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CIVIL

Ark. Dep't of Corr. Sex Offender Assessment Comm. v. Hastings, 2024 Ark. App. 407 [**sex offender notification level; substantial evidence**] The circuit court entered an order reversing an agency decision to set appellee's notification at Level 3. On appeal, appellant argued that the Level 3 assessment was supported by substantial evidence. The burden of proving an absence of substantial evidence is on the challenging party and requires a demonstration that the proof before the administrative agency was so nearly undisputed that fair-minded persons could not reach its conclusion. The question is not whether the evidence would have supported a contrary finding but whether it would support the finding made. Here, the appellate court found that the Level 3 assessment was supported by more than substantial evidence of both appellee's history of repeat sexual offending and his predatory personality characteristics. The administrative record contained accounts by multiple female jail inmates who reported that the appellee, on numerous occasions, engaged in sexual contact with them while they were working under his supervision at a recycling center. Appellee admitted that he had engaged in (undetected) sexual contact with at least three other female jail inmates from as far back as fifteen years before his conviction. The appellee also insisted that he had been "set up" by his victims and refused to believe that his sexual conduct was problematic. Giving the evidence its strongest probative force in favor of the appellant's decision, the appellate court held that substantial evidence supported the Level 3 community-notification

assessment. Therefore, the circuit court erred in reversing the agency's decision. (Wright, H.; 60CV-19-8241; 9-4-24; Thyer, C.)

Spa City Lodging, LLC v. Garland County, 2024 Ark. App. 408 [**county court appeal**] The issue in this case was whether a circuit court may summarily decide an appeal from a county court without first establishing a schedule for discovery, motions, and trial pursuant to Arkansas District Court Rule 9 (Rule 9). The appellate court held that by affirming the county court's decision without allowing discovery, motions, or a trial, the circuit court failed to comply with Rule 9. Rule 9(c) of the Arkansas District Court Rules, which applies to appeals taken from county court to circuit court, provides that the parties shall assert all their claims and defenses in circuit court and that as soon as practicable after the pleadings are closed, the circuit court shall establish a schedule for discovery, motions, and trial. Except as modified by Rule 9, the Arkansas Rules of Civil Procedure govern circuit court proceedings on appeals from county court as if the case had been filed originally in circuit court. Here, the appellate court held that the circuit court erred by not treating the case as a de novo appeal from a county court. Because the appeal from county court to circuit court was appellate in form but original in fact, a schedule for discovery, motions, and trial was required. The circuit court treated this case as an administrative appeal, specifically designating it as such and stating that it had considered the file, pleadings, and law before making its decision. A party appealing a county court's order is entitled to a de novo appeal that includes a schedule for discovery, motions, and trial. (Hearnberger, M.; 26CV-22-1391; 9-4-24; Wood, W.)

City of Rogers v. Powell, 2024 Ark. App. 415 [**summary judgment; immunity**] The circuit court denied appellant's motion for summary judgment in which the appellant sought immunity from litigation. On appeal, the appellant argued that it was entitled to summary judgment. Inverse condemnation is a cause of action against a governmental defendant to recover the value of property that has been taken in fact by a governmental entity, although not through eminent domain procedures. When a municipality acts in a manner that substantially diminishes the value of a landowner's land, and its actions are shown to be intentional, it cannot escape its constitutional obligation to compensate for a taking of property on the basis of its immunity from tort action. Here, the appellant approved revised drainage plans for a complex being built. Appellee, as trustee of a trust that owned property immediately south of the complex being built, filed a lawsuit against the appellant and the property owner after alleging that the construction was flooding their property. There was no evidence that the appellant knew the plans it approved were substantially certain to lead to flooding on the property. Appellant was informed of the flooding after the fact, but appellee had not alleged any action constituting a taking beyond the initial approval and installation of the pipes. Accordingly, there was insufficient proof of any affirmative government activity that caused appellee damages and could constitute an intentional taking. The claim, at most, amounted to negligence. Because the claim sounded in negligence, the tort-immunity statute was applicable. There was no genuine issue of material fact in dispute as to whether the appellant was entitled to immunity on a tort claim. Therefore, the circuit court erred in denying the

appellant's motion for summary judgment as to statutory immunity. (Duncan, X.; 04CV-20-1361; 9-11-24; Klappenbach, N.)

