

# ARKANSAS SUPREME COURT

## PROCEEDINGS OF DECEMBER 1, 2022

### **JOHN DAN KEMP, CHIEF JUSTICE**

[CV-21-557](#). Keith Gibson, Marie Holder, Alec Farmer, Philip Taldo, and Robert S. Moore, Jr., as Members of the Arkansas State Highway Commission; Lorie Tudor, Director of the Arkansas Department of Transportation; Arkansas Department of Transportation; Asa Hutchinson, Governor of the State of Arkansas; Larry W. Walther, Director of Arkansas Department of Finance and Administration; Andrea Lea, Auditor of the State of Arkansas; and Dennis Milligan, Treasurer of the State of Arkansas v. Shelly Buonaiuto, Mary Weeks, Verlon Abrams, and Sarah B. Thompson, from Pulaski County Circuit Court, Sixteenth Division. Reversed on direct appeal; affirmed on cross-appeal. Womack, J., concurs. Baker, Hudson, and Wynne, JJ., dissent.

### **KAREN R. BAKER, JUSTICE**

[CV-22-430](#). Arkansas Parole Board; John Felts, Brett Morgan, Andy Shock, Boyce Hamlet, Wendy Ryals, Jerry Riley, and Lona McCastlain, in Their Official Capacities as Members of the Arkansas Parole Board; Arkansas Department of Corrections, Division of Correction; and Dexter Payne, in His Official Capacity as Director of the Division of Correction v. Willis W. Johnson, from Pulaski County Circuit Court, Twelfth Division. Reversed and remanded. Wynne, J., concurs. Womack, J., dissents.

### **ROBIN F. WYNNE, JUSTICE**

[CV-21-533](#). Kevin Hackie v. Colonel William J. Bryant, in His Official Capacity as Director of the Department of the Arkansas State Police, from Pulaski County Circuit Court, Sixth Division. Affirmed. Womack, J., concurs without opinion. Baker, J., dissents.

### **BARBARA W. WEBB, JUSTICE**

[CV-22-250](#). Risie Howard, as Special Administratrix of the Estate of Mrs. George Howard Jr. (Vivian), Deceased v. Baptist Health a/k/a Baptist Health Home Health Network; Diamond Risk Insurance Company, LLC; John Harris, M.D.; Leah Willett, B.S.N., R.N., Individually; Alicia Brucks, S.L.P., Individually; and Brandy M. Cantwell, P.T., Individually, from Pulaski County Circuit Court, Eleventh Division. Reversed and remanded. Kemp, C.J., and Wood and Wynne, JJ., dissent.

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**PER CURIAM ORDERS**

REHEARING DENIED: Petition for rehearing was denied today in the following case.

CV-22-34. Ricky Lee Scott v. Dexter Payne, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Webb, J., would grant.

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CR-87-54. Harless Dale Maulding a/k/a Elijah Israel v. State of Arkansas, from Poinsett County Circuit Court. Entry of appearance of Michael Kiel Kaiser on behalf of appellant is noted.

CR-87-54. Harless Dale Maulding a/k/a Elijah Israel v. State of Arkansas, from Poinsett County Circuit Court. Appellant's motion for release of physical exhibit for postconviction DNA testing is granted.

CR-93-189. Reginald Early v. State of Arkansas, from Dallas County Circuit Court. Petitioner's amended petition to reinvest the circuit court with jurisdiction to consider a petition for writ of error coram nobis is granted. Womack and Webb, JJ., and Special Justice Sylvester Smith would deny. Wynne, J., not participating.

CR-07-319. Eric Flowers v. State of Arkansas, from Miller County Circuit Court. Motion for entry of appearance of Garnet E. Norwood on behalf of appellant is granted. Wood and Womack, JJ., would note.

CR-07-319. Eric Flowers v. State of Arkansas, from Miller County Circuit Court. Motion for entry of appearance of Jacob S. Potter on behalf of appellant is granted. Wood and Womack, JJ., would note.

CR-07-319. Eric Flowers v. State of Arkansas, from Miller County Circuit Court. Motion for entry of appearance of Joshua L. Potter on behalf of appellant is granted. Wood and Womack, JJ., would note.

