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CIVIL

Wilson v. Kolterman, 2024 Ark. App. 376 **[contempt; civil contempt]** The circuit court entered an amended order as a result of appellant Stephanie Wilson's motion for a new trial, motion to vacate, and motion to modify the order. On appeal, one of the appellants, the attorney for Stephanie, argued that the circuit court erred finding him in contempt of court. Contempt is categorized into criminal contempt and civil contempt. Criminal contempt preserves the power of the court, vindicates its dignity, and punishes those who disobey its orders. Civil contempt, on the other hand, protects the rights of private parties by compelling compliance with orders of the court made for the benefit of private parties. In determining whether a particular action by a judge constitutes criminal or civil contempt, the focus is on the character of relief rather than the nature of the proceeding. Because civil contempt is designed to coerce compliance with the court's order, the civil contemnor may free himself or herself by complying with the order. Criminal contempt, by contrast, carries an unconditional penalty, and the contempt cannot be purged. Here, the circuit court held appellant in contempt for advising his client to violate the court's order not to remove any furniture, fixture, appliances, or attachments from the residence in dispute without first obtaining court authorization. The circuit court ordered appellant to pay appellees' counsel attorney's fees of $1,250 for the additional fees that were incurred by appellees in pursuant of the citation of contempt. Because appellant was ordered to pay appellees—and not the court—if there was any contempt at all, it was

civil contempt. Appellant was ordered to pay an unconditional fee for his disobedience to the court's order. However, the fee was not contingent on certain terms being satisfied. Therefore, there was no valid civil contempt finding because the court did not empower appellant with a path to purge the contempt. In sum, the record demonstrated neither civil contempt nor criminal contempt. Thus, the circuit court erred in its order of contempt against appellant and the award of attorney's fees associated with it. (Delay, G.; 66FCV-21-778; 6-5-24; Gladwin, R.)

City of Helena-West Helena v. Williams, 2024 Ark. 102 **[mayor veto]** The circuit court granted appellee's request for declaratory relief and ruled that the previous mayor's veto of two city ordinances was proper. On appeal, appellants argued that the circuit court erred in finding the two ordinances were properly vetoed. The statutory provisions setting out the requirements for a mayoral veto in a city of the first class are found in Ark. Code Ann. § 14-43-504. The statute does not require that the veto itself be filed; rather, it is the written statement of the mayor's reasons for the veto that must be filed in the office of the City Clerk. The Arkansas Supreme Court has not held that a document must be file-stamped in order to have been properly "filed." Here, on December 30, the city council passed the two ordinances at issue at a special meeting. On December 31, the then-mayor vetoed the council's actions primarily due to the time of the "lame-duck city council meeting." The letter indicated that it was hand-delivered to both the City Clerk's office and the Council's chamber. On January 2, the new mayor wrote a letter to the City Clerk, stating he was rescinding the veto. Appellee then filed a complaint for a declaratory judgment and a petition for a temporary restraining order against the city and the new mayor. Appellants claimed that the former mayor failed to comply with this process because there was no evidence that the purported veto was either filed or laid before or presented to the council at its next regular meeting. **[filing]** The appellants did not present any evidence to refute the former mayor's testimony that he placed his veto letter on the City Clerk's desk before his term as mayor ended at midnight on December 31. Nor did they claim that they did not receive notice of the former mayor's veto. The language in Ark. Code Ann. § 14-43-504(d)(1)(A) providing that "a mayor may veto within five (5) days, Sundays excepted" indicates that vetoes may occur on Saturdays and during hours when the City Clerk's office is closed. Accordingly, the former mayor complied with both Ark. Code Ann. § 14-43-504(d)(1)(A) and -504(d)(1)(B)(i) by timely vetoing the city council's actions and by filing a written statement of his reasons for the veto prior to the next regular city council meeting. **[presented]** Appellants also argued that the former mayor failed to comply with § Ark. Code Ann. § 14-43-504(d)(1)(B)(ii) because he did not present to, or lay before, the city council at its next meeting his written statement of reasons for the veto. Ark. Code Ann. § 14-43-504(d)(1)(B)(ii) does not affirmatively require that the mayor's reasons for the veto be presented to the Council in order to effectuate the veto. Rather, the statute provides that the ordinance vetoed by the mayor is invalid unless, after the written statement is laid before it, the council overrides the veto by a two-thirds vote. Therefore, the circuit court did not err in finding that the former mayor complied with the statute and effectively vetoed the city council's actions. (Morledge, C.; 54CV-23-07; 6-6-24; Hudson, C.)

