

APPELLATE UPDATE

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Appellate Update is a service provided by the Administrative Office of the Courts to assist in locating published decisions of the Arkansas Supreme Court and the Court of Appeals. It is not an official publication of the Supreme Court or the Court of Appeals. It is not intended to be a complete summary of each case; rather, it highlights some of the issues in the case. A case of interest can be found in its entirety by searching this website:

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ANNOUNCEMENTS

On January 29, 2026, the Supreme Court fully adopted amended Administrative Order 16 and amended Rule 902 of the Arkansas Rules of Evidence.

On January 29, 2026, the Supreme Court published for comment proposed revisions to Rules 3(f), 4(a), and 6(b) of the Arkansas Rules of Appellate Procedure. Additionally, they published for comment proposed revisions to adopt Rule 11(d); to amend Rule 26(b); 26(c)(1) and (2); 26(f)(1) and (2); and to adopt Rule 26(g)(1), (2), and (3) of the Arkansas Rules of Civil Procedure. Comment period expires on April 1, 2026.

On February 5, 2026, the Supreme Court published for comment proposed revisions to adopt Rule 412 of the Arkansas Rules of Evidence and to amend Rule 4(f)(4) of the Arkansas Rules of Civil Procedure. Comment period expires on April 1, 2026.

CIVIL

Keathley v. Halijan, 2025 Ark. App. 531 [**breach of contract**] The circuit court entered a final judgment in favor of appellees, awarding them damages as the prevailing party in a breach-of-

contract case. On appeal, the issue was whether the circuit court erred in applying the cost-of-repair measure of damages in awarding the appellees damages for the appellants' defective construction. Arkansas courts recognize two alternative methods for measuring damages in construction-defect cases: (1) the cost-of-repair or (2) the difference in fair market value. In Arkansas, the cost-of-repair measure of damages is preferred because it gives the landowner a money equivalent of what he bargained for by giving him the cost of getting the work done properly. Under the cost-of-repair measure of damages, the homeowner is entitled to recover the cost of repairing the defective construction. This standard is properly applied, even when the value of a newly constructed but defective house exceeds the contract price, because the owner's interest is in having defective construction corrected so that he and his family may enjoy a properly constructed dwelling, and he is not concerned with offsetting any loss on a possible resale of the property. Here, the contract required the appellants to build the appellees a home in a workmanlike manner, and it required the appellees to pay the costs of the construction plus a fixed builder's fee of \$52,000. During construction, a retaining wall that was under construction collapsed during heavy rainfall. The wall collapse was significant enough to pause any ongoing work on the residence as the parties considered solutions. The parties were unable to agree on a resolution, and the appellees terminated the contract. The appellees hired another builder who completed the project for them. They later filed suit against the appellants seeking judgment for the cost of repairing the items they alleged the appellants defectively built. The record indicated that most of the appellees' costs in this case were incurred as a direct result of their efforts to remedy the appellants' deficient workmanship, not the costs that the appellees would have paid regardless in completing the project. The appellate court held that the cost-of-repair standard is the proper measure of damages in this construction-defect case, irrespective of the nature of the underlying contract and fee arrangement between the parties. Cost-plus contracts are not a novel concept and have been recognized and discussed by Arkansas courts for at least a century. Thus, the circuit court did not err because the record supported the circuit court's findings regarding both the measure of damages applied as well as the amount awarded to the appellees as a result of the appellants' defective workmanship on the construction of their home pursuant to the terms of the contract. (Welch, M.; 60CV-22-4201; 11-5-25; Gladwin, R.)

Jones v. MNLRN, LLC, 2025 Ark. App. 537 **[jury trial]** The circuit court decided the issue in favor of the appellee and entered a declaratory judgment after a bench trial. On appeal, appellant argued that the circuit court erred in denying appellant's request for a jury trial and in finding that there was consideration provided by appellee to support the formation of a contract. The Arkansas Constitution does not ensure the right to a jury in all possible instances, but rather in those cases where the right to a jury trial existed when the constitution was framed. The right to a jury trial extends only to those cases that were subject to trial by jury at the common law. In equitable proceedings, there was no right to a jury trial at the common law. Thus, the constitutional right to a jury trial does not extend to cases in equity. Here, this case concerned the assignment of a sublease for property. The lessee/sublessor of the property was the appellant, and the assignee of

the sublease was appellee. The controversy involved the parties' disagreement as to which party had the right to exercise a five-year option to renew the lease. Both parties filed for a declaratory judgment under Ark. Code Ann. § 16- 111-102, asking for a determination as to the construction and validity of the parties' written contract. The appellate court concluded that the procedure implemented by the trial court—holding a separate bench trial on the parties' declaratory-judgment claims and then (if necessary in the event appellant prevailed) holding a jury trial on appellant's breach-of-contract claim—was not improper and was not a deprivation of appellant's right to a jury trial. Declaratory judgment was unknown in the common law; it first became available in Arkansas by Act 274 of 1953, which conferred authority on the courts to hear declaratory-relief actions. Both declaratory judgments and injunctions have long been recognized as matters of equity. Although appellant argued that Ark. Code Ann. § 16-111-109 guaranteed his right to a jury trial, under that section, a party has a right to a jury trial on a request for a declaratory-judgment claim only when it involves the determination of an issue of fact. The appellate court found that the declaratory action in the present case did not involve the determination of an issue of fact; therefore, appellant was not entitled to a jury trial under Ark. Code Ann. §16-111-109. The construction and legal effect of contracts are to be determined by the court as a matter of law, except in instances in which the meaning of language depends on disputed extrinsic evidence. Because the contract was unambiguous, the validity and meaning of the parties' contract were matters of law to be decided by the court and did not require factual determinations. Appellant did not prevail in the declaratory-judgment action; thus, his remaining cause of action for breach of contract also failed, and he was not deprived of his right to a jury trial. (Welch, M.; 60CV-21-6824; 11-5-25; Hixson, K.)

