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CIVIL

Sullivan v. Richardson, 2026 Ark. App. 145 [**summary judgment; qualified immunity**] The circuit court entered an order denying in part appellants' motion for summary judgment on appellee's federal constitutional claims and denying appellant's assertion of qualified immunity. Appellants were an officer, in his individual and official capacities; the city; and the chief of police, in his official capacity. On appeal, appellants argued that the circuit court erred in concluding that material issues of fact remained regarding qualified immunity. They further argued that, once qualified immunity was established, the remaining claims against them failed as a matter of law. Qualified immunity shields a government official from suit under 42 U.S.C. § 1983 if the official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The analysis asks (1) whether the facts show a violation of a constitutional right and (2) whether the right was clearly established at the time of the alleged misconduct. A court may resolve the case on either prong. Even if a constitutional violation could be inferred, an officer is entitled to qualified immunity if the law did not clearly establish that the conduct was unlawful or if the officer had arguable probable cause for the arrest. Here, the undisputed record—particularly the appellant officer's dashcam audio—demonstrates that appellee exited his vehicle and approached the appellant officer during an active investigatory stop

of a potentially armed aggravated-robbery suspect, refused repeated directives to leave, and diverted the appellant officer's attention from the suspect. The audio evidence contradicts the appellee's assertion that he remained a distant observer and establishes that he entered the appellant officer's immediate vicinity and continued the confrontation after being warned he was interfering. Viewing the evidence before the appellate court in the light most favorable to the appellee, no genuine issue of material fact existed. The appellant officer had, at a minimum, arguable probable cause to arrest the appellee for obstructing governmental operations in violation of Ark. Code Ann. § 5-54-102. Because no underlying constitutional violation could be established, the remaining official-capacity and municipal liability claims necessarily fail. Thus, the circuit court erred in denying the appellants' motion for summary judgment. (Welch, M.; 60CV-21-3504; 3-4-26; Gladwin, R.)

Brinkley v. Beene, 2026 Ark. App. 165 [**summary judgment; governmental immunity**] The circuit court denied appellant's motion for summary judgment, in which it claimed governmental immunity. On appeal, appellant, the city, argued that it was entitled to immunity on claims for trespass and inverse condemnation pursuant to Ark. Code Ann. § 21-9-301. The Supreme Court has consistently held that Ark. Code Ann. § 21-9-301 provides immunity from civil liability for negligent acts but not for intentional acts. [**inverse condemnation**] Inverse condemnation is a cause of action against a governmental defendant to recover the value of property that has been taken in fact by a governmental entity, although not through eminent-domain procedures. Fault has nothing to do with eminent domain, and it is not bare trespass or negligence that results in inverse condemnation, but something that amounts to a de facto or common law taking. When a municipality acts in a manner that substantially diminishes the value of a landowner's land, and its actions are shown to be intentional, it cannot escape its constitutional obligation to compensate for a taking of property on the basis of its immunity from tort action. Accordingly, the circuit court did not err in its denial of tort immunity on this claim. [**trespass**] Although the tort of trespass may be categorized as an "intentional" tort, an analysis of the application of qualified immunity does not stop with that determination. Because an actor's conduct satisfies the type of intent necessary to establish the tort of trespass, it does not follow that the same conduct is necessarily an intentional act that bars application of the doctrine of qualified immunity. It is a deliberate, knowing trespass that bars application of the doctrine of qualified immunity. Here, the appellants argued that any trespass was not intentional because it was based on a reasonable belief that they were legally on the property. Because the appellees failed to assert a claim of deliberate, knowing trespass, and any trespass was based on negligent conduct, the appellant was entitled to immunity on this claim. (Batson, B.; 10CV-23-115; 3-11-26; Klappenbach, N.)

