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CIVIL

Foster v. The Manhattan Group, LLC, 2023 Ark. App. 560 [**attorney's fees; replevin claims**] The circuit court awarded attorney's fees to appellee. On appeal, appellant argued that the circuit court erred in awarding fees because they are not recoverable for replevin claims. While legal costs incurred in recovering property—whether performed by an attorney or a nonlegal professional—may be awarded as damages; attorney's fees incurred for action taken in pursuit of the civil claim and awarded as attorney's fees are not. Here, the only cause of action that appellee prevailed upon was for replevin—a tort—and not a cause of action for which there is statutory authority to award fees. There were no fees awarded as part of the damages to the appellee. Therefore, the circuit court abused its discretion in granting the motion for attorney's fees. (Jamison, L.; 35CV-21-332; 12-6-23; Gruber, R.)

Burks v. Brown, 2023 Ark. App. 562 [**medical malpractice; res ipsa loquitur; summary judgment**] The circuit court granted summary judgment in favor of appellees. On appeal, the appellant, as special administrator of the deceased's estate, argued that the circuit court erred in granting summary judgment in favor of appellees as the result of its application of *res ipsa loquitur*. The doctrine of *res ipsa loquitur* was developed to assist in the proof of negligence where the cause

is connected with an instrumentality in the exclusive control of a defendant. The theory of *res ipsa loquitur* is a rule of evidence that comes into play when (1) the defendant owes a duty to the plaintiff to use due care; (2) the accident is caused by the thing or instrumentality under the control of the defendant; (3) the accident that caused the injury is one that, in the ordinary course of things would not occur if those having control and management of the instrumentality used proper care; and (4) there is an absence of evidence to the contrary. The proof required to survive a motion for summary judgment in a medical malpractice case must be in the form of expert testimony, and the nonmoving party need not establish its case by a preponderance of the evidence or by any other standard of proof; it is only required to establish that there is a genuine issue of material fact for trial. Here, the issue was whether the fourth prong of *res ipsa loquitur* had been met. The appellant filed a medical malpractice case arising out of a surgical procedure jointly performed by the appellees after the deceased suffered an injury to his abdominal aorta, which resulted in his death. In their deposition, the doctors testified that the deceased began bleeding after the medical staple device used in the surgery lurched forward. The appellant's expert testified that there could be three reasons for the type of injury that resulted in the deceased's death: an anatomical issue with the patient (such as an aneurysm), a mechanical issue (such as a malfunction of the stapler), or human error. All parties agreed that the deceased did not suffer from any anatomical issue that would cause his injury. The appellant's expert considered a mechanical malfunction as a possibility, but after he considered and analyzed that possibility, he discarded it, explaining that there was no evidence of the stapler's malfunction. Thus, there was a dispute between the appellant's expert and appellee's expert whether the injury was caused by a stapler malfunction, or negligence on the part of the doctors. Both of the experts did not opine that mechanical failure of the medical staple device could cause injuries to the deceased absent the negligence of the defendant doctors. Therefore, there was evidence to the contrary, and the fourth prong of *res ipsa loquitur* had been met. The appellate court held that the circuit court erred in granting summary judgment because there were questions of material fact left unanswered. (Meyer, H.; 32CV-17-48; 12-6-23; Barrett, S.)

Peek v. Diley, 2023 Ark. App. 576 [**undue influence; warranty deed**] The circuit court found that there was no undue influence when the deceased executed a warranty deed in 2018 that gave appellee, the deceased's niece, a joint tenancy in her home. If the warranty deed was invalidated, the appellant would have inherited the deceased's home under a will the deceased executed in 2020, after the deceased and appellee had a falling out. Here, the appellee and her husband lived with the deceased for six years before they moved out after the deceased uncharacteristically lashed out at their young granddaughter. Appellee was the deceased designated agent under a durable power of attorney and wrote checks to herself to reimburse herself for expenses like groceries and medication she picked up for the deceased. The record established that the deceased had previously executed a beneficiary deed to appellee, who was a beneficiary under the deceased's 2007 will. The attorney who assisted the deceased with the warranty deed in 2018 testified that although he did not specifically remember the deceased, he would have followed his usual practices, separating the client from any family for a private meeting to ensure she understood the estate plan he had prepared, that the plan reflected the client's own wishes, not someone's undue influence; and that

