APPELLATE UPDATE

PUBLISHED BY THE
ADMINISTRATIVE OFFICE OF THE COURTS

MARCH 2025
VOLUME 32, NO. 7

Appellate Update is a service provided by the Administrative Office of the Courts to assist in locating published decisions of the Arkansas Supreme Court and the Court of Appeals. It is not an official publication of the Supreme Court or the Court of Appeals. It is not intended to be a complete summary of each case; rather, it highlights some of the issues in the case. A case of interest can be found in its entirety by searching this website:
https://opinions.arcourts.gov/ark/en/nav.do

CIVIL

Hipp v. Cottrell, 2025 Ark. App. 179 **[quiet title; boundary by acquiescence]** The circuit court entered an order quieting title in certain real property to appellees. On appeal, appellants argued that the circuit court erred in quieting title and that the award should be in their favor as owners of the disputed real property on the basis of boundary by acquiescence. A boundary by acquiescence arises from conduct of adjoining landowners over many years that implies an agreement to treat some visible marker as their boundary, wherever the true boundary might be. A boundary by acquiescence is usually represented by a fence, a turnrow, a lane, a ditch, or some other monument tacitly accepted as visible evidence of a dividing line. Whenever adjoining landowners tacitly accept a fence line or other monument as the visible evidence of their dividing line and apparently consent to that line, it becomes a boundary by acquiescence. A boundary line by acquiescence is inferred from the landowners' conduct over many years so as to imply the existence of an agreement about the location of the boundary line. A fence, by acquiescence, may become the accepted boundary even though contrary to the survey line. Here, there was an old barbed-wire fence through the trees approximately fifty feet from the surveyed boundary line. There was no testimony that any of the parties' predecessors in interest informed the parties that the fence was the boundary line. One of the predecessors in interest testified that he did not consider the fence to

be the boundary line. Additionally, multiple witnesses testified that fence lines, such as the one at issue here, were frequently placed in tree lines to contain cattle because it was cheaper and easier. Both the appellee and his predecessors grazed cattle on the property. The only persons to testify that they considered the fence to be the boundary line were the appellants. Thus, having considered the record, the appellate court found that the circuit court did not err in making its findings and in quieting title in favor of the appellees. (Meyer, H.; 12CV-20-107; 3-19-25; Thyer, C.)

Baldwin v. Lloyd, 2025 Ark. App. 184 **[excessive damages]** Appellee sued appellants for wrongfully cutting his timber, and a jury found in favor of appellee, awarding him $50,000 in damages. In accordance with Ark. Code Ann.§ 15-32-301(a), the circuit court doubled the award and entered a $100,000 judgment in the appellee's favor. On appeal, appellants argued that the circuit erred by not granting a remittitur or a new trial. Arkansas Rule of Civil Procedure 59(a) provides that a new trial may be granted, among other reasons, for excessive damages appearing to have been given under the influence of passion or prejudice; for error in the assessment of the amount of recovery, whether too large or too small; and when the verdict is clearly contrary to the preponderance of the evidence. Remittitur is appropriate when the compensatory damages awarded are excessive and cannot be sustained by the evidence. Ordinarily, a general verdict is a complete entity that cannot be divided, requiring a new trial upon reversible error. When, however, a trial error relates to a separable item of damages, a new trial can sometimes be avoided by the entry of a remittitur. Here, the jury was instructed to compensate appellee for the fair market value of the timber, the cost of replacing the trees plus the reasonable repairs to any property damaged, and the cost of cleanup. Even when construing the proof and all reasonable inferences in the light most favorable to appellee as required by our standard of review of damage awards, the appellate court was unable to determine the basis of the jury's award. In remitting appellee's compensatory damages award down to the most liberal amount that the appellate court would have accepted had the jury returned a verdict for that sum, the appellate court noted that expert testimony supported a compensatory damages award of $19,323.10. Accordingly, the appellate court held that the circuit court abused its discretion by not granting a new trial due to excessive damages. (Wilson, D.; 19CV-20-111; 3-19-25; Murphy, M.)