Swaffar v. White, 2024 Ark. App. 417 **[service; summary judgment]** The circuit court granted summary judgment in favor of the appellee. On appeal, appellant argued that the motion for summary judgment was void because appellee failed to properly serve the appellant. **[service]** Arkansas Supreme Court Administrative Order No. 21 provides that persons proceeding pro se shall be entitled to submit conventional paper filings. Rule 5(a) of the Arkansas Rules of Civil Procedure provides that every pleading filed subsequent to the complaint, except ones that may be heard ex parte, shall be served on each party. One method by which service can be had on a party is by sending it regular mail to his last known address; service by mail is presumptively complete upon mailing. Here, appellant represented himself in the proceedings below. Appellee's attorney sent appellant the motion for summary judgment by certified mail, not regular mail. Appellant did not pick up the certified mail, and it was returned to appellee's attorney as unclaimed. A copy of the front of the envelope showing it was unclaimed and returned to appellee's attorney was attached to appellee's proof of notice of service of the summary-judgment motion on appellant and filed with the court. The circuit court granted appellant's motion for summary judgment on the basis of the fact that appellant had failed to pick up the certified mail. The appellate court held that appellant was never properly served with the motion for summary judgment. **[summary judgment]** Summary judgment may not be warranted even when a party fails to respond to a motion for summary judgment or fails to present proof showing a genuine issue of material fact—if the proof supporting a motion for summary judgment is insufficient, there is no duty on the part of the opposing party to meet proof with proof. Here, the appellate court held that summary judgment was improper in this case because appellee's own proof was insufficient and left genuine issues of material fact to be determined. (Clawson, C.; 23CV-20-1352; 9-11-24; Barrett, S.)

Diamond K Investments, Inc. v. 1330 LLC, 2024 Ark. App. 433 **[summary judgment; easement]** The circuit court denied appellant's motion for summary judgment on an easement issue, granted appellee's motion for partial summary judgment, which dismissed appellant's counterclaims, and denied appellant's motion for reconsideration. The land over which the easement is imposed is known as the servient tenement or estate, and the land having the right of use is the dominant tenement or estate. As a general rule, the owner of the servient estate may erect gates across the right-of-way if they are located, constructed, or maintained so as not to unreasonably interfere with the right of passage and when they are necessary for the preservation and proper and efficient use of the lands constituting the servient estate. In an express-easement situation, the dominant estate is entitled to use and enjoyment of the entire easement area for the clearly expressed purposes of the grant. Here, the case involved a dispute between adjacent property owners regarding whether the owner of an easement for the purpose of a roadway, appellee, could erect a fence and gate across the roadway of the landowner, appellant. The circuit court found that appellee's placement of a fence and gate across a roadway was a reasonable improvement and not an unreasonable burden on appellant. The clearly expressed purpose of the grant in this case was a right-of-way for

roadway purposes. There was no language in the grant here indicating that the easement was to be used to protect the personal property of the easement holder or its tenants. A fence and gate erected to prevent theft was not an improvement to a right-of-way for roadway purposes. The appellate court held that the scope of the express easement in the case did not authorize the appellee to place a fence and gate on appellant's property. Therefore, the circuit court erred by denying appellant's motions for summary judgment and reconsideration and granting appellee's motion for partial summary judgment that dismissed appellant's counterclaims. (Clawson, C.; 23CV-22-470; 9-18-24; Wood, W.)

Turnbow v. Hiegel Building Solutions, LLC, 2024 Ark. App. 438 [**disqualification of counsel**] The circuit court entered an order disqualifying appellants' counsel and their counsel's law firm from representing them in a lawsuit against appellee. On appeal, the appellants argued the circuit court erred in granting the disqualification. Corporations and their stockholders are separate and distinct entities, even when a stockholder owns a majority of the stock. A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client. Here, appellee is a company that has one sole member, Gregory. Taking Gregory's testimony as true, there was evidence presented that the appellants' counsel may have represented himself as counsel for both Gregory and another company, Eagle Rock Contracting, during the purchase of Gregory's interest in Eagle Rock Contracting. Although Gregory stated that the purchase transaction was one transaction that had concluded. There was no evidence introduced that either appellants' counsel or their counsel's firm had since provided or currently provides legal services to Gregory, individually. The record established that the appellants' counsel provided ongoing legal services to the parent corporation of Eagle Rock Contracting, in which Gregory has a 30 percent interest. The appellate court found that even if appellee was affiliated with the other two companies, appellee had not established that the circumstances dictate that appellee should also be considered a client of the firm, that any adverse representation regarding affiliates was in place, or how the firm's obligations to the two companies or the appellants materially limited its representation of anyone involved. Additionally, appellee never took the position below that Gregory was a former client, and in its brief asserted that he was not a former client. Even if Gregory were a former client, the appellate court could not conclude that a conflict of interest existed based on prior representation. Disqualification of an attorney is a drastic measure to be imposed only when required by the circumstances. The appellate court held that the circumstances did not require disqualification. Thus, the circuit court erred when it disqualified the appellants' law firm. (Weaver, S.; 23CV-22-1177; 9-18-24; Murphy, M.)

