

APPELLATE UPDATE

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Appellate Update is a service provided by the Administrative Office of the Courts to assist in locating published decisions of the Arkansas Supreme Court and the Court of Appeals. It is not an official publication of the Supreme Court or the Court of Appeals. It is not intended to be a complete summary of each case; rather, it highlights some of the issues in the case. A case of interest can be found in its entirety by searching this website or by going to (Supreme Court - http://courts.arkansas.gov/opinions/sc_opinions_list.cfm or Court of Appeals - http://courts.arkansas.gov/opinions/coa_opinions_list.cfm).

ANNOUNCEMENTS

On November 15th, Supreme Court adopted two new rules: Ark. R. Crim. P. 8.7 (Use of Video Conferences in Pretrial Proceedings) and Ark. R. Evid. 411 (Admissibility of Evidence of Victim's Prior Sexual Conduct). These rules are effective January 1, 2013. The per curiam was included in the weekly mailout.

Reminder: Administrative Judges are to be selected by February 1st.

From Administrative Order 14: "In each judicial circuit in which there are two or more circuit judges, there shall be an administrative judge.

a. Means of Selection. On or before the first day of February of each year following the year in which the general election is held, the circuit judges of a judicial circuit shall select one of their number by secret ballot to serve as the administrative judge for the judicial circuit. In circuits with fewer than ten judges the selection must be unanimous among the judges in the judicial circuit. In circuits with 10 or more judges the selection shall require the approval of at least 75% of the judges. The name of the administrative judge shall be submitted in writing to the Supreme Court.... An administrative judge shall be selected on the basis of his or her administrative skills.

b. Term of Office. The administrative judge shall serve a term of two years and may serve successive terms."

CRIMINAL

Bean v. State, 2012 Ark. App. 643 [**Crim. P. R. 21.3**] Neither Rule 21.3 of the Rules of Criminal Procedure nor *res judicata* precluded the prosecution of appellant in Sebastian County for criminal acts that occurred in Sebastian County. (Fitzhugh, M.; CACR 12-184; 11-7-12; Hoofman, C.)

Jones v. State, 2012 Ark. App. 636 [**pedophile exception**] Because the conduct was similar to the conduct for which appellant was charged, and because the victims in the various episodes were similar, the trial court did not abuse its discretion when pursuant to the pedophile exception to Rule 404 (b), it admitted evidence of appellant's prior bad acts. (Kemp, J.; CACR 12-411; 11-7-12; Glover, D.)

Todd v. State, 2012 Ark. App. 626 [**sufficiency of the evidence; internet stalking of a child**] There was substantial evidence to support appellant's conviction. [**expert testimony**] Psychiatric testimony that attempts to establish a defendant's state of mind at the time of a particular crime is not admissible. [**admission of evidence**] The trial court did not abuse its discretion when it admitted into evidence the chat logs between appellant and Lt. Weaver because they were properly authenticated by Lt. Weaver. [**hearsay**] The chat logs were not hearsay because they were not offered for the truth of the matter asserted, and because they contained admissions of a party opponent. [**motion to dismiss; governmental misconduct**] The State's participation in an online chat with appellant did not demonstrate outrageous governmental conduct. Thus, the trial court did not err in denying appellant's motion to dismiss. [**illegal sentence; condition of incarceration**] The trial court did not have authority to impose a condition of incarceration upon appellant. (Cottrell, G.; CACR 12-42; 11-7-12; Robbins, J.)

Mashburn v. State, 2012 Ark. App. 621 [**sufficiency of the evidence; rape**] There was substantial evidence to support appellant's conviction. [**pedophile exception**] The trial court did not abuse its discretion when pursuant to the pedophile exception to Rule 404 (b), it admitted evidence of appellant's prior bad acts. [**mistrial**] The trial court did not err when it denied appellant's motion for a mistrial, which was based upon the victim mentioning appellant's prior bad acts during her testimony. (Cottrell, G.; CACR 12-201; 11-7-12; Vaught, L.)

