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Appellate Update is a service provided by the Administrative Office of the Courts to assist in locating published decisions of the Arkansas Supreme Court and the Court of Appeals. It is not an official publication of the Supreme Court or the Court of Appeals. It is not intended to be a complete summary of each case; rather, it highlights some of the issues in the case. A case of interest can be found in its entirety by searching this website or by going to (Supreme Court - http://courts.arkansas.gov/opinions/sc_opinions_list.cfm or Court of Appeals - http://courts.arkansas.gov/opinions/coa_opinions_list.cfm).

ANNOUNCEMENTS

On October 20th, the Supreme Court amended Rule VII (license fee) and Rule XIV (pro hac vice) of the Rules Governing Admission to the Bar. The per curiams were included in the mailout.

On October 20th, the Supreme Court substituted a revised Administrative Order Number 17 addressing a mandatory course that is required to be taken within two years of admission to the Bar.

CRIMINAL

Trif v. State, 2016 Ark. App. 452 **[probation revocation]** Appellant was sentenced to probation in two separate cases. Thereafter, prior to the expiration of the probationary periods, the State filed a petition to revoke under each case number. However, an arrest warrant was issued under only one case number. Based on various procedural issues, appellant did not plead guilty to the

revocation petitions and sentences were not imposed in the cases until after the expiration of the periods of probation. On appeal, appellant correctly challenged the jurisdiction of the circuit court to revoke his probation in one of the cases. Specifically, appellant argued, and the appellate court agreed, that appellant's probation could not be revoked in the case in which he was not arrested and a sentence was not imposed prior to the expiration of the probationary period. The appellate court noted that the fact that a warrant was issued for appellant's arrest based upon a violation of probation in one case did not cure the court's lack of jurisdiction in the separate case in which no arrest warrant was issued. (McGowan, M.; CR-16-57; 10-5-16; Gladwin, R.)

Brisher v. State, 2016 Ark. App. 488 **[revocation; confrontation clause]** In a revocation proceeding, the trial court must balance the defendant's right to confront witnesses against the grounds asserted by the State for not requiring confrontation. The trial court should first assess the explanation the State offers for why confrontation is undesirable or impractical. A second factor that should be considered is the reliability of the evidence that the government offers in place of live testimony. In appellant's case, the State offered no explanation as to why the informant was not available to be confronted and the circuit court did not make a finding that there was good cause for not requiring the informant to testify. Thus, the circuit court erred by allowing law enforcement officials to testify that the informant identified appellant as the person who had delivered contraband when the informant did not testify at appellant's hearing. (Medlock, M.: CR-15-707; 10-19-16; Hoofman, C.)

Whalen v. State, 2016 Ark. 343 **[sobriety checkpoint]** The sobriety checkpoint at which appellant was arrested was not conducted according to a preexisting plan or in a manner exhibiting explicit, neutral limitations on the officers' conduct. When determining whether officers' discretion at a checkpoint is properly limited the court should consider: (1) whether the decision to set up the checkpoint was made by the officer or officers actually establishing the checkpoint, and (2) whether the officers on the scene are deciding for themselves the procedures to be used in operating the checkpoint. These factors are so essential to the reasonableness of a checkpoint that the absence of either factor will result in the invalidation of the stop. The State must show that some authority superior to the officers in the field decided to establish the checkpoint, particularly as to its time and location, and that the officers adhered to neutral standards previously fixed by administrative decision or regulation. (Tabor, S.; CR-15-1067; 10-20-16; Baker, K.)

Doty v. State, 2016 Ark. 341 **[Rule 37]** Appellant failed to establish that his trial counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Thus, the circuit court did not err when it denied appellant's petition for postconviction relief. (Edwards, R.; CR-16-126; 10-20-16; Danielson, P.)

Thacker v. State, 2016 Ark. 350 **[*error coram nobis*]** Suppression of material exculpatory evidence by a prosecutor falls within one of the four categories of *coram nobis* relief. Evidence is "material" if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Because appellant failed to establish that the evidence, which was withheld by the prosecutor, was "material," the trial court's denial of appellant's *error coram nobis* petition was not an abuse of discretion. (Fitzhugh, M.; CR-15-1034; 10-20-16; Wood, R.)

