

Smith v. State: [**sufficiency of the evidence; capital murder**] There was substantial evidence to support appellant's conviction. [**Ark. R. Evid. 609**] The trial court did not abuse its discretion when it admitted evidence of appellant's prior felony conviction. [**reopening a case**] The trial court did not abuse its discretion when it allowed the State to reopen its case to put on evidence of appellant's age and to amend the criminal information to correctly assert the elements of the capital-murder charge. (Jones, B.; CR 09-106; 10-1-09; Hannah).

Phavixay v. State: [**sufficiency of the evidence; delivery of methamphetamine**] There was substantial evidence to support appellant's conviction. [**prosecutorial vindictiveness**] The trial court did not clearly err in finding that appellant failed to demonstrate prosecutorial vindictiveness. [**jury instructions**] The circuit court did not err in giving the jury the habitual-offender instruction. [**mistrial**] The trial court did not abuse its discretion when it denied appellant's request for a mistrial. (Fitzhugh, M.; CR 08-1463; 10-1-09; Hannah).

Gibbs v. State: [**revocation of probation**] The trial court properly revoked appellant's probation because he violated the terms and conditions of his probation by associating with a known felon. (Fogleman, J.; CACR 09-56; 10-7-09; Vaught).

Gwaltney v. State: [**administrative review; Sex Offender Assessment Committee**] Substantial evidence existed to support appellant's Level 2 notification assessment. Thus, the assessment was not unreasonable or arbitrary. (Fox, T.; CA 09-196; 10-7-09; Brown).

Hayes v. State: [**motion for a continuance**] The trial court did not abuse its discretion when it denied appellant's fifth request for a continuance, which was made on the day of the trial and after the jury and witnesses were assembled. (Pope, S.; CACR 09-262; 10-7-09; Henry).

Rouzer v. State: [**competency of a witness**] The trial court did not abuse its discretion when it determined that appellant's eight-year-old daughter was competent to testify. (Medlock, M.; CACR 09-168; 10-7-09; Glover).

Vorachith v. State: [**sufficiency of the evidence; second-degree murder**] There was substantial evidence to support appellant's conviction. [**motion in limine**] The trial court did not abuse its discretion when it denied appellant's motion in limine and admitted an out-of-court statement that he made in response to a news reporter's question. (Cox, J.; CACR 08-1508; 10-7-09; Gruber).

Johnson v. State: [**sentencing**] The concept of "sentencing manipulation," which is used in federal courts, is not applicable to the state courts of Arkansas. (Anthony, C.; CACR 08-1141; 10-7-09; Hart).

Price v. State: [**sufficiency of the evidence; endangering the welfare of a minor, second degree; second-degree battery**] There was substantial evidence to support appellant's convictions. [**motion for a continuance**] The trial court did not abuse its discretion when it denied appellant's request for a continuance to obtain new counsel. (Langston, J.; CACR 08-942; 10-7-09; Baker).

Holt v. State: [**sufficiency of the evidence; manufacturing a controlled substance; possession of drug paraphernalia with intent to manufacture; maintaining a drug premise; exposing a child to a chemical substance**] There was substantial evidence to support appellant's convictions. (Sims, B.; CR 09-51; 10-8-09; Imber).

Banks v. State: [**Ark. R. Evid. 404(b)**] The trial court did not abuse its discretion when it admitted testimony about other crimes pursuant to the exceptions articulated in Rule 404(b) of the Arkansas Rules of Evidence because the evidence was independently relevant to show appellant's consciousness of guilt. (Humphrey, M.; CR 09-95; 10-8-09; Gunter).

Rollins v. State: [**sufficiency of the evidence; manslaughter**] There was substantial evidence to support appellant conviction. [**Ark. R. Evid. 401**] A pipe, which contained cocaine residue, that was found in appellant's car after an automobile accident was relevant because it made it more probable than not that appellant had ingested cocaine prior to the accident. (Fox, T.; CR 09-265; 10-8-09; Wills).