Gutierrez v. State, 2012 Ark. App. 628 [**motion to suppress**] Law enforcement officials lacked authority to enter and search appellant's home. Thus, the trial court erred when it denied appellant's motion to suppress the evidence that was obtained during the unlawful search of appellant's home. (Reynolds, D.; CACR 12-177; 11-7-12; Wynne, R.)

Conway v. State, 2012 Ark. 420 [**juror conduct**] The trial court erred when it refused to remove a juror from appellant's trial after the juror advised the court that he could not be fair and impartial and could not deliberate because "in my mind I've made a choice." (Wright, J.; CR 11-1270; 11-8-12; Baker, K.)

Harrell v. State, 2012 Ark. 421 [**termination of obligation to register as a sex offender**] Arkansas Code Annotated § 12-12-919, which addresses termination of an individual's obligation to register as a sex offender, is internally inconsistent. To cure the inconsistencies, which occurred at codification, the Supreme Court reviewed the language of the original Act as adopted by the General

Assembly. Based upon its review, the Supreme Court held that a probationer may apply to terminate his or her obligation to register as a sex offender fifteen years after being placed on probation. The court also concluded that a probationer is entitled to relief upon a showing by a preponderance of the evidence that he or she has not been adjudicated of a sex offense during that fifteen-year-time period and he or she is not likely to pose a threat to the safety of others. (Erwin, H.; 12-176; 11-8-12; Baker, K.)

Williams v. State, 2012 Ark. App. 656 [**illegal sentence**] Because appellant was convicted of a Class Y felony, his sentence of probation was illegal. Because appellant's sentence was illegal, the revocation that resulted from that sentence was void. (Partlow, G.; CACR12-572; 11-14-12; Gruber, R.)

Bustillos and Bustillos v. State, 2012 Ark. App. 654 [**sufficiency of the evidence; possession of a controlled substance**] The Court of Appeals concluded that there was substantial evidence to support the conviction of the defendant, who owned the vehicle in which cocaine was found. However, the court further concluded that there was insufficient evidence to support the conviction of the co-defendant, who was a passenger in the vehicle. (Elmore, B.; CACR 12-260; 11-14-12; Wynne, R.)

Ward v. State, 2012 Ark. App. 649 [**motion to suppress**] Based upon the totality of the circumstances, there was reasonable cause to investigate appellant's actions and probable cause to arrest appellant. Thus, the trial court did not err when it denied appellant's motion to suppress. (Mason, G.; CACR 12-542; 11-14-12; Gladwin, R.)

Harris v. State, 2012 Ark. App. 651 [**sufficiency of the evidence; rape**] There was substantial evidence to support appellant's conviction. [**amendment to information**] Because the amendment to appellant's criminal information did not change the nature or degree of the criminal offense for which appellant was charged, and because appellant did not claim that he was prejudiced by the amendment, the trial court did not err when it permitted the State to amend the information on the day of appellant's trial. (Henry, D.; CACR 12-223; 11-14-12; Robbins, J.)

Moore v. State, 2012 Ark. App. 662 [**illegal sentence**] Appellant's sentence, which included an enhancement for being a felon in possession of a firearm, and an enhancement pursuant to the habitual-offender statute, was not illegal. (Johnson, L.; CACR 12-95; 11-14-12; Brown, W.)

Watson v. State, 2012 Ark. 430 [**motion to suppress**] On appeal, appellant argued that the trial court erred when it denied his motion to suppress the statement that he gave to law enforcement officials. The Supreme Court declined to reverse the trial court's ruling because appellant's statement was never introduced during his trial. Thus, appellant could not demonstrate that he was prejudiced by the trial court's actions. (Wright, H.; CR 12-304; 11-15-12; Goodson, C.)

Harris v. State, 2012 Ark. App. 674 [**motion to suppress**] Based upon the totality of the circumstances, there was reasonable cause to believe that evidence of a sexual assault would be found at appellant's home. Thus, the search warrant for appellant's home was sufficient and the trial court properly denied appellant's motion to suppress. Law enforcement officials had probable cause to believe that appellant's truck contained evidence of criminal activity. Accordingly, the trial

court's denial of appellant's motion to suppress was not clearly against the preponderance of the evidence. **[motion for continuance]** The trial court did not err when it denied appellant's motion for a continuance, which was based upon appellant's desire to obtain new counsel. (McCallum, R.; CACR 12-305; 11-28-12; Abramson, R.)

