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CIVIL

Centofante v. Ferguson, 2025 Ark. App. 303 **[subject-matter jurisdiction]** The circuit court dismissed the appellants' complaint against the appellees for lack of subject-matter jurisdiction. On appeal, the appellants argued that the circuit court erred in finding it did not have subject-matter jurisdiction under Article 7, Section 28 of the Arkansas Constitution because their complaint was founded in exclusive county-related matters. Under Article 7, section 28 of the Arkansas Constitution, the County Courts shall have exclusive jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties. Amendment 80 of the Arkansas Constitution provides that the circuit courts are trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution. The term "relating to" does not mean automatic exclusive jurisdiction. County courts have exclusive jurisdiction when an issue obviously flows from a county-related matter. The appellants' complaint alleged that the acts of the appellees in developing a subdivision caused surface water to be diverted into the individual appellant members' private property, which, in turn, flooded a county road. The pleadings did not suggest this was a case that obviously flows from a matter relating to a county road. The appellants' claims were based on damage to the appellant members' private property that would also affect

travel on a county road if not remedied. Further, the remedy sought by the appellant, an injunction, does not fall within the province of the county court. Injunctions are matters for the circuit court and thus fall outside the jurisdiction of county courts. Thus, the appellate court found that the circuit court abused its discretion in dismissing the appellants' complaint for lack of subject-matter jurisdiction. (Wright, H.; 60CV-22-6659; 5-14-25; Barrett, S.)

Ferguson v. Harrison, 2025 Ark. App. 320 **[directed verdict]** The circuit court directed a verdict in favor of appellees. On appeal, the appellants argued that the circuit court erred in concluding as a matter of law that they were required to present evidence of monetary damages to submit their trespass claim to the jury. A trespass on lands is actionable, although the damage to the owner is inappreciable. Nominal damages may be recovered for the infringement of a right. However, to warrant recovery of nominal damages, there must be an unlawful infringement of a property right. Here, the circuit court initially denied the appellees' directed-verdict motion because it determined that there was a factual issue as to whether appellees' actions constituted a trespass–i.e., whether there had been an infringement of a property right. It took that question away from the jury when it concluded that the appellants failed to prove a specific dollar amount of damages. By directing a verdict based on an absence of proof of damages, the circuit court preempted the jury's determination of whether there had been an infringement of a property right in the first instance. Thus, the appellate court found that the circuit court erred in directing a verdict in favor of the appellees. (Williams, L.; 5-21-25; 26CV-21-388; Thyer, C.)

CRIMINAL

Artero v. State, 2025 Ark. App. 290 **[expert witness testimony qualified]** Appellant was convicted by a jury of second-degree sexual assault. On appeal, appellant argued that the circuit court erred in allowing expert testimony on the subject of delayed disclosure because the witness providing the testimony lacked the requisite credentials to provide such testimony. To determine whether one qualifies as an expert, a circuit court must weigh whether the witness is qualified as an expert by the witness's knowledge, skill, experience, training, or education, and once reconciled, the witness may testify thereto in the form of an opinion or otherwise. Ultimately, circuit courts are responsible for determining, on the basis of the witness's qualification, whether the witness has knowledge of a subject at hand which is beyond that of ordinary persons. Unless the person is clearly lacking in training and experience, the decided tendency is to permit the fact-finder to hear the testimony of someone having superior knowledge in a given field. Absolute expertise concerning a particular subject is not required to qualify a witness as an expert. Arkansas Rule of Evidence 702 recognizes that an expert's testimony may be based on experience in addition to knowledge and training. Here, the witness at issue was a forensic interviewer with the Children's Safety Center in Springdale. The witness testified about the procedures used in interviewing children and the type and specificity of disclosures based on the age and maturity of the children interviewed. She also testified regarding the stages of disclosure and the reasons a child might delay disclosure. The

witness had not interviewed the victim specifically, so her observations were general rather than specific. The witness had a bachelor's degree with a major in social work, had completed continuing education and teaching hours, and had received specialized training in conducting forensic interviews with children. Additionally, she had twenty years of experience as a forensic interviewer and had conducted over four thousand interviews. Although the witness did not have any advanced degrees or write any peer-reviewed articles on delayed disclosure, the witness was not clearly lacking in either training or experience. Thus, it was not an abuse of discretion for the circuit court to qualify the witness at issue as an expert witness. (McCune, M.; 17CR-23-252; 5-7-25; Thyer, C.)

