# APPELLATE UPDATE

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CIVIL

*H.C. v. Nesmith*, 2025 Ark. App. 59 **[statute of limitations; extending]** The narrow issue in this case was whether legislative action could revive an expired statute of limitations. The Arkansas Supreme Court has consistently held that a statute of limitation cannot be extended by legislation once it has expired. The legislature may extend a statute of limitations only for claims not already barred when the new statute takes effect. Here, appellants alleged they were sexually abused by the appellee between 1995 and 2007. In 2022 the appellants filed their complaint against the appellee seeking compensatory and punitive damages for sexual assault, sexual battery, outrage, and other claims under the crime victim civil action statute. In 2021, Act 1036 extended the statute of limitations for child sexual abuse claims. It is undisputed that the appellants' claims were time-barred before the Act's enactment. The Act also included the following provision: "Notwithstanding any other statute of limitation or any other law that may be construed to reduce the statutory period set forth in this section, a civil action similar to a civil action described in subdivision (b)(1) of this section, including a cause of action arising before, on, or after the effective date of this act, that was barred or dismissed due to a statute of limitation is revived, and the civil action may be commenced not earlier than six (6) months after and not later than thirty (30) months after the effective date of this act." The appellants filed their complaint within the revival window. Remedial statutes may operate retroactively so long as they do not disturb contractual or vested rights or create new obligations. Thus, the statute of limitations could not be

extended, and the circuit court did not err in granting the appellee's motion for summary judgment. (Fox, T.; 60CV-22-4435; 2-5-25; Tucker, C.)

*WPH, LLC v. Ferstl Consulting, LLC*, 2025 Ark. App. 118 **[service]** Appellee obtained a declaratory judgment by default when appellant failed to plead or otherwise defend within thirty days after a process server left the complaint and summons outside appellant company's sole member and registered agent's home of in the vicinity of a person the process server assumed was the appellant company's registered agent. The circuit court denied appellant's motion to set it aside as void, where appellant argued that service did not strictly comply with Rule 4(f)(6) of the Arkansas Rules of Civil Procedure for serving an LLC. In the default-judgment setting, the courts review for strict compliance with rules interpreted just as they read. Refusal service is expressly authorized for personal service on individual defendants, but not on the officers and agents listed in Rule 4(f)(6). The 2019 amendments to Rule 4 added Rule 4(g)(4), under which service by other means authorized in advance by the circuit court complies with Rule 4 if it is reasonably calculated to apprise the defendant of the action or, in other words if it meets the minimum requirements of due process. Here, appellee attempted to serve appellant by leaving papers at the appellant company's registered agent and sole member's house near the person to be served. The appellate court found that this did not comply with Rule 4(f)(6). If appellee had set out the details of repeated failed service attempts before the fact in an application to serve appellant under Rule 4(g)(4) and the circuit court had granted it, the leaving of the papers on the registered agent's stoop as the process server did, with some combination of other approved methods, could have satisfied the constitutional standard, and therefore also complied with Rule 4. Because the appellee did not properly serve the appellant, the circuit court erred in denying appellant's motion to set aside the declaratory judgment by default. (Welch, M; 60CV-22-8229; 2-26-25; Harrison, B.)

CRIMINAL

*Vasquez v. State*, 2025 Ark. App. 65 **[evidence; motion to suppress]** Appellant was convicted by a jury of five counts of rape committed against appellant's then-girlfriend's minor daughter, for which he was sentenced to eighty years in prison. On appeal, appellant argued the circuit court erred in: (1) permitting the State to cross-examine him about prior order-of-protection cases in violation of Arkansas Rules of Evidence 404(a)(1), 608, and 613; and (2) the trial court erred in denying his motion to suppress evidence obtained from his cell phone. **[Rule 404]** Rule 404(a)(1) of the Arkansas Rules of Evidence provides that evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except: evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same. Rule 405(a) provides that once character evidence is admissible, one permissible method is reputation or opinion testimony and, further, that on cross-examination, inquiry is allowable into relevant specific instances of conduct. Here, the State cross-examined appellant about order-of-protection cases involving his girlfriend, which occurred more than a year after the victim and her mother had moved out of appellant's house and more than a year after he had been charged with rape. Appellant had not testified about his character for nonviolence on direct examination; therefore, the State had nothing to rebut. The only reason for the introduction of evidence about the orders of protection involving appellant was to imply that

