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ANNOUNCEMENTS

REMINDER: Pursuant to Administrative Order No. 14, circuits are to notify the Supreme Court by February 1, 2019 of the Administrative Judge selection.

Administrative Plans. 2019 is a year that all circuits are required to submit administrative plans to the Supreme Court. Plans are to be submitted by July 1st to be effective January 1, 2020.

CRIMINAL

Shaffer v. State, 2018 Ark. App. 581 [**revocation; jurisdiction**] The circuit judge assigned to preside over the petitions to revoke appellant's suspended sentences had been the prosecutor when appellant was originally convicted. Based upon his previous role as the prosecutor, the circuit judge recused from consideration of the revocation petitions. Approximately, eleven years later when new petitions to revoke were filed in the same cases, the circuit judge, who had formerly been the prosecutor and had previously recused from the cases, presided over the cases, found that appellant violated the terms of his suspended sentences, and imposed new sentences.

The appellate court concluded that the circuit judge, who had previously recused from the cases, was without authority to act further in any judicial capacity in appellant's cases. (Tabor, S.; CR-18-321; 12-5-18; Gruber, R.)

Bradley v. State, 2018 Ark. App. 586 [**sufficiency of the evidence; felon-in-possession of a firearm**] The State did not present substantial evidence to support appellant's felon-in-possession conviction. Specifically, the State failed to sufficiently prove that appellant constructively possessed the firearm. Additionally, appellant's conviction was based upon circumstantial evidence and the State could not establish that all other reasonable hypotheses about who may have possessed or controlled the gun were excluded. (Griffen, W.; CR-18-326; 12-5-18; Harrison, B.)

Caldwell v. State 2018 Ark. App. 588 [**revocation**] Although evidence may be insufficient in a revocation proceeding to sustain an allegation that appellant committed a specific offense, the revocation will be affirmed on appeal if the evidence establishes commission of a lesser-included offense of the one charged. There is no requirement that lesser-included offenses be separately charged because lesser-included offenses are, indeed, included within a greater offense, charging a person with a greater offense implicitly charges him with all lesser-included offenses. (Cottrell, G.; CR-17-1017; Klappenbach, N.)

Sweeten v. State, 2018 Ark. App. 590 [**rape-shield statute**] The admissibility of evidence otherwise barred by the rape-shield statute must be determined in a pretrial in-camera hearing as prescribed by Ark. Code Ann. § 16-42-101(a)–(c). At the in-camera hearing, the defendant must offer the evidence of prior sexual conduct, not merely legal argument. [**witness; evidence**] The trial court did not abuse its discretion when it permitted a forensic interviewer from the Children's Advocacy Center to testify how interviews at the Center in general are conducted and about common characteristics of child sex-abuse victims. In permitting such testimony in appellant's case, the trial court ensured that the witness did not testify about the credibility of the victim. (Haltom, B.; CR-18-298; 12-5-18; Klappenbach, N.)

Christian v. State, 2018 Ark. App. 594 [**sufficiency of the evidence; possession of a controlled substance**] To establish that a person illegally possessed a controlled substance, the State must prove that the person possessed a "usable or measurable amount" of the controlled substance. The amount of the controlled substance must be either (1) sufficient to permit knowledge of its presence without the need for scientific identification or (2) sufficient to be useable in the manner in which such a substance is ordinarily used. The "usable-amount" term does not stand for the proposition that there must be a usable amount sufficient to produce a chemically-induced behavioral, hallucinogenic, or otherwise altered state. The Court of Appeals has interpreted the usable-amount standard to include weight-based standards. (Griffen, W.; CR-18-248; 12-5-18; Vaught, L.)

Martin v. State, 2018 Ark. 344 [**error coram nobis**] Because appellant's petition seeking a writ of *error coram nobis* alleged that the expert's testimony from his case contained one or more of the same errors as those identified in *Strawhacker v. State*, 2016 Ark. 348 and *Pitts v. State*, 2016 Ark. 345, reinvesting jurisdiction in the circuit court to consider appellant's petition was appropriate. (CR-00-1382; 12-6-18; Goodson, C.)

Pelletier v. State, 2018 Ark. 347 [**Ark. Code Ann. § 5-27-602**] Each photograph that is distributed in violation of Ark. Code Ann. § 5-27-602(a)(1) can support a separate charge. (Morledge, C.; CV-18-264; 12-6-18; Wynne, R.)

