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CRIMINAL

Echols v. State, 2015 Ark. App. 304 [**motion to suppress; pretextual arrest**] Appellant was arrested on an outstanding warrant. At the time of his arrest, he was also the subject of an ongoing criminal investigation on charges unrelated to the outstanding warrant. Because appellant was arrested on an unrelated outstanding warrant, he was unable to establish that his arrest, which may have had dual motives, was pretextual. [**motion to suppress; search warrant**] The search warrant, which authorized the search of appellant's house, was based upon probable cause that evidence of a crime was likely to be found in his home. Accordingly, the trial court did not err when it denied appellant's motion to suppress the evidence seized during the search. (Phillips, G.; CR-14-326; 5-6-15; Hixson, K.)

Green v. State, 2015 Ark. App. 291 [**confrontation clause; revocation**] Although a defendant in a probation revocation proceeding may be entitled to a Sixth Amendment right to confront adverse witnesses, a violation of that right is subject to a harmless-error analysis. Whether a Confrontation Clause violation is harmless error depends on a variety of factors, including the importance of the witness's testimony in the State's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and the overall strength of the State's case. Because the challenged testimony in appellant's case was not necessary to establish that appellant

violated the terms of his probation, the trial court's erroneous admission of the testimony was harmless. (Goodson, D.; CR-13-1090; 5-6-15; Virden, B.)

Liggins v. State, 2015 Ark. App. 321 [**Sixth Amendment; right to counsel of choice**] The trial court did not abuse its discretion when it denied appellant's requests to terminate his attorney, retain new counsel, and continue the trial to allow the new attorney to prepare, which were made after a jury was empaneled and appellant's trial had begun. (Thyer, C.; CR-11-415; 5-13-15; Brown, W.)

Hobbs v. Hodge, 2015 Ark. 207; and *Hobbs v. Grubbs*, 2015 Ark. 205 [**writ of habeas corpus**] The trial court erred by granting appellants' petitions seeking habeas-corpus relief without making the required probable cause findings and following the procedures outlined in the habeas-corpus statutes. (Simes, L.T.; CV-14-470, CV-14-468; 5-14-15; Hart, J., Goodson, C.)

Conte v. State, 2015 Ark. 220 [**sufficiency of the evidence; capital murder**] There was substantial evidence to support appellant's convictions. [**motion to dismiss; prosecutorial delay**] Because the nine-year delay in filing charges against appellant was based upon ongoing investigations of the crimes rather than an attempt by the State to create an improper tactical advantage, and because appellant failed to demonstrate that he suffered substantial and actual prejudice as a result of the delay, the trial court did abuse its discretion when it denied appellant's motion to dismiss the charges against him based upon alleged prosecutorial delay. [**motion in limine; third-party guilt**] A defendant may introduce evidence tending to show that someone other than the defendant committed the crime charged, but such evidence is inadmissible unless it points directly to the guilt of the third party. Evidence which does no more than create an inference or conjecture as to another's guilt is inadmissible. In appellant's case, although he wished to introduce evidence that several other individuals may have been involved in or committed the crimes for which he was convicted, he failed to offer any evidence to connect those third parties to the crimes. Accordingly, the trial court did not abuse its discretion when it granted the State's motion to exclude the evidence. (Clawson, C.; CR-13-721; 5-21-15; Baker, K.)

Metzner v. State, 2015 Ark. 222 [**Ark. Code Ann. § 5-65-205(a)**] Arkansas Code Annotated § 5-65-205 (a) does not prohibit an officer from obtaining a search warrant to collect a blood sample from an individual accused of driving while intoxicated after that individual has declined to take a chemical test requested by a law enforcement official pursuant to the implied consent law. (Karren, B.; CR-14-865; 5-21-15; Goodson, C.)

Isom v. State, 2015 Ark. 219 [**motion to recall mandate**] Appellant's petition to recall the mandate in his postconviction proceeding was denied because he failed to identify any error on the part of the Supreme Court that would constitute a breakdown in the appellate process. (CR-08-1386; 5-21-15; Baker, K.)

Isom v. State, 2015 Ark. 225 [**error coram nobis**] Appellant's petition to reinvest jurisdiction in the circuit court to permit him to seek a writ of error coram nobis based upon possible *Brady* violations was granted. (CR-02-213; 5-21-15; Hart, J.)

