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CRIMINAL

Briggs v. State, 2012 Ark. App. 226 [**burden of proof; motion to suppress**] The trial court erred by requiring appellant to establish that the warrantless search of his home was illegally conducted. (Wright, J.; CACR 11-1036; 4-4-12; Pittman, J.)

McPeak v. State, 2012 Ark. App. 234 [**custodial statement**] The appellate court concluded that appellant made a knowing and intelligent waiver of his *Miranda* rights and that his custodial statement was not the product of coercion or deception. Thus, the statement was voluntarily given and the trial court did not err in denying appellant's motion to suppress. (McCallum, R.; CACR 11-812; 4-4-12; Gruber, R.)

Keck v. State, 2012 Ark. 145 [**Rule 37**] The failure of defense counsel to object to or otherwise attempt to limit certain testimony from a physician, who treated the victim in appellant's case, was not ineffective assistance. Thus, the trial court properly denied appellant's petition for Rule 37.1 relief. (Phillips, G.; CR 11-373; 4-5-12; Baker, K.)

Rueda v. State, 2012 Ark. 144 [**speedy trial; Rule 37**] Speedy trial begins to run from the date of the arrest for all charges stemming from the same criminal episode, irrespective of when any information is filed. Because any motion to dismiss based on speedy trial would have lacked merit,

appellant's trial counsel was not ineffective for failing to make such a motion. Accordingly, the circuit court did not clearly err in denying appellant's request for post-conviction relief. (Clinger, D.; CR 11-366; 4-5-12; Danielson, P.)

Eubanks v. State, 2012 Ark. 142 **[Rule 37]** The failure of appellant's attorney to make a constitutional challenge to the pedophile exception, a well-established evidentiary rule, was not ineffective assistance of counsel. Therefore, the trial court did not err by denying appellant's Rule 37.1 petition. (Rogers, R.; CR 11-406; 4-5-12; Hannah, J.)

Myers and Hall v. State, 2012 Ark. 143 **[Rule 37]** Appellants' trial counsel was not ineffective for failing to make an argument that was contrary to recently-decided case law from the Arkansas Supreme Court. The circuit court properly denied appellants' request for post-conviction relief. (Whiteaker, P.; CR 11-111; 4-5-12; Gunter)

Ross v. State, 2012 Ark. App. 243 **[sufficiency of the evidence; negligent homicide]** There was substantial evidence to support appellant's negligent-homicide conviction. **[sufficiency of the evidence; first-degree criminal mischief]** Because there was no evidence to show that appellant acted with the purpose of damaging property that belonged to another person, there was insufficient evidence to support appellant's first-degree-criminal-mischief conviction. (Medlock, M.; CACR 11-711; 4-11-12; Pittman, J.)

Perez v. State, 2012 Ark. App. 250 **[revocation]** The possession-of-a-defaced-firearm count was not included in the original or amended petitions to revoke, which were filed in appellant's case. The offense was not recited by the State when the prosecutor informed the court of appellant's potential exposure if the petition was granted. Additionally, the court did not specify that count when rendering its oral ruling on the petition. Thus, the trial court lacked the authority to revoke appellant's suspended sentence based upon that count, and the resulting sentence was illegal. (Fitzhugh, M.; CACR 10-646; 4-11-12; Abramson, R.)

Sartin v. State, 2012 Ark. 155 **[Rule 37]** Appellant failed to demonstrate that trial counsel's strategic decisions were not supported by sufficient investigation or by reasonable professional judgment. Trial counsel did not provide ineffective assistance by failing to make a record of appellant's express waiver of his right to testify. (Wright, H.; CR 11-606; 4-12-12; Corbin, D.)

Fields v. State, 2012 Ark. App. 269 **[juror misconduct]** When a jury has been admonished not to do a certain act, the mere opportunity to violate the admonition, without proof of its violation, provides no basis upon which an appellate court can find that the trial court has abused its discretion in refusing to investigate the jury for such possible misconduct. (Fitzhugh, M.; CACR 11-747; 4-18-12; Gruber, R.)