CR-21-78. Demarcus Donnell Parker v. State of Arkansas, from Crittenden County Circuit Court. Appellee's motion to preserve anonymity of juvenile victims pursuant to Ark. Sup. Ct. R. 6-3(a) is denied. Womack, J., would moot. Webb, J., would grant.

CR-22-503. Nathaniel Allen Freeman v. State of Arkansas, from Stone County Circuit Court. Appellant's statement of the fact of death of appellant pursuant to Ark. R. App. P. -Crim. 1(c) & Ark. R. Civ. P. 25(a) is noted.

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CR-22-670. Damien Echols v. State of Arkansas, from Crittenden County Circuit Court. Appellant's motion for rule on clerk is granted. Kemp, C.J., not participating.

CR-22-677. Zorel Tilson v. State of Arkansas, from Garland County Circuit Court. Petitioner's petition for writ of certiorari and petition for writ of prohibition taken as a case. Hudson, Womack, and Webb, JJ., would deny.

CR-22-696. Fredrick Jones v. State of Arkansas, from Pulaski County Circuit Court, Fifth Division. Appellant's motion for rule on clerk is granted.

CV-21-417. Rebecca Nichols v. James Swindoll and Chuck Gibson, from Pulaski County Circuit Court, Fifth Division. Appellant's motion to strike response to petition for review is denied.

CV-22-190. John Thurston, in His Official Capacity as Secretary of State of the State of Arkansas; Sharon Brooks, Bilenda Harris-Ritter, William Luther, Charles Roberts, James Sharp, and J. Harmon Smith, in Their Official Capacities as Members of the Arkansas State Board of Election Commissioners v. The League of Women Voters of Arkansas; Arkansas United; Dortha Dunlap; Leon Kaplan; Nell Matthews Mock; Jeffery Rust; and Patsy Watkins, from Pulaski County Circuit Court, Fifth Division. Appellant's petition for writ of certiorari to complete the record is granted.

CV-22-254. State of Arkansas v. Veronica McClane, as Parent and Next Friend of Her Minor Children; Ashley Simmons, as Parent and Next Friend of Her Minor Children; Asa Hutchinson, in His Official Capacity as Governor of Arkansas; Barry Hyde, in His Official Capacity as County Judge for Pulaski County; Eric Higgins, in His Official Capacity as Pulaski County Sheriff; Little Rock School District; and Marion School District, from Pulaski County Circuit Court, Sixth Division. Motion of Jimmy Hickey, Jr., in His Official Capacity as President Pro Tempore of the Arkansas Senate, and Matthew Shepherd, in His Official Capacity as Speaker of the Arkansas House of Representatives, for leave to file amici curiae brief is granted. Special Justice Howard Brill agrees. Kemp, C.J., and Baker and Wynne, JJ., would deny. Wood, J., not participating.

CV-22-463. Michael Akins d/b/a ABC Construction v. Andre Coleman d/b/a ARC Foundation, from Crittenden County Circuit Court. Appellant's pro se motion for leave of court and/or, in the alternative, motion for belated filing treated as a motion to file a belated petition for review and denied.

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CV-22-635. Monsanto Company v. Cornelius Kilgore, Labommie Kilgore, Walmart, Inc., and Wal-Mart Stores Arkansas, LLC, from Drew County Circuit Court. Motion of Jacob Simon to admit pro hac vice is granted.

CV-22-635. Monsanto Company v. Cornelius Kilgore, Labommie Kilgore, Walmart, Inc., and Wal-Mart Stores Arkansas, LLC, from Drew County Circuit Court. Motion of Kenneth Lee Marshall to admit pro hac vice is granted.

CV-22-635. Monsanto Company v. Cornelius Kilgore, Labommie Kilgore, Walmart, Inc., and Wal-Mart Stores Arkansas, LLC, from Drew County Circuit Court. Motion of Stefani L. Wittenauer to admit pro hac vice is granted.

