

APPELLATE UPDATE

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CRIMINAL

Hanna v. State: **[revocation of probation]** The State failed to prove that appellant inexcusably failed to pay restitution. Accordingly, the trial court erred in revoking appellant's probation based upon his failure to comply with the payment obligation imposed as a condition of his probation. (Hanshaw, L.; Huckabee, S.; CACR 09-121; 12-2-09; Marshall).

Dunahue v. State: **[Rule 701]** The trial court did not abuse its discretion when it admitted certain testimony, which appellant argued was in violation of Rule 701 of the Rules of Evidence. (Sims, B.; CACR 09-360; 12-2-09; Marshall).

Anderson and Stephens v. State: **[sufficiency of the evidence; second-degree forgery]** There was substantial evidence to support appellants' convictions. **[motion to suppress]** The trial court correctly found that the search of appellant Anderson was proper and that it did not exceed the scope of Anderson's consent. Thus, the trial court did not err when it denied appellant's motion to suppress evidence found during the search. **[404(b)]** The trial court properly admitted certain evidence pursuant to Rule 404(b) to show appellant Anderson's motive, intent, plan, and knowledge. (Shirron, P.; CACR 09-570; 12-2-09; Gruber).

Mosley v. State: **[motion to suppress]** Because the law enforcement official had reasonable suspicion to stop appellant's vehicle, the trial court did not err by denying appellant's motion to suppress. (Johnson, K.; CACR 08-1408; 12-2-09; Gladwin).

Gilmore v. State: [**revocation of probation**] There was sufficient evidence to support the circuit court's revocation of appellant's probation. (Storey, W.; CACR 09-486; 12-2-09; Vaught).

Richie v. State: [**illegal sentence**] Because there was not a statute to authorize the actions taken, the circuit court imposed an illegal sentence when it attempted to require appellant to undergo drug and alcohol treatment as a condition of his incarceration. (Clawson, C.; CR 08-793; 12-3-09; Wills).

Lawshea v. State: [**sufficiency of the evidence; capital murder; accomplice**] There was substantial evidence to support the trial court's finding that appellant was guilty as an accomplice to murder. Accordingly, the Supreme Court affirmed his conviction on appeal. (Wilson, R.; CR 09-629; 12-3-09; Gunter).

Singleton v. State: [**restitution**] An insurance company, who compensated its insured for property loss caused by appellant, is a "victim" and is eligible for restitution pursuant to the plain language of Ark. Code Ann. § 5-4-205. (Sims, B.; CR 09-176; 12-3-09; Hannah).

Burks v. State: [**witness bias**] At trial, appellant argued that the State illegally obtained testimony from a witness and he requested that the testimony be suppressed. The circuit court denied appellant's request and admitted the testimony. The trial court allowed appellant to cross-examine the witness on the issue. On appeal, the Supreme Court noted that the appropriate remedy for witness bias is to allow the defense to cross-examine the witness on the source of that bias and thereby impeach the witness's credibility. Because appellant was given the opportunity to cross-examine the witness regarding the issue of how her testimony was obtained, the Supreme Court concluded that the trial court did not abuse its discretion in denying appellant's motion to suppress. [**mistrial**] The trial court did not abuse its discretion when it denied appellant's motion for a mistrial. (Sims, B.; CR 09-609; 12-3-09; Imber).

Cross v. State: [**drug court**] The drug-court program under the Drug Court Act is subject to the sentencing provisions of the Arkansas Criminal Code. (Smith, P.; CR 09-494; 12-3-09; Brown).

Rye v. State: [**Rule 804 (b)(7)**] The trial court did not abuse its discretion when it admitted testimony pursuant to the child-hearsay exception set forth in Rule 804 (b)(7) of the Arkansas Rules of Evidence. (Cottrell, G.; CACR 09-96; 12-9-09; Baker).

McKim v. State: [**motion to suppress**] Because the law enforcement official did not have the authority to stop appellant's vehicle, the evidence obtained during the stop should have been suppressed. (Phillips, G.; CACR 09-817; 12-9-09; Glover).

Sanders v. State: [**motion for new trial**] The trial court did not abuse its discretion when it denied appellant's motion requesting a new trial without holding a hearing on the motion. (Langston, J.; CACR 08-704; 12-9-09; Glover).

McDaniels v. State: [**withdrawal of guilty plea**] The trial court did not err in denying appellant's motion to withdraw his guilty plea. (Partlow, H.; CACR 09-223; 12-9-09; Gladwin).