Boykin v. State, 2012 Ark. App. 274 **[sufficiency of the evidence; possession of cocaine; simultaneous possession of drugs and firearms]** There was substantial evidence to support appellant's convictions. **[motion to suppress]** Pursuant to Rule 4.1 of the Arkansas Rules of

Criminal Procedure, law-enforcement officials had authority to arrest appellant without a warrant because the officers reasonably believed that appellant had committed a felony. After appellant's lawful arrest, Rule 12.6 (b) of the Arkansas Rules of Criminal Procedure permitted the officers to conduct a warrantless inventory search of appellant's car. Thus, the trial court did not err in denying appellant's motion to suppress the evidence found during the inventory search. (Williams, C.; CACR 11-936; 4-18-12; Martin, D.)

Wells v. State, 2012 Ark. App. 276 [**sufficiency of the evidence; first-degree murder**] There was substantial evidence to support appellant's conviction. [**jury pool**] Appellant failed to show how he was prejudiced by having to select a jury from a pool of 49 potential jurors. (Wilson, R.; CACR 11-769; 4-18-12; Brown, W.)

Fett v. State, 2012 Ark. App. 259 [**sufficiency of the evidence; simultaneous possession of drugs and firearms**] Because the firearm that was recovered from appellant's residence was not loaded, and because no ammunition was found at appellant's residence, the firearm was not readily accessible as a firearm. Thus, appellant's conviction for simultaneous possession of drugs and firearms was not supported by substantial evidence. (Looney, J.; CACR 11-1145; 4-18-12; Hart, J.)

Sipe v. State, 2012 Ark. App. 261 [**jury instructions**] The trial court did not abuse its discretion when it refused to give a jury instruction that was not supported by the evidence in appellant's case. [**admission of evidence**] The trial court did not abuse its discretion when it excluded prejudicial evidence about the victim's prior violent history and his drug use. Because appellant "opened the door" during his testimony, it was not an abuse of discretion for the trial court to admit testimony about appellant's drug use. (Wright, J.; CACR 11-677; 4-18-12; Gladwin, R.)

Gilliland v. State, 2012 Ark. 162 [**Rule 37**] Appellant's attorney was not providing ineffective assistance of counsel when he failed to object to the admission of certain testimony, which was offered after appellant "opened the door" to the issue. Therefore, the trial court did not err by denying appellant's Rule 37.1 petition. (Shirron, P.; CR 11-539; 4-19-12; Hannah, J.)

Prater v. State, 2012 Ark. 164 [**Rule 37**] Appellant's attorney was not ineffective for failing to make a directed-verdict motion on an issue that lacked merit. Appellant's attorney's decision to exclude testimony about the victim, which was not relevant, did not constitute a proper basis for Rule 37 relief. An ineffective-assistance-of-counsel claim requires more than a showing that a *Doyle* violation occurred. (Wright, H.; CR 11-437; 4-19-12; Brown, R.)

Wright v. State, 2012 Ark. App. 289 [**Brady violation**] Appellant failed to show that he was prejudiced by the alleged *Brady* violation or that there was a reasonable probability that the outcome of his trial would have been different if the State had provided him with a copy of an informant's statement. (Chandler, L.; CACR 11-585; 4-25-12; Gruber, R.)

Mathis v. State, 2012 Ark. App. 285 [**sufficiency of the evidence; aggravated assault; terroristic threatening; committing certain offenses in the presence of a minor**] There was substantial

evidence to support appellant's convictions. **[excited-utterance exception to the hearsay rule]** The trial court did not abuse its discretion when pursuant to the excited-utterance exception to the hearsay rule, it admitted a recording of appellant's victim's call to 911, which occurred within a "short time" after the assault. (Whiteaker, P.; CACR 11-1029; 4-25-12; Gladwin, R.)

Malone v. State, 2012 Ark. App. 280 **[alternative sentence]** The trial court did not abuse its discretion when it refused to give appellant's proffered jury instruction on the availability of probation as an alternative sentence. (Williams, C.; CACR 11-1073; 4-25-12; Vaught, L.)

Horton v. State, 2012 Ark. App. 287 **[judgment]** The trial court had jurisdiction to amend the judgment and commitment order, which was entered in appellant's case, to correct a clerical error. The notice of appeal, which was filed by appellant, was effective to appeal from the amended judgment and commitment order that was subsequently filed by the trial court. (Whiteaker, P.; CACR 11-1030; 4-25-12; Robbins, J.)

