

# APPELLATE UPDATE

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## CIVIL

*Johnson v. Cohick*, 2025 Ark. App. 578 [**warranty deed; recording**] The circuit court found that a 1996 warranty deed was the controlling deed with respect to certain property, which ultimately resulted in the dismissal of appellant's complaint for ejectment against appellees. On appeal, appellant argued that an unrecorded 1992 warranty deed delivered to her mother was the controlling deed for purposes of the ejectment action. The title to real property is effective upon valid delivery of the deed. Delivery passes title between parties even if it has not been recorded. However, under Arkansas law, an earlier delivered but unrecorded deed does not defeat title in all cases if the subsequent deed is recorded. Under Ark. Code Ann. § 14-15-404(b), the claim of a purchaser for valuable consideration who does not have actual notice of the prior deed trumps that of a holder of a prior but unrecorded deed. Here, the record reflected that Jerry Fultz (Jerry) purchased property in 1991. It is undisputed that Jerry delivered the 1992 deed to Lana (his mother) and Dale (his father), naming himself, Dale, Lana, and Janet (his sister and appellant) as joint tenants with right of survivorship. It is further undisputed that the 1992 deed was not recorded until May 15, 2023. Jerry married Joy Ann in 1994, and later executed a warranty deed in 1996, conveying the property to himself and Joy Ann as tenants by the entireties. In 2017, Jerry and Joy Ann executed a quitclaim deed conveying the property to Jerry and Joy Ann, as husband and wife,

and to the appellees, as husband and wife, as joint tenants with right of survivorship. Joy Ann executed a quitclaim deed conveying her interest in the Property to the appellees, which was recorded on May 12, 2023. The parties stipulated that there was no bona fide purchaser for valuable consideration. Further, the testimony was unrefuted that Joy Ann paid no consideration when Jerry transferred title to himself and Joy Ann in the 1996 deed, and that the appellees did not pay consideration when the subsequent deeds quitclaiming title were executed. The appellate court found that the circuit court erred in finding that the 1996 deed was the controlling deed. Joy Ann was not a subsequent purchaser for valuable consideration and does not get the benefit of the protections afforded under Ark. Code Ann. § 14-15-404(b). Additionally, the circuit court's ruling was not based on equitable defenses or equitable principles. In this case, because there was no bona fide purchaser for valuable consideration after Jerry's initial purchase, and the court's order was not based on equitable principles, neither the 1996 deed nor the deeds that followed effectively passed title of the property to the appellees. Accordingly, the appellate court found that the 1992 deed was the controlling deed. (Jackson, S.; 08ECV-23-141; 12-3-25; Tucker, C.)

*Pinnacle in Home Care, LLC v. 1 Source Senior Care, LLC*, 2025 Ark. 193 **[disqualification of counsel]** The circuit court entered an order disqualifying two attorneys, along with their law firm, as counsel for appellant. On appeal, appellant argued that the circuit court erred when it disqualified appellant's counsel because appellant's position was not "materially adverse" to its codefendants. Rule 1.9 of the Arkansas Rules of Professional Conduct provides that a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. Here, appellee filed its initial complaint against the appellant and two individual defendants, both of whom were employees of appellant at the time of filing. The complaint alleged a breach of noncompete agreements, violation of confidentiality agreements, and tortious interference with its business relationships. An answer was filed on behalf of all defendants, acknowledging that one of the defendants was deceased. The law firm subsequently moved to withdraw as counsel for the individual defendants due to the one defendant's death and the fact that the other defendant was no longer employed by the appellant. Then, one of the appellee's employees left to work for appellant, and the appellee filed an amended complaint. The attorneys filed an answer on behalf of appellant and the employee. After the employee left her employment with appellant, the law firm moved to withdraw as counsel for the employee. In the appellee's complaint, the appellee alleges that separate defendants acted within the course and scope of their employment with appellant and at appellant's encouragement to commit tortious acts. This created tension between the defendants regarding the attribution of liability, specifically, whether the separate defendants were acting for their own benefit or for the benefit of the appellant, their employer. The defendants in this case would be in an adversarial position as the issue of individual liability was litigated. Additionally, in its answer, appellant affirmatively pleaded that appellee's damages or losses, if

any, were caused by persons whom appellant had no control over and for whom the appellant was not responsible. This showed that the appellant would disavow the actions of the separate defendants if necessary to avoid liability. The law firm also acknowledged in its motions to withdraw potential conflicts of interest arising between the appellant and separate defendants now that the separate defendants were no longer employed by the appellant. As such, the interests of the defendants in this case were materially adverse, and therefore, the law firm's representation of the appellant could not continue under Rule 1.9. Thus, the circuit court did not abuse its discretion by disqualifying the attorneys and their law firm. (Threet, J.; 72CV-21-1883; 12-4-25; Webb, B.)