he is a violent person who was capable of raping the victim. **[Rule 608]** Rule 608(b) provides that specific instances of conduct may be admissible only if probative of truthfulness or untruthfulness, and the conduct must concern the witness's character for truthfulness or untruthfulness. The Arkansas Supreme Court has held that Rule 608(b) provides that the trial court may if it finds good faith and the probative value of the testimony outweighs the prejudicial effect, allow questions about certain offenses if the misconduct relates to honesty and truthfulness. Here, the appellate court held that the circuit court abused its discretion in allowing the State to introduce evidence of the orders of protection against appellant under Rule 608 because his propensity for violence was "wholly unrelated" to a propensity for honesty. **[Rule 613]** Arkansas Rule of Evidence 613 concerns prior inconsistent statements of witnesses. Without an inconsistent statement at the trial, extrinsic evidence of a prior inconsistent statement by a witness is not admissible under Rule 613(b). Here, prior to the State's cross-examination, the appellant never gave any testimony about the order-of-protection cases. Although a prior statement that is inconsistent with a witness's trial testimony may be admissible for purposes of impeachment under Rule 613(b), there was no trial testimony to impeach in this regard. Therefore, the appellate court concluded that this questioning about the orders of protection was erroneously allowed under Arkansas Rules of Evidence 404(a)(1), 608, and 613. Additionally, the appellate court found that the error was not harmless in light of the circumstances. **[good-faith exception]** An officer's good-faith reliance on a facially valid warrant will avoid application of the exclusionary rule in the event that the magistrate's assessment of probable cause is found to be in error. In a determination of whether the good-faith exception applies, we look at the totality of the circumstances and may consider unrecorded testimony given to the magistrate as well as facts known by the officer but not communicated to the magistrate. Here, appellant tried to suppress evidence obtained from his cell phone, which were images of prepubescent minors depicting a child's buttocks, a female child's genitalia, and a child wearing only underwear. The appellate court held that the circuit court's application of the good-faith exception and its denial of appellant's motion to suppress was not clearly against the preponderance of the evidence. The affidavit said that the victim had been interviewed by police and provided graphic details of at least five different acts of deviate sexual activity. At the suppression hearing, testimony showed that during her interview the victim also described images of child pornography that appellant had shown her on his cell phone. While statements regarding appellant's cell phone were not in the affidavit, an officer testified that she communicated this information to the judge over the phone before her application for and issuance of the search warrant. Therefore, although the affidavit itself lacked probable cause to justify the search, the trial court correctly applied the good-faith exception based on the facts known to the officer who swore out the affidavit. (Philhours, R.; 28CR-19-227; 2-5-25; Hixson, K.)

*Minor Child v. State*, 2025 Ark. App. 76 **[delinquency; terroristic threatening]** Appellant appealed his being found delinquent for the offense of terroristic threatening. On appeal, appellant argued that stating the school needed to blow up while walking away from an authority figure was not a threat. Although appellant acknowledged that asserting that his school needed to blow up was a troubling sentiment, he alleged that he did not remark what he or someone working in concert with him would do to the school. He maintained that he did not even direct the comment in the direction of the school resource officer, who was walking with him. The appellate court held that the record contained sufficient evidence to support the circuit court's finding that a reasonable

person would have taken appellant's statement as a true threat made with the purpose of terrorizing the school officials. (Brown, E.; CR-24-178; 2-12-25; Gladwin, R.)

*Casillas v. State*, 2025 Ark. App. 117 **[juvenile transfer petition]** Appellant challenged the denial of his motion to transfer his criminal case to juvenile court. A circuit court is required to consider ten factors enumerated in Ark. Code Ann. §9-27-318(g). Factor seven instructs the circuit court to consider whether there are facilities or programs available to the juvenile judge that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday. Appellant took issue with the alleged inadequacy of his probation officer's credited testimony, which included his very lengthy history of eleven prior findings of delinquency, the numerous services that appellant had already received during his years in the juvenile justice system, and that any further resources available likely would not rehabilitate him. The officer also testified that once appellant turned eighteen certain services would no longer be available to him, such as placement in a juvenile residential treatment facility or placement in a long-term care facility because as an adult he could check himself out and leave; the officer did mention that community service and outpatient counseling would be two remaining options. Appellant did not present any proof or make any argument disputing this testimony. In his appeal, appellant asserted that a juvenile ombudsman or other person should have testified about the rehabilitative services available to him in DYS custody through a delinquency disposition if the case were to be transferred. However, appellant failed to offer any testimony from a juvenile ombudsman or anyone else about those services. Second, even assuming a lack of evidence on specific facilities or programs still available in the juvenile division, there was certainly extensive evidence to support the conclusion that any such facilities or programs would not be likely to rehabilitate Appellant before his twenty-first birthday. The circuit court had before it appellant's lengthy juvenile record, through which he had already received many services, to support its conclusion that further services would not successfully rehabilitate him, in addition to the probation officer's testimony regarding the same. Finally, contrary to appellant's argument that extended juvenile jurisdiction (EJJ) should have been considered and requested at his transfer hearing, there can be no EJJ designation unless the case is already in the juvenile division or is transferred to the juvenile division. Because the case was not already in the juvenile division and the criminal division denied appellant's transfer motion to the juvenile division, EJJ was not applicable. (Petro, K.; 26CR-23-159; 2-26-25; Harrison, B.)

