

APPELLATE UPDATE

PUBLISHED BY THE
ADMINISTRATIVE OFFICE OF THE COURTS

OCTOBER 2025
VOLUME 33, NO. 2

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:

<https://opinions.arcourts.gov/ark/en/nav.do>

CIVIL

Ridgewood Timber Corporation v. Haddock, 2025 Ark. App. 493 [**prescriptive easement**] The circuit court entered an order granting a prescriptive easement in favor of the appellees. On appeal, appellants argued that the circuit court erred in granting the appellees the prescriptive easement because the hostile use of the road lasted for only two years. A prescriptive easement may be gained by one not in fee possession of the land by operation of law in a manner similar to adverse possession. Generally, one asserting an easement by prescription must show by a preponderance of the evidence that his or her use has been adverse to the true owner and under a claim of right for the statutory period. The statutory period of seven years for adverse possession applies to prescriptive easements. Overt activity on the part of the user is necessary to make it clear to the owner of the property that an adverse use and claim are being exerted. Mere permissive use of an easement cannot ripen into an adverse claim without clear action, which places the owner on notice. Some circumstances or acts in addition to, or in connection with, the use that indicate the use was not merely permissive are required to establish a right by prescription. Here, although the evidence showed the appellees had openly used the roadway for more than seven years, time alone will not suffice to transform permissive use into legal title. There must be some circumstances in addition to the length of use to show that the use was adverse. There had been no objection to the

appellees' use of the road until the appellants purchased the property in 2021. Even if the appellees' use of the road was adverse to appellants beginning in 2021, when appellants purchased the property, this usage falls short of the seven years required to ripen into a prescriptive easement. There was no evidence that the road had been used by the general public or that the appellees had committed overt acts to put the prior landowners on notice that an adverse use and claim of right were being exerted. Accordingly, the appellees' usage did not ripen into an absolute right. Further, the use of wild, unenclosed, and unimproved land, such as this road, is presumed to be permissive until the persons using the land for passage, by their open and notorious conduct, demonstrate to the owner that they are claiming a right of passage. Thus, the appellate court found that the circuit court erred in granting a prescriptive easement in favor of appellees. (Meyer, H.; 69CV-23-47; 1-22-25; Barrett, S.)

Vowell v. Waldrip Lands, LLC, 2025 Ark. App. 523 **[property; partition]** The circuit court entered an order confirming the sale of property. On appeal, appellants argued that the circuit court erred when it ordered the sale of the jointly owned land without appointing commissioners and without evidence that partition in kind would greatly prejudice the owners. A landowner who wishes to divide jointly held land must file a petition asking for division, and if it appears that partition cannot be made without great prejudice to the owner, it may ask for a sale of the property. Upon determining the interests of the parties and deciding that partition should be ordered, the circuit court may appoint commissioners to divide the land in kind, if possible, according to those interests. Arkansas Code Annotated § 18-60-420 provides that if the commissioners appointed by the court report that partition in kind cannot be made without great prejudice, and if the court finds the report just and correct, it may order the property to be sold at public auction or through a negotiated sale under terms set by the court. Alternatively, Ark. Code Ann. § 18-60-424 provides that the court may order a sale without the appointment of commissioners if the court determines from the evidence presented that there is no necessity for the appointment of commissioners. Here, the property at issue is 396 acres of farmland. Appellee bought one-third interest in the land, then sent a letter to one of the appellants that they were terminating the appellant's farm lease agreement. Appellees then sought a declaratory judgment that they could terminate the lease without the other appellant's consent. The circuit court found that notice to terminate one of the appellant's farm leases was properly given. The circuit court further ordered the parties to resolve their dispute within fourteen days, and if they could not resolve the dispute, the court would appoint the clerk to sell the property. The circuit court erred in ordering the land to be sold before a petition for partition was filed. The circuit court's order of the sale of land after this hearing was premature. Neither party filed for a partition until after this hearing. And even still, the post-hearing filings did not demonstrate whether the land could be partitioned in kind without great prejudice. It was also not evident whether the appointment of commissioners was necessary. Thus, the circuit court must hear evidence or refer the question to commissioners to examine the land and determine

whether partition in kind can be made without prejudice. (Morledge, C.; 39CV-23-78; 10-29-25; Murphy, M.)