Shatley v. State, 2025 Ark. App. 301 **[motion to recuse]** Appellant was convicted of two counts of rape. On appeal, appellant argued that the circuit court erred in declining to recuse itself from presiding over appellant's trial. A trial judge is presumed to be impartial, and the party seeking disqualification has the burden of proving otherwise. The fact that there are adverse rulings is not enough to demonstrate bias. Moreover, a party filing a complaint against the trial judge with the Judicial Discipline and Disability Commission (JDDC) does not require recusal. In the present case, appellant's trial was set for June 2024, with a motion and plea day set in May 2024 after being continued several times. Appellant's attorney passed away in January 2024. The circuit court required appellant, who was out on bail, to appear before him in February 2024, and directed appellant at that hearing that he needed to obtain counsel before the motion day and trial date. Appellant then proceeded to file a complaint with the JDCC and filed a motion to recuse, claiming that the judge was prejudiced and biased against him for having him appear in February 2024 without counsel. Appellant could not demonstrate prejudice by the judge's refusal to recuse himself when guilt was decided by a jury and only the minimum sentence was imposed. The appellant made no showing that he was treated unfairly during the trial or that the complaint with the JDDC affected any rulings or the outcome of the trial. For these reasons, the appellate court could not find that the circuit court abused its discretion in denying the motion to recuse. (Ratton, R.; 68CR-22-65; 5-14-25; Tucker, C.)

Herrington v. State, 2025 Ark. App. 316 **[court costs]** Appellant was convicted of multiple charges. On appeal, the appellant argued that the imposition of a copy-expense fee was illegal. No court costs shall be assessed that are not provided for by state law. In the present case, the sentencing order notes the imposition of a fee for $191.60 titled "PA COPY EXPENSE." Appellant was correct in asserting that there is no statute authorizing a circuit court to order reimbursement to the prosecuting attorney for copies made as a fee associated with a criminal conviction. Accordingly, the circuit court erred in its imposition of the copy expenses, and the circuit court should strike the part of the sentencing order that awarded the State copying expenses. (Riner, A.; 49CR-22-8; 5-21-25; Gladwin, R.)

Romick v. State, 2025 Ark. 57 **[lay testimony]** Appellant was convicted by a jury of rape. On appeal, the appellant argued that the circuit court improperly allowed a lay witness—the sexual assault nurse examiner (SANE) who examined the minor victim—to give expert testimony. Arkansas Rule of Evidence 701 permits lay testimony in the form of opinions or inferences that are rationally based on the witness's perception and helpful to a clear understanding of the witness's testimony or the determination of a fact in issue. While lay testimony must be rationally related to the witness's observations, expert testimony may include opinions formed from facts the expert did not personally perceive. Firsthand observers with specialized knowledge—such as police officers, investigators, or treating medical professionals—may give lay opinions where they have laid the proper foundation for their knowledge and experience. Witnesses are not required to leave their knowledge, training, and experience at the courthouse door. Instead, Rule 701 of the Arkansas Rules of Evidence permits witnesses to offer helpful lay opinions and inferences based on their perceptions, informed by their demonstrated knowledge, training, and experience. Here, the appellant argued that the SANE improperly veered into expert territory when she testified that a 2009 study supported her statement that a lack of physical evidence in abuse cases is not unusual, particularly when there is repetitive penetration and acute, aggressive attacks that do not allow time for healing. Like other experienced witnesses, the SANE did not leave behind her knowledge and experience examining children when she took the stand. She examined the victim twice and testified as to what someone in her position would conclude from what she observed. Additionally, the witness's testimony was helpful to clearly understand the rest of her testimony and the central fact at issue, which was whether the victim was raped. The Arkansas Supreme Court also found that *Vasquez v. State*, 2022 Ark. App. 328, is overruled. The circuit court did not abuse its discretion in permitting the witness to offer lay opinion testimony about the lack of physical evidence in abuse cases or reference the 2009 study. (McCune, M.; 5-1-25; 17CR-23-461; Bronni, N.)