Davis v. State: [**Ark. R. Evid. 404(b)**] The trial court did not abuse its discretion when it allowed two witnesses to testify about matters related to appellant's character because the evidence was independently relevant on the issues of intent, motive, opportunity, preparation, plan, knowledge, and absence of mistake or accident. [**admission of photographs**] The trial court did not abuse its discretion when it admitted photographs that bore direct relevance to appellant's intent or state of mind, which were key issues in appellant's case. [**jury instructions**] On appeal, the "skip rule" barred appellant's argument that the circuit court abused its discretion in failing to give a jury instruction on a lesser-included offense. (Wright, J.; CR 09-339; 10-8-09; Corbin).

Whitham v. State: [**Ark. R. Evid. 1003**] Because appellant failed to establish that there was a genuine question as to the authenticity of the document, the trial court did not abuse its discretion when it admitted a photocopied letter into evidence. (Reynolds, D.; CR 09-321; 10-8-09; Hannah).

Rounsaville v. State: [**sufficiency of the evidence; rape**] There was substantial evidence to support appellant conviction. [**Ark. R. Evid. 404(b); 403**] The trial court did not abuse its discretion when it admitted testimony about a previous rape that appellant committed because the evidence was independently relevant, and because it was more probative than prejudicial. (Hanshaw, L.; CR 09-365; 10-8-09; Brown).

Jones v. State: [**search warrant**] Because there was a substantial basis for reasonable cause to believe that contraband would be found on the premises to be searched, the trial court did not err in denying appellant's motion to suppress. (Edwards, R.; CACR 09-495; 10-21-09; Pittman).

Reese 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 restitution. (Fitzhugh, M.; CACR 08-737; 10-21-09; Hart).

Ray 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 offense of rape. (Fitzhugh, M.; CACR 09-506; 10-21-09; Hart).

Morrison v. State: [**sufficiency of the evidence; failure of a sex offender to report a change of address**] There was substantial evidence to support appellant's conviction. [**motion for mistrial**] The trial court did not abuse its discretion in denying appellant's motion for a mistrial. (Cottrell, G.; CACR 08-572; 10-21-09; Gladwin).

Williams v. State: [**self-representation**] The trial court did not err when it permitted appellant to waive his right to counsel and to represent himself during his trial. (Piazza, C.; CACR 08-1453; 10-21-09; Robbins).

Rodriguez-Bonilla v. State: [**motion to suppress**] The trial court did not abuse its discretion when it denied appellant's request to suppress evidence that was obtained during a lawful traffic stop. (Danielson, E.; CACR 09-93; 10-21-09; Gruber).

Hodgson v. State: [**revocation of suspended imposition of sentence**] The trial court correctly concluded that appellant violated the terms and conditions of her suspended imposition of sentence by failing to pay restitution, fines, and court costs. (Fitzhugh, M.; CACR 09-193; 10-21-09; Marshall).

Payton v. State: [**evidentiary rulings**] The trial court did not abuse its discretion when it: (1) refused to permit the admission of irrelevant testimony; (2) permitted the State to introduce a statement from appellant; and (3) refused to allow appellant's attorney to include statements in his closing argument that were based on speculation rather than facts. (Wyatt, R.; CACR 08-1424; 10-21-09; Glover).

Throneberry v. State: [**sentencing**] The trial court did not abuse its discretion by refusing to disclose its reasoning for declining to follow the jury's recommendation of concurrent sentencing and instead ordering that appellant's sentences be served consecutively. (Reynolds, D.; CR 09-139; 10-22-09; Wills).

May 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 offense of domestic battery in the third degree. (Cox, J.; CACR 09-571; 10-28-09; Gladwin).