Snow v. State, 2018 Ark. App. 612 [**sufficiency of the evidence; battery**] The State failed to exclude every other reasonable hypothesis for how the victim's injuries were sustained. Based upon the evidence presented, it was just as reasonable to conclude that the victim's mother inflicted the injuries upon the child as it was to conclude that appellant inflicted the injuries. Two equally reasonable conclusions as to what occurred may give rise to a suspicion of guilt, but that is not enough to support a conviction. Accordingly, there was not substantial evidence to support appellant's conviction for first-degree battery. (Putman, J.; CR-18-105; 12-12-18; Harrison, B.)

Allen v. State, 2018 Ark. App. 603 [**Ark. R. Evid. 901**] For the purposes of Rule 901 of the Rules of Evidence, authentication requirements are satisfied if the circuit court concludes that the evidence presented is genuine and, in reasonable probability, has not been tampered with or altered in any significant manner. Subsections (5) and (6) of Rule 901 are nonexhaustive examples of authentication or identification for purposes of illustration. Authentication is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. In appellant's case, an official with the local jail testified that the recorded calls, which the State sought to introduce, were made from the local detention center while appellant was housed there. The individuals in the recordings, appellant and his victim, reference each other by name and the male states that his email address is an address that contains appellant's first and last name. Moreover, the individuals in the recordings discuss the female's facial injury, which were consistent with the testimony concerning the victim's injury. Thus, the circuit court did not abuse its discretion in admitting the recordings. (Elmore, B.; CR-18-415; 12-12-18; Abramson, R.)

Vann v. State, 2018 Ark. App. 601 [**sufficiency of the evidence; aggravated robbery**] The test for corroborating evidence is whether, if the testimony of the accomplice were totally eliminated from the case, the remaining evidence independently establishes the crime and tends to connect the accused with its commission. Corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof. In appellant's case, there was not substantial evidence to corroborate the accomplice testimony in appellant's trial. Specifically, there was insufficient evidence to establish that either an armed robbery was committed or that appellant was involved. Accordingly, appellant's conviction for aggravated robbery was not supported by substantial evidence. (Johnson, K.; CR-18-578; 12-12-18; Gruber, R.)

Miller v. State, 2018 Ark. App. 614 [**admission of evidence; medical records**] Appellant sought to introduce two pages from the victim's medical records, which he asserted would have rebutted testimony about the victim's cause of death. The trial court excluded the evidence. On appeal, the appellate court explained that because appellant failed to identify what theory the documents would support, and because the documents do not tend to support the conclusion that the victim's death was caused by a lack of medical care, it was not an abuse of discretion to exclude the testimony. The Court also noted that several of the statements from the medical records were heard by the jury during defense counsel's questioning of the medical examiner. Thus, appellant suffered no prejudice. [**admission of evidence; phone conversation**] The State introduced a recording of a phone call between appellant and a witness, which occurred during the trial, while appellant was in jail. The State argued that it was relevant because it established that appellant was attempting to prevent a witness from testifying against him by encouraging her to change her story or to minimize her account of the events the night of the crime. This, the State argued, indicated guilt. Appellant objected to its admission. The Court of Appeals held that the circuit court did not abuse its discretion in finding the recording admissible. The appellate court explained that although it was prejudicial, the probative value of the call was not substantially outweighed by the danger of unfair prejudice. The Court of Appeals further noted that the circuit court's admonition to the jury on this issue was sufficient to cure any possible prejudice that could stem from the jury learning that appellant was incarcerated during the trial when he made the phone call. [**expert witness**] Because there was a reasonable basis to conclude that the law enforcement official, who testified that he had been trained in advanced techniques of collecting and identifying fingerprints as part of his training as a crime-scene investigator, had knowledge of fingerprint collection beyond that of ordinary knowledge, the circuit court did not abuse its discretion in allowing the officer to testify as an expert on the collection of fingerprints. (Davis, B.; CR-18-303; 12-12-18; Harrison, B.)

King v. State, 2018 Ark. App. 605 [**Rule 37**] On appeal from the denial of a Rule 37 petition following a guilty plea, there are only two issues for review: (1) whether the plea of guilty was intelligently and voluntarily entered; and (2) was the plea made on the advice of competent counsel. In appellant's case, the trial court clearly erred when it failed to address the second prong of the analysis. [**Rule 37; hearing**] Rule 37.3 of the Rules of Criminal Procedure provides that an evidentiary hearing should be held in a postconviction proceeding unless the files and record of the case conclusively show that the prisoner is entitled to no relief. When the trial court concludes, without a hearing, that the petitioner is not entitled to relief, Rule 37.3(a) requires the trial court to make written findings specifying the parts of the record that form the basis of the trial court's decision. If the trial court fails to make such findings, it is reversible error, unless the record before the appellate court conclusively shows that the petition is without merit. In appellant's case, the trial court committed reversible error by neither conducting an evidentiary hearing nor citing the parts of the record that conclusively showed that appellant's claim was without merit and that he was not entitled to relief. (Wright, H.; CR-18-41; 12-12-18; Virden, B.)

