

judgment in imposing appellant's sentence after hearing and considering arguments on the issue, rather than mechanically following the jury's recommendation. (Anthony, C.; CACR 06-871; 1-23-08; Griffen).

Lewis v. State: **[sentencing]** The trial court erred when it denied appellant's motion to withdraw his guilty plea before the court entered a sentence that deviated from the sentence contemplated by the plea negotiations. (Henry, D.; CACR 06-1455; 1-23-08; Miller).

Seaton v. State: **[The Confrontation Clause; hearsay]** The trial court erred when it admitted appellant's sister's statement into evidence because appellant did not have an opportunity to cross-examine her prior to its admission, and because she was not present to cross-examine during the trial. (Looney, J.; CACR 07-432; 1-30-08; Robbins).

Creed v. State: **[continuance; appointment of expert witness]** A psychiatric evaluation was performed on appellant. Approximately three months later, appellant filed a motion requesting the appointment of psychiatric and DNA experts. Appellant also requested that the trial be continued to allow him time to undergo additional mental evaluations. The trial court denied appellant's requests. However, the court noted that the previous forensic examination was very thorough and the trial court offered to allow the appellant to be evaluated by another expert before the scheduled trial date. Based upon the foregoing facts, the Supreme Court concluded that the trial court did not abuse its discretion when it denied appellant's requests for a continuance and appointment of additional experts. **[admission of evidence; 404(b)]** The trial court did not abuse its discretion when it admitted a presentence report from another case in which appellant described a prior rape because the report contained facts that were similar to the facts of the crime for which appellant was charged and established a similar scheme, intent, motive, preparation, and plan. (Shirron, P.; CR 07-556; 1-31-08; Glaze).

Tavron v. State: **[appellate review]** An appellant is prohibited from raising arguments on appeal that were not first brought to the attention of the trial court. An appellant is limited by the scope and nature of the argument and objections presented at trial, and may not change the grounds for objection on appeal. Because the appellant was attempting to raise a new argument on appeal, the Supreme Court was precluded from reaching the merits of the issue. (Piazza, C.; CR 07-153; 1-31-08; Corbin).

Randle v. State: **[appellate review]** Error may not be predicated upon a ruling which excludes evidence unless both a substantial right of the party is affected and the substance of the excluded evidence was made known to the trial court by an offer of proof or was apparent from the context within which the question was asked. Because the appellant failed to proffer the evidence that he sought to have admitted at trial, the Supreme Court was precluded from reviewing this matter on appeal. (Humphrey, M.; CR 07-490; 1-31-08; Brown).

Rounsaville v. State: **[appellate review]** The Supreme Court would not consider appellant's arguments on appeal because he failed to present the issues to the circuit court, and he failed to receive a ruling on the issues from the circuit court. (Proctor, W.; CR 07-75; 1-31-08; Danielson).

CIVIL

Reshel v. Moser: **[jurisdiction]** Court had subject matter jurisdiction over corporate defendant that was subject of pending judicial dissolution and receivership proceeding. (Fox, T.; CA07-531; 1-9-08; Glover)

GMAC Mortgage. v. Farmer: **[partition]** Ark. Code Ann section 28-11-301 applies to this action and the term "child" includes "grandchildren." (Jones, B.; CA07-438; 1-9-08; Glover)

Brookshire v. Adcock: **[value of minority interest in bank]** Minority stockholders in bank should have been awarded interest on the value of stock during delay between fixing of the value and the payment. (Humphrey, M.; CA07-522; 1-9-08; Heffley)

James v. Williams: **[mandate]** Trial court lacked subject matter jurisdiction because mandate had been recalled by the supreme court. Issues raised in the litigation were part of the *Lake View* litigation. (Fox, T.; SC 07-619; 1-10-08; Brown)

Seidenstricker Farms v. Doss: [**lease**] Tenant held over at the end of the term and landlord continued to accept payments in accordance with the lease; consequently, a tenancy from year to year was created and the terms of the lease applied. Ark. Code Ann. section 18-16-105 applied because it was farmland and the statute requires that notice be give by June 30th to terminate the lease. (Mills, W.; SC 07-786; 1-10-08; Corbin)

Watson v. Connors: [**dismissal/notice**] Order of dismissal pursuant to Ark. R. Civ. P. 41 (b), which was entered without notice to the parties, does not constitute a clerical error that can be corrected pursuant to Rule 60 at any time. (Humphrey, M.; SC 07-208; 1-10-08; Glaze)

Brennan v. Wadlow: [**service**] The process server left a copy of the complaint with the dependant's father at the father's place of business. Rule 4 requires that it be left at dwelling or place of abode. Fact that the business address was the address listed on defendant's driver's license did not impact requirement of Rule 4. (Williams, L.; SC 06-1406; 1-10-08; Hannah)

