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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

Ward v. State, 2018 Ark. 313 **[Ark. Code Ann. § 16-90- 506]** Arkansas Code Annotated § 16-90- 506(d)(1)(A) is devoid of any procedure by which a death-row inmate has an opportunity to make an initial "substantial threshold showing of insanity . . . to trigger the hearing process pursuant to *Ford v. Wainwright*, 477 U.S. 399 (1986). Nor does the language of section 16-90-506(d)(1)(A) provide for an evidentiary hearing that comports with the fundamental principles of due process, as articulated in *Ford* and *Panetti v. Quarterman*, 551 U.S. 930 (2007). Therefore,

the statutory provision is unconstitutional on its face and violates the due-process guarantees of the United States and Arkansas Constitutions. (Dennis, J.; CV-17-291; 11-1-18; Kemp, J.)

Dye v. State, 2018 Ark. App. 545 **[motion to suppress; stop; Ark. R. Crim. P. 2.2]** When the law enforcement official requested that appellant, who was on private property, stop and cooperate, the officer was investigating or attempting to prevent the potential crime of trespass. Thus, the initial stop of appellant was valid pursuant to Ark. R. Crim. P. 2.2. **[motion to suppress; seizure; Ark. R. Crim. P. 3.1]** Pursuant to Ark. Code Ann. § 16-81-203 and Ark. R. Crim. P. 3.1, law enforcement officials properly concluded that there was reasonable suspicion to believe that appellant was engaged in criminal activity based on the following factors: (a) there had been reports of trespassing on the private property where appellant was located; (b) appellant was seen on the property at approximately midnight; (c) the truck occupied by appellant was parked side-by-side with another vehicle; (d) appellant was holding cash in his hand; (e) there was a black pouch containing plastic baggies in plain sight between the front seats of the truck; (f) the law enforcement official determined that appellant had prior methamphetamine convictions; and (g) appellant's co-occupant fled the scene shortly after the officers' arrival. Appellant was detained for about twenty minutes from the time of the initial stop until the time the police began the challenged search. In light of the suspicious information known to the officers and the fact that they were still actively searching for appellant's companion, the twenty-minute time period was not unreasonable. (Medlock, M.; CR-18-118; 11-7-18; Hixson, K.)

Drennan v. State, 2018 Ark. 328 **[sufficiency of the evidence; first-degree murder]** There was substantial evidence to support appellant's conviction. **[admission of evidence]** Because appellant failed to introduce evidence to demonstrate that the victim's drug use was linked to her murder or to appellant's defense to the murder, the trial court did not abuse its discretion when it excluded from appellant's trial a toxicology report that showed the presence of controlled substances in the victim's body at the time of her death. (Easley, E.; CR-17-1011; 11-8-18; Baker, K.)

Reams v. State, 2018 Ark. 324 **[Rule 37; guilt phase]** A fair-cross-section-of-the-jury violation is a structural error and is therefore cognizable in Rule 37 proceedings. To establish a prima facie violation of the fair-cross-section requirement, a litigant must demonstrate: (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process. The prejudice prong of *Strickland v. Washington*, 466 U.S. 668 (1984), is demonstrated through the existence of a fair-cross-section violation. Thus, prejudice is presumed if a fair-cross-section violation is established. **[Rule 37; penalty phase]** Trial counsel's failure to, at a minimum, attempt to present certain mitigation

testimony from the alleged "shooter" during the penalty phase of appellant's trial constituted ineffectiveness. (Cole, J.; CR-17-654; 11-8-18; Baker, K.)