Wynne-Ark., Inc. v. Asphalt Producers, LLC, 2025 Ark. App. 540 [**directed verdict**] The circuit court granted appellees' directed-verdict motion and dismissed with prejudice the negligence claim and claim for damages filed by appellants. [**causation**] A motion for directed verdict should be granted only if there is no substantial evidence to support a jury verdict. Substantial evidence is evidence of sufficient force and character to induce the mind of the fact-finder past speculation and conjecture. To establish a prima facie case of negligence, the plaintiff must demonstrate that the defendant breached a standard of care, that damages were sustained, and that the defendant's actions were the proximate cause of those damages. Proximate cause is defined as that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. Proximate causation is usually an issue for the jury to decide, and when there is evidence to establish a causal connection between the negligence of the defendant and the damage, it is proper for the case to go to the jury. Here, the appellant, a restaurant, filed a complaint against the appellees, a contractor and its subcontractor, related to a highway construction project. The co-owner of one of the appellees testified that, according to his contract, the appellee had a duty to maintain access for all the businesses along the construction route, and to fail to do that would constitute negligence. The appellate court found that because there was evidence and testimony that it was dangerous and at times impossible to enter the driveways of the appellant restaurant, a reasonable jury could find that a causal

connection existed between appellee's negligence in adhering to the contract specifications and appellant's lost profit. Whether the appellee complied with the contract specifications by providing safe and convenient alternative driveways or failed to comply with this specification is a question for a jury to decide. Appellee also argued that appellant's financial records showed that the restaurant lost more profits before and after the project than during it, and appellant closed in 2017, three years after appellee finished work. Appellant asserted that the testimony that the most accurate way to prove damages is by the decreasing plates-sold count and cited the need for the \$350,000 loan to keep the restaurant open as proof of causation. It is the province of the jury to resolve conflicting testimony. Accordingly, the appellate court held that appellant presented substantial evidence such that a jury could have found that appellee negligently caused damage to appellant. **[damages]** To recover damages for lost profits, the claimant must present evidence that makes it reasonably certain that the profits would have been realized but for the wrongful act. Arkansas law does not require exactness in proving damages. If it is reasonably certain that some loss occurred, damages may be stated approximately, even when they are difficult to ascertain, as long as the evidence allows the fact-finder to reach a satisfactory conclusion. Here, there was evidence of lost sales correlating to the time of construction. Witnesses testified that there were drastically fewer customers, and there was testimony that the owner had to take out a loan for \$350,000 to try to keep the business open. The appellate court held that from the evidence presented, a reasonable jury could find that some loss occurred, and profits would have been realized during the period of construction had it not been for the appellee's negligence. Thus, the circuit court erred in its decision granting the directed verdict. (Morledge, C.; 19CV-14-46; 11-12-25; Virden, B.)

Brayfield v. Gould, 2025 Ark. App. 555 **[summary judgment; wrongful-death; survival]** The circuit court entered an order granting summary judgment to appellee and dismissed appellant's wrongful-death and survival claims with prejudice. On appeal, appellant argued that the circuit court erred in finding that he lacked standing to bring the lawsuit. There are two causes of action that arise when a person's death is caused by the negligence of another: (1) a cause of action for the estate under the survival statute, Ark. Code Ann. § 16-62-101, and (2) a cause of action for the statutory beneficiaries under the wrongful-death statute, Ark. Code Ann. § 16-62-102. The survival statute has been interpreted to mean that only an administrator, an executor, or a personal representative can file a survival action. A wrongful-death action must be brought by and in the name of the personal representative of the deceased person; however, if there is no personal representative, then the action must be brought by the heirs at law, the beneficiaries of the deceased person. Here, the deceased, a Missouri resident, was working a highway construction job in Poinsett County when he was struck and killed by the appellee, an Arkansas resident, who was intoxicated when he drove through the construction zone. Appellant had been appointed as the administrator or personal representative of the deceased's estate in Missouri. The circuit court found that appellant was not a proper party and lacked statutory authority to file a suit for survival

and wrongful death because appellant did not file for ancillary administration, which the trial court said was required before filing his complaint in Arkansas, citing *Travis Lumber v. Deichman*, 2009 Ark. 299. An ancillary administration is a separate but related proceeding to the administration of a decedent's estate in the jurisdiction where the decedent died. Except when special provision is made otherwise, the law and procedure relating to the administration of estates of resident decedents shall apply to the ancillary administration of estates of nonresident decedents. The circuit court also faulted appellant for not seeking an appointment or authorization by an Arkansas court to pursue the litigation here. *Travis Lumber* does not require ancillary administration for foreign representatives to bring suit in Arkansas. The appellate court in *Travis Lumber* held that the trial court erred in determining that the cross-appellant was required to file for an ancillary administration in Arkansas, and went on to hold that the cross-appellant nevertheless did not have standing to sue because, when he filed his original complaint, he had not been appointed the administrator of his mother's estate in any state. Because the original complaint was a nullity, his amended complaint could not relate back. Unlike the cross-appellant in *Travis Lumber*, the appellant here had been appointed administrator in Missouri before filing suit in Arkansas and had executed a bond with a corporate surety authorized to do business in Arkansas. Pursuant to Ark. Code Ann. § 28-48-201(a), as it read when appellant's complaint was filed, the court shall take a bond from the personal representative with a corporate surety authorized to do business in this state. Appellant also argued that the trial court erred in determining that he lacked standing because he failed to execute a bond in Arkansas before filing his lawsuit. In its written order, the trial court mentioned a bond in its factual findings by correctly stating that appellant had not posted a bond or sought approval of a bond in an Arkansas court; however, the appellate court could not say that the trial court ruled on the sufficiency of appellant's bond, which was executed with a corporate surety authorized to do business in Arkansas. Because the trial court erred in determining that appellant was required to file an ancillary administration or seek appointment as administrator by an Arkansas court and made no legal conclusion as to the bond that appellant executed, appellee was not entitled to judgment as a matter of law. Thus, the circuit court erred in dismissing the appellant's wrongful-death and survival claims with prejudice. (Honeycutt, P.; 56CV-23-83; 11-19-25; Virden, B.)

