's conviction. **[jury instruction; negligent homicide]** The trial court did not abuse its discretion in refusing to give the jury instruction on the lesser-included offense of negligent homicide because the instruction was not supported by even the slightest evidence. (Herzfeld, R.; CR-14-587; 1-28-15; Virden, B.)

Tankersley v. State, 2015 Ark. App. 37 **[motion to suppress]** A tip received by state police from a driver, who identified himself and was witnessing appellant's erratic behavior at the time of the report, was sufficiently reliable to give law enforcement officials reasonable suspicion to conduct a traffic stop of appellant on suspicion of driving while intoxicated. (Medlock, M.: CR-14-449; 1-28-15; Gruber, R.)

McCann-Arms v. State, 2015 Ark. App. 27 **[sufficiency of the evidence; introduction of a controlled substance into the body of another person]** There was substantial evidence to support appellant's conviction. **[venue]** The circuit court correctly concluded that the introduction of a controlled substance into appellant's unborn child began in Sevier County continued into Polk County, where the child was born, because the child was born with methamphetamine in his system and was suffering from withdrawal. Accordingly, jurisdiction was proper in Polk County. **[Ark. Code Ann. 5-13-210]** The circuit court correctly found that appellant gave birth to her child, who, after birth, was "another person," suffering from withdrawal from methamphetamine, which appellant caused him to ingest or otherwise introduced into him in violation of Ark. Code Ann. § 5-13-210. Thus, it was not necessary for the appellate court to determine whether Ark. Code Ann. § 5-13-210 includes an "unborn child" in the group of possible victims. (Looney, J.; CR-14-388; 1-28-15; Gladwin, R.)

Chatmon v. State, 2015 Ark. 28 **[sufficiency of the evidence; aggravated robbery; theft of property]** There was substantial evidence to support appellant's convictions. **[admission of evidence; Ark. R. Evid. 901]** The trial court did not abuse its discretion when it admitted into evidence certain audio recordings, which were properly authenticated by a law enforcement official who was able to identify the voices on the recordings. **[ineffective assistance of counsel claims in posttrial motions]** A deemed-denied ruling on a posttrial motion for new trial is an insufficient order from which to raise on direct appeal a claim of ineffective assistance of counsel because such a ruling necessarily precludes any consideration by the trial court of the relevant facts pertaining to the claim. (Maggio, M.; CR-13-1006; 1-29-15; Danielson, P.)

Hartman v. State, 2015 Ark. 30 **[sufficiency of the evidence; tampering with physical evidence]** Appellant's tampering-with-physical-evidence conviction was not supported by substantial evidence.

[jury instruction; lesser-included offense] The offense of second-degree sexual assault is not a lesser-included offense of rape because it requires proof of two elements that rape does not. (Pearson, W.; CR-14-489; 1-29-15; Wood, R.)

Cases in which the Arkansas Court of Appeals concluded that there was substantial evidence to support the appellant's conviction(s):

Perrigen v. State, 2015 Ark. App. 42 (driving while intoxicated) CR-14-596; 1-28-15; Vaught, L.

Cases in which the Arkansas Court of Appeals concluded that the circuit court's decision to revoke appellant's probation or suspended sentence was not clearly against the preponderance of the evidence:

Khanthamany v. State, 2015 Ark. App. 46 (suspended sentence) CR-14-355; 1-28-15; Brown, W.

CIVIL

Crafton, Tull, Sparks, Associates, Inc. v. Ruskin Heights, LLC, 2015 Ark. 1 **[engineer lien]** Ark. Code Ann. section 18-44-105 provides that engineers shall have a lien, but that lien "does not attach to the land, building, erection, or improvement upon [the] land unless and until the lien is duly filed of record." The lien attached on September 25, 2009, when it was duly filed of record. However, the engineer lien does not relate back to the date that the construction commenced. (Beaumont, C.; CV-14-454; 1-15-15; Hannah, J.)

McMullen v. McHughes Law Firm, 2015 Ark. 15 **[pleading/FDCPA]** The fact that attorney does not enjoy blanket immunity for its litigation practice as a debt collector does not relieve plaintiff of her fact-pleading obligation under Rule 8. A complaint must state facts, not mere conclusions, in order to entitle the pleader to relief. This complaint states mere conclusions that attorney's filing of the debt-collection lawsuit violated the FDCPA or the AFDCPA. The fact that the underlying debt-collection lawsuit was dismissed is not evidence that attorney's pursuit of his client's unpaid account in litigation violated statutory prohibitions targeted at abusive prelitigation practices. (Moody, J.; CV-14-307; 1-12-15; Baker, K.)