Simmons v. State: [**sufficiency of the evidence; possession of cocaine with intent to deliver; delivery of cocaine; possession of drug paraphernalia**] There was substantial evidence to support appellant's convictions. [**motion to suppress**] Because the search warrant provided a sufficient description of the items to be seized, the trial court did not err in denying appellant's motion to suppress items obtained during the search of appellant's home. [**motion for mistrial**] The trial court did not abuse its discretion in denying appellant's motion for a mistrial. (Storey, W.; CACR 08-1430; 10-28-09; Robbins).

Cockrell v. State: [**motion to suppress**] The trial court erred by denying appellant's motion to suppress evidence that was obtained in violation of Rules 2.2 and 3.1 of the Arkansas Rules of Criminal Procedure. (Piazza, C.; CACR 09-222; 10-28-09; Vaught).

Bradley v. State: [**Ark. R. Evid. 614**] A trial court, on its own motion, may call and interrogate witnesses. [**motion to suppress**] The trial court did not err in denying appellant's motion to suppress the in-court identifications made by two witnesses. (Simes, L.T.; CACR 09-209; 10-28-09; Henry).

Sykes v. State: [**sufficiency of the evidence; capital murder**] There was sufficient evidence to support appellant's capital-murder conviction. [**motion to suppress**] Because appellant did not clearly and unequivocally invoke his right to remain silent or his right to an attorney, the trial court did not err in denying appellant's motion to suppress a portion of his custodial statement. (Storey, W.; CR 09-402; 10-29-09; Gunter).

Ray v. State: [**motion to suppress; pretrial identification**] Appellant did not meet his burden of showing that the pretrial-identification procedure was unduly suggestive. [**motion to suppress; search; seizure**] Because appellant did not have a legitimate expectation of privacy in the vehicle searched, he lacked standing to challenge the search. [**Ark. Code Ann. § 5-4-504**] The "pen pack," which was offered by the State, was sufficient to prove appellant's two prior Tennessee convictions for purposes of enhanced sentencing as a habitual offender under Ark. Code Ann. § 5-4-504. (Thomas, J.; CR 09-99; 10-29-09; Brown).

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

Rhodes v. State: (first-degree murder); Arnold, G.; CACR 09-306; 10-7-09; Baker.

Hawkins v. State: (first-degree murder; first-degree battery; felon in possession of a firearm); Anthony, C.; CACR 09-240; 10-21-09; Vaught).

Butler v. State: (terroristic act); Wright, H.; CACR 09-285; 10-21-09; Baker.

Carter v. State: (aggravated robbery); Wright, J.; CACR 08-1385; 10-21-09; Robbins.

Abernathy v. State: (rape); Cox, J.; CACR 09-505; 10-28-09; Hart.

Ibarra v. State: (delivery of a controlled substance; possession of a controlled substance with intent to deliver; simultaneous possession of drugs and firearms); Storey, W.; CACR 08-1391; 10-28-09; Kinard.

Mingbougha v. State: (rape); Tabor, S.; CACR 09-192; 10-28-09; Gruber.

Dishman v. State: (second-degree murder); Proctor, W.; CACR 09-372; 10-28-09; Henry.

CIVIL

Bryan v. City of Cotter: [**contractor/limitations/contract**] Limitations period for claim of malpractice was three years from the time of occurrence – not the date of discovery. Material issues of fact exist to preclude disposing of the issues relating to contract interpretation by way of summary judgment. (Piazza, C.; SC 08-811; 10-1-09; Imber)

Bayird v. Floyd: [**personal liability/corporate officer**] Corporate officer was not personally liable because he lacked any personal involvement in the event surrounding the injuries to the nursing home resident. (Glover, D., SC 08-1099; 10-1-09; Corbin)

Twin Springs Group, Inc. v. Karibuni, Ltd. [**personal jurisdiction**] Summary judgment dismissing action for lack of personal jurisdiction was not in order because there were factual issues concerning the negotiation and execution of the contract in question, which if believed, would give an Arkansas court jurisdiction. (Smith, K.; CA09-127; 10-7-09; Pittman)