Shay v. State, 2018 Ark. App. 393 [**motion to suppress**] If a suspect is already lawfully seized pursuant to a valid investigatory stop pursuant to Rule 3.1 of the Rules of Criminal Procedure, the minimal additional intrusion of a pat-down search of the suspect's outer clothing pursuant to Rule 3.4 of the Rules of Criminal Procedure is reasonable given the compelling State interest of protecting the safety of law enforcement officers doing their jobs. In appellant's case, the law enforcement official had reasonable suspicion to investigate the presence of appellant's car in a closed city park during the early morning hours. Additionally, the interaction between the officer and appellant and his companion did not dispel the officer's reasonable suspicion, thus the pat-down search of appellant was reasonable under the Fourth Amendment and Rule 3.4. However, the law enforcement official exceeded the scope of what was permissible under Rule 3.4 when he opened appellant's wallet and removed his identification. The officer did not have probable cause to search appellant's wallet for the identification card. Also, it was not disputed that the officer failed to ask appellant to consent to the search of his wallet and appellant did not verbally authorize him to look inside. Accordingly, the trial court clearly erred in denying appellant's motion to suppress the contraband found in his wallet. (Pearson, B.; CR-18-177; 12-20-18; Hart, J.)

Isom v. State 2018 Ark. 368 [**recusal**] Appellant requested that the trial judge recuse from the consideration of his *error coram nobis* petition. The request was based upon the fact that the judge, who was previously a prosecutor, had twice prosecuted appellant on serious charges and had once obtained a conviction. Additionally, appellant asserted that the circuit judge was biased against him because as a prosecutor, he was unsuccessful in his attempt to have appellant's parole rescinded. The Supreme Court explained that a circuit judge's previous prosecution of a defendant in an unrelated case is insufficient under Arkansas law to require recusal. The Court also concluded that the circuit judge's actions associated with attempting to have appellant's parole rescinded was the then-prosecutor carrying out his ordinary duties as a prosecutor. Thus, the Supreme Court concluded that appellant failed to demonstrate actual bias or the appearance of bias sufficient to require recusal. (Pope, S.; CR-17-1003; 12-20-18; Kemp, J.)

CIVIL

Johnson v. Schafer, 2018 Ark. App. 630 [**physical therapist/negligence**] Plaintiff did not establish the requisite standard of care by expert testimony. At a minimum, Johnson's case would require the explanation of knee anatomy, physical therapy rehabilitation practices and procedures, and the pharmacology of anticoagulants. The facts of the case do not justify a departure from the general rule that a plaintiff must prove a medical-malpractice claim through expert testimony. (Honeycutt, P.; CV-18-153; 12-12-18; Murphy, M.)

Horton v. Mitchell, 2018 Ark. App. 610 **laches**] The defense of laches is applicable in instances in which equitable relief is sought. **[trust]** The Trust imposes a limitation on distributions that allowed for court correction in instances in which a trustee acts utterly without reason or in bad faith. Butch and Cindy contend that there was no evidence of their bad faith. To the contrary, enormous distributions were made to Butch and Cindy. They were purportedly made to account for Butch's work on the farm and Cindy's work acting as Rena's caregiver; however, there is little to no documentation to support those distributions. Although the Trust does not require documentation for expenditures, the lack of documentation raises concerns. There was extensive testimony that neither Rena nor the farm were being properly cared for by Butch and Cindy. **[punitive damages]** Butch and Cindy argue that Deb offered no proof of malice. However, the evidence reflected that Butch and Cindy paid themselves large amounts of money from the Trust for purportedly providing services to their mother and the farm. Deb clearly called into question the validity of the services they allegedly provided. There was no documentation of the services. Moreover, there was significant evidence regarding the lack of actual work being done on the farm and as it related to the care of Rena. Specifically, there was evidence of neglect of these responsibilities despite the frequent and substantial distributions being made from the Trust. Finally, there was evidence that Butch and Cindy used threats and intimidation to dissuade Deb from visiting or inquiring too much. Those facts taken together are indicative of intentional wrong or conscious indifference to their consequences and demonstrate that malice could be properly inferred by a jury and affirm. **[contempt]** Here, Cindy argues that compliance and the penalty for noncompliance were the same—under either scenario she had to pay \$41,054.32. Thus, any offer for her to purge herself of contempt was illusory. To the contrary, the penalty for noncompliance was not the same as the method to purge herself of contempt. If Cindy failed to comply with the circuit court's orders, the amount she owed would be reduced to a judgment plus interest. This is a penalty more severe than merely paying the money owed. This is a valid civil-contempt order. (Putman, J.; CV-17-270; 12-12-18; Gladwin, R.)