*Progressive Eldercare Servs. v. Campbell*, 2025 Ark. App. 597 [**arbitration**] The circuit court dismissed the case after ordering it stayed for arbitration under the Federal Arbitration Act (FAA). On appeal, appellants argued the circuit court erred in dismissing the case. When a case is subject to arbitration under the FAA, the circuit court shall, on application of one of the parties, stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement. While the case is stayed, the trial court retains only a vestige of jurisdiction to assist parties in arbitration by, for example, appointing an arbitrator, enforcing subpoenas issued by arbitrators to compel testimony or produce evidence, and facilitating recovery on an arbitral award. When arbitration concludes, the court must confirm the arbitration award unless the award is vacated, modified, or corrected as prescribed in the FAA. Here, after the arbitrator dismissed all the appellee's claims with prejudice, the appellee moved to dismiss them without prejudice under Arkansas Rule of Civil Procedure 41(a) instead. Whether appellee could nonsuit her claims under Rule 41 of the Arkansas Rules of Civil Procedure after the arbitrator dismissed them was a question for the arbitrator, not the circuit court. Thus, the circuit court had no authority under the FAA to dismiss without prejudice after it ordered the parties to arbitrate and stayed the case. (Morledge, C.; 19CV-20-5; 12-10-25; Harrison, B.)

*Brookstone Assisted Living Opco, LLC v. Green*, 2025 Ark. App. 598 [**default judgment; common defense**] The circuit court denied appellant's motion to set aside default judgment. On appeal, the appellant argued the circuit court erred because the codefendants had raised a common defense. Here, the case involves a single patient and whether the alleged negligence by multiple defendants, which rendered her medical care, resulted in injuries in two causally related incidents. The timely answers by one of the defendants covered the appellant. First, the appellee combined all his fact allegations against all defendants into a single claim. One defendant pleaded affirmatively that relief could not be granted on those facts and moved to dismiss both complaints under Rule 12(b)(6). Failure to state a claim as a defense is equally applicable to both codefendants. Second, one of the defendants denied "both generally and specifically, each and every material allegation" she had not specifically admitted. A general denial of every material allegation is a common defense because it puts in issue the basic elements in every lawsuit, regardless of the differing

allegations of fault as to each defendant. Finally, one of the defendants specifically denied allegations of negligence and causation directed at appellant before affirmatively pleading in the same paragraph that she was not negligent and did not proximately cause injury. The combination made clear she was denying the allegations against all defendants, not just herself. The appellate court held that the common-defense doctrine applied in this case. Thus, the circuit court erred in denying appellant's motion to set aside default judgment. (Threet, J.; 72CV-22-3433; 12-10-25; Harrison, B.)

*Lara v. Faulkenberry*, 2025 Ark. 205 **[motion to intervene]** The circuit court denied appellant's motion to intervene in a lawsuit challenging the constitutionality of a portion of the LEARNS Act. On appeal, they argue that they are entitled to intervene of right because (1) as the beneficiary of a government program, they have an interest sufficient to justify their right to defend the program; (2) shutting down the Arkansas Education Freedom Account program and clawing back past tuition payments would impair their interests; and (3) the government cannot adequately represent their narrow, personal interests in the program. Under Arkansas Rule of Civil Procedure 24(a)(2), a party is entitled to intervene when it has made a timely application and claims an interest relating to the property or transaction which is the subject of the action and the party is so situated that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. **[recognized interest]** To satisfy the recognized interest in the subject matter of the litigation, the interest must be direct, as opposed to tangential or collateral, and the interest must be both substantial and legally protectable. A recognized interest arises when, as a result of a ruling on a governmental regulation, the putative intervenor would suffer economic damage. Here, appellants are parents of children eligible for the Education Freedom Account program. The Supreme Court held that the appellants would suffer an economic loss if the voucher program were held to be unconstitutional, because they would be losing money that could be put toward private school tuition or homeschool expenses. Likewise, the disposition of the action directly affected the appellants' interest in the Education Freedom Account program. Finally, the claw-back provisions in the appellees' complaint directly threatened the appellants' resources. The Supreme Court held that the appellants had established a recognized interest in the lawsuit. **[adequate representation]** A litigant's interest is adequately represented when it is identical to, or not significantly different from, that of the proposed intervenor. In the present case, the Department of Education had a much broader focus than the appellants' narrow concern over the education of their children. The appellants' participation in the case has the potential to provide a court of equity with evidence when it attempts to weigh the equities implicated by the appellees' complaint. Thus, the Supreme Court held that the state actors did not adequately represent the interests of the putative intervenors. The appellants were entitled to intervene as a matter of right, and the circuit court erred in denying their motion to intervene. (Welch, M.; 60CV-24-4630; 12-11-25; Webb, B.)