Hendrix v. Stobaugh: [**slip/fall**] Summary judgment was proper because there was no evidence raising a material question of fact as to whether the floor was wet as a result of the owner's negligence or that there was a recurrent slippery condition. (Sutterfield, D.; CA 09-71; 10-7-09; Gruber)

Heirs v. Butler: [**laches**] Although claim for property was not asserted for over 20 years, it was not barred by laches because there was no showing of prejudice in the timing of the assertion. (Henry, D.; CA 09-103; 107-09; Glover)

Sunbelt Business v. James: [**fraud**] Fraud claim was not sustained because of the lack of justifiable reliance on the alleged false representation. (Proctor, W.; CA 08-320; 10-7-09; Glover)

Roeben v. BG Excelsior Ltd. [**defamation**] One of the party's claim was barred by the one-year statute of limitations for defamation and it was not saved by either the relation back doctrine or the savings statute. Summary judgment was not proper because of factual issue related to damages, publication, and the applicability of a qualified privilege. (Moody, J.; CA 08-1111; 10-7-09; Vaught)

DC Express v. Briggs: [**promissory note/fiduciary duty**] Damages for default on a note were readily ascertainable from the evidence. Claim for breach of fiduciary duty was not supported by the evidence. (Gray, A.; CA 08-1247; 10-7-09; Hart)

Simpson Housing v. Hernandez: [**class action/apartment residents suing carbon monoxide levels**] Trial court certified one subclass and refused to certify another subclass. Predominance and superiority requirements were met on claims for breach of contract and fraud but not on tort claims. The critical distinction between the two subclasses is that proximate causation is a foundational element of the tort claims; therefore, the plaintiffs on the tort claims cannot establish liability without addressing the individualized issues involving the extent of exposure to carbon monoxide and how the exposure caused damage. On the contract claims, the damages are for rental payments that do not implicate individual variances associated with personal exposure. The appellate court defers to the trial court on the decision as to whether a class action is the superior method for trying the claims because the trial court must determine that the class litigation is manageable. (Gunn, M.; SC08-396; 10-8-09; Brown)

Wilson v. Cecil Smith Excavating: [**dismissal/nonresident attorneys**] Attorneys whose names appeared on the signature block of a pleading were not attorneys of record and were not entitled to notice of dismissal pursuant to Rule 41. They were not licensed in Arkansas and had not been admitted pro hac vice. (Humphrey, M.; CA 09-241; 10-21-09; Pittman)

Watkins v. Southern Farm Bureau: [**insurance/duty to defend**] In assault and battery litigation, when insured asserted defense of self-defense, insurer had duty to defend, and exclusion for intentional-design did not absolve the duty. In this case, assault and battery case went to trial and insured did not prevail on self-defense claim but sought damages for the cost of the lawyer he had to hire when insurer failed to provide counsel. Insurer was liable for such damages because it was obligated to defend based on self-defense claim even though claim ultimately was unsuccessful. (Fox, T.; CA 09-120; 10-21-09; Henry)

QHG of Springdale v. Archer: [**contract**] Hospital breached employment contract with doctor first; therefore, doctor was entitled to damages. [**Unjust enrichment**] Doctor is entitled to seek damages for his over performance of the contract in the form of unjust enrichment after contract terminated. (Gunn, M.; CA 07-1115; 10-21-09; Marshall)

PH, LLC v. City of Conway: [**zoning**] Decisions by a city council to approve or deny a requested rezoning of land is legislative rather than administrative in nature and the standard of review for such is that the city council's decision should be affirmed unless it was arbitrary, capricious, or unreasonable. (Clark, D.; SC 08-1383; 10-22-09; Brown)

Greenlee v. J.B. Hunt: [**gender discrimination**] Summary judgment in favor of the employer was proper because employee failed to meet her burden under the *McDonnell Douglas* criteria to produce evidence that the employer's explanation was pretextual. (Keith, T.; SC 07-1254; 10-22-09; Danielson)