the client had the mental capacity to execute the necessary instruments. Additionally, the attorney stated that he would have explained to the deceased that unlike the existing beneficiary deed to appellee, which she could unilaterally revoke, she would not be able to undo the joint tenancy unless the appellee agreed. The circuit court found that the facts were consistent with its view that appellee was a loved and loving niece whose relationship with the deceased soured in her declining years. The circuit court found that appellee had procured that deed during a confidential relationship with the deceased. However, the circuit court also found appellee had proved beyond a reasonable doubt that the deed was the product of the deceased's intentions and desires about the disposition of her property. Based on the facts of the case, the circuit court did not err in finding that there was no undue influence. (Delay, G.; 66GCV-20-184; 12-13-23; Harrison, B.)

Valiant Consultants, Inc. v. Lewis, 2023 Ark. App. 591 [**arbitration; motion to compel**] The circuit court denied appellants' motion to compel arbitration. On appeal, appellants argued that the circuit court erred in denying arbitration, claiming that there was a valid arbitration agreement in place between the company and appellee and that her fraud claims fell within its scope. If a claim of fraudulent inducement relates to the contract generally and the contract contains an arbitration provision, the language of the Federal Arbitration Act provides that the dispute must be adjudicated by the arbitrator. An arbitration provision is severable from the remainder of the contract. Unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance. Here, appellee's fraud claim attacked the validity of the agreement as a whole and not the arbitration clause specifically. Therefore, the arbitrator, not the court, determines the issue. Thus, the circuit court erred in denying the company's motion to compel. However, the individual appellants were nonsignatories to the agreement, therefore, they did not have the right to enforce the arbitration provisions of the contract. One of the appellants signed the agreement only in his official capacity as the company's CEO. Accordingly, the circuit court did not err in dismissing individual appellants' motion to compel arbitration. (Fox, T.; 60CV-21-1486; 12-13-23; Thyer, C.)

Bauer v. Beamon, 2023 Ark. 194 [**right to jury trial; breach of contract; rescission**] The circuit court awarded damages in favor of the appellees. On appeal, appellants argued that the circuit court erred by denying their jury trial demand and awarding damages on a breach-of-contract claim that was not alleged in the appellees' complaint. The appellees cross-appealed, arguing that the circuit court erred by denying their request for rescission of the real estate contract. [**right to jury trial**] The Arkansas Constitution does not ensure the right to a jury in all possible instances, but rather in those cases where the right to a jury trial existed when the constitution was framed. The right to a jury trial extends only to those cases that were subject to trial by jury at the common law. In equitable proceedings, there was no right to a jury trial at the common law. Thus, the constitutional right to a jury trial does not extend to cases in equity. The rescission of a contract is an equitable remedy. Here, because the appellees elected rescission as their remedy, the circuit court properly considered the claim without a jury. [**breach of contract claim**] A party is bound by his pleadings and the allegations therein. Here, the circuit court awarded damages based on breach of contract.

However, the appellees' equitable and legal claims were both brought under a theory of fraud and deceit, they never pled breach of contract. Nor did they move to amend their complaint to add a breach-of-contract claim under Rule 15 of the Arkansas Rules of Civil Procedure. The appellees therefore could not recover damages for breach of contract. As a result, the circuit court erred in its award of damages. **[recession]** One who desires to rescind a contract on grounds of fraud or deceit must do so as soon as he discovers the truth. The rescinding party must announce his purpose at once and act with reasonable diligence. But if he continues to treat the property involved as his own or conducts himself with reference to the transaction as though it were still subsisting and binding, he will be held to have waived his right to rescission and will be conclusively bound by the contract as if the fraud had not occurred. Here, the appellees' acts of possession, repair, and reclamation were inconsistent with an intent to rescind. Thus, the circuit court did not err in its denial of the appellees' recession claim. (Medlock, M.; 17CV-17-549; 12-21-23; Webb, B.)

