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CRIMINAL

Silmon v. State, 2018 Ark. App. 388 [**Ark. Code Ann. § 5-64-411**] Arkansas Code Annotated § 5-64-411 provides for a sentencing enhancement for certain drug crimes committed in proximity to certain facilities. The circuit court erred in concluding that the sentencing enhancement did not require proof of a culpable mental state. (Cox, J.; CR-17-705; 9-5-18; Gruber, R.)

Kirkland v. State, 2018 Ark. App. 396 [**double jeopardy**] Because the State did not act with the purpose of provoking appellant into requesting a mistrial, double-jeopardy principles do not prevent the retrial of appellant's case. (Taylor, J.; CR-17-772; 9-5-18; Hixson, K.)

Anderson v. State, 2018 Ark. App. 389 [**sentencing**] Pursuant to Ark. Code Ann. § 5-4-301 (a)(2)(A)-(B) (Repl. 2006), a circuit court may suspend a portion of a habitual-offender's sentence when it also imposes a term of imprisonment. (Cox, J.; CR-17-926; 9-5-18; Abramson, R.)

Shabazz v. State, 2018 Ark. App. 399 [**right to counsel**] Because there was an insufficient investigation into whether appellant's willingness to proceed without the assistance of counsel

was knowingly or intelligently asserted, and because the trial court's questioning as to appellant's wish to proceed *pro se* did not meet the constitutional minimum as set forth by the supreme court, the circuit court erred when it determined that appellant waived his right to counsel. **[standard of review]** Because suppression hearings, unlike plea hearings, more closely resemble a trial, a more relaxed or less formal inquiry as to whether the defendant has knowingly and intelligently waived his right to counsel is not sufficient. Therefore, the more heightened *Faretta* standard of review governing trials should control. **[harmless error]** The denial of counsel at a suppression hearing is a structural defect in the proceeding that requires an absolute reversal of the conviction and the harmless-error analysis does not apply. (Cooper, T.; CR-17-659; 9-5-18; Whiteaker, P.)

Hall v. State, 2018 Ark. App. 411 **[Ark. R. Crim. P. 32.2]** Rule 32.2 of the Arkansas Rules of Criminal Procedure requires the court to advise the jury of the nature of the crime. Thus, the circuit court did not violate appellant's right to a bifurcated trial when it included the word "feloniously" in its description of the charges read during *voir dire*. Additionally, any possible prejudice that could have resulted from the court informing the jury of the allegations in the case, was cured by the cautionary statement given to the jury by the court. (Hearnberger, M.; CR-17-952; 9-12-18; Vaught, L.)

Thrower v. State, 2018 Ark. 256 **[insufficient record]** The appellate record, which did not include numerous bench conferences, discussions and rulings regarding jury instructions, and two notes from the jury, was insufficient for purposes of appellate review. (Carroll, R.; CR-16-949; 9-13-18; Wood, R.)

Johnson v. State, 2018 Ark. App. 429 **[independent-source doctrine]** There is a two-part test to determine whether the inclusion of illegally obtained information in an affidavit precludes the application of the independent-source doctrine. First, the appellate court examines the search warrant by excising the offending information from the probable-cause affidavit and determines whether the affidavit nevertheless supports the issuance of a search warrant; second, the appellate court examines the motivation of the officer or officers who obtained the warrant and determines whether the motivation to obtain the warrant came as a result of discovering the tainted information. (Clawson, C.; CR-17-887; 9-19-18; Murphy, M.)

Wallace v. State, 2018 Ark. App. 451 **[jury instructions]** The jury instruction that was given by the trial court that: (1) included a modified version of AMI Crim. 2d 203-A; (2) outlined the law concerning a defendant's consciousness of guilt under Ark. R. Evid. 404 (b); (3) cautioned the jury that although certain evidence was offered as consciousness of guilt, such evidence may not be used as a substitute for proof of guilt; and (4) explained that contemplation of suicide creates no presumption of guilt, was a correct statement of the law and was properly given. (Johnson, L.; CR-17-1014; 9-26-18; Hixson, K.)