CRIMINAL

Spencer v. State, 2025 Ark. App. 450 [**motion to suppress; Miranda warning**] Appellant was convicted of first-degree murder. On appeal, appellant argued that the circuit court erred by denying her motion to suppress certain statements she made to police. Specifically, appellant claimed that the officers interrogated her while she was in custody without giving her Miranda warnings. Miranda warnings are required only in the context of a custodial interrogation. A person is in custody for purposes of Miranda warnings when they are deprived of their freedom of action by formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Miranda warnings are not required simply because the questioning takes place in the police station or because the questioned person is one whom the police suspect. In resolving the question whether a suspect was in custody at a particular time, the only relevant inquiry is how a reasonable person in the suspect's shoes would have understood the situation. Here, one officer questioned the appellant at her home while securing the area around the victim, who was found by the officer unresponsive in the carport. A detective later questioned her at the station, noting she came voluntarily, was free to leave, and drove herself there. When the detective became suspicious, he gave her Miranda warnings. Under these circumstances, the circuit court did not err in denying appellant's motion to suppress. (Guynn, A.; 35CR-21-205; 10-1-25; Abramson, R.)

Mattingly v. State, 2025 Ark. App. 461 [**right to self-representation**] Appellant was convicted by a jury of one count each of simultaneous possession of drugs and firearms, possession of morphine, and resisting arrest. On appeal, appellant argued that the circuit court erred by failing to conduct the proper inquiry before allowing him to represent himself at trial. Three requirements must be met before allowing a defendant to proceed pro se: (1) the request to waive the right to counsel must be unequivocal and timely asserted, (2) there must have been a knowing and intelligent waiver, and (3) the defendant must not have engaged in conduct that would prevent the fair and orderly exposition of the issues. The accused must have full knowledge or adequate warning concerning his rights and a clear intent to relinquish them before a waiver can be found. Whether any defendant intelligently waived his right to counsel is dependent on the particular facts and circumstances of the case, including the background, the experience, and the conduct of the accused. To establish a voluntary and intelligent waiver, the circuit court must inform the accused that he is entitled to an attorney as a matter of law and question him to determine whether he can afford to hire a lawyer. The circuit court must also explain the desirability of having the assistance of an attorney during the trial and the drawbacks of not having an attorney. A specific warning of the dangers and disadvantages of self-representation, or a record showing that the defendant possessed such required knowledge from other sources, is required to establish the validity of a

waiver. The “constitutional minimum” for determining whether a waiver was knowing and intelligent is that the accused be made sufficiently aware of his right to have counsel present and of the possible consequences of a decision to forgo the aid of counsel. Here, while the circuit court engaged appellant on matters of jurisdiction and procedure, it did not undertake any of the requisite inquiries, warnings, or explanations before allowing appellant to represent himself. The circuit court asked appellant if he wished to represent himself, to which appellant replied in the affirmative. A violation of the Sixth Amendment right to self-representation is a fundamental, structural error that is not amenable to a harmless-error analysis. Therefore, appellant’s waiver of his right to counsel was not knowing and intelligent. (Wright, R.; 17CR-23-433; 10-1-25; Thyer, C.)

Blissitt v. State, 2025 Ark. App. 479 [**plea; continuance**] A jury found appellant guilty of second-degree domestic battery and first-degree terroristic threatening. On appeal, appellant argued that the circuit court erred by refusing to accept his guilty plea and abused its discretion by denying his motion for continuance to obtain additional witnesses. [**guilty plea**] Arkansas Rule of Criminal Procedure 24.6 states that the circuit court shall not accept a guilty plea without making such inquiry as will establish that there is a factual basis for the plea. Rule 24.3(d) requires the State to assent to a waiver of a jury trial in a criminal case before a guilty plea can be accepted by the court. Here, when the parties were in plea negotiations, appellant indicated that he wanted to go to trial. However, the next day, he stated that he wished to plead guilty to the two charges against him. The circuit court denied the plea because the appellant’s statement of the facts did not amount to the charged offenses. Given these facts, the appellate court could not say that the circuit court erred by refusing to accept appellant’s guilty plea. [**continuance**] In deciding whether to grant or deny a motion for a continuance to secure the presence of a witness, the circuit court should consider (1) the diligence of the movant; (2) the probable effect of the testimony at trial; (3) the likelihood of procuring the attendance of the witness in the event of a postponement; and (4) the filing of an affidavit stating not only what facts the witness would prove but also that the affiant believes them to be true. Here, appellant waited two days before his jury trial to seek a continuance for a witness whom he failed to disclose to the State; he did not present the circuit court with any facts to ensure that he could procure the witness’s attendance even if the continuance was granted; and there was no affidavit filed with his motion. Based on these facts, the circuit court did not abuse its discretion by denying appellant’s motion for a continuance. (Gibson, R.; 21ACR-24-14; 10-8-25; Brown, W.)