Ball v. State, 2012 Ark. App. 665 **[pedophile exception]** The trial court did not abuse its discretion when pursuant to the pedophile exception to Rule 404 (b), it admitted evidence of appellant's prior bad acts. (Storey, W.; CACR 12-423; 11-28-12; Vaught, L.)

Crouse v. State, 2012 Ark. 442 **[probation revocation]** The trial court's determination that appellant violated the terms and conditions of his probation by using and possessing methamphetamine was not clearly against the preponderance of the evidence. **[sentencing]** Probation is a permitted sentence for certain Class Y drug offenses. (Fogleman, J.; CR 12-63; 11-29-12; Danielson, P.)

Stewart v. State, 2012 Ark. 444 **[closing argument]** The prosecution's closing argument was a response to defense counsel's attacks on the witnesses' credibility, directly related to the testimony at trial, and was also a fair inference drawn from that testimony. Thus, the circuit court did not abuse its discretion in overruling appellant's objections to the closing argument. (Wright, H.; CR 12-441; 11-29-12; Baker, K.)

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

Foster v. State, 2012 Ark. App. 640 (driving while intoxicated) CACR 12-428; 11-7-12; Martin, D.

Smith v. State, 2012 Ark. App. 638 (first-degree battery) CACR 12-396; 11-7-12; Abramson, R.

Stocker v. State, 2012 Ark. App. 624 (first-degree battery) CACR 12-237; 11-7-12; Gladwin, R.

Tate v. State, 2012 Ark. App. 672 (first-degree murder) CACR 12-84; 11-28-12; Gruber, R.

Hicks v. State, 2012 Ark. App. 667 (residential burglary; theft of property) CACR 12-171; 11-28-12; Pittman, 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:

Risper v. State, 2012 Ark. App. 658 (suspended imposition of sentence) CACR 12-361; 11-14-12; Glover, D.

CIVIL

Baylark v. Helena Regional Medical Center, 2012 Ark. 405 **[service]** Court should not have granted extension of time to serve process because the plaintiff failed to demonstrate a good cause for the requested extension. Court erred in denying motion to dismiss for insufficiency of

process. (Simes, L.; SC 11-1192; 11-1-12; Hannah, J.)

HPD, LLC v. Tetra Technologies, Inc., 2012 Ark. 408 **[arbitration]** By the terms of parties' agreement, court should have compelled arbitration (Guthrie, D.; SC 11-1299; 11-1-12; Goodson, C.)

Elsner v. Kalos Financial Services, Inc., 2012 Ark. App. 639 **[arbitration]** An unconfirmed arbitration award should be given preclusive effect, and subsequent lawsuit is barred by res judicata. Parties were before the arbitrator; they had a full and fair opportunity to litigate the issues raised; and the issues were actually decided by the arbitrator. (Scott, J.; CA 12-403; 11-7-12; Abramson, R.)

Huber Rental Properties, LLC v. Allen, 2012 Ark. App. 642 **[landlord/ tenant]** Court properly found that under the lease the landlord had a duty to make repairs. Landlord had the duty to remove a fallen tree from the property. (McCallum, R.; CA 12-255; 11-7-12; Martin, D.)

Menninger v. Concoby, 2012 Ark. App. 627 **[unjust enrichment]** Owner and contractor settled their dispute over cost of renovations to building. In a subsequent lawsuit by a subcontractor against the contractor (which possibility had been carved out of the settlement), owner was not liable for value of materials on the theory of unjust enrichment. Contractor was liable for the amounts owed and owner did not receive an unjust benefit as the owner had paid the contractor from which funds were available to pay the subcontractor. (Smith, K.; CA 12-384; 11-7-12; Robbins, J.)