Brasuell v. State, 2015 Ark. App. 355 [**sentencing**] The circuit court erred when it ordered that appellant's suspended sentence in one case was to run consecutive to a term of imprisonment in a separate case. Specifically, Ark. Code Ann. § 5-4-307 (b) requires that when a suspended sentence is imposed for one crime along with a term of imprisonment for another crime the sentences are to run concurrently. (Cottrell, G.; CR-14-993; 5-27-15; Brown, W.)

Edwards v. State, 2015 Ark. App. 340 [**expert testimony**] The issue of whether a defendant had the requisite capacity at the time of the murder is a decision best left to the jury. Thus, the circuit court correctly concluded that expert testimony on appellant's ability to form specific intent to commit murder was not admissible. (Wright, J.; CR-14-928; 5-27-15; Abramson, R.)

Akers v. State, 2015 Ark. App. 352 [**sufficiency of the evidence; sexual assault in the first degree**] Because appellant was an employee in the victim's school when he engaged in sexual intercourse with the victim, who was a minor and not his spouse, there was substantial evidence to support appellant's conviction. Pursuant to the language in Ark. Code Ann. § 5-14-124(a)(3), it was not necessary for the State to establish that appellant was in a position of trust or authority over the victim or that he used that position to influence her to have sex with him to sustain a conviction for first degree sexual assault. [**Ark. Code Ann. § 5-14-124; constitutional challenge**] Appellant attempted to challenge his sexual-assault conviction based upon a violation of his right to privacy. Specifically, he argued that he would not have been charged with first degree sexual assault for having sex with a sixteen-year-old but for his status as a teacher. The appellate court rejected appellant's argument and held that the State has an interest in protecting students from sexual advances from their teachers and school employees who have unique access to minors and are inherently viewed as authority figures. The Court further noted that appellant failed to provide legal authority or persuasive arguments as justification for extending constitutional privacy protections to an adult's sexual relationship with a minor. [**jury instructions**] The trial court did not abuse its discretion when it refused to give appellant's proffered jury instruction, which contained proof of additional elements that were not required by statute or constitutional provision. (Fogleman, J.; CR-14-669; 5-27-15; Vaught, L.)

Evans v. State, 2015 Ark. 240 [**admission of photographs**] The trial court did not abuse its discretion when it admitted certain photographs, which depicted the victim's brain, into evidence because the photographs assisted the jury in its understanding of the medical examiner's testimony and showed the location and type of injuries the victim suffered. (Singleton, H.; CR-14-529; 5-28-15; Goodson, C.)

McClinton v. State, 2015 Ark. 245 [**mistrial**] The trial court did not abuse its discretion when it refused to grant appellant's motion for a mistrial, which was based upon a prospective juror's comments during jury selection. The appellate court concluded that the comments were not prejudicial and that appellant could have requested a curative instruction. (Jones, B.; CR-14-1060; 5-28-15; Wood, R.)

Barner v. State, 2015 Ark. 247 [**appeal from district court**] A defendant in district court who enters a plea of nolo contendere and is ordered to complete probation pursuant to the First Offender Act is not eligible to appeal the order of probation to circuit court. (Johnson, L.; CR-14-577; 5-28-15; Wynne, R.)

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

Sizemore v. State, 2015 Ark. App. 295 (negligent homicide) CR-14-1052; 5-6-15; Gruber, R.

Davis v. State, 2015 Ark. App. 328 (criminal mischief; theft of property) CR-14-802; 5-20-15; Gruber, R.

CIVIL

Edge v. Sutherland, 2015 Ark. App. 305 [**easement**] There was not sufficient evidence to sustain the burden of proof for easements by necessity or implication on one or more elements. Moreover, there is an absence of evidence in the record concerning the unity of title regarding the gravel drive. Without this element of unity of title, an easement by necessity or implication fails. A failure of this aspect of the complaint rendered useless any further easement, as it negates the very remedy sought—this particular access route from the road to the property. (Weaver, T.; CV-14-1048; 5-6-15; Hixson, K.)

Hall v. State Farm, 2015 Ark. App. 287 [**summons**] A summons directed to more than one defendant is not deficient process under Rule 4(b). (Weaver, T.; CV-14-754; 5-6-15; Gladwin, R.)

