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CIVIL

Wells Fargo Bank v. Prescott Automotive, LLC, 2022 Ark. App. 389 [**competing liens**] The circuit court entered an order denying appellant's motion for summary judgment and granting a motion for summary judgment filed by appellee. On appeal, appellant argued the circuit court erred in granting summary judgment in favor of appellee. Under Ark. Code Ann. § 18-45-202(b), mechanic's liens are subject to the perfected lien of a financial institution for any claim for balance of purchase money due. Mechanic's liens, being in derogation of the common law, are to be strictly construed. Here, the issue was a question of priority among competing liens over a vehicle. The court made two specific findings on the basis of undisputed facts: appellee had a mechanic's lien, and appellant, a financial institution, had a purchase money security interest. Therefore, strictly construing Ark. Code Ann. § 18-45-202(b) and applying it to the facts, appellant was entitled to summary judgment. (Culpepper, D.; 50CV-20-18; 10-5-22; Whiteaker, P.)

Blackburn v. The Lonoke County Board of Election Commissioners, 2022 Ark. 176 [**motion to dismiss**] The circuit court entered orders granting motions to dismiss filed by appellees. On appeal, appellant argued that the circuit court abused its discretion in granting the motions to dismiss because he adequately pleaded an as-applied challenge to the constitutionality of Ark. Code Ann.

§ 7-7-103. Additionally, he argued that even if his amended complaint was deficient, then it should have been dismissed without prejudice. **[pleading]** Arkansas Code Annotated § 7-7-103 outlines the process for a person seeking to have his name placed on a ballot as an independent candidate for a county office in a general election. Here, appellant contacted an employee in the Lonoke County Clerk's office for assistance in determining the number of signatures he needed to comply with the statutory requirement from Ark. Code Ann. § 7-7-103. The employee provided appellant with the wrong number of signatures required to get on the ballot. Appellant obtained and returned the incorrect number of signatures by the deadline, and the employee subsequently informed appellant that a mistake had been made and that he was short signatures. Appellant argued that although Ark. Code Ann. § 7-7-103 contained no requirement that the clerk provide him with information about the number of required signatures, her office undertook that action, and the effect is that a government official construed Ark. Code Ann. § 7-7-103 and made an official government statement of what was required under the statute related to signatures. The Supreme Court held that the appellant failed to advance any factual allegations against the appellees. Appellant further failed to allege how mistaken information from an employee of the clerk's office, rendered that statute unconstitutional as applied to him. The circuit court correctly found it was appellant's duty alone to obtain the correct number of signatures. Appellant identified no specific constitutional provision—state or federal—that was violated. Liberally construing the amended complaint, the Supreme Court concluded that appellant failed to plead facts showing that he was entitled to relief. **[dismissal without prejudice]** When a complaint is dismissed under Rule 12(b)(6) of the Arkansas Rules of Civil Procedure for failure to state facts upon which relief can be granted, the dismissal should be without prejudice so that the plaintiff may elect whether to plead further or appeal. Here, appellant was not able to elect whether to plead further or appeal because his amended complaint was dismissed with prejudice. Thus, the Supreme Court modified the dismissals to reflect they were without prejudice. (Story, B.; 43CV-22-348; 10-6-22; Kemp, J.)

Robinson v. Quail Rivers Properties, LLC, 2022 Ark. App. 409 **[summary judgment]** The trial court entered an order granting summary judgment in favor of appellee on appellant's personal-injury claim. On appeal, appellant argued that summary judgment was inappropriate because there were unresolved questions of fact. Summary judgment should not be granted when reasonable minds could differ as to the conclusions that can be drawn from the facts presented. The standard is whether the evidence is sufficient to raise a factual issue, not whether the evidence is sufficient to compel a conclusion. Arkansas case law recognizes an exception to the reasonable-care duty, sometimes referred to as the open and obvious exception; that is, no such duty exists if the condition of the premises that creates the danger was known by, or obvious to, the invitee unless the premises owner should reasonably anticipate that the invitee would be exposed to the danger despite his knowledge of it or its obvious nature. Here, appellant tripped over a parking bumper and fell resulting in injuries on the appellee's property. Appellant testified in her deposition that the parking area was darkened by a shadow, that the asphalt was black, and so was the parking bumper. As a result, she claimed that the bumper blended with asphalt, and she could not differentiate between the dark parking bumper and the dark pavement. Appellant was presented