Riceland Foods v. Pearson: [**landlord lien**] A purchaser of crops does not have a duty to make a reasonable investigation or inquiry as to whether the seller of crops is a tenant or owner of farmland on which the crops were produced. Riceland, which purchased rice from a tenant, did so in good faith and without notice that seller was a tenant who had failed to pay rent to the landlord. Landlord lien was not enforceable against Riceland. (Story, B.; SC 08-999; 10-29-09; Hannah)

Arkansas Dept. Corrections v. Williams: [**admin procedures**] Act 1296 of 2009 states that procedures for capital punishment by lethal injection are not subject to the Administrative Procedures Act. It is not a sentencing statute and applies to executions that are to take place after its passage; consequently, it does not raise questions of retroactivity or ex post facto as to when the crime was committed. (Fox, T.; SC 08-1031; 10-29-09; Gunter)

JUVENILE

Arkansas Dept. of Human Servs. v. Denmon: [**Writ of Certiorari**] Following the denial of appellant motions to stay and modify the circuit court's order placing a parent in a dependency-neglect case in a specific placement, appellant filed a writ of prohibition. A writ of prohibition is not appropriate for something that has already been done. A writ of certiorari was granted and is available when on the face of the record there has been a plain, manifest, clear, and gross abuse of discretion, and when no other adequate remedy exists. This was not a final appealable order. Ark. Code Ann. §9-27-335(b) prohibits a judge from naming a particular provider when DHS is the payor. The court found the order erroneous on its face and further noted that custodial jurisdiction is limited to juveniles. (Williams, C.; 09-479; 10-8-09; Will)

Fredrick v. Arkansas Dept. of Human Servs.: [**No- Merit TPR**] Motion to withdraw denied and rebriefing ordered. (Cook, V.; CA 09-507; 10-7-09; Hart)

Thomsen v. Arkansas Dept. of Human Servs.: [**TPR**] TPR affirmed. Appellant argued that the circuit court erred in finding TPR was in the children's best interest and in finding that DHS made meaningful efforts to reunite her with her children. The circuit court did not err in finding that termination was in the children's best interest. The court considered all the evidence and met the statutory duty to consider potential harm in returning the children to the appellant. Appellant based the meaningful efforts argument on a ground that required the children to be out of the custody of the parent for 12 months despite meaningful efforts by the department to rehabilitate the parent and correct the conditions that caused removal. However, in this case, the children had not been out of the home for 12 months at the time the court entered the termination order, so this ground does not apply. The TPR order also entered two other grounds including sex abuse and subsequent conditions that do not depend on the amount of time children have been removed from the home that were not challenged by appellant. (Zimmerman, S.; CA 09-610; 10-21-09; Robbins)

Henson v. Arkansas Dept. of Human Servs.: [**TPR**] Appellant challenged the TPR finding as to the child's best interest, specifically the finding as to the children's adoptability. Appellant argues that the statute, while not requiring a finding that a juvenile is adoptable should be construed to require an assessment of the probability that potential adoptive parents will select particular children and the likelihood that her three children would be adopted as a sibling group. Appellant further argued that the evidence at trial was not sufficient because it was based on potential adoptive parents and past experiences with other adoptions. Since appellant failed to raise this issue below it will not be considered on appeal, nor did appellant offer any legal authority to support her argument. The appellate court went further to note that even if addressed on the merits neither the juvenile code or case law supports this argument. (Sullivan, T.; CA 09-535; 10-21-09; Brown)

Staley v. Arkansas Dept. of Human Servs.: [**No- Merit TPR**] Motion to withdraw granted and TPR affirmed. (Wilson, R.; CA 09-468; 10-21-09; Henry)

Flowers v. Arkansas Dept. of Human Servs.: [No- Merit TPR] Motion to withdraw granted and TPR affirmed. (Branton, W.; CA 09-667;10-28-09; Gladwin)

Bell v. Arkansas Dept. of Human Servs.: [No- Merit TPR] Motion to withdraw granted and TPR affirmed. (Branton, W.; CA 09-611;10-28-09; Baker)