Dolson v. State, 2018 Ark. App. 440 [404 (b)] Evidence of squalid living conditions in which a rape defendant kept his child victims is admissible under Rule 404(b) because such evidence demonstrates a pattern of intentional neglect of the children's well-being. (Pearson, W.; CR-18-7; 9-26-18; Gladwin, R.)

Ward v. State, 2018 Ark. 270 [IFP] Appellant submitted a motion to proceed in forma pauperis along with a complaint to the Pulaski County Circuit Clerk. The circuit court denied the motion and appellant did not pay a filing fee. Thereafter, appellees requested that appellant's "case" be dismissed. The court granted the motion and entered an order finding that the cause of action was dismissed with prejudice for failure to prosecute. The order also noted that the dismissal was an adjudication on the merits. The payment of a filing fee, or waiver of that fee pursuant to Rule 72 of the Arkansas Rules of Civil Procedure, is required before a civil action will be filed. Because the circuit court declined to find appellant indigent, and because appellant never paid a filing fee to the circuit clerk, the complaint was never filed, and no action was commenced. Thus, appellant's case was never "filed;" therefore, the circuit court never acquired jurisdiction and the circuit court's order of dismissal should be vacated. (Fox, T.; CV-17-901; 9-27-18; Hart, J.)

CIVIL

Durham v. Mccone, 2018 Ark. App. 392 [**Boundary by Acquiescence**] A boundary by acquiescence may be represented by monuments tacitly accepted as visible evidence of a dividing line. A tank in the ground or a utility pole, the items that formed the boundary line between the properties in this case, could be used as monuments. Here, the monuments were identifiable, and all property owners prior to Ginger's sole ownership agreed that the sewer system and the utility pole formed the boundary line between the two properties. Furthermore, there is no requirement of adverse usage to the boundary in order to establish a boundary by acquiescence. In the present case, with the exception of Ginger, the present and prior property owners who testified stated that the sewer system and the utility pole were understood to form the boundary line between the properties. (Porch, S.; CV-17-907; 9-5-18; Glover, D.)

Roberts v. Holiday Island Improvement Dist., 2018 Ark. App. 394 [**suburban improvement district**] The timeshare owners were property owners as contemplated by Arkansas Code Annotated section 14-92-201(3) and therefore were entitled to receive individual notice of upcoming elections for commissioners or to receive individual ballots to vote in the election. The requirements that an owner be current in his or her assessments in order to be nominated for commissioner or to receive a ballot were not enforceable. (Jackson, S.; CV-17-966; 9-5-18; Whiteaker, P.)

Hickory Heights Health v. Cook, 2018 Ark. App. 409 [**arbitration**] The parties to the arbitration agreement are recited to be the facility, and “The Resident and/or Responsible Party.” Because there is no clear indication anywhere in this agreement to demonstrate whether Ethel was signing in an individual capacity or in a representative capacity, there is ambiguity in the agreement that must be construed against the drafter of the agreement. The trial court’s refusal to compel arbitration is affirmed. (Fox, T.; CV-17-1022; 9-12-18; Klappenbach, M.)

Burnham v. Price, 2018 Ark. App. 410 [**nonsuit/new action**] Following a nonsuit, a new case number was not assigned to Burnham’s second petition. The filing of a new petition under the previous case number rather than opening a new case as Rule 3 of the Rules of Civil Procedure require prevents the trial court from exercising jurisdiction over the new petition. (Sutterfield, D.; CV-17-1086; 9-12-18; Glover, D.)