Little Scholars of Ark. Found. v. Pulaski Cnty., 2024 Ark. 106 **[subject-matter jurisdiction; declaratory judgment]** The circuit court entered an order granting appellees' motion to dismiss based on a lack of subject-matter jurisdiction to hear the complaint. On appeal, appellants argued that the circuit court did have subject-matter jurisdiction over their illegal-exaction claims that property used for school purposes was exempt from taxes under article 16, section 5(b) of the Arkansas Constitution; that the circuit court erroneously found that the county court had exclusive original jurisdiction of these claims; and that appellants' declaratory-judgment claim that Ark. Code Ann. § 6-21-118 violates the constitution does not fall within the county court's jurisdiction. **[subject-matter jurisdiction]** A suit to prevent the collection of an illegal or unauthorized tax is an illegal-exaction suit, and subject-matter jurisdiction is concurrently in the circuit court. There are two types of illegal-exaction cases: (1) "public funds" cases in which the plaintiff contends that public funds generated from tax dollars are being either misapplied or illegally spent; and (2) "illegal-tax" cases in which the plaintiff asserts that the tax itself is illegal. Here, appellants were purporting to allege an illegal-tax claim. However, the taxes assessed in this case were ad valorem taxes, and appellants did not argue that ad valorem taxes were illegal. Instead, appellants argued that the assessed ad valorem taxes formed the basis for an illegal-tax claim. If the taxes complained of are not themselves illegal, a suit for illegal exaction will not lie. A flaw in the assessment or collection procedure, no matter how serious from the taxpayer's point of view, does not make the exaction itself illegal. Thus, the Arkansas Supreme Court held that this was not an illegal-exaction claim, rather it was an assessment dispute. **[exclusive original jurisdiction]** Exemption disputes fall within Article 7, section 28, of the Arkansas Constitution which states that county courts shall have exclusive original jurisdiction in all matters relating to county taxes. A circuit court may gain jurisdiction over a litigant's claim only after the issue is first heard in the county court and then appealed to the circuit court. In the present case, the appellants did not follow this procedure, therefore the circuit court lacked subject-matter jurisdiction. **[declaratory judgment]** The county court has exclusive authority over assessment challenges. Therefore, the subject matter of appellants' petition for declaratory judgment was founded on matters within the jurisdiction of the county court, not the circuit court. A declaratory-judgment action does not confer subject-matter jurisdiction. A court must have subject-matter jurisdiction before a declaratory judgment may be sought. Therefore, because the circuit court did not have subject-matter jurisdiction over appellants' request for declaratory judgment the circuit court lacked subject-matter jurisdiction over the assessment dispute. Thus, the circuit court did not err in granting appellees' motion to dismiss. (James, P.; 60CV-22-7085; 6-6-24; Hudson, C.)

CRIMINAL

Evans v. State, 2024 Ark. App. 368 **[hearsay exception; excited utterance]** A jury convicted appellant of rape. On appeal, appellant argued the circuit court erred in admitting text messages between the victim and her friend. Arkansas Rule of Evidence 803(2) provides that an excited utterance is not excluded by the hearsay rule, even though the declarant is available as a witness and an excited utterance is a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. The relevant inquiry

is whether the statement was made under the stress of excitement or was made after the declarant calmed down and had an opportunity to reflect. Admissibility is not to be measured by any precise number of minutes, hours, or days but requires that the declarant is still under the stress and excitement caused by the event. Continuing emotional or physical shock, unabated fear, and other factors may also prolong the time. Here, the circuit court found that she was scared and tried to get away but couldn't get away, which was a traumatic experience. The text messages at issue occurred between 11:11 p.m. and 12:31 a.m. In the initial round of contested text messages (from 11:11 p.m. to 12:04 a.m., when the victim's friend did not respond), the victim pleaded for help three times. In the next round of text messages during her conversation with her friend (the eight minutes from 12:23 a.m. to 12:31 a.m.), the victim begged for help twice and told her friend she did not know what to do. Additionally, the appellant texted the victim during this time repeatedly asking her where she was. The record established that the text messages at issue fell within the excited-utterance exception to the hearsay rule. Therefore, the circuit court did not abuse its discretion in admitting the test messages. (Braswell, T.; 23CR-20-451; 6-5-24; Virden, B.)