*Cypert v. State*, 2025 Ark. 11 **[jury instruction; second-degree murder]** Appellant was convicted of first-degree murder and sentenced to life imprisonment plus 15 years for killing his wife. On appeal, appellant argued that the circuit court erred in its refusal to give a second-degree murder instruction. To obtain an instruction on a lesser included offense, a proponent must demonstrate that "the slightest evidence supports" that instruction. It requires the proponent of an instruction to demonstrate an actual basis for acquitting the defendant of the charged crime and instead convicting him of the lesser. Here, Cypert sought a second-degree murder instruction. While first-degree murder requires that the defendant "acted for the purpose of causing the death of another person," second-degree murder only requires that the defendant "knowingly cause[d] the death of another person under circumstances manifesting extreme indifference to the value of human life." To receive a second-degree murder instruction, the defendant must point to evidence in the record that supports a finding that he acted with a "knowing" mental state rather than a "purposeful"

mental state. The Supreme Court found that appellant was not entitled to a second-degree murder instruction because all the evidence supported the conclusion that he purposefully shot and intended to kill his wife. The appellant did not merely know that his shooting was practically certain to result in his wife's death, his actions reflected purpose and a plan to kill. After an argument, the appellant followed his wife out of the house, and he pulled the trigger of a high-velocity rifle six separate times, even if some of those shots hit a wall, others undisputedly did not. Moreover, appellant never attempted to render aid to the victim, and he left the scene to dispose of the murder weapon. Far from demonstrating the kind of remorse that would be expected if he had not intended to kill his wife, when confronted by police, appellant never asked about his wife's condition and proceeded to lie about his whereabouts. Thus, on this record, no basis existed for acquitting appellant on the first-degree murder charge and convicting him of second-degree murder, and the circuit court did not abuse its discretion in denying appellant's request for a second-degree murder instruction. (Medlock, M.; 17CR-22-658; 2-27-25; Bronni, N.)

PROBATE

*Andrade v. Derouen*, 2025 Ark. App. 116 **[adoption]** The circuit court entered an order finding that appellant's consent to the stepparent adoption of his four minor children by appellees unnecessary under Ark. Code Ann. 9-9-207(a)(1) and (2). On appeal, appellant argued that the stepparent adoption without his consent was clearly erroneous. **[failure to communicate]** Under Arkansas law, consent to adoption is not required of a parent who has abandoned a child; consent to adoption is also not required of a parent of a child in the custody of another if the parent for a period of at least one year has failed significantly without justifiable cause to communicate with the child or to provide for the care and support of the child as required by law or judicial decree. Justifiable cause means the significant failure must be willful in the sense of being voluntary and intentional; it must appear the parent acted arbitrarily and without just cause or adequate excuse. The appellate court has held that there is a clear distinction between "communication and visitation," stating that the terms are not synonymous and interchangeable. The allowance or disallowance of one does not equate to an allowance or disallowance of the other. The record indicated that between December 24, 2020, and December 2022, appellant made no attempts to contact the children. Appellant made no attempt to reach out to appellee through friends, family, or an attorney. There was a final order of protection prohibited him from contacting the appellees entered on June 2020, but it did not include the children. Although a temporary custody, support, and division-of-property order that was also entered on June 24, 2020, prohibited appellant from having contact with the minor children "until further ordered," that order expressly expired on December 24, 2020. Thus, any legal impediment that prevented appellant from having contact with the minor children expired on December 24, 2020. The order of divorce did set a boundary in that he was permitted to have contact only "pursuant to terms and conditions imposed by the Mother to ensure the physical safety and their emotional well-being." Still, there was no evidence that appellant attempted to have an attorney or any other intermediary contact appellee to work out an arrangement for communicating with the minor children while he was incarcerated. Appellant specifically testified that he did not make any attempts to modify or assert any rights under the custody agreement. For purposes of determining whether a parent willfully deserted his child or intended to maintain his parental role, the circuit court may consider as a factor whether the parent sought to enforce his visitation right during the relevant one-year period. Though Andrade's