Talley v. Johnson, 2026 Ark. App. 177 [**immunity**] This case involves a traffic accident in which a patrol car driven by appellee, a police officer with a city police department, collided with a

vehicle carrying the appellees. The appellees filed a negligence lawsuit against the officer and the city, later amending their complaint to include claims of felony battery and felony aggravated assault against the officer. The city and officer admitted liability for the negligence claim and sought to interplead \$50,000, the statutory liability limit, into the court's registry. They also filed a motion to dismiss, claiming tort immunity under Ark. Code Ann. § 21-9-301 and 21-9-303(b). The circuit court accepted the interpleader but denied the motion to dismiss, stating that the appellees' allegations could suggest intentional conduct, which would not be covered by immunity. On appeal, the officer argued that the circuit court erred in its order denying his motion to dismiss because he was immune from any liability beyond the \$50,000 statutory maximum based on the application of Ark. Code Ann. § 21-9-301 and Ark. Code Ann. § 21-9-303(b). Arkansas Code Annotated § 21-9-301 provides that all municipal corporations and governing bodies “shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.” This statute provides city employees with immunity from civil liability for negligent acts but not for intentional acts. Ark. Code Ann. § 21-9-303(b), which provides, “The combined maximum liability of local government employees, volunteers, and the local government employer in any action involving the use of a motor vehicle within the scope of their employment shall be the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq. [\$50,000].” Here, the appellate court found that the appellees' allegations did not demonstrate intentional conduct but rather reckless conduct, which is covered by tort immunity. The appellate court noted that the appellees' claims of second-degree battery and aggravated assault were based on reckless, not intentional, conduct. Additionally, the court found that the officer was operating his patrol car within the scope of his employment at the time of the accident. Because the officer was operating the patrol car within the scope of his employment with the city police department when the accident occurred, and the appellees did not allege that the accident was the result of an intentional act, the appellate court held that the officer was entitled to tort immunity, and the appellees were subject to the \$50,000 liability limit interpleaded by the city pursuant to Ark. Code Ann. § 21-9-301 and -303. Thus, the circuit court erred in denying the officer's motion to dismiss. (Story, B.; 16JCV-19-426; 3-11-26; Hixson, K.)

Soto-Abarca v. Trexis Ins. Co., 2026 Ark. App. 192 [**insurance; public policy**] The issue on appeal was whether a provision in an automobile insurance policy excluding coverage for unlicensed drivers is void as against public policy. The circuit court granted the motion for summary judgment filed by appellee, finding that the exclusion did not violate public policy. An insurer may contract with its insured upon whatever terms the parties may agree, which are not contrary to statute or public policy. Exclusionary endorsements must adhere to the general requirements that the insurance terms be expressed in clear and unambiguous language. When the terms of an insurance policy are clear and unambiguous, the policy language controls, and absent statutory strictures to the contrary, exclusionary clauses are generally enforced according to their terms. Unless the legislature has specifically prohibited exclusions, courts will not find such restrictions void as

against public policy. The determination of public policy lies almost exclusively with the legislature, and the courts will not interfere with that determination in the absence of obvious errors. The appellate court found no Arkansas statute that expressly prohibits exclusions such as the unlicensed-driver clause at issue here. Therefore, the circuit court did not err in ruling that the unlicensed-driver exclusion in appellee's policy does not violate Arkansas's public policy. (Bryan, B.; 72CV-23-867; 3-18-26; Thyer, C.)