with a photograph during her deposition allegedly showing that the parking bumper had been marked with white stripes, which was purportedly taken after appellant tripped. However, the photograph was time-stamped as having been taken on the day of the incident, but before, not after. The appellate court held that genuine issues of material fact existed as to whether the condition of the parking bumper in question was known or obvious to appellant. Thus, summary judgment was not proper at that time. (Morledge, C.; 54CV-19-29; 10-19-22; Whiteaker, P.)

Chadick v. Walters, 2022 Ark. App. 423 [**settlement; meeting of the minds**] The circuit court determined that the parties reached a full and complete settlement agreement of their claim to quiet title and entered an order compelling execution of the settlement agreement. On appeal, appellant argued that the circuit court erred when it determined that the parties had reached an enforceable settlement agreement. A settlement is contractual in nature, and to be legally valid, it must possess the essential elements of a contract. There must be a meeting of the minds in order to have a valid contract, using objective indicators; if there is no meeting of the minds, there is no contract. A court cannot make the parties' contract but instead can only construe and enforce that contract the parties have made. Here, the issue was whether there was a meeting of the minds as to all terms of the contract. Appellant argued there was not a meeting of the minds, while appellee argued appellant tried to create an unresolved issue. Three different versions of a real-estate purchase agreement were sent to appellee's attorney. The first version has a specific performance provision in the event either party breached the agreement. The final version was signed by the appellant but allowed only appellant to be entitled to specific performance, and shifted all of the closing costs and expenses, including appellant's attorney's fees to the appellee. The circuit court ordered the parties to execute the version of the agreement appellant signed that contained a provision allowing the remedy of specific performance only to appellant, which the appellee said was unacceptable. The appellate court held there was no meeting of the minds between the parties regarding the specific-performance provision. In an amended order, the circuit court added an additional requirement by holding both parties to specific performance. The circuit court can only enforce the parties' contract as written. Because the parties did not agree on all the terms of the agreement, there was no meeting of the minds. Therefore, there was no enforceable contract, and the circuit court erred in finding that an enforceable contract existed. (Ohm, R.; 26CV-19-1009; 10-26-22; Barrett, S.)

Stanfield v. Willis, 2022 Ark. App. 427 [**statutory notice requirement; quiet title**] The circuit court denied appellant's motion to reopen, intervene, and overturn a decree of quiet title entered in favor of appellee. On appeal, appellant argued the circuit court erred in denying her motion because she was not given proper notice of the quiet-title action. The statutory-notice provision of Ark. Code Ann. § 18-60-502 is mandatory and required appellee to conduct searches for particular records in order to identify persons who are entitled to notice, and upon identifying such persons, appellee was required to send notice by certified mail to the last known address of such persons in duplicate, with one copy addressed by name to the person entitled to notice and the other copy addressed to "occupant." If the certified mail was returned undelivered, appellee was required to

send a second notice by regular mail. When there is no compliance with the quiet-title statutory-notice requirements, the circuit court lacks jurisdiction to adjudicate the rights to the land. Here, appellant argued that appellee failed to comply with Ark. Code Ann. § 18-60-502, because if he had conducted the required search, he would have seen her name on the tax records for the property and he would have discovered that she is a party entitled to notice under the statute. In the present case, there was no evidence on the record that appellee complied with Ark. Code Ann. § 18-60-502, and appellee argued that appellant was not entitled to notice. The appellate court held the trial court erred in finding that notice of the filing of the petition had been given as required by law. Therefore, the decree of quiet title should be set aside. (Williams, L.; 26CV-19-1356; 10-26-22; Vaught, L.)