Ark. DHS v. Koprovic, 2012 Ark. 645 **[admin. app.]** Substantial evidence did not support DHS's finding that foster parent maltreated child by inadequately supervising her in connection with drowning of child in swimming pool. (Fitzhugh, M.; CA 12-474; 11-7-12; Hoofman, C.)

Taylor v. Texas Gas Comm., 2012 Ark. App. 625 **[contract]** Landowner may not recover the value of time spent in cleaning up waste wrongfully dumped on property by employees of drilling company. Contractors defecated on property, but behavior was not within scope of contract and no evidence of costs of cleanup was presented. (Hughes, T.; CA 12-253; 11-7-12; Gladwin, R.)

Hankins, Adm'x v. Austin, 2012 Ark. App. 641 **[deed]** Although an expert testified that signature was not valid, court did not err in relying on fact witnesses' testimony regarding circumstance relating to execution of deed. Plaintiff failed to sustain its burden to prove mental incapacity or that executor of deed was unduly influenced. Evidence supported court's finding that person had authority to complete check in accordance with instructions. (Harkey, A.; CA 11-1200; 11-7-12; Martin, D.)

40 Retail Corp. v. City of Clarksville, 2012 Ark. 422 **[estoppel]** Business is not estopped to challenge an ordinance. Business did not benefit from the ordinance; it is not seeking to benefit from legislation while at the same time rid itself of its burdens. (Sutterfield, D.; SC 12-276; 11-8-12; Goodson, C.)

Walls v. Ark. Oil and Gas Comm., 2012 Ark. 418 **[mineral rights]** Case involved appeal from Commission's payment to owners of unleased owners. Commission is not required to award the

highest price historically paid but only a reasonable one. Commission's decision was supported by substantial evidence. Commission authorized owners to form a drilling unit for exploration purposes. Owners who do not want to participate can transfer rights in the drilling unit for a reasonable consideration and on a reasonable basis. (Maggio, M.; SC 12-146; 11-8-12; Danielson, P.)

Benefit Bank v. Rogers, 2012 Ark. 419 [**lien/alimony**] A voluntary lien imposed by the agreement of the parties to secure alimony payments is valid and enforceable and has priority over a subsequent mortgage on the property. [**lis pendens**] Lis pendens was valid and it did not have to be notarized. Its purpose is to give notice; it is not an instrument of conveyance, and there is no requirement of acknowledgment. (Tabor, S.; SC 12-163; 11-8-12; Danielson, P.)

Brown v. Lee, 2012 Ark. 417 [**judgment/offset**] Judgment that referenced wrong insurance company is a clerical error that may be corrected by a nunc pro tunc order. Court's offset was proper. (Fox, T.; SC 12-106; 11-8-12; Corbin, D.)

Ozark Capital Corp. v. Pullen, 2012 Ark. App. 652 [**evidence**] An affidavit prepared pursuant to section 16-46-108 to introduce business records should not have been excluded sua sponte by the judge. (Pearson, W.; CA 12-174; 11-14-12; Robbins, J.)

Henderson v. Harbison, 2012 Ark. App. 657 [**negligence**] Directed verdict on negligence counterclaim was proper because of failure of proof on issues of standard of care and proximate cause. (Maggio, M.; CA 12-393; 11-14-12; Gruber, R.)

Sammons v. Seeco, Inc., 2012 Ark. App. 650 [**negligence**] Plaintiff failed to show that defendant released the water that cause the flooding on plaintiff's property. Res ipsa doctrine does not apply until other responsible causes have been eliminated. (McCormick, D.; CA 12-446; 11-14-12; Gladwin, R.)

Blake. v. Shellstrom, 2012 Ark. 428 [**juror misconduct**] Interjection of insurance coverage into deliberations did not meet "extraneous prejudicial information" exception under Evidence Rule 606 but rather was speculative beliefs based on prior knowledge and life experiences. (Harkey, A.; SC 12-36; 11-15-12; Gunter, J.)