Comstock v. State, 2024 Ark. 112 **[district court referral; contempt]** The circuit court entered an order dismissing appellant's appeal of an order finding him in direct criminal contempt. On appeal, the appellant argued that the circuit court erred in ruling that it lacked jurisdiction to conduct a de novo trial of the contempt finding and finding him in direct criminal contempt. **[jurisdiction]** Circuit courts have original jurisdiction, exclusive of the district court, over felonies. District courts have original jurisdiction, concurrent with Circuit Courts, of misdemeanors, and also have such other criminal jurisdiction as may be provided by the Arkansas General Assembly. Appellate jurisdiction over the district court is placed in the circuit court. Arkansas Supreme Court Administrative Order No. 18(6)(b) provides that a state district court judge may be referred matters pending in the circuit court: "A state district court judge presiding over any referred matter shall be subject at all times to the superintending control of the administrative judge of the judicial circuit." Referred matters can include a criminal matter such as the prosecution of an offense lying within the exclusive jurisdiction of the circuit court, including conducting a first appearance pursuant to Rule 8.1 of the Arkansas Rules of Criminal Procedure. The final judgment, although ordered by a state district court judge, is deemed a final judgment of the circuit court and will be entered by the circuit clerk under Rule 58 of the Arkansas Rules of Civil Procedure. Any appeal shall be taken to the Arkansas Supreme Court or Court of Appeals in the same manner as an appeal from any other judgment of the circuit court. Here, the district court judge sat in the capacity of a circuit court judge, pursuant to Administrative Order No. 18, and conducted a Rule 8.1 hearing in the Benton County jail courtroom. During the Rule 8.1 hearing, based on his powers inherent to a circuit court judge, the district court judge made the criminal contempt finding and memorialized that finding in the circuit court's contempt order. The Arkansas Supreme Court concluded that the contempt order was a final order from a circuit court and that the appellate court was the proper venue for a review of that order. Accordingly, the circuit court properly found that it lacked jurisdiction to conduct a trial in the matter and dismissed the case. **[contempt finding]** Direct contempt is a contemptuous act committed within the immediate presence of the Court. A court has inherent power to punish contemptuous behavior committed in its presence, without regard to

the restrictions imposed by Ark. Code Ann. § 16-10-108(a). Arkansas Code Annotated § 16-10-108(c) provides the inherent power of the court to summarily punish contumacious conduct immediately occurring in its presence. Here, appellant's recitation of the facts in his motion, the statements from the judge, and the narratives of the two court deputies provided substantial evidence to support the circuit court's direct criminal-contempt finding. Appellant disrupted the Rule 8.1 proceedings, interrupted the judge, repeatedly refused to leave when asked, and yelled "DO IT!" when told that he could be held in contempt. Thus, substantial evidence supported the circuit court's order finding appellant in direct criminal contempt. (Green, R.; 04CR-22-1427; 6-13-24; Kemp, J.)

DOMESTIC RELATIONS

Slayton v. Dill, 2024 Ark. App. 372 **[child support]** The circuit court entered an order setting appellant's child-support obligation. On appeal, the appellant argued the circuit erred in calculating his gross income as a self-employed restauranteur under Ark. Sup. Ct. Admin. Order No. 10. It is axiomatic that a change in circumstances must be shown before a court can modify an order for child support. In determining whether there has been a change in circumstances warranting an adjustment in support, the court should consider remarriage of the parties, a minor reaching majority, change in the income and financial conditions of the parties, relocation, change in custody, debts of the parties, ability to meet current and future obligations, and the child support chart. In calculating child support, any order shall state the amount of health insurance premiums, extraordinary medical expenses, and childcare expenses allowed in determining the total child-support obligation. These three additional child-rearing expenses shall be added to the worksheet and must be considered by the trial court. The worksheet referenced in Administrative Order 10 shall be filed in the court file and attached to the order that includes the child-support award. Here, the hearing addressed the parties' requests to change custody, but the issue of child support had been taken under advisement. The appellate court found the circuit court did not factor into appellant's total child-support obligation childcare expenses. Although the circuit court ordered that the parties shall obtain health insurance for the child if it is available at a cost of 5% of gross income or less, the amount actually paid must be set forth in determining the total child-support obligation because the payor receives a credit for the additional child-rearing expenses that the payor is paying out of pocket. The "agreed order" refers to a worksheet; however, there is not a worksheet attached to the file-marked copy of the order that was electronically signed by the judge, although the parties' proposed orders have various worksheets and other exhibits attached to them. The circuit court had appellant's income tax returns for 2020 and 2021, and appellant was subjected to questioning by the trial court concerning his lifestyle, however, there was not much other information adduced at the hearing on which to determine appellant's gross income. While the trial court's determination of appellant's gross income and his total child-support obligation may ultimately be correct, the appellate court could not discern from the record how the trial court arrived at its figures for a self-employed individual—or whether the trial court simply imputed income to appellant. The appellate court held that the circuit court should assess the allegations, arguments, and concessions made below; hold appellee, as the moving party, to her burden of

proof; consider the evidence submitted by the parties; and consult Administrative Order No. 10 and its instructions related to self-employment and imputed income. (McSpadden, D.; 12DR-16-286; 6-5-24; Virden, B.)