Waterman v. State, 2025 Ark. 62 **[double jeopardy; federal charges]** The circuit court denied appellant's motion to dismiss her prosecution based on double jeopardy. On appeal, appellant argued that her prosecution was barred by the double jeopardy provisions of Ark. Code Ann. § 5-1-114. In the present case, the appellant was charged in Benton County with two counts of premeditated and deliberated capital-murder stemming from the deaths of a woman and her unborn child. Appellant pleaded guilty in the United States District Court for the Western District of Missouri to one count of kidnapping that resulted in death under 18 U.S.C. § 1201(a)(1) and one count of kidnapping that resulted in the death of an unborn child in violation of 18 U.S.C. § 1841. The first portion of the Ark. Code Ann. § 5-1-114(1)(A) exception is that the offense of which the defendant was formerly convicted or acquitted and the offense for which he or she is subsequently prosecuted each requires proof of a fact not required by the other offense. The Arkansas capital-murder charges require proof that the appellant had the premeditated and deliberated purpose to cause the death of another person; however, premeditated and deliberated purpose is not required

by the federal statutes. Kidnapping, which was required for both federal convictions, requires proof of an unlawful seizure, confinement, abduction, or holding of a person. Additionally, kidnapping requires that the person be willfully transported in interstate commerce. The Arkansas capital-murder statute requires no such unlawful holding or transport via interstate commerce. Because both the federal and state statutes require proof of facts not required by the other, the first portion of the Ark. Code Ann. § 5-1-114(1)(A) exception was satisfied. The second portion of the exception is that the law defining each offense is intended to prevent a substantially different harm or evil. 18 U.S.C. § 1201(a)(1) is intended to prevent the unlawful seizure, confinement, abduction, or holding of a person and the willful transport via interstate commerce of the person. Additionally, 18 U.S.C. § 1841, which incorporates § 1201 into its scope, is intended to prevent the death of, or bodily injury to, a child who is in utero at the time of the kidnapping. No intent to cause death or injury is required by 18 U.S.C. § 1201(a)(1) or § 1841. In contrast, Arkansas's capital-murder statute is intended to prevent a person from purposely causing the death of another person. Thus, the federal and state statutes at issue are intended to prevent substantially different harms or evils, and therefore, the second portion of the Ark. Code Ann. § 5-1-114(1)(A) exception was satisfied. Accordingly, under Ark. Code Ann. § 5-1-114(1)(A), appellant's federal convictions did not prevent her prosecution in Arkansas, and the circuit court did not err in denying appellant's motion to dismiss her prosecution. (Green, R.; 04CR-22-2355; 5-8-25; Baker, K.)

Ark. Post-Prison Transfer Bd. v. Norvel, 2025 Ark. 63 **[sentencing order]** The circuit court granted appellee's petition for declaratory judgment, injunctive relief, and prayer for mandamus relief. Specifically, the circuit court found that Act 683 of 2023, codified at Ark. Code Ann. § 16-93-609(b)(2)(B), applied to appellee and that he was entitled to the relief sought in his petition—namely, a finding by the court that he was eligible for parole along with appropriate injunctive relief. On appeal, appellants argued that appellee's sentencing order contained an "express designation" that he was sentenced under Act 683, making him ineligible for parole. In *Rodgers v. Arkansas Parole Board*, 2024 Ark. 176, the Arkansas Supreme Court's application of the statutory requirement that the sentencing order "expressly designate" sentencing under that section turned on the sentencing order: (1) directly citing Ark. Code Ann. § 16-93-609 or (2) clearly or unmistakably representing that the defendant had been sentenced under that section. Here, on June 7, 2018, appellee entered into a negotiated plea of guilty for battery in the first degree and possession of firearms by certain persons, and the State nolle prossed a firearm enhancement under Ark. Code Ann. § 16-90-120 and a sentencing enhancement for being a habitually violent felony offender under Ark. Code Ann. § 5-4-501(d). Under "Additional Info," the sentencing order states as follows: "DEFENDANT HAS TWO PRIOR RESIDENTIAL BURGLARIES AND SHOULD SERVE FLAT TIME." The record reflected that, at the time of sentencing, appellee actually had four residential burglary convictions committed in 2013 and earlier, and the plea hearing included discussion of the parties' agreement that appellee would serve "flat time" due to having two prior violent felony convictions. The sentencing order in the present case did not cite Ark. Code Ann. §

16-93-609, nor did it clearly or unmistakably represent that the appellee was sentenced under that section. Accordingly, based on precedent, the Arkansas Supreme Court rejected appellants' argument that the notation on appellee's sentencing order constituted an express designation under Ark. Code Ann. § 16-93-609. Thus, the circuit court did not err in granting appellee's petition for declaratory judgment, injunctive relief, and prayer for mandamus relief. (Wright, W.; 60CV-23-8448; 5-8-25; Hudson, C.)