Myers v. State, 2016 Ark. App. 501 **[jury instructions; third-degree endangering the welfare of a minor]** Based upon appellant's admission that when the child he was caring for began to cry appellant became upset and frustrated and bite, pinched, and squeezed the child, the evidence did not support a finding that appellant's actions were reckless. Thus, there was no rational basis for instructing the jury on the offense of endangering the welfare of a minor in the third-degree. (Dennis, J.; CR-16-242; 10-26-16; Glover, D.)

Williams v. State, 2016 Ark. App. 507 **[Ark. R. Evid. 403]** The trial court abused its discretion when it allowed the State to introduce detailed allegations from a separate and unrelated crime into evidence at appellant's trial because the evidence had little probative value in establishing whether appellant committed the crime for which he was on trial and because the evidence was unfairly prejudicial. (Sims, B.; CR-15-866; 10-26-16; Hoofman, C.)

Cases in which the Arkansas Court of Appeals concluded that there was substantial evidence to support the appellant's conviction(s):

Velasco v. State, 2016 Ark. App. 454 (maintaining a drug premises within 1000 feet of a certified drug-free zone) CR-16-178; 10-5-16; Abramson, R.

Hembey v. State, 2016 Ark. App. 482 (felon in possession of a firearm) CR-16-186; 10-19-16; Whiteaker, P.

Cases in which the Arkansas Court of Appeals concluded that the circuit court's decision to revoke appellant's probation or suspended sentence was not clearly against the preponderance of the evidence:

Baker v. State, 2016 Ark. App. 468 (suspended sentence) CR-16-84; 10-5-16; Hoofman, C.

Holmes-Childers v. State, 2016 Ark. App. 464 (probation) CR-16-172; 10-5-16; Vaught, L.

Daffron v. State, 2016 Ark. App. 486 (suspended sentence) CR-16-240; 10-19-16; Hixson, K.

CIVIL

Union Pacific RR v. Seeco, Inc., 2016 Ark. App. 466 [**mineral rights]** When mineral rights have been severed, adverse possession of the surface rights is ineffective against the owner of minerals unless the possessor actually invades the minerals by opening mines or drilling wells and continues that action for the necessary period. However, because Union Pacific failed to show evidence that the mineral rights were severed by at least 1948, the Tyus family adversely possessed the mineral rights when the surface rights were adversely possessed. (Braswell, T.; CV-16-28; 10-5-16; Hixson, K.)

Jackson v. Nationstar Mortgage, LLC, 2016 Ark. App. 473 **[motion to dismiss]** The circuit court did not err in considering Nationstar's motion to dismiss after the plaintiff had filed an amended complaint. Plaintiff merely asserts new theories to acquire the same relief. Furthermore, the same defects raised in the original motion apply to the new pleading. Jackson also argues that the circuit court erred in considering the motion to dismiss because it did not afford her an opportunity to file a written response to the motion as to the newly added claims. There is no specific requirement of a written response to a written motion. In this case, the court held a hearing where Jackson had the opportunity to respond to Nationstar's argument as to the newly added claims. Moreover, Jackson filed a written response to Nationstar's motion to dismiss. (Piazza, C.; CV-15-1006; 10-19-16; Abramson, R.)

Bales v. *City of Fort Smith*, 2016 Ark. App. 491 **[summary judgment/whistleblower]** It is clear that reasonable minds could determine that there is evidence connecting Bales' alleged whistle-blowing communication to the adverse actions he ultimately incurred. Accordingly, summary judgment on Bales' whistle-blower claim was improper. Plaintiff Sampson failed to offer any evidence linking his formal reprimand to his alleged whistleblowing communication, and without any evidence of causation, Sampson failed to meet proof with proof. Accordingly, his whistle-blower claim necessarily fails. (Cox, J.; CV-15-873; 10-19-16; Vaught, L.)