Savage v. SMS Trucking Inc., 2024 Ark. App. 452 [**designate expert witness; loss of earning capacity; punitive damages**] The circuit court granted summary judgment in favor of appellee. On appeal, appellant argued that the circuit court erred in (1) granting summary judgment based on the appellant's failure to identify an expert witness, (2) denying the appellant's claim for loss of earning capacity, and (3) its evidentiary ruling that punitive damages were not admissible. [**failing to designate an expert witness; immediate injury**] Proximate cause is that which, in a natural and continuous sequence unbroken by any efficient intervening cause, produces the injury, and without which, the result would not have occurred. When there is evidence to establish a causal connection between the negligence of the defendant and the damages, it is proper for the case to go to the jury. The testimony of the injured party alone, in some cases, can provide a sufficient foundation for the introduction of medical expenses incurred. Here, the appellant filed a personal injury lawsuit alleging that she was operating a forklift when she suffered injuries as a result of the negligence of appellee's employee. Appellant immediately sought medical treatment after the alleged incident. The appellant was competent to testify to the issue of the necessity of the medical expenses that she incurred shortly after the accident. Additionally, the treating physician immediately after the accident was listed as a fact witness and could testify to the reasonableness and causation of the medical treatment provided. Thus, the appellate court found that the combined testimony of appellant and the treating physician created a material issue of fact. [**failing to designate an expert witness; later treatment**] Expert testimony would normally be required to prove the necessity of the expense when the treatment was many months after the accident. Here, appellant had surgery over a year after the accident, and there was no showing that she had been referred to a new doctor or UAMS for continued treatment by the treating physician. In essence, because appellant failed to identify an expert witness, there was no competent testimony that this medical treatment incurred over a year after the accident was necessary or related to the accident. Appellant's testimony, standing alone, could not establish that the necessity of the subsequent treatment was causally related to her fall. Therefore, the circuit court did not err in granting summary judgment on this issue. [**loss of earning capacity**] Damages for loss of earning capacity may be recovered only upon proof that an injury is permanent. A permanent injury is one that deprives the plaintiff of her right to live her life in comfort and ease without added inconvenience or diminution of physical vigor. Permanency must be proved with reasonable certainty, but the seriousness of the injury itself may establish permanency. The jury may rely on lay testimony without expert corroboration in finding permanency. Here, appellee argued but did not introduce any evidence, expert or otherwise, to show that appellant did not have permanent injuries and loss of earning capacity. Appellant stated in her verified responses to appellee's interrogatories that for five years since the accident, the left side of her body continued to cause pain, that she had limited movement, and had been unable to work. As a result, the burden of sustaining a motion for summary judgment on the issue of permanent injury and loss of earning capacity was not met, and summary judgment was not appropriate since issues of fact remain to be determined. [**punitive damages**] To warrant a submission of the question of punitive damages, there must be an element of willfulness or reckless conduct. Summary judgment is not proper where it is necessary to weigh the credibility of statements to resolve an issue. Here there was a genuine issue of fact remaining as to appellee's employee's intent to move his truck without following the safety protocols in place

to prevent injury thereby causing the injury to appellant. Thus, the circuit court erred by granting summary judgment as to punitive damages. (Guynn, A.; 35CV-19-275; 9-25-24; Barrett, S.)

