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CIVIL

Stevens v. Danley, 2026 Ark. App. 42 [**default judgment; at-will employment**] The circuit court denied appellant's motion to dismiss and set aside a default judgment rendered against her individually and in favor of the appellee. On appeal, appellant challenged the order, arguing that the default judgment was void because the complaint failed to state a claim from which relief could be granted. In Arkansas, an employer may terminate an employee for good cause, bad cause, or no reason at all under the employment-at-will doctrine. As a result, Arkansas's at-will employment doctrine generally bars an employee from recovering against an employer that has ended the employment relationship. However, the Arkansas Supreme Court has recognized two exceptions to the at-will doctrine. The first is based on an "implied contract" theory; the second is rooted in public policy. [**implied contract theory**] The implied-contract exception permits a lawsuit based on the theory that an employer who promises an employee that he or she will not be discharged without cause must honor that promise. The employer must have expressly made such an agreement before this narrow exception will apply. An implied provision against the right to discharge will not be sufficient to invoke the exception to the at-will doctrine. Employer policies that address grievance procedures, drug tests, and progressive-disciplinary actions generally do not meet this exception. Here, appellee alleged the Clinic had board-approved grievance policies;

she filed a grievance, but the personnel committee ignored due process guarantees in the handbook and did not give her a required written response. Because the appellee was required to prove an express guarantee that she could not be discharged without good cause for this limited exception to apply, and because she failed to quote, incorporate, or otherwise provide the language from the employee handbook or grievance procedures that would give rise to an express guarantee, her claim must fail on its face. Even when liberally construed, the pleadings failed to state a cause of action for wrongful termination against appellee in either her individual or official capacity. **[public policy]** The public-policy exception applies when the reason for the discharge is so repugnant to the general good as to deserve the label ‘against public policy. This limited public-policy exception does not, however, protect merely private or proprietary interests. Here, the complaint alleged that the Clinic is a corporation providing health care services and that it receives state and federal funds for operational purposes. However, appellee did not identify what state or federal statute or regulation was at issue or was violated, nor did she allege that she was terminated for refusing to violate any state or federal statute or regulation; thus, she could not demonstrate that her termination on this purported ground violates an established public policy. Thus, the appellate court held that the circuit court erred when it denied appellant’s motion to set aside the default judgment. The complaint, when liberally construed and deemed true, failed to state a claim for wrongful discharge against appellant in either her individual or official capacity. (Wilson, D.; 39CV-22-100; 1-21-26; Thyer, C.)

Taylor v. Indep. Cty., 2026 Ark. App. 54 **[county judge; declaratory judgment]** The circuit court found that the county judge acted within his authority under Amendment 55 to the Arkansas Constitution when he refused to hire a deputy district court clerk. Here, the budget committee of the quorum court approved a budget that included five district court clerks—one chief clerk and four deputy clerks. The county judge did not veto the budget, which was enacted as a county ordinance. Subsequently, one of the four deputy clerks retired. When the district court judge tried to hire a deputy clerk to replace her, the county judge instructed the county clerk not to sign anyone up for the vacant deputy clerk position. The quorum court has the power to fix the number and compensation of the deputies and county employees under Amendment 55, section four; however, the county judge has the power to authorize and approve disbursement of appropriated county funds, and the power to hire county employees, except those persons employed by other elected officials of the county. Therefore, even though the quorum court is constitutionally authorized to fix the number and compensation of county employees, the county judge has the constitutional authority to disburse appropriated funds and hire county employees. There is nothing in the constitution requiring the county judge to hire for a position fixed by the quorum court. Rather, the hiring and disbursement authority is given to the county judge. Thus, the circuit court did not err in finding that the county judge acted within the authority vested in him under the law. (Meyer, H.; 32CV-21-61; 1-28-26; Wood, W.)