Schoolfield v. State, 2018 Ark. App. 575 **[double jeopardy]** Rape is not a continuing offense, in that each act occurring as the result of a separate impulse constitutes a separate offense. In appellant's case, although the victim was the same, the alleged rape in the Western District occurred on August 30, 2016, in the Motel 6 in Jonesboro. The alleged rapes in the Eastern District occurred between August 31 and September 15, 2016, at the victim's residence in Caraway. Therefore, because each charge was the result of a separate impulse separated in point of time, the charges were not for the same continuing offense, and appellant was properly charged with separate offenses. As such, the second trial in the Eastern District did not violate the appellant's Fifth Amendment right against double jeopardy. **[Ark. R. Crim. P. 21.3]** Rule 21.3 of the Rules of Criminal Procedure has three requirements: the offenses must be within the jurisdiction and venue of the same court, arise from the same conduct or criminal episode, and a timely motion to join must be made. In appellant's case, the crimes in both cases occurred in Craighead County. However, the county has two judicial districts. Thus, the requisite inquiry for purposes of Rule 21.3 is not whether the offenses were committed in Craighead County but whether the offenses were committed in the same judicial district of Craighead County. Because the offenses charged in the second prosecution did not occur within the same jurisdiction and venue as the initial prosecution, the offenses are not "related offenses," and Rule 21.3 did not require dismissal of appellant's case. (Fogleman, J.; CR-18-229; 11-28-18; Hixson, K.)

Baumann v. State, 2018 Ark. App. 564 **[404(b); pedophile exception]** There are three restrictions on the pedophile exception to Rule 404(b) of the Arkansas Rules of Evidence. First, courts require that there be a sufficient degree of similarity between the evidence to be introduced and the sexual conduct of the defendant. Physical similarities between the alleged victim and the 404(b) witness such as age and gender are relevant when there is not identical conduct toward each by the accused. Second, it is necessary that there be an "intimate relationship" between the perpetrator and the victim. The relationship must be one "close in friendship or acquaintance, familiar, near, or confidential." Third, evidence admitted pursuant to Rule 404(b) must not be too separated in time, making the evidence unduly remote. In appellant's case, the trial court did not abuse its discretion when it admitted evidence pursuant to the pedophile exception to Rule 404(b). The testimony demonstrated that: (1) appellant was in a supervisory role over the 404(b) witness and the victim at the time of the abuse; (2) the pattern of abuse including the location and the method was similar; and (3) the age and gender of the 404(b) witness and victim at the time of abuse were similar. Additionally, although approximately thirty years had lapsed since the prior abuse, the 404(b) testimony was relevant and had a strong connection with the issues in the current case. (Green, R.; CR-18-431; 11-28-18; Gladwin, R.)

Schnarr v. State, 2018 Ark. 333 **[jury instructions; justification]** Pursuant to the plain language of Ark. Code Ann. § 5-2-614, once the jury determines whether a defendant has been reckless or negligent in forming the belief that force is necessary, then the applicability of the justification defense is determined. Stated differently, if appellant was reckless or negligent in forming the belief that force was necessary, then, and only then, is the defense unavailable. If, however, appellant was not reckless or negligent in forming his belief, the defense is available. This is a decision for the jury. (Johnson, L.; CR-18-161; 11-29-18; Baker, K.)

Friday v. State, 2018 Ark. 339 **[motion in limine]** The trial court did not abuse its discretion when it denied appellant's motion in limine seeking to preclude reference to the prosecuting witnesses as "victims." First, the only instance in which appellant identified the trial court's use of the term "victim" was during a bench conference with a single potential juror who was ultimately released. Therefore, the trial court did not improperly influence the jury by using the term "victim" to refer to the complaining witnesses. Additionally, appellant failed to establish prejudicial error from the use of the word "victim" by the prosecution and law-enforcement witnesses because it was readily apparent to the jury that in the prosecution's theory of the case, the complaining witnesses, who were testifying about appellant raping them, were, in fact, "victims." Finally, the law-enforcement officers' references to the complaining witnesses as "victims" were in the officers' testimony recounting their role in the investigation. (Cooper, T.; CR-17-863; 11-29-18; Wynne, R.)

CIVIL

Robinson v. Willis, 2018 Ark. App. 542 **[negligence/foreseeability]** The landlords acknowledged it was foreseeable Barbara might buy a space heater when the heating system did not work. It does not follow, however, that it was also foreseeable Barbara's grandchild would suffer burn injuries from the use of such space heaters. To constitute negligence, an act must be one from which a reasonably careful person would foresee such an appreciable risk of harm to others as to cause the person not to do the act or to do it in a more careful manner. A defendant is under no duty to guard against risks it cannot reasonably foresee. Harm that is merely possible is not necessarily reasonably foreseeable. Foreseeability is an element in the determination of whether a person is liable for negligence and has nothing whatsoever to do with proximate cause. (McGowan, M.; CV-18-75; 11-7-18; Glover, D.)