J.S. v. State, [Transfer] Denial of juvenile transfer affirmed. Appellant was charged with aggravated robbery, felony kidnaping, felony fleeing, and criminal use of a prohibited weapon. Appellant argued that since he was requesting an EJJ designation the burden of proof was preponderance of the evidence, not clear and convincing evidence. The burden of proof at a transfer hearing is clear and convincing evidence. There is no EJJ designation, unless the case is already in juvenile division or is transferred from criminal to juvenile division. Appellant then argued that under either standard of proof the court erred in denying the transfer. The circuit court specifically addressed each of the statutorily required factors and made written findings and was not in error. The court made findings that the juvenile had no prior criminal history and there were rehabilitation facilities available. However, the court also found the alleged offense was against a person; the offenses were serious and committed in an aggressive and willful manner; appellant was culpable; appellant had the benefit of a supportive family but did not make good choices; and appellant participated in the planning of the offense. (Finch, J.; CA 09-188;10-28-09; Gruber).

R.A.S. v. State, [Transfer] Denial of juvenile transfer affirmed. This is a companion case to *J.S. v. State*. Appellant was charged with aggravated robbery, felony kidnaping, felony fleeing and criminal use of a prohibited weapon. Appellant argued that the circuit court misapplied the statutory factors.

The Court of Appeals noted the circuit court's considered decision after weighing all the statutory factors as evidenced by the court's written findings. The appellate court noted that although appellant was not the most culpable and that he suggested abandoning the robbery midstream, he was deeply involved in the groups' violent crimes against persons and property that were both premeditated and violent. (Finch, J.; CA 09-195;10-28-09; Marshall)

DOMESTIC RELATIONS

McWhorter v. McWhorter: [child support—reducing to judgment; res judicata; statute of limitations; judicial estoppel] On the third appeal of this case, the Supreme Court affirmed the trial court's finding that the trial court's prior order was not a judgment. The court noted the difference between an order that establishes a monthly child support obligation and an order that has been reduced to judgment. The court said that a child support order, while a final order for purposes of appeal, is distinguishable from an order that has been reduced to judgment. The court also affirmed the trial court's allowing evidence of past child support payments and crediting those payments toward final judgment. The court addressed the trial court's action in response to the court's previous mandate on appeal, as well as evidence of previous payments in light of res judicata and the five-year statute of limitations. The court declined to consider the appellant's arguments based upon judicial estoppel because she did not raise or argue the issue below. (Bell, K.; No. SC 08-1089; 10-1-09; Gunter).

Hayes v. Otto: [child support] On this second appeal from this case, the Court of Appeals affirmed the trial court's order modifying child support for the parties' two children in its entirety. (Smith, V.; No. CA 08-1486; 10-7-09; Gladwin)

Boudreaux v. Boudreaux: [child support; spousal support; attorney fees and expert witness fees] Under the circumstances of the case, the trial court erred in the method used to calculate the appellant's income for purposes of child support, spousal support, attorney fees and expert witness fees. The Court of Appeals said that it did not second-guess the trial court's judgment of the appellant's credibility with respect to his

finances and his earning ability. The Court reversed and remanded for the trial court to recalculate appellant's income. (Pierce, M.; No. CA 08-1451; 10-21-09; Robbins)

Littles v. Office of Child Support Enforcement, et al.: **[child custody; jurisdiction]** The appellee mother of the child waived any objection to lack of service of process when she appeared at each of the hearings. Her motion raising an objection to lack of service was not made until after a permanent custody order was entered in favor of the appellant. The motion was too late, as any question concerning personal jurisdiction had already been waived. Under the circumstances, the trial court had jurisdiction to enter both its temporary custody order and its permanent custody order. The trial court erred in setting those orders aside. (Kinney, B.; No. CA 09-5; 10-21-09; Robbins)