Hamby . Health Management Assoc., 2015 Ark. App. 298 [**tortious interference**] There is a factual question of whether HMA improperly interfered with Dr. Hamby's employment contract with Emcare. The trial court abused its discretion in dismissing the tortious-interference claim. [**deceptive practices**] Actual damages are required for a private right of action for a DTPA violation.. Hamby contends that he was damaged because there was harm to his physician-patient relationships and because his termination resulted in him losing income. Hamby has alleged actual damages sufficient to withstand a motion to dismiss. [**civil action by crime victim act**] Without any factual support for Dr. Hamby's theory that public benefits were fraudulently received by HMA, the trial court did not abuse its discretion by dismissing the CACVA claim. (Williams, L.; CV-14-667; 5-6-15; Glover, D.)

Smith v. Wright, 2015 Ark. [**judges**] An elected judge or justice is not automatically disqualified from a case in which his or her predecessor had recused and an special judge or justice had been appointed as a replacement. (CV-15-227; 5-7-15; Baker, K.)

Filat v. Rand, 2015 Ark. App. 316 [**lease**] Breach of lease, by installing air conditioning on roof of premises without landlord's consent, did not constitute a tortious act, but a breach of contract. Limitations period for contract action is five years. (Hannah, C.; CV-14-593; 5-13-15; Glover, D.)

Canady v. Petit Jean State Bank, 2015 Ark. App. 313 [**Betterment Act**] The trial court held that the Act was inapplicable to appellant's claim against Bank, which was a judgment lienholder because the property did not belong to the Bank but was, in fact, owned by appellant herself in fee simple. She had acquired the property subject to the judgment lien. The holder of a judgment lien is not treated as an owner of the real property for the purposes of the statute. The Act by its terms provides protection to one who believes herself to be the owner of property that is later discovered to actually "belong to another." The remedy provided by the Betterment Act is against the true owner of the property. The Act does not apply to improvements made to land that is owned by the one making the improvements. (McCormick, D.; CV-14-601; 5-13-15; Kinard, M.)

Smith v. Hopper, 2015 Ark. 210 [**new trial**] Trial judge did not abuse its discretion in granting a new trial because facts were misrepresented in closing argument. The circuit court issued an extensive order listing its reasons for granting a new trial. The order noted that the police officer was one of three essential witnesses. The court further found that Smith's counsel's statements that the police officer had been reprimanded for the accident report were intended by counsel to be "asserted as facts and were totally unsupported by any evidence." The statements were "improper, prejudicial, misleading. The court's grant of a new trial was not a manifest abuse of discretion. In this case, counsel never objected during closing arguments to counsel's comments and asked for a limiting instruction only after the court had raised the issue sua sponte. This failure to object, however, did not prevent the circuit court from granting a new trial. The reason an objection is required is to apprise the circuit court of an error. Here, the circuit court became aware of the error on its own. So to require an objection to apprise the circuit court of an error it noticed itself would be unnecessary. (Fitzhugh, M.; CV-14-488; 5-14-15; Wood, R.)

Hurst v. Ark. Radiology Affiliates, 2015 Ark. App. 333. Issue not preserved for appellate review. (Easley, E.; CV-14-952; 5-20-15; Whiteaker, P.)

SMS Planting Co. v. Farm Bureau Ins., 2015 Ark. App. 331 [**summary judgment**] Summary judgment was improper because factual issue existed as to possible cause of damage. In ruling on a motion to dismiss under Rule 12(b)(6), unlike a summary judgment motion, the judge is limited to the face of the complaint. (Gibson, B.; CV-14-713; 5-20-15; Whiteaker, P.)

Williams v. Pate, 2015 Ark. App. 327 [**qualified immunity**] Property owner Williams sued school district and its officials for trespass for cutting down trees on her property. While the tort of trespass may be categorized as an "intentional" tort, an analysis of the application of qualified immunity does not stop with that determination. Simply because an actor's conduct satisfies the type of intent necessary to establish the tort of trespass, it does not follow that the same conduct is necessarily an intentional act that bars application of the doctrine of qualified immunity. Williams's proof failed to show that school district trespassed on her property deliberately and with knowledge that they

were doing so; rather, the proof indicates that it negligently trespassed onto her property, and school was entitled to immunity. (Hughes, T.; CV-14-595; 5-20-15; Kinard, M.)

Stevens v. Seeco, Inc., 2015 Ark. App. 322 [**deed**] Regardless of whether the deed was construed most strongly against the grantors or the grantee, the fact remains that the deed contained all of the necessary terms for a valid mineral conveyance. Appellant does not clearly identify any legal basis for setting aside or voiding the deed, nor does she argue that the deed's handwritten "release" language caused the minerals to revert back. (Maggio, M.; CV-14-604; 5-20-15; Gladwin, R.)

