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Recent Developments

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RECENT DEVELOPMENTS

*CORBITT V. PULASKI COUNTY JAIL*¹

Chris Corbitt, a licensed Arkansas Attorney, attempted to carry a firearm into the Pulaski County District Courthouse. The guard stated that Corbitt was prohibited from bringing a firearm into any Arkansas courthouse. Corbitt asserted that Arkansas Code Annotated § 5-73-122(b) allows lawyers to carry firearms into courthouses as “officers of the court.”² A Pulaski County Sheriff’s Department detective arrived and reiterated that Corbitt was not permitted to carry a firearm into the courthouse.

The language at issue in § 5-73-122(b) states that “a law enforcement officer, either on-duty or off-duty, officer of the court, bailiff, or other person authorized by the court is permitted to possess a handgun in the courtroom of any court or a courthouse of this state.”³

Corbitt sought a declaratory judgement and injunctive relief, and alternatively a writ of mandamus, to permit lawyers to carry firearms into courthouses. The circuit court denied relief on all grounds.

On appeal, Corbitt only argued the denial of the writ of mandamus. The Arkansas Supreme Court affirmed the circuit court, holding that Corbitt failed to demonstrate a “clear, legal right” for attorneys to carry firearms into courthouses under § 5-73-122(b).⁴

1. *Corbitt v. Pulaski Cnty. Jail*, 2023 Ark. 18, 660 S.W.3d 568.

2. *Id.* at 2, 660 S.W.3d at 569.

3. ARK. CODE ANN. § 5-73-122(b).

4. *Corbitt*, 2023 Ark. 18 at 4, 660 S.W.3d at 571.

***GERBER PRODUCTS CO. V. MITCHELL, WILLIAMS,
SELIG, GATES & WOODYARD, PLLC***⁵

The Arkansas Supreme Court rescinded its acceptance of a certified question from the United States District Court for the Eastern District of Arkansas. The certified question arose out of a malpractice case that stemmed from Mitchell Williams’s waiver of attorney-client privilege and work-product privilege during discovery. Gerber alleged that it spent \$600,000 to overturn the Sebastian County Circuit Court’s determination that Mitchell Williams waived those privileges.

The District Court granted summary judgment in favor of Mitchell Williams, ruling that Gerber failed to show malpractice because it did not present proof that the outcome of the underlying case would have been more favorable had Mitchell Williams’s actions been different. Therefore, the District Court would have required Gerber to show “a case within a case.”⁶

Gerber appealed to the Eighth Circuit, which overturned the District Court’s ruling and remanded the case for further proceedings. The Eighth Circuit ruled that Gerber did not have to prove that the outcome of the underlying case would have changed, only that “Mitchell William[s]’s negligence led, in a ‘natural and continuous sequence,’ to the extra fees it paid.”⁷

On remand, the District Court certified the following question to the Arkansas Supreme Court: “Can plaintiff establish proximate cause in a legal malpractice action and recover corrective fees, which resulted from legal negligence, even without proving that the result of the underlying action would have been more favorable to the plaintiff but for the legal negligence?”⁸

The Arkansas Supreme Court accepted the question, then rescinded its acceptance in deference to the Eighth Circuit’s interpretation of Arkansas law.

5. *Gerber Prods. Co. v. Mitchell, Williams, Selig, Gates & Woodyard, PLLC*, 2023 Ark. 21, 2023 WL 2317579.

6. *Id.* at 3, 2023 WL 2317579, at *1 (quoting *Gerber Prods Co. v. Mitchell Williams Selig Gates & Woodyard, PLLC*, 28 F.4th 870, 872 (8th Cir. 2022)).

7. *Gerber Prods. Co.*, 28 F.4th at 872 (alteration in original) (quoting *Madden v. Aldrich*, 346 Ark. 405, 420, 58 S.W. 342, 353 (2001)).

8. *Gerber Prods. Co.*, 2023 Ark. 21 at 1, 2023 WL 2317579, at *1.

PARKER V. STATE⁹

Demarcus Donnell Parker was convicted of first-degree murder and other charges related to a shooting that resulted in the death of an off-duty police officer, Oliver Johnson. The court sentenced Parker to two life sentences and 835 years in prison to be served consecutively. Parker appealed the conviction on multiple grounds including a violation of right to a speedy trial. The Arkansas Supreme Court reversed and dismissed the conviction due to a speedy-trial violation.

The Arkansas Supreme Court analyzed the speedy-trial issue by dividing the case into five time blocks. First, the speedy-trial clock ran from the arrest date on May 9, 2018, through August 10, 2018 (94 days). Second, the speedy-trial clock was tolled from August 11, 2018, through March 1, 2019, as the circuit court granted Parker's continuances. Third, the speedy-trial clock ran from March 2, 2019, through October 17, 2019 (230 days), because a March 1, 2019 order that did not toll the speedy-trial clock superseded a previous order that did. Fourth, the speedy-trial clock ran from October 18, 2019, through December 4, 2019 (48 days), because a continuance was granted for docket congestion without a contemporaneous order to toll the time and the State failed to demonstrate an additional good cause to toll the time retroactively. Fifth, the speedy-trial clock ran from December 5, 2019, through January 6, 2020 (33 days), because the circuit court's December 4, 2019 order tolling speedy trial due to docket congestion failed to set a trial date at the next available time.

In total, speedy trial was not tolled for 405 days. This exceeded the 365-day allowance in Arkansas Rule of Criminal Procedure 28.1(b). Therefore, the conviction was reversed and dismissed.

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9. *Parker v. State*, 2023 Ark. 41, 660 S.W.3d 815.