City of Bryant v. Boone Trust, 2018 Ark. App. 547 **[condemnation]** Appraisal fees are recoverable under Ark. Code Ann. Section 18-15-307, as a cost occasioned by the assessment. The opinion also addresses the court's reduction of "other costs" and the propriety of pre and post- judgment interest. (Phillips, G.; CV-18-95; 11-7-18; Murphy, M.)

Love v. O'Neal, 2018 Ark. App. 543 **[property/adverse-permissive use]** The trial court found that Ethel had moved onto the property at the invitation of Herbert and with his permission and that the permissive nature of her possession was never revoked. As a result, the trial court concluded that Ethel's occupancy of the property was not hostile or adverse for purposes of claiming adverse possession. This finding is clearly erroneous. In 1999, Herbert deeded the property in question to Ethel pursuant to a quitclaim deed. At that time, Ethel became an owner of the property. Thus, Ethel's possession of the property was not as a permissive user as found by the trial court, but as that of an owner. When Herbert died in 2004, Ethel's ownership interest in the property was extinguished. Despite Herbert's death and the extinguishment of her ownership interest, Ethel continued to reside on the property, maintain it, improve it, assess it, and pay taxes on it. Upon Herbert's death, Gloria, by virtue of her position as a tenant by the entirety, became the sole owner of the property in question. Despite Gloria's ownership, Gloria never explicitly gave Ethel permission to remain on the property. (Fox, T.; CV-18-374; 11-7-18; Whiteaker, P.)

Watts v. Entergy, 2018 Ark. App. 539 **[condemnation]** The Wattses argued to the circuit court that they did not receive the type of notice related to Entergy's initial petition that Ark. Code Ann. § 18-15- 504(a) requires. Specifically, they complain that the ex parte order of possession was entered before they received notice of the lawsuit. At no time did the Wattses challenge Ark. Code Ann. § 18-15-504(a) as being unconstitutional, nor did they argue that the June 27 personal service of process was invalid. The circuit court accepted Entergy's position that subsection 504(a)'s ten-days' notice of the "time and place where the petition will be heard" refers to a trial date. Entergy could not provide notice of a trial date to the Wattses when it initially served the landowners because the trial date had not yet been scheduled. It is undisputed, however, that the Wattses knew about Entergy's petition more than ten days before the jury trial convened; in fact, the trial was held more than two years after Entergy had filed its initial petition in the circuit court. **[damages]** The only person who testified about the property's value was Entergy's appraiser, J.T. Ferstl, who said that he considered, but did not apply, severance damages to the south end of the property during his appraisal. According to Ferstl, the southern part of the property severed by the easement was not damaged because the owners used the southern portion as timber property, it could continue to be used as a timber property, and the primary residential potential of the acreage was the home, which was on the north end of the property. This testimony is substantial evidence that supports the jury's conclusion that the Wattses suffered no severance damages. As for additional compensation for trees within the easement, that is not a separate item of damage under Arkansas law. (Wyatt, R.; CV-17-990; 11-7-18; Harrison, B.)

Thomas v. Robinson, 2018 Ark App. 550 **[warning order]** The diligent-inquiry affidavit the Robinsons filed to support their warning-order effort was insufficient. The affidavit failed to provide any details of the attempted service, including the address or addresses at which service was attempted, and failed to explain any further attempts to locate Thomas. Because it is

conclusory, the affidavit did not meet Rule 4's "diligent inquiry" requirement. Insufficient service of process can void a judgment; and a void judgment can in turn be set aside. (Wyatt, R.; CV-18-212; 11-14-18; Harrison, B.)