Arkansas State Board of Licensure for Professional Engineers and Surveyors v. *Callicott*, 2016 Ark. App. 476 **[administrative review appeal]** Because the Board's order fails to detail what it found to have actually happened regarding several critical issues and fails to state how the facts led to its conclusions, case is reversed and remanded for the Board to make specific findings and conclusions as required by the Administrative Procedure Act. (Welch, C.; CV-15-1039; 10-19-16; Kinard, M.)

Byrd v. State, 2016 Ark. App. 476 **[civil forfeiture/service/default]** Appellant's argument that "there was no testimony to refute Byrd's that he was served the wrong complaint" does not

persuade. The return of service is prima facie evidence of service. Whether service was accomplished in this case is a question of fact, and the credibility of the evidence to rebut proof of service was a matter for the circuit court to decide. The trial court simply did not believe appellant when he claimed to have been served with another man's forfeiture complaint instead of the correct one. The trial court erred in granting default judgment to appellee because there was never an application for default or written notice to appellant as required by Ark. R. Civ. P. 55. In this case, the trial court sua sponte moved this forfeiture case toward a default judgment and did so in the absence of a request by the prosecutor, and it compounded the error by failing to comply with the procedure and notice requirements of Rule 55. (Martin, D.; CV-15-855; 10-19-16; Hoofman, C.)

Ladd v. PS Little Rock, Inc., 2016 Ark. App. 506 **[service]** Service was proper despite questions about the address stated on the green card, misinformation on the proof of service, lack of a postal stamp on the return receipt, and the lack of the signature of a natural person on the return receipt. (McGowan, M.; CV-16-17; 10-26-16; Hixson, K.)

McCord v. Foster, 2016 Ark. App. 500 **[right of refusal]** There is clearly a factual dispute as to the intention of the parties regarding the relationship between Paragraphs 9 and 19. In other words, the relevant issue is whether the original parties to the lease intended that Brandon and Alden would be required to offer the property to the McCords in the event that they acquired the property from the decedent and desired to sell during the term of the lease. The determination of the intent of contracting parties is largely a factual one. Such factual findings are not within the realm of a summary judgment. **[intervention]** Ditch 56 Farms sought to intervene because it has a contract with the McCord defendants to purchase the property from them once the McCord defendants exercised their preemptive right of refusal. Its proposed complaint sought declaratory judgment, specific performance, and a claim for damages for breach of contract against Alden, Brandon, and the McCord defendants. However, the circuit court did not conduct a Rule 24 analysis. Instead, the court simply denied the motion to intervene as moot once it determined that the McCords' right of refusal had been extinguished. On remand, the circuit court shall properly consider the motion to intervene. Generally, such a motion should be considered prior to consideration of the merits of the underlying claims. (Fergus, L.; CV-15-805; 10-26-16; Gruber, R.)

Ransom v. JMC Leasing Specialties, LLC, 2016 Ark. App. 509 **[contempt]** The circuit court properly held Ransom in contempt for failing to timely deliver the Camry's certificate of title to JMC, as required by the June 4, 2015 judgment. The court ordered John to pay JMC $555, based on statements by JMC's attorney that the delay in receiving title had caused him to expend two hours preparing a contempt petition and a show-cause order, for a total of $500 in fees, and to incur $55 in service costs. (Piazza, C.; CV-15-1016; 10-26-16; Brown, W.)

Sexton v. Local Police and Fire Retirement System, 2016 Ark. App. 496 **[administrative appeal]** The Board required more than the statute requires in terms of proof of causation. According to the statute, Planchon had to show that his disability, meaning his cancer, had "arisen out of, and in the course of," his employment. And while "arisen out of" has not been defined in the context of this particular statute, it generally means that one must show a "causal connection." The basic test is whether there is a causal connection between the two episodes. In its written order, the Board cites Dr. Nair's opinion that a "definite causation" had not been established. And in its oral ruling, which was incorporated into the written order, the Board found that Planchon had not "confirmed the cause of his cancer to a sufficient degree" and that "nothing concrete" had "firmly established" a causal relationship. Finally, the Board noted Dr. Bradford's opinion that "no one can absolutely state that Mr. Planchon's workplace exposures to a carcinogen directly caused his colon cancer." Given this record, the Board required a level of certainty that goes beyond what is required by the statute. (Pierce, M.; CV-13-1133; 10-26-16; Harrison, B.)