CRIMINAL

Yarberry v. State, 2026 Ark. App. 40 [**waiver of right to counsel**] Appellant was convicted by a jury of three convictions of unlawfully possessing a firearm. Appellant represented himself through trial, and on appeal, he argued that the record did not establish that he made a knowing and intelligent waiver of his right to counsel. A criminal defendant has the Sixth Amendment right to counsel at all crucial stages of prosecution, but may waive this right if the waiver is made knowingly and intelligently. Confirming the waiver is knowing and intelligent requires “a specific warning of the dangers and disadvantages of self-representation” or a record showing the defendant knew them from other sources. Here, the circuit court erred by not advising appellant why he should retain counsel, meaning making him aware of the advantages of having a lawyer and the dangers and disadvantages of going to trial without one. It is not enough to warn the defendant that he will have to follow the rules of procedure and evidence. The court must also explain the consequences of failing to comply with those rules, such as the inability to secure the admission or exclusion of evidence, or the failure to preserve arguments for appeal. Additionally, the appellate court included questions in Appendix A that are not required (or sufficient) to ground a knowing and intelligent waiver of the right to counsel, but offered to the circuit bench’s consideration of important points on which to question a want-to-be pro se criminal defendant until something authoritative comes along. (Ohm, R.; 26CR-24-709; 1-21;26; Harrison, B.)

Keeton v. State, 2026 Ark. App. 53 [**sufficiency of the evidence**] Appellant was guilty by a jury of one count of obstructing governmental operations. On appeal, the appellant argued that the evidence was insufficient to support her conviction. Substantial evidence is evidence of sufficient force and character that it will, with reasonable certainty, compel a conclusion without resorting to speculation or conjecture. Evidence is sufficient to support a verdict if it is forceful enough to compel a conclusion one way or the other. Ark. Code Ann. § 5-54-102(a)(1) states that a person commits the offense of obstructing governmental operations if the person knowingly obstructs, impairs, or hinders the performance of any governmental function. Governmental function means any activity that a public servant is legally authorized to undertake on behalf of any governmental unit he or she serves. Arkansas case law appears to require actual interference with law enforcement officers or government activities to sustain a conviction for obstruction of governmental operations. Here, the governmental function that the State alleged was obstructed was the service of the arrest warrant on appellant’s daughter. The State played a recording of a phone call from the county jail during the trial, where the appellant’s daughter’s boyfriend was being held. During the call, the appellant said that police were banging on her daughter’s door and her daughter was sending her Ring pictures of them. The appellant stated, “I just told her don’t answer the door. They don’t have a no-knock.” The appellant later added, “I don’t really have any other choice. I don’t tend to break the law.” Appellant did not take any action to obstruct, impair, or hinder the officers from approaching the house and attempting to make contact with her

daughter to serve that warrant. One of the officers who attempted to execute the arrest warrant expressly testified that he had no interaction with the appellant and had no firsthand knowledge of anything that she did to interfere with his efforts that day. The appellant spoke to her daughter, not the officer, and told her that she did not have to open the door if the officers did not have a search warrant. Merely correctly advising her daughter of her constitutional rights did not constitute the knowing obstruction, impairment, or hindrance of a governmental function required by section 5-54-102. Providing such advice did not physically interfere with police activities or prevent officers from performing lawful duties. Therefore, the evidence was insufficient to sustain a conviction for obstruction of governmental operations. (Andrews, J.; 20CR-23-123; 1-28-26; Thyer, C.)

Parris v. State, 2026 Ark. 5 [**sufficiency of the evidence; hearsay**] On appeal, appellant argued that the State presented insufficient evidence to support his conviction of theft by receiving the firearm. One commits theft by receiving if one receives, retains, or disposes of stolen property, either knowing that the property was stolen, or having a good reason to believe the property was stolen. Arkansas Rule of Evidence 801 defines hearsay as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Here, the appellant was convicted of a Class D felony because the allegedly stolen item was a firearm worth less than \$2,500. The only evidence presented that the firearm was “stolen property” was an officer’s testimony that he looked up the model and serial number of the handgun in the ACIC database and found it had been reported stolen. The officer’s testimony about the ACIC information was for the truth of the matter asserted, and as it was not his original statement, it was quintessential hearsay. At trial and on appeal, the State argued that it was a business record, which is a hearsay exception. A record of a regularly conducted business activity, a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge when regularly kept and recorded as part of that business activity, is an exception to the hearsay rule. However, the State did not introduce a physical record from ACIC, where the appellate court could consider whether law enforcement could introduce it as a business record. Even considering it in the light most favorable to the State, testimony that an officer read a report stating a particular weapon was reported stolen was insufficient proof that it was stolen property, especially where the officer was unable to answer basic questions about who owned the weapon and whom it was allegedly stolen from. From this bare testimony, a reasonable jury would not be able to conclude that the weapon was stolen without resorting to speculation or conjecture. Thus, the State did not introduce substantial evidence to support appellant’s theft-by-receiving conviction. (Galloway, D.; 01DCR-22-133; 1-29-26; Wood, R.)