Collier v. Gilmore, 2018 Ark. App. 549 **[adverse possession]** The majority view in the United States is that the "hostility" element should be determined by behaviors and not primarily by inquiring into a claimant's subjective intent. Gilmore's act of farming the disputed tract for decades is enough to establish an intent to hold against, and not in subordination to, the true owner's rights. That Gilmore may have believed that he had farmed up to the "true" property line that the Holder/Gilmore deed established is increasingly unimportant under modern adverse-possession law because Gilmore was, in fact, possessing his neighbor's land. And the possession was "hostile" because it was to an extent greater than the deed anticipated; and his conduct was not subordinate to Holder's property interests or done with Holder's permission. Although the disputed tract was not physically enclosed (by a fence for example), this fact is not pivotal. By all accounts, Gilmore had farmed the property for decades, and the disputed boundary line was a cultivation line that has been clearly identifiable for decades. Gilmore's adverse possession legally altered the boundary line between the Colliers' property and Gilmore's. (Smith, P.; CV-18-72; 11-14-18; Harrison, B.)

DHS v. Salcido, 2018 Ark. App. 559 **[child maltreatment registry]** The Arkansas Department of Human Services (DHS) appeals from the circuit court's reversal of an administrative decision placing Santino Salcido's name on the Child Maltreatment Central Registry. The DHS Office of Appeals and Hearings (OAH) dismissed Salcido's appeal due to his failure to timely provide it with a copy of the final disposition of his criminal proceeding. On Salcido's petition for review of the administrative order dismissing his appeal, the circuit court remanded for a hearing on the merits. Arkansas law imposes a duty on lawyers and litigants to exercise reasonable diligence to keep up with the status of their cases. The statutory mandate requiring Salcido to provide a file-marked copy of the disposition within thirty days of entry is clear. There is no "good faith" exception for failure to comply. The ALJ specifically informed him of this requirement and the stiff penalty for failure to adhere to it in a letter to Salcido's counsel. Salcido was provided the opportunity to be heard, and his substantial rights have not been prejudiced. (Cox, J..; CV-18-463; 11-28-18; Gruber, R.)

Hickory Heights, LLC v. Adams, 2018 Ark. App. 560 **[arbitration]** The arbitration agreement lacks mutuality. Hickory Heights' argument that the agreement supplied the necessary mutuality is disingenuous. Even though the arbitration agreement did not explicitly exclude a type of claim from its scope or require only one party to forgo its right to the court system, the arbitration provision was obviously drafted to shield Hickory Heights from defending itself in the court system against the majority of residents' potential claims while maintaining its right to utilize the court system for its likely claims against residents. Such arbitration agreements lack mutuality.

Accordingly, it is not a valid and enforceable arbitration agreement. (Fox, T.; CV-18-380; 11-28-18; Abramson, R.)

Incorporators of Little Italy v. Pulaski County and Central Ark. Water, 2018 Ark. App. 566 **[county court appeal/ Dist, Ct. R. 9]** The circuit court granted the motion to dismiss because Little Italy had failed to file a complaint; and it failed to name all the necessary adverse parties. Rule 9(e) required Little Italy to file in the circuit court a notice of appeal with an attached certified copy of the county court's judgment; and it was required to file a complaint naming all the necessary adverse parties to perfect its appeal. Because Little Italy failed to perfect its appeal by filing a complaint in the circuit court, the circuit court never acquired jurisdiction over the appeal from the county court. Little Italy argues that its appeal was perfected when it filed a notice of appeal and a certified copy of the county court's judgment with the circuit court. It denies that it was also required to comply either with Rule 9(b) by filing a certified copy of the docket sheet—or a certified copy of the record and a certified copy of the complaint or claim form—or with Rule 9(c) by filing a complaint. Central Arkansas responds that the plain language of Rule 9(e), supported by the comments to the rule, requires a party appealing from county court to circuit court to (1) file a notice of appeal with a certified copy of the county court judgment attached, and (2) file a complaint naming all necessary adverse parties as defendants in the case. Central Arkansas Water argues that the complaint is a necessary component, in addition to the notice of appeal, to perfect an appeal in circuit court. Though Little Italy filed the required notice of appeal, it did not also file a complaint. Consequently, the circuit court never acquired jurisdiction over the case and correctly dismissed Little Italy's appeal. (Piazza, C.; CV-18-162; 11-28-18; Harrison, B.)