Howard v. State, 2012 Ark. 177 **[error coram nobis]** The circuit court was reinvested with jurisdiction to consider three claims raised by appellant in his *error coram nobis* petition. (CR 00-803; 4-26-12; Brown, R.)

Leach v. State, 2012 Ark. 179 **[sufficiency of the evidence; capital murder]** There was substantial evidence to support appellant's conviction. **[motion to suppress]** The circuit court's decision that appellant's statement was freely and voluntarily given was not clearly against the preponderance of the evidence. Thus, the trial court did not err when it denied appellant's motion to suppress. **[evidence]** The trial court did not abuse its discretion when it allowed a witness to testify that it appeared to him that appellant had blood on his hand at the crime scene because: (1) the testimony was based on the witness's personal experience and his observation of appellant at the crime scene; (2) the testimony was helpful when explaining why the witness took photographs of appellant's hands; and (3) the testimony was helpful in deciding a disputed fact. (Looney, J.; CR 11-932; 4-26-12; Gunter, J.)

Hennington v. State, 2012 Ark. 181 **[Rule 37]** The circuit court did not err in denying an evidentiary hearing on appellant's Rule 37 petition. The circuit court's written findings complied with Rule 37.3 of the Arkansas Rules of Criminal Procedure. (Clinger, D.; CR 11-523; 4-26-12; Goodson, C.)

Cases in which the Arkansas Court of Appeals concluded that there was substantial evidence to support the appellant's conviction(s):

Pitts v. State, 2012 Ark. App. 228 (aggravated assault) CACR 11-949; 4-4-12; Hart, J.

Summers v. State, 2012 Ark. App. 247 (criminal contempt) CACR 11-1102; 4-11-12; Gruber, R.

King v. State, 2012 Ark. App. 253 (second degree sexual assault) CACR 11-735; 4-11-12; Brown, W.

McLish v. State, 2012 Ark. App. 275 (rape) CACR 11-1004; 4-18-12; Martin, D.

Hahn v. State, 2012 Ark. App. 297 (second-degree battery) CACR 11-877; 4-25-12; Hoofman, C.

Vault v. State, 2012 Ark. App. 283 (theft of property) CACR 11-995; 4-25-12; Hart, J.

Cases in which the Arkansas Court of Appeals concluded that the circuit court's decision to revoke appellant's probation or suspended sentence was not clearly against the preponderance of the evidence:

Henry v. State, 2012 Ark. App. 235 (probation) CACR 11-1153; 4-4-12; Glover, D.

Boykins v. State, 2012 Ark. App. 263 (probation) CACR 11-916; 4-18-12; Robbins, J.

Hatton v. State, 2012 Ark. App. 267 (probation) CACR 11-1031; 4-18-12; Wynne, R.

Williams v. State, 2012 Ark. App. 298 (suspended sentence) CACR 11-878; 4-25-12; Hoofman, C.

Johnson v. State, 2012 Ark. App. 300 (probation) CACR 11-1103; 4-25-12; Brown, W.

CIVIL

Maris Trust v. Truemper, 2012 Ark. App. 232 [**timber/ACA 15-32-501**] Trial court properly construed statute as not applying to dispute between co-owners under facts of case. No third parties were involved and indemnity between owners was not at issue; rather, co-owners were litigating over authorization to have timber cut. [**conversion**] Summary judgment on conversion claim was not proper. (Moody, J.; CA 11-554; 4-4-12; Robbins, J.)

Wilson v. Graf, 2012 Ark. App. 229 [**deed**] Court was correct in reforming deed upon finding of mutual mistake as to what property was to be conveyed. (Clawson, C.; CA 11-980; 4-4-12; Hart, J.)

Daugherty v. Sipes, 2012 Ark. App. 233 [**FOIA**] Police Department was not found to have violated Freedom of Information Act in manner in which he provided video of police officer's traffic stop. (Sanders, E.; CA 11-343; 4-4-12; Wynne, R.)

Capstone Oilfield, Inc. v. Pope County, 2012 Ark. App. 231 [**permit disposal well**] Court did not err in finding that Oil and Gas Commission's approval of permit application violated Commission's regulations, which require evidence of financial assurance. Such evidence was lacking. (Rogers, R.; CA 11-1087; 4-4-12; Gladwin, R.)