Hicks v. State, 2026 Ark. App. 128 [**hearsay evidence**] Appellant was convicted by a jury of the second-degree sexual assault of an underage girl. On appeal, appellant argued that the circuit court

erred in admitting hearsay evidence under the pedophile exception. The mere fact that the evidence falls within the pedophile exception and, thus, is deemed relevant will not render the evidence automatically admissible because the pedophile exception does not override the hearsay rules established under the Arkansas Rules of Evidence. Instead, the rules for relevancy and hearsay operate independently of each other, and both must be satisfied for evidence to be admissible. Even if evidence is relevant, it may still be excluded if it constitutes inadmissible hearsay. Here, the circuit court allowed an investigator to testify on the facts surrounding appellant's prior convictions. The appellant previously pled no contest to two counts of second-degree sexual assault involving two minors. The issue here is that the State did not attempt to introduce evidence of the appellant's prior bad acts directly through the testimony of the prior victims or from eyewitnesses to the acts. Instead, the State sought to introduce that evidence through the testimony of an investigator. The investigator's knowledge of those prior bad acts was acquired through her investigation of the claims of the prior victims, and her knowledge could only have been obtained from statements made by them to her. The investigator was not herself a victim, nor was she in a position to witness any of the prior acts at the time they occurred. Arkansas Rule of Evidence 801(c) defines hearsay as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. As such, the investigator's testimony fell within the definition of hearsay. It is critical that the appellant's statements were made as part of a no-contest plea, not a guilty plea. A plea of *nolo contendere* is one by which the defendant does not contest or admit guilt. The appellant did not admit the truthfulness of the allegations; rather, he admitted only that, if the victims' allegations were presented to a jury, a jury could find him guilty. As such, there is no circumstantial guarantee of trustworthiness as required under the residual hearsay exception. Additionally, the appellate court found that the admission of the evidence was not harmless error. Thus, the circuit court erred in admitting the hearsay evidence. (Gibson, R.; 02CR-23-211; 2-25-26; Thyer, C.)

State v. Coleman, 2026 Ark. App. 137 [sealing] The circuit court entered an order sealing appellee's conviction for driving while intoxicated-first offense. On appeal, the State argued that the circuit court misinterpreted the applicable statutes and erroneously applied a shorter "lookback" period in sealing the appellee's conviction. The Comprehensive Criminal Record Sealing Act of 2013 ("CCRSA"), codified at Ark. Code Ann. § 16-90-1401 et seq., established a uniform procedure for sealing a person's record and detailed the circumstances in which individuals were eligible to have their records sealed. Arkansas Code Annotated § 16-90-1405 of the CCRSA establishes eligibility to file a petition to seal a misdemeanor offense or violation. On July 6, 2018, the appellee was arrested and subsequently charged with driving while intoxicated ("DWI") in violation of Ark. Code Ann. § 5-65-103. On October 31, 2019, she entered a negotiated guilty plea to the offense. In a sentencing order entered on November 6, Coleman was sentenced to seven days in jail with five days suspended. On September 20, 2023, the appellee filed a pro se petition seeking to seal her misdemeanor DWI conviction. On July 23, 2024, the circuit court held