Turner v. State: [**sufficiency of the evidence; possession of cocaine with the intent to deliver; possession of methamphetamine with the intent to deliver; maintaining a drug premises**] There was substantial evidence to support appellant's convictions. [**Rule 404(b); Rule 403**] The trial court did not abuse its discretion when it admitted evidence of appellant's subsequent drug sales. (Chandler, L.; CACR 09-212; 12-9-09; Hart).

Tyson v. State: [**revocation of suspended imposition of sentence**] The trial court correctly concluded that appellant violated the terms and conditions of his suspended imposition of sentence by failing to pay court-ordered fines, fees, and costs. (Fitzhugh, M.; CACR 09-624; 12-16-09; Gladwin).

Jordon v. State: [**revocation of suspended imposition of sentence**] The trial court correctly concluded that appellant violated the terms and conditions of his suspended imposition of sentence by committing the criminal offenses of leaving the scene of an accident and driving with a suspended license. (Tabor, S.; CACR 09-773; 12-16-09; Robbins).

Cooper v. State: [**probation revocation hearing**] Failure to demand a hearing pursuant to Ark. Code Ann. § 5-4-310 (b)(2) within the applicable sixty-day period waives the right of a defendant to insist on a timely hearing. (McCallum, R.; CACR 09-785; 12-16-09; Kinard).

Williams v. State: [**admission of evidence**] The trial court did not abuse its discretion when it permitted the State to admit an order of protection, which prohibited the appellant from having contact with the victim, into evidence. (Langston, J.; CACR 09-465; 12-16-09; Marshall).

Owens v. State: [**revocation of suspended imposition of sentence**] The trial court correctly concluded that appellant violated the terms and conditions of his suspended imposition of sentence by failing to pay court-ordered child support. (Cox, J.; CACR 09-616; 12-16-09; Brown).

Kemp v. State: [**Rule 37**] A petitioner must ask the Supreme Court to recall its mandate and reopen postconviction proceedings before a second Rule 37 petition can be brought in circuit court. (Humphrey, M.; CR 09-77; 12-17-09; Gunter).

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

Marin and Marin-Mendez v. State: (negligent homicide) Cox, J.; CACR 09-291; 12-2-09; Kinard.

Brown v. State: (aggravated robbery; battery) Langston, J.; CACR 09-409; 12-9-09; Robbins.

Mannis v. State: (harassment) Henry, D.; CACR 09-172; 12-9-09; Vaught.

Brown v. State: (possession of cocaine with intent to deliver) Piazza, C.; CACR 09-591; 12-16-09; Baker.

Moore v. State: (first-degree battery; felony fleeing; aggravated robbery; felony theft of property; first-degree murder) Langston, J.; CACR 09-307; 12-16-09; Gruber.

Simpson v. State: (furnishing prohibited articles into a correctional facility) Sims, B.; CACR 09-620; 12-16-09; Hart.

Williams v. State: (theft of property) Cole, J.; CACR 09-488; 12-16-09; Vaught.

CIVIL

Lillian Ashton Trust v. Caraway: [**contact/specific performance**] Contract was enforceable; there was not a failure of consideration because the earnest-money check was held rather than deposited. There was no evidence that the check was not good. Party was competent to enter into the contract, and there was no undue influence exerted. (Weaver, T.; CA 09-601; 12-2-09; Gruber)

Las Colinas Int'l v. Crosswood Associates [**default judgment/unauthorized practice**] No timely answer was filed on behalf of the corporation. Letters sent by an individual on behalf of the corporation did not constitute a proper responsive pleading. A corporation cannot appear pro se in circuit court. Moreover, the letters by a non-attorney would constitute the unauthorized practice of law and are a nullity; therefore, there can be no relation back by pleadings subsequently filed by a licensed attorney. (Smith, K.; CA 09-391; 12-2-09; Vaught)

Talley v. City of Little Rock: [**administrative appeal**] Stop-work order should have been appealed administratively, then to the circuit court. Appellant failed to exhaust his administrative remedies. Circuit court lacked subject matter jurisdiction when appellant filed action in circuit court rather than through the appeal process. (Kilgore, C.; SC 09-11; 12-3-09; Gunter)

Russell v. Northeast Texas Land and Timber: **[negligence]** Summary judgment was proper because party produced no proof that employer had any knowledge of any “character for negligence, recklessness, or incompetency” on the part of its contractor; nor was there any proof to give rise to vicarious liability. (Yeagan, C.; CA 08-760; 12-9-09; Kinard)