Bismarck School Dist. v. Sims, 2012 Ark. App. 239 [**Teacher Fair Dismissal Act**] School Board violated law in not renewing counselor based on alleged role in failing to track credits that a student needed to graduate. (Cole, J.; CA 11-893; 4-4-12; Martin, D.)

Barnes v. Dept. DF&A, Alcohol Beverage Control Board, 2012 Ark. App. 237 [**permit**] Applicant had a nonprofit purpose other than the consumption of alcohol and permit was properly granted. Finding other purpose in the serving of food was supported by statute and regulations. (Guthrie, D.; CA 11-869; 4-4-12; Glover, D.)

Merryman v. Cargile, 2012 Ark. App. 248 [**deed**] Circuit court had jurisdiction to determine whether a mutual mistake existed regarding a deed even though it related back to probate proceedings that occurred over 18 years ago. Court correctly found a mutual mistake and reformed the deed to divide property as the parties and predecessors in title had intended. (Maggio, M.; CA 11-1099; 4-11-12; Gruber, R.)

Cancun Cyber Café v. City of NLR, 2012 Ark. 154 [**declaratory judgment**] Complaint was properly dismissed as there was no justiciable issue. Plaintiff was seeking an advisory opinion – whether its conduct is legal and not subject to prosecution. (Piazza, C.; SC 11-1130; 4-12-12; Hannah, J.)

Staggs v. Union Pacific RR, 2012 Ark. 156 [**mineral rights**] A general reservation of mineral rights in a 1934 deed includes oil and gas rights. (Harkey, A.; SC 11-902; 4-12-12; Danielson, P.)

Central Oklahoma Pipeline, Inc. v. Hawk Field Services LLC, 2012 Ark. 157 [**contractors**] Contractor in the business of underground piping and gas distribution lines satisfied statutory definition of a contractor. An unlicensed contractor is barred by Ark. Code Ann. § 17-25-103 from bringing claims for breach of contract and violation of the Deceptive Practices Act. This statute is constitutional. There is no private cause of action under section 17-25-313. An unlicensed contractor cannot collect from an architect compensation that it could not otherwise recover. (McCormick, D.; SC 11-992; 4-12-12; Goodson, C.)

Mercer v. Engle, 2012 Ark. App. 277 [**usury**] Transaction did not fall under federal law preempting state's usury law; therefore, Arkansas law applied. (Erwin, H.; CA11-1094; 4-18-12; Brown, W.)

Pinnacle Point Properties, LLC v. Metropolitan National Bank, 2012 Ark. App. 268 [**foreclosure sale**] Challenge to foreclosure sale is moot as property was bought by a third party and owner had not obtained a supersedeas bond. A debtor who fails to obtain a stay has no remedy on appeal when property is sold to a bona fide third-party purchaser. Although debtor was unable to pay the judgment for unremitted rental payments (the failure to remit giving rise to contempt finding), the court was not required to vacate the finding of contempt. (Schrantz, D.; CA11-365; 4-18-12; Wynne, R.)

Billingsley v. Planit Dirt Excavation, Inc., 2012 Ark. App. 266 [**contract**] Evidence supported finding that party had not breached contract so as to entitle appellant to withhold payment due under

contract. (Roberts, R.; CA11-1082; 4-18-12; Robbins, J.)

Deltic Timber Corp. v. Newland, 2012 Ark. App. 271 [**minerals**] Evidence supported parties' intent for appellant's parents to retain a fractional interest in the mineral rights. (McCormick, D.; CA11-1042; 4-18-12; Glover, D.)

Buckeye Retirement Co. v. Walter, 2012 Ark. App. 257 [**judgment lien**] No judgment lien attached to the property because judgment debtor did not own the property. (Fox, T.; CA11-1002; 4-18-12; Vaught, L.)

McMillan v. Live Nation Entertainment, Inc., 2012 Ark. 166 [**scalping tickets**] Ark. Code Ann. Section 5-63-201 applies to an exclusive agent, such as Ticketmaster, who sells tickets that include in the price of the ticket additional fees. (Certified Question from E. D. Ark.; SC 11-732; 4-19-12; Baker, K.)