a hearing on the appellee's petition to seal her DWI conviction. The circuit court stated that a five-year lookback period was in effect in July 2018 when the appellee committed the DWI offense; hence, she was entitled to have the conviction sealed. The circuit court explained that the law was later changed in 2021 to a longer ten-year lookback period for a DWI-first offense. In the absence of a provision stating that an act will apply retroactively, the act will apply prospectively only. Thus, for sealing eligibility of the appellee's misdemeanor offense, the appellate court looked to Ark. Code Ann. § 16-90-1405(a) of the CCRSA, which was in effect when the appellee committed the DWI offense. It stated at the time that a person is eligible to file a petition to seal the record of his or her misdemeanor conviction sixty days after meeting the requirements outlined herein. There is no dispute that appellee met the requirements, i.e., the petition was filed more than sixty days following the completion of her sentence and payment of all fees, costs, and restitution ordered by the court. Therefore, the appellee was eligible to file the petition and request the sealing of her misdemeanor conviction. Accordingly, the circuit court did not err in its order granting appellee's petition to seal the record of her misdemeanor DWI conviction. However, the appellate court held that the appellee was convicted of a misdemeanor DWI; thus, the five-year waiting period did not apply to her; instead, her petition to seal was subject to the sixty-day waiting period stated for misdemeanors. (Whatley, K.; 60CR-18-2759; 2-25-26; Brown, W.)

PROBATE

Bailey v. Kirkendoll, 2026 Ark. App. 90 [**adoption**] The circuit court denied appellant's petition for single-parent adoption and awarded joint custody and established visitation with appellee. On appeal, appellant argued the circuit court erred in denying the petition for adoption. A person who wishes to adopt a child without the consent of the parent must prove consent is unnecessary by clear and convincing evidence. Arkansas Code Annotated § 9-9-206 sets forth the persons whose consent is required before a petition of adoption may be granted. Arkansas Code Annotated § 9-9-207 identifies when consent to an adoption may be excused. Consent is not required of a parent who, for a period of at least one year, has failed significantly and without justifiable cause either to communicate or provide care or support for the child as required by law or judicial decree. These statutes operate together: Ark. Code Ann. § 9-9-206(a)(2) determines whether an individual is a person whose consent is required, and Ark. Code Ann. § 9-9-207 provides exceptions under which otherwise required consent may be excused. Before a circuit court may decide whether a parent's consent is excused under Ark. Code Ann. § 9-9-207, it must first determine whether that parent falls within a category of persons whose consent is required under Ark. Code Ann. § 9-9-206. Here, the record did not reflect that the circuit court applied Ark. Code Ann. § 9-9-206(a)(2) or made any findings as to whether the appellee was a father whose consent is required under the statute. Therefore, the circuit court must determine if appellee's consent was required under Ark. Code Ann. § 9-9-206(a)(2). (Alexander, T.; 16JDR-23-369; 2-11-26; Barrett, S.)

Jones v. Parnell, 2026 Ark. App. 117 [**adoption; consent**] The circuit court granted appellees' petition for the child's stepfather to adopt the child, over the objection of appellant, the child's biological father. On appeal, the appellant argued that the circuit court erred when it determined that the appellant's consent was not required, and it was in the child's best interest to be adopted by the appellee stepfather. Ordinarily, the consent of a natural parent is required in an adoption case. However, this consent is not required if the parent, for a period of at least one year, has failed significantly without justifiable cause to communicate with the child or to provide for the care and support of the child as required by law or judicial decree. A significant failure is one that is meaningful or important and is unjustifiable if it is voluntary and intentional, i.e., arbitrary and without adequate excuse. A person who wishes to adopt a child must prove by clear and convincing evidence that consent is unnecessary. Clear and convincing evidence is defined as that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. Here, the only issue before the court was whether the appellant had failed to communicate with the child for a one-year period without justifiable cause. The evidence presented at trial shows that the appellant never went longer than four months without attempting to communicate with the child. Text messages show that the appellant requested visitation with the child no less than sixteen times and was rebuffed each time. The question is not whether a parent could have done more; rather, it is whether the parent's efforts to establish a significant relationship, despite the other parent thwarting his or her efforts, were sufficient such that consent was not required. The fact that appellant could have hired an attorney and tried to have appellee held in contempt for withholding visitation did not invalidate the fact that appellant repeatedly requested visitation with the child and was constantly rebuffed. Moreover, while it is indisputable that appellant should have completed his hair-follicle drug test and parenting class far earlier than he did, he was still entitled to supervised visitation. His failure to do these things did not justify the appellee's alienation of the child. The circuit court erred when it determined that appellant's consent was not required because appellant had a justifiable excuse for not having communication with the child for any one-year period before the resolution of the case. (Smith, T.; 04PR-24-297; 2-25-26; Abramson, R.)