Weatherford v. State, 2025 Ark. 150 [**autopsy photographs**] Appellant was convicted by a jury of first-degree murder, residential burglary, and theft of property. On appeal, appellant argued that the circuit court abused its discretion in allowing certain autopsy photographs into evidence. Photographs are generally admissible if they help explain testimony. The mere fact that a photograph is inflammatory or cumulative is not, standing alone, sufficient reason to exclude it.

Even the most gruesome photographs may be admissible if they assist the trier of fact in any of the following ways: (1) by shedding light on some issue; (2) by proving a necessary element of the case; (3) by enabling a witness to testify more effectively; (4) by corroborating testimony; or (5) by enabling jurors to better understand the testimony. Other acceptable purposes include showing the condition of the victim's body, the probable type or location of the injuries, and the position in which the body was discovered. If a photograph serves no valid purpose and can only result in inflaming the passions of the jury, it is inadmissible. Here, before the medical examiner's testimony at trial, the court held a hearing on appellant's motion in limine to exclude certain autopsy photographs. First, appellant objected to four photos depicting the victim's scalp pulled forward and backward to show internal hemorrhaging. The medical examiner explained that he could describe the head trauma, which was listed as part of the victim's cause of death, but it would be easier to show the photos to the jury. Next, appellant objected to two photos depicting the victim's brain after it had been removed during her autopsy. The medical examiner explained that the photos show the flattening of the surface of the brain caused by cerebral edema. The circuit court here carefully considered each autopsy photo in conjunction with the medical examiner's testimony to assess its probative value versus the prejudicial effect. The medical examiner then used the photos to more effectively explain his autopsy findings and show the jury the extent of the victim's injuries, including internal hemorrhaging to the scalp caused by blunt-force trauma to her head, internal hemorrhaging to her neck caused by strangulation, and the flattening of the victim's brain caused by cerebral edema, which contributed to the victim's cause of death. Based on the record, the circuit court did not abuse its discretion in allowing the autopsy photographs into evidence. (Ramey, J.; 42BCR-19-95; 10-16-25; Baker, K.)

Haley v. State, 2025 Ark. App. 484 [**district court appeal**] The circuit court dismissed appellant's appeal from the district court. On appeal, appellant argued that the circuit court erred in granting the State's motion to dismiss his appeal due to improper services and filing pursuant to Arkansas Rule of Criminal Procedure 36(c). Rule 36(c) of the Arkansas Rules of Criminal Procedure governs how an appeal from district courts to the circuit court is taken. The requirements in Rule 36(c) of the Arkansas Rules of Criminal Procedure are administrative in nature, rather than jurisdictional. The circuit court acquires jurisdiction over a de novo appeal from the district court when a certified record from the district court is timely filed in the circuit court. Written notice to the prosecutor is not necessary to perfect the appeal. The appellate court has held that the State did not suffer prejudice when a defendant failed to file a certificate of service, given that the circuit clerk must, under Rule 36(f) of the Arkansas Rules of Criminal Procedure, notify the State of any appeal to the circuit court. Here, the parties agree that the record was timely filed, and the fees were paid, but the written notice was not served on the State, nor was it in the district court record. The appellate court found that the circuit court erred in dismissing appellant's appeal due to improper service. (Wright, R.; 08ECR-22-199; 10-22-25; Virden, B.)

Peal v. State, 2025 Ark. App. 525 [**self-representation**] The appellant was found guilty at a jury trial of possession of a firearm by certain persons. On appeal, appellant argued that the circuit court erred in denying his request for self-representation. A circuit court must grant a defendant's request to represent himself at trial when (1) the defendant's request to waive his right to counsel and represent himself is unequivocal and timely asserted; (2) the defendant makes a knowing and intelligent waiver of his constitutional right to be represented by counsel; and (3) the defendant has not engaged in conduct that would prevent the fair and orderly exposition of his trial. Every reasonable presumption must be indulged against the waiver of the right to counsel. There is no infringement on the right to self-representation if a defendant fails to properly assert it. The test is whether a defendant clearly and unequivocally invoked his or her right to proceed pro se; this test safeguards the fundamental right to counsel. A request to waive must not leave any doubt that the waiver of counsel is what the defendant wants. When a defendant seeks to have another attorney represent him, his request to proceed is not unequivocal. Here, at a pretrial hearing, appellant expressed dissatisfaction with his counsel, citing counsel's failure to obtain a bond reduction hearing and address a charge he believed should have been dropped. The circuit court informed appellant that any substitute counsel would need to be prepared to proceed to trial and advised him of the consequences if new counsel were not retained. In response, appellant stated that he would represent himself if no new counsel were hired. The circuit court ordered current counsel to remain until replacement counsel appeared. On the day of trial, appellant again complained about counsel's performance and stated that he was being forced to proceed to trial with unprepared counsel. The record did not show that appellant made an unequivocal request to waive counsel and proceed pro se. His statements reflected dissatisfaction with counsel and a desire to remove him, not a clear invocation of the right to self-representation. Accordingly, the circuit court did not deny appellant his constitutional right to self-representation. (Guynn, A.; 35CR-22-379; 10-29-25; Brown, W.)