Spencer v. State, 2025 Ark. 91 **[gag order]** Appellant filed a petition for writ of certiorari requesting that a gag order entered in his circuit court criminal case be vacated. Appellant argued that the entry of the order was an abuse of discretion and that there was no other adequate remedy but for the writ. The Arkansas Supreme Court found that the circuit court's gag order was too broad and too restrictive of speech protected by the First Amendment and Article 2, section 6 of the Arkansas Constitution. It was also impermissibly vague. Further, the order was entered without the requisite findings. Therefore, the circuit court's order constituted a plain, manifest, clear, and gross abuse of discretion for which there was no other adequate remedy; accordingly, the court issued a writ of certiorari and vacated the order. (Elmore, B.; 43CR-24-551; 5-29-25; Hudson, C.)

PROBATE

Andraca v. Tice (In re MC), 2025 Ark. App. 292 **[guardianship]** The circuit court entered an order awarding a permanent guardianship of appellant's daughter to the child's paternal grandmother. On appeal, appellant argued that there was no need for a guardianship, a guardianship was not in the child's best interest, and to impose one on this record was a violation of her constitutional rights to raise her child. Guardianships are special proceedings governed by statutory law. A guardian may be appointed for an "incapacitated person," and minors under the age of eighteen are defined as "incapacitated persons." Arkansas Code Annotated § 28-65-105 provides: Guardianship for an incapacitated person shall be: (1) Used only as is necessary to promote and protect the well-being of the person and his or her property; (2) Designed to encourage the development of maximum self-reliance and independence of the person; and (3) Ordered only to the extent necessitated by the person's actual mental, physical, and adoptive limitations. A circuit court's order establishing guardianship shall contain findings of fact that the respondent is an incapacitated person and is in need of a guardian. "Necessary" is not defined in the statute. The dictionary definition of "necessary" is "absolutely needed: required." Additionally, Ark. Code Ann. § 28-65-210 states that before appointing a guardian, the court must be satisfied that: (1) the person for whom a guardian is prayed is either a minor or otherwise incapacitated; (2) a guardianship is desirable to protect the interests of the incapacitated person; and (3) the person to be appointed guardian is qualified and suitable to act as such. "Desirable" is not defined in the statute, but according to its dictionary definition, desirable in this context is synonymous with prudent or

advisable. These statutes do not contemplate the appointment of a guardian for any child at any time: it must be necessary—absolutely needed or required—and desirable—prudent or advisable. Here, the appellate court held that the circuit court erred in determining that a guardianship was "necessary to promote and protect" the child's well-being under Ark. Code Ann. § 28-65-105(1) and "desirable" to protect the child's interests as required by Ark. Code Ann. § 28-65-210(2). It was undisputed that appellant was employed, and her income was enough to cover her and the child's expenses. While appellant did not have a driver's license, she had transportation through family members and taxis. No evidence was presented that either she or the child had ever missed work, school, or any other event for lack of transportation. Also, the parties agreed that custody exchanges were going well, and transportation had not been an issue. Although the trailer in which appellant lived did not have internet service at the time of the hearing, appellant testified that her sister, who lived five minutes away, did have internet service. Finally, the court's concern that the child did not have her own bedroom at appellant's home did not mandate the removal of the child from her family and the appointment of a third-party guardian who could supply this. The record revealed that appellant provided the child with appropriate housing, food, clothing, and transportation. Therefore, the appellate court held that the circuit erred in entering its final order of guardianship, and the circuit court should enter an order terminating the guardianship and grant appellant full custody of the child. (McCain, M.; 58PR-20-205; 5-7-25; Wood, W.)