DOMESTIC RELATIONS

Pockrus v. Pockrus, 2026 Ark. App. 31 [**statute of limitations**] The circuit court granted an order directing that appellant equally divide his retirement accounts with his ex-wife, appellee, as they agreed to do in their 2013 divorce. On appeal, appellant argued that the statute of limitations barred appellee's claim. The statute of limitations for a contract runs from the point at which the cause of action accrues rather than from the date of the agreement. For breach of contract, the true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. A cause of action for breach of

contract accrues the moment the right to commence an action comes into existence and occurs when one party has, by words or conduct, indicated to the other that the agreement is being repudiated or breached. In ordinary contract actions, the statute of limitations begins to run upon the occurrence of the last element essential to the cause of action. In *Est. of Daniel v. Est. of Daniel*, 2024 Ark. App. 120, the appellate court ruled that for an oral contract with no set time limits, the statute of limitations began only when a demand to perform was made and refused decades later. Although a condition in the agreement occurred in 1982, enforcement wasn't sought until 2020, so the cause of action accrued then. Here, the parties' September 2013 divorce decree included a mediation agreement that resolved property division, debt division, and alimony. A qualified domestic relations order (QDRO) was entered by the court in May 2014, stating that the appellee was entitled to 50 percent of the balance, as of December 12, 2012, of two retirement accounts the appellant held with Edward Jones. In November 2021, the appellee filed a motion for a renewed QDRO. Appellee alleged that she had been unaware of the entry of the 2014 QDRO and that no one had provided it to Edward Jones; thus, the accounts were never divided. Attempts to resolve the issue outside of court had been unsuccessful. The agreement did not contain any time limits and did not specify the parties' obligations regarding obtaining the QDRO or delivering it. The funds remained in appellant's accounts, and appellee was not damaged until November 2021, when she sought to have her funds transferred, and appellant refused. It was at this point that one party indicated to the other that the agreement was being repudiated or breached. Accordingly, because the breach did not occur until 2021, the circuit court did not err in finding that this action was not barred by the statute of limitations. (Scott, J.: 04DR-12-2118; 1-21-26; Klappenbach, N.)

Henderson v. Henderson, 2026 Ark. App. 37 [**modification of custody**] The circuit court entered an order changing custody of the parties' children to the appellee. On appeal, the appellant argued that the circuit court erred by awarding custody to the appellee after expressly finding that no material change of circumstances had occurred since the original custody determination. Change of custody is a two-step process. First, the circuit court must determine whether a material change in circumstances has occurred since the last custody order. Second, if that threshold requirement is met, the court must then consider whether a change of custody is in the child's best interest. Here, the circuit court found, both from the bench and in its written order, that no material change in circumstances had occurred since the original custody determination. The circuit court then changed custody on the basis of its view of the children's best interest. This was erroneous because when a circuit court determines that no material change in circumstances has occurred, it may not reach the best-interest prong or modify custody. Because the circuit court expressly found that no material change in circumstances had occurred since the original custody determination, it was foreclosed from considering the children's best interest and deprived of authority to modify custody. The circuit court's decision to move forward with changing custody to the appellee was erroneous. (McSpadden, D.; 25DR-23-16; 1-21-26; Gladwin, R.)