PROBATE

Goldman v. Walker, 2025 Ark. App. 451 [**adoption petition dismissed**] The circuit court dismissed the appellants' petition for adoption. On appeal, appellants argued that the circuit court erred when it determined that the preponderance of the evidence did not support their petition. 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 (i) to communicate with the child or (ii) to provide for the care and support of the child as required by law or judicial decree. A person who wishes to adopt a child must prove by clear and convincing evidence that consent is unnecessary. "Without justifiable cause" means that the significant failure must be willful in the sense of being voluntary and intentional; it must appear that the parent acted arbitrarily and without just cause or adequate excuse. Communication and visitation are not one

and the same. The question is not whether a parent could have done more; rather, it is whether the parent's efforts to establish a significant relationship, despite the other parent thwarting his or her efforts, were sufficient such that consent was not required. Here, there was no court-ordered visitation for appellee mother to see the child. Instead, the court order expressly reserved the issue of visitation and allowed any party, including the appellants, to petition for visitation at a later time. One appellant testified that she had the discretion to permit contact between appellees with the child but chose not to do so. Testimony established that appellee mother attempted to visit the child but was ignored by the appellants, including an incident at Walmart where they removed the child before appellee mother could make contact. One appellant admitted that appellee mother eventually stopped attempting contact because the appellant never responded to her requests. The evidence also showed that although appellee father was incarcerated, he made multiple attempts to communicate with the child by letter. After his release, the appellee father continued to seek contact through regular text messages, all of which one of the appellants ignored. The appellants were required to show that neither of the appellees attempted to visit or care for the child for at least one year. Accordingly, the circuit court did not clearly err in determining that the appellants had not met their burden. Either consent or a waiver is required from both biological parents before an adoption petition will be granted. Because the circuit court did not err in determining that the appellees' consents were required, the circuit court properly dismissed the appellants' adoption petition. (Keaton, D.; 14PR-22-77; 10-1-25; Abramson, R.)

DOMESTIC RELATIONS

Van Pelt-White v. White, 2025 Ark. App. 464 [**custody**] The circuit court entered a divorce decree. On appeal, appellant argued that the trial court erred by granting appellant primary physical and legal custody of the parties' two minor children. In an original child-custody determination, there is a rebuttable presumption that joint custody is in the best interest of the child. The presumption may be rebutted if the court finds by clear and convincing evidence that joint custody is not 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. The mutual ability of the parties to cooperate in reaching shared decisions in matters affecting the children's welfare is a crucial factor bearing on the propriety of an award of joint custody. Given the hostility between the parties and their lack of cooperation in coparenting the children, the appellate court found that it was evident that joint custody would not have been in the children's best interest. Appellee testified that he was the primary disciplinarian during the marriage, maintained a loving and involved relationship with the children, and participated in many meaningful activities with them. The appellee claimed the appellant sometimes stayed away for days and prioritized romantic relationships over parenting. Although appellee admitted his house was sometimes unclean and that he had used a belt and wooden spoon for discipline, he denied neglect and noted the home's condition had improved. Appellee agreed to follow any court

order prohibiting corporal punishment, which the circuit court imposed on both parents. In evaluating credibility for the children's best interests, the circuit court found appellee highly credible and appellant not credible. Having reviewed the record, the appellate court held that the circuit court did not err in determining that it was in the children's best interest to be placed in appellee's custody. (Ladd, D.; 66FDR-22-855; 10-1-25; Hixson, K.)

