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WHAT IT TAKES: A STATISTICAL ANALYSIS OF THE ARKANSAS SUPREME COURT'S PETITION FOR REVIEW PROCESS

*Justice Rhonda Wood, Jessica Finan Patterson, and Brian W. Johnston**

Much of the Arkansas Supreme Court's docket involves whether to grant petitions for review from decisions of the Arkansas Court of Appeals. From January 1, 2015, through July 1, 2021, the supreme court considered petitions for review in 772 cases. The supreme court granted review in just 92 cases, or 11.92%. This Article is a statistical analysis of those 772 cases as they relate to the petition for review process and outcome at the supreme court.

The Article proceeds in four parts. Part I provides a general procedural overview of the appellate process in Arkansas and the jurisdiction of both appellate courts. Part II explains the methodology we used to obtain the data for this Article. Part III is the statistical analysis itself. And in Part IV, we analyze the granted petitions by case type and draw conclusions.

Our data and analysis show some predictability in which cases the supreme court granted review and in the supreme court's ultimate disposition. For example, our data show that the strongest indicator that the supreme court would grant review was if the case was decided by a court of appeals panel of nine judges. The second most likely indicator was if the appeal was decided by a panel of six judges.

This Article also compares the result reached at the court of appeals with the result reached at the supreme court. One might hypothesize that the supreme court would grant review to change the outcome. After all, why would the supreme court accept review if the outcome would stay the same? Our analysis revealed that the supreme court's result differed from the court of appeals more often than not. Almost 55% of the time the supreme court reached a different result. But, as this Article explains, the supreme court may grant review for reasons other than reaching a different outcome.¹

One of these reasons is the supreme court's interest in the underlying legal issues. We separated the granted petitions into the following case types: civil, criminal, probate, domestic, and juvenile. Was one case type more likely to be granted than another? This inquiry produced surprising

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1. *See infra* Part III.

results. For example, the supreme court accepted review in almost 30% of the petitions for review filed in probate cases.² But these were not “typical” probate cases about will contests or estate administration; nearly all probate cases concerned guardianships over children or adoptions. This focus on children dovetailed with the third highest case type in which the supreme court granted review: domestic-relations cases. These were granted at a rate of more than 18%.³ These results, combined with our analysis in Part IV, show the supreme court’s focus on petitions where guardianships, adoptions, or divorces touched on the custody of children.

The supreme court also accepted review in many cases in which the court of appeals had dismissed the appeal for lack of jurisdiction. This happened most often in appeals from divorce decrees. But the trend showed up in civil, probate, and juvenile cases, too. The supreme court showed a preference to reach the merits in these cases. In some, the supreme court would remand the case to the court of appeals for further consideration. In others, the supreme court would keep the case and decide the merits on its own.

We hope this Article will illuminate the petition for review process for practitioners. We know of no other descriptive study of the supreme court’s petition for review docket. And we hope the results can help lawyers as they advise their clients and make informed decisions about whether to seek review at the supreme court.

I. PROCEDURAL OVERVIEW

A. Where Do Appeals Go?

We start by summarizing appellate jurisdiction in Arkansas. Under the Arkansas Constitution, the supreme court has “[s]tatewide appellate jurisdiction[,]”⁴ and the court of appeals “shall have such appellate jurisdiction as the Supreme Court shall by rule determine[.]”⁵ Under the Rules of the Arkansas Supreme Court and Court of Appeals, all appeals must be filed with the court of appeals unless original appellate jurisdiction lies with the supreme court.⁶ Broadly, the supreme court exercises original appellate jurisdiction over the following: (1) construction or interpretation of the Arkansas Constitution; (2) criminal appeals in which the sentence is life imprisonment or death; (3) extraordinary writs; (4) election cases; (5) attorney discipline;

2. See *infra* Part III.B.

3. See *infra* Part III.B.

4. ARK. CONST. amend. 80, § 2(D)(1).

5. *Id.* § 5.

6. ARK. SUP. CT. R. 1-2(a).

(6) judicial discipline; (7) subsequent appeals to the supreme court; and (8) appeals the law requires the supreme court to hear.⁷

The supreme court has also chosen to exercise jurisdiction in interlocutory appeals involving class-action certification orders under Rule 23 of the Arkansas Rules of Civil Procedure.⁸ Previously, the supreme court also exercised jurisdiction in all appeals involving ineffective-assistance-of-counsel claims arising under Arkansas Rule of Criminal Procedure 37.1.⁹ But now, the supreme court hears in the first instance Rule 37 cases only when the underlying sentence was life imprisonment or death.¹⁰

The supreme court can also decide an appeal in the first instance, even if the case was first lodged in the court of appeals.¹¹ Three methods exist for transferring an appeal from the court of appeals to the supreme court.¹² First, a party can file a motion requesting reassignment.¹³ Second, the supreme court can reassign the case on its own initiative¹⁴ after considering a non-exhaustive list of factors, which includes issues concerning: (1) first impression; (2) inconsistency between an opinion of the court of appeals and supreme court; (3) the United States Constitution; (4) substantial public interest; (5) clarification or development of law; and (6) substantial questions of statutory interpretation.¹⁵ This list is not limited, and the supreme court can consider any other factor when deciding to transfer.¹⁶

Third, the court of appeals can certify a case to the supreme court.¹⁷ In so doing, the court of appeals must identify why the case falls outside its jurisdiction or why the case raises one or more issues of significant public interest or major legal interest.¹⁸ When the court of appeals certifies a case to the supreme court, the court of appeals submits a certification memo to the

7. *Id.*

8. *See, e.g.*, *Koppers, Inc. v. Trotter*, 2020 Ark. 354, 2020 WL 6375918; *Mun. Health Benefit Fund v. Hendrix*, 2020 Ark. 235, 602 S.W.3d 101; *City of Conway v. Shumate*, 2017 Ark. 36, 511 S.W.3d 319. The court of appeals may hear a class-action appeal after a final merits disposition. *E.g.*, *Gen-Kal Pipe & Steel Corp. v. M.S. Wholesale Plumbing, Inc.*, 2019 Ark. App. 117, at 2, 573 S.W.3d 1, 2 (affirming a summary judgment case in which a class action was certified). But we found no cases in which the court of appeals heard, on an interlocutory basis, an appeal from a class certification order.

9. *Barnes v. State*, 2017 Ark. 76, at 1 n.1, 511 S.W.3d 845, 846 n.1.

10. *Id.*; *see also* *Bridgeman v. State*, 2017 Ark. App. 321, at 3–4, 525 S.W.3d 459, 462 (explaining transfer of jurisdiction).

11. ARK. SUP. CT. R. 1-2(c).

12. *Id.* 1-2(b)–(c).

13. *See, e.g.*, *Order, Flywheel Energy Prod., LLC v. Ark. Oil & Gas Comm'n*, No. CV-21-136 (Ark. July 22, 2021) (order denying appellant's motion to certify to supreme court).

14. *See, e.g.*, *Trammell v. Wright*, 2016 Ark. 147, at 1, 489 S.W.3d 636, 637.

15. ARK. S. CT. R. 1-2(b).

16. *Id.*

17. *Id.* 1-2(c).

18. *Id.*

supreme court outlining the reason for certification.¹⁹ The entire supreme court then votes on the certification memo as a motion.²⁰ If the supreme court accepts certification, it decides the merits of the appeal.²¹ If the supreme court votes to deny certification, then the appeal remains with the court of appeals.²² The supreme court can also accept a specific certified question, answer it, then remand the case to the court of appeals for a decision on the merits.²³

Unless the case is transferred to the supreme court as described above, the court of appeals will decide the appeal first. Here's how that generally works. The court of appeals is composed of twelve judges elected from seven districts.²⁴ The court of appeals' internal rules provide that the judges sit in four separate divisions of three judges each.²⁵ The Clerk of the Courts' office uses a computer program to randomly assign judges to divisions.²⁶ The divisions are enumerated as Division I,²⁷ Division II,²⁸ Division III,²⁹ and Division IV.³⁰ The computer then randomly assigns cases to one of the four divisions (panels). The court of appeals' internal rules require a unanimous decision within a three-judge panel.³¹ If the three-judge panel does not agree on a case's disposition, then it is submitted to an expanded six-judge panel.³² The six-judge panel consists of the original division and the next

19. *Id.*

20. *See, e.g.,* Order, Beard v. State of Arkansas, No. CR-21-85 (Ark. Nov. 4, 2021) (order granting certification to supreme court).

21. *E.g.,* Turnbo v. State, 2021 Ark. 166, at 1, 629 S.W.3d 797; Macklin v. Ark. Dep't of Hum. Servs., 2021 Ark. 151, at 1, 624 S.W.3d 869, 870; Agrifund, LLC v. Regions Bank, 2020 Ark. 246, at 5, 602 S.W.3d 726, 730.

22. *E.g.,* Order, St. Francis River Reg'l Water Dist. v. City of Marmaduke, No. CV-19-595 (Ark. May 20, 2021) (order denying certification to supreme court); *see also* St. Francis River Reg'l Water Dist. v. City of Marmaduke, 2021 Ark. App. 305, 626 S.W.3d 168 (subsequent opinion from the court of appeals).

23. *E.g.,* Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P., 2010 Ark. 91, at 7, 362 S.W.3d 882, 886 (answering a certified question about statutory interpretation and remanding remaining issues to court of appeals); Bales v. City of Fort Smith, 2017 Ark. 161, at 4, 518 S.W.3d 76, 79 (answering a certified question about jurisdiction and remanding to court of appeals); Minor v. Chase Auto Fin. Corp., 2010 Ark. 246, at 13, 372 S.W.3d 762, 769 (answering a certified question about contract interpretation and remanding to court of appeals).

24. ARK. CODE ANN. § 16-12-202 (current through 2021).

25. Judge Josephine Linker Hart & Guilford M. Dudley, *The Unpublished Rules of the Arkansas Court of Appeals: The Internal Rules and Procedures of the Arkansas Court of Appeals*, 33 U. ARK. LITTLE ROCK L. REV. 109, 114 (2011).

26. The Authors have verified this process with the Clerk of Court's office.

27. *See, e.g.,* Williams v. Davis, 2021 Ark. App. 199, 625 S.W.3d 243.

28. *See, e.g.,* Taylor v. State, 2021 Ark. App. 98, 618 S.W.3d 207.

29. *See, e.g.,* Hurd v. State, 2021 Ark. App. 180, 2021 WL 1557902.

30. *See, e.g.,* Neff v. State, 2021 Ark. App. 123, 618 S.W.3d 479.

31. Hart & Dudley, *supra* note 25, at 114.

32. *Id.*

enumerated division.³³ For example, if an appeal is assigned to Division III, but the three judges on that panel are not unanimous in the disposition, then the case will be decided by both Division III and Division IV, sitting as a six-judge panel.³⁴ If the six-judge panel does not reach a majority vote as to the case's disposition, then the case is submitted to a panel of nine judges, that is, three divisions.³⁵ As before, the next enumerated division is added to the prior two divisions. In our example, Division I would be added to Divisions III and IV. One cannot assume that a nine-judge panel will always lead to a 5-4 majority decision.³⁶ Results may be unexpected.

While there is no right of appeal to the supreme court from a decision of the court of appeals, court rules provide a procedure whereby parties may seek discretionary review with the supreme court following a court of appeals' decision.³⁷ That is, after the court of appeals issues its decision and the parties have had an opportunity to petition for rehearing, the parties may seek supreme court review by filing a petition for review. The deadline to file the petition for review is ten calendar days from the end of the court of appeals' rehearing period.³⁸ The rehearing period ends when the court of appeals decides the last pending petition for rehearing or, if no rehearing petition is filed, eighteen calendar days from the date of the court of appeals' decision, whichever is later.³⁹ If a petition for review is not filed within the deadline, the clerk will issue the mandate, and the court-of-appeals' decision becomes final.⁴⁰

Should a party decide to file a petition for review, the petition must state the grounds for review.⁴¹ An appropriate ground is (1) a split decision by the court of appeals; (2) the court of appeals' opinion conflicts with its

33. *Id.* The Clerk of Courts assigns all Public Service Commission appeals to two divisions in the first instance. *Id.* Significant time has passed since the referenced law review article and some of the internal rules have changed. One of the authors, Justice Wood, was a member of the court of appeals during some of the changes.

34. *E.g.*, *Galli v. Jones*, 2021 Ark. App. 302, at 1, 627 S.W.3d 434, 435 (affirming by vote of 5-1).

35. *E.g.*, *J.M.E. v. Valley View Agri Sys.*, 2016 Ark. App. 531, at 1, 505 S.W.3d 211, 212 (reversing on a 5-4 vote).

36. In *Harley v. Dempster*, a nine-judge panel did not reach a majority opinion. 2017 Ark. App. 159, at 1, 512 S.W.3d 698, 699 (four judges reversed and remanded, two dissenters would have affirmed, and three dissenters would have dismissed the appeal). The supreme court granted review and dismissed the appeal because the briefs were filed untimely. *See Harley v. Dempster*, 2018 Ark. 43, at 3.

37. *See* ARK. S. CT. R. 1-2(d).

38. *Id.* 2-4(a).

39. *Id.* *See also id.* 2-3(a). These deadlines do not apply to dependency-neglect cases. The deadlines to petition for rehearing and review in those cases can be found at Ark. S. Ct. R. 6-9(k)(2).

40. *Id.* 5-3(a).

41. ARK. S. CT. R. 2-3(f).

own or supreme court precedent; or (3) the case errs on any reassignment factor listed in Rule 1-2(b).⁴² The Rule 1-2(b) factors are broad. Thus, a party has considerable leeway to make a good-faith argument for review. The opposing party has ten days to respond to the petition for review.⁴³ No provision exists for the filing of amicus briefs in petitions for review.⁴⁴

After a party petitions for review and after any responses are filed, the supreme court decides whether to grant the petition. The supreme court issues decisions on pending petitions for review monthly and lists those decisions on the supreme court's syllabus. When deciding whether to grant a petition, the supreme court can consider the court of appeals' majority opinion, any dissents and concurrences, any petition for rehearing and responses, and the petition for review and responses.⁴⁵ The petition for review is limited to three pages, so filing a petition for rehearing, which allows ten pages, and attaching it to the petition for review is a common method for expanding the arguments presented to the supreme court.⁴⁶

The Arkansas Constitution requires four justices to decide a case.⁴⁷ Thus, even if one justice does not participate in the decision to grant or deny the petition, four justices out of the remaining six must vote to grant.⁴⁸ Contrast this procedure with that of writs of certiorari to the United States Supreme Court, when review is granted based on a minority vote of four out of nine.⁴⁹

B. What Happens When the Supreme Court Grants a Petition for Review?

Once the supreme court grants a petition for review, the parties' original briefs are automatically resubmitted to the supreme court.⁵⁰ The parties can file supplemental briefs and request oral argument.⁵¹ Upon accepting a petition for review, the supreme court considers the appeal as if it had been originally filed in its court.⁵² In other words, it does not review the court of

42. *See also id.* 2-4(d).