CRIMINAL

Govan v. State, 2025 Ark. App. 143 **[speedy trial]** Appellant was found guilty of eight felonies by a jury. On appeal, appellant argued that the circuit court erred in denying his motion to dismiss on speedy-trial grounds. The time for trial begins to run on the date of either the defendant's arrest or service of summons. It continues to run uninterrupted except during any applicable "excluded periods" set forth in Rule 28.3 of the Arkansas Rules of Criminal Procedure. The filing of a speedy-trial motion tolls the running of the time for a speedy trial under our rules. If the defendant is not brought to trial within the requisite time, the defendant is entitled to have the charges dismissed

with an absolute bar to prosecution. When a defendant makes a prima facie showing of a speedy-trial violation, the burden shifts to the State to show that the delay was the result of the defendant's conduct or was otherwise justified. A prima facie case for a speedy-trial violation is made when there is a period of delay beyond twelve months from the date of the charge. Speedy trial can be tolled for docket congestion only if the court enters an order at the time the continuance is granted. Here, the appellate court held that one of the periods at issue could not be excluded for good cause on the basis of other criminal trials taking place, i.e., docket congestion, because the case law is clear that the circuit court cannot retroactively toll speedy trial for docket congestion. There was also no record of any other exceptional circumstances that provided a sufficient basis on which to toll speedy trial for good cause. Accordingly, one of the periods challenged by appellant was improperly excluded and was charged to the State. From the date of appellant's arrest to when he filed his motion for lack of speedy trial, appellant was held for a total of 428 days during which speedy trial was not tolled. This 428-day total exceeded the requisite 365-day period. Thus, appellant's convictions were vacated. (Andrews, J.; 70CR-20-396; 3-5-25; Harrison, B.)

Odom v. State, 2025 Ark. App. 148 **[motion to sever charges]** Appellant was convicted by a jury of one count of internet stalking of a minor, one count of computer child pornography, and thirty counts of possession of matter depicting sexually explicit conduct involving a child. On appeal, appellant argued the circuit court erred in denying his motion to sever the charges. A severance motion may be denied if the two offenses were part of a single scheme or plan or if both offenses required the same evidence. Generally, the test for whether joinder is proper involves weighing the possible prejudice to the defendant against the public interest in avoiding duplicitous, time-consuming trials in which the same factual and legal issues must be litigated. Where the facts necessary to prove the offenses would almost all be required in each trial if a severance were granted and the evidence would be used in both trials to prove a plan, scheme, motive, or state of mind, there is no abuse of discretion in refusing to sever the cases. Here, even if the charges had been separated, much of the same evidence would have been required in both trials. Of the four witnesses who testified, all were necessary to establish possession of child pornography, and at least three were critical to proving internet stalking. The charges involved overlapping witnesses, timelines, and evidence. Moreover, evidence of either charge would be admissible to establish, at a minimum, the appellant's state of mind for the other. Thus, the circuit court did not err in denying the motion to sever the charges. (Ellington, S.; 16JCR-22-1758; 5-5-25; Murphy, M.)

Moore v. State, 2025 Ark. App. 176 **[discovery]** Appellant was convicted of rape by a jury. On appeal, appellant argued the circuit court erred in allowing two witnesses to testify pursuant to the pedophile exception to Arkansas Rule of Evidence 404(b). Additionally, appellant argued that the circuit court erred in allowing one of the witnesses to testify when the State had not properly disclosed her contact information and expected testimony as required by Arkansas Rule of