Davis Nursing Home v. Neal., 2018 Ark. App. 413 [**charitable immunity**] Neal has a right to have issues of fact related to charitable immunity decided by a jury. Based on article 2, section 7 of the constitution and caselaw, the circuit court’s decision to hold a jury trial on Davis’s entitlement to charitable immunity is affirmed. [**proffered instructions**] In deciding whether the circuit court abused its discretion, there are two important considerations. First, in declining to give the proffered instructions, the circuit court mentioned that the rejected instructions could be incorporated into Davis’s closing argument. Additionally, it appears that Davis merely cherry-picked language from appellate caselaw on charitable immunity that supported its argument. Although each proffered instruction is based on some evidence presented at trial and gleaned from our caselaw, the usage of these proffered instructions is problematic because they serve to emphasize some *Masterson* factors to the exclusion of others. Moreover, the proffered instructions arise out of prior applications of the *Masterson* factors to particular facts. A charitable-immunity determination is based on “the totality of the relevant facts and circumstances,” thus these instructions are not particularly helpful in evaluating the facts of this case. [**substantial evidence**] Substantial evidence supports the jury’s verdict. In reaching this conclusion, John Langham’s testimony that Davis’s gross revenue places it in the middle of all Arkansas nursing homes in terms of profitability is persuasive. It is also significant that Davis receives minimal cash donations. Finally, the most compelling evidence is based on the free-care factor. There is ample evidence that Davis admits patients with the presumption that they will pay. Furthermore, the amount of free care— which is only unreimbursed care—provided by Davis is minimal in comparison to Davis’s overall revenue. (Dennis, J.; CV-17-327; 9-19-18; Gruber, J.)

First Government Lease Co. v. Northwest Scott County Volunteer Fire Dept., 2018 Ark. App. 419 [**continuance**] The circuit court did not abuse its discretion by refusing to grant a continuance. Whether a motion for continuance should be granted lies within the discretion of the circuit court, and its decision in this regard will not be overturned unless the circuit court

abused that discretion by acting arbitrarily or capriciously. The circuit court should consider an attorney's conflicts that cause delays in preparing and presenting a case for trial; however, an attorney's trial-schedule conflicts and convenience must be subject to the convenience of the circuit court in setting its trial or hearing docket. Having reviewed the procedural history of this case, the circuit court's strict adherence to its scheduling order was not an abuse of discretion and the judgment is affirmed. **[punitive damages]** In determining whether the punitive-damages award was excessive under state law, does the award shocks the conscience of the court. Given the evidence including appellants' direct violation of the circuit court's order to cease and desist any repossession efforts and that repossession of VFD's fire trucks left portions of the county vulnerable, the punitive-damages award was not excessive under state law. The award did not violate federal due process based on the same facts and behavior of appellants as proved by VFD. Further, the punitive-damages award does not exceed a single-digit ratio between compensatory and punitive damages. **[new trial motion]** The circuit court did not exercise its discretion thoughtlessly and without due consideration. The circuit court's order explicitly found that appellants' failure to appear is not encompassed under Rule 59(a)(3), which provides that a new trial may be granted for an accident or surprise that ordinary prudence could not have prevented. Ordinary prudence could have easily prevented appellants' failure to appear at the scheduled trial. Further, appellants' absence at trial was not the only limitation they faced because appellants' failure to follow the circuit court's scheduling orders throughout the case had hindered their ability to present evidence and witnesses at trial. **[strike counterclaim]** The circuit court's conclusion that appellants would not be allowed to bring any claim against appellee was not an abuse of discretion. The circuit court, being intimately familiar with the case, ruled that there was no difference between Graver and FG. Accordingly, having failed to participate in discovery under the scheduling orders, appellants were properly precluded from bringing their claims after the applicable deadlines had passed. (McCormick, D.; CV-17-658; 9-19-18; Gladwin, R.)

Smith v. DHS, 2018 Ark. App. 438 **[child maltreatment registry]** Name's entry on registry supported by substantial evidence of abuse. (Fox, T.; CV-17-647; 9-26-18; Virden, B.)

Martin v. Smith, 2018 Ark. App. 452 **[quasi-judicial immunity]** A court-appointed physician is entitled to judicial immunity so long as he was serving an integral part of the judicial process by carrying out and acting within the scope of a court's order. Here, it is clear that Dr. Smith was doing so. The records indicate that Dr. Smith had been treating and monitoring McFadden and keeping the circuit court apprised of McFadden's condition and compliance. (Pierce, M.; CV-17-878; 9-26-18; Hixson, K.)