CRIMINAL

Rogers v. State, 2022 Ark. App. 388 [**second-degree escape**] Appellant was convicted of second-degree escape by the circuit court and was sentenced as a habitual offender to twenty-five years in the Department of Correction. On appeal, appellant argued that the circuit court erred in allowing lay witnesses to provide testimony on an ultimate issue of fact and that his right to speedy trial was violated. [**lay-witness testimony**] Rule 701 of the Arkansas Rules of Evidence permits lay witnesses to testify in the form of opinions or inferences as long as those opinions or inferences are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of his or her testimony or the determination of a fact in issue. Although opinion testimony on the ultimate issue is admissible, if the opinion mandates a legal conclusion or “tells the jury what to do,” the testimony should be excluded. Here, one of the prosecuting attorneys in appellant’s underlying drug-conviction trial testified that appellant was in custody at the time of the escape. The circuit court did not abuse its discretion by admitting that testimony over appellant’s objection, because while the testimony indicated attorney’s belief that appellant was in custody, it did not improperly direct the jury to find appellant guilty of second-degree escape. Additionally, the chief of court security for the circuit court testified that court security officers were part of a law enforcement agency. On cross-examination, counsel for appellant read the applicable statutes and asked the chief of security’s opinion on whether the duties of the court security officers fell within the statutory definition and whether the court security organization qualified as a law enforcement agency. Thus, it was appellant, not the State, who elicited testimony from the witness in an attempt to direct a verdict in his favor. The chief of court security’s testimony did not command the jury to find appellant guilty of second-degree escape. Accordingly, the court did not abuse its discretion in allowing that testimony. (Haltom, B.; 46CR-18-436; 10-5-22; Whiteaker, P.)

Mitchell v. State, 2022 Ark. App. 424 [**substitution of counsel**] Appellant was convicted by a jury of one count of first-degree battery and sentenced to a total of twenty-one years imprisonment as a habitual offender. On appeal, appellant argued that the circuit court erred when it denied his motion for substitution of counsel. A defendant has a right to counsel of choice grounded in the

Sixth Amendment to the United States Constitution and guaranteed by article 2, section 10 of the Arkansas Constitution. While constitutionally guaranteed, however, a defendant does not have an absolute right to counsel of his choosing and may not exercise his right to frustrate the inherent power of the court to command an orderly, efficient, and effective administration of justice. The purpose of the right is to guarantee an effective advocate for each criminal defendant, rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers. Once competent counsel is obtained, any request for a change in counsel must be considered in the context of the public's interest in the prompt dispensation of justice. Here, the appellant filled out an affidavit of indigency, was found to be partially indigent, and appointed a public defender in 2019. In 2021, a trial date was set in May with a pretrial hearing in April. An attorney from a firm filed a motion for discovery and disclosure on appellant's behalf and then filed a motion for substitution of counsel in March, which was denied by the circuit court at the April hearing. The circuit court was concerned that the case had been pending on its docket for over two years, and that the trial had been continued multiple times due to the COVID pandemic and at appellant's request. The circuit court repeatedly stated that it was amenable to considering the option of having the firm work as co-counsel with the public defender, which was rejected by appellant. In *Morris v. Slappy*, 461 U.S. 1 (1983), the United States Supreme Court held that only an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to the assistance of counsel. Based upon this holding, the appellate court held that appellant's right to assistance of counsel was not violated. Therefore, the circuit court did not abuse its discretion in denying appellant's motion for substitution of counsel. (Karren, B.; 04CR-19-368; 10-26-22; Whiteaker, P.)

