

# APPELLATE UPDATE

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## CIVIL

*Comeau v. Still*, 2025 Ark. App. 429 [**default judgment; motion to dismiss**] The circuit court entered an order for default judgment and denied appellant's motion to set aside the default judgment. On appeal, appellant argued that the circuit court erred in entering a default judgment against him despite the pendency of a timely filed motion to dismiss under Ark. R. Civ. P. 12. Under Arkansas law, when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided under the rules of civil procedure, judgment by default may be entered by the court. Default judgments are not favored in the law and should be avoided when possible. A default judgment should be granted only when strictly authorized and when the party affected should clearly know he is subject to default if he does not act in a required manner. In the present case, at a final hearing, the circuit court denied appellant's motion to dismiss and his request for more time to respond under Rule 12(j). Appellee then sought a default judgment, arguing appellant failed to answer within ten days of the notice of hearing. Appellant contended that his motion to dismiss constituted a sufficient response to avoid default. The appellant defended the action against him by filing his motion to dismiss, and the circuit court, after ruling on the appellant's motion, should have given the appellant the opportunity to plead

further. Therefore, because the appellant did not fail to plead or otherwise defend, it was erroneous to enter default judgment. (Clawson, C.; 65CV-23-1; 9-17-25; Barrett, S.)

## CRIMINAL

*Cobb v. State*, 2025 Ark. App. 420 [**double jeopardy; contempt**] The circuit court denied appellant's motion to dismiss a felony charge for interference with court-ordered custody on the basis of double jeopardy. The Double Jeopardy Clause protects criminal defendants from (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. The Arkansas Supreme Court has said that the test of double jeopardy is not whether a defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense, and where two statutes are intended to suppress different evils, conviction under one will not preclude prosecution of the other. In determining whether a particular action by a court constitutes criminal or civil contempt, the focus is on the character of relief rather than the nature of the proceeding. Criminal contempt vindicates the power and dignity of the court and constitutes punishment for disobedience of its orders, while the purpose of civil contempt is to preserve and enforce the rights of private parties to suits and to compel obedience to orders made for the benefit of those parties. Because civil contempt is designed to coerce compliance with the court's order, the contemnor may free himself or herself by complying with the order. Criminal contempt, by contrast, carries an unconditional penalty solely and exclusively punitive in character, and the contempt cannot be purged. Here, the circuit court issued an arrest warrant after the appellant failed to return his children following visitation. The State charged appellant with interference with court-ordered custody pursuant to Ark. Code Ann. § 5-26-502. Appellant was arrested by Oklahoma authorities on the Arkansas warrant and extradited to Arkansas after two days in jail. The mother filed an "Application for Indirect Contempt Citation" in a paternity case in Oklahoma. Appellant later moved to dismiss the Arkansas interference-with-court-ordered-custody charge on double-jeopardy grounds. His motion alleged that on July 29, he pled no contest to the mother's application for indirect contempt in the Oklahoma case and that the court found him guilty of indirect contempt, "and deferred the Defendant's sentence for a period of six months, and sentenced [him] to jail time but credit given for time served." The nature of the contempt is dependent on the nature of the resulting sanction. Although appellant asserted that he was sentenced to jail time and given credit for that time and that the character of the relief was the imposition of a sentence of imprisonment, the Oklahoma order deferred "judgment and sentence" for six months. The reference to "credit time served" is of no significance because the Oklahoma court did not impose a sentence; thus, there was no sentence to credit at the time of the order. In the absence of sanctions being imposed by the Oklahoma court, the appellate court could not conclude that jeopardy attached. Thus, the circuit court did not err in denying appellant's motion to dismiss. (Settle, C.; 17CR-24-46; 9-10;25; Wood, W.)

*London v. State*, 2025 Ark. App. 444 **[jury instruction]** Appellant was convicted by a jury of the lesser included charge of manslaughter while employing a firearm. On appeal, appellant argued that the circuit court erred in issuing a “flight” instruction because there was no rational basis for the instruction. A party is entitled to a jury instruction when it is a correct statement of the law and when there is some basis in the evidence to support giving the instruction. A nonmodel jury instruction should be given only when the model instructions do not correctly state the law, or there is no model instruction on the subject. Here, appellant testified that he left the scene and traveled to Atlanta after he fired six shots at the victim. The circuit court read the following instruction to the jury: “If you find him -- find that evidence shows that [the defendant] fled to avoid arrest or detection by law enforcement, you may consider that evidence in your deliberations as the circumstances and corroboration of evidence tending to establish the guilt of the Defendant.” The Arkansas Supreme Court recently addressed a similar nonmodel jury instruction in *Smith v. State*, 2025 Ark. 26. In that case, the Arkansas Supreme Court found that the circuit court did not err in allowing a similar instruction, because it did not require that the jury reach any particular conclusion from the evidence that was presented; rather, the instruction merely stated the evidence “may” be considered as corroborative of that defendant’s guilt. Thus, the appellate court found that there was no abuse of discretion in allowing the jury instruction under the facts of this case. (Johnson, L.; 60CR-20-3716; 9-24-25; Hixson, K.)