43. *Id.* 2-4(e).

44. *Id.* 4-6.

45. *See generally id.* 2-4(d).

46. ARK. S. CT. R. 2-4(c); *id.* 2-4(e); *id.* 2-3(e).

47. ARK. CONST. amend. 80 § 2(C).

48. *See id.*

49. STEPHEN M. SHAPIRO, ET AL., SUPREME COURT PRACTICE § 5.4, at 325 (10th ed. 2013).

50. The supreme court changed this July 1, 2019. Previously the parties had to refile their prior briefs within ten days of the supreme court granting review and had to seek permission to file supplemental briefs. ARK. SUP. CT. R. 2-4 (e) (amended July 1, 2019). This change streamlined the process.

51. ARK. S. CT. R. 2-4(f)-(g).

52. *See Symanietz v. Symanietz*, 2021 Ark. 75, at 4, 620 S.W.3d 518, 523.

appeals' decision.⁵³ Instead, the supreme court reviews the circuit court's or administrative agency's decision.⁵⁴

Once the supreme court has accepted a petition for review, a few dispositions can follow. The first option is to decide the appeal on the merits.⁵⁵ But the supreme court has other options too. For example, the supreme court may decide to limit its review to a threshold jurisdictional issue and remand the remaining issues to the court of appeals.⁵⁶ Typically, this occurs when a court of appeals' decision concerns a procedural issue, and the supreme court reaches a different decision from the court of appeals on that threshold issue.⁵⁷

Another dispositional path is for the supreme court to dismiss a petition for review as improvidently granted.⁵⁸ This occurs because the supreme court, after submission and briefing, decides review is unwarranted. Again, because the petition for review itself is limited, it sometimes takes supplemental briefing for the supreme court to determine that a full review was unnecessary and will only delay finality. For example, in *Crenshaw v. McFalls*, the supreme court granted review based on the petitioners' allegation that the court of appeals' decision conflicted with prior holdings of the supreme court.⁵⁹ But, upon examination of the case, the supreme court determined that "no conflict exists and that the petition was improvidently granted."⁶⁰ When the supreme court holds that review was improvidently granted, the decision of the court of appeals stands.⁶¹ So even if the supreme court grants a petition for review, it may not ultimately decide the merits of the appeal.

II. METHODOLOGY

With this background in mind, we turn to the purpose of this Article. This Article analyzes all petitions for review considered by the Arkansas

53. *E.g.*, *Ark. Dep't. Hum. Servs. v. Mitchell*, 2021 Ark. 187, at 5, 2021 WL 4927547, at *2 (explaining the supreme court's review process when it accepts a petition for review in an administrative appeal).

54. *Id.*

55. *E.g.*, *Conagra, Inc. v. Strother*, 340 Ark. 672, at 676, 13 S.W.3d 150, 152 (2000) (granting petition for review and affirming the merits of the circuit court's denial of the motion for new trial).

56. *See, e.g.*, *Havner v. Ne. Ark. Elec. Coop.*, 2016 Ark. 382, 2016 WL 6649148 (vacating and remanding to the court of appeals when a rule change altered the outcome).

57. *See, e.g., id.*

58. *E.g.*, *Crenshaw v. McFalls*, 2016 Ark. 39, at 2, 2016 WL 448019, at *1; *McFalls v. Crenshaw*, 2016 Ark. 32, at 2, 2016 WL 448759, at *1 (both dismissing petitions for review as improvidently granted).

59. *Crenshaw*, 2016 Ark. 39, at 2, 2016 WL 448019, at *1.

60. *Id.*

61. *See id.*

Supreme Court in recent years to determine whether predictable trends exist. We relied on data from the Arkansas Administrative Office of the Court's case-management system, CourtConnect. CourtConnect provides public access to Arkansas state court information.⁶² It allows users, like us, to search case filings. Data are only as good as the user's input. But we have high confidence in these data. The Clerk of Courts supervises a small and well-trained staff who continually maintain this information.

For this project, we first generated a report by performing docket searches for petitions for review granted (docket code ACO69) and petitions for review denied (docket code ACO36) from January 1, 2015, through July 1, 2021.⁶³ These reports provided us with the case identification number, case filing date, case description (title), and case type. We chose this period because a majority of the current supreme court (Justices Baker, Hudson, Wood, and Wynne) served during that entire period.⁶⁴

In recent years, the case-management system has undergone changes. Until 2019, when a case was filed with the court of appeals, the clerk assigned it a case number. If a party later petitioned for review, the clerk assigned it a different case number. This resulted in cases having two different appellate case number designations—one for the court-of-appeals case and one for the supreme court case.⁶⁵

In 2019, the supreme court approved a unified, numerical case-numbering system. Under this system, the clerk assigns each appellate case one numerical designation, which the case retains even if transferred between the two appellate courts. But because some cases from 2015 through 2018 had two case numbers, some petitions for review appeared in duplicate in our original dataset generated by CourtConnect. We culled those duplicate case numbers before conducting our analysis.

We also culled duplicate petitions for review filed in a single case. In other words, we counted by case, not by total number of petitions for review

62. See ARK. ADMIN. OFF. OF THE COURTS, 2020 ANNUAL REPORT TO THE COMMUNITY 26–27 (2020), <https://www.arcourts.gov/sites/default/files/AnnualReport2020.pdf>.

63. Our dataset excludes cases the supreme court granted review for during this time period but did not issue a written opinion until after July 1, 2021. Given that parameter, we excluded two cases from our study. See Ark. Dep't of Hum. Servs. Crimes Against Child. Div. v. Mitchell, 2021 Ark. 187; Ark. Dep't of Hum. Servs. Crimes Against Child. Div. v. Mitchell, 2021 Ark. 188.

64. *Supreme Court Justices*, ARK. JUDICIARY, <https://www.arcourts.gov/courts/supreme-court/justices> (last visited Feb. 20, 2022).

65. Compare Whalen v. State, 2016 Ark. 343, 500 S.W.3d 710 (assigned case number CR-15-1067), and Whalen v. State, 2015 Ark. App. 706, 478 S.W.3d 249 (assigned case number CR-14-980 on petition for review), with Howton v. State, 2021 Ark. App. 86, 619 S.W.3d 29 (assigned case number CR-20-432), and Order, Howton v. State, No. CR-20-432 (Ark. Apr. 15, 2021) (supreme court order denying petition for review within the same case number).

filed. For example, in some cases, a party petitioned for review, but the petition became moot when the court of appeals granted a petition for rehearing. After rehearing by the court of appeals, a second petition for review was filed. In these cases, we counted only one petition for review and excluded the moot petition for review.

Also, multiple parties have filed petitions for review within the same case. But we counted these multiple petitions as a single petition. For example, if the appellant and appellee both filed petitions for review, we counted this as one petition for review.⁶⁶ Thus, the data included only the number of cases in which a petition for review was filed, not the aggregate number of petitions for review filed. We did this because when the supreme court grants a petition for review, it reviews the entire case, not just the issue raised in the petition.⁶⁷

We then categorized each appeal into one of eight case-type categories: civil, criminal, juvenile, probate, domestic relations, department of workforce services, workers' compensation, and public service commission. Five of these categories correspond with the designation the case received when it was first filed in circuit court: domestic relations, probate, juvenile, civil, and criminal. These "subject-matter divisions" are administrative only and do not affect a circuit court's jurisdiction.⁶⁸ "Domestic relations cases" are defined by Administrative Order Number 14 as "cases relating to divorce, annulment, maintenance, custody, visitation, support, paternity, and domestic abuse."⁶⁹ Probate cases are defined by the Order as "cases relating to decedent estate administration, trust administration, adoption, guardianship, conservatorship, commitment, and adult protective custody."⁷⁰ The Order does not define juvenile cases, but these essentially fall under three categories: juvenile delinquency, dependency-neglect, and family-in-need-of-services.⁷¹ Criminal cases are those actions filed by the prosecuting attorney alleging the violation of the Arkansas Criminal Code.⁷² Civil cases encom-

66. *See, e.g.*, Order, *Kellensworth v. State*, No. CR-19-684 (Ark. Sept. 24, 2020) (granting appellee's petition for review but denying appellant's petition for review).

67. *See Symanietz v. Symanietz*, 2021 Ark. 75, at 4, 620 S.W.3d 518, 523 (explaining that the supreme court treats appeals granted on petition for review as if they had been filed there first).

68. *Edwards v. Nelson*, 372 Ark. 300, 303, 275 S.W.3d 158, 161 (2008).

69. Ark. Sup. Ct. Admin. Order No. 14(b) (amended 2012).

70. *Id.*

71. ARK. CODE ANN. §§ 9-27-306(a)(1), (a)(1)(B), (a)(1)(D) (1987).

72. "The Arkansas Constitution provides that the duty of charging an accused with a felony is reserved to the grand jury or to the prosecutor." *State v. Knight*, 318 Ark. 158, at 162, 884 S.W.2d 258, 260 (1994). ARK. R. CRIM. P. 1.5 (providing that any criminal prosecution must be brought in the name of the State of Arkansas); *see also* ARK. CODE ANN. § 16-81-104(a)(3)(A) (1987).

pass any other matter filed in circuit court not covered by the foregoing categories.

Three other classes of cases involve administrative appeals filed directly in the court of appeals: Workers' Compensation Commission; employment-security division; and Public Service Commission. Disability claims under the Workers' Compensation Act must be filed directly with the Workers' Compensation Commission.⁷³ Any appeals from the Workers' Compensation Commission go directly to the court of appeals.⁷⁴ The same is true for appeals from a denial of unemployment benefits or appeals from the Public Service Commission: a party must first proceed through the agency's review process, and any appeal goes directly to the court of appeals.⁷⁵ In contrast, under the Administrative Procedures Act, a party can appeal an agency adjudication or rule-making decision by other state agencies directly to the circuit court.⁷⁶

Additionally, for our purposes, we included any petitions for review granted that the supreme court later dismissed as improvidently granted.⁷⁷ Because the supreme court granted review and wrote an opinion in those cases, we counted them as granted even though the supreme court later dismissed the petition for review.

The reports generated by CourtConnect, while a great starting point for identifying cases where the supreme court granted review, lacked some critical details we needed for our analysis. To obtain more detailed information, we individually reviewed each case.⁷⁸ Using CourtConnect and Westlaw, we recorded the court of appeals citation, court of appeals' decision, the number of judges in the court of appeals panel, court of appeals' opinion citation, the decision of the supreme court, and the supreme court opinion citation.⁷⁹ From there we determined whether the supreme court reached the same or a different result from the court of appeals. When making this determination, we labeled any supreme court decision as different if it differed at all from the court of appeals. So, for example, if the court of appeals affirmed and the supreme court reversed in part and remanded in part, we labeled the result as different. And, of course, even if the supreme court reached the same result as the court of appeals, the supreme court may have changed the rea-

73. ARK. CODE ANN. § 11-9-702(a)(1) (1987).

74. *Id.* § 11-9-711(b)(1).

75. *Id.* § 11-10-529(a)(1)(A) (unemployment-benefit claims); *id.* § 23-2-423(a)(1) (1987) (Public Service Commission orders).

76. *Id.* § 25-15-212(a)-(b) (1987) (agency adjudications); *id.* § 25-15-214 (1987) (agency's failure to act in any case of rulemaking or adjudication).

77. See cases cited *supra* note 58.

78. Margaret Whisenhunt, a college-student intern, was critical to this step. She performed countless hours of research and statistical analysis without which this Article would not have been possible.

79. All of this information is included in the appendix attached to the end of this Article.

soning from that of the court of appeals. Parsing those types of differences required more careful legal analysis, and we have done that in Part IV below.

III. RESULTS OF STATISTICAL ANALYSIS

After classifying the petitions for review as described above, we performed a descriptive statistical analysis. We focused on the following data points: the number of petitions for review submitted to the supreme court, the number of petitions for review granted, and the case-type category breakdown. We also considered whether the case type and the number of judges on the panel at the court of appeals impacted the supreme court's decision to grant review and, if granted, whether the result was the same or different from the court of appeals. The results showed that the supreme court denied most petitions for review filed. During the relevant period, the supreme court granted only 92 out of 772 petitions for review filed, or at a rate of 11.92%.

The most predictive data point on whether the supreme court would grant review was the number of judges on the court of appeals panel. Decisions from three-judge panels were granted review 8.5% of the time. This is low, but the rate increased if more judges decided the case. Decisions from six-judge panels were granted review 33.8% of the time. And the most predictive data point of all: decisions from nine-judge panels were granted review 63.6% of the time. The only other data point that showed the supreme court would grant review nearly that high was if the case type was probate. Those cases were granted at a rate of 29.41%.

Once the supreme court granted review, it reached a different disposition from the court of appeals in about 55% of the cases. The data showed a differentiation between case type and whether the supreme court reached a different outcome: the supreme court's disposition differed most often in domestic cases and workers' compensation cases. The supreme court reached a different outcome in 64.7% of domestic cases and in 62.5% of workers' compensation cases.

A. Total Cases Considered on Petition for Review

We first examined the total number of petitions for review filed by case-type. From January 1, 2015 through July 1, 2021, the supreme court considered petitions for review in 772 cases. Most of the petitions for review, 282 in total, were filed in civil cases, which made up 36.5% of the total cases. Criminal cases constituted the second most common type of petitions for review, with 213 in total, or 27.6%. Ninety-three petitions, or 12%, were filed in domestic-relations cases. Seventy-one petitions, 9.2%,

were filed in juvenile cases. Less often, petitions for review were filed in probate (4.4%), department-of-workforce-services (4.4%), and workers' compensation (5.5%) cases. Only two petitions (.3%) were filed in public-service-commission cases. Chart 1 below shows this statistical breakdown.

Chart 1: Total Petitions for Review Filed by Case Type

	Frequency	Percent
Civil	282	36.5
Criminal	213	27.6
Juvenile	71	9.2
Probate	34	4.4
Domestic	93	12.0
Dept Workforce Service	34	4.4
Workers' Compensation	43	5.5
Public Service Commission	2	0.3
Total	772	

B. Granted Petitions for Review by Case Type

Next, we analyzed the number of cases in which the supreme court granted review and categorized the granted petitions by case type. All told, the supreme court granted petitions for review in 11.92% of cases, or 92 total cases. This means in the vast majority of cases, or almost 90% of the time, the supreme court denied the petition for review.