CRIMINAL

Houston v. State, 2024 Ark. App. 447 [**probation revocation; conditions**] The circuit court entered an order revoking appellant's probation and sentenced him to imprisonment and probation. On appeal, the appellant argued that the circuit court did not enter or approve his conditions of probation. A circuit court cannot revoke a probationary or suspended sentence on a violation of a condition that has never been imposed or that was not in effect at the time of the revocation hearing. Here, the circuit court entered an order that specifically stated it had neither approved nor entered the conditions of probation contained within the record. In other words, the conditions of probation were not imposed. Although the probation officer informed the appellant of the conditions he was ultimately found to have violated, those conditions were never imposed by the court. Thus, appellant could not have been found to have violated the conditions even if the probation officer went over the conditions with him because the probation officer could not impose the conditions, the court must do so. The petition for probation revocation and amended petitions alleged that appellant had violated the conditions of probation by committing new offenses, but those terms and conditions of appellant's probation were not attached to the sentencing orders. The circuit court entered an order stating that the conditions of probation were neither approved by the circuit court nor entered into the court records. If the conditions of probation were not imposed by the circuit court in the first instance, then a revocation may not subsequently occur based on alleged violations of those conditions of probation. Therefore, the circuit court erred in revoking the appellant's probation. (Casady, K.; 63CR-21-453; 9-25-24; Gruber, R.)

DOMESTIC RELATIONS

Yue v. Lonon, 2024 Ark. App. 403 [**modification of child support**] The circuit court entered an order denying appellant's motion to modify her child-support payments and found her in contempt for failure to fully pay child support. On appeal, appellant argued that the circuit court erred in failing to modify her child-support obligation pursuant to Arkansas Supreme Court Administrative Order No. 10. In making a factual determination of whether there have been changed circumstances sufficient to warrant a modification of child support, the circuit court must consider the evidence. When the circuit court denies a motion to modify child support, revised Administrative Order No. 10 does not require the circuit court to determine the parties' income, recite the amount of support required under the guidelines, and address any deviation from the guideline's presumptive child-support calculation. Here, the appellant presented no proof of what income the circuit court used to calculate the base child support at the time of the January 2020 divorce and no evidence of her income after 2021, except the single paycheck stub of her wages from July 2022. The appellate court found that the circuit court did not err in finding that appellant had failed to provide proof that her financial situation had changed since the time of the divorce

sufficient to warrant modification of her child-support obligation. Therefore, the circuit court did not err in denying appellant's motion to decrease her child support obligation. (Beaumont, C.; 72DR-18-1573; 9-4-24; Gruber, R.)

Styles v. Styles, 2024 Ark. App. 435 [**custody; contempt; back child support; private school expenses; attorney's fees**] The circuit court entered a divorce decree and an order awarding appellee attorney's fees and costs. On appeal, appellant argued that (1) the trial court erred in awarding custody of the children to appellee; (2) the contempt findings were erroneous; (3) the award of back child support was erroneous; (4) the trial court erred in requiring appellant to pay half of the private-school expenses appellee incurred; (5) the restrictions on the children's relationship with appellant's twin sister was erroneous; and (6) the attorney-fee order was erroneous. [**custody**] The mutual ability of the parties to cooperate in reaching shared decisions in matters affecting the child's welfare is a crucial factor bearing on the propriety of an award of joint custody, and such an award is an error when cooperation between the parties is lacking. Here, due to the hostility between the parties and their inability to cooperate in co-parenting the children, it was evident that joint custody would not have been in the children's best interest. The circuit court found that the appellant was influencing and encouraging the children's behavior to create a hatred toward the appellee that jeopardized the children's psychological and emotional well-being. Evidence of the children's instructed animosity toward their father included them ransacking his house and routinely referring to him as an idiot, a jerk, and Hitler. Having reviewed the record, the appellate court held that the circuit court did not err in awarding primary custody of the children to appellee. [**contempt**] Suspension of a sentence for contempt is, in effect, a complete remission of the contempt. If the suspended sentence is suspended conditionally for a specific period of time, the suspension amounts to a mere postponement rather than a remission. A trial court cannot indefinitely suspend a contempt sentence but can conditionally postpone a sentence for a specified period of time. In the final order, for each of its findings of contempt against the appellant, the trial court sentenced her to thirty days in the county detention center, suspended on the condition she never again disregard the court's orders not to malign, harass, or in any way communicate negatively toward appellee. These suspensions were for an indefinite time period, and the indefinite suspensions of appellant's sentences were invalid and amounted to a complete remission of the contempt and punishment. Thus, the two findings of contempt in the trial court's final order are moot and, accordingly, are set aside. [**back child-support**] Utilizing the family support chart contained in prior Administrative Order No. 10 is mandatory when setting child support. There is a rebuttable presumption that support awarded pursuant to the chart is the appropriate amount of support and can be modified only upon written findings stating why the application of the chart amount would be unjust or inappropriate. Here, the period for the back child-support calculation that is under review in this case commenced in February 2018 and ended in November 2019. In awarding the back child support, the trial court did not, inter alia, recite appellant's income, recite the amount of support required under the guidelines, state whether the court was applying the chart amount, state whether it was deviating from the chart amount, or state reasons why the application of the chart amount would be unjust or inappropriate. Therefore, the circuit court erred in not making the requisite findings to support its award of back child support. The circuit court should