Ward v. State, 2018 Ark. 270 **[IFP]** Appellant submitted a motion to proceed in forma pauperis along with a complaint to the Pulaski County Circuit Clerk. The circuit court denied the motion and appellant did not pay a filing fee. Thereafter, appellees requested that appellant's "case" be dismissed. The court granted the motion and entered an order finding that the cause of action

was dismissed with prejudice for failure to prosecute. The order also noted that the dismissal was an adjudication on the merits. The payment of a filing fee, or waiver of that fee pursuant to Rule 72 of the Arkansas Rules of Civil Procedure, is required before a civil action will be filed. Because the circuit court declined to find appellant indigent, and because appellant never paid a filing fee to the circuit clerk, the complaint was never filed and no action was commenced. Thus, appellant's case was never "filed;" therefore, the circuit court never acquired jurisdiction and the circuit court's order of dismissal should be vacated. (Fox, T.; CV-17-901; 9-27-18; Hart, J.)

DOMESTIC RELATIONS

Hudson v. Hudson, 2018 Ark. App. 379 [**attorney's fee award in child support case**] A trial court has the inherent power to award attorney's fees in domestic-relations proceedings. Furthermore, an analysis of the *Chrisco* factors is no longer required in domestic-relations cases, when considering an award of attorney's fees, because the trial court in a domestic-relations case is in a better position to assess the applicable case factors to determine the reasonableness of attorney's fees. The circuit court in this case had entered the divorce decree, presided over the hearings to determine the appropriate amount of child support, reviewed the parties' pleadings and briefs, considered the evidence and arguments, and specifically found in its order awarding fees that the amount requested was justified and proper based on the amount of preparation, court time, and the experience level of Appellee's attorney. Therefore, the appellate court found no error in the trial court's award of attorney's fees. (Herzfeld, R.; CV-17-1007; 8-29-18; Gruber, R.)

Webster v. Jones, 2018 Ark. App. 406 [**visitation modification and travel cost assessment**] The appellate court found error in the circuit court's visitation award. The appellate court found that the order allows too much instability in the children's lives and that the record does not demonstrate the degree of economic disparity to justify the assignment of all travel costs to the custodial parent. The matter was remanded for the circuit court to devise a visitation arrangement in accordance with the children's best interest. (Scott, J.; CV-17-1075; 9-12-18; Harrison, B.)

Buskirk v. Buskirk, 2018 Ark. App. 417 [**modification of custody**] Because the circuit court found numerous facts to support its decision that there were material changes in circumstances warranting changes in custody, the circuit court correctly proceeded with its analysis of determining who should have custody which focusing on the child's best interest. After observing every aspect of the parties and the witnesses, the circuit court weighed the evidence according to its observations. Therefore, the appellate court found no error in the court's reinstatement of primary custody to Appellant. (Taylor, J.; CV-17-1001; 9-19-18; Abramson, R.)

Goodson v. Bennett, 2018 Ark. App. 444 [**waiving personal jurisdiction by seeking affirmative relief; denial of visitation grounds; denial of continuance; unequal division of marital debt; temporary alimony award does not require need and ability to pay analysis; attorney's fees; imposing reasonable limits on cross examination; denial of motion to reopen record**] Appellant failed to raise any error warranting reversal. First, the appellate court found that Appellant waived his challenge to the circuit court's personal jurisdiction over him