Chart 2: Total Petitions for Review Granted by Case Type

	Frequency	Percent
Civil	27	29.3
Criminal	19	20.6
Juvenile	9	9.8
Probate	10	10.9
Domestic	17	18.5
Dept Workforce Service	1	1.1
Workers' Compensation	9	9.8
Total	92	

In what case-type did the supreme court most often grant the petition for review? Civil cases and criminal cases. This is no surprise because these categories constituted the most petitions for review filed. On the other hand, some case types had a higher grant rate than filed rate. For example, while domestic relations made up only 12% of the petitions for review filed, this case type constituted 18.5% of the petitions for review granted. Similarly, although probate cases made up only 4% of the petitions filed, those cases constituted 11.4% of the total petitions for review granted. In other words, the supreme granted petitions for review in these two case types at a disproportionate rate.

This leads to the data which show the case type where the supreme court granted review at the highest statistical rate. Chart 3 shows this breakdown.

Chart 3: Percent Granted Within Case Type

Case Type	Total Filed	Total Granted	Percent
Civil	282	27	9.57
Criminal	213	19	8.92
Juvenile	71	9	12.68
Probate	34	10	29.41
Domestic	93	17	18.28
Dept Workforce Service	34	1	2.94
Workers' Compensation	43	9	20.93
Public Service Commission	2	0	0.00
Total	772	92	11.92

Probate cases were the easy winner: the supreme court granted probate petitions for review at a rate of 29.41%. The next highest percentages were workers' compensation and domestic cases. Petitions for review filed in workers' compensation cases were granted at a rate of 20.93%. And petitions for review in domestic cases were granted at a rate of 18.28%. The lowest statistical percentage of petitions for review were granted in juvenile cases (12.68%), civil cases (9.57%), and criminal cases (8.92%). Last, petitions for review in department-of-workforce-services cases were granted at the lowest rate: only 2.94%. As mentioned above, no petitions for review were granted in public-service-commission cases, but only two petitions were filed.

C. Number of Judges on the Court of Appeals Panel

We also collected statistics on the number of judges who sat on the panel at the court of appeals. Ultimately, this was the strongest indicator whether the supreme court would grant a petition for review. The more judges who decided the case, the more likely the supreme court granted the petition for review. Chart 4 shows the results:⁸⁰

Chart 4: Petitions for Review Grant/Deny Percentages by number of judges on court of appeals panel

	Total	3-judge panel	6-judge panel	9-judge panel
Grant	92	56	22	14
Deny	655	604	43	8
Percentage of Petitions Granted		8.5%	33.8%	63.6%

Petitions from decisions by three-judge panels were granted at a rate of 8.5%. Petitions from decisions by six-judge panels were granted at a rate of 33.8%. And petitions from decisions by nine-judge panels were granted at a rate of 63.6%. The strongest indicator that the supreme court would grant review, by a wide margin, was when a nine-judge court of appeals panel had decided the case. The second strongest metric was when a six-judge court of appeals panel decided a case. As explained in Part IV, when the court of appeals was split or when a dissenting judge highlighted an issue needing the supreme court's attention, the supreme court was also more likely to grant review.

D. Court of Appeals Result Compared to Supreme Court Result and by Case Type

Our last data set was whether the supreme court reached a different disposition from the court of appeals.⁸¹ If the supreme court granted review,

80. The total number of denied petitions excludes twenty-five cases in which the court of appeals issued a per curiam or disposed of the matter by docket entry. In those cases, we did not know whether the decision was reached by a three-, six-, or nine-judge panel because the decision did not come from an authored opinion.

81. For the purposes of determining whether the disposition was the same or different, the universe of cases is 87 rather than 92. In five of the petitions for review granted, the supreme court dismissed or otherwise disposed of the appeal before it reached a decision. Therefore, in these cases, the supreme court could not have reached either the same or different disposition from the court of appeals because it made no merits decision at all. *See Order,*

was it more or less likely to reach a different result? To answer this question, we analyzed and compared the court of appeals' disposition with the supreme court's disposition.

One might assume that if the supreme court granted review, then it would reach a different disposition from the court of appeals. And the results bear that out. Chart 5 shows that in cases where the supreme court granted review, it reached a different result from the court of appeals 55% of the time. On the other hand, the supreme court reached the same result about 45% of the time. Thus, if a petitioner lost her case at the court of appeals and the supreme court granted review, it was more likely than not that the supreme court would grant her a different outcome.

Chart 5: Comparison of Case Result of Supreme Court

	Frequency	Percent
Same	39	44.8
Different	48	55.2
Total	87	100.0

We also analyzed whether the supreme court reached a different disposition from the court of appeals based on case type. Chart 6 shows these results.

Chart 6: Comparison of Case Result of All Granted Petitions for Review by Case Type

	Civil	Criminal	Juvenile	Probate	Domestic	Dept. Workforce Service	Workers' Compensation	Total
Same Result	10	9	5	5	6	1	3	39
Different Result	13	10	4	5	11	0	5	48
Total	23	19	9	10	17	1	8	87
Percent Different	56.5%	52.6%	44.4%	50%	64.7%	0%	62.5%	55.2%

Cantrell v. Toyota Motor Corp., No. CV-18-502 (Ark. Sept. 5, 2019) (order granting joint motion to dismiss); Harley v. Dempster, 2018 Ark. 43 (dismissing for failure to timely file brief); Holden v. Waggoner, 2017 Ark. 4, at 1 (remanding to Workers' Compensation Commission after parties filed joint motion to withdraw petition for review); Order, United Sys. of Ark. v. Beason, No. CV-149-12 (Ark. Apr. 16, 2015) (order granting joint motion to dismiss); Order, Stephens Prod. Co. v. Bennett, No. CV-15-935 (Ark. July 21, 2015) (order granting joint motion to dismiss).

In criminal, juvenile, and probate cases, the supreme court reached the same disposition about 50% of the time. Yet, in civil and domestic cases, the supreme court was likely to reach a different outcome. In domestic-relations cases, the supreme court reached a different result in almost two-thirds of the cases. Workers' compensation appeals also showed a larger variance between the result at the court of appeals versus the supreme court—the supreme court reached a different result in over 60% of those cases.

IV. CASE TYPE ANALYSIS

The data we collected in Part III tell only part of the story. To best understand why the supreme court may have granted review in a case, we also analyzed the opinions from the court of appeals and the supreme court to see if any trends emerged. To do this, we divided the cases into the most common case types: civil, criminal, juvenile, probate, and domestic relations.⁸² Below, we discuss some common themes within these five case types. We also discuss whether the supreme court's disposition vis-à-vis the court of appeals could illuminate the issues that attracted the supreme court's interest. Practitioners should find this section useful because it could help them frame an issue to the supreme court. This section could also give insight into what the supreme court has focused on in the past, thus helping practitioners make decisions on the utility of petitioning for review.

Several trends emerged following our review. Many reinforce the data we collected in Part III. We identified several cases when a split at the court of appeals led to the supreme court granting review. We also identified cases where a court of appeals judge highlighted an issue for supreme court review. The trends also dovetailed with the supreme court's factors for granting review under Rule 2-4(d). Several cases contained an issue of first impression or an issue of substantial public interest. And many also contained constitutional questions. Last, the supreme court granted review in an inordinate number of cases where the court of appeals dismissed an appeal on a procedural ground. In some of those cases, the supreme court found no procedural basis to dismiss and instead reached the merits of the appeal. This trend occurred throughout every case type, excluding criminal, which generally are not subject to strict procedural restrictions to perfect an appeal.⁸³

82. We excluded workers' compensation cases due to the highly specialized nature of that practice area.

83. For example, the court will still hear a late filed appeal from a criminal conviction if an affidavit is filed showing "good cause." ARK. R. APP. P.—CRIM. 2(e) (last amended 2021).

A. Civil Cases

The supreme court granted review in twenty-four civil cases, representing 9.41% of the total petitions for review filed within this case type. Two of those petitions were later dismissed as improvidently granted,⁸⁴ and one case was voluntarily dismissed by the parties after settlement.⁸⁵ The civil cases represent the highest percentage of cases granted (29.3%). But they also have the widest array of legal issues. For that reason, it is hard to draw strong conclusions across the civil cases. Instead, we have roughly divided the civil cases into the following groups: civil procedure, tort, jury-trial waiver and arbitration, immunity, trusts, and contracts. These groupings highlight trends when the supreme court granted review.

1. *Civil Procedure*

Five of the granted cases dealt with procedural issues,⁸⁶ and two of those five considered the finality of the circuit court's order.⁸⁷ The first is a good example of when the court of appeals' decision is constrained by certain procedural rules and precedent. But unlike the court of appeals, the supreme court has rule-making authority and can modify rules to conform to existing practice.

The *Havner v. Northeast Arkansas Electric Cooperative* case required the court of appeals to decide whether a judgment marked “presented” and “recorded” by a circuit clerk was a final, appealable order.⁸⁸ The court of appeals concluded it was not final and dismissed the appeal “because the judgment and 54(b) certificate was *recorded* but never filed, . . . [so] appellant has failed to appeal from a final order.”⁸⁹ The problem in the circuit-court clerk's office stemmed from default marks generated by software programs that failed to change the marks from “recorded” to “filed” as required by Administrative Order 2.⁹⁰

84. *Crenshaw v. McFalls*, 2016 Ark. 39, at 2; *McFalls v. Crenshaw*, 2016 Ark. 32, at 2. We categorized these cases as if the supreme court reached the same decision as the court of appeals.

85. See Order, *Cantrell v. Toyota Motor Corp.*, No. CV-18-502 (Ark. Sept. 5, 2019).

86. See *White v. Owen*, 2021 Ark. 31, at 7, 617 S.W.3d 241, 245; *Lawson v. Simmons Sporting Goods, Inc.*, 2019 Ark. 84, at 10, 569 S.W.3d 865, 871; *Williamson v. Baptist Med'l Health*, 2017 Ark. 92, at 3, 514 S.W.3d 445, 446; *Havner v. Ne. Ark. Elec. Coop.*, 2016 Ark. 382, at 2, 2016 WL 6649148, at *1; *Jones v. Douglas*, 2016 Ark. 166, at 9, 489 S.W.3d 648, 654.

87. See *Williamson*, 2017 Ark. 92, at 3, 514 S.W.3d 445 at 446; *Havner*, 2016 Ark. 382, at 2, 2016 WL 6649148, at *1.

88. *Havner*, 2016 Ark. 382, at 2, 2016 WL 6649148, at *1.

89. *Id.* at 2-3.

90. *Id.* at 3; Ark. Sup. Ct. Admin. Order No. 2(b)(2) (amended 2018).

The court of appeals' opinion in *Havner* prompted the supreme court to quickly revise Administrative Order 2.⁹¹ Revised Administrative Order No. 2(b)(2) stated that judgments, orders, and decrees marked "recorded" are considered "filed."⁹² Thus, when the supreme court reviewed *Havner*, it concluded that the circuit-court judgment was final under the revised administrative order, and it vacated the court of appeals' opinion and remanded to consider the merits of the case.⁹³

In another case, though, the supreme court found a procedural defect when the court of appeals did not. In *Williamson*, a wrongful death case, the appellant argued that her jury award omitted loss-of-life damages, creating an inadequate monetary award.⁹⁴ The court of appeals affirmed.⁹⁵ But the supreme court dismissed the appeal for lack of a final order.⁹⁶ Like it had previously decided,⁹⁷ the supreme court found that the judgment failed to specify the dollar amount owed by the defendant and that it was ambiguous whether the jury had apportioned fault in making its damages award.⁹⁸ *Williamson* represents a rare instance in which the supreme court dismissed for lack of a final order when the court of appeals had addressed the merits.

The remaining procedural cases dealt with service of process and personal jurisdiction. In two cases, *Jones v. Douglas* and *White v. Owen*, the supreme court reviewed service-of-process issues under the civil rules and savings statute.⁹⁹ In both cases, the supreme court modified the circuit court's dismissal from "with prejudice" to "without prejudice," because the plaintiffs had complied with the savings statute.¹⁰⁰ In *White*, however, the court of appeals had concluded that the savings statute did not apply because the plaintiff did not make a good-faith attempt to serve the defendant at a known address.¹⁰¹ The supreme court disagreed, finding that there was no "evidence of bad faith or of a conscious disregard of knowledge" of the defendant's correct address.¹⁰²

91. *In re Admin. Order No. 2(b)(2)*, 2016 Ark. 172 (2016).

92. *Id.* at 2.

93. *Havner*, 2016 Ark. at 3, 2016 WL 6649148, at *1.

94. *Williamson v. Baptist Med. Health*, 2017 Ark. 92, at 1; 547 S.W.3d at 445.

95. *Williamson v. Baptist Med. Health*, 2016 Ark. App. 78, at 10, 2016 WL 537280, at *4 (rehearing denied).

96. *Williamson*, 2017 Ark. 92, at 1, 547 S.W.3d at 445.

97. *See Ford Motor Co. v. Washington*, 2013 Ark. 88, at 5–6, 2013 WL 776233, at *3.

98. *Id.*, 2013 WL 776233, at *3.

99. *White v. Owen*, 2021 Ark. 31, at 14, 617 S.W.3d 241, 249; *Jones v. Douglas*, 2016 Ark. 166, at 1–2, 489 S.W.3d 648, 649–50; *see also* ARK. CODE ANN. § 16-56-126 (current through 2021).

100. *White*, 2021 Ark. 31, at 14, 617 S.W.3d at 249; *Jones*, 2016 Ark. 166, at 9–10, 489 S.W.3d at 654.

101. *White v. Owen*, 2020 Ark. App. 356, at 13, 609 S.W.3d 1, 8.

102. *White*, 2021 Ark. 31, at 13, 617 S.W.3d at 249.

Finally, *Lawson v. Simmons Sporting Goods, Inc.*, which involved personal jurisdiction, presented an interesting procedural posture.¹⁰³ In this trip-and-fall case, the circuit court dismissed the plaintiff's complaint for lack of personal jurisdiction because minimum contacts were deficient.¹⁰⁴ The court of appeals reversed, applying Arkansas' five-factor test for determining minimum contacts over nonresident corporations.¹⁰⁵ After the Arkansas Supreme Court denied a petition for review, the defendant corporation filed a writ of certiorari to the United States Supreme Court.¹⁰⁶

The United States Supreme Court granted certiorari, vacated the court of appeals decision, and remanded to the court of appeals "for further consideration in light of *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*["]¹⁰⁷ In *Bristol-Myers Squibb Co.*, the United State Supreme Court rejected California's "sliding scale" approach to personal jurisdiction, holding that for a court to exercise jurisdiction over a nonresident corporate defendant, there must be "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum state["]¹⁰⁸

On remand, the court of appeals reconsidered its decision and affirmed, concluding that the defendant's contacts with Arkansas were insufficient.¹⁰⁹ The plaintiff petitioned for review, which this time the Arkansas Supreme Court granted.¹¹⁰ Although the supreme court reached the same disposition as the court of appeals, the United States Supreme Court in *Bristol-Meyers Squibb Co.* had signaled a change in its approach to personal jurisdiction.¹¹¹ The Arkansas Supreme Court, therefore, used *Lawson* to overhaul the State's requirements for specific personal jurisdiction.¹¹² The ultimate result was an abandonment of the five-factor test.¹¹³ Like *Havner* discussed at the beginning of this subsection, *Lawson* provides an example of the supreme

103. 2019 Ark. 84, at 1, 569 S.W.3d 865, 867.

