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CRIMINAL

Cagle v. State, 2019 Ark. App. 69 [**motion to suppress**] The lack of insurance information in the Vehicle Insurance Database was sufficient to provide the law enforcement official with probable cause to believe that a traffic violation had occurred. Thus, the initial stop of appellant's vehicle was valid and the circuit court's denial of appellant's motion to suppress was proper. (Tabor, S.; CR-18-386; 2-6-19; Whiteaker, P.)

Worsham v. State, 2019 Ark. App. 65 [**Ark. Code Ann. § 5-14-110; First Amendment**]
Appellant was eighteen years old at the time that he was charged with the offense of sexual indecency with a child pursuant to Ark. Code Ann. § 5-14-110 (a)(1). The State alleged that appellant and his then fourteen-year-old girlfriend sent text messages and social media posts to one another in which appellant solicited sex with his girlfriend. Appellant filed a pretrial motion to dismiss the charge, alleging that Ark. Code Ann. § 5-14-110(a)(1), as applied, was unconstitutional in that it punished speech about lawful activity—specifically that it criminalized appellant's expression in words of his desire to have sex with his girlfriend, which was a legal act under Arkansas law. The Arkansas Court of Appeals concluded that Ark. Code Ann. § 5-14-110(a)(1), as applied to appellant, was overbroad and impermissibly infringed on and burdened appellant's fundamental right to freedom of expression under the First Amendment to the United

States Constitution and article 2, section 6 of the Arkansas Constitution. (Pearson, B.; CR-18-613; 2-6-19; Gladwin, R.)

Robertson v. State, 2019 Ark. App. 73 [**speedy trial; Ark. R. Crim. P. 28.3(b)**] Arkansas Rule of Criminal Procedure 28.3(b) provides that in the event of docket congestion, a period of delay resulting from a continuance may be excluded for speedy trial purposes but only when, at the time the continuance is granted, a written order is entered wherein the court (1) explains with particularity the reasons the trial docket does not permit trial on the date originally scheduled; (2) determines that the delay will not prejudice the defendant; and (3) schedules the trial on the next available date permitted by the trial docket. Because the order continuing appellant's trial failed to satisfy the requirements of Ark. R. Crim. P. 28.3(b), it was insufficient to toll the running of time for speedy-trial calculations. (Hearnberger, M.; CR-18-669; 2-6-19; Murphy, M.)

Patton v. State, 2019 Ark. App. 63 [**Sixth Amendment right to counsel**] Although appellant did not voluntarily and intelligently waive his right to counsel, he forfeited that right through his actions. Appellant was free on bond during the relevant time-period. He had won the lottery, taking home \$680,000 during the pendency of the case. Further, appellant established on the record that he did not want to hire a lawyer because he could not justify spending the money. By refusing to hire counsel despite abundant means and opportunity to do so, appellant frustrated the orderly administration of justice. Thus, the circuit court did not abuse its discretion in determining that appellant preferred not to hire a lawyer. Accordingly, the circuit court's ruling that appellant forfeited his right to counsel by refusing to hire counsel for his defense was not an abuse of discretion. (Pope, S.; CR-18-224; 2-6-19; Gladwin, R.)

Sitzmann v. State, 2019 Ark. App. 78 [**hearsay; business-record exception**] The mere fact that a document is retained in a business's files does not supply the required foundation for admission pursuant to Ark. R. Evid. 803(6). To be admissible under the business-record exception, the offering party must meet seven requirements. Specifically, the evidence must be: (1) a record or other compilation (2) of acts or events (3) made at or near the time the act or event occurred (4) by a person with knowledge, or from information transmitted by a person with knowledge (5) kept in the course of a regularly conducted business (6) that has a regular practice of recording such information (7) as shown by the testimony of the custodian or other qualified witness. (Sims, B.; CR-18-480; 2-13-19; Abramson, R.)

Shreck v. State, 2019 Ark. App. 85 [**Rule 37**] When a circuit court concludes, without a hearing, that a petitioner is not entitled to post-conviction relief from a criminal conviction, Rule 37.3(a) of the Arkansas Rules of Criminal Procedure requires the circuit court to make written findings, specifying the parts of the record that form the basis of the circuit court's decision, and if the circuit court fails to make such findings, it is reversible error. The only exception to the foregoing rule is if the record on appeal conclusively shows that the petition is without merit.