PROBATE

In the Matter of the Adoption of Minor Child Manuel Cruz Cervantez v. Segovia, 2022 Ark. App. 408 [**consent to adoption**] The trial court entered an order finding appellant's consent to the adoption of his minor child was not required. On appeal, appellant argued the trial court erred because he did not voluntarily, willfully, arbitrarily, and without adequate excuse fail to maintain communication with his child. Consent to adoption is not required of a parent of a child in the custody of another if the parent for a period of at least one year has failed significantly without justifiable cause to communicate with the child. Justifiable cause means the significant failure must be willful in the sense of being voluntary and intentional; it must appear the parent acted arbitrarily and without just cause or adequate excuse. For purposes of determining whether a parent willfully deserted his child or intended to maintain his parental role, the circuit court may consider as a factor whether the parent sought to enforce his visitation right during the relevant one-year period. A circuit court should consider a parent's conduct, particularly in the period before the filing of the adoption petition, in determining whether the parent's consent to an adoption should be required. In determining whether a significant failure has occurred, courts must inquire whether the parent utilized those resources at his command in continuing a close relationship with the child. A parent's attempt to conceal the child from the other parent by not providing a home address or

phone number effectively prevents that parent from communicating with the child in a meaningful way. Here, before the petition for adoption was filed, appellant messaged appellee twenty-nine times and sent a legal letter requesting visitation with the child. Further, there was not a one-year period during which appellant did not attempt communication with the child. Appellee concealed her home address and phone number from appellant and was held in contempt for doing so. Appellant's inability to contact the child through appellee was not voluntary or intentional, which was required for a just-cause finding. While the trial court suggests appellant could have done more, the Arkansas Supreme Court has held previously the question is not whether a parent could have done more; rather, it is whether the parent's efforts to establish a significant relationship, despite the other parent thwarting his or her efforts, were sufficient such that consent was not required. The appellate court held that appellant's efforts were sufficient under the circumstances. Therefore, the circuit court erred in finding appellant's consent to the adoption of the child was not required and granting the petition to adopt. (Threet, J.; 72PR-20-996; 10-19-22; Barrett, S.)

DOMESTIC RELATIONS

Wilson v. Cribbs, 2022 Ark. App. 383 [**order of protection; domestic abuse**] The circuit entered an order of protection that prohibited the appellant from contacting his former girlfriend, appellee, for one year. On appeal, appellant argued that there was insufficient evidence to support the order because there was a lack of evidence of domestic abuse committed against appellee. When a petition for a protective order is filed under the Domestic Abuse Act, the circuit court may provide relief to the petitioner upon a finding of domestic abuse. Domestic abuse is defined as physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members. Here, appellee testified that she was afraid of appellant and tormented by his behavior. Appellee had experienced at least two confrontations during which appellant put his hands on her in a violent way: pulling her out of a car by her neck and pushing her toward a wooded area by her shoulders. Additionally, a witness heard several phone calls where the appellant told the appellee to watch her back and he expressed remorse for having put his hands on appellee. The appellate court held that the circuit court did not err in finding domestic abuse and entering the protective order restricting appellant's contact with appellee. (Bailey, A.; 05DR-20-411; 10-5-22; Klappenbach, N.)

Morris v. Morris, 2022 Ark. App. 386 [**change of custody; evidence**] The circuit court entered an order changing custody of the parties' two children to appellee. On appeal, appellant argued that the circuit court erred (1) in prohibiting evidence predating an earlier order; (2) in prohibiting testimony regarding a statement made by appellee's now adult son to his then counselor; and (3) in finding a material change in circumstances and that it was in the best interest of the children to change custody to appellee. [**modification proceeding**] The circuit court has discretion to restrict evidence in a modification proceeding to facts arising since the prior order modifying custody. While the earlier order was entered as a result of a petition for contempt, the end result involved a