consider the deviation factors outlined in prior Administrative Order No. 10, and if the court deviates from the chart amount, it must include specific written findings stating why the amount is unjust or inappropriate. **[private school tuition]** Under the prior Administrative Order No. 10, section (V)(a)(5), educational expenses may be used as a relevant factor to consider in deciding whether to deviate from the chart amount of child support. Here, the trial court ordered appellant to pay half the private school expenses but did not make the findings required for a deviation. **[contact with appellant's sister]** In its final order, the circuit court ordered that appellant's twin sister not be left alone with the children or communicate with them in any way except as authorized in the order. If the appellant's sister wished to see the children, the visitation would be supervised by a person of appellee's choosing. Here, testimony at trial showed that appellant's sister had exhibited concerning behavior, including praying in the presence of the children for a spirit of confusion to come upon one of appellee's sisters and her family. While working at appellant's clinic, the appellant's sister put a Walmart bag on her head and stated that she had to wear it to keep the sex witches away, causing her to be banned from the clinic by the Arkansas State Medical Board. The appellant's sister also thought appellee's sister was a witch and controlled her mind, and the appellant's sister shared this with the children. Based upon the record, the circuit court did not err in finding that it was in the children's best interest to have only restricted contact with the appellant's sister. **[attorney's fees]** In domestic-relations proceedings, the trial court has the inherent power to award attorney's fees, and the decision to award fees and the amount of those fees are matters within the discretion of the trial court. Here, the circuit court found that attorney's fees were appropriate in part because the attorney's fees incurred by appellee throughout litigation were not available to support the parties' children who were in appellee's custody for the entirety of the case. The circuit court had already awarded appellee back child support in this case. Although the trial court has inherent power to award attorney's fees in such cases and may do so based on the relative financial abilities of the parties, the fees should not be used as a direct substitute for child support that has already been awarded. The circuit court must consider the attorney's fees with the back-child support because the issues were intertwined. (McCain, G.; 58DR-18-53; 9-18-24; Hixon, K.)

Smart-Moore v. Moore, 2024 Ark. App. 453 **[child support; property division]** On appeal, appellant argued that the circuit court abused its discretion in its calculation of child support and erred in its characterization of certain funds as marital property. **[child support; pass-through income]** The version of Administrative Order No. 10 in effect at the time of the divorce provided that gross income for purposes of child-support calculations includes earnings generated from a business, partnership, contract, self-employment, or other similar arrangement but cautioned that income (or losses) from a corporation should be carefully examined to determine the extent to which they were historically passed on to the parent or used merely as a tax strategy. Income that is subject to elective status (for example, retained income) may be considered as income after the court considers the circumstances and history of the elective treatment, which includes, but is not limited to, the status prior to the implementation of the support order. If a change in the status was made after the original election, then a court can choose either to include the income in child-support calculations or not to include it in the calculations. Here, the circuit court was provided