104. *Id.* at 2, 569 S.W.3d at 868.

105. *Lawson v. Simmons Sporting Goods, Inc.*, 2017 Ark. App. 44, at 8, 511 S.W.3d 883, 889.

106. *See Simmons Sporting Goods, Inc. v. Lawson*, 138 S. Ct. 237 (2017).

107. *Id.*; *see Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773 (2017).

108. *Id.* at 1780 (citing *Goodyear v. Dunlap Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

109. *Lawson v. Simmons Sporting Goods, Inc.*, 2018 Ark. App. 343, at 1, 553 S.W.3d 190, 191.

110. *Lawson*, 2019 Ark. 84, at 3, 569 S.W.3d at 868.

111. *See Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781.

112. *Lawson*, 2019 Ark. 84, at 9, 569 S.W.3d 865, 871.

113. *Id.*, 569 S.W.3d 865, 871.

court using the petition for review process to make necessary changes that the court of appeals cannot achieve as an intermediate appellate court.¹¹⁴

2. *Tort*

The supreme court granted review in three tort cases, with one marking a significant shift in the law. Consistent with the supreme court's granting review on cases that raise issues of first impression, it reviewed *Dollar Gen. v. Elder* to consider whether a chiropractor was qualified to provide medical-causation testimony.¹¹⁵ The supreme court held that with the proper foundation, a chiropractor could give expert testimony about the causal need for surgical procedures, even though the chiropractor is not licensed to perform those procedures.¹¹⁶ At the court of appeals, a three-judge panel decided the original case, which our statistics show would not likely result in the supreme court granting review.¹¹⁷ Yet, this case raised an issue of first impression, which could have explained the granted petition.

In the other cases, the supreme court applied existing law, but the court granted review following divided decisions at the court of appeals. For example, in *James Tree and Crane Serv. v. Fought*, the circuit court granted a motion for new trial, but the court of appeals reversed in a 4-2 decision.¹¹⁸ But on review, the supreme court unanimously affirmed, concluding that the jury's zero verdict was clearly against the preponderance of the evidence.¹¹⁹ And in *Duran v. Sw. Ark. Elec. Coop. Corp.*, the supreme court addressed the duties owed to an independent contractor.¹²⁰ The court of appeals, with two judges dissenting, held that the electrical cooperative had no duty to warn an employee of an independent contractor about the dangers of working around energized electrical equipment.¹²¹ The supreme court, in a 4-3 vote, agreed with the court of appeals majority.¹²²

3. *Jury-Trial Waivers and Arbitration*

The Arkansas Supreme Court has also granted review in cases that involve the constitutional right to a jury trial and federal law surrounding arbi-

114. *See id.*, 569 S.W.3d 865, 871.

115. 2020 Ark. 208, at 2, 600 S.W.3d 597, 600.

116. *Id.* at 14, 600 S.W.3d at 606.

117. *Dollar Gen. Corp v. Elder*, 2019 Ark. App. 526, at 1, 589 S.W.3d 437, 440.

118. 2016 Ark. App. 320, at 1, 497 S.W.3d 696, 697.

119. *James Tree & Crane Serv., Inc.*, 2017 Ark. 173, at 1, 518 S.W.3d 678, 679.

120. 2018 Ark. 33, at 1, 537 S.W.3d 722, 724.

121. *Duran v. Sw. Arkansas Elec. Coop. Corp.*, 2016 Ark. App. 237, at 10, 492 S.W.3d 87, 93.

122. *Duran*, 2018 Ark. 33, at 1, 537 S.W.3d 722, 724.

tration. First, in *Tilley v. Malvern National Bank*,¹²³ the supreme court considered the constitutionality of pre-dispute jury waivers.¹²⁴ In that case, a land developer waived a jury trial in loan documents, but later demanded one during foreclosure litigation on his common-law counterclaims.¹²⁵ The court of appeals held that the jury-waiver was enforceable and that the constitutional right to a jury trial did not extend to the foreclosure proceedings.¹²⁶ The supreme court reached a different result.¹²⁷ It held that pre-dispute jury-trial waivers violated article 2, section 7 of the Arkansas Constitution because no law provided for waivers in this context.¹²⁸ After *Tilley*, the Arkansas General Assembly passed a statute that authorized prelitigation waivers in contracts involving borrowing or lending money.¹²⁹

In two arbitration cases, the supreme court applied the federal doctrine of preemption.¹³⁰ Not surprisingly, the supreme court may be more inclined to accept review of arbitration cases, even absent a court of appeals split, when federal law considerations, like the FAA, are at issue.¹³¹ In *Kilgore v. Mullenax*, the appellant argued that the arbitrator should not have applied the FAA.¹³² But, like the court of appeals, the supreme court found that because the parties agreed that the arbitrator would determine jurisdiction, it was within his authority to apply federal law.¹³³

In *Jorja Trading v. Willis*, the supreme court applied Arkansas's law on mutuality of obligations and upheld an arbitration agreement in an installment-sales contract for a vehicle.¹³⁴ After reviewing the agreements' provisions on self-help, class-action waiver, and arbitrator-selection, the supreme court held that mutuality was satisfied, and it upheld the arbitration agree-

123. 2017 Ark. 343, 532 S.W.3d 570.

124. *Id.* at 1, 532 S.W.3d at 572. Because *Tilley* dealt with first-impression issues concerning the construction or interpretation of the Arkansas Constitution, it is interesting that it was initially assigned to the court of appeals and was not certified or reassigned to the supreme court. *See* ARK. SUP. CT. R. 1-2(a).

125. *Tilley*, 2017 Ark. 343, at 2, 532 S.W.3d at 572.

126. *Tilley v. Malvern Nat'l Bank*, 2017 Ark. App. 127, at 4, 515 S.W.3d 636, 640.

127. *Tilley*, 2017 Ark. 343, at 14–15, 532 S.W.3d at 578–79.

128. *Id.* at 13–14, 532 S.W.3d at 577–78.

129. Act of March 3, 2018, No. 13 (codified at ARK. CODE ANN. § 16-30-104 (Supp. 2018)). *See* *Tilley v. Malvern Nat'l Bank*, 2019 Ark. 376, at 7, 590 S.W.3d 137, 142 (reversing the circuit court's application of the new legislation to the matter on remand).

130. *E.g.*, *Kilgore v. Mullenax*, 2017 Ark. 204, at 1, 520 S.W.3d 670, 672; *Jorja Trading, Inc. v. Willis*, 2020 Ark. 133, at 3, 598 S.W.3d 1, 4.

131. The eighth circuit has suggested that “the rule followed in Arkansas with respect to arbitration agreements . . . violates the FAA[.]” *Plummer v. McSweeney*, 941 F.3d 341, 347 n.1 (8th Cir. 2019).

132. 2017 Ark. 204, at 4, 520 S.W.3d at 674.

133. *Id.* at 5, 520 S.W.3d at 674; *see* *Kilgore v. Mullenax*, 2016 Ark. App. 143, at 5–6, 485 S.W.3d 705, 708–09.

134. 2020 Ark. 133, at 5–6, 598 S.W.3d at 5–6.

ment as valid.¹³⁵ The court of appeals had reached the opposite conclusion unanimously.¹³⁶

4. *Immunity*

The supreme court accepted review in three cases in which an immunity defense had been raised—one case related to charitable immunity, and two involved quasi-judicial immunity afforded to court-appointed psychiatrists.¹³⁷ Like cases in the foregoing section, the supreme court may be more likely to review a court of appeals decision when it implicates the right to a jury trial, particularly if it is an issue of first impression. *Davis Nursing Ass'n v. Neal* is a good example.¹³⁸ There, the supreme court held that charitable immunity was a matter of law for the circuit court, not the jury, to decide.¹³⁹ That said, if the existence of charitable immunity turned on disputed factual issues, the jury could decide those facts, leaving the circuit court to decide whether those facts established the immunity.¹⁴⁰

In the pair of cases on quasi-judicial immunity, the supreme court set parameters for immunity for court-appointed physicians.¹⁴¹ First, in an issue of first impression, the supreme court held that nonjudicial actors, like court-appointed psychiatrists, are entitled to absolute quasi-judicial immunity from suit if they serve an integral function to the judicial process.¹⁴² In *Martin v. Smith*, Kenneth McFadden, who was conditionally released from prison, had to receive psychiatric treatment under the terms of his release.¹⁴³ Dr. Smith's agency had to monitor McFadden's compliance with his prescribed treatment regimen and report back to the circuit court.¹⁴⁴ The supreme court

135. *Id.* at 6–9, 598 S.W.3d at 6–7. The supreme court recently denied a petition for review that asked the court to clarify its decision in *Jorja Trading*. See Order, EBF Partners, LLC v. Letha's Pies, LLC, No. CV-19-949 (Ark. Sept. 23, 2021) (order denying petition for review); see also EBF Partners, LLC v. Letha's Pies, LLC, 2021 Ark. App. 187, at 10, 625 S.W.3d 713, 720 (reversing denial of motion to compel arbitration). But the court subsequently commented on *Jorja Trading* in an appeal from a class-certification order. See *Funding Metrics, LLC v. Letha's Pies, LLC*, 2022 Ark. 73, 2022 WL 1042970.

136. *Jorja Trading, Inc. v. Willis*, 2018 Ark. App. 574, at 8–9, 566 S.W.3d 510, 516.

137. *E.g.*, *John v. Faitak*, 2020 Ark. 105, at 1, 594 S.W.3d 871, 872 (judicial immunity); *Martin v. Smith*, 2019 Ark. 232, at 1, 576 S.W.3d 32, 34 (judicial immunity); *Davis Nursing Ass'n v. Neal*, 2019 Ark. 91, at 1, 570 S.W.3d 457, 458 (charitable immunity).

138. *Davis Nursing Ass'n*, 2019 Ark. 91, at 6; 570 S.W.3d at 461.

139. *Id.* at 6–7, 570 S.W.3d at 461.

140. *Id.*, 570 S.W.3d at 461.

141. See *John*, 2020 Ark. 105, at 3, 594 S.W.3d at 873; *Martin*, 2019 Ark. 232, at 1, 576 S.W.3d at 34.

142. *Martin*, 2019 Ark. 232, at 8, 576 S.W.3d at 37.

143. *Id.* at 2, 576 S.W.3d at 34.

144. *Id.*, 576 S.W.3d at 34.

held that Dr. Smith's treatment of McFadden fell within the scope of the judicial function, and thus he was immune from liability.¹⁴⁵

Shortly after *Martin*, the supreme court reviewed a second case on judicial immunity of a court-appointed expert in *John v. Faitak*.¹⁴⁶ Yet in *Faitak*, the supreme court found that the therapist was not entitled to judicial immunity because his actions exceeded the scope of the circuit court's appointment.¹⁴⁷ In that case, the circuit court had appointed Faitak to perform psychological examinations and conduct monthly mediation sessions with a couple involved in a custody dispute.¹⁴⁸ The husband alleged that Faitak exceeded the scope of the circuit court's order by individually diagnosing him, disclosing that diagnosis during a session with the wife, and using ex parte communications with the wife's counsel to broker a settlement in the custody case.¹⁴⁹ The supreme court held that Faitak was not immune because the alleged acts pled by the husband were outside the scope of the custody order.¹⁵⁰

Martin and *Faitak* serve as further examples of a group of cases accepted by the supreme court to address unresolved areas of the law.¹⁵¹ *Martin* established a new rule on quasi-judicial immunity, and *Faitak*, which was decided shortly after *Martin*, established a parameter of that rule.¹⁵² Finding immunity in *Martin* but none in *Faitak* allowed the supreme court to establish a spectrum of when the immunity would apply.¹⁵³

5. Trusts

The supreme court also reviewed two trust cases,¹⁵⁴ both of which involved charities.¹⁵⁵ These cases had interesting procedural postures at the court of appeals. In both cases, a six-judge panel from the court of appeals entered a substituted opinion on rehearing following a unanimous decision

145. *Id.* at 8, 576 S.W.3d at 37.

146. 2020 Ark. 105, 594 S.W.3d 871.

147. *Id.* at 6, 594 S.W.3d at 874.

148. *Id.* at 2, 594 S.W.3d at 872–73.

149. *Id.* at 2–3, 594 S.W.3d at 873.

150. *Id.* at 6, 594 S.W.3d at 874–75.

151. See discussion *supra* Part IV.D.1 (compare with the guardianship cases discussed when the supreme court accepted three cases to develop that area of the law).

152. *Martin v. Smith*, 2019 Ark. 232, at 8, 576 S.W.3d 32, 37; *John v. Faitak*, 2020 Ark. 105, at 3, 594 S.W.3d 871, 873.

153. See *Martin*, 2019 Ark. 232, at 1, 576 S.W.3d at 872; *John*, 2020 Ark. 105 at 6, 594 S.W.3d at 874.

154. One of these cases, *Covenant Presbytery*, should have probably been assigned a probate case number because it dealt with the administration of a trust. 2016 Ark. 138, 489 S.W.3d 153; see *in re Admin. Order No. 14(1)(b)*, 351 Ark. Appx. 713 (2003).

155. See *Stone v. Washington Reg'l Med. Ctr.*, 2017 Ark. 90, 515 S.W.3d 104; *Covenant Presbytery v. First Baptist Church*, 2016 Ark. 138, 489 S.W.3d 153.

from a three-judge panel.¹⁵⁶ These substituted opinions may have drawn attention during the supreme court's consideration of the petition for review.

First, in *Covenant Presbytery v. First Baptist Church*, a three-judge panel of the court of appeals issued a decision, a petition for rehearing followed, and it was denied.¹⁵⁷ Yet the court of appeals issued a substituted opinion by a six-judge panel the same day. On the merits, appellee's petition for review to the supreme court alleged that the court of appeals had created a new legal standard and misrepresented the Trust Code.¹⁵⁸ The supreme court granted review and ultimately reached the same decision as the court of appeals.¹⁵⁹

In *Stone v. Wash. Reg. Med'l Ctr*, the supreme court also granted review following a substituted opinion from the court of appeals.¹⁶⁰ There, a three-judge panel initially affirmed the circuit court's decision.¹⁶¹ But the court of appeals granted a petition for rehearing, and a six-judge panel affirmed again.¹⁶² The supreme court granted review and also affirmed. In both these cases, the result was the same as the court of appeals, and neither case raised an issue of first impression. Thus, in addition to a six-judge panel factoring high into the likelihood of a petition for review being granted, our analysis suggests a substituted opinion may also be a factor.