*Vasquez v. State*, 2025 Ark. 134 **[motion to suppress; order of protection]** Appellant was convicted by a jury of five counts of rape. On appeal, appellant argued that the circuit court erred by denying his motion to suppress evidence obtained from his cell phone pursuant to a search warrant that was so facially deficient as to preclude the “good-faith” exception; and in permitting the State to question him regarding details from a prior order-of-protection case in violation of Arkansas Rules of Evidence 404(a)(1), 608, and 613. **[motion to suppress]** Rule 13.1 of the Arkansas Rules of Criminal Procedure sets out the requirements for the issuance of a search warrant. In the present case, the circuit court denied the appellant’s motion to suppress. Although the circuit court found that the affidavit was insufficient, it nonetheless denied appellant’s motion based on the good-faith exception to the exclusionary rule. Later, and without any objection from appellant, the circuit court allowed the State to introduce additional evidence on the suppression issue. The district court judge granted the search warrant after being given a concededly deficient affidavit before him, but also received testimony from the requesting officer. The officer filled in via telephone any gaps in the evidence supporting the issuance of the warrant. While it would have been a better practice to put this information in the affidavit, it nonetheless shows that the police had a good-faith belief that the warrant was valid. Under the totality of the circumstances, the Arkansas Supreme Court held that it was objectively reasonable for the police to rely on the district court judge’s probable cause determination. **[order of protection testimony]** The circuit court

allowed the State to cross-examine appellant about orders-of-protection cases involving his girlfriend, which occurred more than a year after appellant had been charged with the rapes in the instant case. The circuit court allowed the line of questioning pursuant to Arkansas Rules of Evidence 401(a), 608, and 613. Here, the Arkansas Supreme Court held that the circuit court abused its discretion in its application of the Arkansas Rules of Evidence in making its rulings regarding the orders-of-protection line of questioning based on the facts of the case. However, the evidentiary errors by the circuit court were found to be harmless. (Philhours, R.; 28CR-19-227; 9-25-25; Webb, B.)

## PROBATE

*Miles v. Gladden*, 2025 Ark. App. 418 [**undue influence; will**] The circuit court entered an order denying appellant's petition for probate of the deceased's will. On appeal, appellant argued that (1) the appellee failed to prove appellant unduly influenced the execution of the deceased's 2018 will; and (2) appellee failed to prove appellant unduly influenced the execution of the deceased's 2020 will. A party challenging the validity of a will must usually prove by a preponderance of the evidence that the testator lacked the requisite mental capacity or that the testator was the victim of undue influence when the will was executed; however, certain circumstances will cause the burden to shift to the proponent of the will to disprove undue influence. One of those circumstances is when a beneficiary procures the will. Procurement of a will requires the actual drafting of the will for the testator or planning the testator's will and causing him to execute it. Procurement shifts the burden to the proponent of the will to show beyond a reasonable doubt that the will was not the result of undue influence and that the testator had the mental capacity to make the will. The existence of a confidential relationship between a primary beneficiary and a testator also gives rise to a rebuttable presumption of undue influence. A confidential relationship arises between a person who holds power of attorney and the grantor of that power. Undue influence may be inferred from the facts and circumstances of a case, and cases involving questions of undue influence will frequently depend on a determination of witness credibility. [**2018 will**] Appellant obtained power of attorney for the deceased shortly after her hospital admission and then directed an attorney to draft a will naming him the primary beneficiary. Because the appellant both held power of attorney and orchestrated the drafting and execution of the 2018 Will, a confidential relationship existed, and he is deemed to have procured the will. These circumstances created a rebuttable presumption of undue influence, placing the burden on the appellant to show the will was not the product of such influence. Having considered the evidence and testimony presented at the hearing, the appellate court found that the circuit court did not err when it found appellant failed to rebut the presumption of undue influence. [**2020 will**] The circuit court's order found that appellant had procured another 2020 will. Here, the appellant called a law firm to make the appointment for the deceased and drove her to the appointment. Subsequently, all conversations about the will and its contents took place between the deceased and her attorney or her attorney's secretary. The

appellant was not present in the office when the 2020 will was executed, and the 2020 will was kept in the law firm's safe until the deceased died in 2021. Based on these facts, the appellate court held the circuit court erred in finding appellant procured the 2020 will. Therefore, the circuit court must make further findings. (Ross, Q.; 22PR-21-22; 9-10-25; Barrett, S.)