change of custody. The circuit court found a material and substantial change of circumstances had occurred and that it was in the best interest of the children that prior orders be modified. A custody order is a decree assigning the custody of a child. Therefore, the circuit court did not err in excluding evidence concerning records or events that took place before the earlier order. **[privileged statement]** Rule 503(b) of the Arkansas Rules of Evidence states a patient has the right to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment, and the physician at the time of communication is presumed to have authority to claim the privilege on behalf of the patient. Rule 801(c) of the Arkansas Rules of Evidence defines hearsay as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Here, appellant tried to introduce a statement made by appellee's son to his counselor. Appellant's counsel questioned the son's counselor about whether she treated the appellee's son and whether the counselor had disclosed to appellant any concerns the son had about the minor children being in appellee's care. In addition to being privileged communication, this evidence was also impermissible hearsay. **[material change in circumstances]** A circuit court must first determine a material change in circumstances has occurred since the last order of custody; and if that threshold requirement is met, it must then determine who should have custody, with the sole consideration being the best interest of the children. Abrupt behavioral issues in a child are sufficient to support a finding of a material change in circumstances. Here, there was an abnormal change in one of the children's behavior. Additionally, at the same time the child's behavior change began the appellant was suffering from paranoid delusions and the children received excessive absences and were dropped from their school district. Further, as a result of appellant's quest to receive a medical diagnosis for the child's behavior, the child experienced numerous traumatic and unnecessary medical examinations. The appellate court held that there was sufficient evidence to support the circuit court's finding of a material change in circumstances and that there was ample proof that it was in the best interest of the children for appellee to have custody. (Schrantz, D.; 04DR-10-1411; 10-5-22; Barrett, S.)

Howell v. Howell, 2022 Ark. App. 415 **[child support; property settlement agreement]** The circuit court entered an order modifying child support and awarding back child support. On appeal, appellant argued the circuit court erred in modifying child support and asserted that a change in circumstances must be proved. In determining a reasonable amount of child support, the court shall refer to the most recent revision of the family-support chart. It shall be a rebuttable presumption that the amount contained in the family-support chart is the correct amount of child support to be awarded. Only upon a written finding or a specific finding on the record that the application of the family-support chart would be unjust or inappropriate, as determined under established criteria set forth in the family-support chart, shall the presumption be rebutted. All orders granting or modifying child support (including agreed orders) shall contain the court's determination of the payor's income, recite the amount of support required under the guidelines, and recite whether the court deviated from the family-support chart. If the order varies from the guidelines, it shall include a justification of why the order varies. A change in circumstances must be shown before a court can modify an order for child support. Here, the parties were divorced by decree, which

incorporated a property-settlement agreement (PSA). The PSA provided that the parties had created an account in which each party would deposit a certain amount each month “to cover each of their ½ respective amounts payable towards the minor child’s Health, Dental, School, Clothing, and Extracurricular activities.” Appellee later filed a motion to set child support and modify the PSA. On appeal, appellee argued that she did not have to prove a material change of circumstances because of the circuit court’s inherent power and continuing jurisdiction to interpret, clarify, and enforce a divorce decree. Specifically, appellee argued that the PSA was unclear about whether the expense accounts were substitutes for support under Administrative Order No. 10. Accordingly, appellee asserted that the court’s order on appeal was the first instance of child support being ordered, and it was not necessary to prove a change of circumstances. The appellate court agreed, holding that the circuit court had made an initial determination of child support appropriate in a joint-custody arrangement. Although the PSA contained a provision for the parties to pay certain amounts into an account to benefit the child, the account was jointly held and funded as part of the joint-custody arrangement and did not establish the parties’ incomes or obligations under the family-support chart. Therefore, the circuit court’s order establishing child support under the chart was not an abuse of discretion. (Ohm, R.; 26DR-17-578; 10-26-22; Gladwin, R.)