Manuel Bail Bond Co. v. Hosto and Buchan, PLLC, 2018 Ark. App. 631 **[legal malpractice]** At no point was Manuel prevented from bringing suit because the defective-summonses claim was always there. Arkansas calculates statute-of-limitations onset as the date of the negligent act and not the date that the act was discovered. It was always negligent for the law firm to be using a defective summons, and Manuel's claim never ceased to exist. Manuel is wrong when it characterizes the action that created the malpractice suit as an appellate decision that brought attention to the issue—the action that created the malpractice claim was the use of the defective summonses that had not been approved for use since 2011. The three-year statute of limitations for legal malpractice applied and barred appellant's claim. The debt-collection agreement was an ancillary contract for representation, and appellant failed to plead a viable cause of action regarding a breach of a separate and distinct written contract. (Piazza, C.; CV-18-306; 12-12-18; Murphy, M.)

Mountain Crest, LLC v. Kimbro, 2018 Ark. App. 626 [**restrictive covenants**] The circuit court was correct in finding that the bill of assurance for Phase II was clear and unambiguous and governed only those lots in that phase and that the parties were confined to the meaning of the language employed in the bill of assurance, and that it was improper to inquire into other extrinsic evidence argued by appellants. Even if it was determined that the language in the covenant is ambiguous, the solution is not to interpret it in Mountain Crest's favor; rather, it is to free lot 48 from the restrictions contained therein. When there is uncertainty in the language by which a grantor in a deed attempts to restrict the use of realty, freedom from that restraint should be decreed. (Gray, A.; CV-18-533; 12-12-18; Whiteaker, P.)

GM Enterprises, LLC v. HCH Toyota, LLC, 2018 Ark. App. 607 [**contract**] Summary judgment was not proper in contract action because viewing the evidence in the light most favorable to GM, it was improper to conclude that appellees were entitled to judgment as a matter of law. GM's interpretation of the LTAs is reasonable. [**unjust enrichment**] The mere existence of a written contract does not foreclose a claim of unjust enrichment. (Scott, J.; CV-18-336; 12-12-18; Virden, B.)

Commercial Fitness Concepts, LLC v. WGL, LLC, 2018 Ark. App. 634 [**conversion**] As a matter of law, this court will not hold that consequential damages can never be established in a conversion case of personal property where the conversion causes loss-of-use damages concerning real property. Here, the trial court made a mistake in awarding damages for lost rent under the facts of this case. The evidence presented at the hearing on remand did not establish that the lost rent awarded by the trial court was proximately caused by the conversion of the computer-interface module/panel. (Scott, J.; CV-18-108; 12-12-18; Glover, D.)

Ark. Oil and Gas Commission v. Hurd, 2018 Ark. 397 [**sovereign immunity**] Appeal of an administrative agency adjudication is not barred by sovereign immunity. The present case is distinguishable from *Andrews* because it concerns an appeal of an agency adjudication. The AOGC is a named defendant, but its role in the proceeding is that of a tribunal or a quasi-judicial decision-maker rather than a real party in interest. The subject of the adjudication—the amount of royalty to be paid by SWN to the appellees—does not affect the State's coffers or control its actions. Appellees sought judicial review of the AOGC's final agency action; they alleged no additional claims against the AOGC or any other state actor. Under these circumstances, sovereign immunity is not implicated because the AOGC is not "made a defendant" as contemplated by article 5, section 20, of the Arkansas Constitution. (Fox, T.; CV-18-223; 12-20-18; Wynne, R.)