CRIMINAL

Wimberly v. State, 2026 Ark. App. 190 **[evidence]** Appellant was convicted of two counts of manslaughter stemming from an automobile accident. On appeal, appellant argued that the circuit court abused its discretion by permitting the State to introduce evidence that appellant had a pending traffic warrant, permitting the State to introduce a witness's 911 call, and allowing the State to display a photo of each victim during the entirety of the trial. **[res gestae]** The general rule is that evidence of other crimes by the accused, not charged in the indictment or information and not a part of the same transaction, is not admissible at the trial of the accused; however, evidence of other crimes is admissible under the res gestae exception to the general rule to establish the facts and circumstances surrounding the alleged commission of the offense. Under the res gestae exception, the State is entitled to introduce evidence showing all circumstances which explain the charged act, show a motive for acting, or illustrate the accused's state of mind if other criminal offenses are brought to light. Specifically, all of the circumstances connected with a particular crime may be shown to put the jury in possession of the entire transaction. Where separate incidents comprise one continuing criminal episode or an overall criminal transaction, or are intermingled with the crime actually charged, the evidence is admissible. Res gestae testimony and evidence is presumptively admissible. Here, appellant argued that the court abused its discretion by admitting evidence of his misdemeanor traffic warrant and suspended license. The appellate court held that this evidence was admissible under the res gestae exception, providing context to the events leading to the wreck. The appellate court also found any error in admitting this evidence to be harmless due to overwhelming evidence of reckless driving. **[hearsay]** Appellant also objected to the admission of a 911 call made by a witness, arguing it was hearsay. The appellate court found the call admissible under the res gestae doctrine, as it was cumulative of the witness's trial testimony and not prejudicial. **[photographs]** Arkansas Code Annotated § 16-90-1116 provides for the displaying of a photograph of the deceased victim as he or she appeared before the crime. The statute provides that the State may, during its case-in-chief, have admitted and display a photograph of the deceased person as he or she appeared in life before the crime occurred. The picture of the victim must be a reasonable, accurate, and appropriate depiction of the person. While the court may limit the size of the photograph, limit the length of time it is displayed, and give a limiting instruction, it is not required to do so under the statute. The admission of photographs is a matter left to the sound discretion of the circuit court. Here, appellant challenged

the display of large photographs of the victims during the trial, arguing it was prejudicial. The appellate court found no error on the record before them, as the display was permitted by statute, and appellant had agreed to their use during opening and closing statements. (Shirron, S.; 27CR-23-70; 3-18-26; Tucker, C.)

Gamble v. State, 2026 Ark. 44 [**custodial statement; motion to strike the venire**] A jury found appellant guilty of aggravated residential burglary and capital murder by premeditation and deliberation. On appeal, appellant argued that the circuit court erred by (1) denying his motion to suppress his custodial statement as the product of a pretextual arrest; and (2) denying his motion to strike the venire panel after it heard a venire member say that he was guilty. [**custodial statement**] Appellant first argued that his custodial statement should be suppressed as it was the product of a pretextual arrest, citing the precedent set in *State v. Sullivan*, 348 Ark. 647, 74 S.W.3d 215 (2002), which held that pretextual arrests were unreasonable under the Arkansas Constitution. The Supreme Court overruled *State v. Sullivan*, reasoning that Arkansas's constitutional provision mirrors the Fourth Amendment and should not provide broader protection than federal law. It is not unreasonable to arrest someone for a lesser crime (when there is probable cause for that arrest) if the real motivation of the police is to investigate a more serious crime. The officer's subjective intent for making the arrest is irrelevant if there is probable cause for that arrest. It is objectively unreasonable to prohibit police from arresting a murder suspect for a lesser crime just because the police do not yet have probable cause to make an arrest for murder. Under Rule 4.1(a)(iii) of the Arkansas Rules of Criminal Procedure, a law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed any violation of law in the officer's presence. Here, appellant argued that the circuit court erred by denying his motion to suppress his custodial statement as the product of a pretextual arrest. Appellant's possession of drug paraphernalia was an offense that was committed in an officer's presence. Accordingly, appellant's arrest was proper, and the circuit court did not err in denying his motion to suppress. [**motion to strike the venire**] During jury selection, a potential juror expressed a belief in appellant's guilt, which appellant argued tainted the jury pool. The circuit court offered to allow the defense to question the remaining jurors about potential bias, but the defense declined. The circuit court then gave a comprehensive admonition to the jury pool to disregard the comment. The Supreme Court found no abuse of discretion in the circuit court's handling of the situation. (Pate, M.; 73CR-20-604; 3-5-26; Webb, B.)