Stormes v. Gleghorn, 2022 Ark. App. 416 [**change in custody; material change in circumstances**] The circuit court entered an order changing joint custody of the parties two children to primary custody with appellee. On appeal, appellant argued that appellee failed to prove a material change in circumstances. The primary consideration in child-custody cases is the welfare and best interest of the child, with all other considerations being secondary. The party seeking modification of the custody order has the burden of showing a material change in circumstances. To change custody, the trial court must first determine that a material change of circumstances has occurred since the last order of custody, and if that threshold requirement is met, it must then determine who should have custody with the sole consideration being the best interest of the child. Behavior demonstrating an inability to protect the minor children or behavior placing them in imminent danger can constitute a material change in circumstances. The parents’ inability to cooperate on joint custody, remarriage, exposing the children to a dangerous new romantic interest, and serious illegal and legal drug abuse and medical concerns are all recognized factors supporting a material change. Here, appellant testified that she bought and smoked marijuana. Appellant also testified that she had spent the night with a romantic interest that had sexual abuse allegations from another child when the children were present, and she stipulated that the children would no longer be allowed around him. Additionally appellant testified that she did not comply with the divorce decree’s order that she take parenting classes before a contempt motion was filed. Appellant argued that custody awards are not made or changed to punish, reward, or gratify the desires of either parent. Appellee contended that the order on appeal was not the product of the circuit court’s desire to punish appellant. Rather, appellee argued that the order was a thoughtful and measured reaction to the significant changes created by appellant’s poor decisions and illicit behavior, including her decision to avoid court-ordered drug testing and flee the emergency room when she was asked to submit to a drug test. Giving special deference to the trial court’s superior position to evaluate the witnesses, their testimony, and the child’s best interest,

the appellate court held that the circuit court's finding of a material change in circumstances was not clearly erroneous. (Broadaway, M.; 16JDR-18-107; 10-26-22; Gladwin, R.)

Saunders v. Saunders, 2022 Ark. App. 428 [**custody; joint custody**] The circuit court entered an order granting a motion for change of custody and awarding appellee custody of the parties' child. On appeal, appellant argued that (1) the circuit court erred by failing to consider and make findings on joint custody, and (2) the circuit court's factual findings were clearly erroneous. [**joint custody consideration**] Arkansas Code Annotated § 9-13-101 was amended in 2013 to announce that in divorce actions, an award of joint custody is "favored" in Arkansas. In 2021, the General Assembly amended Ark. Code Ann. § 9-13-101 to state that "the circuit court shall consider awarding joint custody of a child to the parents in making an order for custody." Here, appellant argued that the circuit court failed to consider joint custody in contravention of the statute favoring joint custody. The appellate court held that even though the legislature has amended Ark. Code Ann. § 9-13-101 to state that an award of joint custody is favored in Arkansas and that a circuit court must consider joint custody in making an award, joint custody is by no means mandatory under the statute. The statutory preference for joint custody does not override the ultimate guiding principle that the best interest of the child is the polestar for a custody determination. A failure by the circuit court to award joint custody does not mean that the circuit court failed to consider awarding joint custody. The circuit court expressly stated that it considered the child's best interest in modifying custody and that it considered "all of the factors," which necessarily includes an award of joint custody under the statute. As such, the circuit court did not err. [**modification of custody**] Courts impose more stringent standards for modifications in custody than they do for initial determinations of custody to promote stability and continuity in the life of the child and to discourage repeated litigation of the same issues. In order to change custody, the circuit court must first determine that a material change of circumstances has occurred since the last order of custody, and if that threshold requirement is met, it must then determine who should have custody with the sole consideration being the best interest of the child. Here, appellant argued that the circuit court's factual findings were clearly erroneous. The circuit court outlined and considered multiple factors in its decision to change custody. The circuit court specifically stated that the child's "academics, absences, tardies, and his exposure to three different men" in appellant's home were all indicative of a change in circumstances. The circuit court further found that when considering all of the factors, especially the lifestyles that both of the parties led, it was in the best interest of the child that custody be placed with appellee. Appellant admitted that she had received truancy letters from the child's school concerning excessive absences. There was also evidence of a previous incident in which the parties' other child had access to a gun that was pulled on appellant's former husband, while appellant was home. Additionally, there was evidence presented that the child had been given a cell phone by appellant's boyfriend who was still married to another woman, that contained a nude photograph of appellant and other pornographic photographs. Appellant testified that her current boyfriend had stayed at her home overnight with the child present and that the boyfriend babysat the child at times when appellant was away. The appellate court held the circuit court did not clearly err in finding that there had been a material change in circumstances and that it was in

the best interest of the child to change custody from appellant to appellee. (Thomason, M.; 13DR-14-84; 10-26-22; Hixson, K.)