Dove v. Dove: **[divorce; pension plan; survivor's benefit]** The parties' divorce decree was amended upon appellee wife's motion after the trial court determined which formula (of three choices) to use for dividing appellant's pension plan. The amendment under Rule 60 ordered that a \$375-a-month payment for Joint and Survivor Coverage, which benefits the appellee, be divided between the parties. The Court of Appeals found that the formula chosen to divide the appellant's pension plan was not clearly erroneous, and held that the trial court's decision to split the monthly premium between the parties was properly made under Rule 60. It was not clearly erroneous for the trial court to divide the monthly premium for the survivor's benefit. The decision was affirmed. (Hearnberger, M.; No. CA 08-958; 10-21-09; Gladwin)

PROBATE

Butcher, guardian of Thelma Healy v. Beatty, personal representative of John Healy's estate: **[guardianship; equitable lien]** John and Thelma Healy were husband and wife, whose joint assets included a marital home and two rent houses, all owned as tenants by the entirety. Thelma became incapacitated because of Alzheimer's and, in a contested guardianship action, the trial court appointed her grandson (the appellant) and her husband as co-guardians of her estate. The parties reached an agreement about their three homes, deciding that John would pay Thelma \$21,000 for her interest in the marital home, with her guardians to convey her interest to John. Thelma would pay John \$40,000 for his interest in the rent houses, and he would convey his interest to her. A court order entered reflecting the agreement provided for the conveyances and payments to be completed by a date certain. John paid the \$21,000 and the appellant executed and returned a deed on the home. John died unexpectedly and the appellant refused to pay John's estate the \$40,000. The appellee, John's daughter and the personal representative of his estate, petitioned the court to compel the appellant to honor the agreement and pay the estate \$40,000. The trial court ordered specific performance of the agreement and ordered payment of \$40,000 to John's estate. The Court of Appeals affirmed the trial court but on a different basis. As surviving spouse, Thelma became sole owner of the two houses at John's death. Specific performance would not lie because Thelma had sole title to the two houses, thus making performance of the parties' agreement impossible as a matter of law and fact. The court held that the rent houses were subject to an equitable lien in John's favor. The court set out the law regarding equitable liens, noting that Arkansas law is underdeveloped in this area. Here, no fraud was involved and no adequate remedy at law could be had. The basis for equitable relief was that Thelma's estate had been unjustly enriched because of John's sudden death and her guardian's refusal to comply with the agreed order. The couple had an agreement, which was not in dispute, and John performed his part of the agreement. The circuit court reached the right result and the judgment was affirmed. (Shirron, P.; No. CA 08-1226; 10-7-09; Marshall)

Ellingsen, et al. v. King, Executor, et al.: **[summary judgment]** If an estate, either in this state or as a whole, is insolvent, it shall be disposed of so that, as far as possible, each creditor whose claim has been allowed either in this state or elsewhere, shall receive an equal proportion of his or her claim. Therefore, it is necessary to determine whether an estate is solvent before deciding whether some of these appellees' claims will be allowed. Although a Tennessee court made a finding that the estate was insolvent, that was before the assets now known were discovered. The Arkansas trial court did not make a finding about the solvency of the estate, and no evidence in the record pertains to that question. Because the solvency of the estate is a fact question, summary judgment was not proper. (Hannah, C.; No. CA 08-1505; 10-7-09; Kinard)

Graham v. Matheny: **[guardianship]** In clarifying the standard to be used in termination of guardianship cases, the Arkansas Supreme Court held that “it is clear...that the standard to be applied has been fixed by the General Assembly in section 28-65-401(b)(3) and that standard is (1) whether the guardianship is no longer necessary, or (2) whether termination is in the best interest of the ward. The statutory standard is crafted in the disjunctive and is applicable to terminations involving wards who are adults and wards who are children.” The court noted that confusion had resulted from several termination-of-guardianship cases in which the court used a material-change-of-circumstances standard. Here, the court reversed the order denying the mother’s petition to terminate the guardianship of her child and remanded for further proceedings using the statutory standard. (Kilgore, C.; No. 08-975; 10-8-09; Brown)