6. *Contracts*

The last grouping of civil cases involves contracts, for which the supreme court accepted review in just two cases.¹⁶³ One came from a six-judge panel and one from a nine-judge panel, and the supreme court reached a different decision from the court of appeals in both.¹⁶⁴ In *Miracle Kids Success Acad. v. Maurras*, the court of appeals reversed the circuit court's motion for summary judgment, concluding whether the term of the loan agree-

156. *Covenant Presbytery v. First Baptist Church*, 2015 Ark. App. 233, *substituted by* 2015 Ark. App. 417, 467 S.W.3d 190; *Stone v. Washington Reg'l Med. Ctr.*, 2016 Ark. 165, *substituted by* 2016 Ark. App. 236, 490 S.W.3d 669.

157. *See* 2015 Ark. App. 233, *substituted by* 2015 Ark. App. 417, at 10, 467 S.W.3d 190, 197.

158. Petition for Rehearing, 1–2, *Covenant Presbytery v. First Baptist Church*, 2015 Ark. App. 417, 467 S.W.3d 190 (No. CV-14-891).

159. *Covenant Presbytery*, 2016 Ark. 138, at 8, 489 S.W.3d at 158.

160. 2017 Ark. 90, at 4, 515 S.W.3d at 107.

161. *Stone v. Washington Reg'l Med. Ctr.*, 2016 Ark. App. 236, at 2 n.2, 490 S.W.3d 669, 671 n.2.

162. *Stone*, 2016 Ark. App. 236, at 2 n.2, 490 S.W.3d at 671 n.2.

163. *Miracle Kids Success Acad., Inc. v. Maurras*, 2019 Ark. 146, 573 S.W.3d 533; *Farris v. Conger*, 2017 Ark. 83, 512 S.W.3d 631.

164. 2018 Ark. App. 40, 539 S.W.3d 603, *vacated*, 2019 Ark. 146, 573 S.W.3d 533; *Farris v. Conger*, 2016 Ark. App. 230, 490 S.W.3d 684, *vacated*, 2017 Ark. 83, 512 S.W.3d 631.

ment allowed the lender to demand immediate repayment was an issue of material fact.¹⁶⁵ But the supreme court affirmed.¹⁶⁶ In *Farris v. Conger*, a nine-judge panel of the court of appeals concluded that a customer's claim against his wealth management service provider was subject to the three-year statute of limitations.¹⁶⁷ Still, three judges dissented in this result.¹⁶⁸ The supreme court reached a different outcome.¹⁶⁹ It concluded that the claim sounded in breach of contract rather than negligence, and therefore, the circuit court erred in applying the three-year statute of limitations.¹⁷⁰

B. Criminal

The supreme court granted 19 petitions for review in criminal cases.¹⁷¹ It denied 194, which means the supreme court granted criminal petitions at a rate of 8.92%.¹⁷² The supreme court agreed with the court of appeals' disposition in 9 cases and reached a different disposition in 10 cases.¹⁷³ The granted cases fall into three broad categories: (1) sufficiency of the evidence; (2) evidentiary issues; and (3) motions to suppress. Three other miscellaneous cases involved procedural issues, including the procedure for appealing from district court to circuit court¹⁷⁴ and judicial recusal.¹⁷⁵

The criminal cases on which the supreme court granted review suggest the court rarely accepted cases alleging error correction. Issues accepted on review usually involved an issue of first impression, a constitutional challenge, or a case that could have a statewide impact. An incisive dissent from a judge on the court of appeals is another common thread.

1. *Sufficiency Cases*

The first broad category involves challenges to the sufficiency of the evidence. These challenges required the court to construe a criminal statute¹⁷⁶ or decide whether enough evidence supported a conviction for negli-

165. *Miracle Kids Success Acad., Inc.*, 2018 Ark. App. 40, at 11–12, 539 S.W.3d at 609–10.

166. *Miracle Kids Success Acad., Inc.*, 2019 Ark. 146, at 5, 573 S.W.3d at 535–36.

167. *Farris*, 2016 Ark. App. 230, at 6, 490 S.W.3d at 687–88.

168. *Id.* (Harrison, Glover, and Hoofman, JJ., dissenting).

169. *Farris v. Conger*, 2017 Ark. 83, at 1, 512 S.W.3d 631, 632.

170. *Id.* at 7, 512 S.W.3d at 632.

171. *See supra* Chart 3.

172. *See id.*

173. *See supra* Chart 6.

174. *Treat v. State*, 2019 Ark. 326, at 4, 588 S.W.3d 10, 14; *Collins v. State*, 2021 Ark. 80, at 1.

175. *Ferguson v. State*, 2016 Ark. 319, at 1, 498 S.W.3d 733, 734.

176. *E.g.*, *Arms v. State*, 2015 Ark. 364, at 6–8, 471 S.W.3d 637, 641–42.

gent homicide.¹⁷⁷ The largest category of these cases, however, involved possession crimes, when the court, either in a gun or drug case, had to address whether enough evidence supported the possession conviction.¹⁷⁸

A trilogy of cases highlights this. In *Pokatilov v. State*, a divided court of appeals affirmed a drug-possession conviction.¹⁷⁹ The majority applied a constructive-possession theory to affirm the conviction.¹⁸⁰ Three judges dissented, arguing that the jury instructions should have included language about the defendant's knowledge of the contraband.¹⁸¹ On review, the supreme court unanimously agreed with the court of appeals majority, holding the evidence was sufficient on a constructive-possession theory and that additional instructions were not required.¹⁸²

But in two other drug-possession cases, the supreme court affirmed convictions where a unanimous court of appeals had reversed and dismissed. In *Kellensworth v. State*, the court of appeals reversed a controlled-substances possession conviction because the State's expert only visually identified the drugs.¹⁸³ And in *Kolb v. State*, a divided 5-4 court of appeals reversed a methamphetamine-possession conviction because the State presented no evidence the defendant had a "usable amount" of the drug.¹⁸⁴ The four dissenting judges would have upheld the conviction.¹⁸⁵

The supreme court reached a different result in both cases. In *Kellensworth*, a unanimous supreme court concluded the expert's testimony based on visual confirmation constituted sufficient evidence that the defendant possessed the drugs.¹⁸⁶ The supreme court cited both Arkansas cases and several cases from out-of-state jurisdictions, suggesting the issue raised was somewhat novel.¹⁸⁷ In *Kolb*, the supreme court found on a 6-1 split that sufficient evidence supported the conviction.¹⁸⁸ Only one justice would have reversed.¹⁸⁹ The majority opinion cited Arkansas cases exclusively.¹⁹⁰

Kolb and *Kellensworth* are similar in that the court of appeals reversed and dismissed a conviction, but the supreme court disagreed. Even so, in the

177. *E.g.*, Gill v. State, 2015 Ark. 421, at 7–8, 474 S.W.3d 77, 81–82.

178. *E.g.*, Pokatilov v. State, 2017 Ark. 264, 526 S.W.3d 849; Kellensworth v. State, 2021 Ark. 5, 614 S.W.3d 804; Kolb v. State, 2021 Ark. 58, 2021 WL 926282.

179. 2017 Ark. App. 150, at 1, 516 S.W.3d 285, 288.

180. *Id.* at 5, 516 S.W.3d at 290.

181. *Id.* at 16, 516 S.W.3d at 296 (Virden, J., dissenting).

182. Pokatilov v. State, 2017 Ark. 264, at 1, 8, 526 S.W.3d 849, 852, 856.

183. 2020 Ark. App. 249, at 8, 600 S.W.3d 622, 629.

184. 2020 Ark. App. 305, at 4–5, 602 S.W.3d 128, 130.

185. *Id.* at 5–7, 602 S.W.3d at 130–31 (Klappenbach, J., dissenting).

186. Kellensworth v. State, 2021 Ark. 5, at 7, 614 S.W.3d 804, 809.

187. *Id.* at 4–7, 614 S.W.3d at 808–09.

188. Kolb v. State, 2021 Ark. 58, at 5–6, 2021 WL 926282, at *1.

189. *Id.* at 6, 2021 WL 926282, at *1 (Wynne, J., dissenting).

190. *See id.* at 1–5, 2021 WL 926282, at *1.

cases we reviewed, the supreme court did not always side with the State in sufficiency cases. In two other sufficiency cases taken on petition for review, the supreme court unanimously reversed convictions where it found the proof wanting.¹⁹¹ And in both cases the court of appeals had affirmed.¹⁹²

2. *Evidentiary Issues*

The second broad category involved evidentiary issues that fell into two subsets. The first subset involved the defendant's access to evidence either in the State's hands or in the hands of a third party.¹⁹³ The second subset involved evidence the defendant tried to introduce at trial or sentencing.¹⁹⁴ For example, in two cases, a rape defendant requested access to the victim's psychiatric records.¹⁹⁵ In both cases, the supreme court, like the court of appeals,¹⁹⁶ concluded the defendant had no right to access the records. But both cases prompted strong dissents in which the dissenters would have allowed the defendant access based on his constitutional right to present a defense.¹⁹⁷

3. *Motions to Suppress*

The third broad category involved motions to suppress. The supreme court accepted four of these cases in the period.¹⁹⁸ The supreme court's interest in these cases should come as no surprise given the constitutional basis of search-and-seizure law. In addition, two of these cases raised issues of important, statewide concern.

For example, in *Pickle v. State*, the supreme court held that the Game-and-Fish-Commission officers lacked reasonable suspicion to start a crimi-

191. *Arms v. State*, 2015 Ark. 364, at 8, 471 S.W.3d 637, 643; *Gill v. State*, 2015 Ark. 421, at 9, 474 S.W.3d 77, 82.

192. *McCann-Arms v. State*, 2015 Ark. App. 27, at 1, 453 S.W.3d 709, 710; *Gill v. State*, 2015 Ark. App. 162, at 1, 457 S.W.3d 674, 676.

193. See *Holland v. State*, 2015 Ark. 341, at 12, 471 S.W.3d 179, 187; *Harmon v. State*, 2020 Ark. 217, at 4–7, 600 S.W.3d 586, 589–91; *Vaughn v. State*, 2020 Ark. 313, at 4–5, 608 S.W.3d 569, 572; *Lambert v. State*, 2017 Ark. 31, at 5, 509 S.W.3d 637, 641.

194. *Edwards v. State*, 2015 Ark. 377, at 1, 472 S.W.3d 479, 480.

195. *Holland*, 2015 Ark. 341, at 12–13, 471 S.W.3d at 187; *Vaughn*, 2020 Ark. 313, at 2, 608 S.W.3d at 571.

196. *Holland v. State*, 2014 Ark. App. 644, at 12, 448 S.W.3d 220, 228; *Vaughn v. State*, 2020 Ark. App. 185, at 18, 598 S.W.3d 549, 560.

197. *Holland*, 2015 Ark. 341, at 19–22, 471 S.W.3d at 190–92 (Wynne & Hart, JJ., dissenting); *Vaughn*, 2020 Ark. 313, at 11–20, 608 S.W.3d at 575–80 (Wynne & Hart, JJ., dissenting).

198. See *Pickle v. State*, 2015 Ark. 286, at 1, 466 S.W.3d 410, 411; *Schneider v. State*, 2015 Ark. 152, at 1, 459 S.W.3d 296, 297; *Whalen v. State*, 2016 Ark. 343, at 1, 500 S.W.3d 710, 711; *Shay v. State*, 2018 Ark. 393, at 1, 562 S.W.3d 832, 833.

nal investigation when, after completing a regulatory hunting compliance check, the officers also searched the defendant's name in a warrant database.¹⁹⁹ A commentator has suggested that the supreme court's ruling in *Pickle* could have implications not only to Game-and-Fish searches but to other police-citizen encounters.²⁰⁰

The supreme court also accepted review in *Whalen v. State*.²⁰¹ The supreme court held an Arkansas State Police sobriety checkpoint was unconstitutional because it failed to follow a preexisting plan and gave field officers unfettered discretion.²⁰² The supreme court adopted a two-part test to analyze sobriety checkpoints going forward.²⁰³ The new test provides guidance for future law-enforcement-sobriety checkpoints.

The two other motion-to-suppress cases concerned more routine automobile stops. The first case involved a split in the relevant legal authorities. In *Schneider v. State*, a unanimous court of appeals upheld a traffic stop when the police ran a license-plate check and discovered the car's color did not match its registration; this discrepancy was the sole basis for the stop.²⁰⁴ In reaching its conclusion, the court of appeals noted, "[d]ifferent courts have reached different conclusions on the issue presented here."²⁰⁵ Again, a split in authority is a factor the supreme court may consider when accepting the case on petition for review, and a unanimous supreme court concluded the stop had been illegal.²⁰⁶

And even when the issue prompted no split in authority, our analysis showed that a lone dissent from a six-judge court of appeals panel might influence the decision to grant a petition for review. In *Shay v. State*, a divided 5-1 court of appeals held a search had been unlawful when a police officer, after finding the defendant inside a parked car, searched the defendant's wallet after he had been "fidgiting . . . with his pockets[.]"²⁰⁷ The lone dissenting judge would have affirmed, arguing that the defendant consented to the search.²⁰⁸ Ultimately the supreme court agreed with the majority that

199. 2015 Ark. 286, at 7, 466 S.W.3d at 414.

200. Ben Honaker, *Constitutional Law—Fourth Amendment Search and Seizure—We've Got Ourselves in A Pickle: The Supreme Court of Arkansas's Recent Expansion of Fourth Amendment Rights May Have Unintended Consequences*, 39 U. ARK. LITTLE ROCK L. REV. 299, 301 (2017).

201. 2016 Ark. 343, 500 S.W.3d 710.

202. *Id.* at 6–7, 500 S.W.3d at 714.

203. *Id.* at 8, 500 S.W.3d at 714.

204. 2014 Ark. App. 711, at 2, 452 S.W.3d 601, 602.

205. *Id.* at 4, 452 S.W.3d at 603.

206. ARK. SUP. CT. R. 2-4(d)(ii); *Schneider v. State*, 2015 Ark. 152, at 2–6, 459 S.W.3d 296, 300.

207. 2018 Ark. App. 101, at 6, 542 S.W.3d 885, 889.