JUVENILE

Felicia Love v. Ark. Dep't of Human Servs.; 2022 Ark. App. 377 [**TPR; sufficiency of evidence; best interest**] Children were removed from Appellant's custody due to her substance abuse; one child tested positive for THC at birth, and another tested positive for THC on a hair test at removal. There was no error in termination of parental rights due to aggravated circumstances finding from little likelihood that services would result in successful reunification as the evidence at termination hearing was Appellant did not participate in substance-abuse counseling, despite it being offered, and Appellant admitted using illegal drugs, specifically marijuana, two months prior to the hearing and eighteen months following the children's removal. Appellant's continued drug use throughout the case, coupled with her untreated mental-health issues, demonstrated potential harm sufficient to support a best-interest finding for TPR. (Byrd, T.; CV-22-169; 10-5-22; Abramson, R.)

Aslyn Smith v. Ark. Dep't of Human Servs., 2022 Ark. App. 379 [**TPR; abuse of discretion; acceptance of consent to terminate**] In the middle of a multi-day TPR hearing, Appellant tendered a consent to the voluntary termination of her parental rights, which the trial court did not accept. Arkansas Code Annotated section 9-27-341(b)(3)(B)(v)(a) states a ground for termination that "a parent has executed consent to termination of parental rights or adoption of the juvenile, *subject to the court's approval.*" This section provides the trial court discretion to accept a parent's consent to voluntary termination of his or her parental rights; trial court gave no reason and statute does not require specific findings to reject a consent. As an aside, the fact that the trial court provided a consent form to Smith as a courtesy did not mean that the trial court was then bound to accept Appellant's consent. No error found; decision affirmed. (Zimmerman, S.; CV-22-200; October 5, 2022; Virden, B.)

Ryan Franklin v. Ark. Dep't of Human Servs., 2022 Ark. App. 390 [**ADJ; sufficiency of evidence**] Appellant's child was adjudicated dependent-neglected due to abuse from injury at variance with the history given and from nonaccidental physical injuries; specifically, skull, rib, and leg fractures while in the custody and care of the parents. Appellant first argued the record was silent as to his contribution to or commission of any "act or omission" that resulted in the abuse or neglect of his child, claiming not to have been the "bad actor." However, the focus of an adjudication hearing is the child, not the parent, and whether the child was at substantial risk of serious harm as the result of, among other things, abuse or neglect. In this case, the circuit court found the child dependent-neglected due to physical abuse sustained while in the custody and care of the parents and that the injury was at variance with the history given. Which parent committed the acts or omissions constituting neglect or abuse was not the issue. Appellant secondly argued that DHS failed to

prove that any of the injuries were intentional and failed to provide evidence that the injuries were “nonaccidental” (alleged failure to prove causation). This argument was found to be without merit, as the relevant statutes do not appear to include any intent element, and Appellant cited no case holding that they do. Further, credible expert witnesses in pediatric medicine testified that the child was too young to have accidentally injured themselves and that, in any event, no one gave a history of any sort of an accidental event or provided a plausible accidental cause for the child’s injuries, which was enough for the court to find “that this injury was at variance with the history given.” No error found; decision affirmed. (Sullivan, T.; CV-22-95; 10-5-22; Whiteaker, P.)