Miller. v. DFA, 2012 Ark. 165 [**drivers license suspension**] Ark. Code Ann. Section 5-65-402 is constitutional as applied and appellant was not denied due process in the administrative hearing or on de novo appeal. (Taylor, J.; SC 11-879; 4-19-12; Gunter, J.)

Killian v. Gibson, 2012 Ark. App. 299 [**summary judgment**] Court did not err in granting summary judgment. Party failed to meet proof with proof. (Williams, L.; CA 11-1053; 4-25-12; Hoofman, C.)

Laster v. Williams, 2012 Ark. App. 282 [**boundary line**] Parties had an agreement concerning a fixed and certain property line that was recognized by both of them for decades. Furthermore, acquiescence in a boundary line by a tenant with an interest can bind the landowner. Court erred in awarding attorney's fees because there was not a complete absence of a justiciable issue. Party did not prevail but it was not a baseless claim. (Shirron, P.; CA 11-807; 4-25-12; Pittman, J.)

P.J. Transportation, Inc. v. First Service Bank, 2012 Ark. App. 292 [**contempt**] Petition for contempt does not have to be verified. Party had notice of contempt hearing and had an opportunity to be heard. (Webb, G.; CA 11-1056; 4-25-12; Glover, D.)

Hauser v. Sims, 2012 Ark. App. 295 [**personal jurisdiction**] Although parties had moved from Arkansas and were no longer residents, there were sufficient contacts with the state to exercise personal jurisdiction. They executed a guaranty with an Arkansas bank and pledged Arkansas real estate as collateral. This substantial financial and legal connection with the state was sufficient. [**schedule of assets**] ACA 16-66-221 provide that a resident of the state shall prepare a schedule of assets after a judgment is entered against him. The statute does not require a non-resident to do so. (Simes, L.; CA 11-960; 4-25-12; Martin, D.)

Harrill & Sutter, PLLC v. Farrar, 2012 Ark. 180 [**FOIA**] FOIA request was directed to private attorneys paid by malpractice insurer representing individual doctors. The request was for litigation files.

FOIA does not apply to these records, which are not public records. (Capeheart, T.; SC 11-894; 4-26-12; Danielson, P.)

DOMESTIC RELATIONS

Waggoner v. Waggoner, 2012 Ark. App. 286 [**divorce; property division**] The trial court prohibited the appellant from presenting any evidence at the divorce hearing as a sanction for his failure to timely respond to discovery requests. On appeal, the appellant alleged the corroboration of grounds in appellee's presentation of her case was "woefully less than 'slight.'" He said that the grounds were not sufficiently corroborated because of his inability to testify. However, he had not made that argument to the circuit court; there he merely objected to the fact that his testimony was disallowed. The court also noted that Rule of Civil Procedure 37(b)(2) allowed the court to prohibit appellant's testimony and the court did not abuse its discretion in so ruling. On the division of property, the court held that the trial court did not err in making an unequal division of marital property, and that it considered all relevant factors from section 9-12-315, making specific findings for its reason for the unequal division of the property. (Huckabee, S.; No. CA 11-390; 4-25-12; Gladwin, R.)

Elliott v. Elliott, 2012 Ark. App. 290 [**divorce; alimony; marital debt; visitation**] The parties were married for 18 years and have three minor children. Appellant earns over \$500,000 a year as a physician and the appellee has been a stay-at-home mother, by joint decision of the parties, since the second year of the marriage. He appealed both the amount of alimony and the "indefinite" period of time it was awarded, arguing that it ought to have been "rehabilitative alimony" for a time certain instead. The Court of Appeals, in affirming the award, outlined the parties' respective expenses, work experience, and earning power. The court set out the factors applicable to making a decision and said that the trial court did not abuse its discretion based upon the facts of the case. Appellant also argued that the trial court erred in making him responsible for all of his medical-school debt. Noting Arkansas has no presumption that debts should be divided equally, the court said that a court does not err in allocating debts between parties based upon their relative ability to pay. Here, the debt was to pay for appellant's education. He earned the medical degree, which enables him to earn a significant income. Between the two of them, he has the ability to pay for the school loan. Finally, the appellant alleged the trial court erred in not awarding him additional visitation during his ten vacation weeks each year, set by his employer. The parties often took their children out of school for several weeks to travel during part of this vacation time. The circuit court denied this extra visitation time, but did award him two extra weeks, one in the fall and one in the spring, forbidding, however, his removing the children from school during extended visitation periods. The Court of Appeals held that the circuit court did not err in establishing the appellant's visitation and that the court's primary consideration was not appellant's work schedule, but the best interests of the children. The court affirmed the decision in its entirety. (Bryan, B.; No. CA 11-853; 4-25-12; Gruber, R.)