McWilliams. v. Pope County Board of Equalization, 2012 Ark. 427 [**tax assessment**] Property should not have been classified as residential or timber land. Equal Protection challenge on basis that Board's requirement of profitability of the tract that was imposed on property owner is not imposed on others was not sustained. Court did not abuse its discretion in allowing an expert to visit the property. (Rogers, R.; SC 12-385; 11-15-12; Hannah, J.)

Roselyn Gira Trust v. Bryant, 2012 Ark. App. 668 [**default judgment**] Court abused its discretion in setting aside a default judgment. There was no evidence to show the sort of mistake, inadvertence, surprise, or excusable neglect that would justify relief from the default judgment. (Webb, G.; CA 11-726; 11-28-12; Pittman, J.)

Dobbs v. Discover Bank, 2012 Ark. App. 678 [**summons**] Summons was fatally defective in that it did not state that it was from "The State of Arkansas", and it failed to list the plaintiff-

attorney's address. Other claimed deficiencies (failure to list clerk's address and language used to advise of possible default) were without merit as not in violation of Rule 4 requirements.

[service] Service by Federal Express to defendant's husband was defective because the record failed to demonstrate that the commercial delivery company was registered with the circuit clerk or that the husband was an agent authorized to accept service. (Fox, T.; CA 12-449; 11-28-12; Martin, D.)

Smith v. Rebsamen Med. Center, 2012 Ark. 441 **[concurrent jurisdiction]** Circuit court civil division did not have the authority to disregard a nunc pro tunc order previously entered by the probate division, which affected the date of appointment of the estate's administrator. (Fox, T.; SC 11-1266; 11-29-12; Corbin, D.)

City of Rockport v. City of Malvern, 2012 Ark. 445 **[annexation]** Annexation by resolution as opposed to ordinance is not invalid; nor, is there a legal requirement that a resolution for annexation be published and read on three different days. Requirement in annexation statute of property being in "one area" does not preclude the city from annexing several separate properties at one time. Land was contiguous to annexing city because a city street does not break contiguity for purposes of annexation. (Rogers, R.; SC 12-336; 11-29-12; Baker, K.)

Whitbeck v. Bradford, 2012 Ark. 439 **[dismissal]** Circuit court's dismissal order affirmed based on res judicata. (Moody, J.; SC 11-961; 11-29-12; Hannah, J.)

Kimbrell v. McClerskey, 2012 Ark. 443 **[school funding]** When school district generates more URT revenues than the foundation-funding amount, the excess revenues go to the district from which the revenues were derived and not to the state. The URT is a one-of-a-kind tax but it is not a state-ad valorem tax and URT revenues are not state-tax revenues. (Fox, T.; SC 11-1289; 11-29-12; Danielson, P.)

DOMESTIC RELATIONS

Kelley v. Kelley (now Taylor), 2012 Ark. App. 653 **[marital property–railroad retirement benefits; enforceability of property settlement agreement]** When they divorced in 1993, the parties entered into a property settlement agreement, approved by the court and incorporated into the divorce decree, that provided that the appellant's Tier I and Tier II railroad retirement benefits would be divided equally between the parties. In 1994, appellee filed a petition seeking one-half of appellant's Tier I and Tier II benefits being paid to him as a result of a temporary disability. The trial court held at that time that appellee was not entitled to receive any portion of disability benefits under the parties' decree, but only one-half of both the Tier I and Tier II benefits that appellant would receive at retirement age. The Court of Appeals affirmed that decision. This appeal results from a contempt motion the appellee filed subsequently, alleging that appellant has reached retirement age and is receiving Tier I and Tier II benefits, but that she is receiving one-half of his Tier II benefits only. She asserted that the Tier I benefits are not divisible by way of a Qualified Domestic Relations Order and that he refused to pay her one-half of those benefits directly. He responded that no legal authority exists for dividing the Tier I benefits and that the

decree is void and unenforceable with respect to those benefits. The circuit court found that appellant was not in contempt, but ordered him to pay one-half of his Tier I benefits to appellee based upon the original 1993 decree. The circuit court said the parties and the court did not understand at the time that the Tier I benefits were different and not subject to the QDRO that was ordered. However, the court said the order should be enforced as written in accordance with the intention of the trial court and the parties at the time. The appellant contends on this appeal that federal law prohibits the division of the Tier I benefits, and the trial court lacked authority to enforce that provision of the decree requiring the appellant to pay the appellee one-half of the Tier I retirement benefits. The Court of Appeals agreed and said that the parties' previous agreement was invalid and unenforceable when signed because it violates federal law. The decision was reversed. (Harrell, S.; No. CA 12-473; 11-14-12; Robbins, J.)