Hearst v. Newcomb, 2018 Ark. App. 573 **[summary judgment/malpractice/limitations]** There was no error in the circuit court's finding that Hearst's attorney-malpractice claim was barred by the statute of limitations. Arkansas Code Annotated section 16-56-105 provides for a three-year statute of limitations for legal-malpractice claims. The statute begins to run on the date of the negligent act, which was January 7, 2013 (the date on which Hearst's response to Baker's motion for summary judgment was due), and that even if the statutory period is tolled during the period of time that the nonsuit order was in effect (as Hearst argues it should be), Hearst's complaint was still filed beyond the statutory period. The court also found that Hearst had failed to present evidence supporting fraudulent concealment, which he argued should further toll the statute of limitations. (Griffen, W.; CV-18-83; 11-28-18; Vaught, L.)

Jorja Trading, Inc. v. Willis, 2018 Ark. App. 574 **[arbitration]** The arbitration agreement lacks mutuality of obligation because both the self-help and class-action-waiver provisions are significantly one-sided in favor of appellants. While mutuality of obligation does not require each party to be equally burdened, the appellants have not demonstrated that they are subject to any meaningful obligations under the arbitration agreement. To the extent that the circuit court

also found that appellants had the unilateral option of avoiding arbitration by refusing to consent to the appellees' selection of arbitrator, the court erred in its interpretation of the contract. The arbitration agreement states that the purchaser may select the arbitrator "with [the seller's] consent" but goes on to specify that if the parties could not agree on an arbitrator, one would be appointed by a court. While this provision places the initial burden on the appellees to select an arbitrator, it does not allow the appellants to avoid arbitration simply by refusing to consent. (Threet, J.; CV-18-234; 11-28-18; Vaught, L.)

King v. Jackson, 2018 Ark. App. 570 **[ejectment]** The trial court erred in holding that King and Caldwell failed to establish a prima facie case of legal title to the property. At trial, King and Caldwell introduced into evidence a correction deed purporting to cover the property in dispute. Clearly, a deed constitutes prima facie evidence of title, and King and Caldwell produced a deed at trial. The Jacksons never disputed, argued, or presented any evidence to suggest that the three acres at issue were not contained in the legal description provided in the Correction Deed. Thus, the trial court's ruling that King and Caldwell failed to establish a prima facie case of legal title to the property was clear error. In finding that King and Caldwell were estopped from denying the Jacksons' possession of the property in question, the trial court specifically found that King and Caldwell had failed to present evidence that they (1) were unaware that the Jacksons occupied the property; (2) objected to the occupancy of the property by the Jacksons; and (3) purchased the entire six acre tract from Elbert because the correction deed did not indicate an aggregate total acreage. However, King and Caldwell did present evidence at trial that they were aware that the Jacksons occupied the property and that they had sent the Jacksons a letter objecting to their occupation of the property and ordering them to vacate. Moreover, the Jacksons agreed at trial that the property they occupied was within the six acres that Elbert once owned and that had been conveyed to King and Caldwell. Thus, the facts the trial court relied on to support its estoppel ruling are clearly erroneous. (Griffen, W.; CV-17-995; 11-28-18; Whiteaker, P.)

DOMESTIC

Rawls v. Rawls, 2018 Ark. App. 536 **[rehabilitative alimony denied despite ability to pay; allocation of debt; equitable distribution of assets allowed "tax account" to be solely awarded to one party]** The appellate court found no error in the circuit court denying Appellant's request for rehabilitative alimony despite Appellee's ability to pay. The circuit court considered the short duration of the parties' marriage, the couple's past standard of living, the parties' current and anticipated incomes, debts of the parties, and other secondary factors. The appellate court also found no error in the allocation of marital debt, because there is no presumption of equal division of debt and the circuit court made the debt allocation after considering conflicting testimony. Lastly, the appellate court found no error in Appellee

retaining sole possession of the "tax account" that is used solely to hold 30% of her income for payment of income taxes, as Appellee is required to keep a tax-payment fund whereas Appellant employs the typical tax deductions from each check. The property-division statute does not compel mathematical precision in the distribution of property; it simply requires that marital property be distributed equally. Because this fund would be solely used to pay taxes, the decision effects an equitable distribution of marital property. (Compton, C.; CV-18-168; 11-7-18; Virden, B.)