DOMESTIC RELATIONS

Starkey v. Holmes, 2025 Ark. App. 279 **[grandparent visitation]** The circuit court entered an order denying appellant's petition for grandparent visitation. Pursuant to the grandparent-visitation statute, there is a rebuttable presumption that a custodian's decision to deny or limit the grandparent's visitation is in the best interest of the child. The grandparent petitioner bears the burden of rebutting the presumption by a preponderance of the evidence; to do so, the petitioner must show that she has established a "significant and viable relationship" with the child and that visitation with the petitioner is in the child's best interest. To establish that visitation with the petitioner is in the best interest of the child, the petitioner shall prove by a preponderance of the evidence the following: (1) The petitioner has the capacity to give the child love, affection, emotional support, and guidance; (2) The loss of the relationship between the petitioner and the child is likely to: harm the child; cause emotional distress to the child; result in the emotional abuse of the child; or result in the emotional neglect of the child; (3) The petitioner is willing to cooperate with the custodian if visitation with the child is allowed; and (4) Awarding grandparent visitation would not interfere with the parent-child relationship. Here, the circuit court found that appellant had failed to prove that visitation was in the child's best interest. Appellant is the maternal grandmother of the child who was born in June 2021. The child's parents were divorced in 2023, and the child's father was granted sole custody of the child, with the mother being awarded supervised visitation. Assuming that appellant's relationship with the child had been or would be

lost in the absence of a court order, the appellate court agreed with the circuit court that appellant failed to prove that such a loss was likely to harm the child, cause emotional distress to the child, or result in emotional abuse or neglect of the child. There is a substantial difference between a relationship benefiting a child and the denial of that relationship harming the child. The best interest of the child cannot be proved simply by showing that a meaningful or substantial relationship existed and that the grandparent desired to further that relationship. Thus, the circuit court did not err in its denial of appellant's petition due to her failure to prove that visitation was in the child's best interest. (Halsey, B.; 18DR-23-285; 5-7-25; Klappenbach, N.)

Conner v. Conner, 2025 Ark. App. 310 **[custody]** The parties were divorced by decree, and custody of the parties' children was placed with appellee, subject to appellant's visitation. On appeal, appellant argued that the circuit court erred in granting appellee custody of the children in light of the evidence presented that appellee was violent, had a drinking problem, interfered with her ability to see the children, and was dishonest. Arkansas Code Annotated § 9-13-101(a)(1)(A)(iii) provides that joint custody is favored in Arkansas. In an action concerning an original custody determination, there is a rebuttable presumption that joint custody is in the child's best interest, but this presumption may be rebutted if the court finds by clear and convincing evidence that joint custody is not in the child's best interest. Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. Here, the appellate court found that the circuit court's best-interest finding was supported by the fact that during the pendency of this action, appellant moved to Tulsa and quit exercising her right to visitation with the children. She essentially left the appellee to raise five children on his own. The circuit court had ample evidence before it to support the award of custody in appellee's favor: the children were doing well in school, had good relationships with friends and family in the area, and were involved in extracurricular activities. On the other hand, appellant moved out of state and never saw them in person again. The circuit court asked for competing findings of fact and conclusions of law and had the opportunity to consider both. The appellate court defers to the superior position of the circuit court to evaluate the witnesses, their testimony, and the children's best interest. Thus, the appellate court held that the circuit court did not err in awarding custody of the parties' children to appellee. (Williams, L.; 26DR-20-1027; 5-14-25; Murphy, M.)

Tubbs v. Tubbs, 2025 Ark. App. 315 **[sanctions; custody; domestic violence]** The circuit court entered a divorce decree in which it awarded appellee custody of the parties' child. In the decree, the trial court also granted appellee's motion in limine after finding that appellant had violated the trial court's scheduling order. On appeal, appellant argued that the trial court erred in granting appellee's motion in limine, which prohibited him from introducing witnesses and exhibits during the final hearing, and that the circuit court erred in finding that the presumption that the parties should share joint custody of the child was rebutted. The appellant further contended that the trial