Thompson v. Thompson, 2012 Ark. App. 296 [**divorce; Ark.R.Civ.P. 55(c)**] Although the appellant husband was served with the complaint for divorce and summons, neither he nor his attorney appeared at the hearing on the complaint. A divorce was granted on general indignities. The appellant now argues that the "default judgment" should be vacated and the case reversed and

dismissed because the complaint failed to state a cause of action. The divorce decree provides that the cause was heard on July 5, 2011, and that the appellee and her attorney appeared, whereas the appellant, although served with the complaint and summons, did not appear. The court granted an absolute divorce “on the grounds of general indignities pursuant to Arkansas law....” In affirming, the Court of Appeals noted that the appellant was arguing matters on appeal for which he had failed to obtain a ruling from the trial court. He also asserted errors without convincing argument or legal authority. Although he called the decree a “default judgment” he did not explain how he arrived at that conclusion and did not cite Rule 55(c), which provides that the court may, upon motion, set aside a default judgment based upon specific grounds included in the rule. The court noted that, although the appellant claimed that appellee failed to state facts upon which relief could be granted, he took no action with regard to the trial court’s proceedings until he filed the notice of appeal. The court cited a case that when a judgment is based upon evidence presented to the court at a trial, as opposed to being based on the failure of a party to appear or attend, the judgment is not a default judgment, and Rule 55 does not apply. (Smith, P.; No. CA 11-1127; 4-25-12; Martin, D.)

Schultz v. Butterball, LLC, 2012 Ark. 163 [UIFSA] The appellant challenged a California wage-withholding order for child-support arrearages filed in Arkansas under the Uniform Interstate Family Support Act (UIFSA). He sought to restrain his employer from further wage withholdings, and sought damages from the employer as compensation for wages already withheld. In affirming the circuit court, the Supreme Court found that the court properly dismissed the action because the appellant had no claim against his appellee employer, who was required to comply with the withholding order, making dismissal with prejudice proper. The court could not address res judicata and collateral estoppel issues because they were not properly preserved for appeal. Regarding his constitutional challenge to the statute, the appellant’s arguments failed because the statute clearly provides a mechanism for an obligor to contest the order. The decision of the circuit court was affirmed. (Pearson, W.; No. SC 11-1212; 4-19-12; Corbin, D.)

PROBATE

Ashley v. Ashley, et al., 2012 Ark. App. 236 [**decedent’s estate; family limited partnership; revocable trust**] The circuit court did not err in finding that the decedent had transferred his interest in a family limited partnership to a revocable trust. The court also found that the circuit court did not err in not removing the personal representatives because of animosity between them and the appellant. The trial court’s decision was affirmed in its entirety. (Brantley, E.; No. CA 11-741; 4-4-12; Glover, D.)

Ashley v. Ashley, et al., 2012 Ark. App. 230 [**recusal**] In this companion case to the one above, the appellant argued that the circuit court erred in failing to recuse. The Court of Appeals affirmed, noting that the appellant waived her right to seek recusal. She made no timely motion to the circuit court to recuse, and made no objection to allegedly biased remarks of the judge. (Brantley, E.; No. CA 11-845; 4-4-12; Gladwin, R.)