Taylor v. Ferguson, 2025 Ark. 180 [**subject-matter jurisdiction**] The circuit court dismissed appellant's complaint for lack of subject-matter jurisdiction. The issue here was whether a dispute over flooding allegedly caused by a private residential development had to be brought initially in the county court. Here, the appellant owned property near Pinnacle Mountain. Appellant claimed that appellee's neighboring property development caused his property to flood, and he sued appellee in circuit court. Appellee moved to dismiss appellant's complaint for lack of subject-matter jurisdiction. The circuit court agreed and dismissed appellant's complaint on the grounds that it involved matters that Article 7, Section 28 of the Arkansas Constitution assigned to the county court. This case did not involve county roads, internal improvement, or local concerns as

those terms are used in Article 7, Section 28. Instead, it was a private residential dispute over flooding, and the Arkansas constitution assigns such disputes to the circuit court. Therefore, the circuit court erred in dismissing appellant's complaint for lack of subject-matter jurisdiction. (Honorable, L.; 60CV-22-3911; 11-13-25; Bronni, N.)

Skala v. Comfort Systems USA, Inc., 2025 Ark. 183 **[summary judgment]** The circuit court entered an order granting summary judgment in favor of appellees. On appeal, appellants argued that (1) there were genuine issues of material fact in dispute that preclude summary judgment; (2) the circuit court erred as a matter of law in concluding that the going-and-coming rule precluded liability; and (3) erred in granting summary judgment on appellants' direct-liability claims. A circuit court may grant summary judgment only when it is apparent that no genuine issues of material fact exist requiring litigation and that the moving party is entitled to judgment as a matter of law. Summary judgment is not proper when evidence, although in no material dispute as to actuality, reveals aspects from which inconsistent hypotheses might reasonably be drawn and reasonable minds might differ. **[vicarious liability]** The going-and-coming rule ordinarily precludes recovery for an injury sustained while the employee is going to or coming from his place of employment. Here, this appeal stemmed from a fatal motor-vehicle accident. An employee of the appellees' was driving from his home to a jobsite when his vehicle crossed the center line of the highway and struck a daycare transport van. The driver and one passenger were killed, and another passenger was injured. The circuit court granted summary judgment in favor of appellees, concluding that the going-and-coming rule, applied in workers'-compensation cases, should be extended to respondeat superior liability cases based on established principles of Arkansas law. Because this case involved respondeat superior liability, the Supreme Court held that a traditional respondeat superior analysis applied. As such, the fact that the employee was en route to his remote jobsite was just one of the issues to analyze in determining whether the employee was within the scope of his employment with appellees at the time of the accident. Thus, the Supreme Court held that the circuit court erred in determining that the going-and-coming rule precluded liability. **[material fact]** Under the doctrine of respondeat superior, an employer may be held vicariously liable for the tortious conduct of an employee if the evidence shows that such conduct was committed while the employee was acting within the scope of employment. For purposes of respondeat superior, whether an employee is acting within the scope of employment is not necessarily dependent upon the situs of the occurrence but on whether the individual is carrying out the object and purpose of the enterprise, as opposed to acting exclusively in his own interest. The Supreme Court held that the facts were undisputed; however, reasonable minds could draw inconsistent conclusions as to whether the employee was in the scope of his employment at the time of the accident. Thus, the circuit court erred in granting summary judgment in favor of the appellees. **[direct liability]** A trial court cannot grant relief beyond that prayed for in the motion for summary judgment in ruling on that motion. Appellee's motion for summary judgment was based solely on whether it was vicariously liable for its employee's negligence. Thus, the circuit

court erred when it granted summary judgment to the appellees on the direct-liability claims. (Meyer, H.; 32CV-21-245; 11-20-25; Baker, K.)

CRIMINAL

Thompson v. State, 2025 Ark. App. 558 **[good-faith exception]** On appeal, appellant argued that the circuit court erred by finding that the good-faith exception saved law enforcement’s illegal seizure and subsequent illegal searches of both his person and residence. The good-faith exception does not apply if law enforcement relies on a legal authority that is facially deficient or clearly lacking in specificity or probable cause. When the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force, and exclusion cannot pay its way. Here, law enforcement acted in reliance on an abatement order that was entered by the circuit court in 2011 pursuant to the Arkansas Drug Abatement Act of 1989—an anti-drug law that allowed for the abatement of common nuisances, specifically targeting properties used for illegal drug activity. The purpose of the abatement order was crime prevention in a certain neighborhood, and signs were posted throughout that neighborhood by the city. The signs specifically stated, “This property and all persons upon the property are subject to search by Jonesboro Police Department.” The circuit court was clear in its finding that the search of the appellant and the property was not authorized without a warrant merely because the abatement order gave the police department the authority to do so. The circuit court focused on whether the officer’s actions were reasonable in light of the totality of the circumstances and the plain language of the abatement order. Before the date in question, the officer testified that he believed he saw a drug transaction take place at the residence via SkyCop. The officer also testified that the street-crime unit had several investigations centered on residents in the neighborhood and that he had previously used his abatement authority to conduct searches of individuals within the abatement premises. Additionally, the officer was familiar with the appellant and had previously arrested him. When the officer’s street-crime unit was patrolling the neighborhood, he saw several men congregating outside the property. The officer’s bodycam video showed the officer immediately searched appellant, and two oxycodone pills were seized. At the suppression hearing, the officer confirmed that it was standard practice of the police department to conduct searches of individuals based on the abatement order and that he had always been advised that conducting a search of a residence was also covered by the order. However, because the officer had never personally used the abatement order to search a residence, he contacted the city attorney before searching to confirm that he had such authority. In light of these facts, the appellate court agreed with the circuit court that the officer acted in good faith in relying on the clear directives of the abatement order. Thus, based on the specific facts of this case, the circuit court did not err in denying appellant’s motion to suppress. (Philhours, R.; 16JCR-23-1191; 11-19-25; Gladwin, R.)