court conducted no analysis of the effects of domestic abuse on the child's best interest and erred by awarding appellee sole custody of the child because the evidence showed that appellee had committed acts of domestic violence and engaged in a pattern of domestic abuse. **[sanctions]** Imposing a sanction for violating discovery rules rests in the trial court's discretion. Here, the trial court outlined in the order itself the possible consequences for violating the scheduling order, and appellant's counsel violated it. Under the facts of this case, the appellate court could not say that the circuit court erred in choosing its sanction. Appellant had not alleged that appellee was a bad mother or that the child would be in harm's way in appellee's care. Appellant testified that appellee was a "great mom," he could not identify any weaknesses she had as a parent, and appellant had no concerns with the child being around anyone in appellee's family. Generally, the better practice—especially in a child-custody case—is to hear evidence from both parties about what is in a child's best interest; however, in this particular situation, the appellate court could not say that the trial court abused its discretion in granting appellee's motion in limine concerning appellant's witnesses. **[joint custody presumption]** In an action for divorce, an award of joint custody is favored in Arkansas. In an action concerning an original child-custody determination in a divorce, there is a rebuttable presumption that joint custody is in the best interest of the child. While there is a statutory preference for joint custody, this preference does not override the ultimate guiding principle, which is to set custody that comports with the best interest of the child. Each child-custody determination ultimately must rest on its own facts. Here, the appellate court could not say that the trial court erred in finding that joint custody was not in the child's best interest for reasons aside from the findings of domestic violence. Appellant admitted that he did not provide any financial support for the child for eleven months. A parent has a moral and legal obligation to support his child regardless of the existence of a support order. Also, appellant conceded that he did not ask to see the child for six months after the parties separated. The circuit court also found that the parties could not coparent the child, given their difficulty communicating with each other. Finally, while it is true that both parties had been abusive toward each other, the trial court found that appellant's anger tended to turn to rage, which led to potentially more serious injuries to appellee. **[domestic violence]** Arkansas Code Annotated § 9-13-101(c)(1) provides that, if a party to an action concerning custody of a child has committed an act of domestic violence against the party making the allegation and such allegations are proved by a preponderance of the evidence, the trial court must consider the effect of the domestic violence on the best interest of the child, regardless of whether the child was physically injured or personally witnessed the abuse, together with any facts and circumstances the trial court deems relevant. The statute does not require the trial court to make specific findings about the effect that domestic violence has on a child. All the trial court has to do is consider the effect of domestic violence when determining the best interest of the child. Here, there was no indication that the circuit court did not consider the effect that the parties' domestic violence had on the child. Moreover, there is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent when there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse. Despite the presumption, the appellate court could not conclude that the trial court erred in

ultimately awarding primary custody of the child to appellee. The trial court acknowledged that appellee had committed domestic violence against appellant and that appellee was the initial aggressor; however, appellant had also committed domestic violence against appellee, and his rage toward her had resulted in appellee's suffering physical injuries. The trial court found that, unlike appellant, the appellee had expressed remorse for her actions and had sought counseling to learn how to deal with conflict resolution. (Tucker, C.; 60DR-23-105; 5-21-25; Virden, B.)

Jones v. Zachery, 2025 Ark. App. 332 **[order of protection]** The circuit court entered a final order of protection in favor of appellee. On appeal, appellant argued that the circuit court erred in issuing the ex parte order of protection, and the evidence at the final hearing was inadequate to meet appellee's burden of proof for a final order. **[relationship basis]** Under Ark. Code Ann. § 9-15-201(c)(1), a party may file a petition for relief in the circuit court. A petition for relief shall allege the existence of domestic abuse under Ark. Code Ann. § 9-15- 201(e)(1). Here, appellant notes that appellee stated in her affidavit attached to her petition that she was "good friends" with him, yet in her petition, she stated she was in a dating or previous relationship with him. Appellant then argued that if they were "good friends," she had no grounds upon which to pursue an order of protection, because their relationship would not meet the definition of "family or household members" to mean persons who are presently or in the past have been in a dating relationship. Despite any conflict between appellee's statements in the petition and her affidavit concerning the relationship issue, there was express testimony from both appellee and her mother that she and appellant had been in a dating relationship. Accordingly, the circuit court did not err in finding that appellant met the requirements of the family-or-household-member element of the statute. **[sufficiency of the evidence]** Domestic abuse is defined as physical harm, bodily injury, or assault, or the infliction of fear of imminent physical harm, bodily injury, or assault. Here, evidence was introduced that appellant would follow appellee late at night after work on the nature trail should would walk on to and from work, posted a picture of appellee's grandmother's backyard on his social media account, and posted an image on his Facebook profile of a recorded phone call between the appellee and him with the caption "R.I.P." Additionally, appellant vandalized her parents' vehicles, by slashing the tires and totaling their vehicles. Thus, appellant's above-referenced actions, along with the continued loitering around appellee's family business, when viewed in conjunction with the vandalism, provided sufficient support for the circuit court's determination that the issuance of the final order of protection was warranted. (Brantley, E.; 36DR-23-256; 5-28-25; Gladwin, R.)