because he sought affirmative relief. Second, the appellate court affirmed the denial of visitation based on the earlier findings of domestic abuse and the additional evidence presented that visitation was not in the child's best interest. Third, the appellate court found no error in the circuit court's denial of a continuance because Appellant failed to prove an abuse of discretion and failed to show prejudice that amounts to a denial of justice. Fourth, the appellate court found that there was no error in the equitable division of the property. Appellant is mistaken that an equal division of debts must occur. Fifth, although the circuit court did not analyze the need of Appellee and the Appellant's ability to pay, the appellate court affirmed the circuit court's award of alimony. An award of temporary alimony need not be supported by an analysis of the needs of the payee spouse or the payor's ability to pay if other considerations make alimony necessary to achieve an equitable result. The appellate court viewed the circuit court's award of spousal support as an award of temporary alimony so it was affirmed. Sixth, because the circuit court has inherent authority to grant attorney's fees in domestic-relation cases, and because Ark. Rule of Civil Pro. 54(e)(2) authorizes a court to modify its procedure for requesting attorney's fees, the appellate court found no error. Seventh, because an evidentiary error must be prejudicial to justify reversal, and since a court has wide latitude to impose reasonable limits on cross-examination, the appellate court found no error in the circuit court imposing a five-year limitation on questions regarding allegations of sexual abuse. Eighth, the appellate court found no error in the circuit court denying Appellant's motion to reopen the record with new evidence. Relevant evidence may be excluded if its probative value is outweighed by the danger of needless presentation of cumulative evidence, and the appellate court found it clear that the circuit court would have not given much weight to the proposed testimony, as the circuit court placed absolutely no value in the witness's prior testimony. (Pierce, M.; CV-17-529; 9-26-18; Glover, D.)

Colston v. Williams, 2018 Ark. App. 455 [**relocation of primary custodian; *Hollandsworth* presumption rebutted**] The appellate court found no error in the circuit court's ruling that Appellee rebutted the presumption in favor of relocation by demonstrating the move would not be in the child's best interest. The circuit court properly considered all *Hollandsworth* factors that a court must consider when determining to grant a petition to relocate: (1) the reason for relocating; (2) the educational, health, and leisure opportunities available in the new location; (3) the effect of the move on the visitation and communication schedule of the noncustodial parent; (4) the effect of the move on extended family relationships in Arkansas and the new location; and (5) the child's preference, considering the age, maturity, and reasons given for the preference. Even when these factors are considered, the polestar interest remains whether it has been established by a preponderance of the evidence that a proposed relocation would serve the child's best interest. While a presumption exists in favor of relocation for custodial parents, the noncustodial parent can rebut the presumption. (Bryan, E.; CV-18-261; 9-26-18; Murphy, M.)

PROBATE

Trask v. Trask, 2018 Ark. App. 400 [**estate property in possession of third party**] If an interested person alleges that property owned by the decedent is in the possession of a third party, Arkansas Code Ann. 28-49-103 authorizes a probate court to have the person appear and be examined regarding the property in his or her possession. Any person failing to appear when

ordered or refusing to answer proper questions should be adjudged guilty of contempt of court and punished accordingly. However, when ownership is disputed, the statute does not empower a circuit court to adjudicate the right of possession. Because ownership was disputed in this matter, the appellate court found no error in the circuit court failing to order delivery of certain property. (Herzfeld, R.; CV-17-1053; 9-12-18; Gruber, R.)

Roberson v. Roberson, 2018 Ark. App. 423 [**construction of a trust**] Appellants sought an order funding an irrevocable credit shelter trust (CST) under the terms of the Roberson Living Trust (the Trust) and requested that the court declare the first amendment to the Trust invalid. A court construing a trust applies the same rules applicable to the construction of a will, and the paramount principle in the interpretation of wills is that the intention of the testator governs. The settlor's intention is to be determined from viewing the four corners of the instrument. The appellate court found that the four corners of the Trust demonstrate that the Trust settlors intended for their survivor to establish and fund an irrevocable CST when one of them died. Their intent at the time the Trust was executed must control. Moreover, the mandatory terms of the Trust left the survivor no option against funding the CST or amending its "irrevocable and unamendable" plan of distribution. The matter was remanded for further proceedings consistent with the foregoing. (Webb, G.; CV-17-384; 9-19-18; Whiteaker, P.)

JUVENILE

Corley v. Ark. Dep't of Human Servs., 2018 Ark. App. 397 [**TPR—sufficiency of the evidence**] The trial court did not clearly err in terminating parents' rights where evidence at termination hearing demonstrated that both parents tested positive for methamphetamine at the time the children were removed and again a week before the termination hearing. The appellate court agreed, finding clear and convincing evidence in support of termination and that termination was in the children's best interest. (Williams, L.; JV-16-380; September 5, 2018; Murphy, M.)