Fondren v. Fondren, 2026 Ark. App. 64 **[custody; visitation]** The circuit court entered a divorce decree awarding the appellee physical and legal custody of the parties' child and awarding the appellant supervised visitation. On appeal, appellant argued that the circuit court erred. On cross-appeal, appellee argued that the circuit court erred in ordering that appellant's visitation would become unsupervised upon his providing his counselor with his psychological evaluation and completing twelve one-hour counseling sessions. Additionally, on cross-appeal, appellee argued the circuit court erred in ordering that the child shall remain in the Dover School District. **[custody]** There is a rebuttable presumption that joint custody is in the best interest of the child when deciding original child custody in a divorce action. That presumption, however, can be overcome if the court finds by clear and convincing evidence that joint custody is not in the best interest of the child. The preference for joint custody does not override the ultimate guiding principle, which is to set custody that comports with the best interest of the child. In the present case, the circuit court found clear and convincing evidence that joint custody was not in the child's best interest. The court specifically found that appellant had depression and anxiety as well as anger and substance-abuse issues, all of which needed to be addressed in counseling. The circuit court's determination that joint custody is not in the child's best interest was supported by the evidence, and the appellate court was not left with the definite and firm conviction that a mistake had been made. **[automatic conversion of visitation]** Arkansas uses a present-based analysis when analyzing custody issues, and trial courts must examine the changes and best interest of the children presented as evidence to the court at the time of the final hearing, not changes that may occur weeks, months, or years down the road. In the present case, the circuit court found that the appellant suffered from depression and anxiety as well as anger and substance-abuse issues, all of which needed to be addressed in counseling. The circuit court ordered that appellant's visitation with the child would automatically convert from supervised to unsupervised upon the completion of twelve counseling sessions and then increase incrementally over the course of a few years until appellant shared equal parenting time with appellee. This action effectively removed the circuit court's ability to determine whether the change from supervised to unsupervised visitation and increasing parenting time would be in the child's best interest at the time the change occurs. Such a springing provision does not provide the opportunity for the court to make a present-based analysis of the child's best interest. This was not in compliance with Arkansas's present-based-analysis approach. The circuit court erred in including a springing provision in its child-custody order and in its determination that twelve one-hour sessions would be sufficient to enable appellant to have unsupervised visitation and eventually equal parenting time without further evaluation of the child's best interest. **[order to stay in school district]** Arkansas recognizes a presumption in favor of relocation for custodial parents with primary custody. It is a matter within the custodial parent's right to send or to continue to send their child to any particular school. Here, because it is the custodial parent's right to choose the school for the minor child, and the appellate court has recognized a presumption in favor of the ability to relocate, the circuit court erred in issuing a blanket order that the child would remain in the Dover School District. (McCain, G.; 58DR-22-71; 2-4-26; Tucker, C.)

Blackwell v. Blackwell, 2026 Ark. App. 86 **[custody; visitation; contempt]** The circuit court entered an order modifying provisions of the parties' divorce decree. On appeal, appellant argued that the circuit court lacked authority to modify child custody sua sponte, abused its discretion in modifying custody to limit medical care of the children to doctors within a forty-mile radius, the conditional visitation orders are equally void or nonfinal, and the contempt sentence should be set aside because it was indefinitely suspended. **[modification of custody; springing contingency]** Although circuit courts retain continuing jurisdiction over child-custody matters, a modification requires a properly pled request and proof of a material change in circumstances. Here, the appellee's custody motion was expressly struck, and the appellant's pending petition sought only a modification of visitation. Under these circumstances, the appellate court held that the custody modification was not properly before the court. Even if custody had been properly at issue, the circuit court erred by imposing a springing or contingent custody provision. The order provided that physical custody will automatically convert to joint custody if the appellee relocates within a specified distance of the children's school. Because the circuit court's custody ruling depended on future, unproven contingencies, it was unenforceable. **[medical-provider distance restriction]** A geographic limitation on medical providers is not erroneous per se because circuit courts have discretion to enter orders designed to reduce parental conflict and promote cooperation, even absent a material change in circumstances. Here, the order contained a provision requiring that the children's doctors and dentists be located within forty miles of their residence and prohibiting appointments during the appellee's visitation. The record reflected that one of the children received regular specialized care at Arkansas Children's Hospital, which lay outside the imposed forty-mile radius. The blanket restriction, while not inherently unlawful, creates a significant logistical problem under these facts and may interfere with necessary and ongoing medical treatment. The appellate court remanded for the circuit court to reconsider and, if necessary, tailor the medical-care provisions to accommodate established specialty care to the children's best interest. **[conditional visitation findings]** Where the parties maintain joint custody and the moving party is not seeking an actual change of custody, the material-change-in-circumstances analysis is not triggered, and the court may adjust or reallocate parenting time to enforce the original arrangement. Any modification of an original determination requires changed circumstances—whether it is a modification of custody or of visitation and whether it is a modification toward or away from a joint-custody award. Here, in addition to the contingent change of custody in this case, visitation was also set contingent on the appellee's various living situations. Specifically, visitation was established "if [appellee] moves back to this area within 35 miles of the Rural Special school" and was contingent on various possible eventualities, including different arrangements "if [appellee] is able to return to the Stone County area"; and "[a]s long as [appellee] resides more than three (3) hours away from the Rural Special School." The circuit court must reinstate the visitation provisions set forth in the decree, absent an analysis regarding definiteness and reflection of a material change of circumstances sufficient to modify visitation. **[contempt]** An indefinite