PROBATE

Murphy v. Murphy (In re Adopt. of Minor Children), 2025 Ark. App. 551 **[adoption]** The circuit court entered an order granting appellee's petition for single-parent adoption of the parties' two children. The circuit court found that appellant's consent to the adoption was not needed and that the adoption was in the best interest of the children. Appellant argued on appeal that the circuit court's justifiable cause finding was erroneous because appellee interfered with appellant's ability to contact his children, and the preponderance of the evidence did not support the circuit court's best-interest finding. Ordinarily, the consent of a natural parent is required in an adoption case. However, this consent is not required if the parent, for a period of at least one year, has failed significantly without justifiable cause to communicate with the child or to provide for the care and support of the child as required by law or judicial decree. The one-year period may be any one-year period, not necessarily the one immediately preceding the filing of the adoption petition. A significant failure is meaningful or important and is unjustifiable if it is voluntary and intentional, i.e., arbitrary and without adequate excuse. The issue of justifiable cause is factual, but one that is largely determined on the basis of the credibility of the witnesses. A person who wishes to adopt a child must prove by clear and convincing evidence that consent is unnecessary. **[consent; failure to communicate]** Here, the circuit court heard evidence that appellant failed to contact his children for at least one year during a four-year period. Appellant claimed appellee interfered with his contact with the children, submitting text messages from April 2023 to January 2024 showing no responses from appellee. Appellant testified that this was a common theme with appellee, but stated that he no longer had access to older texts. Appellee testified that the appellant did not start communicating consistently until after she filed for single-parent adoption. The appellee also stated that she told appellant he could call the children, which he did not do, and appellee denied that she ever told appellant he could not see the children. Appellant acknowledged knowing where appellee and the children lived but stated he did not visit because he feared police involvement, but admitted that appellee never told him he could not come and that authorities never warned him to stay away. Additionally, appellant stated that he warned appellee that he was going to reopen their divorce case and threatened to show up at appellee's residence with the police to see the children, but never did. Given these facts, the appellate court found that the circuit court did not err in finding no justification for appellant's failure to communicate with his children for at least a year. **[best interest]** The appellate court gives great weight to a circuit court's personal observations when the welfare of young children is involved. The burden rests on the one seeking adoption to prove by clear and convincing evidence that adoption is in the child's best interest. Here, appellee testified that for the last four years, she had been the only parent the children have known. She stated that they were thriving and stable with her. The circuit court was in the best position to decide which party to believe. Despite the appellant's contention, the circuit court did not find that appellee was to blame for appellant's lack of contact with the children. The circuit court also seemed to have believed appellee when she testified that the children's lives would be

disrupted if appellant, a stranger to them, was allowed back into it. Thus, the appellate court was satisfied that the circuit court's best-interest finding is supported by clear and convincing evidence. (Martin, D.; 72PR-24-41; 10-12-25; Brown, W.)

DOMESTIC RELATIONS

Podleski v. Podleski, 2025 Ark. App. 538 [**joint custody; domestic abuse**] The circuit court entered a divorce decree and awarded the appellee joint custody of their child. On appeal, appellant argued that the circuit court erred in (1) finding that she failed to overcome the statutory presumption in favor of joint custody, and (2) excluding the testimony of the parties' marriage counselor. In an original child-custody determination in a divorce, there is a rebuttable presumption that joint custody is in the child's best interest. An award of joint custody is rebutted if the court finds by clear and convincing evidence that joint custody is not in the child's best interest. Arkansas Code Annotated § 9-13-101(c)(1) also provides that if a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a directive pursuant to this section. Additionally, Ark. Code Ann. § 9-13-101(c)(2) states that 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 in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse. Here, there was testimony that both parties engaged in acts of violence and name-calling during the marriage. Accordingly, in the divorce decree, the circuit court found that the parties dislike each other intensely, are bad spouses to one another, and rude and negative comments were made by both parties to each other, as well as acts of physical aggression against each other. The circuit court found that the child was a good child who loves both parents, the parties communicated well regarding the child's care, and were able to provide him with great opportunities if they continued to work together. Based on the record, the circuit court, following the mandates of Arkansas Code Annotated § 9-13-101(c)(1), considered the effects of the domestic violence on the best interest of the child. Additionally, on appeal, aside from the allegations of domestic abuse, the appellee failed to argue that joint custody was not in the child's best interest. Thus, the circuit court did not err in awarding joint custody. (Schrantz, D.; 04DR-23-152; 11-5-25; Brown, W.)