Fry v. Laire, 2025 Ark. App. 470 [**modification of custody**] The circuit court denied appellant's petition for modification of custody and held that appellee would retain custody of their child. On appeal, appellant argued that the circuit court erred in not finding a material change in circumstances. Generally, courts impose more stringent standards for modifications than they do for initial determinations of custody. The party seeking modification has the burden of proving a material change in circumstances. If that threshold is met, the circuit court must determine who should have custody, with the sole consideration being the best interest of the child. Arkansas uses a present-based analysis when analyzing custody issues, and circuit courts must examine the changes and best interest of children presented as evidence to the court at the time of the final hearing, not changes that may occur weeks, months, or years down the road. Here, appellant argued that the circuit court erred when it declined to follow a section of the initial custody order stating that, when the child reaches four years old or pre-K, whichever is later, that event constitutes a material change in circumstances. The appellate court found that such a provision is against Arkansas law, and the circuit court did not clearly err by declining to enforce this provision of the initial order. [**material change**] Determining whether there has been a material change in circumstances requires full consideration of the circumstances that existed when the first custody order was entered in comparison to the circumstances when the change of custody is considered. To establish a material change, it is essential to demonstrate that the changed circumstances are substantial and directly affect the child's welfare. In the present case, the circuit court considered all of appellant's allegations that she claimed supported a material change in circumstances and concluded that she did not meet her burden of proof. The circuit court gave a thorough analysis in its order, finding no material change in circumstances, including that appellee lived in the same home; his parents continued to provide the same level of support; and while he remains disabled, there had been no change in his income or his ability to support the child. To the extent appellant argued that the material change is the improvement in her life, the appellate court has consistently held that a noncustodial parent's voluntarily choosing a better life—standing alone—is insufficient to support a material change in circumstances. Thus, the circuit court did not err in finding no material change in circumstances occurred to support a modification of custody. (Bibb, K.; 56DR-18-130; 10-8-25; Tucker, C.)

Kitchens v. Whisenhunt, 2025 Ark. App. 471 [**order of protection**] The circuit court entered a final order of protection for two years against appellant. On appeal, appellant argued the circuit court

erred in finding domestic abuse. When there is no evidence that the respondent committed physical abuse or inflicted fear of imminent physical harm, bodily injury, or assault, it is an abuse of discretion to issue the order of protection. The legislative definition of “domestic abuse” to obtain an order of protection does not include the terms “harassing” and “controlling.” Here, the judge weighed the witnesses' credibility, and despite their statements of fear, the judge did not find that the appellee was fearful of physical harm. The circuit court found that appellant’s behavior constituted a disturbance of the peace and described appellee as “worried and concerned,” not in imminent fear of physical or bodily harm. Upon the court’s inquiry as to what her fear was, appellee declared she was concerned about the threat of extortion and revelation of embarrassing information. There was not sufficient evidence to support the circuit court’s finding of domestic abuse in this matter. Thus, the circuit court erred in entering a final order of protection against appellant. (Johnson, S.; 60DR-24-321; 10-8-25; Tucker, C.)

Inmon v. Davis, 2025 Ark. App. 494 [**custody**] The circuit court entered a divorce decree that awarded primary custody of the parties’ child to the appellee. On appeal, appellant argued that the circuit court erred in finding it was in the child’s best interest for appellee to have primary custody. The best interest of the children is the polestar in every child-custody case; all other considerations are secondary. Although the issue of which parent has been the primary caretaker is relevant and worthy of consideration, it is not in and of itself determinative of custody. Here, the circuit court found that although joint custody is generally favored in Arkansas, joint custody was not appropriate in this case because the distance between the parties’ homes made joint custody impractical, and the parties had demonstrated their unwillingness to make joint custody work through their hostility toward each other and inability to cooperate in co-parenting the child. The circuit court found that appellant sought to alienate the child from her father by abruptly moving her away from her father, grandmother, and extended family, and cutting off appellee’s contact, relocating the child into the home of appellant’s new partner. The court also determined that appellant routinely delegated the child’s care to others, including repeatedly leaving the child overnight with her new partner’s parents. Additionally, based on testimony and appellant’s own admissions, the court concluded that appellant had a serious, longstanding substance-abuse problem that had worsened since moving in with her partner and posed a risk to the child’s safety. Given the record and the deference due to the circuit court as factfinder in custody proceedings, the appellate court held that the circuit court did not err. (Schrantz, D.; 04DR-23-869; 10-22-25; Barrett, S.)