Wallis v. Keller, 2015 Ark. App. 343 [**damages**] Declining to poll the jury does not bar an appeal under Rule 59. Jury's award of zero damages even though defendant admitted fault in the car accident was supported by the evidence. (Duncan, X.; CV-14-853; 5-27-15; Virden, B.)

Swindle v. Southern Farm Bureau, 2015 Ark. 241 [**attorney's fees**] "Prevailing party" contemplates at least some adjudication on the merits of the actions. Swindle claims that he prevailed on the issue of his entitlement to the payment of the \$24,500; however, the payment was not made as a result of an adjudication by the circuit court resolving the merits of the issue. [**sanctions**] Rule 11 did not allow court to impose, without notice, sanctions on its own initiative. (Duncan, X.; CV-14-250; 5-28-15; Hart, J.)

Gawenis v. Ark. Oil and Gas Comm., 2015 Ark. 238 [**integration of mineral interests**] The forced-integration provisions of the Arkansas Conservation Act do not "take" anything away from Gawenis. Rather, the integration order allowed Gawenis to lease his interest in the drilling unit in exchange for compensation or to participate in the drilling of the well and receive monetary benefits. The Commission's integration of Gawenis's .69 acre mineral interest is not a compensable taking but a constitutional exercise of the State's police power. There was no right to a jury trial. (Foster, H.; CV-14-648; 5-28-15; Hannah, J.)

Diamante, LLC v. Dye, 2015 Ark. 243 [**arbitration/class**] The court of appeals decision only addressed the issue of whether Diamante had waived the right to compel arbitration as to the Dyes, when the Dyes were individual plaintiffs, not the class representatives in a class action. Thus, it is not conclusive on the issue of whether Diamante had waived arbitration as to the class members who were subsequently added to the lawsuit upon class certification. Case remanded for determination on whether there was a valid agreement to arbitrate with the unnamed class members. (Arnold, G.; CV-14-618; 5-28-15; Hart, J.)

DOMESTIC RELATIONS

Meredith v. Meredith, 2015 Ark. App. 303 [**divorce-marital property-debt**] When the parties divorced, their agreed order provided that the appellee wife would receive their 2009 Suburban and the appellant husband would pay any and all indebtedness "when due," as well as the automobile insurance. After the appellee wrecked and totaled the vehicle, the insurance company paid \$16,875.84 to the holder of the Suburban note and \$6,863.41 to the appellee. Upon the appellee's

petition for contempt, the circuit court awarded her a judgment of \$16,875.84 from the appellant, the amount of the debt on the vehicle that he did not have to pay despite his obligation under the parties' agreed order. Based upon the plain language of the agreed order and the purpose of damages in a contract action—to place the injured party in the same position she would have been in if the contract had been performed—the Court of Appeals affirmed the judgment. (Halsey, B.; No. CV-14-1094; 5-6-15; Vaught, L.)

Horton v. Parrish, 2015 Ark. App. 306 [**divorce—custody**] In a post-decree modification of custody, the circuit court changed custody from joint custody to sole custody in the appellee father. The appellant mother contended on appeal that the circuit court erred in modifying the decree and awarding custody of the four children against their best interest. The Court of Appeals noted the trial judge's superior position to observe the parties and the appellate court's deference to the trial court in matters of credibility, particularly in cases involving the custody of children. Here, the trial court had specifically afforded credibility and a greater weight to the testimony of the paternal grandmother, and had found the mother less likely to foster a positive relationship if she were given full custody. The decision was affirmed. (McCain, G.; No. CV-14-966; 5-6-15; Hoofman, C.)

Wilcoxon v. Thomas, 2015 Ark. App. 311 [**divorce decree—modification—Rule 60**] Arkansas Rule of Civil Procedure did not confer upon the circuit court the authority to modify the decree of divorce under either Rule 60(a), which gives the court ninety day to correct mistakes, or Rule 60(b), which permits the court to correct clerical errors at any time. The amended order was entered ninety-two days after the decree was entered, so Rule 60(a) could not apply, and it did not correct any mistakes such that Rule 60(b) applied. The decision was reversed and remanded for the original decree to be reinstated. (Johnson, K.; No. CV-14-368; 5-13-15; Virden, B.)