Burns v. Dillinger, 2025 Ark. App. 543 [**custody**] The circuit court entered an order finding no material change in circumstances sufficient to modify custody and ruled that appellee would retain primary physical and legal custody of the parties' child. On appeal, appellant argued that the circuit

erred in not finding a material change in circumstances warranting a change of custody. In order to change custody, the circuit court must first determine that a material change in circumstances has occurred since the last custody order; 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. Determining whether there has been a change of circumstances requires full consideration of the circumstances that existed when the last custody order was entered in comparison to the circumstances at the time the change of custody is considered. Failure of communication, increasing parental alienation by a custodial parent, and inability to cooperate can all constitute a material change in circumstances sufficient to warrant modification of custody. The combined, cumulative effect of particular facts may together constitute a material change. Custody awards are not made or changed to punish, reward, or gratify the desires of either parent. Further, a violation of the circuit court's previous orders does not compel a change in custody. The violation is a factor to be taken into consideration, but it is not so conclusive as to require the court to act contrary to the best interest of the child. Even when a custodial parent willfully violates court orders, modification is not necessarily warranted because a court's contempt powers should be used before the more drastic measure of changing custody. Here, the circuit court found that the testimony demonstrated "bad behavior" between the two parents but that the child had not been adversely affected. The evidence demonstrated a change in appellee's circumstances in that he was no longer married to his ex-wife, but the court found no material change had occurred. The circuit court's oral ruling also indicated that it would not be in the child's best interest to change custody. The court also took appellee's violation of the court's orders into account and exercised its contempt powers to punish appellee's noncompliance. After their review, the appellate court found that the circuit court did not err in finding no material change in circumstances had occurred. (Hannah, C.; 59NDR-23-1; 11-12-25; Harrison, B.)

Coleman v. Coleman, 2025 Ark. App. 550 [**custody**] The circuit court entered a divorce decree. On appeal, appellant argued that the circuit court erred when it awarded primary custody of the parties' minor children to appellee. Arkansas Code Annotated § 9-13-101(a)(1)(A)(iii) provides that joint custody is favored in Arkansas. 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. 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. In this case, the appellate court held that the circuit court did not clearly err in finding that the appellee rebutted the presumption for joint custody. Appellant had a long, problematic history with alcohol. Additionally, the appellant had a serious wreck and was cited for a DWI roughly an hour after dropping the children off at school. Notably, in a previous divorce action, the

appellee received sole custody of the parties' minor child due to the appellant's alcohol use. The circuit court entered a written temporary order advising appellant to seek out a combination of assistance, but more than six months later, appellant continued to drink alcohol. Appellant's argument on appeal was an impermissible request to reweigh the evidence. Recognizing the superior position of the circuit court to evaluate the witnesses, their testimony, and the children's best interest, the appellate court found no error in the circuit court's award of primary custody to the appellee. (Copeland, J.; 03DR-22-406; 11-12-25; Murphy, M.)

JUVENILE

Minor Child v. State, 2025 Ark. App. 530 [**delinquency probation; revocation**] Appellant was adjudicated delinquent and placed on probation; terms of his probation included a 9:00 p.m. curfew and not spending the night away from home without his mother's permission. After a family altercation, appellant's mother asked that he leave the home to "cool off." When he refused, she called the police to assist in taking appellant to a friend's house, telling him to return home before curfew. Later that evening, appellant phoned his mother to ask if he had to be home by curfew, to which she responded that he needed to return home with a better attitude; she also stated that he could return home "if" he had changed his attitude because he was not going to be allowed to be disrespectful. appellant did not return home that evening, missing curfew and spending the night away from home without his mother's permission. After his probation was revoked under both those terms, he appealed the revocation. [**delinquency probation revocation**] A trial court may revoke a juvenile's probation if it finds by a preponderance of the evidence that the juvenile violated the terms and conditions of probation. The State need only show that the appellant committed one violation in order to sustain a revocation. On appeal, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. Because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given testimony, the appellate court will defer to the trial court's superior position to gauge these matters. On appeal, appellant argued that his mother forced him to leave her home by having the police take him away. He asserted that she did not call him to come home; rather, he called her to ask whether he should come home. According to appellant, his mother gave him an option to either come home if his attitude had changed or stay away if it had not. Appellant argued that his mother did not instruct him to come home. He argued that the State thus failed to prove that he spent the night away from home without his mother's permission. As for violating curfew, appellant argued that his mother admitted she did not know that he was anywhere other than at his friend's home after 9:00 p.m. that night, which was where she had given him permission to stay. Appellant indicated that he understood the rules and conditions of his probation, including the two rules that the trial court found he had violated. The trial court found that the mother credibly testified that she instructed appellant, before he left to go to his friend's house, to return home before his curfew. According to the mother's testimony, appellant had permission to remain at his friend's house just long enough to "cool off" after the incident at her home. The trial court noted that, while appellant initially had permission to go to the friend's house, the permission had been

withdrawn when it came to staying overnight and past his curfew. While appellant may have interpreted his mother's initial statement as making his return home optional, his mother made other statements clearly instructing appellant to return home before his curfew, and appellant was well aware that he must comply with the rules and conditions of his probation. The appellate court could not say that the trial court's revocation decision was clearly against the preponderance of the evidence. Either violation was sufficient to support the revocation of appellant's probation. Decision affirmed. (Johnson, S.; CV-24-805; 11-5-25; Virden, B.)