DOMESTIC RELATIONS

Nesbitt v. Nesbitt, 2016 Ark. App. 487 **[property-settlement agreement; military-retirement benefits]** In the parties' property-settlement agreement, the appellant husband agreed to pay the appellee wife 32% of his military-retirement benefits. Shortly after the divorce, he unilaterally opted to receive Combat Related Special Compensation (CRSC) in lieu of a large portion of his military-retirement benefits, which reduced the monthly payment to the appellee from $1,099.25 per month to $101.34. She filed a motion for contempt and asked that her monthly benefit be calculated as if he had not taken the CRSC election. The circuit court declined to find him in contempt, but ordered him to pay her a percentage of his military-retirement pay based on what he was receiving at the time of the divorce, along with future increases. The Court of Appeals held that the trial court correctly interpreted the parties' agreement and did not err in ordering the appellant to pay the appellee the equivalent of what her share of his benefits were at the time of the divorce, plus any COLA benefits. The Court also affirmed the award of attorney's fees and costs. (Meyer, H.; No. CV-15-970; 10-19-16; Hixson, K.)

Thurmon v. Thurmon, 2016 Ark. App. 497 **[child custody; division of property]** The Court of Appeals affirmed the award of custody of the parties' two-year-old son to the appellee mother of the child, finding that the decision of the circuit court was not clearly erroneous. The Court reversed the circuit court's award of the house to the appellee mother. Both parties agreed that the appellant husband owned the home before the parties married. The appellee testified that she had lived there for two years, that the land had never been deeded to her, and that the appellant husband made the mortgage payments on the house. The circuit court had awarded possession to the wife, with the mortgage payments to be divided evenly between the parties, and the house to

be sold, the debt paid, and the equity divided when the child reached the age of majority. The wife was to pay the utilities and the parties were to divide maintenance and repairs. The appellee argued on appeal that the court's decision was correct because the "marital" home was the "homestead" and, at divorce, possession of the homestead may be granted to either of the parties for the time and upon terms and conditions as are equitable and just. The Court defined marital property and noted that the appellant had acquired the home before the marriage and there was no evidence that he purchased it with the intent to make it the marital home. The circuit court gave no reason why the home should not be returned to the husband. On the appellee's point about the house being the parties' "homestead," she cited cases addressing the possession of homestead by a husband and wife as tenants by the entirety, which is not the case here. The Court reversed and remanded for the property to be awarded to the appellant as his nonmarital property. On a final point, the circuit court equally divided a 401(k) savings plan. The Court of Appeals said the record was not clear regarding whether this account was fully or partially vested or what amount of money was contributed before the marriage or during the marriage. The case was remanded to the circuit court to reconsider the division of the account and to provide findings to support whatever decision it makes. (Guthrie, D.; No. CV-16-243; 10-26-16; Harrison, B.)

Vice v. Vice, 2016 Ark. App. 504 **[child support; attorney's fees and costs]** The circuit court dismissed the appellant father's claim for credit for the overpayment of child support for his twenty-five-year-old daughter, Julia, because he failed to plead it; but the court found that his child-support obligation for her terminated as a matter of law. The court also required him to pay $62.00 a week in child support for his thirty-one-year-old disabled daughter, Lisa, finding that, based on her disability, she needed the support, that her mother needed financial support to care for her, and that he had a duty to continue to support her. The amount was based upon the court's imputing income of full-time minimum wage to him, based upon Administrative Order No. 10. It found that his testimony that he was unable to work was not credible and that he was working below his capacity. In affirming, the Court of Appeals found that, based upon the record, the trial court did not abuse its discretion in finding that the credit for the overpayment was not properly pled or litigated. He did not file a pleading requesting a credit for overpayment of Julia's child support. His first request for a credit was in a brief filed the date of the hearing, but he never moved to amend the pleadings. Regarding the amount of child support for Lisa, the Court of Appeals found that the circuit court did not abuse its discretion in denying the appellant's request for credit against the child support he pays for Lisa's receipt of Social Security benefits on his record. He never argued or mentioned that Lisa's $553 monthly Social Security benefits should be included in calculations of his income, so the Court held he cannot now claim a credit for it against his child-support obligation. Finally, the court affirmed the trial court's assessment of attorney's fees and costs against the appellant, noting that the trial court has inherent power to award attorney's fees in domestic-relations proceedings. (Martin, D., No. CV-16-210; 10-26-16; Vaught, L.)