Woodson v. Woodson, 2012 Ark. App. 663 [**marital property; Rule 60 of the AR CivP**] The appellant appealed the denial of his motion to set aside the order of the circuit court granting the appellee all of the stock in a marital business and requiring her to pay the appellant \$31,839 for his interest. The appellant had argued at a hearing on the motion that the order should be set aside "in the sake of fairness and justice." Rule 60 of the Arkansas Rules of Civil Procedure sets out the conditions under which a trial court may modify or set aside its order beyond the 90-day limitation in the rule. The Court of Appeals found that the appellant failed to establish a meritorious defense under Rule 60, and the trial court did not abuse its discretion in denying relief under Rule 60. (Harkey, A.; No. CA12-364; 11-14-12; Brown, W.)

PROBATE

Laura E. Eft, Individually and as Trustee of the Rogers Family Revocable Trust, et al. v. Rogers, 2012 Ark. App. 632 [**revocable trust–reformation; evidence**] The circuit court denied the appellants' petition to reform the Rogers Family Revocable Trust, created in March, 1993, by Dale Rogers and his wife, Mary Jane Rogers, both deceased. Appellants claimed that the court erred (1) in excluding extrinsic evidence regarding Ms. Rogers's motive, intent, plan and statement against her interest, and (2) by failing to find clear and convincing evidence sufficient to reform the trust. The proposed reformation of the trust would have removed the appellee as the residual beneficiary of the trust, making the appellants the residual beneficiaries instead. The first issue involved excluded evidence the appellants contended showed Ms. Rogers's state of mind regarding her estate plan. The Court of Appeals said that much evidence was allowed about her state of mind, but that the testimony excluded about certain aspects of her emotions and relationships were not affirmative statements of intent. Regarding the circuit court's alleged error in failing to find clear and convincing evidence, the court said the circuit court's conclusion was not clearly erroneous that the appellants did not meet the high burden of proof necessary to remove appellee as the residual beneficiary or to prove a mistake in the drafting in the estate-planning documents. The decision was affirmed. (Schrantz, D.; No. CA 12-135; 11-7-12; Gruber, R.)

JUVENILE

Per Curiam [**Appellate Criminal Procedure - Transfers**] The Supreme Court declined to adopt the recommendation from the Criminal Practice Committee to allow the state to appeal transfer orders. (Per Curiam; 11-15-2012.).

L.C. v. State, 2012 Ark. App. 666 [**Delinquency - sufficiency of the evidence**] Appellant was found delinquent of battery in the second degree and challenged the sufficiency of the evidence. Appellant failed to comply with Ark. R. Crim. P. 33.1 to make specific motions regarding the lack of evidence to prove serious physical injury and the lack of evidence to prove culpable mental state. The only sufficiency argument preserved for appeal was that there was no proof that appellant caused injury on anybody and on that point the court disagreed based on the theory of accomplice liability. [**petition deficiencies**] Appellant also argued that the trial court erred in denying her motion to dismiss based on deficiencies in the delinquency petition. The proper time to object to an indictment or information is prior to trial. Appellant is barred from raising this on appeal because she failed to properly object prior to trial. [**Delinquency Disposition – DYS Commitment**] Appellant argued that the court erred in committing her to DYS because there was evidence of alternative dispositions. While this order is moot since the juvenile has already been released from DYS, we affirm the court's disposition as appropriate in this case. [**Delinquency Disposition – DYS Review**] Appellant also argued that the disposition order is void because the trial court ordered that prior to being released from DYS, DYS was required to provide notice to the trial court in order for a hearing to be scheduled. Appellant argued that this interfered with DYS' sole authority to release authority. The appellate court held that the issue was moot. DHS requested the court to reach the merits of the argument because according to agency data this language occurs in one quarter of the cases. The appellate court declined to do so because DHS admitted it routinely notified the court prior to a juvenile's release and in the current case the juvenile was released and no hearing was held. (Cooper, T.; CA12-278; 11-28-2012; Vaught, L.).