Steeland v. Steeland, 2018 Ark. App. 551 **[determining self-employment income; ordering payment of children's expenses in addition to child support; determining value of marital company necessary to divide property; nonmarital property division when marital funds expended]** The appellate court found no error in the circuit court's income findings, the award of child support, nor the award for payment of additional children's expenses. The circuit court properly considered evidence regarding Appellant's self-employed income, including testimony regarding additional income not provided on his Affidavit of Financial Means, before determining Appellant's net income and chart amount of child support. Furthermore, the circuit court correctly provided an explanation as to why Appellant was ordered to pay tuition, bus fees, and medical expenses of their child. The appellate court found error in the circuit court's division of the marital property for two reasons. First, because marital property is to be equally distributed, the circuit court was required to place a value on Appellant's LLC to make a determination of a fair and equitable division. Second, the appellate court found error in the circuit court's declaration that Appellant's premarital property was transformed into marital property. While the circuit court may grant some benefit for expending marital funds that increased the value of premarital property, the nonmartial property is not transformed into marital property by virtue of the expenditure of martial funds to reduce debt or to make improvements. Given the resolution of the preceding two points, the circuit court must reevaluate the distribution of the overall marital estate. (Mitchell, C.; CV-17-583; 11-14-18; Klappenbach, N.)

Karolchyk v. Karolchyk, 2018 Ark. App. 555 **[division of marital and nonmarital assets; moving expenses as marital debt; money spent on extramarital affair; alimony]** The appellate court found no error in the circuit court's division of property, division of debt, and alimony award. First, the appellate court found no error in the circuit court awarding Appellee one-half of the equity in the marital home as well as reimbursing her an additional $20,000.00 for down payment money she used from her inheritance. It is a well-settled rule that property acquired for a consideration paid in part out of community funds and in part out of separate funds of one of the spouses is in part community and in part separate property. While the nature of separate property may change to marital in the event commingling occurs, there was no difficulty tracing the down payment from her separate inheritance in this matter. Second, the appellate court found no error in the circuit court ordering Appellant to reimburse Appellee for

money he spent on his girlfriend during their marriage. It is permissible to have one spouse reimburse the other for improper expenses attributable to a paramour, and there does not have to be an exact calculation for reimbursement. Appellant admitted taking trips and spending money on his girlfriend, and that evidence was sufficient. Third, the appellate court found no error in the circuit court ordering Appellant to reimburse Appellee for moving expenses. The moving expenses are akin to a marital debt, not an award of marital property, and the circuit court reasoned that Appellant should have to pay this debt since Appellee moved out because of his affair. Fourth, the appellate court found no error in the circuit court awarding Appellee compensation for the martial contributions made toward improvements and the principal reduction on Appellant's non-marital home. A circuit court has broad discretion to distribute both marital and nonmarital party to achieve an equitable division, and a non-owning spouse is entitled to some benefit when marital funds have been used to pay off debts or make improvement on the owning's spouse's nonmarital property. Lastly, the appellate court found no error in the circuit court's award of alimony. The circuit court considered the primary factor of Appellee's need, and Appellant did not argue his ability to pay. The circuit court also considered secondary factors, relying heavily on Appellee's medical needs. (Smith, V.; CV-18-120; 11-14-18; Murphy, M.)

Raymond v. Raymond, 2018 Ark. App. 567 [**using *Hollandsworth* factors in *Singletary* relocation analysis**] The appellate court found no error in the circuit court granting Appellee's petition to relocate. The *Hollandsworth* factors can be relevant "best interest" considerations when the circuit court is applying a *Singletary* relocation analysis. It is only the *Hollandsworth* presumption in favor of relation that is not to be applied. For these reasons, the circuit court correctly considered the factors necessary to determine what was in the children's best interest, and the appellate court will not reweigh the evidence. (Pierce, M.; CV-18-378; 11-28-18; Klappenbach, N.)