Because the record did not “conclusively show” that appellant was not entitled to any relief from his convictions, the circuit court committed reversible error when it denied appellant’s Rule 37 petition without holding an evidentiary hearing or making findings of fact and conclusions of law as required by Ark R. Crim. 37.3. (Clawson, C.; CR-18-600; 2-13-19; Gladwin, R.)

Wilson v. State, 2019 Ark. App. 116 [**First Offenders’ Act**] If a person is found guilty or pleads guilty to one of the offenses listed in Ark. Code Ann. § 16-93-303(a)(B)(i-v), the circuit court lacks authority to impose a sentence pursuant to the First Offender Act found at Ark. Code Ann. § 16-93-303. (Alexander, T.; CR-18-652; 2-20-19; Glover, D.)

Huskey v. State, 2019 Ark. App. 113 [**hearsay; excited-utterance exception**] Arkansas Rule of Evidence 803(2) provides that an “excited utterance” is a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. Factors to consider are the lapse of time, the age of the declarant, the physical and mental condition of the declarant, the characteristics of the event, and the subject matter of the statement. For the exception to apply, there must be an event that excites the declarant. It must appear that the declarant’s condition at the time was such that the statement was spontaneous, excited, or impulsive rather than the product of reflection and deliberation. The statements must be uttered during the period of excitement and must express the declarant’s reaction to the event. It is for the circuit court to determine whether the statement was made under the stress of excitement. The relevant inquiry is whether the statement was made under the stress of excitement or was made after the declarant had calmed down and had an opportunity to reflect. Admissibility is not to be measured by any precise number of minutes, hours, or days but requires that the declarant is still under the stress and excitement caused by the event. In appellant’s case, the trial court did not abuse its discretion when pursuant to the excited-utterance exception to the hearsay rule, it permitted a witness to testify that the victim identified appellant as his assailant. The statement was made by the victim to the witness minutes after the victim had been severely beaten, while he was upset, crying, and lying on the ground bleeding following the attack. (Pope, S.; CR-18-801; 2-20-19; Klappenbach, M.)

Wingfield v. State, 2019 Ark. App. 111 [**leading witnesses**] If it appears necessary to elicit the truth from a child witness, the circuit court may allow leading questions. Leading the witness is allowed in these circumstances because of: (1) the seriousness of the crime, (2) the natural embarrassment of the witness about the incident, (3) the child’s fear of being in a courtroom full of people, (4) the necessity of testimony from a victim, (5) threats toward victims from those perpetrators, and (6) to avoid the possibility that an accused might escape punishment for a serious offense merely because of the victim’s reluctance to testify. When reviewing the decision to allow the prosecution to lead a witness, the youth, ignorance, and timidity of a witness are important factors that mitigate against a finding of an abuse of discretion. In appellant’s case, the trial court did not abuse its discretion when it permitted the prosecution to lead the child

victim during her testimony based upon the child's age, the nature of the questions asked, the reluctance of the witness, and her refusal to look at the appellant during the questioning. (Wright, R.; CR-18-563; 2-20-19; Harrison, B.)

Pitts v. State, 2019 Ark. App. 107 [**motion to suppress; *Miranda* warnings**] There is no constitutional requirement that a suspect be warned of his or her *Miranda* rights each time the suspect is questioned. There is likewise no mechanical formula for measuring the longest permissible interval between the last warning and the confession. *Miranda* warnings need only be repeated when the circumstances have changed so seriously that the accused's answers are no longer voluntary, or the accused is no longer making a knowing and intelligent relinquishment or abandonment of his or her rights. At the time of his arrest, appellant was advised of his *Miranda* rights. Five days later, while in jail and without being re-*Mirandized*, appellant made statements to his parole officer. Because appellant did not assert that the *Miranda* warnings that he received at the time of his arrest were insufficient to advise him of his rights, the trial court did not abuse its discretion when it denied appellant's motion to suppress and admitted his custodial statements. (Hearnsberger, M.; CR-18-424; 2-20-19; Virden, B.)

Lunsford v. State, 2019 Ark. App. 140 [**expungement**] The Court of Appeals declined appellant's request to revisit its ruling in *Smith v. State*, 2011 Ark. App. 439. Thereby, affirming its position that the felon-in-possession statute, as applied to appellant, is an exception to the general provisions found in Ark. Code Ann. § 16-90-902 (a), which restore an individual's privileges and rights upon receiving an expungement. Thus, the expungement of appellant's felony conviction did not restore his right to possess a firearm. (Piazza, C.; CR-18-447; 2-27-19; Murphy, M.)