CV-22-661. Nancy Heard v. State of Arkansas ex rel. Todd H. Murray, First Judicial District Prosecuting Attorney; Phillips County, Arkansas; and Clark Hall, County Judge of Phillips County, Arkansas, from Phillips County Circuit Court. Petitioner's petition for writ of prohibition and writ of certiorari is denied.

D-22-611. In Re Everett O. Martindale, Arkansas Bar No. 74100, an Original Action. Petition of Everett O. Martindale, Arkansas Bar No. 74100, for surrender of license in lieu of disciplinary action is granted.

D-22-613. Arkansas Judicial Discipline and Disability Commission v. Robin Carroll, Circuit Court. Petitioner's report and amended report of uncontested sanction. Expedited petition granted; modified sanction of suspension without pay imposed. See [per curiam](#) issued November 18, 2022.

D-22-692. In Re André Brandon Caldwell, Arkansas Bar No. 2021084, an Original Action. Petition of André Brandon Caldwell, Arkansas Bar No. 2021084, for voluntary surrender of license (resignation) is granted.

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CR-07-238. Kenny Travis, Jr. v. State of Arkansas, from Mississippi County Circuit Court, Chickasawba District. Petitioner's pro se motion for written opinion to be issued on third petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis and for writ of quo warranto is denied.

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CR-07-238. Kenny Travis, Jr. v. State of Arkansas, from Mississippi County Circuit Court, Chickasawba District. Petitioner's pro se motion for rule on clerk to file a belated motion for extension of time to file a motion for rehearing or reconsideration treated as a motion for rule on clerk to file a belated motion for extension of time to file a motion for reconsideration and denied. Wood, J., would dismiss.

CR-14-1088. Fred L. Williams v. State of Arkansas, from Drew County Circuit Court. Petitioner's pro se fourth petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis is denied. Baker and Wood, JJ., would moot.

CR-14-1088. Fred L. Williams v. State of Arkansas, from Drew County Circuit Court. Petitioner's pro se amended fourth petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis is denied.

CR-22-221. Parnell R. May v. State of Arkansas, from Pulaski County Circuit Court, First Division. Appellant's pro se motion to file reply brief within fifteen days of receipt of State's response is moot. Baker, J., would deny.

CR-22-221. Parnell R. May v. State of Arkansas, from Pulaski County Circuit Court, First Division. Appellant's pro se motion for access to the record by obtaining a copy of appellant's brief and reply brief with file stamp is denied.

CR-22-221. Parnell R. May v. State of Arkansas, from Pulaski County Circuit Court, First Division. Appellant's pro se motion requesting oral argument is moot. Hudson, Womack, and Webb, JJ., would deny.

CR-22-626. Jackie Breeden, Jr. v. State of Arkansas, from Benton County Circuit Court. Petitioner's pro se petition for writ of mandamus is denied. Webb, J., would moot.

CR-22-626. Jackie Breeden, Jr. v. State of Arkansas, from Benton County Circuit Court. Petitioner's pro se amended petition for writ of mandamus. Response requested.

CV-22-599. Rolandis Chatmon v. Dexter Payne, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for use of the record of appeal is granted. Wood, J., not participating.

CV-22-599. Rolandis Chatmon v. Dexter Payne, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for extension of time to file brief is granted. Wood, J., not participating.

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**MOTIONS SUBMITTED**

CR-21-364. Marvin Stanton v. State of Arkansas, from Miller County Circuit Court. Appellee's motion to dismiss appeal.

CR-22-615. Marlon Smith v. State of Arkansas, from Washington County Circuit Court. Petitioner's petition for writ of certiorari to complete the record.

CR-22-706. James McCauley v. State of Arkansas, from Hot Spring County Circuit Court. Appellant's motion for rule on clerk.

CR-22-715. Deric Smith v. State of Arkansas, from Jefferson County Circuit Court. Appellant's motion for rule on clerk.

CV-22-32. Altice USA, Inc., d/b/a Suddenlink Communications v. City of Gurdon, Arkansas ex rel. Honorable Sherry Kelley, Mayor, Individually and on Behalf of a Class of Similarly Situated Cities, from Clark County Circuit Court. Motion of Ginger Gooch to withdraw as counsel for appellant.