DOMESTIC RELATIONS

Shahid v. Masood, 2026 Ark. App. 151 [**child support; alimony; custody**] The circuit court entered an amended divorce decree granting appellant a divorce from appellee. On appeal, appellant argued that the circuit court erred in (1) its determination of appellee's child-support

obligation by miscalculating his income; (2) its award of \$5,000 a month in alimony to appellant for seven years; and (3) finding that appellant did not rebut the presumption that joint custody was in the best interest of the children. **[child support]** Appellant first argued that the circuit court miscalculated appellee's income for child support purposes by allowing improper deductions for business expenses. In determining an appropriate amount of child support, courts are to refer to the most recent revision of the family-support chart in Administrative Order No. 10. The circuit court's decision was based on appellee's affidavit of financial means and unfiled tax returns, which appellant contended did not accurately reflect his income. The appellate court agreed with the appellant, finding errors in the calculation. The circuit court erred in allowing appellee to deduct "business expenses" from his gross personal income. The appellee did not operate a business in his individual capacity; accordingly, he had no business expenses to deduct on the joint personal income tax return. Allowing him to deduct these non-deductible expenses before calculating income for child-support purposes violated Administrative Order No. 10. **[alimony]** The purpose of alimony is to rectify the economic imbalances in earning power and standard of living in light of the particular facts in each case. The primary factors to be considered in determining whether to award alimony are the financial need of one spouse and the other spouse's ability to pay. The circuit court may also consider other factors, including the couple's past standard of living, the earning capacity of each spouse, the resources and assets of each party, and the duration of the marriage. Here, appellant contended that the alimony award was insufficient given appellee's ability to pay. The circuit court made a finding based on the parties' testimony. The circuit court ultimately required the appellee to pay all the marital debt, which reduced his ability to pay. The appellate court found no abuse of discretion, noting its deference to the circuit court with respect to the credibility of the witnesses. **[joint custody]** Arkansas Code Annotated § 9-13-101(a)(1)(A)(iv)(a) declares a rebuttable presumption that joint custody is in the best interest of the child in actions concerning an original child custody determination in a divorce matter. The presumption may be rebutted by one of several ways: (1) if the court finds by clear and convincing evidence that joint custody is not in the best interest of the child; (2) if the parties have reached an agreement on all issues related to custody of the child; (3) if one of the parties does not request sole, primary, or joint custody; (4) or if a rebuttable presumption described in Ark. Code Ann. § 9-13-101(c) or (d) is established by the evidence. Arkansas Code Annotated § 9-13-101(c)(1) states that if a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a directive pursuant to this section. Here, appellant argued that she rebutted the presumption that joint custody was in the child's best interest due to appellee's alleged abuse. The circuit court found no clear and convincing evidence of abuse, and the appellate court held the circuit court did not err. (Johnson, S.; 60DR-20-2357; 4-3-26; Tucker, C.)

Ortiz v. Bagley, 2026 Ark. App. 161 [**custody; material change in circumstances**] The circuit court denied appellant's request to change custody of the parties' two minor children. On appeal, appellant argued that the circuit court erred in finding that she did not prove a material change in circumstances. In *Nalley v. Adams*, 2021 Ark. 191, 632 S.W.3d 297, the Supreme Court distinguished between visitation exercised by a noncustodial parent and the allocation of time between joint custodians. When a parent who lacks joint custody requests additional time beyond that provided in the decree, the request constitutes a modification of custody or visitation and therefore requires proof of a material change in circumstances. By contrast, when parties share true joint custody, a reallocation of time between equal custodians does not alter the underlying custodial status and therefore does not, by itself, trigger the material-change analysis. Here, the parties did not share joint custody of the children. Because the parties did not share joint custody, it was therefore appropriate for the circuit court to treat the motion as one to change custody or visitation. The party seeking modification of the custody order has the burden of showing a material change in circumstances. To change custody, the circuit court must first determine that a material change in circumstances has occurred since the last order of custody; if that threshold requirement is met, it must then determine who should have custody, with the sole consideration being the best interest of the children. Here, appellant argued the circuit court overlooked key factors: the emotional effects of appellee's divorce and remarriage, the need for more bonding time due to having two new children, and changes in her work schedule, education, and relocation to a better home environment. Appellant further contended that, since the entry of the 2019 agreed order, statutory law has evolved to establish a rebuttable presumption in favor of joint custody. A change in the law alone does not constitute a material change in circumstances. Our courts continue to require proof of a material change as a prerequisite for modifying custody. Even considering all the factors together, there was not a material change because the appellant presented only minor complaints and self-created conditions. The circuit court did not err in finding that appellant failed to meet her burden of demonstrating the existence of a material change in circumstances. (Chesshir, B.; 67DR-18-131; 3-4-26; Murphy, M.)