*State v. Good Day Farm Ark., LLC*, 2025 Ark. 207 [**amendment to voter-initiated laws**] This appeal concerned the General Assembly’s authority to amend voter-initiated laws and the constitutional limits on the germaneness of such amendments. On appeal, there were two questions: first, whether authority to amend exists under article 5, section 1 of the Arkansas Constitution; and second, whether the word “section” in section 23(a) of amendment 98 should be read as “amendment” for the purpose of applying its germaneness requirement. The Supreme Court held that the plain text of article 5, section 1 grants the General Assembly the authority to amend the laws initiated by the people of this state by a two-thirds vote of both houses of the General Assembly, which is what section 23(a) of amendment 98 expressly allows. Additionally, *Arkansas Game & Fish Commission v. Edgmon*, 218 Ark. 207, 235 S.W.2d 554 (1951), was overruled in its entirety. Further, the Supreme Court construes the word “section” to function as “amendment” for the purposes of applying the germaneness requirement of section 23(a) of amendment 98. (Welch, M.; 60CV-22-931; 12-11-25; Hiland, C.)

## CRIMINAL

*Gililand v. State*, 2025 Ark. App. 570 [**motion for mistrial**] Appellant was convicted by a jury of second-degree murder. On appeal, appellant argued the circuit court erred by not granting his motion for mistrial, in which he alleged that the State’s closing argument improperly shifted the burden to him to prove self-defense. A mistrial is an extreme and drastic remedy, appropriate only when an error is so prejudicial that it cannot be cured by an admonition or instruction—in other words, when justice cannot be served by continuing the trial. Generally, an abuse occurs when the circuit court acts improvidently, thoughtlessly, or without due consideration. A cautionary instruction or admonition to the jury can make harmless any prejudice that might occur. Here, in an interview that was played for the jury, the appellant said that he was in his fifties and disabled with a fake hip, fake knees, and plates in his arms, so he could not run or fight anyone. Appellant also stated that the victim, who was around thirty years old, approached him, backing him up to his truck, and seemed like he wanted to fight, so he shot the victim in the chest. During closing arguments, the prosecutor questioned the appellant's claim of being disabled, noting the absence of a cane, walker, limp, or medical testimony. He suggested that if evidence existed, it would have been presented, implying the disability may be exaggerated. Defense counsel requested a mistrial, asserting the appellant was not required to provide proof or testify, but the circuit court denied it. Defense then asked for a jury instruction to disregard the prosecutor's comments. The circuit court offered a curative instruction that defense counsel accepted. Moreover, the jury had previously been given instructions on the law that included the defendant’s constitutional right not to testify, the State’s burden of proof, the defendant’s presumption of innocence, and the instruction that an attorney’s arguments are not evidence to be considered in arriving at the jury’s verdict. The circumstances here showed that the circuit court did not abuse its discretion in denying the motion for mistrial. (Ramey, J.; 75SCR-23-61; 12-3-25; Klappenbach, N.)

*Dority v. State*, 2025 Ark. App. 607 [**hearsay**] Appellant was convicted by a jury of first-degree murder. On appeal, appellant argued that the circuit court erred by allowing the admission of out-of-court statements made by the victim as dying declarations under Arkansas Rule of Evidence 804 and in violation of appellant's right to confrontation guaranteed under the Sixth Amendment. Rule 804 of the Arkansas Rules of Evidence provides hearsay exceptions that apply when the declarant of a statement is unavailable. [**dying declaration**] One of these exceptions to the hearsay rule is a statement made under the belief of impending death, commonly referred to as a dying declaration. A dying declaration is defined as a statement made by a declarant while believing that his death was imminent concerning the cause or circumstances of what he believed to be his impending death. A sense of imminent death need not be shown by the declarant's express words alone but can be supplied by inferences fairly drawn from his condition. Here, the victim had been shot in the back, and the bullet went through his esophagus and trachea. The officer testified that the victim was struggling to breathe and spitting up blood. A video of the victim immediately after he was shot and lying in the street was introduced at the motion hearing. While the officer thought the victim was a little more coherent in the ambulance, paramedics were treating him while he was making statements. There were times that the victim gasped and choked, and even one paramedic can be heard saying that there was blood coming from the victim's ear. Considering the obvious severity of the victim's injuries and his difficulty breathing, the appellate court concluded that the circuit court did not abuse its discretion in determining his statements were dying declarations and admissible at trial. [**confrontation clause**] The Confrontation Clause requires that a defendant have the opportunity to confront the witnesses who give testimony against him, except in cases where an exception to the confrontation right was recognized at the time of the founding. The United States Supreme Court stated in *Giles v. California*, 554 U.S. 353 (2008) that it had "previously acknowledged that two forms of testimonial statements were admitted at common law even though they were unopposed. The first of these were declarations made by a speaker who was both on the brink of death and aware that he was dying." In light of the United States Supreme Court's guidance and persuasive authority from other jurisdictions, the appellate court agreed with the circuit court that testimonial dying declarations are an exception and pose no conflict with the Confrontation Clause. Thus, the circuit court did not err in admitting the victim's statements. (Ellington, S.; 47BCR-23-43; 12-10-25; Hixson, K.)