Metz v. Langston, 2015 Ark. App. 319 [**child support**] In this child support case, the Court of Appeals said the “salient issue on appeal” was the appellant mother's contention that the circuit court clearly erred in setting the appellee father's child-support obligation and its calculation of arrearages. Counsel for both parties had submitted letters to the trial court setting out their respective positions on what the child support and the arrearage should be. The parties agreed that the appellee was medically unable to work and had no income at the time. The court adopted the appellee's position on setting support and calculating the arrearage. The Court of Appeals found that the calculation of child support and arrearage and the court's imputing income to the appellee conformed to Administrative Order No. 10. The court found other issues without merit because the appellant had “consented, induced, or acquiesced to the trial court's ruling on those issues.” The decision was affirmed. (Spears, J.; No. CV-14-970; 5-13-15; Hixson, K.)

Fry v. Fry, 2015 Ark. App. 339 [**divorce--property**] The appellant wife contended on appeal that the circuit court erred in (1) disregarding the parties' prenuptial agreement by considering her premarital inheritance in dividing property; (2) making an unequal division of property on the basis of her inheritance property; and (3) misapplying the statutory factors for the division of marital property. The Court of Appeals said that the court did acknowledge her inheritance property but did not award any of it to the appellee husband. Second, the court did not make an unequal division of the marital property but, to the contrary, made nearly an equal division. It was clear from the court's comments that its intention was to make an equitable division of the parties' property. The statute

does not compel “mathematical precision” in distributing property, but the overriding purpose is “a division that is fair and equitable under the circumstances.” Finally, the Court of Appeals said the circuit court met the mandates of the statute in considering the statutory factors for distributing marital property, discussing several of those factors in its order. The parties’ contract was upheld and the court made an equal division of marital property. The decision was affirmed. (Wright, R.; No. CV-14-743; 5-20-15; Brown, W.)

Drinkwitz v. Drinkwitz, 2015 Ark. App. 345 [**grandparent visitation**] The Court of Appeals held “that the trial court abused its discretion in awarding visitation rights to the...[appellant grandparents...] because they failed to sustain their burden of proving that visitation was in the children’s best interest in that they could not show that the relationship with their grandchildren was lost or would be lost.” The evidence was that the grandparents continued to have visitation with their grandchildren, although it may have been reduced. The appellant mother never denied visitation altogether. The court cited *Oldham v. Morgan*, 372 Ark. 159, 271 S.W.3d 507 (2008), in which the Supreme Court said that if a relationship has been limited, but not lost, and if there is no evidence that the relationship will be lost if grandparent visitation is not established by the court, “a grandparent’s petition for visitation is premature.” The decision granting the grandparents visitation was reversed and the visitation order was vacated. (Medlock, M.; No. CV-14-979; 4-27-15; Virden, B.)

PROBATE

Hinton v. Bethany Christian Services, 2015 Ark. App. 301 [**adoption–intervention–standing; guardianship–temporary**] Because the appellant mother had only temporary guardianship of her adult, incapacitated daughter, and the guardianship had expired after ninety days, the appellant did not have standing to challenge the adoption of the daughter’s infant child. Therefore, the circuit court did not abuse its discretion in granting the adoptive parents’ motion to dismiss the appellant’s petition set aside the adoption, and the Court of Appeals affirmed that decision. (Bryan, B.; No. CV-14-1004; 5-6-15; Whiteaker, P.)

Lagios v. Goldman, 2015 Ark. App. 329 [**adoption**] The Court of Appeals affirmed the adoption of an infant by the appellee husband and wife over the objection of the appellant who was determined to be the father of the child after the child’s mother had died. The circuit court found the appellant was not a fit and proper person to have custody of the child. In affirming, the Court of Appeals said that, although the statutory requisites of the petition were not in the petition for adoption, all were made a part of the record through testimony of the appellees. Although a home study was not admitted at the hearing, the trial court reopened the record to hear the testimony of the social worker who conducted it, which the judge had the authority to do. There was substantial compliance with the statutes. The testimony of the appellant was not required as he was not one of those listed in the statute as required to consent. The court also found that it was in the best interest of the child to be adopted by the appellees. The granting of the adoption was affirmed. (Chandler, L.; No. CV-14-63; 5-20-15; Glover, D.)