*Rouse v. Tippit*, 2025 Ark. App. 428 [**wrongful death; in loco parentis**] The circuit court entered an order dividing the proceeds of a wrongful-death lawsuit brought on behalf of the estate of Billy Ray Waymon (the "Estate"). Specifically, the appellants appeal the ruling that the appellees had an in loco parentis relationship with the decedent, Billy Ray Waymon ("Waymon"), entitling them to a portion of the wrongful-death proceeds received as a result of Waymon's death in a car collision. Pursuant to Ark. Code Ann. § 16-62-102(d), beneficiaries in a wrongful death action under this section are (1) the surviving spouse, children, father, mother, brothers, and sisters of the deceased person; (2) persons, regardless of age, standing in loco parentis to the deceased; and (3) persons, regardless of age, to whom the deceased stood in loco parentis at any time during the life of the deceased person. The basic rule of statutory construction is to give effect to the intent of the legislature. Legislative intent is determined by the language of the statute, specifically whether the language used is plain and unambiguous. The statute is construed just as it reads, giving the words their ordinary and usually accepted meaning in common language. No word in the statute is left void, superfluous, or insignificant, and the courts give meaning and effect to every word in the statute, if possible. If the language of a statute is clear and unambiguous and conveys a clear and definite meaning, it is unnecessary to resort to the rules of statutory interpretation. Here, the circuit court found an in loco parentis relationship between the appellees and Waymon pursuant to Ark. Code Ann. § 16-62-102(d)(3). Specifically, under this statute, the circuit court interpreted the term "regardless of age" to mean that an in loco parentis relationship can be established with a decedent at any age. The circuit court declined to interpret the statute to mean that the appellees had to be minors when the relationship with Waymon was established. The appellants argue that the appellees had a father in Missouri whom they lived with and who provided for the boys most of their childhood; thus, the in loco parentis relationship could not attach. For the appellate court to interpret the statute as the appellants argue, they would have to find that the legislature intended to limit the in loco parentis relationship to those individuals who, as minors, formed a relationship with another individual, and the words "regardless of age" would be rendered meaningless. Thus, the appellate court held that the circuit court did not err when it interpreted the term "regardless of age" to mean that the appellees could develop an in loco parentis relationship with Waymon beginning in their teenage years and into their adulthood. Additionally, the evidence in this case clearly reflected an emotional bond rising to the level of a parental relationship with their stepfather. Waymon assumed a parental role—by disciplining them, supporting them, teaching them how to drive, teaching them various trades, and enjoying hobbies and activities like hunting and fishing together. As they grew older, they testified as to how they helped support Waymon—financially, emotionally, and physically. Given those factors and in light of the totality of the

circumstances, the appellate court held that the circuit court did not err in determining that an in loco parentis relationship existed between Waymon and the appellees. (Broadaway, M.; 11CPR-23-3; 9-17-25; Tucker, C.)

## DOMESTIC RELATIONS

*Hill v. Hill*, 2025 Ark. App. 403 [**alimony**] On appeal, appellant argued that the circuit court abused its discretion by awarding appellee alimony. Alimony can be awarded to rectify the economic imbalances in earning power and standard of living in light of the particular facts and circumstances. The court will consider the financial need of one spouse and the other spouse's ability to pay. Secondary factors the court may consider in awarding alimony include (1) the parties' financial circumstances; (2) the parties' past standard of living; (3) the value of jointly owned property; (4) the amount and nature of the parties' income, both current and anticipated; (5) the extent and nature of the resources and assets of each party; (6) the amount of income of each party that is spendable; (7) the earning ability and capacity to earn of the parties; (8) the property awarded or given to one of the parties, either by the court or the other party; (9) the disposition of the homestead; (10) the respective health and medical needs of the parties; (11) duration of the marriage; and (12) the amount of child support. In the decree, the circuit court considered the appellee's financial need in comparison to the appellant's ability to pay. Additionally, the circuit court considered the secondary factors such as the parties' station in life, standard of living during the marriage, length of the marriage, the parties' respective incomes and earning power (current and anticipated), the extent and nature of each parties' resources and assets, and the terms of the parties' settlement agreement announced on the record. The appellate court deferred to the circuit court with respect to credibility determinations and found that the circuit court did not abuse its discretion by awarding the appellee alimony. (Dyer, C.; 26DR-22-595; 9-3-25; Tucker, C.)