suspension of a contempt sentence constitutes a complete remission of the contempt. When a sentence is indefinitely suspended, there is no remaining punishment to enforce, rendering the issue moot. The court of appeals modified the order to set aside the contempt sentence. (McSpadden, D.; 69DR-22-2; 2-11-26; Gladwin, R.)

Peters v. Peters, 2026 Ark. App. 97 [**modification of custody**] The circuit court granted appellee's motion for modification of visitation with the parties' daughter. On appeal, appellant argued that the circuit court erred in modifying visitation because there was no material change in circumstances. The party seeking a change in visitation has the burden to demonstrate a material change in circumstances that warrants such a change. The primary consideration regarding visitation is the best interest of the child. A parent cannot use the circumstances he created as grounds to modify visitation. Here, in the appellee's petition to modify custody, the appellee alleged that the fact that the child had gotten older was a material change in circumstances. The mere fact that a child has gotten older does not constitute a material change in circumstances sufficient to warrant a modification of visitation. The appellee also alleged that appellant had agreed to extended visitation and had since stopped due to jealousy of the appellee's romantic relationship. Appellee testified on at least two occasions that this was not true and even stated that extended visitation was stopped because the appellant did not want the child around appellee's mother and grandmother, and that appellant had problems with appellee's parenting skills. The divorce decree gave the appellee visitation with the child one night, every other weekend. Appellee agreed to this schedule. The order also stated that visitation could be extended if the parties wanted it to. However, there was nothing stating that once additional visitation was granted, it had to remain, even if against the desires of one party. Finally, appellee contended that a material change had occurred because appellant refused to let the child go to appellee's mother's house for visitation as contemplated by the divorce decree. The evidence showed that the appellee exercised visitation wherever he lived and did not follow the terms of the decree as it related to where visitation should take place. Evidence also showed that the appellant was concerned about the child's safety around appellee's mother, after a video surfaced with appellee's mother discussing UFOs and aliens with the child. Additionally, the appellee's mother tested positive for methamphetamine and admitted she has an opiate addiction and must follow a treatment plan and take a maintenance drug. The appellate court found that there was no material change in circumstances in this case. Thus, the circuit court erred by modifying visitation. (Duncan, X.; 04DR-16-1873; 2-11-26; Brown, W.)

JUVENILE

Brookins v. Ark. Dep't of Human Services, 2026 Ark. App. 41 [**TPR**] Upon termination of her parental rights, appellant challenged the grounds for the termination and the best interest finding as it relates to both potential harm and adoptability. [**TPR; failure to remedy**] To prove the failure