Karlowski v. Karlowski, 2026 Ark. App. 178 [**custody; visitation; no-contact order**] The circuit court entered an order granting a covenant marriage judicial separation, awarding appellee primary custody of the parties' minor child, and setting visitation. On appeal, appellant argued that the order for primary custody was erroneous; the restrictions on visitation were erroneous; and the one-sided no-contact order was erroneous. [**custody**] In an original child-custody determination, there is a rebuttable presumption that joint custody is in the best interest of the child. While there is a statutory preference for joint custody, this preference does not override the ultimate guiding principle, which is to set custody that comports with the best interest of the child. Here, the appellate court could not say that the circuit court erred in finding that the presumption had been

rebutted and that there was clear and convincing evidence that joint custody was not in the child's best interest. The circuit court heard evidence from multiple witnesses that the child had significant and concerning behavioral changes that started after the parties attempted joint custody pending judicial resolution. The circuit court gave considerable weight to the testimony of witnesses confirming the regressive behaviors the child exhibited while the parties shared joint custody and the improvement since appellee had been given temporary primary custody. Giving deference to the circuit court to evaluate and judge the credibility of the witnesses in child-custody cases, the appellate court could not say that the circuit court's findings were erroneous. **[visitation]** The primary consideration regarding visitation is the best interest of the child. Important factors the court considers in determining reasonable visitation are the wishes of the child, the capacity of the party desiring visitation to supervise and care for the child, problems of transportation and prior conduct in abusing visitation, the work schedule or stability of the parties, and the relationship with siblings and other relatives. A parent who is not granted sole, primary, or joint custody of his or her child is entitled to reasonable parenting time with the child unless the court finds after a hearing that parenting time between the parent and the child would seriously endanger the physical, mental, or emotional health of the child. Here, the circuit court recited this provision in its order and found that a "reasonable amount of parenting time" or "overnight visits" would "seriously endanger the mental and emotional health of the child. Given the appellate court's standard of review and the deference given to the circuit court to evaluate and judge the credibility of the witnesses in child-custody cases, the appellate court could not say that the circuit court's findings were clearly erroneous. **[no-contact order]** The circuit court also issued a no-contact order preventing the child from having contact with appellant's romantic partner, or any other woman with whom appellant was involved romantically. Appellee conceded error on this point and explained that the provision should have been a mutual provision, as it was in the temporary order and initially announced in the circuit court's oral findings. Accordingly, the appellate court found that the circuit court should reconsider any restrictions on contact that the child may be allowed with the parties' romantic partners. (Zimmerman, S.; 72DR-23-1664; 3-11-26; Hixson, K.)

Hildreth v. Hildreth, 2026 Ark. App. 193 **[modification of custody]** The circuit court granted appellee father's motion to modify the parties' child-custody arrangement. On appeal, appellant mother argued that the circuit court erred in modifying the joint-custody arrangement because there was no material change in circumstances and because modification was not in the best interest of the couple's child. Modification 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; and second, if the court finds that there has been a material change in circumstances, the court must determine whether a change of custody is in the child's best interest. Where the relationship between the appellant and the child had deteriorated, the father's relocation to another county created a daily transportation burden related to school and limited the child's desired extracurricular activities, and the parents' deteriorating relationship made effective co-parenting

impracticable, the circuit court properly found a material change in circumstances warranting modification of custody from joint physical custody to primary physical custody with the father. Giving great weight to the circuit court's observations, the appellate court found that the circuit court did not err in finding that it was in the child's best interest to modify the parties' custody arrangement. (Houston, B.; 63DR-17-795; 3-18-26; Thyer, C.)