Neil v. Phillips: **[warranty deed]** Grantor breached covenants in deed when taxes on property had not been paid. Consequently, title was not passed free of encumbrances. Grantor was not only liable for amount of taxes owed but for the damages incurred by the grantee in action against the Land Commissioner to redeem the property. (Schrantz, D.; CA 09-626; 12-9-09; Robbins)

Benedetto v. Justin Wooten Construction: **[default judgment]** Court did not abuse its discretion in denying motion for default judgment because evidence showed a mistake. Filing was only one day late, and defendant appeared and raised a meritorious defense. Abuse of process claim was barred by res judicata. (Wood, R; CA 08-1243 12-9-09; Gladwin)

Williams v. Southern Farm Bureau: **[insurance]** Case remanded for determination whether moped is an “auto” as defined under the policy. (Hill, V.; CA 09-585; 12-9-09; Hart)

T & S Machine Shop v. KD Sales: **[letter opinion/judgment]** Judge’s letter opinion contained a clearly erroneous finding, but the finding was not contained in the judgment that was prepared by the prevailing party and entered. Letter was not incorporated into the judgment. Form of judgment was not approved by opposing counsel. Finding in letter opinion cannot be ignored; judgment was entered on the letter. Therefore, case is remanded. (Wyatt, R.; CA 09-87; 12-9-09; Marshall)

Turley v. Staley: **[common-defense doctrine]** Answer of one defendant inures to the benefit of co-defendants when answer of non-defaulting defendant states a defense that is common to all of the defendants. **[land contract/forfeiture]** Contract had been modified by a course of dealing that permitted late payments. Party was never put on notice that in the future strict compliance with payment terms would be required. Forfeiture was inequitable given the long history of accepting late payments, the length of time payments had been made on the contract, amount paid on the contract, and the ability of the buyer to pay the balance. (Moody, J.; CA 08-825; 12-9-09; Baker)

Wade v. Benton County Sheriff: **[arrest/civil rights act]** Although officers violated Arkansas law when they stopped, detained, and arrested defendant for offense outside of their territorial jurisdiction, defendant failed to state a claim that the arrest constituted an unreasonable seizure because the complaint failed to allege that it was unreasonable. Supreme Court did not consider whether an arrest that is illegal under statutory law is a per se violation of the constitution because the argument was not presented below. (Smith, K.; SC 09-245; 12-10-09; Hannah)

State Farm v. Stamps: **[statutory penalty]** Victim’s amended demand was rejected by the insurer and case went to trial. Award of statutory penalty was proper as verdict was within 20% of the demand. (Tabor, S.; SC 09-208; 12-10-09; Danielson)

Northport Heath Services v. DHS: **[Medicaid reimbursement]** DHS’ handling of requests for reimbursement of certain costs, tuition, and fees associated with its employees’ enrollment in nursing school were affirmed in appeal under Administrative Procedures Act. Agency’s interpretation of its rules were not clearly wrong. (Moody, J.; SC 09-343; 12-10-09; Corbin)

Arkansas Construction and Excavation v. City of Maumelle: **[appeal/administrative procedure]** The denial of a request for a waiver of the specified right-of-way was a final action by the commission that triggered the time in which to file an appeal in circuit court. Since appeal was not timely, circuit court did not have subject matter jurisdiction. (McGowan, M.; CA 09-116; 12-16-09; Baker)

Mullen v. Shockley: **[amendment/pleading]** Rule 15 permits the filing of an amended answer at any time before the entry of a final judgment. Party did not object to the amended complaint but filed an answer; therefore, it was an abuse of discretion to enter a summary judgment and not consider the amended pleading. (Laser, D.; CA 09-615; 12-16-09; Hart)

Garrett v. Fite: [**specific performance**] Specific performance was properly denied upon the court's findings that the price was inadequate and the seller was vulnerable (health/mental state). (Medlock, M.; CA 09-238; 12-16-09; Marshall)

Orr v. Calicott: [**venue**] A dismissal of a complaint for lack of proper venue is not a dismissal with prejudice if the plaintiff appeals the venue issue rather than refile the complaint. (Maggio, M.; CA 08-640; 12-16-09; Gladwin)

Superior, Inc. v. Arrington: [**ucc/course of dealing**] Court properly found that there was a course of dealing in the used car business that a seller will reimburse the buyer when the seller cannot deliver title to the vehicle free and clear of liens. Therefore, this course of dealing prevailed over the terms of the UCC. (Proctor, W.; CA 09-541; 12-16-09; Baker)