City of Fort Smith v. Carter: [**attorney's fees/mortgagee**] A mortgagee of condemned property taken by eminent domain is not entitled to an award of attorney's fees under Ark. Code Ann. section 18-15-605(b). The mortgagee is not the landowner. (Cottrell, G.; SC 07-220; 1-10-08; Imber)

Born v. Hodges: [**foreclosure**] In foreclosure action, court did not have the authority to order the defaulting defendant to sign a quitclaim deed in favor of the plaintiff. (Patterson, J.; CA 07-526; 1-16-08; Baker)

Citifinancial Mortgage v. Matthews: [**tax sale**] Mortgage holder's contention that the failure of the Land Commissioner to give the required notice of a public sale somehow invalidated the private sale was without merit. The mortgage holder had notice of the actual sale. (Fogleman, J.; SC 07-431; 1-17-08; Danielson)

Talbert v. U.S. Bank: [**altered check**] In depositing check and receiving payment on it, customer warranted that check had not been altered. When check was subsequently dishonored due to alteration, she breached her warranty and was liable. Customer did not have a defense under either Ark Code Ann. sections 4-4-406 or 4-3-406. (Moody, J.; SC 07-497; 1-17-08; Imber)

Royal Oaks Vista v. Maddox: [**bill of assurance/laches**] Replat violated bill of assurance and defense of laches was not established. (Harkey, J.; SC 07-542; 1-17-08; Hannah)

Citifinancial Retail Services v. Weiss: [**Bad Debt Statute**] Credit provider was not entitled to bad debt refund. Refund goes to the retailer. A taxpayer under the Bad Debt Statute is the person liable to report and remit sales taxes -- the retailer. Only the retailer was entitled to refund for sales tax paid on defaulted consumer credit account because credit provider was not "taxpayer" under the statute. (Fox, T.; SC 07-551; 1-17-08; Glaze)

Board of Collection Agencies v. McGhee: [**surety bond**] Surety was liable on its bond. Bond issued to check casher protected against loss suffered by any person because of check casher's acts that violated laws of the state, including the usury laws, and were not limited to violations of Check-Cashers Act and the Board's regulations. (Brantley, E.; SC 07-129; 1-17-08; Brown)

Roberts v. Green Bay Packaging: [**settlement**] Court erred in enforcing settlement because the parties never actually agreed on the terms of the settlement. Court made a contract for the parties where they had failed to make one on their own. (Clawson, C.; CA 07-60; 1-23-08; Marshall)

Estate of Banks v. Wilkin: [**malpractice/limitations**] In order for administrator of an estate to have standing to bring a malpractice action, it is only necessary that an order be entered appointing the person as the personal representative; the letters of administration do not have to be issued. (Guthrie, D.; CA 06-1285; 1-23-08; Glover)

Boyster v. Shoemake: [**boundary by acquiescence**] Evidence supported that the parties mutually assented to the boundary line. In such cases, the court's decree must recite a specific description of the property line. (Tabor, S.; CA 07-593; 1-23-08; Pittman)

Shamlin v. Quadrangle EnterprisesI: [**wrongful timber cutting/ ACA 18-60-102**] Under the statute, it is irrelevant whether one was an employee or an independent contractor because the party who engaged the

timber cutter is a joint tortfeasor with the timber cutter. The Civil Justice Reform Act does not impact this statute or the status of joint tortfeasor under it. (Phillips, P.; CA 07-308; 1-23-08; Vaught)

One National Bank v. Pope: **[loss of life damages]** Some evidence that the decedent valued his or her life must be presented from which a jury could infer and derive an award. Mere proof of life and death is not enough. But circumstantial evidence may be used. (Weaver, T.; SC 06-1497; 1-24-08; Danielson)

R.K. Enterprises v. Pro-Comp: **[unjust enrichment damages]** Use of the fair market value of the misappropriated trade secrets was an appropriate measure of damages for the unjust enrichment claim. (Gunn, M.; SC 07-671; 1-24-08; Brown)

Pro-Camp v. R.K. Enterprises: **[prejudgment interest/trade secrets]** Prejudgment interest should not have been awarded on the damages awarded for misappropriation of trade secrets because the exact value at the time of the misappropriation was not definitely ascertainable without reliance upon opinion or discretion. (Gunn, M.; SC 07-648; 1-24-08; Corbin)

DOMESTIC RELATIONS

Cody Oldham v. David and Paula Morgan: **[grandparent visitation]** The Supreme Court reversed the circuit court's order of grandparent visitation because the appellee grandparents failed to rebut the statutory presumption that a custodian's decision denying or limiting visitation to the grandparents is in the best interest of the child. (Honeycutt, P.; No. SC 07-315; 1-17-08; Gunter)