## DOMESTIC RELATIONS

*Young v. Tash*, 2025 Ark. App. 582 [**parenting time; joint custody**] The circuit court entered a judgment of paternity adjudicating appellant as the legal father of the child, awarded the parties joint custody, and set forth a detailed "parenting time" schedule, which did not award the parties equal time with the child until the child completes kindergarten. On appeal, appellant argued the

circuit court erred in its award of parenting time. In an action concerning an original child-custody determination in a divorce or paternity matter, there is a presumption that an award of joint custody is in the best interest of the child, which may be rebutted if the circuit court finds by clear and convincing evidence that joint custody is not in the child's best interest. The primary consideration in child custody cases is the welfare and best interest of the children; all other considerations are secondary. The custody statute provides that joint custody means the approximate and reasonable equal division of time with the child by both parents individually. Custody shall be awarded in such a way as to assure the frequent and continuing contact of the child with both parents, consistent with the welfare and best interest of the child. Here, the circuit court's order gave appellant extremely limited visitation for almost five years—eight hours every other weekend for over a year until the child turned three; four nights a month for over two years until the child started kindergarten; and then alternating weekends for another year until the child completed kindergarten—before allowing him equal parenting time. While courts cannot always make the parenting time an even split, the disparity here was too great. Moreover, there was no evidence presented that an equal division of time was unworkable or that an equal or near equal division of time would result in a detriment to the child. Thus, the circuit court erred in its award of parenting time. (Dyer, C.; 12-3-25; Wood, W.)

*Nguyen v. Yassin*, 2025 Ark. App. 589 [**custody; material change in circumstances**] The circuit court entered an order terminating an emergency order and denying appellant's motion for a permanent change of custody after finding that there had been no material change in circumstances. The circuit court then ordered an amended order to clarify its previous order. On appeal, appellant argued the circuit court erred. [**material change in circumstances**] The party seeking modification of the custody order has the burden of showing a material change in circumstances. To change custody, the circuit court must first determine that a material change in circumstances has occurred since the last order of custody; if that threshold requirement is met, it must then determine who should have custody, with the sole consideration being the best interest of the children. Here, the circuit court found that while appellee's criminal case was not insignificant, there had been no showing that it negatively impacted the child, and the child had a very close relationship with appellee and his family. The parties' joint-custody schedule had not materially changed since November 2021. Although appellant obtained temporary full custody, the parties continued to exercise joint custody. During the school year, the child spent four nights a week with appellant and three nights a week with appellee. The evidence showed that the parties could successfully manage a joint-custody arrangement, and this was not a material change from the 2021 order of joint custody. Appellant also argued that her move from Tulsa to Bentonville was a material change in circumstances. However, a party should not be permitted to allege a material change of circumstances that she herself has created. Giving great weight to the circuit court's observations, the appellate court was unable to say that the circuit court erred in finding no material change in circumstances. Accordingly, the circuit court did not err in denying appellant's petition

to change custody. **[springing provision]** Appellant also argued the amended order contained an unenforceable springing provision that automatically changed the custody arrangement upon the happening of a prospective event. The amended order here provided that the custody schedule would change when the child's Christmas break began from a weekday/weekend schedule to resume a one week on/ one week off custodial schedule. It was not a change from primary to joint custody; rather, the parties were to exercise joint custody under both schedules. Furthermore, the schedule change was triggered by the child's school calendar, not the prospective actions of one party. Accordingly, the appellate court held that the amended order was valid. (Ladd, D.; 66FDR-18-280; 12-10-25; Klappenbach, N.)

*Gomez v. Gomez*, 2025 Ark. App. 590 **[settlement agreement]** The circuit court entered a decree divorcing the parties. On appeal, appellant argued that the circuit court erred in denying his motion to approve their settlement agreement. Although divorcing spouses may enter into settlement agreements, the circuit court is not bound to accept them, even in the absence of fraud or coercion. It is within the discretion of the circuit court to approve, disapprove, or modify the agreement. A circuit court has an obligation to manage and control its docket in an efficient manner. Here, the appellate court held that the circuit court acted within its discretion in denying appellant's motion to approve the settlement agreement and vacate the auction order. The divorce case had been pending since 2021. At a February 2024 pretrial, the circuit court warned that failure to settle before trial would lead to a property sale. During the April 16 trial, the circuit court gave both parties several chances to settle and reiterated that the property would be auctioned if no agreement was reached and stated that a subsequent settlement would not be accepted. Both parties testified and acknowledged that their property would be auctioned, and they did not request a continuance. The parties waited until May 10 to tender their settlement agreement. Given these circumstances, the circuit court did not err in denying appellant's motion to approve the settlement agreement and vacate the auction order. (McCain, G.; 58DR-21-342; 12-10-25; Abramson, R.)