Arkansas Residential Building Contractors Committee v. JAG Enterprises: [**administrative jurisdiction**] Committee had jurisdiction to hear alleged violations that a residential contractor was acting without a license, and the committee has the authority to impose a penalty on the contractor. (Switzer, D.; CA 09-92; 12-16-09; Marshall)

Selrahc Limited Partnership v. Seeco, Inc. [**mineral interest**] The tax sale of a severed mineral interest, not subjoined to the surface assessment, is not valid. Ark. Code Ann. 26-26-1112 will not be applied retroactively. (Wood, R.; CA 09-378; 12-16-09; Glover)

Howe Now, Inc. v. Fishing University: [**personal liability / corporate debt**] Shareholder was personally liable for corporate debt that was incurred while the corporate charter was revoked and while the shareholder was actively engaged in the business during that period. (Fitzhugh, M.; CA 09-326; 12-16-09; Pittman)

Price v. Willbanks: [**expert witness**] Parties' failure to supplement their answers to discovery and disclose an expert witness, a surveyor, did not prejudice the other side. [**contract**] There was an enforceable contract between the parties. The essential elements of a contract existed; additionally there was an adequate property description and mutuality of obligations. (Mills, B.; CA 09-226; 12-16-09; Vaught)

Acuff v. Bumgarner: [**summary judgment**] Fact questions prevent the entry of summary judgment. (Smith, K.; CA 09-269; 12-16-09; Hart)

Gentry v. Robinson: [**summary judgment**] Denial of County Judge's summary judgment motion based on immunity was error as a prima facie case was made that was not met with proof sufficient to raise a disputed fact question. (Simes, L.; SC 08-1452; 12-17-09; Wills)

Rettig v. Ballard: [**service/dismissal**] Complaint should not have been dismissed with prejudice. Plaintiff served complaint and defective summons within the 120 days. Therefore, plaintiff was entitled to the one year savings statute in which to serve the complaint and valid summons. Because the complaint and summons, though defective, were timely served the saving statute applies. (Proctor, W.; SC 09-361; 12-17-09; Hannah)

Robinson v. Villines: [**illegal exaction**] Although voters approved an increase in library millage, it could not be applied to the 2007 tax year because the quorum court did not enact an ordinance to levy the tax to apply to 2007, and the county judge did not have the authority to do so. (Fox, T.; SC 09-671; 12-17-09; Gunter)

JUVENILE

Leatherwood v. Arkansas Dept. of Human Servs.: [TPR - Service] TPR affirmed where appellant argued that service by warning order to terminate her parental rights was insufficient. Appellant argued that DHS failed to demonstrate to the court that after diligent inquiry her identity or whereabouts remained unknown as required by Rule 4(f) of the Arkansas Rules of Civil Procedure. Although the court found that the argument was not preserved for review, the court noted that DHS satisfied the diligent efforts requirements and that appellant's attorney was provided with notice pursuant to Rule 5. The court added that it was appellant's responsibility to stay informed and keep her attorney informed of her current address. (Finch, J.; CA09-725;12-16-09; Gladwin).

Hays v. Arkansas Dept. of Human Servs.: [D-N Adjudication] Adjudication was based on trial court's finding that appellant's alcohol abuse led to physical and mental injury of his child, that he failed to supervise his child, and that he was an unfit parent. Appellant argued that there was insufficient evidence and that the court should have granted a directed verdict. The court found that there was ample evidence that appellant abused alcohol, including drinking before driving with his son as a passenger, wrecking a golf cart which his son was riding in, and therapist's testimony of the mental injury caused by appellant due to his drinking. [Hearsay] The Court found that although the trial court abused its discretion in allowing testimony of intoxication under the business record exception, appellant failed to show prejudice and it was harmless. [Jurisdiction] Finally, appellant argued that the court lacked jurisdiction to change visitation with his son. Ark. Code. Ann. 9-27-306(a)(1) gives juvenile division courts exclusive jurisdiction of dependency-neglect actions. The court's transfer of custody order supersedes any existing court order and remains in full force and effect until a subsequent order of custody is entered by a court of competent jurisdiction. (Zimmerman, S.; CA 09-711; 12-16-09; Gruber)

Tadlock v. Arkansas Dept. of Human Servs.: [TPR] After a year of working with the family, T.T. was ultimately returned home only to be removed again due to the mother's cocaine use. Several months later the court terminated parental rights finding several grounds for termination, including testimony of the father's anger management issues and the children not being fed adequately. The father appealed the termination order as to T.T. The court affirmed the TPR finding that other factors or issues arose subsequent to the filing of the original TPR.