Dianna Dejarnette v. Ark. Dep’t of Human Servs., 2022 Ark. App. 410 [**TPR; best interest**] The appellate court found no clear error in the circuit court’s finding that there was little likelihood that additional services to the family would have resulted in successful reunification. Appellee had been providing services to Appellant for almost a year and a half by the time of the termination hearing, and Appellant failed to stabilize her mental-health issues. Appellant never demonstrated compliance with the case plan sufficient to have custody or even unsupervised visits with her children. Further, Appellant’s deficiencies could not be characterized as “a few lapses in judgment”; rather, she consistently failed to comply with the case plan and court orders, and she never resolved her mental-health issues. The appellate court will not reweigh the evidence in Appellant’s favor and credibility determinations are for the circuit court to make. The appellate court found no clear error in finding termination of parental rights was in the children’s best interest after considering the potential harm caused by returning the children to Appellant. Furthermore, the appellate court found it was not unreasonable to deny Appellant’s request for more time despite her argument there was no mention of a plan to have the children adopted together and no evidence presented about the children’s relationship or the impact the termination decision would have on them, contending that the only way to reunify the children with each other was through reunification with Appellant. Lastly even if the issue was preserved, the court found Appellant’s sibling-separation argument would have been unsuccessful as there was no evidence presented at the termination hearing of a sibling bond between the children, merely that the children were not placed together yet saw each other at the Appellant’s sporadic visitation. Without some evidence of the existence of a sibling bond, there was no error in finding termination was in the best interest of the children. (French, T.; CV-22-217; 10-19-22; Vaught, L.)

Calvin Summers v. Ark. Dep’t of Human Servs.; 2022 Ark. App. 421 [**TPR; best interest and measurable progress**] Appellant alleged termination was clearly erroneous because he had made significant and measurable progress and additional time would not have put minor child at risk of potential harm. The appellate court will not reweigh the evidence in Appellant’s favor and adopt a timetable more fitting to his circumstances. (Layton, D.; CV-22-237; October 26, 2022; Gruber, R.)

Natalie Edwards v. Ark. Dep't of Human Servs.; 2022 Ark. App. 419 [**TPR; best interest and juvenile's need for permanency**] Appellant argued that she had corrected the conditions that caused removal because at the time of the termination hearing because she had completed one inpatient program and was participating in another, she had employment, and she had options for a stable home for her and the children. However, while appellant was sober at the time of the termination hearing, she had failed to show that she could maintain sobriety, housing, employment, or stability outside of an inpatient-rehab setting. Appellant argued that a delay in providing services impacted the amount of progress that could be made prior to the termination hearing, but the only specific service she referenced was counseling for the children. At the time of the January 2021 hearing in which the trial court found a lack of reasonable efforts, Appellant was planning to enter a drug-treatment center upon her completion of a crisis-stabilization program. Accordingly, even though other services were delayed, Appellant at that point had already taken steps toward remedying her drug issues. At the next two hearings, the court found that Appellee had made reasonable efforts, but Appellant had only partially complied with the case plan and court orders. [**TPR; continuance**] Appellant also argued that the trial court erred in refusing to grant her a continuance or additional time to complete her drug-treatment program and demonstrate she could maintain stability and sobriety. She argued that if the trial court had granted her motion for a continuance to the date of the termination hearing, she could have completed the inpatient portion of her program. However, at the time the trial court denied the motion for a continuance, there had been no testimony or argument regarding Appellant's drug treatment or progress. Again, relying on the January 2021 no-reasonable-efforts finding, Appellant argued that she had only been offered ten months of reasonable efforts and that, given her progress and her bond with her children, termination was not in the children's best interest. However, a juvenile's need for permanency and stability may override a parent's request for additional time to improve the parent's circumstances. The intent of the termination statute was to provide permanency in a child's life when returning to the family home was contrary to the child's health, safety, or welfare, and it appeared from the evidence that a return to the family home could not be accomplished in a reasonable period of time as viewed from the child's perspective. The children here had been in foster care for fifteen months. Given the history of the case, the circuit court's best-interest finding was clearly not erroneous. (Byrd, T.; CV-22-105; 10-26-22; Klappenbach, N.)