B. R. v. State, 2012 Ark. App. 644 [**Delinquency – evidence**] Appellant was adjudicated delinquent for rape and argued that the court erred in admitting evidence under Ark. R. Evid. 803(25) of a video of an interview of a child victim at a Child Advocacy Center. Appellant argued that the court erred in finding the videotaped statements reliable. Appellant's argument was not preserved for appeal because appellant only objected on the basis that she had not cross-examined the child. The appellate court further noted that it found no abuse of discretion in admitting the videotape. (Fryauf, T.; CA12-272; 11-7-2012; Hoofman, C.).

D.D. v. State, 2012 Ark. App. 637 [**Delinquency - sufficiency of the evidence**] Appellant was adjudicated delinquent on three counts of sexual assault in the second degree. He argued that the court erred in denying his motion for directed verdict which is considered a challenge to the sufficiency of evidence. Appellant argued that the victims' testimony was not credible. He also argued it was inherently improbable and/or physically impossible and that there was not additional evidence support the three victims' testimony. The appellate court disagreed that none of the victims' versions of events were improbable or physically impossible. The trial court found that the victims told appellant no and he would not take no for an answer. The trial court found the victims' testimony credible and the uncorroborated testimony of a victim of a sexual

offense constitutes sufficient evidence. (Fryauf, T.; CA12-254; 11-7-2012; Glover, D.).

Arkansas Dept. of Human Servs. v. Koprovic, 2012 Ark. 645 [**Child Maltreatment Administrative Appeal**] Substantial evidence did not support DHS's finding that foster parent maltreated child by inadequately supervising her in connection with drowning of child in swimming pool. (Fitzhugh, M.; CA 12-474; 11-7-12; Hoofman, C.).

Thornton v. Arkansas Dept. of Human Servs., 2012 Ark. App. 670 [**TPR - meaningful rehabilitation efforts**] Appellant argued that the trial court erred in finding that there was sufficient evidence that DHS provided meaningful rehabilitation efforts to assist him with reunification of his children. Appellant does not challenge the best interest finding or grounds for termination. Appellant's argument is procedurally barred because he did not appeal from prior orders in which the trial court found that DHS made reasonable efforts. The record also shows that although appropriate services were offered he failed to avail himself to those services. (Cook, V.; CA12-635; 11-28-2012; Gladwin, R.).

Bradbury v. Arkansas Dept. of Human Services, 2012 Ark. App. 680 [**TPR - sufficiency of the evidence**] Appellant argued that the trial court erred in finding there was sufficient evidence that he abandoned D.D. because there was no evidence of intent. The appellate court questioned whether appellant's incarceration throughout the case would constitute abandonment. DHS alleged the statutory ground of subsequent issue and the appellate court found that there was sufficient evidence to support a finding based on that ground where appellant failed to maintain employment, stable housing and transportation, had no plan to support his children, failed to comply with case plan, avail himself to services provide by DHS, and maintain contact with his children. (Cook, V.; CA12-636; 11-28-2012; Brown, W.)

Case in which the Court of Appeals Affirmed No-Merit TPR and Motion to Withdraw Granted:

- *Wrone v. Arkansas Dept. of Human Services*, 2012 Ark. App. 671 (Isbell, G.; CA12-639; 11-28-2012; Wynne, R.).

EIGHTH CIRCUIT

Argonaut Great Central Ins. Co v. Casey: [**insurance**] District court did not err in determining that under Arkansas law and the provisions of the policy in question it could aggregate Argonaut's liability and uninsured motorist coverages to determine the insurer's liability. (E.D.; Ark.; #12-1221; 11-13-12)