Criminal Procedure 17.1. **[pedophile exception]** The pedophile exception allows the State to introduce evidence of a defendant's similar acts with the same or other children when it is helpful in showing a proclivity for a specific act with the person or class of persons with whom the defendant has an intimate relationship. There are two requirements for this exception to apply: (1) a sufficient degree of similarity between the evidence to be introduced and the charged sexual conduct, and (2) evidence of an "intimate relationship" between the defendant and the victim of the prior act. Here, the similarity requirement of the pedophile exception was met with respect to both witnesses. The victim and the two witnesses shared the commonality of familial relationships with appellant. When appellant was eighteen, he raped the victim, who was seven years old, waking her from a sound sleep to do so, while she was alone in his bedroom at his parents' house. One witness testified that appellant, who was eighteen at the time, molested her in his camper while the only others present were intoxicated minors. Again, at age eighteen, appellant raped another younger cousin in his camper after serving her so much alcohol that she blacked out and became defenseless. Additionally, the intimate relationship between the two witnesses and appellant was present. The two witnesses were younger cousins of appellant who testified that they spent a significant amount of time with him, often in his home or bedroom and that they trusted him. Thus, the circuit court did not abuse its discretion. **[discovery violation]** Pursuant to Rule 17.1, the State is required to give the defendant only what comes within the possession, control, or knowledge of the prosecuting attorney. Here, the record showed that the State provided appellant's trial counsel its entire file, containing the name of a witness. The circuit court found that the State had committed a discovery violation but ruled that it would allow the witness's testimony after a recess to allow defense counsel to interview her. Appellant's attorney interviewed the witness for an hour. The evidence before the appellate court was that the State had the witness's telephone number and provided that to appellant. The State is not required to provide what it does not have. The prosecuting attorney asserted on the record that the State did not have written reports on the witness's anticipated testimony of molestation. However, the State did possess knowledge of the expected testimony, and the prosecuting attorney told the appellant's attorney a week before the trial about the expected testimony. The appellate court disagreed with the circuit court's finding that the prosecuting attorney committed a discovery violation. However, the appellate court agreed with the circuit court's decision to admit the witness's testimony after it recessed to allow appellant's attorney time to interview the witness. When a court determines that a discovery violation has occurred, it can enter an order it deems appropriate under the circumstances. An appropriate remedy is to allow the defendant time to interview the witness. Thus, the circuit court did not err in allowing the witness's testimony to be admitted. (Riner, A.; 57CR-22-173; 3-19-25; Tucker, C.)

DOMESTIC RELATIONS

Martin v. Martin, 2025 Ark. App. 136 **[personal jurisdiction; res judicata; contempt]** On appeal, appellant argued the circuit court erred in denying his motion to dismiss appellee's amended counterclaim for divorce and in finding him in contempt. Specifically, appellant argued that the circuit court should have granted his motion to dismiss because the circuit court did not have personal jurisdiction over him and appellee was barred by res judicata from relitigating custody and visitation without providing a material change in circumstances warranting a modification. **[personal jurisdiction]** Contempt is not merely a collateral issue like attorney's fees. A circuit court's order is not final and appealable when a contempt issue remains pending. Here, appellant's personal-jurisdiction argument was based on his contention that a 2021 consent decree of separate maintenance was a final order that closed the case. Appellee had filed a motion for contempt in July 2020 and amended her motion the following month. Because appellee's amended motion for contempt was not disposed of, the 2021 decree was not final. **[res judicata]** The purpose of res judicata is to put an end to litigation by preventing a party who has already had a fair trial on the matter from litigating it again. The doctrine of res judicata is not strictly applicable in child custody matters. To apply collateral estoppel, the following elements must be present: (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) the issue must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment. Issues resolved in a nonfinal order, including a decision final as to custody, can be raised in an appeal from a later final order pursuant to Rule 2(b) of the Arkansas Rules of Appellate Procedure – Civil, which provides that an appeal from any final order also brings up for review any intermediate order involving the merits and necessarily affecting the judgment. Here, because there was no final order entered at the time custody was decided in the 2021 decree, the issue of custody remained in the circuit court and could be appealed upon later entry of a final order. When a claim is resolved by an intermediate order, it is subject to reconsideration and even revision before the final resolution of the case. Thus, custody had not been determined by a final judgment such that res judicata would apply. **[contempt]** Suspension of a sentence for contempt is, in effect, a complete remission of the contempt. If a suspension is for an indefinite time period, it amounts to a complete remission of the contempt and punishment and, therefore, the issue would be moot. Here, the circuit court sentenced appellant to thirty days in a detention center suspended upon strict compliance with the provisions of the divorce decree. Thus, the contempt issue was moot, and the appellate court modified the decree to set aside the sentence for contempt. (Foster, H.G.; 23DR-20-162; 3-5-25; Klappenbach, N.)