Sherland v. Sherland, 2015 Ark. App. 342 [**guardianship**] This appeal involves the circuit court's granting the appellee maternal grandmother guardianship of her granddaughter over the objection of the appellant mother of the child. [**constitutionality**] The Court of Appeals did not consider the issue of the constitutionality of the guardianship statutes because the appellant did not give notice to the Attorney General that she was raising the issue and she failed to fully develop and argue the issue. [**fitness**] To the extent the trial court did not consider the appellant's fitness as a parent, there was no error under Arkansas's current interpretation of the guardianship laws, but, in addition, the court reasonably could have concluded from the evidence that the appellant was unfit. [**desirability of guardianship**] The court held that the trial court did not clearly err in determining that a guardianship was desirable. [**natural-parent preference**] The natural-parent preference does not automatically attach to a child's natural parents; it is within the trial court's discretion to make a determination whether a parent is qualified and suitable. The decision was affirmed. (Feland, W.; No. CV-13-170; 5-27-15; Virden, B.)

JUVENILE

Billingsley v. Ark. Dep't of Human Services, 2015 Ark. App. 348 [No-Merit DN Adjudication] Appellant unsuccessfully appealed adjudication and aggravated circumstances finding. The trial court found that appellant's infant had been severely beaten within hours of dying at the time he was treated at Children's Hospital. The court specifically found that the infant had been subjected to chronic, extreme and repeated cruelty by appellant's boyfriend. Appellant had a duty to protect her child and failed to take reasonable steps to do so. The circuit court also found by clear and convincing evidence that the appellant subjected her child to aggravated circumstances. No-Merit adjudication granted (Jamison, L.; CV-14-1120; 5-27-2015; Gruber R.)

Whitt v Ark. Dep't of Human Services, 2015 Ark. App. 293 [**DN PPH**]

In *Whitt I* the Court of Appeals held that the circuit court erred in granting permanent custody to the mother and closing the case at a review hearing because there was not enough information. The appellate court remanded the case for further investigation as to both parents. A year later, a PPH hearing was held and the trial court granted custody to the mother. Appellant argued that the court erred again and this was not in his children's best interest. However, there was sufficient evidence to place custody with the mother, including testimony that the mother had cared for the children, provided for her children's needs and that they had done well in school. The son also testified as to their living arrangements and how much he enjoyed his school. There was also evidence that appellant had recently been convicted and sentenced to six years in prison. Appellant also argued that a report should have been admitted into evidence to point out inconsistencies with testimony. However, appellant objected to the admission of the report. "A party cannot complain of action he induced, consented to or acquiesced in." (Zimmerman, S; CV-15-20; 5-6-2015; Harrison, B.)

Gyalog v. Ark. Dep't of Human Service v. Nelson, 2015 Ark. App. 302 [**DN PPH &TPR**]

Appellant argued that the change of the goal to adoption and resulting TPR at the PPH were not in his children's best interest. He argued that his sister who lived in California was a possible placement, although a home study had not been completed at the time of the PPH. The Court of

Appeals looked at the preference of placement in the PPH statute and noted that adoption is preferred over a custodial placement with a relative. It was also not clearly erroneous to find that termination of parental rights was in the children's best interest where there was testimony that the children were bonded with the foster parents who wanted to adopt them and the children were thriving in their care. (Zimmerman, S; CV-14-994; 5-6-2015; Vaught, L.)

Rodgers v. Ark. Dep't of Human Services, 2015 Ark. App. 299 [**TPR grounds**]

Appellant is correct that the failure to remedy ground is not applicable to him because he never had custody of his child. However the circuit court was upheld in finding a second ground, failure to support. "Material support can be financial contributions or food, shelter, clothing or other necessities that have been ordered to be provided by a court of competent jurisdiction." Appellant had been ordered to pay child support and by his own admission he did make any payments, although there was testimony he made payments for medical bill for himself. (Clark; CV-14-1128; 5-6-2015; Glover, D.)

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

1. *Harmon v. Ark. Dep't of Human Services*, 2015 Ark. App. 347 (Thyer, C.; CV-15-70; 5-27-2015; Kinard, M.)
2. *Ramsey v. Ark. Dep't of Human Services*, 2015 Ark. App. 297 (Arnold, G.; CV-15-21; 5-6-2015; Gruber, R.)

A.S. v. Randolph County Circuit Court, 2015 Ark. 221 [**Writ of Habeas Corpus**]

Writ denied, but a concurring opinion addressed procedural concerns, including that a FINS juvenile did not have defense counsel as required by law. (King, K.; CV-15-349; 5-21-2015; Wood, R.)