PROBATE

In the Matter of the Adoption of Z.K., a minor, 2018 Ark. App. 533 [**putative father's standing in adoption; significant relationship not enough**] Under a plain reading of Arkansas Code Annotated 9-9-206(a)(2)(F), not just "anyone" who proves the existence of a significant relationship with the child is required to consent to the child being adopted; rather, the statute requires only a "father" who proves the existence of such a relationship to consent. The appellate court found that the Appellant "putative father" is not entitled to notice or the right to consent pursuant to this section. Therefore, because Appellant failed to establish that he was the father of the child, the appellate court found no error in the circuit court's finding that Appellant lacked standing to challenge the adoption because he was not required to consent to the adoption. (Duncan, X.; CV-17-962; 11-7-18; Gruber, R.)

JUVENILE

Lancaster v. Ark. Dep't. of Human Servs. 2018, Ark. App. 557 **[TPR—sufficiency of the evidence; reasonable efforts]** There was clear and convincing evidence to support grounds for termination where parents remained unfit throughout case in part due to unresolved substance abuse issues, there were environmental concerns in the home, the father was incarcerated at times and the problems were not resolved while two of the children remained out of the home twelve months. The court's reasonable efforts and best interest findings were affirmed. (Richardson, M.; JV-16-17; November 14, 2018; Brown, W.)

Norris v. Ark. Dep't of Human Servs. 2018, Ark. App. 571 **[TPR—sufficiency of the evidence]** Appellate court affirmed termination of father's rights on the basis of abandonment where during the first year of the dependency neglect case he visited the child, an infant, on only three occasions and by the time of the TPR hearing he had spent no more than twelve hours with her during her entire life. The father offered no just cause for his failure to maintain regular contact with the child and the lack of bond between parent and child can be considered evidence of potential harm. (Clark, D.; JV-17-25; November 28, 2018; Whiteaker, P.)

Phillips v. Ark. Dep't of Human Servs. 2018, Ark. App. 565 **[TPR—sufficiency of the evidence]** Each parent's separate appeal of the termination order was ineffective because each failed to challenge one of the grounds for termination and only one ground is needed for termination, thus termination was affirmed. Regarding potential harm, the mother's extensive history with DHS and noncompliance was evidence of potential harm and termination was in the children's best interest. (Zimmerman, S.; JV-16-105; November 28, 2018; Gladwin, R.)

Woods v. State, 2018 Ark. App. 576 **[Motion to transfer to juvenile court]** Trial court's denial of motion to transfer affirmed where the court considered the ten statutory factors and made written findings concerning each. Although the defendant's juvenile probation officer testified that defendant could be served in the juvenile courts and requested transfer, and two of his teachers and school counselors wrote letters in support of the defendant, the court refused transfer due to the seriousness of the offense, which involved shooting a handgun in a residential neighborhood, and the defendant's failure to comply with prior juvenile probation. The court also considered as evidence photographs of the defendant posted on social media with known gang members "throwing gang signs." The appellate court deferred to the trial court's discretion in deciding the weight to be afforded each factor. (Griffen, W.; CR-18-273; November 28, 2018; Hixson, K.)

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

Bailey. Ark. Dep't. of Human Servs. 2018 Ark. App. 553 (Warren, J.; JV-16-836; November 14, 2018; Glover, D.)

Wagner v. Ark. Dep't of Human Servs. 2018 Ark. App. 554 (Hendricks, A.; JV-17-214; November 14, 2018; Hixson, K.)

Hedrick v. Ark. Dep't of Human Servs. 2018 Ark. App. 568 (Easley, E..; JV-17-25; November 28, 2018; Klappenbach, N.)

Newmy v. Ark. Dep't of Human Servs. 2018, Ark. App. 562 (Wilson, R.; JV-16-169; November 28, 2018; Virden, B.)