JUVENILE

Hambrick v. Dep't of Human Services, 2016 Ark. App. 458 **[DN Adjudication - credibility]** Appellant appealed the court's dependency-neglect adjudication of his three daughters based on appellant's sexual abuse of one of the daughters. Two of the children, ages three and five, were interviewed by a forensic interviewer at a Child Advocacy Center. The trial court reviewed the taped interview and found the interviews were "credible and compelling." Appellant cited no authority for his position that credibility determinations may be made only where live testimony is offered. The appellate court will not substitute its own judgement or second-guess credibility determinations. The trial court considered the child's statements that it found sufficiently trustworthy and credible testimony from witnesses. **[child hearsay]** Hearsay testimony is admissible when a statement is made by child under that age of 10 concerning any type of sexual offense. Ark. R. Evd. 804(b)(6). The trial court must conduct a hearing to determine whether the statement offered possesses a reasonable guarantee of trustworthiness, and may use any factor including, but not limited to, the factors outlined in the rule. Ark. R. Evd. 804(b)(6)(A). Appellant argued that the court erred in finding that the child's hearsay statements had a reasonable guarantee of trustworthiness due to leading questions and he argued that the interviewer assumed abuse and did not clarify the child's answers. Admissibility of evidence is left to the sound discretion of the judge and will not be reversed absent an abuse of discretion. The trial court considered the relevant factors including the credibility of another witness in testifying to what the child had said, the consistency of the statements and corroboration of the statements by other evidence. Although the child's statements were at time contradictory and confusing, the forensic interviewer testified that this was normal for a three-year old and did not mean the child had not been abused. (Edwards, R.; CV-16-333; 10-5-2016; Virden, B.)

Forbes v. Ark. Dep't of Human Services, 2016 Ark. App. 508 **[TPR– failure to remedy]** Appellant argued there was insufficient evidence to support the failure to remedy grounds because at the time of her child's removal she was incarcerated and not responsible for the environmental conditions in her mother's home. However, evidence showed that a DHS case was open on appellant prior to her child's removal in appellant's mother's home and that services did not prevent removal. Evidence presented indicated that appellant worked at six different jobs and lived in seven different homes, including several motels. At the time of the termination hearing the DHS caseworker testified that appellant was currently living at the racetrack where she was currently employed. Appellant's failure or inability to provide for a safe and stable home for her child that did not pose a risk was not remedied. (Choate, S; CV-16-585; 10-26-2016; Hoofman, C.)

Holmes v. Ark. Dep't of Human Service v. Nelson, 2016 Ark. App. 495 **[TPR–ICWA]** The party seeking termination must prove that active efforts have been made to provide remedial service and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful. 25 U.S.C. § 1912(d). The termination must be supported by evidence beyond a reasonable doubt, including testimony of a qualified expert witness that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(f). Appellant argued that there was insufficient evidence under ICWA, but incorrectly asserts the standard of review. The standard in a civil bench trial is clearly-erroneous, even though the burden of proof is beyond a reasonable doubt under ICWA. A child welfare specialist for the Cherokee Nation was qualified as an expert witness and testified at the termination hearing. **[active efforts]** The trial court did not err in determining that DHS proved that active efforts were made beyond a reasonable doubt. Expert testimony was provided that DHS had made active efforts, including multiple referrals to drug treatment to prevent the breakup of the Indian family and that those efforts had been unsuccessful. Appellant also failed to attend counseling to address her substance abuse issues and the sexual abuse finding concerning her husband against her daughter. **[serious emotional or physical damage]** The trial court did not err in determining that DHS proved that continued custody was likely to result in in serious emotional or physical damage to the children beyond a reasonable doubt where the expert also testified that this was due to Appellant's drug usage and failure to take advantage of the drug treatment offered. Appellant denied that she had a drug problem at the termination hearing. Appellant testified that she would protect her child, but did not know if her husband had sexually abused her child and disobeyed a court order that her children were to have no contact with him, attempted to reconcile with him, was still married to him at the termination hearing and testified she was unsure of her future plans for their relationship. (Smith, T.; CV-16-521; 10-26-2016; Virden, B.)