Walker v. State, 2019 Ark. App. 130 [**Ark. R. Evid. 608**] Rule 608 (a) of the Arkansas Rules of Evidence provides that: "the credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise." In appellant's case, the trial court abused its discretion when it refused to permit the victim's mother, brother, and aunt to offer opinion testimony regarding the victim's character for untruthfulness pursuant to Ark. R. Evid. 608 (a). Specifically, the trial court incorrectly concluded that Rule 608 required each witness to demonstrate that they were a member of the community and were familiar with the victim's reputation in the community before giving an opinion concerning a victim's character for untruthfulness. (Jones, C.; CR-18-614; 2-27-19; Gladwin, R.)

CIVIL

Noel v. Cox, 2019 Ark. App. 70 [**negligence/summary judgment**] A question of fact exists as to whether the POA assumed a duty by agreement. Without question, the POA recognized the danger associated with the retaining wall and had discussed building some sort of barrier. However, it never actually attempted to do so, and the accident occurred before any corrective action was taken by the POA. There was also evidence that Boettger had agreed to plant additional azaleas to prevent persons from walking over to the edge of the wall. By doing so, did Boettger relieve the POA of its duty to do more? These are questions of fact that have not been adequately answered. (Williams, L.; CV-18-592; 2-6-19; Whiteaker, P.)

Conley v. Boll Weevil Pawn Co., 2019 Ark. 31 [**class action/findings**] The circuit court is required to enter specific findings of fact and conclusions of law in denying class certification. Findings are not just necessary when granting class certification. (Fox, T.; CV-17-678; 2-7-19; Hart, J.)

Cruz v. State, 2019 Ark. App. 91 [**service/inmate**] Rule 12(a)(1) is clear and unambiguous that a defendant who is incarcerated has sixty days after service to answer. It matters not that Cruz was personally served; it only matters that he was incarcerated when he was served. To hold otherwise would inject a level of uncertainty into the rule when one begins to look at the circumstances under which an incarcerated defendant is served, rather than simply looking at the fact the defendant is incarcerated, as is clearly stated in Rule 12. It was error for the circuit court to enter the forfeiture order prior to the expiration of Cruz's time to answer. (Morledge, C.; CV-18-574; 2-13-19; Glover, D.)

Hope Medical Park Hospital v. Varner, 2019 Ark. App. 82 [**negligence/obvious danger**] Hope argues that it was entitled to judgment as a matter of law because it owed Carrie no duty to warn her of a known danger. Carrie had been an employee of the hospital for fifteen years and had walked across the median with its tree roots sticking up many times, including fifteen minutes before she fell and was injured. Carrie testified that she saw the tree roots on the day of her fall, even though there were shadows cast by the tree. Carrie's testimony showed that she was not distracted and was not in a hurry, and she said that she thought she could avoid tripping over the tree roots if she was being careful and paying attention. Her testimony shows that she appreciated the danger of the situation. A dangerous condition is "obvious" when "both the condition and the risk are apparent to and would be recognized by a reasonable man, in the position of the visitor, exercising ordinary perception, intelligence, and judgment." "Known" has been defined as "not only knowledge of the existence of the condition or activity itself, but also appreciation of the danger it involves." Because the danger was both known and obvious, according to Carrie's own testimony, the hospital did not owe a duty to warn her of the tree roots in her path. (Culpepper, D.; CV-18-589; 2-13-19; Virden, B.)

Milde v. Graves and Associates, Inc., 2019 Ark. App. 99 [**negligence/duty contractor**] Bennett argues that Graves assumed a duty of care to employees of its subcontractors in the contract it had with the ADT. That contract incorporated standard specifications for highway construction and contained provisions that imposed duties on Graves to “comply with applicable Federal, State, and local laws governing safety” and to “provide safeguards . . . and take any other action necessary to protect the life and health of employees on the project and the safety of the public . . . in connection with the performance of the work covered by the Contract.” Graves was required to “keep fully informed of all Federal and State laws, local laws, ordinances, and regulations” and “at all times observe and comply with all such laws, ordinances, regulations, quarantines, orders, and decrees.” Consistent with these duties and to facilitate fulfilling them, Graves was required to employ “a competent superintendent or supervisor” who had “full authority to direct performance of the work in accordance with the contract requirements and is in charge of all construction operations (regardless of who performs the work).” Graves was to be “responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.” Given these sweeping contractual provisions, Graves contracted to comply with safety laws, provide safeguards, and protect the health and life of employees. It also retained a right of supervision. This imposed a duty in tort on Graves. (Wyatt, R.; CV-18-13; 2-13-19; Murphy, M.)