CRIMINAL

Jacobs v. State, 2023 Ark. App. 554 **[speedy trial]** The circuit court denied appellant's motion to dismiss on speedy-trial grounds and the appellant later entered a conditional plea of guilty to three counts of kidnapping. On appeal, appellant argued that his right to a speedy trial was violated. A defendant must be brought to trial within twelve months unless there are periods of delay that are excluded under Rule 28.3 of the Arkansas Rules of Criminal Procedure. The twelve-month period for bringing an accused to trial begins to run on the date of arrest or service of summons, whichever occurs first. Here, the delay between the date of service of the arrest warrant and the date appellant's motion to dismiss was filed was 1,411 days. Appellant conceded that 502 days were properly excluded; however, he contended that three time periods should not have been excluded from the speedy-trial calculation. **[designation of time tolled]** The circuit court entered a scheduling order that did not designate the period of time from that date until the trial, a period of 105 days, as excluded from the time calculated for speedy trial. The time period was not designated as excluded; therefore, it was not excludable under any provision of Arkansas Rule Criminal Procedure 28.3. **[codefendant continuance]** Rule 21.2 of the Arkansas Rules of Criminal Procedure provides that two or more defendants may be joined in one information or indictment under certain circumstances, such as when each of the defendants is charged with accountability for each offense included or when each of the defendants is charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to be in furtherance of the conspiracy. Here, there were two contested time periods consisting of 406 days and 187 days, and the reason given for the delays in the scheduling orders was that a motion for continuance filed by a "codefendant" had been granted. The appellant was the sole defendant listed in the criminal information and was the sole defendant listed in all pleadings until June 2022, after he had filed his motion to dismiss on speedy-trial grounds. The record did not support the conclusion that the appellant and the other inmates charged in the incident were "codefendants" such that a continuance by one defendant would justify the exclusion of time in appellant's case. Therefore, the circuit court erred when it continued appellant's case based on a motion for continuance filed by a separate defendant. **[motion to continue]** The circuit court entered a scheduling order stating

that the appellant's motion to continue was granted. However, there was no record of a motion for continuance filed by appellant. Therefore, that period was not excluded for purposes of speedy-trial computation. The calculations from the date appellant was served with the arrest warrant, 9 February 2018, to the date he filed his motion to dismiss, 21 December 2021 demonstrated that a total of 909 days passed during which speedy trial was not tolled. This exceeded the 365-day period; thus, appellant's convictions were vacated. (Dennis, J.; 35CR-18-63; 12-6-23; Harrison, B.)