S.C. v. State, 2015 Ark. App. 334 [**Delinquency Adjudication**]

Appellant appealed her delinquency finding for filing a false report for rape. She argued that her inconsistencies did not negate the fact that she believed she was raped. The intent to commit the offense may be inferred by the defendant's conduct and the surrounding circumstances. Appellant's argument relates to her creditability, and the appellate court defers to the trial court's assessment that appellant was not credible. (Fergus, L.; CV-14-860; 5-27-2015; Virden, B.)

B.J. v. State, 2015 Ark. 310 [**Delinquency Adjudication**]

Appellant appealed his delinquency finding for rape. Appellant argued insufficient evidence, and there was evidence that the two children were engaged in playing a "hump game." Although appellant moved for a directed verdict at the close of the state's case for failure to provide evidence of penetration or sexual gratification, appellant failed to renew his motion for directed verdict at the close of all the arguments as required by Rule 33.1 of the Arkansas Rules of Criminal Procedure. (McCallum, R.; CV-14-956; 5-13-2015; Abramson, R.)

J.P. v. State, 2015 Ark. App. 308 [**Delinquency Disposition**]

Appellant argued that her disposition was an illegal sentence when the court ruled from the bench it was going to defer a finding of guilt, but order court cost, a court fine, and if appellant stayed out

of trouble, the case would be dismissed. However, the written order found appellant delinquent for theft of property, placed the juvenile on three months of probation, and ordered court costs and restitution. When there is disparity between the judgment and the order, the order controls. The disposition imposed was not illegal. (Fergus, L.; CV-14-860; 5-27-2015; Virden, B.)

U.S. SUPREME COURT

Coleman v. Taylor: **[federal courts-dismissal of harassing lawsuits]** Ordinarily, a federal litigant who is too poor to pay court fees may proceed *in forma pauperis*. This means that the litigant may commence a civil action without prepaying fees or paying certain expenses. But a special “three strikes” provision prevents a court from affording *in forma pauperis* status to a prisoner who “has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.” Petitioner Coleman, a state prisoner, filed three federal lawsuits that were dismissed on grounds enumerated in §1915(g). While the third dismissal was pending on appeal, he filed four additional federal lawsuits, moving to proceed *in forma pauperis* in each. The District Court refused to permit him to proceed *in forma pauperis* in any of those lawsuits, holding that a prior dismissal is a strike under §1915(g) even if it is pending on appeal.

Held: A prior dismissal on one of §1915(g)’s statutorily enumerated grounds counts as a strike, even if the dismissal is the subject of an ongoing appeal.

(No. 13–1333; May 18, 2015)

Henderson v. U.S.: **[federal courts-surrender of firearms]** After being charged with the felony offense of distributing marijuana, petitioner Henderson was required as a condition of his bail to turn over firearms that he lawfully owned. Henderson ultimately pleaded guilty, and, as a felon, was prohibited under from possessing his (or any other) firearms. Henderson therefore asked the Federal Bureau of Investigation, which had custody of his firearms, to transfer them to his friend. But the agency refused to do so. Henderson then filed a motion in federal district court seeking to transfer his firearms, but the court denied the motion on the ground that Henderson’s requested transfer would give him constructive possession of the firearms.

Held: A court-ordered transfer of a felon’s lawfully owned firearms from Government custody to a third party is not barred by §922(g) if the court is satisfied that the recipient will not give the felon control over the firearms, so that he could either use them or direct their use. Federal courts have equitable authority to order law enforcement to return property obtained during the course of a criminal proceeding to its rightful owner. Section 922(g), however, bars a court from ordering guns returned to a felon-owner like Henderson, because that would place the owner in violation of the law. And because §922(g) bans constructive as well as actual possession, it also prevents a court from ordering the transfer of a felon’s guns to someone willing to give the felon access to them or to accede to the felon’s instructions about their future use.

A court may approve the transfer of a felon's guns consistently with §922(g) if, but only if, the recipient will not grant the felon control over those weapons. One way to ensure that result is to order that the guns be turned over to a firearms dealer, himself independent of the felon's control, for subsequent sale on the open market. But that is not the only option; a court, with proper assurances from the recipient, may also grant a felon's request to transfer his guns to a person who expects to maintain custody of them. Either way, once a court is satisfied that the transferee will not allow the felon to exert any influence over the firearms, the court has equitable power to accommodate the felon's transfer request. (No. 13-1487; May 18, 2015)