[D-N Adjudication] C.T. was born in Dec 2008 when T.T. was returned home to the parents, but both children were removed in January 2009. C.T. was adjudicated following the termination hearing on T.T. C.T.'s adjudication was affirmed due to the drug relapse that resulted in the removal. (Cook, V.; CA 09-638; 12-9-09; Baker)

Tadlock v. Arkansas Dept. of Human Servs.: [TPR] TPR affirmed as to C.T. based on prior involuntary termination of a sibling. (Cook, V.; CA 09-814; 12-9-09; Pitman)

Stedman v. Arkansas Dept. of Human Servs.: [TPR - Hearsay] Appellant's sole issue on appeal is that the circuit court erred in admitting an affidavit as hearsay that had been admitted at a prior hearing. Even though the affidavit did contain hearsay, appellant cannot show that she was prejudiced by its admission. The testimony was commutative with other evidence submitted without objection. (Cook, V.; CA 09-582; 12-2-09; Gruber)

Duke v. Selig, Director of Arkansas Dept. of Human Servs.: [Child Maltreatment] Appellant argued that the finding is not supported by the evidence. The victim testified that appellant picked her up by the neck making it difficult for her to breath. The definition of abuse includes intentionally or knowingly interfering with a child's breathing with or without physical injury. Once an administrative body had determined the victim to be credible, the courts are without power to disregard that finding. The victim's testimony by itself is sufficient to support a finding of maltreatment, even in light of evidence to the contrary. (Moody, J; CA 09-518; 12-9-09; Brown)

DOMESTIC RELATIONS

Halk v. Halk: [**divorce; alimony; marital property; attorney's fees**] The Court of Appeals affirmed that portion of the trial court's order dividing marital property and granting attorney's fees, but reversed that part denying alimony to the appellant. The appellant was sixty-four years old, the parties had been married for forty-five years, and the appellant had never worked at the insistence of the appellee. Her affidavit of financial means indicated that she had no income and that she had substantial ongoing medical expenses. Noting that the primary purpose of alimony is to rectify imbalance in the parties' earning power and standard of living, the court said that the denial of alimony here was an abuse of discretion. (Bell, K.; CA 09-237; 12-4-09; Kinard).

Arkansas Office of Child Support Enforcement v. Hearst: [**child support; Social Security Disability benefits**] A case of first impression in which the Supreme Court held that Social Security Disability (SSD) benefits paid directly to appellee's children as a result of his disability is considered as income to him for the purpose of determining his child support obligation under Administrative Order No. 10. (Maggio, M.; SC09-135; 12-3-09; Imber).

Schmit (now Crisp) v. Schmit: [**change in custody--material change in circumstances**] Neither the custodial parent's relocation nor other issues raised was a material change in circumstances sufficient to change custody and the circuit court was affirmed. (Duncan, X.; CA 09-136; 12-9-09; Marshall).

Lee v. Eubanks: [**child custody; child support; visitation**] The trial court found no material change sufficient to modify child support or visitation and the Court of Appeals affirmed. (Clawson, C.; CA 09-489; 12-9-09; Marshall).

Hatfield v. Miller: [**change of custody; jurisdiction--UCCJEA; material change in circumstances**] The trial court did not err in finding that the UCCJEA applied and that, under the Act, Arkansas had continuing jurisdiction. The court did not err in finding a change in circumstances (in the condition of appellant's home) adequate to change custody from appellant to appellee. Finally, the court did not err in finding it in the child's best interest to be in the custody of the appellee. (Pierce, M.; CA 09-640; 12-9-09; Gruber).

Office of Child Support Enforcement v. Jones: [**child support arrearage**] Vacating the appellee's unpaid balance of a child-support arrearage was not a retroactive application of amended Ark. Code Ann. 9-10-115(f)(1). It was a prospective application from the date of the hearing on appellee's motion to vacate his arrearage, which was after the effective date of Act 60, the act amending the provision. The circuit judge ordered that appellee was not obligated to pay the unpaid balance of his support obligation from the date of the order forward. The Supreme Court held that was a prospective application of the statute and affirmed. (Shirron, P.; SC 09-333; 12-10-09; Brown).