DOMESTIC RELATIONS

David v. David, 2023 Ark. App. 568 [**modification of child support**] The circuit court entered an order modifying child support in favor of appellee. On appeal, appellant argued that (1) the circuit court's decision on his motion to modify child support was erroneous, and (2) the circuit court erred by refusing to apply the modified child support amount retroactively to the date the motion was filed. In determining a reasonable amount of child support, the circuit court shall refer to the most recent revision of the family support chart. Administrative Order No. 10 provides guidelines for a circuit court to follow when deciding whether to deviate from the guidelines. Relevant to the issues on appeal in this case, pursuant to 2020 Revised Rule 10, "all orders granting or modifying child support shall contain the court's determination of the payor's income, payee's income, recite the amount of support required under these Guidelines, and state whether the court deviated from the presumptive child-support calculation set by the Worksheet and these Guidelines." The 2020 Revised Rule 10 provides that an additional joint custody reduction based on the parties' shared time with their children is discretionary with the circuit court. Here, appellant argued that he was entitled to an additional 50 percent joint custody discretionary reduction. The circuit court first noted that the parties were awarded joint custody. The circuit court then considered the time spent with each parent and noted that the financial needs of the children when in appellee's care had not changed, and that the appellant had sought a reduction in his child support obligation based upon the increase in his income of \$30,000 gross annually from the time the divorce decree was entered. The circuit court also stated that there was a significant disparity between the parties' incomes which weighed against any adjustment for the appellant. Finally, the circuit court stated that the reduction was not in the best interest of the children and that the reduction would be unjust and inappropriate under the circumstances. On this record, the appellate court held that the circuit court did not abuse its discretion in determining the amount of child support. [**retroactivity**] The commencement date of an award of child support is a matter within the discretion of the circuit court. Here, the circuit court denied appellant's request to order that any reduction be applied retroactively and found that the "retroactive reduction would be unjust and inappropriate, the income disparity is significant between the parties, and a retroactive reduction would not be in the best interest of the minor children." Given the record, the appellate court could not say the circuit court abused its discretion in denying appellant's request to retroactively reduce his child support. (Threet, J.; 72DR-19-730; 12-6-23; Hixson, K.)

Cappelluzzo v. Cole, 2023 Ark. App. 571 [**custody; material change in circumstances; relocation**] The circuit court entered an order changing custody of the three children appellant shares with his ex-wife, appellee. On appeal, appellant argued that no material change in circumstances occurred to warrant a change in custody, and further, the change of custody was not in the children's best interest. The proper analysis for a change-in-custody request due to the relocation of one parent in a joint-custody situation is the same as that when relocation is not involved: the court must first determine whether a material change in circumstances has transpired since the last order on custody and then determine whether the change in custody is in the best interest of the child. Here, evidence was presented that appellee remarried and her husband had good work in Michigan. Appellee and her new husband had purchased a home in Michigan and appellee had to be out of the home she was renting three days after the hearing because it was listed for sale. Two of the children and appellant had a significant falling out, and appellant did not make any real attempt to initiate meaningful contact with his children for almost seven months. Given that appellee was days away from relocating, and two of the children were barely on speaking terms with appellant, it was not erroneous for the circuit court to find this was a material change in circumstances sufficient to warrant a change of custody. Additionally, the circuit court did not err in finding that this same evidence supported the best interest finding. (Bailey, A.; 45DR-14-76; 12-6-23; Murphy, M.)

Joslin v. Osborn, 2023 Ark. App. 573 [**personal jurisdiction; agreed order**] The circuit court denied appellant's motion to dismiss an agreed child-support order between the parties. On appeal, appellant argued that the circuit court erred in denying his motion because he was never served with a copy of appellee's petition for child support and that the circuit court never obtained personal jurisdiction over him. The guiding principle of Rule 4 of the Arkansas Rules of Civil Procedure and the purpose of a summons is to ensure due process by giving the defendant adequate notice of the suit and an opportunity to respond before a judgment is entered. Actual knowledge of a proceeding does not validate defective process. The defense of personal jurisdiction may be waived by the appearance of the defendant without objecting. Any action on the part of a defendant, except to object to jurisdiction, which recognizes the case in court, will amount to an appearance. In deciding whether a defendant has waived his rights and entered an appearance, a determining factor is whether the defendant seeks affirmative relief. Here, a petition for child support was filed, and two days later, appellant signed an agreed order for child support. Although appellant had not been served with the summons or the petition for support, his actions amounted to an appearance because, by entering into the agreed order, this was a step in the process of resolving the case, and it gave appellee the remedy she sought. Appellant also received benefits in the form of supervised visitation with the child; having the right to be informed about the child's health, education, and activities; having his name placed on all documents for access to the child's records; being granted the right to all information concerning the child regardless of any state, federal, or business privacy policy; and the ability to have a say in whether the child can reside outside the jurisdiction of the circuit court. Thus, the circuit court did not err in its denial of appellant's motion to dismiss. (Hannah, C.; 73DR-19-607; 12-6-23; Brown, W.)