Gen-Kal Corp. v. M. S. Wholesale Plumbing, Inc., 2019 Ark. App. 117 [**summary judgment/jurisdiction**] An answer is not necessary to vest subject-matter jurisdiction to enter summary judgment if a complaint has been properly served. The filing of a valid answer has nothing to do with jurisdiction. Defendant likewise failed to timely respond to MS Wholesale’s requests for admission, thereby admitting them. Gen-Kal and Kalsky failed to meet proof with proof; accordingly, no material question of fact remained, summary judgment was proper, and the circuit court had subject-matter jurisdiction to enter the summary judgment. (Coker, K.; CV-17-970; 2-20-19; Glover, D.)

Terra Land Services, Inc. v. McIntyre, 2019 Ark. App. 118 [**settlement agreement**] Here, it is patently clear Smith and Bell made no agreement to settle. There was never a meeting of the minds on the part of Terra as to the buyout amount. With knowledge of Smith and Bell’s wishes, on November 3, Attorney Scholl entered into a settlement agreement with Leigh to settle for \$215,000, at which time both Scholl and Leigh represented to the circuit court and to Dailey that the matter had been settled. “Under Arkansas law, an attorney has no implied authority to enter into a compromise agreement. However, when a client gives his attorney specific authority to enter into a compromise agreement, such an agreement, if entered into by the attorney, is valid and binding.” Clearly, Scholl had no actual authority to bind Terra without agreement from Smith and Bell. At least three days prior to Scholl’s entering into the agreement with Leigh, Smith was asking for more financial information from McVesting, and she told Scholl it was not

possible to make a decision without true numbers. Smith consistently refused to sign any acknowledgement of an agreement of any sort. Scholl knew at least three days prior to entering into the settlement agreement with Leigh that he had no authority to determine a buyout amount at that time. Without specific authority, Scholl could not bind Terra, and the circuit court was clearly erroneous in enforcing the settlement agreement. (Carnahan, C.; CV-18-317; 2-20-19; Glover, D.)

Amason v. City of Calion, 2019 Ark. App. 106 [**summary judgment**] The circuit court properly granted summary judgment because there are no genuine issues of material fact as to whether the wastewater project voided the surface lease. (Guthrie, D.; CV-18-618; 2-20-19; Abramson, R.)

D & T Pure Trust v. DWB, LLC, 2019 Ark. App. 122 [**res judicata/collateral estoppel**] The Crawford County Circuit Court erred by dismissing Boydston's unlawful-detainer complaint based on "the doctrine of claim preclusion and the concepts of res judicata and judicial economy." Following litigation in Pulaski County, Boydston filed a claim in the Crawford County Circuit Court for unlawful detainer of commercial property. The unlawful-detainer statute specifically prohibited Boydston from asserting his unlawful-detainer claim in Pulaski County, and the Pulaski County Circuit Court correctly determined that it did not have jurisdiction to adjudicate the claim. Accordingly, Boydston did not have a full and fair opportunity to litigate the unlawful-detainer claim in Pulaski County. Turning to issue preclusion, although it is correct that the Pulaski County Circuit Court determined the amount of unpaid rent Brown owed Boydston, it specifically found that the rent amounts were instructive and not binding on the Crawford County court. Moreover, the amount of rent owed is not the only element of an unlawful-detainer action. Because the parties did not have a full and fair opportunity to litigate all components of the unlawful-detainer action in Pulaski County, the Crawford County Circuit Court was not barred from doing so on the basis of issue preclusion. (Medlock, M.; CV-18-46; 2-20-19; Vaught, L.)

J. C. v. DHS, 2019 Ark. App. 131 [**administrative appeal**] The agency's decision is supported by substantial evidence, and the decision cannot be classified as arbitrary or capricious. (Fox, T.; CV-18-276; 2-27-19; Gladwin, R.)