to remedy ground appellee must have shown (1) the child was adjudicated dependent-neglected; (2) the child continued to be out of the custody of the parent for twelve months; and (3) the parent failed to remedy the cause of removal despite meaningful efforts by appellee to rehabilitate the parent and correct the issue that caused the removal. Appellant did not dispute the fact that the children were adjudicated dependent-neglected and continued out of her custody for twelve months. Rather, she argued appellee failed to make meaningful efforts or provide timely and appropriate services. She also contended that the domestic-violence and drug-related issues that existed at removal had been remedied. Here, appellee provided Appellant with parenting and individual counseling, a referral to 100 Families, a drug-and-alcohol assessment, an outpatient referral, drug screens, transportation, medical services, and educational services. Although the Juvenile code provided timelines for hearings, it did not require appellee to offer or complete services within a specific time frame. In July 2023—nearly two years before the termination hearing—the circuit court found that appellee had made reasonable efforts to provide appellant with reunification services. Appellant also testified at the termination hearing that more than one service had been provided to her. Appellant further asserted there was no evidence of ongoing domestic-violence issues because she ceased contact with the ex-boyfriend in July 2023 after she started to receive therapy services from appellee; however, the circuit court did not find her testimony credible and determined that the domestic-violence issue had not been remedied. Additionally, appellant admitted to her continued use of marijuana, without a prescription, despite the circuit court’s order prohibiting illegal drug use. A person’s failure to take responsibility for his or her actions will support a finding that the behavior that caused the removal had not been remedied. Accordingly, appellant failed to remedy the issues that led to the children’s removal. **[TPR; best interest]** In her second point on appeal, appellant challenged the circuit court’s best-interest finding. To determine whether it was in the child’s best interest to terminate a parent’s rights, the court must have considered (1) the child’s likelihood of adoption and (2) the potential harm to the child if returned to a parent’s care, considering specifically the health and safety of the child. **[TPR; best interest; potential harm]** Appellant argued that the circuit court’s potential-harm finding was erroneous because there was no evidence of an actual risk. However, the circuit court was not required to find actual harm or identify a potential harm. Evidence of potential harm must be viewed in a forward-looking manner and considered in broad terms. Appellant’s continued use of illegal drugs posed a risk of harm to the children if returned to her. Additionally, appellant’s past behaviors, communicating with the ex-boyfriend despite physical abuse toward her and the children, may be viewed as predictors of potential harm. Therefore, it was not clearly erroneous for the circuit court to conclude that potential harm could exist if the children were returned to appellant’s care. **[TPR; best interest; adoptability]** Finally, appellant challenged the circuit court’s adoptability finding, arguing termination was not in the children’s best interest because appellee failed to consider placement with relatives and did not use diligence to identify and provide notice to potential relatives. However, because appellant failed to make this argument to the lower court, she was prevented from arguing it on appeal. It is well settled that the appellate court will not address arguments made for the first time on appeal. Even if preserved, the argument would still fail. The circuit court found that appellee had exercised due diligence in identifying and vetting all biological relatives, and the only approved relative declined placement because she lacked a relationship with the children. No other relative was deemed fit for placement and willing

to move forward. The circuit court's determination that it was in the children's best interest to terminate appellant's parental rights was not clearly erroneous. (Johnson, S.; CV-25-476; 1-21-26; Potter Barrett, S.)

Raymond v. Ark. Dep't of Human Services, 2026 Ark. App. 44 [TPR; best interest; sibling relationship] Appellant appealed the termination of his parental rights. His sole point on appeal was that insufficient evidence supported the circuit court's finding that termination was in the children's best interest. Appellant recognized the requirement for the circuit court to consider potential harm and adoptability, and he did not challenge the court's consideration of either. Rather, he argued that the circuit court must also consider the impact termination had on sibling relationships in its best-interest analysis, asserting that the circuit court did not do so. Appellant pointed to the testimony of the adoption specialist who stated that there were only two potential matches for the entire sibling group. He argued that appellee was unable to place the children together throughout the case and that it was unlikely appellee would find an appropriate adoptive home for all the children. He also argued that there was no testimony as to the special needs of the children and whether it was in their best interest to be adopted together or separately. He asserted that reversal was warranted because the circuit court failed to consider how its termination decision would affect the significant bond between the children. However, appellant failed to present this argument to the circuit court; therefore, it was not preserved for review. (Byrd Manning, T.; CV-25-511; 1-21-26; Wood, W.)