Morales v. Morales, 2023 Ark. App. 582 [**order of protection**] The circuit court entered a final order of protection against appellant on the petition of his wife, appellee. On appeal, appellant argued the circuit court erred in granting a ten-year order of protection against him in favor of appellee. When a petition for an order of protection is filed, the circuit court may provide relief to the petitioner upon a finding of domestic abuse. Domestic abuse is defined as physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members. Here, appellee made allegations of abuse against her mother-in-law and further alleged that appellant had beaten and raped her. Appellee also acknowledged that she did not report the incidents to law enforcement. Appellant maintained that this was a classic case of “he said, she said.” There were no exhibits offered or admitted into evidence, and each party, who appeared pro se, called only a relative to testify. Disputed facts and determinations of the credibility of the witnesses are within the province of the fact-finder. Based upon the record, the appellate court held that the circuit court did not err in granting appellee’s petition for an order of protection against appellant. (Thomason, M.; 14DR-22-121; 12-13-23; Gladwin, R.)

Losurdo v. Losurdo, 2023 Ark. App. 584 [**motion to vacate; agreed order**] Appellant’s motion to vacate an agreed order relating to the custody of her and appellee’s two children was deemed denied after the circuit court did not hold a hearing or enter an order on the motion to vacate. On appeal, appellant argued that the circuit court erred in entering the order modifying custody because there was no agreement. Contract principles apply to “agreed orders.” An attorney is not permitted to compromise her client’s cause of action or judgment without permission. An attorney has no implied authority to enter into a compromise agreement. When a client gives her attorney specific authority to enter into a compromise agreement, such an agreement, if entered into by the attorney, is valid and binding. Whether an agent is acting within the scope of her authority is a question of fact. Here, appellant asserted that her attorney and the appellee’s attorney engaged in negotiations at the courthouse, with appellant believing that the only agreement struck was that the parties would resolve their custody issues outside of the courtroom. Appellant also stated that she only became aware of the agreed order when she checked the online docket at appellee’s prompting. Appellant then terminated her attorney’s services and personally emailed the appellee’s attorney and copied the circuit court, informing them that she had never seen the order, approved it, signed it, or agreed to its terms. She further stated that she never authorized her attorney to agree to the order or its terms, and it was submitted to the court without her knowledge or consent. No record was made regarding whether an agreement existed between the parties, and no discretion was exercised regarding the motion to vacate. Accordingly, the circuit court must make further findings. Thus, the circuit court erred in denying the appellant’s motion to vacate. (Bailey, A.; 03DR-18-338; 12-13-23; Gruber, R.)

JUVENILE

Jones v. Ark. Dep't of Human Servs., 2023 Ark. App. 559 [**TPR; subsequent factors**] There was no error in finding that Appellant manifested the incapacity or indifference to rehabilitate his circumstances that prevented the placement of the juvenile in his custody when Appellant displayed a level of apathy about spending time with his son, cut visits short and refused extra time with him. Appellant reportedly obtained housing months prior to the termination hearing, but it was “not ready” at the termination stage; Appellant did not permit Appellee to inspect the residence until the night before the termination hearing, and Appellant did not produce a lease until the day of the hearing; he was not yet prepared to have his son in his custody because he had not finished preparing a bed for his infant son; a stable home is one of a child’s most basic needs, and that cannot be ignored. [**TPR; best interest; potential harm**] Appellant admittedly was not ready to have his son come home because his residence was not yet suitable for his child; Appellant was a cigarette and marijuana smoker with no apparent intention of quitting, despite his son’s sensitivity to airborne irritants; and Appellant was satisfied with only four hours of visitation each week with his son. After having given Appellant nearly two years to become the parent his child needed, there was no clear error in finding the child’s best interest was served by terminating Appellant’s parental rights. (Weaver, S.; CV-23-433; 12-6-23; Klappenbach, N.)