Lakeside Nursing Center v. Ruffkahr, 2019 Ark. App. 142 [**arbitration**] The arbitration agreement is unenforceable due to the parties not being identifiable. (Ritchey, D.; CV-18-633; 2-27-19; Brown, W.)

Friday v. Friday, 2019 Ark. App. 129 [**proof**] The trial court did not err in finding that Joel failed in his burden of proving by a preponderance of the credible evidence the existence and value of guns he claimed were "missing" from Randy's home. The trial court's decision not to

rely on plaintiff's exhibit No. 4 was a matter involving credibility and the weight of the evidence on which this court defers to the trial court. (Capeheart, T.; CV-18-692; 2-27-19; Virden, B.)

Null v. Parole Board, 2019 Ark. 50 [**administrative appeal/parole**] Null contends that the Board failed to follow statutory guidelines and consider all the criteria in denying him, and others, parole eligibility. The record reflects that primarily the Board denied Null parole based on the "seriousness of the crime." Null contends that the Board did not follow the statutory criteria, but he provides nothing other than speculation for support. Additionally, he does not provide factual support of his claim in relation to other inmates. There is no constitutional right to parole. In addition, Null failed to plead facts sufficient that, even if taken as true, entitled him to declaratory relief. The circuit court did not abuse its discretion in finding that Null's speculative claim could not survive a motion to dismiss. (Dennis, J.; CV-17-936; 2-28-19; Wood, R.)

DOMESTIC RELATIONS

Warner v. Warner, 2019 Ark. App. 60 [**extending child support beyond age of majority**] The appellate court found no error in the circuit court awarding child support beyond the age of majority. The custodial parent seeking continued support bears the burden of proving that support should continue, and the evidence showed that the child was dependent on a parent for the foreseeable future because of her medical condition that began at age 16. Appellant argued that a court cannot reimpose a legal duty of child support once that duty has ceased pursuant to *Towery v. Towery*. However, the child in *Towery* became disabled after turning 18, and the *Towery* court was careful to note that the duty of support does not terminate if the child is disabled at the age of majority. (Herzfeld, R.; CV-18-505; 2-6-19; Abramson, R.)

Montez v. Montez, 2019 Ark. App. 61 [**modifying custody on remand; utilization of attorney ad litem from prior case discretionary**] Because the evidence showed that the parties could not communicate, the appellate court issued a mandate on the prior appeal that the circuit court make a sole-custody determination. The appellate court found that the circuit court rendered a judgment consistent with the mandate by awarding Appellee sole custody, i.e. sole decision-making responsibilities. The appellate court also found no error in the circuit court failing to obtain a second recommendation of the attorney ad litem on remand. The parties did not present any new evidence on remand, and ad litem are not mandatory. The circuit court considered all evidence concerning the best interest of the child, and the circuit court was affirmed on all matters. (Taylor, J.; CV-18-577; 2-6-19; Abramson, R.)

Goodman v. Goodman, 2019 Ark. App. 75 [**child's preference on custody; modification of visitation**] A child's preference about living with a particular parent is but one factor for the circuit court to consider, and the circuit court is in a better position to judge the credibility of the

witnesses including the minor child. Therefore, the appellate court found no error in the circuit court failing to modify custody based on the child's preference. The appellate court also found no error in the circuit court decreasing Appellant's visitation. The facts of the case show that Appellant had a practice of abusing the circuit court's visitation schedule, he speaks ill of Appellee in front of the children and encourages them to do the same, and his behavior supports the necessary material change in circumstances finding to modify visitation. (Singleton, S.; CV-17-1030; 2-6-19; Brown. W.)

John v. Bolinder, 2019 Ark. App. 96 [**attorney's fees awarded following motion for voluntary nonsuit in domestic relations case; timeliness of motion**] The circuit court has inherent power to award attorney's fees in domestic-relations proceeding. Therefore, the appellate court found that the circuit court had authority to grant attorney's fees following Appellant's motion to voluntarily nonsuit his custody motion. Furthermore, the appellate court rejected Appellant's argument that the motion for attorney's fees was untimely since it was filed before the order of nonsuit was entered. Arkansas Rule of Civil Procedure 54(e) provides that the motion for attorney's fees must be filed no later than 14 days after entry of judgment, and Appellant cited no authority for the proposition that an attorney's-fee petition cannot be filed prior the entry of the judgment. With that said, only the attorney's fees associated with the order of nonsuit were allowed, and the attorney's fee request relating to prior proceedings in the case were untimely because they were not filed within 14 days of those prior orders. (Schrantz, D.; CV-18-307; 2-13-19; Hixson, K.)