Denning v. Denning, 2025 Ark. App. 499 [**continuance**] The circuit court entered an order granting appellee primary custody of the parties’ child and setting child support. On appeal, appellant argued that the circuit court abused its discretion in denying her request for a continuance. A circuit court has an obligation to manage and control its docket efficiently, and it is crucial to our judicial

system that circuit courts retain the discretion to control their dockets. For the circuit court to have abused its discretion, it must have acted improvidently, thoughtlessly, or without due consideration. Here, the appellant's pro bono attorney withdrew ten days before trial. The case had been open for nearly a year, and the circuit court had previously granted requests for a continuance even after it had stated that no further continuances would be granted. Appellant's previous attorney was allowed to withdraw after she alleged appellant had breached the terms of their attorney-client agreement, making it necessary for the attorney to withdraw. Although appellant had notice of the withdrawal, she waited until the day of the final hearing to request a continuance. Given these circumstances, the appellate court found no abuse of discretion in the circuit court's denial of a continuance. (Schrantz, D.; 04DR-19-252; 10-22-25; Hixson, K.)

Judkins v. Judkins, 2025 Ark. App. 524 [**custody; contempt**] The circuit court entered a divorce decree. On appeal, appellant argued that the circuit court erred when it awarded appellee primary custody of their child and held appellant in contempt. [**custody**] 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. The circuit court may enter an order to reduce areas of conflict in a manner determined appropriate by the court. But 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. Here, over the course of nearly two years, the appellant failed to demonstrate to the court that he was capable of sharing joint custody of the child with the appellee and instead proved the opposite. Each child-custody determination ultimately must rest on its own facts. The circuit court was well within its discretion to conclude that joint custody was not in the child's best interest. Thus, the circuit court did not err in its custody award. [**contempt**] Willful disobedience of a valid order of a court is contemptuous behavior. The purpose of criminal contempt is to preserve power, vindicate the dignity of the court, and punish for disobedience of the court's order. By comparison, civil-contempt proceedings are instituted to preserve and enforce the rights of private parties to suits and to compel obedience to orders made for the benefit of those parties. Here, appellant was held in contempt for three reasons: nonpayment of child support, failing to deposit the tax refund into the registry of the court as directed, and interfering with appellee's visitation. The sanctions for the contempt were that appellee was awarded the amount of past-due child support from the registry of the court; appellee's attorney fees were awarded "for the costs associated with the contempt motions which were filed"; and appellant was sentenced to seven days in jail suspended "upon him not being found in contempt for violating the orders of this Court in the future." The appellate court found the circuit court erred in finding the appellant in contempt for failure to pay the parties' tax refund into the registry of the court because the appellant partially performed by depositing some funds into the registry, and there was a lack of a performance date in the order. Additionally, suspension of a sentence for contempt is, in effect, a complete remission of the contempt. The jail sentence was therefore set aside. Thus, the circuit

court erred in holding appellant in contempt for failure to pay the tax refund, and in sentencing him to seven days in jail, and then suspending the sentence for an indefinite amount of time. (Houston, B.; 63DR-22-268; 10-29-25; Murphy, M.)

JUVENILE

Lindsey v. Ark. Dep't of Human Services, 2025 Ark. App. 403 [**TPR; failure to remedy**] Appellants challenged the termination of their parental rights to their infant child, arguing insufficient evidence of statutory grounds and best-interest considerations. Appellee removed the child following a domestic-violence incident between the parents and adjudicated him dependent-neglected due to parental unfitness. The circuit court terminated on multiple statutory grounds, including the non-custodial father failing to correct conditions that prevented the child from being placed with him, unresolved domestic-violence issues, relocation out of state, and failure to complete services. Neither Appellant completed drug treatment or a domestic violence program. [**TPR; best interest/risk of harm**] The court also determined termination was in the child's best interest, citing Appellants' instability, noncompliance, and potential risk of harm to the child. In fact, Appellant father did not begin court-ordered domestic violence classes until less than two months before the termination hearing. [**TPR; best interest/potential relative placement**] Appellants also contended that it was not in the child's best interest to terminate parental rights when the child could have been placed with a paternal aunt, who was still awaiting an approved ICPC home study from another state. However, this issue was not raised below and would not be taken up for the first time on appeal. (Medlock, M.; CV-25-192; 10-22,-25; Harrison, B.)