Manning v. Ark. Dep't of Human Servs., 2023 Ark. App. 565 [**TPR; parent**] Although Appellant father’s putative parent rights had attached to the child, it was error to terminate his parental rights on grounds reserved for “parents” as he was never determined to be the father of the child. [**TPR; aggravated circumstances; little likelihood**] There was no error in finding little likelihood that services would result in reunification when there had not been any observable change in Appellant mother’s behavior since the case was initiated; Appellee’s primary concern was the risk of harm associated with the Appellant mother’s untreated mental illness that had resulted in violence, aggression, hallucinations, and overall neglect; Appellant mother was not consistent with her therapy or her medication-management plan; she was not abiding by her treatment plan because the interior of the home became an environmental hazard; the Appellants were unable to have visitation at the home because they were unable to keep even one room safe and appropriate for visitation; Appellant mother admitted that her home was not appropriate for the children and admitted that she had refused the Appellee’s offer of help. Coupled with her lack of consistent compliance with mental-health treatment over a period of two years, Appellee did not believe that there were any additional services that would lead to a successful and safe reunification with the children in a timely manner, which is sufficient evidence to support the court’s finding of aggravated circumstances. (Chesshir, B.; CV-23-221; 12-6-23; Thyer, C.)

Milholland v. Ark. Dep't of Human Servs., 2023 Ark. App. 567 [**TPR; best interest; potential harm**] Appellant mother argued that the evidence was not clear and convincing that she posed a risk of potential harm to her child when Appellant was not provided a full year to reunify, which she contended was “statutorily permitted,” and when there was a less restrictive alternative to

termination through reunification with the child’s father, adding that adoption was not an available permanency option at the time of termination, so termination was simply unnecessary. Her argument was unsuccessful. She cited no authority to support her “statutorily allowed time” argument. Although the Juvenile Code provided that permanency planning must occur no later than twelve months after a child enters an out-of-home placement, the code specifically authorized DHS or an attorney *ad litem* to file a petition for termination at any time. Moreover, while there was a statutory ground that required proof that the child had been out of the parent’s custody for twelve months, Appellant’s rights were not terminated on that ground, and in any case, she did not challenge the statutory grounds for her termination. Finally, one of the grounds on which the court did terminate her parental rights—involuntary termination of rights to two children in December 2021—demonstrated that she had a lengthy drug history. This child was born with drugs in his system over a year before the termination, and Appellant continued to use drugs until she was arrested and incarcerated, where she remained. Appellant’s continued illegal drug use and instability demonstrated a risk of potential harm to the child; the lack of time to complete appropriate services was irrelevant to the circuit court’s determination of best interest. **[TPR; less restrictive alternative]** Appellant also argued that termination was not necessary because there was a less restrictive alternative to termination through reunification with the child’s father. However, the child was not in care of his father but was instead in foster care, where the court specifically found that it was in his best interest to remain; potential reunification with the child’s father was not a stable, permanent option for the child at the time of termination and might never have been. The trial court recognized that the child’s father had substance-abuse issues and ordered him to enter and successfully complete residential drug treatment. In addition, the court specifically found that the child was adoptable and living with foster parents who wanted to adopt him. Moreover, there was no evidence in this case that the child had a significant relationship with any maternal or paternal relatives. Here, the record supported the circuit court’s best-interest determination terminating Appellant’s parental rights because of her continued drug use and instability; Appellant’s failure to participate in services to address her substance abuse and her continued instability supported the circuit court’s finding that the child needed an irrevocable break from her. There was no clear error found in the circuit court’s best-interest finding. (Coker, K.; CV-23-502; 12-6-23; Wood, W.)