*Porter v. Jackson*, 2025 Ark. App. 605 **[joint custody]** The circuit court granted sole custody of the parties' child to the appellee. On appeal, appellant argued that the circuit court erred. **[pattern of domestic abuse]** Appellant first argued that the circuit court failed to identify any acts of domestic violence or pattern of domestic abuse sufficient to overcome the presumption of joint custody under Ark. Code Ann. § 9-13-101(a)(1)(A)(iv)(a). Arkansas Code Annotated § 9-13-101(a)(1)(A)(iv) provides that, in an action concerning an original custody determination in a divorce or paternity matter, there is a rebuttable presumption that joint custody is in the best interest of the child and that the presumption can be rebutted under certain circumstances, such as when the court finds by clear and convincing evidence that joint custody is not in the best interest of the child or when the court finds by a preponderance of the evidence that a parent has engaged in a pattern of domestic abuse. If the court finds that the presumption in favor of joint custody has been

rebutted, the statute requires that the written order include facts, findings, and conclusions of law concerning the basis for the court's determination. Here, the circuit court did not recite or make any specific findings of fact in the divorce decree to support its conclusion that there had been a pattern of domestic abuse sufficient to rebut the presumption that joint custody was not in the child's best interest. And while the circuit court's oral ruling mentioned appellant's bad "temperament" and an incident involving the child's sibling, the written decree contained no factual findings with respect to appellant's alleged commission of an act of domestic violence or pattern of domestic abuse as the statute requires. Thus, the decree was deficient. **[best interest]** Appellant also argued that the circuit court failed to make a finding that there was clear and convincing evidence that joint custody was not in the child's best interest. The circuit court did not include in its written order any facts or findings to support its conclusion that joint custody was not in the child's best interest. Thus, the circuit court must make the necessary findings concerning whether the joint-custody presumption was rebutted and clarify whether it also found by clear and convincing evidence that joint custody was not in the child's best interest under Ark. Code Ann. § (a)(1)(A)(iv)(b)(1) and, if so, the facts to support it. (Huff, M.; 34DR-23-59; 12-10-25; Thyer, C.)

## JUVENILE

*Turner v. Ark. Dep't of Human Services*; 2025 Ark. App. 585 **[TPR; failure to remedy]** Appellant appealed the termination of her parental rights. The case began due to her methamphetamine use while expecting her most recent child, which resulted in the child having developmental issues. Appellant's progress throughout the case was sporadic. The appellee alleged only a single ground in its termination petition: Appellant's failure to remedy the issue that caused the removal, parental unfitness due to drug use. But by the time of the termination hearing, her drug use largely had been addressed: the caseworker testified that since the petition for termination had been filed, appellant completed outpatient treatment and had tested negative for drugs, which allowed her to have a trial home placement. The caseworker testified that the trial home placement ended within about a month due to the hoarding environment of appellant's home. She admitted appellant continued to test negative on her drug screens, yet she did not believe appellant could maintain a safe environment for the child. Following the testimony, the court granted the appellee's petition. The court entered its written order, citing the only ground pled in the termination petition—failure to remedy the issues causing removal. In support of this ground, the court found that, despite the case being opened for almost 18 months with an attempted trial home visit, the juvenile still could not be returned home safely. The court also found that termination would be in the child's best interest. From this order, appellant appealed. Appellant challenged the sufficiency of the evidence supporting the ground the court relied on in terminating her parental rights. She contended the court erred by relying on the failure-to-remedy ground because the issue causing removal, drug use, had been largely remedied. While acknowledging that there were other grounds available that were likely supported by the facts in the case (e.g., subsequent factors), appellant noted this was the sole ground pled by the appellee, as the appellee never amended its petition or moved to conform the pleadings to the proof. According to the caseworker's testimony, the issue causing

removal—drug use—had been remedied. Additionally, after the hearing concluded, the court’s oral ruling acknowledged appellant’s completion of outpatient drug treatment. The court instead focused its reasoning on the environmental state of appellant’s home and the child’s deteriorated condition after the trial home visit to grant the petition. Neither drug use nor lack of sobriety was mentioned as a basis for termination. The appellee contended the termination order could still be affirmed and asked that the appellate court use its de novo review to hold that even if appellant completed rehab and tested negative on drug screens for the few remaining months before the termination hearing, her efforts were considered “eleventh-hour.” The appellate court declined to do so because that was not its role; the circuit court was the fact-finder, and the appellate court was to determine if that finding was clearly erroneous. Considering the evidence presented and the single ground pled, it held that the circuit court clearly erred in finding that the ground for termination was proven by clear and convincing evidence. (Williams, L.; CV-25-487; 12-3-25; Murphy, M.)

*Woods v. Ark. Dep’t of Human Services*; 2025 Ark. App. 587 [TPR] Appellant’s children were removed from her care and adjudicated dependent-neglected based upon neglect and parental unfitness; due to appellant’s drug use, she failed to provide for the health and safety needs of the children, including food, and failed to provide a safe environment that did not pose a risk to the children. Her parental rights were subsequently terminated; she appealed that decision. [TPR; **aggravated circumstances**] One ground found by the circuit court was the aggravated-circumstances ground, which required that a determination had been or was made by a judge that there was little likelihood that services to the family would result in successful reunification. Appellant maintained that reunification services were successful and that at the time of the termination hearing, she was in a position where reunification could be achieved. However, the caseworker testified that there were no services appellee could offer appellant that had not already been offered that would help remedy the conditions that caused removal. A caseworker’s testimony that there were no further services that appellee could provide to reunify a parent with his or her child will support a finding of aggravated circumstances in a termination-of-parental-rights proceeding. Moreover, the evidence showed that appellant did not attend inpatient treatment as ordered, and appellee was not able to perform random drug screens. Appellant could not even verbalize what caused the children’s initial removal from her custody, and she still did not understand the importance of maintaining food in her home. Appellant regressed from a trial home placement to having only supervised visits with the children at a location outside of appellant’s home. Food security was, and continued to be, an issue with appellant, despite services. Additionally, appellant moved often and had been at her current residence for only a few months, and the same was true of her employment. Therefore, the appellate court opined that the circuit court did not err in finding that aggravated circumstances supported the termination of appellant’s parental rights. [TPR; **best interest/potential harm**] Next, appellant argued that the circuit court erred in finding that termination of her parental rights was in the children’s best interest. Specifically, she contended that she remedied the issues that caused the children’s removal and was sober and able to safely parent her children. For potential harm, the evidence must be viewed in a forward-looking manner and considered in broad terms; however, a circuit court is not required