208. *Id.* at 15, 542 S.W.3d at 894 (Glover, J., dissenting).

the defendant did not consent.²⁰⁹ But two justices dissented and would have found that the defendant consented.²¹⁰ And a concurring justice thought the circuit court never made the requisite findings about consent.²¹¹

C. Juvenile

The supreme court granted review in nine juvenile cases, a little over 12.68% of the total petitions filed within this case type.²¹² All of these were child-welfare cases involving dependency-neglect.²¹³ The supreme court did not accept review in any juvenile-delinquency cases. Of the cases reviewed, the supreme court reached the same result as the court of appeals in less than half of the cases.²¹⁴ While the percentage of granted petitions in this subject matter was about average when compared with the overall grant rate (11.92%), the types of cases showed some similarities. In sum, the supreme court granted review in juvenile cases when procedural errors dictated the outcome at the circuit court or court of appeals.

For example, in seven of the juvenile cases reviewed, a procedural issue was alleged. Again, this trend traversed case types. In five of the juvenile cases, the procedural issues emanated from the circuit court.²¹⁵ In *Earls v. Arkansas Department of Human Services*, the circuit court terminated a father's parental rights to his two children, and he appealed to the court of appeals.²¹⁶ The court of appeals affirmed.²¹⁷ The supreme court granted review and reversed the circuit court.²¹⁸ As the supreme court held, the circuit

209. *Shay v. State*, 2018 Ark. 393, at 8, 562 S.W.3d 832, 836.

210. *Id.* at 10, 562 S.W.3d at 837 (Womack, J., dissenting).

211. *Id.* at 8, 562 S.W.3d at 836 (Goodson, J., concurring).

212. *See supra* Chart 3.

213. *See infra* Appendix.

214. *See supra* Chart 5.

215. *See Edwards v. Ark. Dep't of Hum. Servs.*, 2015 Ark. 402, at 7, 474 S.W.3d 58, 62 (dismissing because the underlying order was not appealable); *Ellis v. Ark. Dep't of Hum. Servs.*, 2016 Ark. 441, at 8, 505 S.W.3d 678, 683 (noting the juvenile court failed to hold a timely review hearing); *Ponder v. Ark. Dep't of Hum. Servs.*, 2016 Ark. 261, at 5, 494 S.W.3d 426, 429; *Martin v. Ark. Dep't of Hum. Servs.*, 2017 Ark. 115, at 17–19, 515 S.W.3d at 610–11 (noting the circuit court's failure to hold timely adjudication, review, and permanency-planning hearings) (Wood, J., concurring); *Earls v. Ark. Dep't of Hum. Servs.*, 2017 Ark. 171, at 11–12, 518 S.W.3d 81, 88 (holding the juvenile court terminated the father's paternal rights before those rights attached under the statute); *Langston v. Ark. Dep't of Hum. Servs.*, 2019 Ark. 152, at 3, 574 S.W.3d 138, 140 (holding that the mother failed to preserve the argument that denial of counsel's motion to withdraw violated the Sixth Amendment).

216. 2017 Ark. App. 53, at 7, 511 S.W.3d 373, 377.

217. *Id.* at 10, 511 S.W.3d at 378.

218. *Earls*, 2017 Ark. 171, at 12, 518 S.W.3d at 88.

court committed a procedural error in terminating the father's parental rights without first establishing him as the legal parent.²¹⁹

But in two other cases, the procedural error occurred at the appellate level. In *Minor Children v. Arkansas Department of Human Services*, the court of appeals dismissed an appeal brought by minor children following their permanent placement by the juvenile court.²²⁰ The court of appeals held the appellants failed to timely file their notice of appeal in twenty-one days as required by Arkansas Supreme Court Rule 6-9(b)(1).²²¹ The supreme court granted review and held that because the children were appealing from a permanent-custody order, the appeal fell under Rule 2 and Rule 4 of the Arkansas Rules of Appellate Procedure-Civil; therefore, they had thirty days to file their notice of appeal.²²² The supreme court then remanded to the court of appeals for consideration of the merits of the appeal.²²³ In another case, the supreme court held the court of appeals improperly issued a memorandum opinion and remanded for full consideration of the merits.²²⁴

D. Probate

In probate cases, the supreme court accepted review in ten out of the thirty-four petitions filed or around 29%.²²⁵ Surprisingly, the probate cases were granted at the highest rate of all case types. The second highest rate was workers' compensation cases, which were granted at a rate of around 20%. In half of the probate cases, the supreme court reached a different result from the court of appeals.²²⁶

Our results show that the supreme court granted review most often in probate cases when the issue involved child-custody type disputes stemming from guardianships and adoptions, rather than "typical" probate matters involving the administration of decedents' estates. The supreme court reviewed only one case concerning the administration of a trust.²²⁷ And it reviewed two other cases concerning procedural matters, including mootness and permissive intervention.²²⁸

219. *Id.*, 518 S.W.3d at 88.

220. 2019 Ark. App. 242, at 1, 576 S.W.3d 67, 68.

221. *Id.*, 576 S.W.3d 67, 68.

222. *Minor Children v. Ark. Dep't of Hum. Servs.*, 2019 Ark. 243, at 5–6, 582 S.W.3d at 845–46.

223. *Id.*, 582 S.W.3d at 845–46.

224. *Furnish v. Ark. Dep't of Hum. Servs.*, 2017 Ark. 240, at 2, 2017 WL 3300524, at *1 (remanding for full opinion from court of appeals).

225. *See supra* Chart 3.

226. *See supra* Chart 6.

227. *See In re Hamilton Living*, 2015 Ark. 367, 471 S.W.3d 203.

228. *See Whaley v. Beckham*, 2016 Ark. 196, 492 S.W.3d 65; *Norris v. Davis*, 2015 Ark. 442, 476 S.W.3d 163.

As the supreme court wrote in *Matter of Adoption of A.M.P.*, “[p]arental rights and the integrity of the family unit have always been a concern of this state and their protection regarded as a proper function of the courts[.]”²²⁹ In particular, guardianship and adoption cases stand out as areas where (1) the supreme court is more likely to accept review and (2) the supreme court clarifies and develops the law through cases, which may often involve fact-based inquiries, especially if the court of appeals decision was divided. And as discussed below in the domestic-relations section, the supreme court has routinely scrutinized cases involving custody, parental rights, and visitation. Questions about the placement of children, whether in a guardianship or following a divorce, have been a common thread where the supreme court has granted review.

1. *Guardianship*

The supreme court used the petition-for-review process in probate matters to settle unresolved guardianship law in Arkansas through a series of cases. Guardianships are governed by state statutes, provided the law respects parents’ rights to the “care, control, and custody of [their] children” under the Fourteenth Amendment of the United States Constitution.²³⁰ In 2015, the first case reviewed in this series was *In the Matter of W.L.*²³¹ There, the supreme court refined the standard in guardianship cases and overruled prior decisions.²³² The court held: “In short, our judicially created, two-step tests are ineffective to protect a fit parent’s fundamental rights and are divorced from the statutory text. The best path is to abandon the tests and bring termination-of-guardianship cases in line with the statute.”²³³

The supreme court followed *In the Matter of W.L.* by accepting review in another guardianship matter the next year.²³⁴ In *Donley v. Donley*, the supreme court acknowledged that “[t]ermination of guardianship cases have been in a recent state of flux.”²³⁵ And in a rare instance, in *Morris v. Clark*, the court explained the reason for granting review: “[a]cknowledging that our jurisprudence would benefit from further development on the Termination Statute analysis, we granted review in the present matter. . . .”²³⁶ The

229. *In re Adoption of A.M.P.*, 2021 Ark. 125, at 5, 623 S.W.3d 571, 575.

230. *In re Guardianship of W.L.*, 2015 Ark. 289, at 5–6, 467 S.W.3d 129, 132–33.

231. *Id.* at 6, 467 S.W.3d at 133. The route to clarifying guardianship law began in 2015 when a case the supreme court had taken on appeal on an issue of first impression returned to the court. *In re Guardianship of S.H.*, 2015 Ark. 75, 455 S.W.3d 313.

232. *Id.* at 6–9, 467 S.W.3d at 132–34.

233. *Id.* at 9, 467 S.W.3d at 134.

234. *See Donley v. Donley*, 2016 Ark. 243, at 8–9, 767, 493 S.W.3d 762, 767.

235. *Id.* at 9, 767, 493 S.W.3d at 767 (citing *In re Guardianship of W.L.*, 2015 Ark. 289, 467 S.W.3d 129).

236. 2019 Ark. 130, at 8, 572 S.W.3d 366, 371.

supreme court also explained that the circuit court did not have the benefit of the latest supreme court's opinion setting forth the correct standard for termination of a guardianship.²³⁷ It therefore remanded for the circuit court to reconsider the evidence in light of the correct legal standard.²³⁸

The supreme court did not accept a petition for review in a guardianship matter again until 2019.²³⁹ And once again, that case, *Morris v. Clark*, involved the standard required for a parent to terminate a guardianship.²⁴⁰ In *Morris*, the court of appeals affirmed the circuit court's decision to deny the mother's petition to terminate a guardianship.²⁴¹ On review, the supreme court disagreed and emphasized a fit parent's constitutional right to raise her child.²⁴² Guardianships stand out as an area where the supreme court routinely granted petitions for review to clarify ambiguities, to correct misapplication of the law, and to afford more constitutional safeguards.

2. Adoption

The supreme court also reviewed four adoption cases. Three involved fact-based questions that produced multiple opinions from the court of appeals. The other involved a jurisdictional issue involving the sufficiency of an adoption petition.

Three of the adoption cases concerned adoption by a stepparent over a biological parent's objection. Each involved the interpretation of the relevant statute.²⁴³ This statute provides that a parent's consent to adoption is not required if the parent, for a period of a least one year, "has failed significantly and without justifiable cause (i) to communicate with the child or (ii) to provide for the care and support of the child as required by law or judicial decree[.]"²⁴⁴ Even though this analysis is fact-driven, each of the three adoption cases involved multiple opinions from the court of appeals, which may explain the supreme court's decision to review.

In *Martini v. Price*, the court of appeals, by a vote of 5-4, affirmed an adoption decree without the biological father's consent.²⁴⁵ The issue raised was whether the father failed to communicate to his child without justifiable

237. *Donley*, 2016 Ark. 243, at 11, 493 S.W.3d at 769.

238. *Id.*, 493 S.W.3d at 769.

239. *See Morris*, 2019 Ark. 130, 572 S.W.3d 366.

240. *Id.* at 1, 572 S.W.3d at 367.

241. 2018 Ark. App. 73, at 10, 542 S.W.3d 191, 197.

242. *Morris*, 2019 Ark. 130, at 4, 572 S.W.3d at 368–69. *But see* Act of March 28, 2017, No. 717(codified at ARK. CODE ANN. § 28-65-401 (Supp. 2017)) (amending the termination statute).

243. *See* ARK. CODE ANN. § 9-9-207(a)(2) (2021).

244. *Id.*

245. 2015 Ark. App. 684, at 8, 476 S.W.3d 867, 870.

cause, a fact-based inquiry.²⁴⁶ The supreme court accepted review and even noted the 5-4 split in the majority opinion.²⁴⁷ The court, in a 6-1 vote, ultimately agreed with the dissenting judges at the court of appeals, concluding the father's consent was required and reversing the trial court's contrary factual finding.²⁴⁸

In *Rodgers v. Rodgers*, the central issue was whether a mother's consent to adoption was required after she failed to communicate with her children for more than a year.²⁴⁹ The court of appeals affirmed the stepmother's adoption because the children's mother had substantially failed to communicate with or support her children.²⁵⁰ However, one judge concurred, stating that he thought the mother's failure to communicate with her children was justifiable because the circuit court judge had previously ordered the mother not to have "any visitation at all with [her] children."²⁵¹

Like the court of appeals, the supreme court affirmed, but the court's reasoning was fractured.²⁵² Only two justices agreed with the court of appeals majority.²⁵³ Two justices concluded that the mother had failed to provide care and support but was justified in not communicating with her children.²⁵⁴ Two justices dissented, contending the mother was justified in failing to communicate and support her children because the circuit court had ordered her to neither communicate with the children nor pay child support.²⁵⁵ Finally, one justice wrote that her failure to communicate was unjustified for part of the time, but not for one year.²⁵⁶

The last fact-driven adoption case was *Matter of Adoption of A.M.P. and A.A.P.*, where the court of appeals reversed a stepparent adoption.²⁵⁷ It concluded that the biological father's failure to provide care and support for his children was justified because the divorce decree explicitly relieved him of the duty to pay child support; therefore, his failure to pay child support could not be used against him.²⁵⁸ One judge concurred, noting the court of appeals' "recent pattern in stepparent-adoption cases and the effect that this

246. *Id.* at 7, 476 S.W.3d at 870.

247. *Martini v. Price*, 2016 Ark. 472, at 1, 507 S.W.3d 486, 487.

248. *Id.* at 5, 507 S.W.3d at 489.

249. *Rodgers v. Rodgers*, 2017 Ark. 182, at 1, 519 S.W.3d 324, 326.

250. *Rodgers v. Rodgers*, 2016 Ark. App. 447, at 12–13, 503 S.W.3d 102, 109–10.

251. *Id.* at 13–16, 503 S.W.3d at 110–12.

252. *Rodgers*, 2017 Ark. 182, 519 S.W.3d 324.

253. *Id.* at 8, 519 S.W.3d at 329.

254. *Id.* at 8–9, 519 S.W.3d at 329–30 (Wynne, J., concurring).

255. *Id.* at 10–12, 519 S.W.3d at 330–31 (Baker, J., dissenting).

256. *Id.* at 13–15, 519 S.W.3d at 331–33 (Womack, J., dissenting).

257. *In re Adoption of A.M.P.*, 2020 Ark. App. 568, at 1, 2020 WL 7239558, at *1.

258. *Id.* at 6, 2020 WL 7239558, at *2–3.

pattern has on our standard of review.”²⁵⁹ The supreme court accepted review and unanimously agreed with the court of appeals.²⁶⁰

Finally, the courts wrestled with a jurisdictional issue in *Lagios v. Goldman*. There, the court of appeals affirmed an adoption decree over the biological father’s objection.²⁶¹ The father raised numerous procedural arguments on appeal, including that the probate court lacked jurisdiction and that the petition for adoption failed to comply with the statute.²⁶² One judge concurred, however, expressing concerns about the adoption petition’s deficiencies.²⁶³ On review, the supreme court extensively discussed the jurisdictional issue and corrected confusion in caselaw that suggested failure to strictly comply with the adoption statutes deprived the circuit court of jurisdiction.²⁶⁴

E. Domestic Relations

The supreme court granted review in about 18% of domestic-relations petitions.²⁶⁵ The supreme court reached a different disposition from the court of appeals 64.7% of the time, the highest rate among all case types.²⁶⁶ In general, domestic appeals fell into three broad categories: (1) financial questions about property division and alimony; (2) child-custody issues; and (3) procedural issues. In many of these cases, multiple opinions were written at the court of appeals, further evidencing that the supreme court granted review from six- and nine-judge panels at higher rates.