with the parties' 2019 and 2020 joint income tax returns and the 2021 K-1s associated with two businesses appellant held a minority interest in. Their joint tax returns in those years listed taxable income attributable to appellant's ownership in the two companies. The 2021 K-1s also reflected that appellant received a \$34,000 distribution from one of the companies, which appellant asserted was necessary to pay income taxes for that year. The court, in including the amounts in its calculation of appellant's gross income, stated that it was including those amounts because the parties paid income tax on those amounts. Given the broad definition of income and deference to the circuit court on credibility determinations and the weight to be given evidence, the appellate court could not say that the circuit court abused its discretion in the inclusion of those amounts. **[property division]** The presumption that all property acquired during the marriage is marital property is subject to certain statutory exceptions. One such exception is property acquired by gift or inheritance. In determining whether property remains under the control of one spouse upon divorce or is the property of both spouses, "tracing" may be used by the court. One claiming ownership of nonmarital property that has been commingled with marital property bears the burden of tracing the separate property so that it can be treated as such for property-division purposes upon divorce. Here, the parties agreed that part of the money used to purchase a property that was placed in the names of both spouses was inherited. The money was first placed in a premarital account in appellant's name. The circuit court erred by finding that money had become marital property because it was deposited into an account that was sometimes used for marital purposes. The mere pouring of nonmarital funds into and out of a joint checking account does not render them forever funds owned by the entirety. The tracing process here was even more attenuated. The account in which the inherited funds were deposited was not a joint account but was held in appellant's name only. Thus, the fact that the nonmarital account was used to pay marital expenses did not automatically convert the nonmarital account into a marital account. The tracing of money or property into different forms is not to be considered an end in itself, and the fact that a spouse made contributions to certain property does not necessarily require that those contributions be recognized in the property division upon divorce. Therefore, the circuit court must go through further analysis and make appropriate factual findings as to the division of the property at issue. (Johnson, S.; 60DR-21-2333; 9-25-24; Thyer, C.)

JUVENILE

Dixon v. Ark. Dep't of Human Servs., 2024 Ark. App. 428 **[adoption; required consent]** A petition to adopt a minor may be granted only if written consent to that adoption has been executed by one entitled to custody or empowered to consent; an exception to this requirement exists if the lawful custodian "has failed to respond in writing to a request for consent for a period of sixty (60) days or who, after examination of his or her written reasons for withholding consent, is found by the court to be withholding his or her consent unreasonably." Ark. Code Ann. § 9-9-207(a)(8). In the present case, Appellee was the lawful custodian whose consent must have been obtained or waived. Appellants acknowledged they did not obtain Appellee's consent to the adoption; however, they argued that consent was excused either because Appellee did not respond within sixty days to their request for consent or because Appellee unreasonably withheld consent. The Appellants also

claimed that their petition sought Appellee’s consent, that Appellee’s appearance at the hearing showed it was aware of the petition, and that Appellee failed to respond to the request for consent. The Court of Appeals disagreed. The petition stated in paragraph 5 “[t]hat it is reasonably believed that [Appellee] will consent to the adoption.” The allegation that the Appellants reasonably believed Appellee would consent did not amount to a request for consent. Furthermore, when Appellee’s attorney stated at the hearing that no request for consent had been made, the Appellants made no attempt to dispute this claim. The Appellants also claimed that even if the petition had not sought Appellee’s consent, “it was still legal error for the circuit court to fail to examine the absence of ‘any reason’ for Appellee to withhold consent.” The Appellants argued that the statement of the Appellee’s attorney at the hearing that “I don’t know that we have any reason to withhold that consent” shows that Appellee unreasonably withheld consent. Again, the Court disagreed. The statute provided that Appellee’s consent would be excused if Appellee had failed to respond in writing to a request for consent for a period of sixty days or, if after examination of Appellee’s written reasons for withholding consent, Appellee was found by the court to be withholding its consent unreasonably. Ark. Code Ann. § 9-9-207(a)(8). Adoption statutes are strictly construed. Here, the evidence failed to show that the Appellants made a request for consent or that Appellee provided written reasons for withholding consent. Appellee cannot be said to have withheld consent unreasonably when such consent was never requested. As Appellants presented no evidence on the issue of consent, the circuit court was required to dismiss their petition. No clear error. (Zimmerman, S.; CV-23-286; 9-18-24; Klappenbach, M.)

Reynolds v. Ark. Dep’t of Human Servs., 2024 Ark. App. 430 [**TPR/grounds for appeal**] Appellant asked for court to reweigh evidence, which it declined to do. Furthermore, Appellant didn’t appeal all the grounds for TPR, or the best interest finding, so even if their request to reweigh the evidence was granted, there were still two other independent grounds to support the termination that went unchallenged in the appeal. No clear error. (Mooney, C.; CV-24-149; 9-18, 2024; Potter Barrett, S.)