Sellew v. Davis, 2024 Ark. App. 390 **[reallocation of parenting time]** The circuit court entered an order granting appellee's motion for reallocation of parenting time and ordered each party to have equal parenting time with their daughter. On appeal, appellant argued that the circuit court erred in finding that a material change in circumstances was not necessary for a modification of the custody and visitation provisions in the parties' divorce decree. In the alternative, appellant argued that it was not in the child's best interest to modify the custody and visitation awards. **[material change in circumstances]** Traditionally, in determining whether a change in custody is warranted, the burden is on the moving party to show a material change in circumstances. However, in *Nalley v. Adams*, 2021 Ark. 191, 632 S.W.3d 297, the Arkansas Supreme Court held that the material-change-in-circumstances analysis is not triggered when the parties maintain joint custody and neither party seeks an actual change of custody; in that event, the trial court may enforce its original order through the adjustment of parenting time. Here, although the parenting plan incorporated into the divorce decree did not use the terms "primary custody" or "joint custody," it provided that the "parties' goal" was to "share time with the child as equitable as possible" and that "the child has a right to spend substantial time with both parents." The parenting plan spoke in terms of timesharing as opposed to visitation, and although it gave appellant more timesharing with the child, it was at that time impossible to split the time equally due to the considerable distance between the parties. When the divorce decree was entered appellant was living in Florida, and the appellee was recently reassigned to a naval base in Maryland. The parties now live in Arkansas. The parenting plan also provided that the appellant was designated as the custodian of the child solely for purposes of state and federal statues which require a designation or determination of custody, and the designation did not affect either parent's rights or responsibilities under the plan. In the present case, the appellee did not seek a change in custody. He instead filed a motion for reallocation of parenting time to equal parenting time. Additionally, as in *Nalley*, this case did not present an issue of visitation because the parties maintained joint custody. Therefore, the circuit court did not err in finding that a material change in circumstances was not required before adjusting the parties' parenting time. **[best interest]** Here, the testimony showed that the child was bonded with appellant and her family and was bonded with appellee and his family. Awarding equal parenting time was consistent with the parties' expressed desires in the parenting plan that their goal was to share time with the child as equitably as possible and that the child had a right to spend substantial time with both parents. Therefore, giving due deference to the superior position of the circuit court, the appellate court held that the circuit court did not err in finding that equal timesharing with each parent was in the child's best interest. (Johnson, S.; 60DR-15-1086; 6-5-24; Hixson, K.)

JUVENILE

Chevallier v. Ark. Dep't of Human Servs., 2024 Ark. App. 373 **[TPR-best interest; less restrictive alternative]** Even in cases in which a fit and willing relative has custody of the child, the court may terminate parental rights if it is in the child's best interest. Appellant enjoyed time with her son when she was not incarcerated, but she avoided Appellee's attempts to drug test her, she incurred serious new drug-related charges, and had begun serving an eight-year prison sentence. The child's grandmother was willing to adopt him, the record shows that she was not interested in a guardianship, and the circuit court found that termination and adoption would give the child the stability he needs. No clear error. (Layton, S.; CV-24-134; 6-5-24; Virden, B.)

Houselog v. State, 2023 Ark. App. 393 **[juvenile transfer to circuit]** The juvenile code outlines ten factors that a court must consider when deciding whether to transfer a delinquency case to circuit court. The restatement of a factor in a conclusory manner is insufficient to demonstrate consideration of that factor. The order must include details and facts that support the circuit court's conclusion to deny or approve transfer; specific findings on the statutory factors must be tailored to both the juvenile and the evidence presented. **[juvenile transfer; willful premeditated conduct]** The appellate court found that ingestion of abortion-inducing chemicals is not evidence of violence and premeditation with respect to an alleged abuse-of-a-corpse crime, as the legislature has specifically forbidden that a mother be criminally charged for the death of her unborn child as a result of her ingestion of abortion pills. The appellate court also found that evidence of planning to terminate a pregnancy is not evidence of planning to abuse a corpse. **[juvenile transfer; conduct against person or property]** The primary purpose of the statute/crime "abuse-of-a-corpse" is to protect public decency by protecting the feelings of the family of a deceased person, not the deceased person himself. The appellate court found that was not the situation in this case. **[juvenile transfer; sophistication or maturity of juvenile]** When appellant did not live on her own; did not cook for herself; did not contribute financially to rent, utilities, or other household responsibilities; remained unemployed and unable to drive, relying on others for money and transportation; yet engaged in social media "drama" and acted out in fits of jealousy, this was evidence that appellant's maturity was more akin to a child than an adult. **[juvenile transfer; weight of factors]** A circuit court is not required to give equal weight to each of the juvenile-transfer factors. However, the appellate court will reverse and remand juvenile-transfer cases when it is unable to tell how much weight the circuit court gave to its accurate findings and how much weight it gave to its findings that were inconsistent with the proof at the hearing. (Chesshir, B.; CR-23-567; 6-5-24; Murphy, M.)