Cross v. Cross, 2019 Ark. App. 100 [**retroactive child support to date of petition; child support amount that may exceed child's actual needs**] Absent a specific finding of fraud in procuring an existing support decree, it is an abuse of discretion to impose a retroactive modification of a support order beyond the filing date of a petition to modify. Therefore, the appellate court affirmed the retroactive support award, but modified the amount to begin on the date the petition was filed rather than the first day of that month. The appellate court also affirmed the award of child support stating that they have rejected the argument that a noncustodial parent does not have to pay child support pursuant to the chart simply because that amount exceeds a child's actual needs. The evidence supported the amount awarded because there was testimony that the children had missed extracurricular activities because of a lack of funds, and one of the children needed braces. (Williams, L.; CV-18-370; 2-13-19; Murphy, M.)

Armstrong v. Draper, 2019 Ark. App. 114 [**ambiguous custody order; when to apply *Hollandsworth***] Appellant argued that the circuit court erred in finding that the parties exercised joint custody and in failing to apply the *Hollandsworth* presumption in favor of relocation for custodial parents with primary custody. The *Hollandsworth* presumption does not apply when the parents share joint custody of a child. In determining whether *Hollandsworth* shall apply, the appellate court first looked to the language in the initial custody order. The order states that the

parties share joint legal custody but designates one party as the primary custodian. Because that language is ambiguous, it is proper to review the parties' subsequent statements and conduct. The evidence showed that the child spent significantly more time with Appellant, and the fact that the custody order stated that the child could visit with the child more time did not elevate the arraignment to one of joint custody. (Moore, R.; CV-18-496; 2-20-19; Klappenbach, N.)

Rivers v. Deboer, 2019 Ark. App. 132 [**default OCSE paternity judgment was a final custody determination**] In 2011, Appellee did not file an answer to the Office of Child Support's paternity complaint, nor did he simultaneously seek to establish paternity and custody. Therefore, the circuit court entered a default judgment of paternity, determined that Appellee was the child's father, and required him to start paying child support. No subsequent order was entered after the paternity judgment, and no further hearing was scheduled on the issues of custody, visitation, or child support. Five years later, Appellee filed a motion to modify custody. In light of the paternity judgment, the parties' subsequent conduct, and the passage of nearly six years before any court hearing, the appellate court found that the default judgment was a final custody determination and that Appellee was required to plead and establish a material change of circumstance to change custody. (Benton, W.; CV-18-64; 2-27-19; Harrison, B.)

PROBATE

In the Matter of the Hamilton Living Trust, 2019 Ark. App. 76 [**rules of civil procedure in trust-administration proceedings**] Appellant argued that the summons was defective because it failed to contain the names of the "parties". However, the appellate court found that the trustee was not a "party" and was filing a complaint in the name of the Trust. The summons contained the name of the trust and was directed to Appellant. In no way did the form of the summons fail to apprise Appellant of the pendency of the suit and afford him an opportunity to be heard. Arkansas Rule of Civil Procedure 4 states that the official form of summons "may be modified as needed in special circumstances." The appellate court found that a trust-administration proceeding is a "special circumstance" for purposes of the official form of summons because it is not a typical lawsuit involving a plaintiff versus a defendant. Therefore, the appellate court found no error in the circuit court denying Appellant's motion to declare the service and process void and invalid. The appellate court also rejected Appellant's argument that the complaint failed to comply with Arkansas Rule of Civil Procedure 10(a), specifically that the caption does not contain the names of the parties, for the same reasons set forth herein. (Moore, R.; CV-17-727; 2-13-19; Gruber, R.)

Qualheim v. Roush, 2019 Ark. App. 83 [**default judgment in adoption; motion to set aside default judgment**] The appellate court found no error in the circuit court's refusal to set aside the default judgment. The circuit court entered a decree of adoption finding that Appellant had

been served with the adoption petition by process server and that she had not responded. The circuit court also found that Appellant's consent to the adoption was not necessary because she had unreasonably withheld her consent contrary to the child's best interest. Five months following the default judgment, Appellant sought to set the adoption aside. The circuit court considered the events leading up to the entry of the default judgment, and it found that there was insufficient proof that Appellant intended to contest the petition for adoption. The circuit court correctly based its decision on Appellant's failure to prove any of the grounds for setting aside the default judgment. The fact that Appellant may have offered a meritorious defense, i.e. that her consent was required, that is not sufficient to support setting aside the default judgment. (Honeycutt, P.; CV-18-642; 2-13-19; Virden, B.)