Jones v. Owen, et al.: **[power of attorney–validity of acknowledgment]** Ark. Code Ann. Sec. 21-14-111 outlines when a notary public may be held criminally liable for improperly notarizing a document. Although a violation of that provision would be sufficient to invalidate an acknowledgment, it does not constitute the only grounds for finding an acknowledgment deficient. The issue in this case is the validity of the power of attorney, not the notary’s criminal liability. The court said that the proper method for the acknowledgment of a signed instrument has been statutorily outlined and discussed in case law. A power of attorney may be properly executed in one of three ways, set out statutorily, including: Ark. Code Ann. Sec. 28-68-304(a)(3)(A)(Repl. 2004 (in the presence of a notary public who acknowledges the instrument) ; Ark. Code Ann. Sec. 16-47-205 (Repl. 1999) (the notary taking an acknowledgment must know or have evidence that the person making the acknowledgment is the person described in the instrument and the person who executed the instrument); and Ark. Code Ann. Sec. 16-47-106(a)(Repl. 1999) (for a deed or instrument affecting real property, the grantor appears in person before a court or one having authority to take an acknowledgment and states that he executed the deed or instrument for the consideration and purposes set out therein). Cases set out additional rules and exceptions. However, if the grantor never appears to acknowledge the signature on the instrument, but the notary public falsely certifies that the grantor did appear, the acknowledgment is void. In this case, the notary public acknowledged the power of attorney before the decedent signed the instrument. Therefore, the instrument was invalid and any acts that Appellee Owen performed pursuant to the power of attorney were also invalid. Because Owen was not authorized to sell decedent’s personal property, the circuit court did not err in placing the proceeds in a constructive trust for the estate. (Spears, J.; No. SC 08-1436; 10-22-09; Imber)

DISTRICT

Piper v. Potlatch Federal Credit Union: **[district court appeal]** A decision under prior law, this appeal concerned the subject-matter jurisdiction of district court in 2001. The claim filed against the appellant was for \$3,896.24 plus pretrial interest, court costs and attorney’s fees of \$1,298. The claim amount exceeded the jurisdictional limit of \$5,000 in district court at that time. The claim limit did not exclude attorney’s fees thus district court did not have jurisdiction to hear the case and circuit court acquired no jurisdiction on appeal. [Subsequent amendments to the jurisdictional limit in district court specifically exclude attorney’s fees and the district court would have jurisdiction today.] (Glover, J.; CA09-234; 10-28-09; Vaught)

McKenzie v. State: **[district court appeal]** Appellant filed a certified copy of a “Court Session Worksheet”- a combination docket sheet and order with the circuit clerk on the twenty-ninth day after his trial and conviction. This worksheet did not show the trial date and the circuit court remanded the case “for entry of the date of trial.” On remand, the district court entered a separate order reflecting the trial date. Upon the return to circuit court, a new case number was given the appeal. The circuit court dismissed the appeal as untimely because “The District Court records/transcript were not filed in Circuit Court within 30 days of the entry of judgment by the District Court.” The Court of Appeals reversed, holding that the appellant complied with Rule of Criminal Procedure 36(b)&(c) by filing a certified copy of the district court’s “Court Session Worksheet”, which included the docket sheet, with the circuit clerk within thirty days of the district court’s entry of judgment. The district court’s later order was not a new judgment, it simply clarified the date of the district court’s original disposition. (Epley, J.; CACR08-1447; 10-28-09)

EIGHTH CIRCUIT

All-Ways Logistics v. USA Truck: **[contracts]** District court did not abuse its discretion by refusing to give defendant's proposed instruction on the affirmative defense of waiver of breach of contract by acceptance of benefits. There was no error in awarding prejudgment interest or attorneys' fees. (E.D. Ark.; # 08-1054; 10-1-09)