to find that actual harm will result or to affirmatively identify a potential harm. Additionally, past behavior may be viewed as a predictor of potential harm. Further, the same evidence relied on to support statutory grounds may be used to support potential harm. Here, the issues with appellant remained the same throughout the history of the case. She made some progress, but the children were removed a second time due to food insecurity and appellant's altered drug screens. There never was a time after removal that appellant was granted overnight visits, and at the time of the termination hearing, the children were not even allowed to visit at appellant's home. Appellant changed homes and employment often, so she did not have a stable home, and her work history was spotty at best. Although there were concerns with appellant's drug usage, she was never available for random drug screens, and she did not attend the court-ordered inpatient treatment. Under these facts, the appellate court could not say that the circuit court's finding that the children would be subjected to potential harm if they were returned to appellant was clearly erroneous. (Chesshir, B.; CV-25-327; 12-3-25; Brown, W.)

*Camacho v. Ark. Dep't of Human Services*; 2025 Ark. App. 580 [TPR] Appellant first argued the circuit court erred in terminating her parental rights because the circuit court's finding of "instability" was just poverty in disguise. Specifically, appellant argued that poverty was not a legally supportable basis for termination, so the termination of her parental rights should be reversed. [TPR; failure to remedy] Appellant's nine minor children were adjudicated dependent-neglected, and despite the appellee's meaningful efforts, the five youngest minor children remained out of appellant's custody for more than twelve months. The court heard testimony that the appellee provided services to appellant to help remedy the issues of housing, employment, and transportation, including things such as groceries, transportation for the children, medical care for the children, foster-care placement for the children, and monthly home visits. Appellant stayed with various family members until she obtained an apartment that required her father to cosign the lease. However, appellant previously admitted she had concerns regarding her children's safety around her father due to a previous true finding for sexual abuse of a child. Despite this, appellant did not attempt to obtain housing that did not require her father to cosign the lease or create a safety plan to protect the children in the event her father came to the apartment while the children were unsupervised. While the eldest four minor children had a successful trial home placement with appellant, the same cannot be said for the youngest five. During the pendency of this case, the appellee attempted a trial home placement for the five youngest children, but ultimately appellant's failure to provide a transportation plan or a childcare plan for the children while she was at work rendered the appellee unable to move forward with the trial home placement. Although appellant retained the rights to her four eldest children, whose ages ranged from ten to fifteen years, at the time of termination, she continued to lack appropriate housing and the ability to provide for the essential needs of the five youngest children. The court reasoned that the four eldest children could remain in her custody because they were able to stay by themselves while appellant worked, and their schedules allowed them to help appellant around the house. However, when the time came, appellant did not demonstrate that she could meet the essential needs of the youngest five children, including stable housing, transportation, and childcare. The goal of termination proceedings is to provide permanency in a child's life when returning the child to the family home is contrary to the

child's health, safety, or welfare, and the evidence demonstrates that a return to the home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. A child's need for permanency and stability may override a parent's request for more time to improve the parent's circumstances. Here, this case went on for two years without the appellant correcting her failure to provide essential needs for the children, despite the multitude of services offered to her. A stable home is one of a child's most basic needs. A parent's continued inability to protect and care for his or her child and failure to benefit from the services provided demonstrate little likelihood that further services will result in a successful reunification. Considering the facts before it, the appellate court held that the circuit court did not clearly err in finding by clear and convincing evidence that the failure-to-remedy ground supported the termination of appellant's parental rights. **[TPR; best interest]** In making a "best interest" determination, the circuit court was required to consider two factors: (1) the likelihood that the child will be adopted and (2) the potential of harm to the child if custody is returned to a parent. Adoptability is not an essential element; rather, it is a factor that the circuit court must consider. Likewise, the potential harm to the child is a factor to be considered, but a specific potential harm does not have to be identified or proven by clear and convincing evidence. The potential-harm analysis is to be conducted in broad terms and in a forward-looking manner. Appellant did not challenge the circuit court's findings regarding adoptability or potential harm. Rather, appellant argued the circuit court failed to properly account for statutory protections regarding the sibling relationship while making its best-interest determination. To make a sibling-relationship argument that supported reversal, there must have been evidence of a genuine sibling bond, which was not demonstrated in the record here. Additionally, the statute on which appellant relied, Ark. Code Ann. § 9-9-215, concerned the adoption of siblings, not termination of parental rights. Because the appellate court was not left with a definite and firm conviction that a mistake had been made, it held the circuit court did not clearly err in finding that termination was in the best interest of the five youngest children and entering the order terminating the appellant's parental rights. (Smith, T.; CV-25-580; 12-3-25; Potter Barrett, S.)