Oxley v. Lumpkins, 2025 Ark. 98 **[modification of custody; custodian; fit natural parent]** The circuit court denied appellant's motion to modify custody of his natural daughter. On appeal, appellant argued that the circuit erred in denying custody to him as the child's natural parent because he was not found to be unfit. He also contended that the circuit court failed to properly

apply the presumption in his favor as a fit, natural parent during its "best-interest" analysis. Traditionally, the analysis a circuit court employs to modify custody is (1) to determine whether a material change occurred and then (2) to consider the best interests of the child. However, in a case such as this—where the contest is between a fit, natural parent and a nonrelative custodian—requiring the circuit court to first find a material change contradicts the fit, natural parent presumption raised in this court's guardianship cases. Although the appellee is a nonrelative custodian rather than a formal guardian, the unusual posture of this case compels reference to guardianship case law for similar guidance. Where the competing custodian is a nonrelative, the fit, natural parent presumption is dispositive. A fit, natural parent is presumed to act in their child's best interest and is entitled to custody unless the nonrelative proves the natural parent's unfitness. However, this presumption is not determinative in all cases. It will not extend to all custody disputes, such as those between two natural parents, where the presumption is applied consistent with the traditional best-interest framework. Here, the appellant—a fit, natural parent—sought custody from a nonrelative, and the circuit court erred in not applying the presumption in his favor. The circuit court erred when it required that the appellant show a material change in circumstances. Without an explicit finding that the appellant was unfit, the presumption that he, as the natural parent, is fit and acting in the best interests of the child prevails. Thus, as a fit, natural parent, appellant was entitled to custody of his natural daughter. (Parker, A.; 43DR-16-744; 5-29-25; Hiland, C.)

JUVENILE

Varnell v. Griffin, 2025 Ark. App. 298 **[custody; best interest; domestic violence; anger management]** Appellant challenged the award of custody of her minor child to the father, following an incident where she stabbed him while he was holding the child. Despite completing anger-management classes, evidence indicated ongoing issues. The father provided a more stable environment and had a trial home placement. The appellate court found no clear error in the circuit court's best-interest determination and found that the circuit court did not err in its custody award. (Ladd, D.; CV-24-204; 5-14-25; Abramson, R.)

Briley v. Ark. Dep't of Human Servs., 2025 Ark. App. 302 **[TPR; due process]** Appellant challenged the termination of his parental rights, arguing that procedural errors during the dependency-neglect proceedings violated his due process rights. The child was placed in Appellee's custody after the paternal grandmother could no longer provide care, and both parents were unavailable—Appellant being incarcerated and the mother's whereabouts unknown. Despite Appellant's claims of prejudice due to procedural deficiencies (questions of service regarding the initial petition), none of those issues were raised below. Further, nothing gave rise to a *Wicks* exception in that the presence of the defendant at the hearing was unlikely to change its outcome. The court was, however, troubled by the apparent lack of effort to contact or involve Appellant by both the Appellee and Appellant's court appointed counsel. In any other case, the appellate court

indicated it would likely reverse the decision. However, here, the uncontroverted evidence was that Appellant was serving a prison term for a substantial portion of the child's life and would remain incarcerated past the child's 18th birthday. Under these specific facts, the appellate court found no reversible error. (Brown, E.; CV-24-726; 5-14-25; Tucker, C.)

Lee v. Ark. Dep't of Human Servs., 2025 Ark. App. 322 **[TPR; motion to continue]** Appellant appealed the termination of her parental rights and only alleged that the court abused its discretion in denying her motion to continue the termination hearing. She did not appear for the hearing and her counsel had waited until the beginning of the hearing to request a continuance orally, indicating a lack of diligence that was sufficient to support the denial of the motion. Moreover, there was no prejudice because Appellant's past behavior demonstrated that even if the court had granted a continuance, she was not likely to follow through with the steps necessary for reunification. The court found there was not little likelihood but instead "ZERO" likelihood that additional services would result in reunification; Appellant's rights had already been terminated to seven (7) other children, and this was the second dependency-neglect case involving Appellant and this particular child. Thus, there was no abuse of discretion in denying the motion to continue. (Brown, E.; CV-25-74; 5-21-25; Wood, W.)