Fraser v. Ark. Dep't of Human Servs., 2018 Ark. App. 395 [**TPR—incarceration for substantial period of child's life**] Termination of incarcerated father's rights was not clearly erroneous where there was ample evidence that the father was sentenced to prison for twenty years, had numerous recent disciplinary violations while incarcerated, had no contact with the child for years, and had no bond with the child. (Ryan, J.; JV-15-32; September 5, 2018; Vaught, L.)

Kantor v. Ark. Dep't of Human Servs., 2018 Ark. App. 402 [**Guardianship extending past age 18 arising from juvenile case**] Case began as a dependency-neglect case involving a teenager, Rebecca, who was disabled and low-functioning. After Rebecca reached the age of eighteen, the department petitioned the court, requesting that Rebecca's father be appointed her guardian. The court appointed the father guardian, and Rebecca's mother appealed. First, the mother argued that the guardianship order should be reversed because the juvenile court lost jurisdiction when Rebecca turned eighteen and did not request that the court continue jurisdiction. The appellate court held that while the court may not have been in compliance with Ark. Code Ann. § 9-27-306 concerning continuing jurisdiction past the age of eighteen, the error was merely procedural and was not jurisdictional. Next, the mother argued that the guardian was not properly appointed

because the treatment plan that was introduced in support of the petition was not a sworn statement or medical evaluation as is required by Ark. Code Ann. § 28-65-211 and -212. On this point, the appellate court agreed and remanded the case to be transferred to the probate division of the circuit court for further proceedings, noting that on Rebecca's twenty-first birthday, the juvenile division would lose jurisdiction. (Keaton, E.; JV-14-280; September 12, 2018; Virden, B.)

Rivera v. Ark. Dep't of Human Servs., 2018 Ark. App. 405 [**TPR—subsequent factors**] Termination of mother's rights was not clearly erroneous after she failed to comply with the court's orders for more than nineteen months. The court found that the mother's noncompliance with the case plan demonstrated her general unfitness and that, in contrast to the cases that the mother cited on appeal where the parent had a slight lapse in judgment, in Rivera's case the evidence was clear and convincing that she continually failed to comply with court orders by failing to establish a stable home, failing to maintain income, and continuing to use illegal drugs. Failure to comply with the case plan and court orders constituted factors that arose subsequent to the filing of the original petition. (Wilson, R.; JV-16-66; September 12, 2018; Gladwin, R.)

Foster v. Ark. Dep't of Human Servs., 2018 Ark. App. 418 [**TPR—termination of mother's rights proper even though child would remain in permanent custody of father**] The mother did not challenge grounds for termination of her rights, rather she argued that termination was not warranted where the child remained in the permanent custody of the father and termination was not necessary to achieve permanency. The court affirmed termination, finding that due to the mother's inappropriate behavior, instability, lack of bond with the child, and lack of significant and measurable progress during the case, the finding that it was in the child's best interest that rights be terminated was not clearly erroneous. (Hendricks, A.; JV-15-581; September 19, 2018; Abramson, R.)

Gonzalez v. Ark. Dep't of Human Servs., 2018 Ark. App. 425 [**TPR—subsequent factors**] Failure to comply with case plan and court orders constituted subsequent factors as grounds for termination. Mother had been ordered throughout the case to maintain employment, obtain and maintain a stable home, and obtain appropriate transportation, among other things, but she accomplished none of these items until the month before the termination hearing. The mother's last-minute attempts were insufficient and her lack of stability was concerning, thus the order terminating her rights was not clearly erroneous. (Wilson, R.; JV-16-27; September 19, 2018; Whiteaker; P.)

Harris v. Ark. Dep't of Human Servs., 2018 Ark. App. 421 [**TPR—ADA accommodations for parent**] Disabled father whose rights were terminated argued that the department failed to provide reasonable accommodations under the Americans with Disabilities Act. The department provided GIFT (Guided Interaction Family Therapy) specialized services that catered to the father's disability but the father argued that he needed further accommodations, though he did not specify a particular service until the appeal, when he argued he needed an auxiliary parent aid and occupational therapy. The appellate court found no clear error in the trial court's finding that the department provided reasonable efforts, including services to address the father's disability. Moreover, the father's failure to resolve his illegal drug issues was grounds for termination. (Warren, J.; JV-16-845; September 19, 2018; Harrison, J.)