Shannon L. (Hampton) Brown v. Kevin Gene Ashcraft: **[visitation]** The visitation order in this case originally included a provision that the appellee father had to be present with the child and could not be away from the child for an extended period or overnight during any period of visitation. The appellee filed a petition for contempt alleging that the appellant mother had refused him visitation. The appellant defended the charge by relying on the provision, contending that the appellee had extended absences from the child during visitation because of his job as a truck driver. The trial court found that the appellant had done nothing wrong in following the order as written. However, the court removed the restriction, finding that the appellee's absence for work was all right so long as the child was in an appropriate environment, and that appellant mother was informed at all times of where the child was and who was supervising the child. The Court of Appeals found that, although the appellee did not file a petition to modify visitation, the appellant did not object or appeal, and that the issue was tried by consent pursuant to Rule 15(b) of the Arkansas Rules of Civil Procedure. The Court affirmed the trial court's decision. (Hannah, C.; No. CA07-782; 1-30-08; Baker)

PROBATE

Amy Finley O/B/O Herself and W.F., A Minor Child v. Michael J. Astrue, Commissioner, Social Security Administration: **[intestacy-right to inherit]** The following question of law was certified to the Supreme Court by the U.S. District Court: "Does a child, who was created as an embryo through in vitro fertilization during his parents' marriage, but implanted into his mother's womb after the death of his father, inherit from the father under Arkansas intestacy law as a surviving child?" The Court answered the question "no." The Court found that Arkansas law provides that the question presented involved a posthumous child. In order to inherit as a posthumous heir under Arkansas law, the child must not only have been born after the decedent's death, but must also have been conceived before the decedent's death, citing Ark. Code Ann. 28-9-210(a). The statute does not define the word "conceived." The Court declined to define the term, noting that to do so would require the Court to make a public policy decision implicating many concerns, including but not limited to, the finality of estates. The Court commented that current law does not address new legal issues raised by such new technologies as in vitro fertilization and other methods of assisted reproduction. The Court encouraged the General Assembly to consider the intestacy succession statutes to resolve this and other possible issues. (Upon Certification from U.S. Dist. Court, Eastern Dist. Of Ark., Judge G. Thomas Eisele; No. SC 07-627; 1-10-08; Danielson)

Richard Dickinson, III v. State: **[mootness]** The case is a no-merit appeal from a civil-commitment order certified to the Court by the Arkansas Court of Appeals to determine whether the procedure of *Anders v.*

California applies to a civil-commitment order. The Court dismissed the appeal as moot. (French, T.; No. SC 07-355; 1-10-08; Corbin)

Richard T. Smith v. Estate of Mace David Howell, Jr., Deceased: **[appealable orders; timeliness of appeal notice]** The appellant had two bases for appeal. First, he appealed from an order denying his motion for entry of an order approving a settlement in two pending lawsuits, upon the circuit court's finding that there was already an appealable order approving the settlement, which the Supreme Court affirmed. Second, he attempted to appeal the approval of the settlement agreement. However, because he failed to file a timely notice of appeal, according to the Court, it had no appellate jurisdiction. (McGowan, M.; No. SC 07-703; 1-24-08; Hannah)

EIGHTH CIRCUIT

Receivables Purchasing v. Engineering & Professional Ser. **[contracts]** District court properly granted defendant summary judgment on plaintiff's claim for tortious interference with contract as there was no contract with which defendant could have interfered.. District court applied the wrong standard under Arkansas law in granting defendant summary judgment on plaintiff's fraud claim. (W.D. Ark.; No: 06-3825; 1-4-08)

Miner v. Local 373: **[labor law]** Taking all inferences and viewing all evidence in the light most favorable to plaintiff, a genuine issue of fact exists as to whether the defendant locals objectively manifested an intent to be bound by contract addenda on the date of plaintiff's discharge. On remand, if the court determines that a valid collective bargaining agreement was in existence, plaintiff's claim should be remanded to the committee so that Local 516 can represent plaintiff on the merits of her grievance; on remand, if the court determines the addenda was not valid at the time of plaintiff's discharge, it should either exercise supplemental jurisdiction over her breach of contract claim or dismiss it without prejudice. (W.D. Ark.; #07-1383; 1-25-08)

American Federation of State v. City of Benton **[labor law]** Collective Bargaining Agreement obligated the City of Benton to pay retiree health benefits, and such a provision is not prohibited by Arkansas statutes, the Arkansas Constitution or public policy considerations. District court did not err in finding that the City's 2003 and 2004 resolutions impaired the contractual obligations in the contract, and the court did not err in ordering the City to pay the benefits. (E.D. Ark.; #07-1589; 1-25-08)

Rush v. Wyeth: **[products liability]** Assuming the district court erred in giving Arkansas Model Jury Instruction 601 concerning assumption of ordinary care in a case alleging defendant's estrogen products Premarin and Prempro caused plaintiff to develop breast cancer, the error was harmless. District court did not err in giving an instruction regarding failure to warn or in refusing to instruct the jury on plaintiff's fraud claim. (E.D. Ark.; #07-1822; 1-31-08)