Cason v. Lambert, 2015 Ark. App. 5 **[trust]** The appellant contends that the trial court erred in finding that co-settlor had the authority to amend trust after her husband's death because (1) community property was involved so the trust could only be amended by joint action, and (2) joint action was required for amendment because the parties executed reciprocal wills. With regard to the first point, the terms of the trust clearly authorized a surviving grantor to amend or alter any of the terms of Trust. The terms of the trust prevail over the general provisions found in Arkansas Code Annotated section 28-73-602(b)(1); Ark. Code Ann. § 28-73-1106(a). Even though community property was involved, wife had the authority to amend the trust after her husband's death. Regarding point 2, the wills were not reciprocal. A review of the wills and the trust indicates that the parties did not intend for the trust to be irrevocable. The trust contemplated that the surviving

spouse could amend or alter the terms. This further negates the argument that reciprocal wills were created. It was within the trial court's discretion to award attorney's fees to the trustee for services that were rendered in connection with the administration of this estate. (Glover, D.; CV-14-87; 1-28-15; Whiteaker, P.)

George v. Great Lakes Reinsurance PLC, 2015 Ark. App.6 **[insurance]** The assault-or-battery endorsement was part of the insurance contract's terms. The presence of the bodily-injury exclusion in the main body of the policy did not make the policy ambiguous because of the presence of an assault-or-battery endorsement. The presence of an endorsement in and of itself does not make the insurance contract ambiguous. (Duncan, X.; CV-14-557; 1-28-15; Harrison, B.)

Graham v. French, 2015 Ark. App. 29 **[deed/real property]** Appellees contend that the trial court found that the provision in Graham's will that appellants are trying to enforce does not include appellants because they are not children of Graham, but grandchildren. Because appellants are not "surviving children," they have no right to restrict an alienation pursuant to the will. Appellants have not shown where the trial court misinterpreted the will; thus, appellants have not met their burden of demonstrating error. A tenant in common is not prohibited from conveying his undivided interest in real property pursuant to this provision. (Schrantz, D.; CV-14-81; 1-28-15; Gladwin, R.)

Sullins v. Central Ark. Water, 2015 Ark. 29 **[illegal exaction]** Appellants brought an illegal-exaction claim arguing that Pulaski County and Central Arkansas Water had entered into an improper agreement and that as a result, Central Arkansas Water is improperly paying public funds to Pulaski County. The agreement is a proper exercise of authority under the law. Because the agreement is for administrative activities that either Pulaski County or Central Arkansas Water is legally authorized to perform and Pulaski County's financial resources are obligated in the agreement, the circuit court properly concluded that the agreement was governed and authorized by Arkansas Code Annotated section 14-14-910. Because the contract between Pulaski County and Central Arkansas Water is authorized by the Interlocal Agreement Act, the expenditure of funds under the contract is not an illegal exaction. (Fox, T.; CV-14-581; 1-29-15; Goodson, C.)

DOMESTIC RELATIONS

McKenzie v. Moore, 2015 Ark. App. 6 **[stepmother visitation; in loco parentis]** The appellant, biological mother of M.M., appeals from the circuit court's granting visitation to the child's stepmother, who was married to the child's father until he died in July 2013. The evidence indicated that the father had sole custody of the child and that she had lived with him and the appellee stepmother. Both the stepmother and the child testified that they had a close and special relationship, and the circuit court found that the stepmother stood in loco parentis to the child. The case includes a good discussion of "in loco parentis" and the facts of the case that support that finding. The Court of Appeals affirmed the decision. (Herzfeld, R.; No. CV-14-512; 1-14-15; Harrison, B.)

Hargrove v. Hargrove, 2015 Ark. App. 45 **[divorce–marital property]** The appellant husband purchased a life insurance policy on his son from a previous marriage, under which appellant was

the beneficiary, before he and his appellee wife were married. After the marriage, the appellant paid for the premiums with marital funds until the parties separated and divorce proceedings were begun. Arkansas Code Annotated section 9-12-315(b) provides that marital property does not include "property acquired prior to marriage or by gift or by reason of the death of another, including, but not limited to, life insurance proceeds." The son passed away while the divorce was pending. The trial court considered the proceeds to be equivalent to retirement benefits or appreciation of a non-marital asset, and created an exception to the statutory exemption. The court determined that, because 86 percent of the premiums were paid with marital funds, 86 percent of the proceeds were marital funds, and the court awarded the appellant 60 percent of that marital portion and the appellee 40 percent. In reversing, the Court of Appeals said that the statute provides that life insurance proceeds are property acquired by virtue of the death of another and are exempt from the definition of marital property for purposes of division of assets in divorce. (Pierce, M.; No. CV-14-506; 1-28-15; Hixson, K.)