DOMESTIC RELATIONS

Hiatt v. Hiatt, 2018 Ark. App. 591 [**reopening the record for additional evidence; directed verdict/motion to dismiss because no corroboration of divorce grounds**] The appellate court found error in the circuit court's granting of Appellee's motion to reopen the case. At the conclusion of Appellee's case-in-chief, Appellant determined that Appellee failed to satisfy the statutory requirements necessary to grant a divorce and made a motion for directed verdict claiming that she failed to prove her grounds for divorce and failed in her corroborating witness proof. Following the trial, Appellee filed a motion to reopen the case, and the circuit court reopened the record for additional evidence. A circuit court should not reopen a case except for good reason and on proper showing. Evidence should be reopened when to do so would serve the interests of justice and cause no undue disruption of the proceedings or unfairness to the party opposing the motion to reopen. The exigences of each case have much weight in controlling the discretion of the circuit court, and there are nine factors enumerated in which the court can consider. The appellate court found that the circuit court did not properly consider the merits, and Appellee should not have been afforded another opportunity to prove and corroborate her grounds for divorce. The appellate court also found error in the circuit court's denial of Appellant's motion for directed verdict. Appellee failed to corroborate grounds for divorce at the first trial, and corroboration of grounds is a necessary requirement for obtaining a divorce. (Spears, J.; CV-17-343; 12-5-18; Klappenbach, N.)

Treloggen v. Treloggen, 2018 Ark. App. 596 [**general reservation of jurisdiction to modify order**] The appellate court found that the circuit court retained jurisdiction to modify the language in the parties' agreed order dividing Appellant's retirement; therefore, Arkansas Rule of Civil Procedure 60(b) was not the legal basis the circuit court needed to modify the language of the parties' order. The appellate court has repeatedly held that a general reservation of jurisdiction in an order will allow a circuit court to modify after ninety days with respect to issues that the circuit court considered in the original action. The appellate court also found no error in the circuit court striking language from the agreed order to accurately reflect the intent of the parties. While the circuit court directed the retirement plan to disregard language, the circuit court was not changing the terms of the original agreement; it was enforcing what the parties had originally agreed upon. Therefore, the appellate court found no error in the circuit court awarding Appellee arrearages based upon the amount she should receive in the future based upon the modified language. (Moore, R.; CV-18-183; 10-5-18; Hixson, K.)

McGahhey v. McGahhey, 2018 Ark. App. 597 [**property is considered marital if purchased with note or if it cannot be proven that the property was acquired with nonmarital property**] The appellate court found that the circuit court erred in finding that the stock interest purchased during the marriage was nonmarital property. Because Appellee acquired the stock in exchange for a note, she did not acquire it in exchange for one of the nonmarital property

considerations listed in Arkansas Code Annotated 9-12-315(b). It does not change the character of the property that she paid the note with separate, nonmarital property. The appellate court found no error in the circuit court's decision that the CD's purchased were marital property. They were issued during the marriage, and nothing exclusively established that they were acquired with nonmarital property. (Henry, D.; CV-17-835; 12-5-18; Murphy, M.)

Williams v. Lofton, 2018 Ark. App. 606 [**order regarding child support must include income finding as well as the charted amount and any deviation found; court must make specific finding as to whether a material change in circumstance is present in child support modification case; contempt finding following admission of failure to follow order; court has no authority to designate portions of child support to be used for an education trust**]

The appellate court found that the child support order was facially deficient because the circuit court did not determine the Appellant's income, refer to the family-support-chart guidelines, or recite whether the amount of support deviated from the chart. The appellate court also found that it was unclear whether the circuit court found a material change in circumstances sufficient to modify child support; therefore, this issue was remanded for a clear determination. The appellate court found no error in the contempt finding, as there is no question that the willful disobedience of a valid court order is a contemptuous behavior. Appellant admittedly failed to carry insurance for the child, in direct violation of the circuit court's order. Lastly, the appellate court found that the circuit court correctly denied Appellant's request to set up an educational trust in lieu of a portion of his child-support payments. The statute and guidelines do not support the argument that the circuit court has the authority to designate portions of the child-support award for an educational trust, as child support is to provide for their reasonable needs. (Pierce, M.; CV-17-911; 12-12-18; Viriden, B.)

PROBATE

In the Matter of the Adoption of JS and DS, Minor Children, 2018 Ark. App. 595 [**father's consent to adoption unnecessary for failure to support children while in prison and after release**] The appellate court affirmed the circuit court's finding that the father's consent to the adoption of his children was unnecessary. The father failed significantly and without justifiable cause to provide for the care and support of the children for more than a one-year period of time. It was undisputed that the father failed to pay child support for more than one year while he was in prison, and imprisonment is not a valid justification for failure to support. Furthermore, after he was released, the only evidence of support was that, on two or three occasions, the father used food stamps to purchase food for the children. This evidence does not constitute support of the children for two years in any meaningful degree. (Williams, L.; CV-18-256; 12-5-18; Vaught, L.)