Minor Child v. State, 2025 Ark. App. 552 [**double jeopardy; manslaughter**] Appellant was charged as an adult with capital murder, aggravated robbery, terroristic act, and a firearm enhancement. Following a hearing on appellant's motion, the charges were transferred to the juvenile division of the circuit court. In the juvenile division, the court granted the State's motion to designate the case as extended juvenile jurisdiction. The charges were tried to the bench. At the conclusion of the trial, the court ruled that it was dismissing the charges of aggravated robbery and terroristic act, as well as the firearm enhancement. Referencing appellant's "level of involvement," the court "reduced" the charge of capital murder and adjudicated appellant delinquent on manslaughter. The court entered a delinquency order, reflecting its bench ruling that the charge of capital murder was reduced to manslaughter, of which appellant was guilty, dismissing all other charges, and setting a disposition hearing. Afterward, appellant filed a motion to dismiss and argued that manslaughter was not a lesser-included offense of capital felony murder, and a defendant could not be convicted of a felony for which he was not charged or that was not a lesser-included offense of the one charged. Appellant also argued that he could not be retried on the original charges because of the protections afforded to him by the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and article 2, section 8 of the Arkansas Constitution. At a hearing on the motion, the court denied appellant's motion, stating that "the law allows us to correct an improper sentence." The court found that it had not dismissed the capital-murder charge, that the capital-murder charge was "reinstated," and that appellant was now adjudicated delinquent on that charge. Without conducting a disposition hearing, the court committed appellant to the Division of Youth Services (DYS). An order was entered that same day denying appellant's motion, setting aside the initial delinquency order, reinstating all charges, and adjudicating appellant delinquent on all counts. The court entered a separate amended delinquency order finding appellant guilty of capital murder, aggravated robbery, terroristic act, and a firearm enhancement. Other post-trial motions were also denied; appellant then brought this appeal. On appeal, appellant argued that the circuit court (1) erred in denying his motion to dismiss the manslaughter adjudication; (2) violated double-jeopardy protections in adjudicating him delinquent on previously dismissed charges; and (3) erred in summarily committing him to DHS without conducting a disposition hearing. [**delinquency; double jeopardy**] The appellate court agreed with appellant that his adjudications violated the constitutional prohibition against double jeopardy and must be reversed and vacated; it did not take up the other issues. Both the Fifth Amendment to the United States Constitution and article 2, section 8 of the Arkansas Constitution required that no person be twice put in jeopardy of life or liberty for the same offense. These constitutional provisions protected criminal defendants from being subjected to a second

prosecution for the same offense after an acquittal of that offense. This protection was also found in Arkansas Code Annotated section 5-1-112(1)(A) (Repl. 2024). An acquittal was a resolution, correct or not, of some or all of the factual elements of the offense charged. Whether based on a jury verdict of not guilty or on a ruling by a court that the evidence was insufficient to convict, a judgment of acquittal terminated jeopardy and barred retrial. The finality of a verdict of acquittal was the most fundamental aspect of double-jeopardy jurisprudence. At the conclusion of the evidence, the circuit court granted appellant's motion to dismiss the charges of aggravated robbery and terroristic act, and an order was entered dismissing those counts as well as the firearm enhancement. The delinquency order clearly stated that those charges were dismissed. Accordingly, a clear and final adjudication of acquittal was entered on those charges. The court's subsequent order finding appellant guilty of those charges violated double-jeopardy protections as argued in appellant's motion to dismiss. **[delinquency; manslaughter not a lesser included]** Regarding capital murder, the circuit court ruled from the bench that it was adjudicating appellant delinquent on manslaughter based on the evidence presented, and the charge of capital murder was "reduced" to manslaughter. The written order repeated this finding. The appellate court opined that this clearly appeared to be an attempt to adjudicate appellant guilty of a lesser-included offense. A determination of guilt of a lesser-included offense was an acquittal of the greater inclusive offense, although the conviction was subsequently set aside. As argued by appellant below, however, felony manslaughter was not a lesser-included offense of capital felony murder. Here, the initial delinquency order stated that the court "reduces the charge of Capital Murder to Manslaughter. All other charges in this matter are hereby dismissed." The appellate court concluded that this was an acquittal because it was "a resolution, correct or not," of the capital-murder charge. A defendant cannot be retried on the same charge regardless of whether the defendant's acquittal was a result of the circuit court's legal error. Accordingly, because appellant had been acquitted of capital murder by virtue of the initial delinquency order, the court's later order adjudicating appellant delinquent on this offense violated double-jeopardy protections as argued in appellant's motion to dismiss. Therefore, the appellate court reversed and vacated the amended delinquency order adjudicating appellant delinquent on the charges of capital murder, aggravated robbery, terroristic act, and a firearm enhancement. (Brown, E.; CV-25-10; 11-19-25; Klappenbach, N.)

Hunt v. Ark. Dep't of Human Services, 2025 Ark. App. 553 **[placement preference]** Appellant's parental rights were terminated; he did not contest statutory grounds or that he would be unable to take custody of the child at any time in the foreseeable future. He also conceded that his prison sentence constituted a substantial period of the child's life. Instead, appellant argued that Appellee's failure to seek out fit and willing relatives undermined the circuit court's best-interest finding. Appellant asserts that the child has an interest in preserving her familial relationships, which were nullified by the termination of her father's parental rights. Appellant questioned whether Appellee's failure to abide by its obligation to find fit and willing relatives has any meaning or consequences. He added that allowing the child to remain in foster care with the same people who were interested in adopting her would be no detriment to her and would at least give a chance for a fit and willing relative to come forward to care for her. The appellate court ruled

appellant failed to demonstrate reversible error. **[placement preference]** In dependency neglect cases the preference is to obtain guardianship or adoption with a fit and willing relative over adoption. The relative preference outlined in the statute must be balanced with the individual facts of each case. Preference must be given to the least restrictive disposition consistent with the best interest and welfare of the juvenile and the public. Termination of parental rights severs any biological familial relationship because a relative's rights are derivative of the biological parent's rights; the former relatives become legal strangers to the child. On the other hand, to make a least-restrictive-placement argument on appeal, there must be at a minimum an appropriate and approved relative in the picture. At the termination hearing, appellant said that he had not contacted any family members to see if they would be willing to be a placement option for the child. He had not had in-person contact with his four adult children for about ten years, and he had not told them about the child's existence. The caseworker confirmed that two of appellant's adult children, those children's mother, and appellant's sister were contacted, but no one expressed interest in taking MC. The caseworker had called appellant's sister the night before the termination hearing. More than ten other people had been identified as potential relatives, and efforts were made to notify them about the child's situation, but none responded expressing interest in having the child in their home. Appellee's efforts to find fit and willing relatives might not have been ideal, but appellant made no efforts whatsoever. None of the appellant's relatives were "in the picture" for consideration as a suitable placement. No clear error in finding that termination of appellant's parental rights was in the child's best interest. (Johnson, S.; CV-25-335; 11-19-25; Klappenbach, N.)