Nelson v. Ark. Dep’t of Human Servs., 2024 Ark. App. 444 [**TPR-additional time**] Appellant’s argument that she should have been given an additional three months failed because the record supported the circuit court’s determination that there was little hope for reunification: Appellant did not have a sustained bond with either child and visited the youngest only two or three times during the case; Appellant did not comply with the case plan or demonstrate progress toward the initial goal of reunification; specifically, she did not demonstrate stability in housing or employment; she abandoned the children for the majority of the case; and she admitted that she may have to be in drug treatment for life. Additional evidence that Appellant should not continue contact with the children included testimony from her own mother, who stated that she did not want Appellant around the oldest child because of her behavior while on drugs; additionally, evidence in the record demonstrated that Appellant did not wish to continue any relationship with the youngest child. There is still no requirement in the Juvenile Code that a parent be provided services for twelve months before the circuit court hears a TPR petition. Between the prior

protective-services case related to the oldest child and the current court case, Appellant did have more than twelve months to benefit from services, yet she still failed to improve her circumstances. (Phillips, R.; CV-24-291; 9-25-24; Gladwin, R.)

St. John v. Ark. Dep't of Human Servs., 2024 Ark. App. 450 [**continuance; good cause**] Appellant moved to continue a TPR hearing in the hope that paternity could be established in a recently identified putative father; possible placement made with him would avoid the need for an adoption of the child and, by extension, no need for the termination. Her arguments were unpersuasive. She waited until the day of the termination hearing—more than a year into the case—to request a continuance on the basis that a particular person might be the child's father; this alone demonstrated a lack of diligence sufficient to support the denial of continuance. The circuit court did not abuse its discretion in denying Appellant's motion for continuance; she had the burden to demonstrate good cause for the continuance she sought, and she failed to do so. Moreover, Appellant could not demonstrate personal prejudice from the circuit court's denial of her motion; she is not able to argue the potential prejudice to another person, especially one who had notice of the hearing and elected not to attend. [**TPR; placement preference**] Appellant next argued that the denial of her motion for continuance was in contravention of the circuit court's statutory obligation to "give preference to the least restrictive disposition consistent with the best interests and welfare of the juvenile and the public." However, this was a dispositional alternative applicable at the adjudication stage—not termination. She also argued that the circuit court erred in denying the motion to continue because a relative or fictive kin must "be given preferential consideration for placement" However, no relative or fictive kin ever approached Appellee to express interest in placement of the child; the recently identified putative father also did not appear at the termination hearing to request placement. No clear error. (Brown, E.; CV-24-269; 9-25-24; Gruber, R.)

Armento v. Ark. Dep't of Human Servs., 2024 Ark. App. 458 [**TPR; other subsequent factors**] Appellant argued Appellee failed to offer appropriate family services, as required by the other-subsequent-factors ground for termination; she then argued that it was therefore erroneous for the court to rely on the other-subsequent-factors ground to terminate her parental rights. Although Appellant argued that Appellee completely ignored her after the permanency-planning hearing and failed to offer appropriate services, Appellee testified otherwise: she testified that she made referrals for Appellant multiple times throughout the case, ensured that they were still active and available to Appellant, and additionally offered transportation to Appellant when she was having difficulties with her car. However, due to Appellant's failure to attend even a single session, Appellant was dropped from her intensive outpatient treatment program. Appellee testified that she believed Appellant knew her service referrals were still active because Appellant did complete three parenting classes after the permanency-planning hearing. Additionally, Appellee testified that either she or a coworker would text Appellant to "let her know to still partake in services as it's Court-ordered for her to do and that the encumbrance was up to date." Despite Appellee's testimony that she offered Appellant appropriate services during the entirety of the case, Appellant

failed to take advantage of and complete those services. Appellant admitted that she did not reach out to Appellee after her visitation was suspended because she thought “it was pointless” and that she was “setting [herself] up for failure.” Appellant further admitted during the hearing that she refused to allow Appellee in her home. When considering the circuit court credited Appellee’s testimony over that of the Appellant’s, there was no clear error in finding sufficient evidence to support the other-subsequent-factors ground. (Byrd Manning, T.; CV-24-225; 9-25-24; Hixson, K.)