Bair v. Ark. Dep't of Human Services, 2016 Ark. App. 481 **[TPR – adoptability]** There was sufficient evidence as to adoptability where the worker testified that there were potential families matched with the children's characteristics, that the children had thrived in their foster home, and that DHS had succeeded in matching children similar to these children with families in the past. **[statutory interpretation]** Appellant argued that the trial court erred in refusing to consider her argument that the court may terminate the rights of only one parent pursuant to Ark. Code Ann. § 9-27-341(c)(2)(B). Although the trial court expressed an opinion that this statute was unconstitutional, none of the parties raised it as an issue and it was clear that the court's decision to terminate was supported by the grounds. Further, the termination order makes no mention of the court's position regarding this statute and was not a factor in the termination. It cannot be a basis for reversal. (Clark, D.; CV-16-558; 10 9-19-2016; Glover, D.)

Ware v. Ark. Dep't of Human Services, 2016 Ark. App. 480 **[TPR – adoptability]** There was sufficient evidence as to adoptability where the caseworker testified that the children were adoptable and the court specifically found that based on the case worker's testimony, history of the case, the fact that the children were healthy and that there were no conditions that would bar adoption. **[potential harm]** There was sufficient evidence as to potential harm due to evidence of appellant's lack of stable housing and continued drug use. **[aggravated circumstances]** There was sufficient evidence to support that there was little likelihood that services to the family would result in successful reunification. Evidence revealed that Appellant continued to test positive for illegal drugs and despite treatment opportunities offered she refused to address her drug issues or complete a drug treatment program. **[relative placement]** Ark. Code Ann. § 9-28-105 provides for preferential consideration to relatives in foster and adoptive placements. This issue was not preserved for appeal. (Zuerker, L., CV-16-578; 10-19-2016 Gruber, R.)

Beard v. Ark. Dep't of Human Services, 2016 Ark. App. 467 **[TPR – aggravated circumstances] There** was sufficient evidence to support that there was little likelihood that services to the family would result in successful reunification. Evidence from the caseworker indicated that after nineteen months with extensive services, Appellant was no closer to being able to safely care for her child. The worker also testified that there were no services that could be offered that would change that fact or would result in successful reunification. (Keaton, E.; CV-16-443; 10-5-2016; Hixson, K.)

Sutton v. Ark. Dep't of Human Services, 2016 Ark. App. 459 **[TPR – failure to remedy]** The circuit court did not err in terminating Appellant's parental rights based on the failure to remedy ground. Evidence showed that after two years Appellant continued to test positive for illegal drugs, including testing positive for cocaine the day of the termination hearing. Appellant argued that DHS failed to offer meaningful efforts, but evidence showed that despite Appellant's drug problem, she had two drug and alcohol assessments scheduled that she did not attend. (Wilson, R.; CV-16-544; 10-5-2016; Harrison, B.)

Brown v. Ark. Dep't of Human Services, 2016 Ark. App. 455 **[TPR - continuance]** The circuit court did not abuse its discretion in denying Appellant's motion for a continuance. Further, Appellant cannot show prejudice where he requested the continuance at the beginning of the termination hearing which demonstrated a lack of diligence sufficient to support the denial. (Smith, T.; CV-16-532; 10-5-2016; Abramson, R.)