JUVENILE

Arkansas Dept. of Human Services v. Mitchel, 2012 Ark. App. 240 [**FINS – family services**] DHS appealed an order directing the agency to pay for school uniforms and maternity clothes for a pregnant teenager in a FINS case. The appellate court reversed and noted that the trial court failed to comply with the statute that requires the court to make written findings outlining how each service is intended to prevent removal. The appellate court also found that the trial court made conclusions of law based on the judge's knowledge and not evidence and testimony by the petitioner. The appellate court went further to hold that the trial court also erred in its interpretation of the statute concerning family services. Family services are designed to prevent removal of a juvenile; however, removal only occurs when a juvenile is in immediate danger and removal is necessary to prevent serious harm, illness or injury. The appellate court found that lacking clothing did not pose an immediate danger to the juvenile's physical well-being that would result in a removal from her home.

The court recognized that neglect includes a failure or refusal to provide the necessary education required by law. However, there is an exception when such failure is due to the financial inability of the person legally responsible and no services for relief have been offered. The appellate court also noted that if the family's inability to pay for clothing was an issue, the court was required to determine the parent's ability to pay for services and make that determination supported by evidence. (Brown, E.; CA11-739; 4-4-2012; Martin, D.)

Berthelot v. Arkansas Dept. of Human Services, 2012 Ark. App. 249 [**D-N Adjudication**] There was substantial evidence to support the trial court's finding that the juvenile was dependent-neglected based on sexual abuse by her brothers. The juvenile victim's statements were at issue and the court found her credible. Appellant also argued that the court erred in admitting an investigator's report that contained supporting documentation with hearsay. The Court of Appeals agreed the documentation should not have been admitted. However, appellant failed to show prejudice because the trial court ruled that the supporting documentation was not admissible and did not consider it, even though it was erroneously included in the admitted report. (Zimmerman, S.; CA11-1244; 4-11-2012; Glover, D.)

Johnson v. Arkansas Dept. of Human Services, 2012 Ark. App. 244 [**D-N Adjudication**] Appellant argued there was insufficient evidence to support the trial court's finding that the children were dependent-neglected based on physical abuse and melatonin misuse. The Court of Appeals reversed and dismissed. DHS failed to provide sufficient proof concerning the spankings. DHS did not provide evidence as to why or how the spankings were administered, nor was there any evidence that the children were injured. There was also no evidence that the spankings were anything other than moderate or reasonable resulting in transient pain. As to the melatonin, there was no evidence identifying it, its uses, dosage, and side effects. As a result, the appellate court found that the trial court had no basis for finding it harmful to children. (Sullivan, T.; CA11-1253; 4-11-2012; Gladwin, R.)

Hall v. Arkansas Dept. of Human Services, 2012 Ark. App. 245 [**TPR**] Appellant argued that there was insufficient evidence to support the trial court's finding that termination of parental rights was in the best interest of the child. Appellant failed to maintain stable and appropriate housing,

employment, income and transportation. The evidence clearly showed appellant lacked stability needed by the juvenile. There was also evidence that he missed telephone visits with his child and his visits were often inappropriate. Appellant also failed to raise an ICWA challenge at the trial. Yet, even if he had preserved the argument for appeal his argument would fail because to qualify, the child must be an Indian child under ICWA, not a relative of the child. (Hewett, M.; CA11-1220; 4-11-2012; Robbins, J.)

Padgett v. Arkansas Dept. of Human Services, 2012 Ark. App. 294 [No-Merit TPR] The Court of Appeals affirmed this No-Merit TPR and granted the attorney's motion to withdraw. (Branton, W.; CA 11-970; 4-25-2012; Abramson, R.)

I.P. v. State, 2012 Ark. App. 273 [**Delinquency Adjudication**] Appellant argued there was insufficient evidence to support his delinquency adjudication based on harassing communications and disorderly conduct. Ark. R. Crim. P. 33.1(b) applies to juvenile delinquency proceedings and appellant failed to renew his motion to dismiss at the close of all the evidence and he failed to state the specific grounds. (Wood, R.; CA11-1021; 4-18-2012; Abramson, R.)

Cole v. State, 2012 Ark. App. 281 [**Juvenile Transfer**] Appellant at the age of 17 was charged with Murder in the Second Degree. The trial court was affirmed in denying appellant's transfer. The appellate court noted that the trial court considered all the factors and made all the findings required by the transfer statute. The trial court noted that some findings favored appellant while other did not, but found greater weight supported a decision to deny the motion to transfer. (Whiteaker P.; CA11-1172; 4-25-2012; Vaught, L.)