Conapinski v. Ark. Dep't of Human Services, 2025 Ark. App. 554 **[sufficiency of evidence]** Appellant mother challenged the granting of custody of her child to the child's father at the permanency planning hearing (PPH). In order to do that, the court had to find that the father was a fit parent. There were facts in the record that favored a finding that the father was a fit parent. It was undisputed that the father had been completely compliant with the case plan and the court's orders, that the father was having regular communication with the child, and that the father had the child for two extended, unsupervised, out-of-state visits. It was further undisputed that the child wanted to stay with her father. However, the appellate court held that the circuit court clearly erred when it determined that the father was a fit parent on the basis of the evidence before it. As stated, the presiding judge for the PPH was not the judge who had overseen the prior hearings, nor did that judge have transcripts of these earlier proceedings. Rather, the judge was limited to the evidence in the record, which mainly consisted of the prior orders in the case, as no testimony was taken at the PPH. While the record noted that the father underwent a psychological evaluation, there was no mention of the results of that evaluation. Likewise, while the prior orders noted that the father must complete a background check and an Interstate Compact on the Placement of Children home study to have visitation with the child, whether he completed them was unknown, and if he did, the results were also not in the record. Moreover, there was no evidence before the court of the father's employment, whether he was financially able to care for MC, or whether he had provided any support for the child during the pendency of the case. Finally, the record was devoid of any information about his home, his current family, or anything else that would have

supported the circuit court's determination that the father was a fit parent. The appellate court was particularly concerned with the limited evidence presented in this case. While a child does need stability, it opined that it was the job of the courts to make sure that the child was going to a home that was safer and more stable than the one she was removed from. While the father's home may have been such a place, it simply could not say that there was sufficient evidence before the substitute judge to make that determination. Accordingly, the court must make further findings. (Haltom, B.; CV-25-347; 11-19-25; Abramson, R.)

Barnes v. Ark. Dep't of Human Services, 2025 Ark. App. 411 [TPR] Appellant's parental rights were terminated to her child, who had not been in her custody for nine (9) years. The appellate court asserted that although appellant did not articulate an argument related to any specific statutory ground, it held that sufficient evidence supported the subsequent-factors ground. [TPR; **subsequent factors**] A parent's lack of compliance with the case plan and court orders, including a failure to submit to drug screens and testing positive for drugs, supported a subsequent factors finding. Appellant was never found to be in compliance with the case plan or court orders, and at the permanency-planning hearing, the circuit court found that it did not know if appellant was even receptive to services. [TPR; **subsequent factors**] Continued drug use by a parent will show an indifference to remedying the problem and support a subsequent factors finding. At the beginning of the case, appellant tested positive for methamphetamine. She was admitted to a drug treatment program in June 2024 and attended at least ten group sessions and five individual sessions between June 2024 and January 2025. Despite those services, appellant tested positive for methamphetamine on five occasions, with the latest positive drug screen occurring in January 2025. In January 2025, the circuit court found that appellant had not complied with more than twenty attempts to schedule drug screens, and by the time of the TPR hearing, this number reached about forty. In this case, the child was never placed in appellant's custody, and the circuit court repeatedly found that Appellee had made reasonable efforts by offering services. Appellant did not appeal any of these reasonable-efforts findings. [TPR; **little likelihood**] By the time of the TPR hearing, the child was one month away from turning sixteen. She testified that the last time she lived with her mother, whom she referred to by her first name, she was seven, nearly nine years prior. She further testified that she did not want to live with her mother, did not feel safe with her mother, and wanted to stay with and be adopted by the people with whom she was placed—despite pressure from parent counsel to get her to change her mind or say she might regret the decision later. The child acknowledged that there was a time when she wanted to live with her mother, but her wishes had changed due to her mother's decision to continue her relationship with a new boyfriend, whom appellant said had proposed, and because appellant had tested positive for methamphetamine. The child participated in family counseling sessions and visits that she did not want to attend. After being in Appellee's custody for nineteen months and out of her mother's custody for nearly nine years, these facts made it clear that there was little likelihood of reunification within a reasonable period of time as viewed from the child's perspective. Sufficient evidence supported the termination of appellant's parental rights on the statutory grounds pled in the TPR petition and found by the circuit court, and any remaining arguments were requests to reweigh the evidence on appeal. [TPR; **best interest**] A circuit court determines whether TPR is

in a juvenile's best interest by considering the likelihood that the juvenile will be adopted and the potential harm to the juvenile if there is continued contact with the parent. These two factors are not essential elements of proof in a TPR case; thus, neither factor need be established by clear and convincing evidence. Notably, appellant failed to challenge the circuit court's findings regarding either adoptability or potential harm, so the appellate court was therefore not required to address those findings. It disagreed with appellant's argument that the circuit court's specific findings regarding the supporting statutory grounds and the best-interest analysis were the same. In a separate paragraph of the TPR order, the circuit court found it in the child's best interest to terminate parental rights, specifically found that the juvenile was adoptable and would be subjected to potential harm if returned. The record, including testimony from both the child and the adoption specialist for Appellee, supported the adoptability prong of the best-interest finding, and the evidence supporting the statutory grounds also supported the potential-harm prong of the best-interest finding. Appellant developed no further argument regarding potential harm or adoptability; appellant's failure to elaborate on a specific argument resulted in the abandonment of that argument on appeal; thus, the best-interest determination was affirmed. Because there was ample proof in this case on both the statutory grounds for TPR and the best interest of the child, there was no clear error in terminating appellant's parental rights. (Sullivan, T.; CV-25-411; 11-19-25; Gladwin, R.)