incarceration may have limited visitation, he was afforded an opportunity to communicate with the minor children under the terms of the order of divorce, and he did nothing to exercise those rights. Thus, the circuit court did not err in finding that because appellant failed to communicate with the children, his consent was not required. **[failure to support]** Another person's conduct does not excuse a father's duty to support his minor child unless that conduct prevents him from performing his duty. The parent must furnish the support and maintenance himself, and the duty is a personal one; he may not rely on someone else to support his children to avoid the statute's provision permitting the adoption of his children without his consent because he failed to support the children. Imprisonment does not toll a parent's responsibilities toward his child. Here, the circuit court found that the order of divorce assigned a child-support obligation to appellant for $417.23 but then found that because the minor children were receiving more in Veterans Administration ("VA") benefits in the amount of $220 each, appellant would not be responsible for any additional child support. The minor children's VA benefits were deposited into appellant's bank account. The record was clear that appellee had not received any of the minor children's VA benefits, nor had she received any other support from appellant for the children since December of 2020. The order of divorce also imposed a duty to appellant to assist with the children's uncovered medical expenses. While appellee did not provide those expenses or request any reimbursement or payment, appellant knew he had a duty to assist with uncovered medical expenses, and he failed to provide any support. Thus, the appellate court held that the circuit court did not err finding that appellant's consent was unnecessary due to his failure to support the children. Therefore, the circuit court did not err in finding that appellant's consent to the adoptions was not required. (Bryan, B.; 72PR-23-290; 2-26-2025; Gladwin, R.)

DOMESTIC RELATIONS

*Gillum v. Gillum*, 2025 Ark. App. 95 **[property division]** On appeal, appellant argued the circuit court erred in its division of property, specifically, that the circuit court erred in awarding the entire interest in a business to appellee. The circuit court is given broad powers to distribute both marital and nonmarital property to achieve an equitable division, and the overriding purpose of the property-division statute is to enable the court to make a division that is fair and equitable. Arkansas Code Annotated § 9-12-315 provides that all marital property shall be distributed one-half to each party unless the court finds such a division to be inequitable. In that event, the circuit court shall make some other division that the court deems equitable taking into consideration numerous factors which are listed in the statute. When an unequal division of property is made pursuant to these considerations, the circuit court's order must state its basis and reasons for doing so. However, while the circuit court must consider these factors and state its reasons for dividing the property unequally, it is not required to list each factor in its order nor to weigh all the factors equally. Here, in the circuit court's order, the court found that appellant took no action to acquire, preserve, or appreciate appellee's business. Appellant offered no evidence he participated in the business, nor did he refute appellee's testimony that he was riding his bike while she ran her business and employed nannies to assist with caring for the parties' children. At the hearing, appellee's expert provided a valuation of appellee's business. At both hearings on the property division issue, appellee testified that one business she owned was an entity that received and processed insurance payments for services, but the primary operating business was the business at issue. The appellee's expert's report incorporated data points with respect to both the assets and

operations of the businesses. Additionally, the expert witness analyzed the debt on the business in arriving at his figure for appellee's total equity in the business at the time of divorce. Having reviewed the record, the appellate court held that the circuit court properly found that the assets of the business had a certain value, but the business debt offset that value, resulting in a negative hard asset value. Additionally, the circuit court further found that appellant offered no expert testimony regarding the assets, debts, and valuations of the companies. The circuit court concluded that to the extent the business has any value, that value would be goodwill since there was a negative hard asset value. Whether goodwill is marital property is a factual question, and a party—to establish goodwill as marital property and divisible as such—must produce evidence establishing the salability or marketability of that goodwill as a business asset of a professional practice. Appellee's expert opined that appellee maintained personal goodwill associated with the business and appellant failed to offer any testimony to establish otherwise. In deciding a division of property, the circuit court need not do so with mathematical precision. Thus, the circuit court's valuation of the business was not erroneous, and the circuit court did not err in its division of property. (Tucker, C.; 60DR-19-2194; 2-19-25; Abramson, R.)