*Mack v. Mack*, 2025 Ark. App. 421 [**attorney's fees**] On appeal, appellant argued that the circuit court erred in granting appellee's motion for attorney's fees. The circuit court has the inherent power to award attorney's fees in domestic-relations proceedings, and no statutory authority is required. Here, at the conclusion of a hearing, appellee explained that she was entitled to attorney's fees because appellant had failed to move forward with posting a supersedeas bond after the court's previous hearing and instead withdrew his appeal. The circuit court granted the appellee's motion for attorney's fees due to the appellant's withdrawal of his appeal and not moving forward with the supersedeas bond. The Arkansas Supreme Court has held that an appellant may withdraw his or her appeal before the case is submitted to the court for decision without giving a reason. Accordingly, the circuit court erred in granting attorney's fees to the appellee's attorney. (Galloway, D.; 01SDR-19-113; 9-10-25; Hixson, K.)

*Rothwell v. Rothwell*, 2025 Ark. App. 431 [**unequal division of property**] Arkansas Code Annotated § 9-12-315 grants the circuit court broad powers in distributing both marital and nonmarital property to achieve an equitable division. The overriding purpose of the property-division statute is to enable the court to make a division of property that is fair and equitable under the circumstances. All marital property shall be distributed one-half to each party unless the court finds such a division to be inequitable. The court may make an unequal division of marital property if it finds some other division equitable, taking into consideration certain factors listed in the statute, but the circuit court must state the reasons and basis for not dividing the property equally, which should be recited in the order entered in the matter. The court is not required to list each factor, weigh each factor equally, or limit itself to the factors listed. [**investment expenses and line of credit interest**] Here, the circuit court made an unequal distribution of marital property when it awarded appellee a credit for half of appellant's investment expenses and reimbursement for half of the three jointly owned lines of credit interest she paid on those expenses. The circuit court issued these awards in its decree under the heading "Unequal Property Division," and the circuit court set forth the factors it was required to consider pursuant to Ark. Code Ann. § 9-12-315(a)(1)(B) when making this unequal division of marital property. Focusing on the factor regarding each party's contribution to the "acquisition, preservation, or appreciation" of marital property, the circuit court found that appellant abused appellee's trust in him to spend their funds in a covert, wasteful fashion while appellee worked hard to accumulate marital assets. The appellate court found that the circuit court did not err in making this unequal distribution of property. Any exception to the rule of equal distribution will always depend on the specific facts as reflected by the circuit court's findings and conclusions. [home values] The circuit court also awarded appellee a home appraised for \$1.34 million and appellant a home appraised for \$2.4 million, granting appellee a \$1.06 million credit for the value difference. Appellant contended the circuit court offered no justification for this unequal division and that appellee should have received only half the difference, \$530,000, so both would hold \$1.87 million in home value. The circuit court is required to explain why an unequal division is equitable and state its basis and reasons in the order. Thus, the circuit court must either divide the marital property one-half to each party or make some other division that it deems equitable and provide written findings that support the unequal division. (Johnson, S.; 60DR-23-28; 9-17-25; Wood, W.)

## JUVENILE

*Austin v. Ark. Dep't of Human Servs.*, 2025 Ark. App. 401 [**TPR; best interest**] Appellant challenged the termination of her parental rights to her newborn child, MC1, arguing that there was insufficient evidence that termination was in the child's best interest. MC1 had been taken into appellee's custody shortly after birth due to illegal substances in his system, and the appellant had a documented history of substance abuse, including daily THC use and methamphetamine use during pregnancy. Appellant's older child, MC2, had previously been placed in foster care following appellant's arrest, and her parental rights had been involuntarily terminated. Despite

intermittent attempts at rehabilitation and drug court participation, appellant failed to complete treatment programs or maintain consistent sobriety, and she had not complied with court-ordered drug testing or visitation requirements. The court found that returning MC1 to appellant posed potential harm due to her ongoing substance use and history of noncompliance, and that termination was in MC1's best interest. The appellate court affirmed the termination, concluding that the circuit court's findings were not clearly erroneous. (Zimmerman, S.; CV-25-115; 9-3-25; Klappenbach, M.)

*Lock-Fraser v. Ark. Dep't of Human Servs.*, 2025 Ark. App. 402 [**adoption; continuance**] Appellants challenged the denial of their motion for continuance and the grant of an adoption decree to foster parents. The appellants argued that the adoption decree was void due to alleged procedural defects and that the denial of a continuance prevented them from presenting evidence regarding their custody of MC's half-sibling. Appellee removed MC due to neglect and safety concerns, and the appellants were found unsuitable as caretakers due to prior arrests and domestic violence between them. The circuit court held that the appellants lacked standing to challenge the adoption decree and that their motion for continuance was moot because the adoption hearing proceeded. The appellate court found no abuse of discretion, noting that any procedural errors did not render the adoption void and that the Appellants failed to preserve any argument of prejudice. (Shirron, S.; CV-24-391; 9-3-25; Abramson, R.)