*Minor Child v. State*; 2025 Ark. App. 571 **[delinquency; sufficiency of the evidence]** Appellant was adjudicated delinquent on findings of aggravated assault, disorderly conduct, and obstructing governmental operations. On appeal, he argued that the State presented insufficient evidence that he committed aggravated assault. Appellant was involved in a confrontation at a local park; he pushed a victim during the incident and then brandished a knife while walking away from the scene. He then returned a few minutes later, accompanied by several other minors; appellant and another minor were holding knives; the minors surrounded the victim and continued to close in on him with knives brandished until law enforcement arrived on scene. While the delinquency adjudication was not a criminal conviction, it was based on an allegation by the State that the juvenile had committed a certain crime. The standard of review is the same as it would be in a criminal case, that is, whether the adjudication is supported by substantial evidence. Substantial evidence is evidence, direct or circumstantial, that is of sufficient force and character to compel a conclusion one way or the other without speculation or conjecture. In this case, appellant argued that the State presented insufficient evidence that he created a substantial danger of death or

physical injury. He asserted that during the second encounter, he did not threaten the victim and only flashed the knife at him. He further argued that he and the other minors were not close to the victim. **[delinquency; sufficiency of evidence; aggravated assault]** A person committed aggravated assault when, under circumstances manifesting extreme indifference to the value of human life, the person purposely engaged in conduct that created a substantial danger of death or serious physical injury to another person. The aggravated-assault statute did not require that a weapon actually be used or that the victim actually fear for his safety, but required a substantial danger of death or the injury to another person. The court has stated that the statute “does not require that a verbal threat be used; instead, it is the appellant’s overall conduct that must be examined.” The fact-finder did not and need not view each fact in isolation but rather considered the evidence as a whole. The evidence showed that after pulling a knife on the victim during the first encounter, appellant returned to the park, surrounded the victim with other acquaintances, and approached him while visibly holding the knife in his hand. Given those circumstances, the appellate court believed there was sufficient evidence from which the circuit court could find that appellant’s conduct created a substantial danger of death or serious physical injury to the victim. (Smith, T.; CV-24-741; 12-13-25; Abramson, R.)

*Minor Child v. State*; 2025 Ark. 210 **[delinquency]** Appellant was adjudicated delinquent on findings of second-degree sexual assault of his five-year-old victim. On appeal, appellant first argued that the evidence supporting his conviction was legally insufficient. Second, he argued that the circuit court abused its discretion when it admitted the entire recording of the victim’s forensic interview. The Supreme Court rejected both challenges, holding that substantial evidence supported the adjudication and held that the circuit court did not abuse its discretion in admitting the full recording of the victim’s interview. **[delinquency; sufficiency of evidence]** Appellant argued that his conviction was not supported by sufficient evidence because: (1) DNA testing did not confirm his DNA was found on the victim; (2) the sexual-assault nurse examiner testified that she did not observe any physical findings of abuse; and (3) the victim’s testimony contained inconsistencies. **[delinquency; burden of proof]** The State’s burden of proof in the delinquency proceeding was the same as in an ordinary criminal trial—that is, it must have proven “beyond a reasonable doubt” that the juvenile committed the alleged offense. If a juvenile were to challenge the sufficiency of the evidence, an appellate court will apply the ordinary criminal-sufficiency standard and ask whether the adjudication was supported by substantial evidence, which will preserve the fact-finder’s role in weighing the evidence and will view the evidence in the light most favorable to the adjudication. **[delinquency; sexual assault 2nd]** To sustain a second-degree sexual-assault adjudication, the State had to prove that appellant engaged in an “act of sexual gratification involving the touching ... of the ... buttocks or anus of a person” under fourteen. The Supreme Court held the State met its burden. The victim testified and described her interaction with appellant and how he had inserted his finger into her rectum. The victim’s parents’ testimony also corroborated the timeline that the victim described, and DNA testing confirmed the presence of male DNA on the victim’s underwear and in her rectum. With that information, the fact-finder was entitled to conclude that appellant had committed second-degree sexual assault, especially considering that prior cases have held that the victim’s testimony alone, even if not supported by