*Stewart v. Stewart*, 2025 Ark. App. 97 **[reallocation of parenting time]** The circuit court entered an order denying appellant's request to reallocate parenting time such that he and appellee spend equal time with their children. On appeal, appellant argued that the circuit court erred in requiring a material change of circumstances given that the parties share joint custody of the children, and he sought a reallocation of parenting time, not a change of custody. In *Nalley v. Adams*, 2021 Ark. 191, the Arkansas Supreme Court held that the material-change-of-circumstances analysis was not triggered because the father had not actually sought a change of custody given that the parties shared joint custody; rather, the father had simply sought a reallocation of parenting time such that he could spend approximately equal time with the child as contemplated by the original order. Similarly, in *Sellew v. Davis*, 2024 Ark. App. 390, the Arkansas Court of Appeals held that the trial court did not err in finding that a material change of circumstances was not required to adjust the parties' parenting time and that the trial court did not err in finding that equal time sharing was in the child's best interest. The Arkansas Supreme Court stressed in *Cooper v. Kalkwarf*, 2017 Ark. 331, that "the need for decrees, orders, and agreements regarding custody to define terms such as 'primary physical custody' and 'joint legal custody' so that the intent and meaning of each phrase is clear to both the parties and the courts that must interpret this language." Any modification of an original determination requires changed circumstances—whether it is a modification of custody or of visitation and whether it is a modification toward or away from a joint-custody award. The burden of proof is the same for a modification of custody and a modification of visitation—a party must demonstrate a material change in circumstances. Here, the parties' agreed order contains contradictory terms, despite its suggestion— and appellant's urging—that the parties shared joint custody. The order provides that appellee is "primary physical custodian" but that she and appellant share "joint custody" and "legal custody." Under "parenting time," the order states that appellee has custody, subject to appellant's visitation. The agreed order here did not provide any defined terms. The appellate court found that it would be elevating form over substance to accept the label of "joint custody" when appellant clearly had standard visitation subject to appellee's primary custody. Given the ambiguity of the parties' agreed order, the appellate court looked at the parties' testimony about what they intended, as well as their conduct. Appellant indicated during his testimony that he essentially accepted the less-than-equal-time-sharing custody arrangement

because appellee had threatened "to put [him] six feet underground if [he] tried to go for 50/50," and he thought it was in their best interest. Additionally, appellant's work schedule played a role in structuring the parenting-time section of the agreed order. Unlike *Nalley* and *Sellew*, in which true joint custody was logistically impossible at the time of the initial custody determination, the agreed order indicates that both appellant and appellee lived in the same county. Appellant lived within thirty minutes of where appellee and the children lived. Given the ambiguity of the agreed order, testimony indicating that 50/50 parenting time was not contemplated, and the practice of the parties with regard to custody, the appellate court concluded that appellant and appellee did not share joint custody, and that appellant actually sought a modification of custody, not simply a reallocation of parenting time pursuant to *Nalley* and *Sellew*. Appellant essentially sought a modification of custody, and although his argument was that he did not have to prove a material change in circumstances, he alleged that several material changes had occurred with respect to the children and testified to those changes at the hearing. The circuit court stated at the hearing that it did not see that any of the circumstances testified to by the parties were material changes sufficient to modify custody. The appellate court found that the circuit court did not err in finding that appellant did not prove a material change of circumstances had occurred since the entry of the parties' agreed order. (Casady, K.; 63DR-20-162; 2-19-25; Virden, B.)

*Biggerstaff v. Biggerstaff*, 2025 Ark. App. 105 **[custody change; material change in circumstances]** The circuit court granted a motion for change of custody and awarded appellee custody of the parties' children. On appeal, appellant argued that (1) the circuit court erred by finding that a material change in circumstances had occurred and (2) the circuit court erred by finding that it was in the children's best interest to live with appellee without considering all the relevant factors in its best-interest analysis. **[material change]** Appellant first argued that the circuit court erred by finding that a material change in circumstances had occurred since the divorce when the evidence showed that she had addressed her mental health issues and alleged instability in her home. She also appeared to argue that any changes needed to have "negatively impacted the children" to constitute a material change. Contrary to appellant's argument, there is no requirement that the circuit court wait until the children are actually harmed before finding that a material change in circumstances warranting a change in custody exists. The circuit court heard testimony about several incidents that occurred that gave the circuit court concerns about appellant's mental health and stability in the home. Appellant attempted to minimize her mental health issues and instability, instead claiming that the incidents that occurred were isolated and that all issues had now been resolved. However, based on the record, the appellate court could not say that the circuit court's decision was erroneous. Further, the circuit court heard other evidence that appellant's mental health issues and instability, while perhaps better, had not fully resolved as she claimed and therefore could still constitute a material change. Appellant's therapist specifically opined that appellant had a least three more months of treatment if she continued to make progress toward her goals. The circuit court also heard evidence that appellant had told police she and her boyfriend were in an abusive relationship and that she was suicidal; however, appellant was not in couples counseling at the time of the final hearing. The parties' oldest child had previously testified about his concerns regarding appellant's mental health issues and the constant fighting in the home between appellant and her boyfriend. Further, the circuit court also heard testimony from appellant's grandmother and mother that they had previously voiced concerns to appellee about appellant's mental health and relationship with her boyfriend. On the basis of the above testimony