Lei'Keil v. Ark. Dep't of Human Servs., 2025 Ark. App. 324 **[TPR; best interest; least restrictive alternative]** Appellant did not appeal the grounds for termination of her parental rights, but only to the finding that it was in their best interest, given that the children were placed with her brother and were likely to remain, whether by adoption or guardianship. The case began as a result of Appellant's mental-health issues and her written statements that her children had been sacrificed and replaced with clones that she should give up for adoption. Appellant refused the recommended inpatient treatment, and there was no evidence that her mental-health issues had been addressed. The record also showed that, almost two years into this dependency-neglect case, Appellant had not established stable housing, employment, or transportation; she frequently changed addresses and was often out of contact with Appellee. Despite Appellant's claim that she was bonded with the children, the record showed that she had failed to regularly attend her visitation with the children. There was no compelling reason for the trial court to choose guardianship rather than adoption after termination of parental rights because there was no reasonable prospect that Appellant would eventually reunify with the children. No clear error. (Zuerker, L.; CV-25-38; 5-21-25; Hixson, K.)

Smith v. Ark. Dep't of Human Servs., 2025 Ark. App. 325 **[TPR; best interest; least restrictive alternative]** Appellant did not challenge the statutory grounds for termination of his parental rights, or the findings that his child was adoptable and would face potential harm if returned to him. He only made a best-interest argument that the court erred in terminating his parental rights when a less restrictive alternative was available through his relatives. However, Appellant and his relatives did not have a prior relationship with the child and had not spent any time with her.

Appellant was incarcerated throughout the entirety of the case and did not identify family members as a potential placement until about a year after the child had been taken into custody. While Appellant conceded that his mother was denied placement due to her housing, he argued that his brothers were not truly considered or investigated. However, Appellee conducted a preliminary investigation but declined to pursue these relatives further because of recent true findings for abuse and sexual abuse. No clear error. (Mooney, C.; CV-25-62; 5-21-25; Murphy, M.)

Minor Child v. State of Arkansas, 2025 Ark. App. 300 **[transfer to juvenile court; jurisdiction; transfer factors]** Appellant, a 14-year-old charged as an adult with four counts of first-degree battery and one count of attempted first-degree murder, sought to transfer his case to juvenile court. The circuit court denied the motion. On appeal, the Arkansas Court of Appeals dismissed the attempted-murder charge, holding that the criminal division lacked jurisdiction because the State had not properly initiated the case in juvenile court as required by statute. Regarding the battery charges, the appellate court affirmed the denial of the transfer, finding no clear error in the circuit court's assessment of the statutory transfer factors. The court concluded that the seriousness of the offenses, Appellant's alleged violent conduct, and the need to protect society supported retaining the case in the criminal division. (Galloway, D.; CR-24-552; 5-14-25; Virden, B.)

Minor Child v. State of Arkansas, 2025 Ark. App. 309 **[delinquency; sufficiency of evidence; theft by receiving]** Appellant challenged his delinquency adjudication for theft by receiving by appealing the denial of his motion to dismiss. A vehicle had been reported stolen in Stuttgart and was found later that day in Pine Bluff with Appellant in the passenger seat and an adult in the driver’s seat. Appellant argued that the State failed to prove he knew or had reason to believe the vehicle was stolen. While being a passenger in a stolen vehicle is not, standing alone, enough to establish constructive possession, possession of recently stolen property gave rise to the presumption that Appellant knew the property was stolen. In accordance with Arkansas Code Annotated section 5-36-106(c)(1), Appellant was required to plausibly explain how the situation was something other than proof of his theft by receiving. Because Appellant failed to offer any plausible explanation (or any explanation at all) for his possession and use of the stolen vehicle without permission or being an accomplice to someone who did, there was sufficient evidence to support the delinquency adjudication for theft by receiving. (Brown, E.; CR-24-662; 5-14-25; Murphy, M.)