Noble v. Neal, 2019 Ark. App. 86 [**establishing paternity by acknowledgment in decedent's estate matter**] Arkansas Code Ann. 28-9-209 sets forth the six requirements for establishing paternity following a decedent's death. Citing the Arkansas Supreme Court in *Bell v. McDonald*, 2014 Ark. 75, one of the six conditions must have been satisfied and an action connected, or a claim asserted, against the estate prior to the expiration of the 180-day time period. Five out of the six statutory conditions may only be satisfied prior to the putative father's death and that the remaining condition- a court's establishment of paternity- is the only condition that must be met within 180 days following decedent's death. Accordingly, the appellate court found no error in this matter. Appellee, the illegitimate child, filed a claim within 180 days following his putative father's death to make a claim based on the decedent's written acknowledgment. The appellate court also found no error in the circuit court's ruling that Appellee satisfied the written-acknowledgment condition. Appellee introduced a beneficiary-designation form wherein decedent clearly wrote "son" in the space for "relationship to employee". The designation was meant to be relied and acted upon. The definition of acknowledgment in Merriam-Webster is the action of showing that you know, admit, or accept that something exists or is true. (Hendricks, A.; CV-18-655; 2-13-19; Gladwin, R.)

Moore v. Sullivan, 2019 Ark. App. 90 [**mental capacity to execute will and lucid intervals during execution**] A party challenging the validity of a will must prove by a preponderance of the evidence that the testator lacked the requisite mental capacity at the time the will was executed. If the maker of a will has sufficient mental capacity to retain in his memory, without prompting, the extent and condition of his property and to comprehend how he is disposing of it, to whom, and upon consideration, then he possesses sufficient mental capacity to execute the will. Although there was some evidence of memory and confusion problems, there was also testimony presented that the decedent was competent on the day of the execution of his will. The appellate court has recognized in other cases that a testator can experience lucid intervals during execution of the will, and the circuit court was allowed to weigh the credibility of the witnesses. (Foster, H.; CV-17-1049; 2-13-19; Klappenbach, N.)

Holmes v. Wilhelm, 2019 Ark. App. 120 [**step-parent adoption and consent**] The appellate court found no error in the circuit court's determination that the father's consent was not necessary and that the adoption was in the child's best interest. (Smith, T. CV-17-996; 2-20-19; Whiteaker, P.)

Daily v. Stanley, 2019 Ark. App. 126 [**step-parent adoption and consent**] The appellate court found no error in the circuit court's determination that the father's consent was required. (Hendricks, A.; CV-18-150; 2-20-19; Brown, W.)

SUPREME COURT OF THE UNITED STATES

Timbs v. Indiana [**civil forfeiture**] Timbs pleaded guilty in Indiana state court to dealing in a controlled substance and conspiracy to commit theft. At the time of Timbs's arrest, the police seized a Land Rover SUV Timbs had purchased for \$42,000 with money he received from an insurance policy when his father died. The State sought civil forfeiture of Timbs's vehicle, charging that the SUV had been used to transport heroin. Observing that Timbs had recently purchased the vehicle for more than four times the maximum \$10,000 monetary fine assessable against him for his drug conviction, the trial court denied the State's request. The vehicle's forfeiture, the court determined, would be grossly disproportionate to the gravity of Timbs's offense, and therefore unconstitutional under the Eighth Amendment's Excessive Fines Clause. The Court of Appeals of Indiana affirmed, but the Indiana Supreme Court reversed, holding that the Excessive Fines Clause constrains only federal action and is inapplicable to state impositions. *Held*: The Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment's Due Process Clause.

In considering whether the Fourteenth Amendment incorporates a Bill of Rights protection, this Court asks whether the right guaranteed—not each and every particular application of that right—is fundamental or deeply rooted. The Excessive Fines Clause is thus incorporated regardless of whether application of the Clause to civil *in rem* forfeitures is itself fundamental or deeply rooted. (No. 17–1091; February 20, 2019)