Link v. Ark. Dep’t of Human Servs., 2023 Ark. App. 569 **[ADJ; environmental neglect]** There was no clear error in finding the children dependent-neglected based on being at a substantial risk of serious harm from neglect due to living in a home that posed a risk to their health and safety: all of the children reported the house had no running water, a roach infestation, and inadequate food. Appellee testified that despite not being allowed in the home, there were large amounts of trash in the front yard and on the front porch, and that while on that front porch, one could detect a strong order emanating from the home. Even Appellants themselves testified that the home had been without running water, that there had been an issue with cockroaches, that the floor of the home was in need of repair, and that they had denied Appellee access to the home to gauge its safety for their children; Appellant mother testified there had been an issue with insufficient food in the home; Appellant father testified that while he had prior methamphetamine use, he denied

Appellee's request for drug screens. **[ADJ; reasonable efforts to prevent removal]** There was no clear error in finding that Appellee had made reasonable efforts to prevent removal of the children from the home: Appellant mother acknowledged that Appellee had provided cleaning supplies; Appellee testified that the family would decline to accept those supplies and were uncooperative with its efforts to provide those and other services; Appellant mother also acknowledged that the family was provided with community based services, which included a family intervention specialist who visited the home twice a week for a minimum of two hours a day. Despite these services to the Appellants, the need for removal was not prevented. Decision affirmed. (Autrey, L.; CV-23-263; 12-6-23; Hixson, K.)

Moon v. Ark. Dep't of Human Servs., 2023 Ark. App. 600 **[TPR; best interest; sibling relationship]** Appellants contended that the circuit court erred when it failed to consider the impact termination of their parental rights would have on the sibling relationship between their children. However, the issue was not preserved for appeal as Appellants failed to raise a sibling-separation argument to the circuit court. But even if the argument was preserved, it would fail for two reasons. First, there was no evidence of a genuine sibling bond; sibling-separation arguments did not support reversal absent some evidence of a genuine sibling bond, which was not demonstrated in the record here. Second, Appellee's intention was to place the children up for adoption as a sibling group and that potential matches had been identified; when it was expected that the relationship between siblings will continue after termination, the circuit court's best-interest finding was not clearly erroneous based on severance of the sibling relationship. Additionally, there was no requirement that siblings be adopted together; keeping siblings together was an important consideration but was not outcome determinative because the best interest of each child was the polestar. **[TPR; best interest; potential harm]** Appellant mother also challenged the potential-harm finding, arguing that the law did not require flawless compliance. The circuit court was not required to find that actual harm would result or to affirmatively identify a potential harm. Potential harm must be viewed in broad terms, and potential necessarily means that the court was required to look to future possibilities. Here, at the time of the hearing, appellant had not found or maintained stable housing, she still struggled with sobriety, and she failed to complete parenting classes, even though she had twenty-eight months to do so. Instability and continued drug use demonstrated potential harm sufficient to support the best-interest finding in this termination-of-parental-rights case. Appellant's failure to comply with court orders itself was sufficient evidence of potential harm. Additionally, evidence that supported the statutory grounds also supported a potential-harm finding. **[TPR; request for more time to reunify]** Appellant mother also contended she made significant progress to warrant more time. Her children's need for permanency and stability overrode her request for more time to improve her circumstances: the children had been out of the home for over two years; yet Appellant mother had done practically nothing until the last minute to achieve reunification : she did not obtain employment until just before the termination hearing; she still did not have housing for the children; she never completed parenting classes; although she began a trial placement of the children, they had to be removed when she was arrested on an outstanding warrant; she never appreciated why the children were initially put in Appellee's custody or took responsibility for it;

and she waited until the eleventh hour to seek help for her drug addiction. Appellant mother had ample time to prove she could parent the children during the pendency of the proceedings—she did not do so. The children’s need for permanency outweighed Appellant mother’s request for additional time. Her argument was nothing more than a request to reweigh the evidence in her favor, which the appellate court would not do. Decision affirmed. (Byrd Manning, T.; CV-23-447; 12-13-23; Brown, W.)