Hardage v. Hardage, 2026 Ark. App. 195 [**modification of custody**] The circuit court denied appellant's motion to modify custody. On appeal, the appellant argued that the circuit court erroneously imposed a presumption of joint custody in a modification case. In an action concerning an original child-custody determination in a divorce matter, there is a rebuttable presumption that joint custody is in the best interest of the child. The presumption that joint custody is in the best interest of the child may be rebutted if the court finds by clear and convincing evidence that joint custody is not in the best interest of the child. This presumption is limited to original custody determinations and does not change the burden of proof for a modification of custody or visitation. Modification 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; and second, if the court finds that there has been a material change in circumstances, the court must determine whether a change of custody is in the child's best interest. We look at whether there has been a material change in circumstances since issuance of the last order of custody—here, the divorce decree. 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, this case was not an original child-custody-determination case but a modification-of-custody case. Therefore, the circuit court erred as a matter of law in applying the rebuttable joint-custody presumption and in finding that “no party overcame the presumption . . . by clear and convincing evidence.” The circuit court's order denying the motions to change custody was silent on material-change-of-circumstances and best-interest findings. The appellate court cannot presume that the circuit court made the necessary findings to support its order denying the motions because the record demonstrated that the circuit court applied the incorrect standard of law, and there was no indication that the court made the requisite considerations. (Williams, L.; 26DR-23-377; 3-18-26; Wood, W.)

JUVENILE

Scott v. Ark. Dep't of Human Services, 2026 Ark. App. 149 [**TPR**] The appellants' child was initially removed from the home for medical neglect: both parents failed to administer antibiotics the child had been prescribed for a serious illness. That adjudication was upheld in an earlier opinion: *Scott v. Ark. Dep't of Hum. Servs.*, 2024 Ark. App. 517. Throughout the case, appellants nominally participated in services and never reached the point of unsupervised visitation. Appellee

alleged four grounds for termination of appellants' parental rights; the circuit court found three of those grounds: twelve-month failure-to-remedy; subsequent-factors; and aggravated-circumstances. **[TPR-twelve-month failure to remedy]** In his appeal, appellant father admitted all three findings were based on similar facts, chiefly his housing and stability. In the court's bench ruling, it noted that one of the reasons the case opened was the "abominable" conditions in the home. Though appellant father (unlike appellant mother) had transportation and employment, "neither parent ha[d] shown an ability to provide a stable environment for themselves, much less this young child." Further, the court found it significant that appellant father's aunt would not allow the caseworker access to her locked bedroom, and appellant father had refused to let a caseworker enter the home at all. Appellant father argued that none of those grounds were supported by clear and convincing evidence. But proof of even one ground would be enough to affirm a termination if the best-interest requirement was met. There was sufficient proof for the failure-to-remedy ground here. Though the medical-neglect issue might have precipitated appellee's decision to remove the child from the appellants' custody, the court adjudicated the child dependent-neglected because of environmental neglect, as well: upon inspection of appellants' home, the appellee found "animal feces and urine on the floor, a large amount of trash and debris in the home, and roaches." The child himself was "in a dirty playpen with no mattress or other bedding, his diaper was very full, and he was crying." Though conditions had sometimes improved—the appellants initially made a "huge cleanup effort"—follow-up visits showed the home was falling back into that original state. The appellate court affirmed the circuit court's finding that appellant father failed to remedy the environmental neglect that caused the child's removal from the home. The appellants' inability to provide a consistently safe home environment for the child was a theme in the record. **[TPR-best interest; adoptability]** Next, both parents argued, albeit for different reasons, that the circuit court erred by finding termination was in the child's best interest, considering at least two factors, the likelihood of adoptability and the potential harm caused by returning the child to the custody of the parent. Neither parent challenged the circuit court's finding that the child was adoptable. Appellant father argued that, for the same reasons he contended there was insufficient evidence of grounds for termination, there was insufficient evidence of potential harm. The ultimate issue in any termination-of-parental-rights case, regardless of a parent's compliance with a case plan, is whether the parent has become a stable, safe parent able to care for his or her child. Further, a child's need for permanency and stability may override a parent's request for more time to improve his circumstances. In the termination order, the circuit court observed that "we are at 19 months in this case and not even close to the parents having unsupervised visitation." It found neither parent was compliant with counseling and visitation, nor did either parent have suitable housing. Though appellant father had attended court-ordered counseling, his therapist had since discharged him for "no showing" several sessions. Appellant father testified that the provider stopped sending reminders and, without them, he lost track of the days. Indeed, he both displayed and admitted trouble judging how much time had passed. He could not recall the month he had last seen a counselor, or even whether it was within the last month and a half. He said, "[M]y days and months are so clustered together, I barely remember yesterday." Challenged, he repeated, "I barely remember what all happened yesterday." He had not gone to counseling in five (5) months. The potential-harm factor of the best-interest analysis does not require the circuit court to find actual harm would occur or