Davis v. Vondran, 2025 Ark. App. 142 **[relocation; modification of custody]** The circuit court denied appellant's petition to relocate with the parties' child and awarded joint custody of the child. On appeal, appellant argued the circuit court erred by failing to apply the presumption in favor of

relocation for the primary custodial parent as outlined in *Hollandsworth v. Knyzewski*, 353 Ark. 470 (2003), and erred in finding that a material change in circumstances justified modification of custody. The *Hollandsworth* presumption should be applied only when the parent seeking to relocate is not just designated the "primary custodian" in the custody order but also spends significantly more time with the child than the other parent. However, in a true joint-custody arrangement, both parents share equal time with and custody of the child; therefore, there is not one child-parent relationship to take preference over the other. Here, the agreed custody order designated appellant as the "primary custodial parent" but provided that appellee have visitation with the child 3 days a week, which is approximately 156 days a year, and he had been exercising his visitation consistently over the last year and a half. The custody order also found that both parties had full and free access to all matters pertaining to the child; that the parties must notify each other of any medical issues regarding the child; that each parent was entitled to authorize emergency medical treatment; and that each party was responsible for one-half of any health-related expenses. The order made no mention as to which party had more authority to make decisions for the child or which party had the final say in decisions in the event the parties disagreed. The parties' approximately 60/40 split compares favorably with the facts in *Cooper v. Kalkwarf*, 2017 Ark. 331, and the verbiage of Ark. Code Ann. § 9-13-101(a)(5), wherein joint custody is defined as approximate and reasonable equal division of time with the child. Additionally, appellee had a meaningful relationship with the child, shared co-parent responsibilities, and was significantly involved in the child's life. Thus, the circuit court properly applied *Singletary* and *Cooper* in denying appellant's petition to relocate, and no analysis under *Hollandsworth* was necessary. **[material change]** Failure of communication, increasing parental alienation by a custodial parent, and inability to cooperate can all constitute a material change in circumstances sufficient to warrant modification of custody. The combined, cumulative effect of particular facts may together constitute a material change. Here, there was evidence that the child's absences and tardies at school, while with appellant, warranted the school's sending a letter and appellant meeting with a truancy officer. There was also evidence and testimony that appellant failed to inform appellee of the child's medical and educational issues, in violation of the agreed custody order, and that she told the child's teacher not to provide appellee with information regarding the child because he did not have custody. On cross-examination, appellant admitted she wanted to substantially change and reduce the amount of time appellee spent with the child. Given the facts and the standard of review, the appellate court found that sufficient evidence supported the circuit court's finding that material changes in circumstances existed. (Ashley, P.; 43DR-17-930; 3-5-25; Gladwin, R.)

Henry v. Henry, 2025 Ark. App. 149 **[division of property]** On appeal, appellant argued the circuit court erred in (1) finding cattle to be premarital property; (2) awarding appellee sole ownership of a tractor; and (3) setting aside a deed that transferred real property to her. The property-division statute defines marital property as all property acquired by either spouse subsequent to the