all the other evidence present here, would have been sufficient to support a delinquency adjudication. Appellant's arguments did not change the analysis. First, to the extent that appellant relied on inconsistencies in the victim's testimony to suggest that the fact-finder could not rely on her testimony, such inconsistencies were for the fact-finder to resolve, as an appellate court will not second-guess a fact-finder's credibility determinations or its resolution of conflicting evidence. And nothing in the record here suggested that, even crediting those inconsistencies, the circuit court could not credit her testimony that she had been sexually assaulted. Second, the absence of any obvious physical signs of abuse did not undermine the adjudication because, as the nurse testified, such findings were frequently lacking in cases of documented abuse. Third, the mere fact that the State could not identify appellant as the source of the male DNA on the victim's underwear and on the rectal swabs likewise did not undermine the adjudication because the law did not require such a specific link. Moreover, even if it could not be directly linked to appellant, the undisputed presence of male DNA in the victim's rectum supported the adjudication, and the circuit court was entitled to rely on it in adjudicating appellant delinquent. For those reasons, the Supreme Court concluded that substantial evidence supported the circuit court's finding that the State's petition was true. **[evidence; admissibility]** Appellant also argued that the circuit court abused its discretion and committed reversible error by admitting the victim's entire forensic interview. This argument was unsuccessful. Circuit courts enjoy "broad discretion in deciding evidentiary issues," and an appellate court will find an abuse of discretion only when the court acted "improvidently, thoughtlessly, or without due consideration." And even when the circuit court relied on the wrong evidentiary rule to admit evidence, reversal is not required if the circuit court reached the correct result. Applying that standard, the Supreme Court held that although Ark. R. Evid. Rule 803(25) did not authorize the admission of the entire recording, that recording was nonetheless admissible in response to appellant's attempt to impeach the victim's testimony. The circuit court wrongly admitted the entire recording pursuant to Rule 803(25), Arkansas's tender-years exception. That rule permitted the introduction of a "statement made by a child under the age of ten (10) years concerning any type of sexual offense . . . which is inconsistent with the child's testimony and offered in a criminal proceeding". Thus, in other words, to be admissible under that rule, an offered statement must be inconsistent with the child's trial testimony. That was not the case here; the State did not seek to admit the entire recording because it contained inconsistent statements. Instead, it asked to admit the entire recording because it contained statements consistent with the victim's trial testimony. The purpose of admitting the entire video was to counter appellant's argument that the victim's trial testimony was inconsistent with her interview. But nothing in Rule 803(25) authorized the admission of consistent statements, and the circuit court could not rely on that provision to admit the recording. However, that is not the end of the matter because, as the State argued below, there were "all kinds of ways that" the entire video could be admitted. And here, the recording was admissible both to rehabilitate the victim's credibility and to provide necessary context. Ultimately, the circuit court did not abuse its discretion in admitting the recording. At common law, prior consistent statements were admissible to rehabilitate a witness's credibility in response to impeachment. That was because, when used for rehabilitation, such statements were not "offered in evidence to prove the truth of the matter asserted" and barred by the rules against hearsay, per Ark. R. Evid. 801(c). On the contrary, such statements could have provided important context, better enabling the fact-finder to fully assess any alleged

inconsistencies; fairness permitted further inquiry to clarify any confusion or misapprehension left by the defense's cross-examination of a minor victim. The rule of 'verbal completeness' would allow the fact-finder to hear potentially inadmissible evidence to explain earlier testimony or to avoid misleading them. Ark. R. Evid. 106 would permit admission of "any other part or any other writing or recorded statement which in fairness ought to be considered contemporaneously." Consequently, as previously noted, while prior consistent statements were not admissible to simply corroborate or sustain any testimony given in court, the calculation was different when their use directly responded to an attack on a witness's credibility; that principle is particularly relevant where, like here, a child's credibility was attacked. Appellant could not complain about the admission of a victim's recorded forensic interview when he opened the door to its admission. Rehabilitating with prior consistent statements would be especially important in cases where the complaining witness was a child and where the issue of credibility was especially acute; that did not mean that a circuit court must have automatically admitted prior consistent statements whenever a child witness had been impeached with prior inconsistent statements. Instead, the context mattered, and circuit courts should consider things like the victim's age and maturity as well as the background of the previous consistent statements in making that determination. Nor did it mean that parties could freely introduce entire recordings. Rather, parties should be prepared to limit the video played to those portions necessary for context, fairness, or to otherwise clear up misleading impressions. Applying those principles here, the State was entitled to introduce the entire recording. Appellant sought to play approximately one-third of the recording, spliced into sixteen different segments, and thereby create an incomplete and potentially misleading account of the victim's interview. Indeed, appellant made those segments the focus of his defense, arguing in closing that the recording showed how the victim had been coached, "just made up" the attack or, at minimum, was "confused about what happened." The State was entitled to counter that attack on the victim's veracity by playing the full recording and allowing the circuit court to draw its own conclusions about any alleged inconsistencies. Moreover, the circuit court was entitled to rely on the full context for those statements in evaluating the victim's testimony. And the record demonstrated that was how the circuit court used the recording here, finding that—despite her age—the victim "understood what she was talking about then, as she does today," that she did not appear coached, and that she had told a "very credible story, a believable story, and a consistent story." Therefore, there was nothing ultimately improper about the admission of the full recorded interview. (Houston, B.; CV-24-282; 12-11-25; Bronni, J.)