Gonzales v. Ark. Dep't of Human Services, 2025 Ark. App. 496 [**TPR; grounds & best interest**] Appellant challenged the termination of her parental rights to her minor child, MC, arguing termination was not in the child's best interest due to questions of her adoptability; Appellant also challenged the court's finding that MC was not competent to testify; Appellant did not challenge the grounds for termination. MC had been removed in 2023 and adjudicated dependent-neglected due to sexual abuse by her parents. After Appellant failed to comply with case-plan services, Appellee filed a petition to terminate parental rights. [**TPR; adoptability**] There is no requirement that the court find a child adoptable; merely the court must consider adoptability. However, if the court were to make the (arguably unnecessary) finding that the child was in fact adoptable, there must be proof of that adoptability and not merely an assertion by the court with no supporting fact. Here, adoption specialist testimony showed seventy-seven potential adoptive families despite MC's intellectual and behavioral challenges, which was sufficient evidence that despite those challenges, MC was adoptable. [**witness competency**] Appellant also contended that the court erred in excluding MC's testimony based upon her intellectual disability, asserting that said intellectual disability is inconsistent with its finding that MC was adoptable. However, she failed to raise this point below, and the appellate court would not take up the matter for the first time on appeal. As an aside, even if Appellant had raised that issue below, and even if the court erred in its assessment of MC's competency, evidentiary error can be harmless if the same or similar

evidence is otherwise introduced: Appellant represented to the court that she wanted to call MC to elicit her testimony that she enjoyed visitation with her parents. Appellant herself, however, testified that the visits went well and that they were happy to see each other. Because the same evidence that Appellant wanted to offer through MC was introduced via her own testimony, the appellate court could not say that the exclusion of MC's testimony was reversible error. (Weeks, A.; CV 25 21; 10-22-25; Thyer, C.)

Benavides v. Ark. Dep't of Human Services, 2025 Ark. App. 500 [**motion to continue; diligence**] Appellant did not contest the circuit court's findings on statutory grounds or best interest supporting termination of her parental rights. Her sole claim on appeal was that the circuit court abused its discretion by denying her motion for a continuance. Appellant asserted that she could not attend the termination hearing due to lack of transportation, that the court acted arbitrarily by granting a continuance the week before for weather yet denying hers, and that she suffered prejudice by being unable to attend and defend herself. A continuance may be granted only upon a showing of good cause, and the appellate court will reverse a denial only when there has been an abuse of discretion amounting to a denial of justice. Considerations for the court include: the movant's diligence, the potential effect of the anticipated testimony, the likelihood of securing the witness's attendance if postponed, and the filing of an affidavit detailing the expected testimony. Lack of diligence alone is sufficient grounds to deny a continuance, and reversal further requires a showing of prejudice. The record showed that appellant had notice of the termination hearing and knew how to request transportation assistance, as she had done for earlier hearings. She admitted she did not request such assistance for the termination hearing and instead waited until the hearing began to request a continuance. The appellate court held that this lack of diligence defeated any claim of good cause. Appellant also failed to establish prejudice. She did not identify what defense she would have presented or how her presence could have changed the outcome. The record reflected longstanding issues: the child had been removed twice; appellant continued drug use; and she failed to address mental-health concerns despite services offered. The absence of any challenge to statutory grounds or best-interest findings foreclosed a showing of prejudice. Accordingly, the circuit court did not act improvidently or without due consideration in denying the continuance. (Elmore, B.; CV-25-245; 10-22-25; Hixson, K.)

Carlile v. Ark. Dep't of Human Services, 2025 Ark. App. [**TPR; best interest; less restrictive alternative**] Appellant did not challenge the statutory grounds for termination; the only issue on appeal was whether termination was in the child's best interest given the possibility of a less restrictive alternative such as guardianship. Although relatives receive statutory preference at all stages of a dependency-neglect case, a circuit court may still set the permanency goal as adoption even when a relative is available, unless the child is already in a relative's care, the relative has made a long-term commitment, and termination is not in the child's best interest. Appellant relied on *Ivers* and *Rhine*, arguing for a less drastic alternative. The appellate court rejected these comparisons. Unlike *Ivers*, this case did not involve a parent who had demonstrated meaningful progress toward remedying the issues preventing reunification. Appellant was serving a twenty-

year prison sentence, was still incarcerated at the time of the termination hearing, and could not provide care or stability. Rhine was likewise inapplicable because it addressed the denial of a continuance, not a best-interest analysis. The purpose of termination is to achieve permanency when returning a child to the parent is not possible within a reasonable time from the child's perspective. The child had been in the foster parents' care for at least twenty months, was thriving there, and the foster parents preferred to adopt her over serving as guardians. Appellant had been incarcerated for the child's entire life, had only limited virtual contact with her, and could not meet her basic needs. His criminal history and lengthy sentence further undermined any prospect of timely reunification. Given these circumstances, the circuit court reasonably found that termination was in the child's best interest, and a guardianship would not provide the necessary permanency. (Zuerker, L.; CV-25-134; 10-22-25; Brown, W.)