CV-22-380. Arkansas Department of Finance and Administration, Alcoholic Beverage Control Division, and Arkansas Medical Marijuana Commission v. Absolute Essence, LLC, from Pulaski County Circuit Court, Twelfth Division. Appellee's motion to supplement the record.

CV-22-380. Arkansas Department of Finance and Administration, Alcoholic Beverage Control Division, and Arkansas Medical Marijuana Commission v. Absolute Essence, LLC, from Pulaski County Circuit Court, Twelfth Division. Appellee's motion to dismiss appeal for lack of subject matter jurisdiction.

CV-22-623. Lauren Taylor v. Arkansas Department of Human Services and Minor Child, from Conway County Circuit Court. Petitioner's pro se motion requesting oral argument on motion to dismiss complaint.

CV-22-623. Lauren Taylor v. Arkansas Department of Human Services and Minor Child, from Conway County Circuit Court. Petitioner's pro se motion requesting to enter discovery.

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**MOTIONS SUBMITTED**

CV-22-685. Kristina Gulley v. State of Arkansas ex rel. Larry Jegley, Sixth Judicial District Prosecuting Attorney; and Pulaski County, Arkansas ex rel. Barry Hyde, Pulaski County Judge, from Pulaski County Circuit Court, Sixteenth Division. Motion of separate appellee Pulaski County ex rel. Barry Hyde, Pulaski County Judge, to supplement the record and for extension of time.

CV-22-704. (In the Matter of the Guardianship of Zelda Walls, Incapacitated Adult) Donna Bryant, Successor Trustee of the Zelda S. Walls Living Trust v. Richard Gawenis, Individually and as Guardian of the Person and Estate of Zelda Walls, from Van Buren County Circuit Court. Petitioner’s petition for writ of prohibition and writ of mandamus.

CV-22-704. (In the Matter of the Guardianship of Zelda Walls, Incapacitated Adult) Donna Bryant, Successor Trustee of the Zelda S. Walls Living Trust v. Richard Gawenis, Individually and as Guardian of the Person and Estate of Zelda Walls, from Van Buren County Circuit Court. Petitioner’s motion to consolidate.

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CR-22-658. Jimmie L. Barker v. State of Arkansas, from Crittenden County Circuit Court. Petitioner’s pro se motion for belated appeal.

CR-22-688. Duane Gonder v. State of Arkansas, from Drew County Circuit Court. Petitioner’s pro se petition for writ of mandamus.

CR-22-688. Duane Gonder v. State of Arkansas, from Drew County Circuit Court. Petitioner’s pro se motion for supplemental record or, in the alternative, expansion of the record.

CR-22-693. Michael Todd v. State of Arkansas, from Hempstead County Circuit Court. Petitioner’s pro se motion for rule on clerk.

CR-22-694. Rodney L. Baker v. State of Arkansas, from Benton County Circuit Court. Petitioner’s pro se petition for writ of mandamus.

CV-22-536. Gerald H. Lowery, Sr. v. Dexter Payne, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant’s pro se motion to file belated brief.

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**MOTIONS SUBMITTED**

CV-22-722. Charles Edward Jones, Sr. v. Dexter Payne, Director, Arkansas Department of Correction, from Chicot County Circuit Court. Petitioner's pro se petition for writ of mandamus.



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**CASES SUBMITTED**

CV-22-138. Ricky Hendrix, Individually and on Behalf of All Arkansans Similarly Situated v. Municipal Health Benefit Fund, from Pope County Circuit Court. Orally argued.

CR-21-78. Demarcus Donnell Parker v. State of Arkansas, from Crittenden County Circuit Court.

CR-22-151. Terry Break v. State of Arkansas, from Boone County Circuit Court.

CR-22-221. Parnell R. May v. State of Arkansas, from Pulaski County Circuit Court, First Division.

CV-22-296. Jerry Herron v. Arkansas Department of Correction and Wendy Kelley, Director, Arkansas Department of Correction, from Arkansas County Circuit Court, Northern District.

Opinions are available on the internet at

<http://arcourts.gov>