Stacks v. Stacks: [**custody--modification; preference of a child**] A child's preference alone is not determinative of which parent should have custody. Even if the child had expressed a desire to live with her father, and even if the trial court found that constituted a material change in circumstances, the decision whether to change custody would not end there. The primary consideration is the welfare and best interest of the child involved; all other considerations are secondary. Custody will not be modified unless it is shown that there are changed conditions demonstrating that a modification is in the best interest of the child. (Lindsay, M.; CA 09-642; 12-16-09; Kinard).

Poole v. Poole: [**property division; attorney's fees; child custody; evidence**] The Court of Appeals affirmed the trial court's decision in all respects, the division of property, the award of attorney's fees to the appellee, certain evidentiary rulings, and the award of custody to the appellee. (Vittitow, R.; CA 09-42; 12-16-09; Robbins).

Churchill v. Churchill: **[property division–retirement plan]** The Court of Appeals affirmed the trial court’s decision to assess the value of his retirement plan as of the time of the divorce decree rather than at the time of a hearing held four years earlier. The court also affirmed the trial court’s decision involving the proceeds of an insurance settlement related to damage to the marital home before the initial divorce hearing. The trial court credited the appellee’s testimony that the proceeds were spent to replace personal property belonging to her and the children that was lost in the fire. Given the trial court’s impossible task to trace commingled funds, the judge did not err in doing so. (McGowan, M.; CA 09-459; 12-16-09; Pittman).

PROBATE

Baxter, et al. v. Peters, et al.: **[will–execution]** In this will contest, the appellant grandchildren of the decedent appealed from an order finding their grandmother’s will valid and admitting it to probate. The appellants contend that the trial court erred in finding that the statutory formalities for executing a will were satisfied, specifically the executor’s failure to produce two living, attesting witnesses at the hearing. They also contend the court erred in finding there was substantial compliance with the statutory requirements for witnessing the execution of the will. In affirming, the Court of Appeals found that the trial court did not clearly err in finding that the will was witnessed by the appropriate number of witnesses and with the required formality. Three witnesses signed the will, even though only two are required statutorily. The trial court had the authority to judge the weight to be given to the testimony of the witnesses. (Spears, J.; CA 09-594; 12-2-09; Glover).

Stickels v. Heckel: **[adoption]** The appellees’ motion for reconsideration (filed under Rule 60) of the trial court’s denial of an adoption was in fact a motion for a new trial under Rule 59. The motion was not timely because it was not filed within ten days of the entry of the order denying the adoption petition. Therefore, the trial court had no jurisdiction to enter the order granting the adoption petition. (Switzer, D.; CA 09-30; 12-9-09; Kinard).

Dotson v. Dotson, et al.: **[interlocutory appeal; After-Born Child Statute]** The Court of Appeals held that the circuit court did not err in finding that the After-Born Child Statute entitled the son to take against his father’s will and extinguished the rights of the appellant, nephew of the decedent and a named beneficiary of the joint will of the decedent and the appellee. (Epley, A.; No. CA 09-246; 12-9-09; Vaught).

Williams, et al. v. Davis, Executor, et al.: **[decedent’s estate; mandate of appellate court]** In this second appeal of this case, the Court of Appeals affirmed in part and reversed in part the trial court’s compliance with the court’s mandate of the previous appeal. The court ordered that the costs of the appeal would be divided between all of the appellees listed in the caption of the previous appeal. The court affirmed on all other issues—the ownership of the decedent’s bank accounts, the order directing the sale of a tractor and an automobile, and the denial of a motion for distribution of real property. (Shirron, P.; No. CA 09-2; 12-16-09; Pittman).

EIGHTH CIRCUIT

Little Rock Cardiology Clinic v. Baptist Health: **[Antitrust]** In action alleging defendants violated Section 1 and 2 of the Sherman Act by conspiring to restrain trade in the market for services to cardiology patients and monopolize the market for cardiology procedures, the district court did not err in dismissing the complaint on the ground that the plaintiffs’ alleged relevant market was legally flawed and that they did not state a plausible antitrust claim. As a matter of law, in an antitrust claim brought by a seller, a product market cannot be limited to a single method of payment when there are other methods of payment that are acceptable to the seller. Where an antitrust plaintiff alleges that a firm competes in and draws its customers from a specific geographic area, it cannot

then limit the relevant geographic market to a location smaller than that area solely on the fact that consumers must travel to that smaller area to obtain the relevant service or product as to do so would allow antitrust plaintiffs to gerrymander the relevant geographic markets into artificially narrow locations. (E.D. Ark.; No: 08-3158 and No: 09-1786; 12-29-09)