marriage subject to certain exceptions. All marital property shall be distributed one-half to each party unless the court finds such a division to be inequitable; if the property is not divided equally, then the circuit court must state the reasons and bases for not doing so, which should be recited in the order. Further, the statute requires all other property to be returned to the party who owned it before the marriage unless the court makes some other division that it deems equitable and provides its reasoning for doing so. In determining whether property remains under the control of one spouse upon divorce or is the property of both spouses, "tracing" may be used by the court. **[cattle]** Here, appellee owned the cattle before the marriage, and the cattle operation generated income that appellee kept in an account that, while it had appellant's name on it, was used to sustain the cattle operation. Appellee paid for everything pertaining to the cattle. Moreover, even though appellant's name was on the account, evidence introduced showed that appellee wrote checks to appellant from that account. The evidence established that appellee had around fifty cattle in his herd when the parties married and that he maintained that amount over the years. He did not purchase any cows during the marriage but instead bred the ones he had and would occasionally sell from his herd. This is distinguishable from other "cattle cases" where the cattle were purchased during the marriage. Under Ark. Code Ann. § 9-12-315(b)(1), (5), and (7), property acquired before marriage, its increase in value, and any income derived therefrom is specifically excluded from the definition of "marital property." Thus, given this set of facts, the circuit court did not err in finding the cattle to be premarital property. **[tractor]** Here, appellant exchanged a premarital tractor for the new tractor, plus $2000. While the circuit court stated that the $2000 came from marital funds, it found this amount so small that it was equitable to identify the tractor as premarital property. The appellate court found the circuit court made a mistake in taking a de minimis approach, however, the evidence demonstrated that the $2000 difference was paid from appellee's account, which was funded by income from the premarital cattle operation. Thus, the circuit court did not err in finding the tractor was premarital property. **[land]** Once property is placed in the names of both husband and wife without specifying the manner in which they take, such property is presumed to be held by them as tenants by the entirety. To rebut this presumption, the party claiming the property as separate property must present clear and convincing evidence that there was no intent to make a gift of the property to the spouse. The most common argument made by spouses seeking to rebut the joint title gift presumption is a claim that the asset was jointly titled to avoid probate. In Arkansas, if the evidence shows that the transferring spouse had only conditional donative intent, and the condition failed on the facts, a gift is not present. Here, appellee deeded the land to himself and appellant thirteen years into the marriage. Appellee testified he executed the quitclaim deed as part of an estate-planning strategy, the appellee did not intend to give appellant a beneficial interest at any point short of his death. The circuit court was in the superior position to judge the credibility of the witnesses surrounding the execution of the deed. Given the evidence in this case, it was not erroneous for the circuit court to find that the appellee overcame the presumption that he deeded the land as a gift. Therefore, the circuit court did not err in its division of property. (Clark, D.; 23DR-21-471; 3-5-25; Murphy, M.)

Hamaker v. Hamaker, 2025 Ark. App. 156 **[order of protection]** The circuit court entered a final order of protection against appellant and denied appellant's motion to reopen the case. On appeal, appellant argued that the circuit court erred by quashing the subpoena duces tecum requesting appellee's medical records and by refusing to reopen the case due to appellee's alleged fraud. Absent a clerical error, oversight, or omission, however, the circuit court may not modify or amend a final order more than ninety days after entry unless one of the exceptions in Rule 60(c) of the Arkansas Rules of Civil Procedure applies. Here, while appellant referred to his request as a motion to reopen the case, it was essentially a motion to vacate the order of protection; thus, it was governed by Rule 60 of the Arkansas Rules of Civil Procedure. Appellant filed his motion within ninety days; however, the court did not modify or set aside the final order of protection within the ninety-day limitation. Thus, the final order of protection could be set aside only if one of the enumerated conditions in Rule 60(c) applied. Rule 60(c) provides the specific, exclusive circumstances in which the court has the power—after the expiration of ninety days from the filing of the order—to vacate or modify the order. None of appellant's arguments for setting aside the order fell under Rule 60(c) other than his allegation that appellee committed fraud upon the court. Moreover, appellant did not and could not prove that the final order of protection was obtained because of appellee's fraud upon the court since there was no hearing on the merits of appellee's petition. Rather, negotiations took place between the parties, who were both represented by counsel and the parties agreed to the terms of the agreed order before the hearing. The circuit court found that the only meritorious defense appellant set forth was his own word that the alleged conduct did not happen; therefore, he did not meet his burden of proving that the order was obtained by fraud. Thus, the circuit court did not err in denying the appellant's motion to set aside the final order of protection. (Graham, J.; 26DR-22-90; 3-12-25; Gladwin, R.)

Nichols v. Nichols, 2025 Ark. App. 160 **[property division]** The circuit court entered an order determining appellee's entitlement to funds held in the appellant's attorney's trust account. On appeal, the appellant argued that the circuit court erred (1) when it ruled that the property delivered to the appellant in the form of a cashier's check, was not a gift and the separate property of appellee; and (2) when it did not find that the Social Security Retirement benefits of the appellant directly traceable to the account, were not his separate property and were subject to division in the divorce. **[gift]** The requirements of an inter vivos gift are an actual delivery of the subject matter of the gift to the donee with a clear intent to make an immediate, unconditional, and final gift beyond recall, accompanied by an unconditional release by the donor of all future dominion and control over the property so delivered. For an inter vivos gift to be sustained, these elements must be established by clear and convincing proof. Here, appellant and appellee went to their bank where appellant was issued a cashier's check drawn on their joint account and made payable to appellant individually. Appellee testified that she did not intend to make her share of the parties' joint account a gift. The circuit court's written order stated that appellant had not met his burden