Williams v. Ark. Dept. of Human Services, 2025 Ark. App. 507 [**permanency planning; guardianship**] Appellant raised two issues on appeal: (1) the circuit court erred in changing the permanency goal from reunification to guardianship, and (2) the circuit court erred in appointing guardians for her child. [**permanency planning; goal change**] Appellant had more than a year to comply with the case plan but made only minimal progress. She began counseling only one month before the permanency-planning hearing, had not completed the required psychological evaluation or parenting classes, and presented no evidence that her mental-health issues were stabilized. Her housing remained unstable: she had lived in a motel or the Salvation Army for eight of twelve months preceding the hearing and had only recently moved into an apartment, where she had not yet paid rent and could not afford long-term stability without temporary assistance. Although she attended supervised visits, Appellee had to transport her to each visit. The burden rested on Appellant to demonstrate meaningful compliance to maintain a reunification goal; she did not meet that burden. Given her lack of meaningful progress, the circuit court acted within its discretion in changing the goal from reunification to guardianship with a concurrent goal of adoption. [**guardianship; best interest**] The granting of a guardianship requires clear and convincing evidence that the ward is a minor, that guardianship is necessary to protect the minor's interests, and that the proposed guardians are suitable. Here, only the best-interest element was disputed; the parties had agreed the child was a minor and that the proposed guardians were suitable. Appellant argued that guardianship was unnecessary because she had remedied Appellee's concerns and that placement with her was a less restrictive alternative. The record did not support this claim. Appellant's financial and housing stability were uncertain: she depended on temporary aid to afford rent and could not sustain her housing on SSI alone. Although she argued her disability and SSI should not be held against her, the circuit court did not penalize her for receiving benefits; it simply assessed whether she had adequate resources to meet the child's needs. Appellant also did not complete key components of the case plan, including the psychological evaluation and parenting classes, nor did she provide counseling records demonstrating mental-health stability. Longstanding concerns persisted: severe mental-health issues, lack of transportation planning, prior eviction related to unsanitary conditions, and recent adoption of multiple kittens despite past concerns involving animal waste inside her home. The child reported ongoing worries about food insecurity and school attendance—issues that had contributed to her removal. Nothing in the

record showed Appellant had addressed the child’s chronic absenteeism or ensured reliable school transportation. Although Appellant emphasized that she had been granted extended unsupervised visitation, the court reiterated that the natural-parent preference in guardianship cases is governed by statute, not by custody-case fitness standards, and does not require a threshold finding of parental unfitness. Appellant and the child had been involved with Appellee since at least 2019, and the circuit court found guardianship with the proposed guardians to be in her best interest. Given the circuit court’s superior ability to assess credibility and the child’s welfare, the appellate court found no clear error in the decision to change the permanency goal and to appoint guardians. (Warren, D.; CV-25-265; 10-29-25; Abramson, R.)

Crosier v. Ark. Dep’t of Human Services, 2025 Ark. App. 512 [TPR] The circuit court terminated Melissa’s parental rights on three statutory grounds—failure to remedy, subsequent factors, and aggravated circumstances—but only one ground must be proved to support termination. The appellate court affirmed based on the failure-to-remedy ground. [TPR; failure to remedy] Termination may be based on a parent’s failure to remedy conditions that led to a child’s removal despite meaningful efforts by the Appellee to assist. The children were adjudicated dependent-neglected due to environmental neglect and parental unfitness and had been out of Appellant’s custody since April 2023. Despite twenty-one months of services and opportunities, Appellant failed to obtain or maintain safe or appropriate housing, remediate environmental hazards, or demonstrate understanding of the risks posed by inadequate hygiene and unsafe conditions. Appellant’s last-minute improvements did not outweigh the prolonged failure to provide a habitable home. Prior homes were plagued with fire hazards, mold, insect infestations, absence of utilities, and structural instability. Requests for additional time to remedy the situation were properly denied, as a child’s need for stability and permanency may override a parent’s request for more time. Appellant’s argument that termination was based on poverty was not considered by the appellate court because it was not raised below. [TPR; best interest] The children faced potential harm if they were returned to Appellant, as evidenced by her continued failure to obtain safe housing or comply with court-ordered services. Past behavior was appropriately used as a predictor of future risk, demonstrating potential harm and the necessity of permanency. There was clear and convincing evidence to support the court’s determination that termination was in the children’s best interest. No clear error. (Jones, C.; CV-25-260; 10-29-25; Tucker, C.)