PROBATE

In the Matter of the Guardianship of W.L., A Minor, 2015 Ark. App. 38
[guardianship–termination] The guardianship in dispute is of a five-and-a-half year-old child. W.L., who has been under guardianship of her maternal grandparents since she was five months old, when both her mother and her father consented to the guardianship in 2009. The father of the child first petitioned to terminate the guardianship in 2012. That petition was denied based upon the fact that the circuit court found that the guardianship continued to be necessary and that it was in the best interest of the child for the grandparents to remain as guardians. The court found specifically that the guardianship was necessary to "maintain the normal parental responsibilities such as providing food, clothing and financial support, which...[the father] has not provided." At the time of that hearing, the evidence showed that he had visited the child in Arkansas (from his home in Virginia) only one time since 2009 and had provided no financial support for her. The court awarded him visitation in that order. He did not appeal, but began visitation and purchased clothing and toys for her. He did not provide any support to the grandparents for her. A second hearing was held in 2013 on both parents' competing petitions to terminate the guardianship and by subsequent competing petitions for custody if the guardianship was terminated. A hearing was conducted on those petitions. The court continued the guardianship, making specific findings relating to the unfitness of both parents and finding that termination would not be in the best interests of the child and that the guardianship should remain in place. After a thorough review of the record, the Court of Appeals held that the circuit court's decision was not clearly erroneous and affirmed the decision. (McCormick, D.; No. CV-14-139; 1-28-15; Gruber, R.)

JUVENILE

Conway *v. Ark. Dep't of Human Services*, 2015 Ark. 30 **[TPR – sufficient factors]** Appellant argued that his sex offender status was irrelevant to the subsequent factors ground since it did not arise subsequent to the filing of the original petition. The appellate court stated that his status as a sex offender was relevant because it prohibited him from having unsupervised contact with his children.

Appellant did not follow-up on a referral for services for sex offenders provided by DHS. Also, appellant's decision to stay married to the children's mother was of concern because there was testimony that she could not provide adequate supervision of the children. Other evidence of subsequent factors also included appellant's threats to DHS personal safety, including threatening to blow up the DHS building. Appellant also could not provide a stable home within a time frame as viewed from the child's perspective. (Williams W.; CV-14-517; 1-28-15; Gladwin, W.)

Cases in which the Court of Appeals affirmed No-Merit TPR and Motion to Withdraw Granted:

Allman v. Ark. Dep't of Human Services, 2015 Ark. App. 32 (Zimmerman, S.; CV-14-770; 1-28-2015; Abramson, R.)

Johnson v. Ark. Dep't of Human Services, 2015 Ark. App. 34 (James, P.; CV-14-801; 1-28-2015; Virden, D.)

A.D. v. State, 2015 Ark. App. 35 **[Delinquency Adjudication – theft accomplice]** The issue was whether there was substantial evidence that appellant aided, attempted to aid or agreed to aid other juveniles in shoplifting. There was substantial evidence to support the delinquency adjudication where there was evidence by a store employee, a surveillance video footage, and the circuit court's finding that appellant aided the other juveniles by acting as a lookout. (Smith, T.; CV-14-420; 1-28-15; Harrison, B.)

DISTRICT COURT

Alley v. State: 2015 Ark. App. 31 **[motion to suppress evidence][A.R.E. Rule 403].** This is an appeal of a second offense DWI conviction in district court. Appellant's breathalyzer showed less than .08% breath alcohol. Appellant was then administered three field sobriety tests, all of which were failed. Following arrest, appellant gave a urine sample. The urine test was positive for five different drugs. However, the person who administered the test stated that the urine was not tested for how much of each drug was contained in the sample. Appellant objected on the basis of Arkansas Rule of Evidence 403 which was overruled. A directed verdict motion was also denied. It was held that the directed verdict motion was properly denied as there was other evidence of intoxication, namely admission by appellant that he had taken a drug that night and the fact that appellant failed three field sobriety tests. Appellant also contended that the results of the field sobriety tests should be suppressed because he was commanded to perform them. It was held that it no Fourth Amendment violation occurs when an officer commands a defendant to perform a field sobriety test if the officer had reasonable suspicion that defendant committed the offense of DWI; consent of the defendant is not required. Finally, the court did not abuse its discretion in admitting the urine-sample reports as they did not unfairly prejudice the appellant. (Green, R.; CR-14-389; 1/28/2015; Abramson, R.)