of proof that it was a gift. The circuit did not err in its determination that appellee did not intend to gift appellant her marital share of their joint account. **[separate property]** When property is held in the names of a husband and wife without specifying each party's interest, there is a presumption that they own the property as tenants by the entirety, and that presumption can only be overcome by clear and convincing evidence. Clear and convincing evidence is evidence by a credible witness whose memory of facts is distinct, whose narration of detail is exact and in due order, and whose testimony is so clear, direct, weighty, and convincing that it enables the factfinder to come to a clear conviction without hesitation. Here, appellant failed to provide any evidence to overcome the presumption that the cashier's check, which was directly traceable to the parties' joint account, was marital property. The circuit court weighed the evidence and found that the parties commingled their funds in the joint account, paid bills, and bought certain items with money from that account. The source of the funds is of minimal value by virtue of their placement in a joint account to which the parties have joint access. The appellate court found that the circuit court did not err in finding that the cashier's check was marital property and thus found that appellee was entitled to one-half. (Keaton, E.; 14DR-22-34; 3-12-25; Tucker, C.)

Hyler v. Hyler, 2025 Ark. App. 161 **[division of property]** On appeal, appellant argued that the circuit court erred in ordering the sale of approximately 2.5 acres of his nonmarital property on which the marital residence was added, with the proceeds to be distributed equally between the parties. A circuit court is given broad powers to distribute both marital and nonmarital property to achieve an equitable distribution; the overriding purpose of the property-division statute is to enable the court to make a division of property that is fair and equitable under the circumstances. If a circuit court determines, for equitable reasons, that marital property should be unequally distributed or that nonmarital property should not be distributed to the party who owned it prior to the marriage, the court must take into consideration the length of the marriage; the age, health, and station in life of the parties; the occupation of the parties; the amount and sources of income; their vocational skills; their employability; the estate, liabilities, and needs of each party and the opportunity of each for further acquisition of capital assets and income; the contribution of each party in the acquisition, preservation, or appreciation of marital property, including services as a homemaker; and the federal income tax consequences of the court's division of property. Here, the circuit court ordered the sale of approximately 2.5 acres of property on which the marital residence was added, with the proceeds to be distributed equally between the parties. While the real property belonged to appellant prior to marriage, the marital residence did not exist on the property until after the parties had married, and they agreed to place that marital asset on appellant's nonmarital property. Appellee paid for the marital residence and paid to move it onto appellant's nonmarital real property, and the parties used marital funds to make improvements to the marital residence and the surrounding real property while they lived in the house for over twenty years. Neither party offered a valuation of the real property and the marital residence at the time of divorce, either as one parcel or separately. Given the lack of evidence, the appellate court could not say that the

circuit court's determination that the nonmarital and marital property were so intertwined that they could not be valued separately and could not realistically be separated and that the equitable solution, based on the facts presented, was to order the 2.5 acres and the marital residence sold, and the proceeds divided equally, was erroneous. Thus, the circuit court did not err in its division of property. (Warren, D.; 72DR-21-445; 3-12-25; Barrett, S.)