The domestic-relations cases also show the supreme court’s approach to finality issues. In several cases, a unanimous supreme court found that divorce decrees were final and appealable when the court of appeals had not.²⁶⁷ These cases also show the court’s flexibility as to the disposition of the case on review. In some cases, the supreme court simply disposed of the finality decision and remanded to the court of appeals. In others, the supreme court itself considered the merits and overruled a line of authority involving the interpretation of the property-division statute. This shows that the supreme court, when faced with a decision to remand or decide the mer-

259. *Id.* at 7, 2020 WL 7239558, at *3 (Whiteaker, J., concurring).

260. *In re Adoption of A.M.P.*, 2021 Ark. 125, at 9, 623 S.W.3d 571, 577.

261. *Lagios v. Goldman*, 2015 Ark. App. 329, at 12, 463 S.W.3d 726, 733.

262. *Id.* at 4–7, 463 S.W.3d at 729–32.

263. *Id.* at 12–13, 463 S.W.3d at 733–34.

264. *Lagios v. Goldman*, 2016 Ark. 59, at 7–9, 483 S.W.3d 810, 816–17.

265. *See supra* Chart 3.

266. *See supra* Chart 6.

267. This does not just occur in domestic law cases. The supreme court found in a probate case that the circuit court’s order had been final when the court of appeals reached the opposite conclusion. *See In re Hamilton Living Trust*, 2015 Ark. 367, at 1, 471 S.W.3d 203, 205.

its, may choose the latter course when the merits require the supreme court to settle precedent.

1. *Property Division*

Domestic appeals about property division usually concerned a novel legal question or notable dissent from the court of appeals. For example, in *Foster v. Foster*, the court of appeals considered rehabilitative alimony.²⁶⁸ Upon review, supreme court held, as a matter of first impression, that the relevant factors governing permanent alimony also apply to rehabilitative alimony.²⁶⁹ This issue arose because the Arkansas Legislature passed a new law reclassifying “temporary alimony” as “rehabilitative alimony.”²⁷⁰

The supreme court again decided novel legal issues in *Pelts v. Pelts*.²⁷¹ There, the supreme court held a husband’s active-duty military retirement benefits did not vest at the time of the divorce decree; thus, the court reversed the circuit court’s division of that benefit.²⁷² In a 5-1 decision, the court of appeals reached the opposite conclusion.²⁷³ The dissenting judge’s opinion may have tipped the supreme court off that review was warranted. It noted that the court of appeal’s majority’s decision conflicted with binding precedent and that the holding “should be pronounced by either our supreme court or the Department of Defense, but not by our court .”²⁷⁴

Another appeal involving a matter of first impression was *Cherry v. Cherry*.²⁷⁵ The novel issue in that case concerned alimony after a structured settlement.²⁷⁶ The husband had suffered work-related injury that left him totally disabled.²⁷⁷ He received a structured settlement, paid out by annuities, that he received in compensation.²⁷⁸ The circuit court imputed this income to the husband for the purpose of alimony.²⁷⁹ A 5-4 majority from the court of appeals affirmed the award.²⁸⁰ Yet the four dissenting judges would have reversed on an issue they characterized as one “of first impression for Ar-

268. *Foster v. Foster*, 2015 Ark. App. 530, at 4, 472 S.W.3d 151, 154.

269. *Foster v. Foster*, 2016 Ark. 456, at 10, 506 S.W.3d 808, 815.

270. *Id.* at 8, 506 S.W.3d at 814; *see also* Act of April 22, 2013, No. 1487 (codified at ARK. CODE ANN. § 9-12-312 (Supp. 2019)).

271. 2017 Ark. 98, 514 S.W.3d 455.

272. *Id.* at 4–5, 514 S.W.3d at 457–58.

273. *Pelts v. Pelts*, 2016 Ark. App. 75, at 8–10, 482 S.W.3d 345, 350–51.

274. *Id.* at 12, 482 S.W.3d at 352 (Hixson, J., dissenting).

275. 2021 Ark. 49, 617 S.W.3d 692.

276. *Cherry v. Cherry*, 2020 Ark. App. 294, at 3, 603 S.W.3d 585, 590.

277. *Id.* at 2, 603 S.W.3d at 589.

278. *Id.* at 2, 603 S.W.3d at 590.

279. *Id.* at 3, 603 S.W.3d at 590.

280. *Id.* at 19, 603 S.W.3d at 598.

kansas's alimony law[.]”²⁸¹ The supreme court took the case on review and ultimately reached the same decision as the court of appeals’ majority.²⁸²

Even though most of the granted petitions for review in the property-division category involved first-impression legal questions, one case shows how a strong dissent from the court of appeals on a fact question might attract review from the supreme court.²⁸³ In *Symanietz v. Symanietz*, the circuit court imputed a \$3,400 monthly income to the husband for child support and ordered him to pay alimony.²⁸⁴ A 6-3 majority affirmed.²⁸⁵ Still, the dissent pointed out that, under one construction of the decree, the husband could be left with only \$600 per month net income after he paid alimony and child support, less than the federal poverty level.²⁸⁶ The dissent conceded the appeal raised no novel legal issues; instead, it noted that the majority’s decision was authorized by a “deferential standard of review[.]”²⁸⁷ Even though the appeal turned on these factual questions, the supreme court accepted review, ultimately reaching the same conclusion as the court of appeals’ majority.²⁸⁸

2. *Child Custody*

The second category of domestic-relations appeals involved child custody. At times, the supreme court granted review even though the relevant law was clear, and the decision rested mainly on factual disputes. The supreme court may have reviewed these fact-dependent custody disputes when a significant split occurred at the court of appeals.

For example, in *McCoy v. Kincade*, a mother and father shared joint custody of their children.²⁸⁹ Nine years later, the circuit court found a material change of circumstances and granted the father primary custody.²⁹⁰ A 5-1 majority from the court of appeals affirmed despite a lengthy dissenting opinion.²⁹¹ The supreme court granted review and, like the court of appeals, affirmed the change of custody by a 5-2 vote.²⁹² The supreme court noted no

281. *Id.* at 19, 603 S.W.3d at 599 (Harrison, J., dissenting).

282. *Cherry v. Cherry*, 2021 Ark. 49, at 15–16, 617 S.W.3d 692, 701.

283. *See Symanietz v. Symanietz*, 2020 Ark. App. 394, 609 S.W.3d 643.

284. *Id.* at 2, 609 S.W.3d at 645.

285. *Id.* at 13, 609 S.W.3d at 651.

286. *Id.*, 609 S.W.3d at 651 (Harrison, J., dissenting).

287. *Id.*, 609 S.W.3d at 651 (Harrison, J., dissenting).

288. *Symanietz v. Symanietz*, 2021 Ark. 75, at 9, 620 S.W.3d 518, 525.

289. 2014 Ark. App. 664, at 2, 448 S.W.3d 740.

290. *Id.* at 3, 448 S.W.3d at 741.

291. *Id.* at 4–10, 448 S.W.3d at 742–45.

292. *McCoy v. Kincade*, 2015 Ark. 389, at 4, 473 S.W.3d 8, at 11.

novel legal question and analyzed the case using the court's typical standard of review.²⁹³

The supreme court also reviewed another fact-dependent case about child-custody modification in *Pace v. Pace*.²⁹⁴ There, the circuit court denied a petition to alter a joint-custody arrangement.²⁹⁵ The court of appeals affirmed the order by a 5-4 vote.²⁹⁶ A unanimous supreme court reached the same conclusion.²⁹⁷

But the supreme court also reviewed a case that raised new legal questions. In *Cooper v. Kalkwarf*, the supreme court clarified the legal standard for relocation cases.²⁹⁸ The supreme court had recently decided that, when parents share joint custody, the relocating parent is not entitled to a presumption that the move is in the child's best interest.²⁹⁹ The court of appeals split in a 5-4 vote applying this new rule.³⁰⁰ And a concurring judge noted an "ambiguity in our caselaw[.]"³⁰¹ Thus, this concurring opinion may have encouraged a petition for review and explained why the supreme court granted review to "clarify our prior holdings on this issue."³⁰²

3. Procedural Issues

The final category of domestic-relations appeals involved procedural questions. Three of these appeals related to whether the divorce decree was a final, appealable order. In all three cases, the court of appeals dismissed the appeal because the decree was not final.³⁰³ In each case, the decrees ordered the marital property to be sold on mutually agreeable terms; if the parties could not agree, then the property would be sold, and the proceeds divided equally.

The supreme court accepted all three cases on petition for review. But before the supreme court decided any of these appeals, it decided *Davis v. Davis*, which effectively disposed of them all. In *Davis*, the court of appeals certified a question to the supreme court about the finality of the divorce

293. *Id.* at 5, 473 S.W.3d at 11.

294. 2020 Ark. 108, 595 S.W.3d 347.

295. *Id.* at 9, 473 S.W.3d at 352.

296. *Pace v. Pace*, 2019 Ark. App. 284, at 13, 578 S.W.3d 284, 292.

297. *Pace*, 2020 Ark. at 11, 595 S.W.3d at 353.

298. 2017 Ark. 331, at 15, 532 S.W.3d 58, 67.

299. *Singletary v. Singletary*, 2013 Ark. 506, at 7, 431 S.W.3d 234, 239.

300. *Cooper v. Kalkwarf*, 2017 Ark. App. 405, at 15, 525 S.W.3d 508, 516.

301. *Id.* at 16, 525 S.W.3d at 516 (Virden, J., concurring).

302. *See Cooper*, 2017 Ark. 331, at 13, 532 S.W.3d at 66.

303. *E.g.*, *Kelly v. Kelly*, 2015 Ark. App. 147, at 3, 2015 WL 1000809, at *1; *Moore v. Moore*, 2015 Ark. App. 115, at 2, 2015 WL 801993, at *1; *Sherman v. Boeckmann*, 2015 Ark. App. 566, at 2, 2015 WL 6269348, at *1.

decree.³⁰⁴ There, the decree ordered the parties, if they could not otherwise agree, to sell certain marital property by a commissioner's sale.³⁰⁵ The supreme court held that this constituted a final order because it "addressed every issue presented by the parties, reserving no issues to be determined later."³⁰⁶ The supreme court also noted that contrary authority from the court of appeals "misapplie[d] the law on finality."³⁰⁷ The supreme court remanded *Davis* for resolution on the merits.³⁰⁸

Davis preordained the outcome in the three finality appeals taken on petition for review. In *Kelly v. Kelly*, the supreme court, relying on *Davis*, concluded the order was final.³⁰⁹ The supreme court remanded the case for the court of appeals' consideration on the merits.³¹⁰ The supreme court reached the same decision in *Sherman v. Boeckmann*.³¹¹ Citing *Kelly*, the supreme court held the decree constituted a final order and remanded it.³¹²

But *Moore v. Moore* presented an interesting anomaly. In *Moore*, the supreme court again found that the decree had been final.³¹³ But rather than remanding the case to the court of appeals, the supreme court considered the merits.³¹⁴ The supreme court then overruled several cases on the property-division statute.³¹⁵ It explained remanding to the court of appeals without correcting those erroneous decisions first would "not further efficient administration of justice."³¹⁶

The supreme court has accepted other cases on petition for review involving procedural points about the right to a hearing.³¹⁷ It has also accepted a petition for review to clarify the requirements of an Arkansas Rule of Appellate Procedure—Civil.³¹⁸ The court of appeals declined to reach the merits of certain arguments because the appellant failed to properly designate

304. *Davis v. Davis*, 2016 Ark. 64, at 3, 487 S.W.3d 803, 805.

305. *Id.* at 2–3, 487 S.W.3d at 804.

306. *Id.* at 7, 487 S.W.3d at 807 (internal citations omitted).

307. *Id.* at 9, 487 S.W.3d at 808 (referencing *Wadley v. Wadley*, 2010 Ark. App. 733, 2010 WL 4345683).

308. *Id.*, 487 S.W.3d at 808.

309. 2016 Ark. 72, at 3, 483 S.W.3d 296, 297 (citing *Davis*, 2016 Ark. 64, 487 S.W.3d 803).

310. *Id.*, 483 S.W.3d 296, 297.

311. 2016 Ark. 203, at 2, 2016 WL 2866391, at *1.

312. *Id.*, 2016 WL 2866391, at *1.

313. 2016 Ark. 105, at 3, 486 S.W.3d 766, 770.

314. *Id.* at 4, 486 S.W.3d at 770.

315. *Id.* at 8, 486 S.W.3d at 772 (overruling *Layman v. Layman*, 292 Ark. 539, 731 S.W.2d 771 (1987); *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006); *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008)); see also ARK. CODE ANN. § 9-12-315 (2015).

316. *Moore*, at 4 n.1, 486 S.W.3d at 770.

317. *E.g.*, *Potts v. Potts*, 2017 Ark. 33, 512 S.W.3d 611; *Hargis v. Hargis*, 2019 Ark. 321, 587 S.W.3d 208.

318. *Emis v. Emis*, 2017 Ark. 52, at 3, 508 S.W.3d 886, 887.

which order she appealed from.³¹⁹ The supreme court disagreed by a vote of 6-1.³²⁰ The supreme court found the notice of appeal substantially complied with the appellate rules.³²¹ And like it did in the divorce decree cases above, the supreme court remanded to the court of appeals for a decision on the merits.³²²

V. CONCLUSION

After analyzing the data and researching the cases where the supreme court granted review, we have reached the following conclusions. First, the odds the supreme court will grant review are slim. Only 11.92% of the petitions for review we analyzed were granted. Second, the data suggest the supreme court granted review for consistent reasons. Cases involving a split decision from court of appeals were granted at the highest rate and by a significantly large margin. Third, probate cases—mostly guardianships and adoptions—were granted at a higher rate than any other case type. Fourth, our analysis showed the supreme court granted a high number of petitions on unresolved questions of appellate procedure like finality. And last, once the supreme court accepted review, it reached a different result from the court of appeals in about 55% of the cases.

319. *Emis v. Emis*, 2016 Ark. App. 369, at 4, 2016 WL 4541891, at *2.

320. *Emis*, 2017 Ark. 52, at 4, 508 S.W.3d at 888.

321. *Id.*, 508 S.W.3d at 888.

322. *Id.*, 508 S.W.3d at 888.