affirmatively identify the potential harm. The evidence must be viewed in a forward-looking manner and considered in broad terms. Given how the removal proceedings started—with both parents failing to administer prescription antibiotics for a serious illness—the appellate court would not reverse the circuit court on this point. **[TPR-best interest; least restrictive alternative]** Finally, appellant mother argued the circuit court erred by finding termination was in the child's best interest without considering whether the child could achieve permanency (and preserve the family ties to her) through a relative placement with the aunt. She did not preserve that argument for appeal. The circuit court was aware that an ICPC home study for the aunt had been approved, and that appellee supported placing the child with her. Appellee's motion for discretion to make that placement was still pending at the time of the termination hearing; the court mentioned it, and promised a hearing on it, after the termination hearing ended. But the parties had not argued, for example, that the court should determine her suitability for placement before the termination hearing and consider it instead of termination. There were indications the aunt cooperated and was willing to accept custody. But she had not moved to intervene in the action, and there was no evidence she had an existing bond with the child. The parties in termination-of-parental-rights cases are not excused from preserving arguments in circuit court. The appellate court would not reverse a circuit court for ignoring relative-placement issues without evidence it was asked to consider them. (Sullivan, T.; CV-25-400; 3 4-26; Harrison, B.)

Mask v. Ark. Dep't of Human Services; 2026 Ark. App. 168 **[TPR]** Appellant father appealed the termination of his parental rights, but his court-appointed counsel filed a no-merit brief and, after being given notice of the opportunity, the Appellant father filed no pro se points; the termination was upheld as to him. Appellant mother appealed the termination of her parental rights and asserted that the circuit court erred in finding that she failed to remedy the situation that brought her child into Appellee's custody. **[TPR; appealing all grounds]** She argued that she complied with the orders of the court and had completed parenting classes, obtained employment, and visited the child weekly. Regarding her drug use, she contended that she was willing to go to inpatient rehab, but it had not been offered to her. However, only one ground is necessary to terminate parental rights. Appellant challenged the failure-to-remedy ground but failed to contest the statutory grounds of aggravated circumstances / little likelihood of reunification and involuntary termination of parental rights to a child. When an appellant fails to attack the circuit court's independent, alternative bases for its ruling, the appellate court will not reverse. Leaving unchallenged the other two grounds for termination was sufficient for the appellate court to uphold the termination. **[TPR; best interest]** Regarding best interest, Appellant mother did not challenge the circuit court's findings on adoptability or potential harm. Instead, she asserted that there was no proof that "to sever the bond between the mother and the child" was in the child's best interest. She argued that the Appellee's witnesses testified to "compliance issues" but did not address or even say the words "best interest." However, the circuit court was not required to make a finding on the bond between mother and child, and even if such a bond existed, it was insufficient to warrant reversal in light of the evidence in the record. Also, while Appellee's witnesses may not have said the words "best interest," their entire testimony demonstrated the potential harm the child would face if returned to either parent's custody, and, conversely, that not returning to either parent's custody was in the

child's best interest. After reviewing the record and the briefs presented by the parties, the appellate court held that the circuit court had sufficient evidence on which to find that it was in the child's best interest for Appellant's parental rights to be terminated and that statutory grounds for termination existed. (Weeks, A.; CV-25-472; 3-11-26; Harrison, B.)