JUVENILE

Butler v. Ark. Dep't of Human Servs., 2025 Ark. App. 137 **[notice; remote testimony]** At a termination hearing, appellant mother, but not appellant father, objected to a witness testifying remotely claiming that appellee had not followed the notice requirements set forth in Ark R Civ Pro 88 regarding hearing participants appearing via electronic means. The appellate court held that the issue was not preserved for appeal as to appellant father. As to appellant mother, she was unable to demonstrate prejudice: the testimony offered at the termination hearing, that the appellants had physically abused the minor child such that he was near death when arriving at the hospital, mirrored the testimony offered by the same witness at the adjudication hearing. The findings of previous hearings are elements of subsequent hearings. **[TPR-best interest; grandparent relationship]** Although the statutory preferences list "authorizing a plan to obtain a guardianship or adoption with a fit and willing relative" before authorizing a plan for adoption, the relative preference outlined in the statute must be balanced with the individual facts of each case. Here, the children were never in the grandparents' custody, and there was not yet a determination that the relatives were fit to become guardians or adoptive parents. Despite the appellants' arguments that they were complying with the case plan, they had committed abuse that warranted "immediate termination," and their actions supported the finding that termination was in the children's best interest. **[TPR-best interest; risk of harm]** Appellant father argued that it was erroneous to terminate his parental rights because permanency for the child was already achieved with placement with the paternal grandmother. However, the abuse and neglect in this case, which created a life-threatening situation, warranted termination of the father's parental rights despite placement with the father's own mother. **[appeal; motion to stay]** It was not error to deny the appellant mother's motion to stay the termination proceeding until the conclusion of her appeal of the adjudication. The juvenile code provides that, "[p]ending an appeal from any case involving a juvenile out-of-home placement, the juvenile division of circuit court retains jurisdiction to conduct further hearings." Ark. Code Ann. § 9-27-343(c). Further, the Supreme Court has held that, pursuant to this statute, a circuit court retains jurisdiction to proceed with a termination hearing and enter a termination order even when a parent has a pending appeal from an adjudication order. **[motion for continuance; lack of diligence]** Appellant mother moved to continue the termination hearing until the grandparents' motion to intervene could be heard; in their motion, the grandparents had expressed a desire to petition the court for placement, custody, guardianship, or adoption of the minor children. There was no error in denying the mother's motion as the grandparents' motion to intervene had been filed four months prior to the termination hearing, and the mother waited until the termination hearing to make her oral motion to continue stating that the grandparents' motion should be heard first. Lack of diligence by a moving party is

sufficient reason to deny a motion for continuance. (Sullivan, T.; CV-24-725; 3-5-25; Klappenbach, N.)

Turner v. Ark. Dep't of Human Servs., 2025 Ark. App. 146 **[ADJ-medical neglect]** Upon admission to the hospital, the minor child was found to be suffering from starvation ketosis, profound electrolyte abnormalities, and severe malnutrition. The child weighed seventy pounds, was so malnourished that she was bed-bound, had a BMI of 12.9 (the expected BMI for a child this age was 20), and was "lucky to be alive" given her weakened state. The treating physician testified that the child presented to the hospital so severely malnourished that she had permanent loss of bone density. The hospital social worker assigned to the child testified that appellant voiced daily concerns that the medical team was harming the child and that when appellant was not present, the child was happier and seemed less anxious, ordered food, and finished her meals on her own, and was more interactive with the treatment team. During the six-week period that the child was treated at the hospital, she gained thirty pounds. Her medical records from that time, over nine hundred pages, included daily examples of appellant's resistance to, and interference with, the child's treatment: appellant said the medical team was "trying to kill" the child, refused food and treatment for the child, and continually undermined the child's treatment plan. Over a month after the child's admission to the hospital, appellant continued to tell medical personnel that the child did not have an eating disorder and that they were "torturing" the child. The failure or refusal to provide the necessary medical treatment to a child is sufficient evidence of neglect. Here, the record supported the circuit court's finding of dependency-neglect based on medical neglect. (Pate, M.; CV-24-766; 3-5-25; Wood, W.)

Ealy v. Ark. Dep't of Human Servs., 2025 Ark. App. 150 **[TPR-best interest; potential harm]** Appellant asserted there was no evidence "to show any real risk of potential harm" to the child because of her parenting skills, inability to follow medical advice for her own ailments, mental instability, and intellectual deficiencies. She additionally stated that she "complied with everything that was asked." Appellant argued that she had demonstrated genuine attempts and efforts to comply with her case plan and had made steady efforts to develop the necessary parenting skills despite her mental-health issues and intellectual disabilities. Appellant contended that, as stated by her mental-healthcare provider, she "was not as impulsive as she used to be[,]" and although she would need lifelong treatment, she had the ability to learn to change her behavior. However, the evidence showed that despite the numerous services provided by appellee over two years, appellant's mental health had declined, and her parenting skills had not progressed. Moreover, her visitation was suspended after she harmed the child while being supervised by appellee. The evidence showing her inability to safely parent the child supported the finding that termination was in his best interest. No error was found. (Hendricks, A.; CV-24-747; 3-5-25; Brown, W.)