Hilburn v. Ark. Dep't of Human Servs., 2018 Ark. App. 420 [**Adjudication—infant born without drugs in system still DN**] The mother argued that the trial court erred in adjudicating her newborn dependent neglected, where the mother had a history of drug use and dealings with DHS but this infant was born drug-free. The appellate court affirmed adjudication, finding that where the mother had a long history of drug use, had her rights terminated to two children, had five other children in foster care, and was not compliant with her case plan and had not resolved her drug problem, the evidence was sufficient for dependency-neglect based on parental unfitness. There is no proof of actual harm required, rather a substantial risk of serious harm, which was demonstrated by these facts. (Zimmerman, S.; JV-17-976; September 19, 2018; Gladwin, R.)

James v. Ark. Dep't of Human Servs., 2018 Ark. App. 445 [**TPR—sufficiency of the evidence**] Termination order was entered after mother failed to remedy the circumstances that brought the child into care and failed to comply with the court's orders throughout the case. The mother's failure to maintain regular contact with DHS, failure to submit to all required drug tests, and failure to resolve her substance abuse issues equaled factors that arose subsequent to the filing of the dependency-neglect petition. Finding no clear error, the appellate court affirmed the termination order. (Zimmerman, S.; JV-16-637; September 26, 2018; Glover, D.)

Randof v. State, 2018 Ar. App. 441 [**Transfer denied**] Seventeen-year-old was charged with manslaughter for causing the death of his nine-week-old infant. The trial court declined to transfer to juvenile court, and the appellate court affirmed because the trial court properly considered and made written findings concerning each statutory factor. Moreover, a juvenile may be tried as an adult based solely on the serious and violent nature of the offense. (Edwards, R.; CR-17-719; September 26, 2018; Klappenbach, N.)

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

Smith v. Ark. Dep't of Human Servs., 2018 Ark. App. 380 (James, P.; JV-16-1132; August 29, 2018; Abramson, R.)

Harley v. Ark. Dep't of Human Servs., 2018 Ark. App. 428 (Sullivan, T.; JV-17-4; September 19, 2018; Hixson, K.)

Murphy v. Ark. Dep't of Human Servs., 2018 Ark. App. 426 (Keaton, E.; JV-16-164; September 19, 2018; Vaught, L.)

DISTRICT COURT

Warren v. State of Arkansas, 2018 Ark. App. 408, [**Sufficiency of Evidence**] [**Criminal Procedure**] [**Preservation of Argument for Appeal**] Christopher Deshun Warren was convicted of driving on a suspended license in the District Court of Lonoke County, Ward Department. The conviction was appealed to the Circuit Court of Lonoke County. During the

circuit court bench trial, a certified copy of Warren's driving record reflecting the suspension was admitted without objection. Warren's defense was that he was not the driver of the vehicle. An eye witness and a law enforcement officer testified that Warren was the driver of the vehicle; a defense witness testified that she was the driver of the vehicle as opposed to Warren. At the conclusion of the State's case, Warren moved to dismiss stating that "the State hasn't provided enough information to the Court to reach such a conclusion without resorting to speculation or conjecture." At the close of all the evidence, Warren renewed his motion and incorporated his previous argument. Although Warren made his motions to dismiss at the appropriate times, Ark. R. Crim. P. 33.1 (c) requires a motion for dismissal "based on insufficiency of the evidence to specify the respect in which the evidence was deficient." Warren's motion was nonspecific; therefore, he failed to preserve his argument regarding the identity of the driver for appeal. Additionally, a dismissal argument made in a closing argument does not preserve the issue of sufficiency, even in a bench trial. (Elmore, B.; 43CR-17-272; 9-12-18; Klappenbach, N. Mark)