Case Description	Case Type	No. in COA Panel	COA Opinion Case Citation	SCt Opinion Citation	Result
JAMES TREE AND CRANE V TERRI FOUGHT	CIVIL	Six (6)	2016 Ark. App. 320	2017 Ark. 173	D
CITY OF SILOAM SPRINGS ARKANSAS V LA-DE LLC	CIVIL	Three (3)	2015 Ark. App. 130	2015 Ark. 433	D
RALPH CRENSHAW V RILEY VERNON MCFALLS	CIVIL	Three (3)	2015 Ark. App. 186	2016 Ark. 39	S
COVENANT PRESBYTERY V FIRST BAPTIST CHURCH OSCEOLA	CIVIL	Six (6)	2015 Ark. App. 417	2016 Ark. 138	D
RILEY VERNON MCFALLS ET AL V RALPH CRENSHAW ET AL	CIVIL	Three (3)	2015 Ark. App. 249	2016 Ark. 32	S
WENDY JONES ET AL V TED DOUGLAS ET AL	CIVIL	Nine (9)	2015 Ark. App. 488	2016 Ark. 166	D
ELIZABETH ANN WILLIAMSON V BAPTIST HEALTH MEDICAL	CIVIL	Three (3)	2016 Ark. App. 78	2017 Ark. 92	D
TONY EDWARD HAVNER V NORTHEAST ARK ELECTRIC CO-OP	CIVIL	Three (3)	2017 Ark. App. 111	2016 Ark. 382	D
JANE LIPSCOMB STONE V WASHINGTON REGIONAL MEDICAL	CIVIL	Six (6)	2016 Ark. App. 236	2017 Ark. 90	S
SARAH C GILDEHAUS V ALCOHOLIC BEVERAGE CONTROL BD	CIVIL	Six (6)	2016 Ark. App. 160	2016 Ark. 414	S
FELICIA FARRIS M.D. V CYNTHIA L CONGER C.P.A.	CIVIL	Nine (9)	2016 Ark. App. 230	2017 Ark. 83	D
JOSHUA KILGORE V ROBERT MULLENAX	CIVIL	Three (3)	2016 Ark. App. 143	2017 Ark. 204	S
ROBERT DURAN V SOUTHWEST ARKANSAS ELECTRIC	CIVIL	Six (6)	2016 Ark. App. 237	2018 Ark. 33	S
KENNETH TILLEY V. MALVERN NATIONAL BANK ET AL	CIVIL	Three (3)	2017 Ark. App. 127	2017 Ark. 343	D
MIRACLE KIDS SUCCESS ACADEMY INC V MARVIN MAURRAS	CIVIL	Six (6)	2018 Ark. App. 40	2019 Ark. 146	D
J. DAVID JOHN V MARTIN T. FAITAK, PH.D.	CIVIL	Three (3)	2019 Ark. App. 215	2020 Ark. 105	D
VICTOR BERNARD WILLIAMS, M.D. V BAPTIST HEALTH	CIVIL	Three (3)	2019 Ark. App. 482	2020 Ark. 150	S
DOLLAR GENERAL CORPORATION ET AL V KAREN R ELDER	CIVIL	Three (3)	2019 Ark. App. 526	2020 Ark. 208	S
CONNIE CANTRELL V TOYOTA MOTOR CORPORATION	CIVIL	Three (3)	2018 Ark. App. 335	N/A	N/A
CAROLYN LAWSON V SIMMONS SPORTING GOODS INC	CIVIL	Six (6)	2018 Ark. App. 343	2018 Ark. 84	S
DAVIS NURSING ASSOCIATION V GRACE NEAL	CIVIL	Six (6)	2018 Ark. App. 413	2019 Ark. 91	D
MERANDA MARTIN V DR LESLIE SMITH ET AL	CIVIL	Six (6)	2018 Ark. App. 452	2019 Ark. 232	S
JORJA TRADING INC ET AL V LEAH WILLIS ET AL	CIVIL	Three (3)	2018 Ark. App. 574	2020 Ark. 133	D
SCOTT WHITE V HUNTER OWEN	CIVIL	Three (3)	2020 Ark. App. 356	2021 Ark. 31	D
UNITED SYSTEMS OF ARKANSAS INC V BEASON & NALLEY	CIVIL	Six (6)	2014 Ark. App. 650	N/A	N/A
STEPHENS PRODUCTION COMPANY V KATHY BENNETT ET AL	CIVIL	Three (3)	2015 Ark. App. 617	N/A	N/A
CHELSEA S HARLEY V WYNDHAM S DEMPSTER	CIVIL	Nine (9)	2017 Ark. App. 159	2018 Ark. 43	N/A
ANDREW M HOLLAND V STATE OF ARKANSAS	CRIMINAL	Three (3)	2014 Ark. App. 644	2015 Ark. 341	S
JIMMY PAUL PICKLE V STATE OF ARKANSAS	CRIMINAL	Nine (9)	2014 Ark. App. 726	2015 Ark. 286	S
MELISSA McCANN ARMS V STATE OF ARKANSAS	CRIMINAL	Three (3)	2015 Ark. App. 27	2015 Ark. 364	D
WILLIAM DEWEY GILL V STATE OF ARKANSAS	CRIMINAL	Three (3)	2015 Ark. App. 162	2015 Ark. 421	D
JORDAN ARIE SCHNEIDER V STATE OF ARKANSAS	CRIMINAL	Three (3)	2014 Ark. App. 711	2015 Ark. 152	D
ALAN RAY EDWARDS V STATE OF ARKANSAS	CRIMINAL	Three (3)	2015 Ark. App. 340	2015 Ark. 377	S
JEREMY EDWARD WHALEN V STATE OF ARKANSAS	CRIMINAL	Three (3)	2015 Ark. App. 706	2016 Ark. 343	D
JACQUELINE FERGUSSON V STATE OF ARKANSAS	CRIMINAL	Six (6)	2015 Ark. App. 722	2016 Ark. 319	D
DERRICK GERARDE LAMBERT V STATE OF ARKANSAS	CRIMINAL	Three (3)	2016 Ark. App. 229	2017 Ark. 31	S
RICHARD SHRECK V STATE OF ARKANSAS	CRIMINAL	Three (3)	2016 Ark. App. 374	2017 Ark. 39	S
EDWARD ROGERS V STATE OF ARKANSAS	CRIMINAL	Six (6)	2017 Ark. App. 521	2018 Ark. 309	S
ALEXANDER POKATILOV V STATE OF ARKANSAS	CRIMINAL	Nine (9)	2017 Ark. App. 150	2017 Ark. 264	S
IMO SHAY V STATE OF ARKANSAS	CRIMINAL	Six (6)	2018 Ark. App. 101	2018 Ark. 393	S
ROY TREAT V STATE OF ARKANSAS	CRIMINAL	Nine (9)	2019 Ark. App. 212	2019 Ark. 326	D
RODNEY HARMON V STATE OF ARKANSAS	CRIMINAL	Nine (9)	2019 Ark. App. 572	2020 Ark. 217	D
TRACY WILL VAUGHN V STATE OF ARKANSAS	CRIMINAL	Three (3)	2020 Ark. App. 185	2020 Ark. 213	S
BOBBY KELLENWORTH V STATE OF ARKANSAS	CRIMINAL	Three (3)	2020 Ark. App. 249	2021 Ark. 5	D
TARA KOLB V STATE OF ARKANSAS	CRIMINAL	Nine (9)	2020 Ark. App. 305	2021 Ark. 58	D
SHAWN L COLLINS V STATE OF ARKANSAS	CRIMINAL	Three (3)	2020 Ark. App. 440	2021 Ark. 80	D
CHERI SUZANNE MCCOY V VERNON JEFFREY KINCADE	DOMESTIC	Six (6)	2014 Ark. App. 664	2015 Ark. 389	S
JEANNIE SHERMAN V RAYMOND BOECKMANN	DOMESTIC	Three (3)	2015 Ark. App. 566	2016 Ark. 203	D
JOHN DAVID MOORE V NANCY MOORE	DOMESTIC	Three (3)	2015 Ark. App. 115	2016 Ark. 105	D
OWEN KELLY V MANDY KELLY	DOMESTIC	Three (3)	2015 Ark. App. 147	2016 Ark. 72	D
CHRISTOPHER FOSTER V LEAH FOSTER	DOMESTIC	Six (6)	2015 Ark. App. 530	2016 Ark. 456	S
GREGORY L PELTS V SHELLY A PELTS	DOMESTIC	Six (6)	2016 Ark. App. 75	2017 Ark. 98	D
MARILYN CURRY TROUTMAN V RONALD TROUTMAN	DOMESTIC	Three (3)	2016 Ark. App. 70	2017 Ark. 139	D
ERIN LANE POTTS V TIMOTHY D POTTS JR	DOMESTIC	Three (3)	2015 Ark. App. 720	2017 Ark. 33	D
THOMAS JONES ET AL V KIMBERLY JONES	DOMESTIC	Three (3)	2016 Ark. App. 317	2017 Ark. 190	S
ROBIN M EMIS V KEITH W EMIS	DOMESTIC	Three (3)	2017 Ark. App. 372	2017 Ark. 52	D
NATHAN COOPER V SHANNON KALKWARK (KA COOPER)	DOMESTIC	Nine (9)	2017 Ark. App. 405	2017 Ark. 331	S
PARRISH A DARE V SCOTT A FROST	DOMESTIC	Three (3)	2017 Ark. App. 325	2018 Ark. 83	D
LAKSHMINARAYANA CHEKURI V MADHURI NEKKALAPUDI	DOMESTIC	Three (3)	2019 Ark. App. 221	2020 Ark. 74	D
PHILLIP GRANVILLE PACE V JILL COBURN PACE	DOMESTIC	Nine (9)	2019 Ark. App. 284	2020 Ark. 108	S
LYNN B HARGIS V ALLEN HARGIS	DOMESTIC	Six (6)	2018 Ark. App. 490	2019 Ark. 321	D
WILLIAM B CHERRY V RHONDA MARLENE CHERRY	DOMESTIC	Nine (9)	2020 Ark. App. 294	2021 Ark. 49	D
CHARLES SYMANIETZ V DEBORAH SYMANIETZ	DOMESTIC	Three (3)	2020 Ark. App. 394	2021 Ark. 75	D
MARILYN WORSHAM V DIRECTOR ET AL	DWS	Three (3)	N/A	2016 Ark. 146	S
RAYMOND EDWARDS V ARKANSAS DEPT OF HUMAN SERVICES	JUVENILE	Three (3)	2015 Ark. App. 267	2015 Ark. 402	S
GEORGE BRUMLEY V AR DHS AND MINOR CHILD	JUVENILE	Six (6)	2015 Ark. App. 90	2015 Ark. 356	S
RAY ELLIS V ARKANSAS DEPT OF HUMAN SERVICES	JUVENILE	Six (6)	2016 Ark. App. 318	2016 Ark. 441	D
PRISCILLA PONDER V ARKANSAS DEPT OF HUMAN SERVICES	JUVENILE	Six (6)	2016 Ark. App. 61	2016 Ark. 261	D
BRANDON MARTIN V ARKANSAS DEPT OF HUMAN SERVICES	JUVENILE	Three (3)	2016 Ark. App. 521	2017 Ark. 115	S
NATASHA FURNISH V ARKANSAS DEPT OF HUMAN SERVICES	JUVENILE	Three (3)	2017 Ark. App. 511	2017 Ark. 240	S
JACOB EARLS V AR DEPT OF HUMAN SERVICES	JUVENILE	Three (3)	2017 Ark. App. 53	2017 Ark. 171	D
MINOR CHILDREN V AR DEPT OF HUMAN SERVICES ET AL	JUVENILE	Three (3)	2019 Ark. App. 242	2019 Ark. 243	D
KAREN LANGSTON V ARKANSAS DEPT OF HUMAN SERVICES	JUVENILE	Three (3)	2018 Ark. App. 615	2019 Ark. 152	S
SHERYL NORRIS V ASHLEY DAVIS	PROBATE	Three (3)	2014 Ark. App. 632	2015 Ark. 442	S
BANK OF THE OZARKS V SUSAN EVON COSSEY	PROBATE	Three (3)	2014 Ark. App. 581	2015 Ark. 367	D
THOMAS LAGIOS V KENNETH MITCHELL GOLDMAN ET AL	PROBATE	Three (3)	2015 Ark. App. 329	2016 Ark. 59	S
DAVID LINEHAM V SARAH RACHEL HYDE ET AL	PROBATE	Three (3)	2015 Ark. App. 38	2015 Ark. 289	D
ANTONIO MARTINI V CHRISTOPHER A PRICE	PROBATE	Nine (9)	2015 Ark. App. 684	2016 Ark. 472	D
TEMIKA DONLEY V LAKITCHER DONLEY	PROBATE	Three (3)	2015 Ark. App. 496	2016 Ark. 243	D
TIM WHALEY V PAM BECKHAM	PROBATE	Three (3)	2015 Ark. App. 675	2016 Ark. 196	S
REANNA RODGERS V DESTINY RODGERS	PROBATE	Three (3)	2016 Ark. App. 447	2017 Ark. 182	S
AUCIA MICHELLE MORRIS V JANNELL MARIE CLARK	PROBATE	Three (3)	2018 Ark. App. 73	2019 Ark. 130	D
BRINCE PLYMALE V JEREMY ALAN ROGERS ET AL	PROBATE	Three (3)	2020 Ark. App. 568	2021 Ark. 125	S
MULTI-CRAFT CONTRACTORS INC V RICK YOUSEY	WC	Three (3)	2017 Ark. App. 143	2018 Ark. 107	D
BROOKSHIRE GROCERY COMPANY V CLEON MORGAN SR	WC	Three (3)	2017 Ark. App. 387	2018 Ark. 62	D
GALE ASKINS V KROGER LIMITED PARTNERSHIP I ET AL	WC	Three (3)	2017 Ark. App. 165	2018 Ark. 23	S
ARKANSAS GAME AND FISH COMM V OSCAR GERARD JR	WC	Nine (9)	2017 Ark. App. 523	2018 Ark. 97	D
WALTER FARRIS V EXPRESS SERVICES INC	WC	Nine (9)	2018 Ark. App. 189	2019 Ark. 141	D
MARY KATHERINE MYERS V ARKANSAS STEEL ASSC ET AL	WC	Six (6)	2019 Ark. App. 306	2020 Ark. 136	S
WHITE COUNTY JUDGE ET AL V BRUCE MENSER	WC	Six (6)	2019 Ark. App. 523	2020 Ark. 140	D
LEROY CALHOUN V AREA AGENCY ON AGING ET AL	WC	Three (3)	2020 Ark. App. 366	2021 Ark. 56	S
WAYNE HOLDEN & COMPANY INC V TYLER WAGGONER	WC	Three (3)	2016 Ark. App. 309	2017 Ark. 4	N/A