Anthony Beare v. Arkansas DHS, 2018 Ark. App. 598 [**release following acquittal on the basis of mental disease or defect**] According to Arkansas Code Annotated 5-2-314(e)(1), a person found not guilty of an offense involving bodily injury to another person (or serious damage to the property of another person) due to the person's lack of criminal responsibility has the burden of proving by clear and convincing evidence that his or her release would not create a substantial risk of bodily injury to another person or serious damage to property of another person due to a present mental disease or defect. Appellant was acquitted of an aggravated-assault charge on the basis of mental disease or defect, and he had the burden to prove by clear and convincing evidence that his unconditional release would not create a substantial risk of bodily injury to another person or serious damage to the property of another person. The Arkansas State Hospital physician testified that Appellant continued to be a high risk of danger to himself and others, and he believed that the hospital was the least restrictive, appropriate setting for Appellant. Therefore, the appellate court found no error in the circuit court refusing to release Appellant from the custody of DHS. (Morley, R.; CV-18-94; 12-5-18; Murphy, M.)

Gustin v. Trotter, 2018 Ark. App. 618. [**rebutted presumption of undue influence**] Because the decedent possessed testamentary capacity at the time he executed his will, and because Appellant did not allege that Appellee procured the will, the appellate court only reviewed the circuit court's finding that the testator was not subject to undue influence. Appellee had a confidential relationship with the decedent due to her having his power of attorney, giving rise to a rebuttable presumption of undue influence, but the Appellee effectively rebutted the presumption. A testator's decision to favor a person with whom he had developed a close and affectionate relationship is not, of itself, proof that the favored beneficiary procure the will by undue influence. The evidence showed that the decedent and Appellee were close friends, that she cared for him, provided transportation, and she ran his household. On the other hand, the decedent had little contact or a relationship with his family. (Smith, V.; CV-18-318; 12-12-18; Klappenbach, N.)

JUVENILE

Androff v. Ark. Dep't. of Human Servs. 2018 Ark. App. 602 [**TPR—aggravated circumstances**] Court did not err in terminating rights of mother who refused to protect her daughter from sex offender. Four months after the first dependency neglect case was closed and the child was returned to the custody of the mother with a no contact order between the offender and child, the mother re-married the offender and brought him back into the home. In second dependency neglect proceeding, the court terminated mother's rights based on the grounds of aggravated circumstances, finding that there was little likelihood that services would result in successful reunification. (Harrod, L.; JV-16-126; December 12, 2018; Gruber, R.)

A.M. v. State. 2018, Ark. App. 622 [**sex offender registration**] Trial court was required to make written findings on each statutory factor set out in Ark. Code Ann. § 9-27-356(e)(2)(A) in its order requiring the juvenile to register as a sex offender. (Yeargan, C.; JV-14-12; December 12, 2018; Whitaker, P.)

J.L. v. State. 2018, Ark. App. 629 [**restitution**] Order requiring juvenile to pay \$4,302 in restitution for damage to stolen car was not error. A preponderance of the evidence supported the court's findings where juvenile admitted to stealing the car, the car owner testified that when the car was returned it had substantial damage, and an auto-body repair shop manager testified concerning the cost of repairs. (Smith, T.; JV-17-765; December 12, 2018; Murphy, M.)

Strickland v. Ark. Dep't. of Human Servs. 2018 Ark. App. 608 [**TPR—adoptability**] Whether a child is likely to be adopted is but one factor for the court to consider in its best interest analysis, but adoptability need not be proven by clear and convincing evidence. Termination was not clearly erroneous concerning a teenager where grounds were established, there was evidence that the foster family was interested in adopting, and termination was in the child's best interest. (Hendricks, A.; JV-16-96; December 12, 2018; Virden, B.)

Wilson v. Ark. Dep't. of Human Servs. 2018 Ark. 358 [**sovereign immunity**] Where neither party raised the issue of sovereign immunity as it applied to DHS in the trial court below, the issue could not be raised for the first time on appeal. Sovereign immunity is an affirmative defense that may be raised and ruled-on by the trial court in order to preserve the issue and is not a matter of subject-matter jurisdiction. (Branton, W.; JV-16-279; December 13, 2018; Goodson, C.)

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

Hogue v. Ark. Dept. of Human Servs., 2018 Ark. App. 633 (Coker, K.; JV-16-38; December 12, 2018; Brown, W.)