and given the appellate court's deference to the circuit court's assessment of the credibility of the witnesses, the circuit court did not err when it found a material change in circumstances on the basis of appellant's continued and still ongoing mental health issues and instability. **[best interest]** The appellate court has recognized that unless exceptional circumstances are involved, young children should not be separated from each other by dividing their custody. However, the appellate court has been critical of parties who use this rule as a substitute for a determination of what is in a child's best interest. While one factor the court must consider in determining the best interest of the child is whether the child will be separated from siblings, the polestar in every child-custody case is the welfare of the individual child, and keeping siblings together cannot be the sole reason for a custody decision. Moreover, the appellate court has held that the prohibition against separating siblings in the absence of exceptional circumstances does not apply with equal force in cases where the children are half-siblings. There is no exhaustive list of factors a circuit court must consider when analyzing the best interest of the child; the main consideration is whether there are changed conditions that demonstrate that a modification of the decree is in the best interest of the child. Here, although appellant argued that the circuit court should have placed a greater weight on other factors she claimed were in her favor, the court was not required to do so. Given the appellate court's standard of review and the special deference the appellate court gives circuit courts to evaluate the witnesses, their testimony, and the children's best interest, the appellate court could not say that the circuit court erred in finding that it was in the best interest of the children to change custody from appellant to appellee under the facts. (Blatt, S.; 66GDR-17-268; 2-19-25; Hixson, K.)

JUVENILE

*Smith v. Ark. Dep't of Human Servs.*, 2025 Ark. App. 54 **[TPR-best interest; potential harm]** Appellant maintained a personal relationship with and eventually married someone Appellee consistently had warned would impede her ability to regain custody of her children: he was a felon, was a drug addict, and did not have custody of his own children pursuant to a separate foster care case. The relationship threatened her sobriety and her probation status, and she did not attempt to have her husband rehabilitate himself with services from Appellee. Although she claimed they were both drug-free, Appellant testified that they both planned to enter inpatient treatment to get back on their feet. Furthermore, despite parenting classes and ongoing teaching, Appellee still had concerns about Appellant's ability to properly supervise the children who, at the time of the termination hearing, were two and three years old. Given those facts, the appellate court would not say that the circuit court clearly erred in finding that termination was in the children's best interest. (Harrod, L.; CV-24-634; 2-5-25; Klappenbach, N.)

*Campbell v. Ark. Dep't of Human Servs.*, 2025 Ark. App. 72 **[TPR – continuance; diligence]** Appellant alleged that the trial court's denial of her request for a continuance of the TPR hearing violated her due process rights. Appellant did not appear for her TPR hearing and was not diligent in requesting a continuance prior to the TPR hearing. She never communicated with her attorney to request a continuance at all; she simply requested a Zoom link the day of the hearing. There was no error when the court found that Appellant had failed to take adequate steps to ensure her

presence for the hearing and waited until the eleventh hour to attempt to make arrangements to attend. Moreover, the circuit court did not act improvidently because it considered Appellant's arguments and determined that her testimony was unlikely to affect the court's decision on termination: Appellant was never found to be more than partially compliant with the case plan and court orders and attended only six visits with her children during the entire year-long case, so she was unable to demonstrate that she was prejudiced. On appeal, Appellant failed to identify actual prejudice; there was no proffer of testimony, just a vague argument that counsel was unable to call her as a witness. However, Appellant still would be unable to establish prejudice because, in this appeal, she failed to challenge the statutory grounds or the determination that termination was in the best interest of the juveniles. There was no abuse of discretion in denying her request for a continuance. (Clark, D.; CV-24-664; 2-12-25; Abramson, R.)