Rogers v. Ark. Dep't of Human Servs., 2025 Ark. App. 162 **[TPR-best interest; adoptability]** Appellant challenged the circuit court's best-interest finding, arguing that because the circuit court failed to explicitly address the adoptability factor in its termination order, the order should be reversed, in essence asking the appellate court to hold that the circuit court was required to make specific adoptability findings in its termination order. However, that is not the law. In order to terminate parental rights, a circuit court must find by clear and convincing evidence that termination is in the best interest of the child, taking into consideration (1) the likelihood the child will be adopted if the termination petition is granted; and (2) the potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent. Adoptability is not an essential element; rather, it is a factor the circuit court must consider. At the termination hearing, a caseworker for appellee presented testimony that the child was adoptable. Further, the adoption specialist testified there were 184 possible adoptive families for the child. The Juvenile Code does not require a "specific quantum" of evidence to support a circuit court's finding regarding adoptability; it requires only that if an adoptability finding is made, evidence must exist to support it. It has been long settled that a caseworker's testimony that a child is adoptable is sufficient to support an adoptability finding. Therefore, the circuit court did not clearly err in terminating appellant's parental rights. (Byrd Manning, T.; CV-24-757; 3-12-25; Barrett, S.)

Millican v. Ark. Dep't of Human Servs., 2025 Ark. App. 175 **[TPR-grounds; oral ruling; written order]** Appellant asserted that although the circuit court's oral statements at the conclusion of the TPR hearing indicated that the TPR was proper under two separate grounds, those oral rulings could not be relied on for the ultimate findings because they were not reduced to writing in the final TPR order, believing that the written order was the only order to given effect, regardless of what the circuit court may have stated from the bench at the close of trial. Appellant argued that because the findings related to the statutory grounds in the TPR order were inconsistent with what was pled by appellee, the TPR decision must be reversed. The appellate court disagreed, holding that its de novo standard opened the entire record for review and did not constrain the appellate court to the circuit court's rationale, allowing for review of the record for additional reasons to affirm and for the ability to hold that grounds for TPR were proved, even if not specifically stated in the circuit court's order. The appellate court can affirm a circuit court's TPR if the ground was alleged in the TPR petition, and the ground was proved at the TPR hearing. In the present case, according to the written order, the circuit court simply failed to rule on the grounds pled in the TPR petition. It is well established that the appellate court may affirm a circuit court's decision when it has reached the right result, although it may have announced a different reason. The de novo review of the record with respect to the statutory grounds supporting TPR resolved any inconsistency between the grounds pled in the TPR petition and the one specifically set forth in the final TPR order. **[TPR-best interest; potential harm]** Appellant also challenged the potential-harm factor of the circuit court's best-interest finding. The Juvenile Code requires the circuit court to find that the child would be subject to potential harm caused by "returning the child to the custody of the parent . . . .". Potential harm must be viewed in a forward-looking manner and considered in broad terms, and the court may consider past behavior as a predictor of future

behavior. The circuit court does not have to find that actual harm would occur, nor does it have to affirmatively identify a potential harm. Here, appellee testified that appellant did not make the child a priority during the case; the appellate court has held that a parent's lackadaisical approach to following court orders was sufficient evidence of potential harm. Appellant's choice for the child's babysitter had her own open dependency-neglect case with appellee, and his roommates during the case were using illegal substances. A parent's inability to demonstrate appropriate parenting and decision-making skills can support a potential-harm finding. Moreover, appellant tested positive for methamphetamine, amphetamine, and THC and failed to comply with drug screening to demonstrate to the circuit court that the substance-abuse issue had been resolved. Instead, he admitted using Adderall without a prescription and using THC without a medical marijuana card the day before the TPR hearing. After a de novo review of the record and consideration of appellant's arguments, the appellant court was not left with a definite and firm conviction that a mistake had been made. (Talley, D.; CV-24-733; 3-19-25; Gladwin, R.)