Taylor v. Ark. Dep't of Human Services, 2016 Ark. App. 453
A.T.1 was removed from Appellant on 3/18/2014 and a subsequent dependency-neglect case based on inadequate housing and mental health issues remained ongoing. A.T.2 was born on 6/1/2015 and an emergency DN petition as to A.T. 1 was filed on 6/9/2015. A termination

petition was filed as to both children on 6/18/2015. The DN adjudication for A.T.1 and the termination hearing as to both children were held the same day. **[DN adjudication]** The dependency-neglect adjudication as to A.T.2 is null for failure to enter the adjudication order prior to termination order being appealed and record lodged with the appellate court resulting in a loss of jurisdiction. An attempt to supplement the record, along with a stipulation by the parties did not cure the nullity. **[TPR – adoptability]** There was sufficient evidence as to adoptability where the caseworker testified that the foster parents were interested in adopting Appellant's children. **[potential harm]** There was sufficient evidence as to potential harm due to the testimony of the DCFS supervisor that appellant lacked an appropriate home with working utilities, employment or income, and failed to take prescribed medication to address her mental health issues. **[failure to remedy]** Appellant's challenge to DHS's meaningful efforts to remedy the conditions that caused removal of A.T. 1 failed because she never appealed any of the court's reasonable efforts finding or argued that there were any specific reunification services that DHS should provide. **[subsequent factors]** As to A.T.2 there was not sufficient evidence to support the circuit court's findings as to this child. The subsequent factors were identical to the issues for removal which included inadequate housing and mental health issues. There was also insufficient evidence to support a finding that DHS provided appropriate family services due to the short time from the dependency-neglect petition to the termination petition. Termination reversed and remanded as A.T.2. There was sufficient evidence, including a deterioration of Appellant's mental health condition and changes in Appellant's diagnosis when the petition was filed from "depressive disorder" to "major depression with psychotic features" and "seriously mentally ill," to support this ground for A.T.2 (Wilson, R.; CV-16-538; 10-5-2016; Harrison, B.)

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

McGaugh. Ark. Dep't of Human Services, 2016 Ark. App. 485 [subsequent factors, criminal sentence, aggravated circumstances] (Cooper, T.; CV-16-437; 10-19-2016; Vaught, L.)

Lunon. Ark. Dep't of Human Services, 2016 Ark. App. 483 [prior involuntary termination] (Branton, W.; CV-16-439; 10-19-2016; Whiteaker, P.)

Scarver v. Ark. Dep't of Human Services, 2016 Ark. App. 474 [failure to remedy –including domestic violence] (James, P.; CV-16-500; 10-19-2016; Abramson, R.)

Dunbar v. Ark. Dep't of Human Services, 2016 Ark. App. 472 [subsequent factors] (Branton, W.; CV-16-465; 10-19-2016; Gladwin, R.)

Sanders v. Ark. Dep't of Human Services, 2016 Ark. App. 462 [failure to remedy, subsequent factors, aggravated circumstances] (Williams Warren, J.; CV-16-417; 10-5-2016; Glover, D.)

Leach v. State, 2016 Ark App. 502 **[Transfer]** Appellant, age 15, was charged with rape. The circuit court made specific finding as to the statutory factors required at § Ark. Code Ann. 9-27-318 (g). The appellate court stated that on the whole it could not say that the court was clearly erroneous. However, the appellate court took note of some inconsistencies in evidence and the circuit court's findings with regard to two of the factors. (Tabor, S.; CV 16-86; 10-26-2016; Whiteaker, P.)

S.A.T. v. State, 2016 Ark App. 465 **[Criminal Contempt]** Appellant's sufficiency of evidence argument as to criminal contempt was not preserved for appeal. Appellant failed to comply with Crim. R. P. 33.1 by failing to renew his motion to dismiss at the close of all the evidence. (Medlock, M..; CV 16-91; 10-5-2016; Brown, W.)

DISTRICT COURT

S*ikora v. Everett:* **[District Court Appeal] [District Court Rule 9].** Appellant relied on a 2014 decision for the proposition that District Court Rule 9(b) required that she only do two things: obtain a certified copy of the docket sheet and file it in circuit court to perfect an appeal. Reliance on that decision is misplaced considering the subsequent amendment of Rule 9(b)(1). Sikora failed to file a certified copy of the complaint or claim form from the district court under Rule 9(b)(1)(ii), which is a separate requirement from the filing of a certified copy of the district court's docket sheet or the record. Strict compliance with Rule 9(b) is required before a circuit court can acquire jurisdiction over an appeal from district court. The circuit court properly dismissed the appeal. (Fox, J.; CV-16-70; 10/26/2016; Virden, B.)