Byrams v. Ark. Dep't of Human Services, 2025 Ark. App. 382 [TPR] Appellant's parental rights were terminated; her sole point on appeal was that the circuit court clearly erred in finding that termination was in the child's best interest. [TPR; best interest] Appellant argued her case did not fit within the normal potential-harm analysis; specifically, she contended that the "normal" analysis referred to the potential harm to a child's health and safety that might come from continued contact with the parent. She argued that, instead, the court's potential-harm finding concerned the difficulties the child experienced with changes to her environment due to her autism diagnosis. Appellant argued that the circuit court terminated her parental rights because it did not want to disrupt the routine the child had established while in foster care and the services that the child was receiving. Appellant understood these concerns but argued that the potential harm would exist whether the court placed the child with appellant or placed the child in any other adoptive home. She claimed that the evidence presented at the hearing demonstrated that any change in the child's environment would cause regression and that it had taken thirteen months in the foster home for the child to achieve her current stability and structure. The court considered the potential harm caused by returning the child to appellant and found that it included ongoing concerns regarding appellant's stability, particularly as it related to her mental health, as well as her inability to meet the child's special needs and help her deal with her anxiety and past traumas. The record showed that appellant was initially incapable of caring for the child and that the child was at risk of serious harm. Appellant had a history of drug use; suffered from hallucinations at the initiation of the case; tested positive for methamphetamine, amphetamines, and THC; and was transported to the VA Hospital for inpatient mental-health treatment. Appellant's sister, who kept the child for a week before appellee filed an emergency petition, told appellee that appellant had a history of drug use and had eight other children who were in the care of other family members because of this history. During a meeting with appellee after she was released from the VA Hospital, appellant admitted

that she had used drugs that morning in the front room of her home while the child was in the back bedroom. Appellant submitted to a drug test at the meeting and again tested positive for methamphetamine, amphetamines, and THC. Appellant testified at the termination hearing that she had been diagnosed with substance-abuse psychosis but contended she had not used drugs since April 2024 and thus did not have “those issues” anymore. Just three months before the termination hearing, at the fifteen-month review hearing, appellant’s therapist testified that she believed appellant could care for the child as long as she remained connected with the VA but thought that without VA involvement, things would “deteriorate” and put the child at risk. At the hearing, appellant testified that she had not attended therapy for several months and was no longer taking prescribed medication. Although appellant provided reasons for both at the hearing, the credibility and weight of testimony is for the circuit court. Additionally, the record revealed that appellant never achieved unsupervised visitation. The three-week supervised visitation in appellant’s home caused the child to regress “across the board.” The child’s therapist testified that the child was a “complex case” requiring a team of services, and he did not know the timeline for the child to be able to return to appellant’s custody. He thought it was “possible” for appellant to create a routine for the child within six to nine months, which further supported the finding in the circuit court’s termination order that the child was subject to a “risk of serious regression and additional negative impact to her mental health diagnosis if she were returned to [appellant’s] custody today.” In support of her argument, appellant cited *Benedict v. Arkansas Department of Human Services*, in which the appellate court reversed the termination of a mother’s parental rights, holding there was insufficient evidence to support the court’s finding of best interest. 96 Ark. App. 395, 242 S.W.3d 305 (2006). In *Benedict*, the children had been removed from their mother’s custody the day after she voluntarily admitted herself for treatment for what was preliminarily diagnosed as postpartum psychotic depression. She stipulated to an adjudication that the children were dependent-neglected and was ordered to take her prescribed medications, follow all hospital-discharge recommendations, participate in counseling, obtain a drug screen, and follow the case plan, which she did. *Benedict*’s therapist testified at trial that *Benedict*’s psychosis came from major depression, that he saw no evidence of depression at the hearing, that it had been a year since her acute episode, and that she had recovered from it. Although he acknowledged that removing the children from foster care would be a disruption in their lives, he opined that the disruption would pay off “if that natural parent could do the job.” The court terminated her parental rights. The appellate court reversed the termination—stating that *Benedict* had cooperated with the orders of the court, benefited from the services provided by appellant, and shown objective improvement to the benefit of the children—and ordered the circuit court to continue reunification services. In the instant case, the appellate court did not find *Benedict* persuasive. Unlike the parent in *Benedict*, appellant’s psychosis was substance-induced. Appellant had a history of drug use which resulted in the loss of all eight of her other children, and was admittedly using drugs when appellee took custody of this ninth child. While appellant claimed to not have used drugs for ten months at the time of the hearing, a parent’s past behavior is often a good indicator of future behavior. Further, unlike the mother in *Benedict*, appellant had a lengthy history with appellee that resulted in her not having custody of any of her other children. Finally, the child was a special-needs child who was autistic and nonverbal and would require “wrap-around services” to grow and progress. She needed to be in a stable environment that prioritized predictability, routine, and

structure. There was no evidence that the children in *Benedict* required such a specific environment. Each termination-of-parental-rights case is decided on a case-by-case basis. Appellant essentially asked the appellate court us to reweigh the evidence and second-guess the circuit court's credibility determinations, which it would not do. The circuit court's best-interest finding was not clearly erroneous. (Byrd Manning, T.; CV-25-382; 11-19-25; Wood, W.)