

SUPREME COURT OF ARKANSAS

Green v. Alpharma, Inc.

374 Ark. 146 (2008) (Ark. 2008) · No. No. 07-382 · Decided September 4, 2008

SUMMARY

The Supreme Court of Arkansas addressed Alpharma's motion for taxation of appellate costs following a prior decision that affirmed in part and reversed in part. The court awarded Alpharma \$500 in briefing costs based on its successful defense of the expert-testimony ruling, but denied costs related to alleged deficiencies in the appellants' Abstract and Addendum.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	September 4, 2008
DOCKET	No. 07-382
DISPOSITION	other
PROCEDURAL POSTURE	After the court reversed in part and affirmed in part in the underlying appeal, Alpharma moved for taxation of appellate costs, including brief costs and costs allegedly caused by deficiencies in the appellants' Abstract and Addendum.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Mary E. Green, Michael B. Green, individually and as parents, next friends, and natural guardians of Michael Green during his minority, Michael Green, individually v. Alpharma, Inc., Alpharma Animal Health Co., George's Farms, Inc., George's Processing, Inc., Peterson Farms, Inc., Simmons Foods, Inc., Simmons Poultry Farms, Inc., Tyson Foods, Inc.

TOPICS

- costs
- appellate procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Alpharma was entitled to recover \$500 in appellate brief costs under Arkansas Supreme Court Rule 6-7 after the court affirmed part of the circuit court's ruling in Alpharma's favor.
2. Whether Alpharma was entitled to additional appellate costs based on the Greens' alleged noncompliance with Arkansas Supreme Court Rule 4-2 in preparing the Abstract and Addendum.

HOLDINGS

1. Alpharma was entitled to \$500 in briefing costs because the Supreme Court affirmed the circuit court's ruling in Alpharma's favor on the issue of expert testimony.
2. Alpharma was not entitled to costs based on the alleged deficiencies in the Greens' Abstract and Addendum because the court had made no finding of such deficiencies in the prior proceedings.

KEY QUOTATIONS

"the "appellee may recover brief costs not to exceed \$3.00 per page; total costs not to exceed \$500."" (286 S.W.3d at 678)

FACTUAL BACKGROUND

The underlying action involved claims against Alpharma and poultry producers, and the circuit court had granted summary judgment to the poultry-producer appellees. The Arkansas Supreme Court previously reversed that summary judgment as to the poultry producers but affirmed the circuit court's ruling concerning expert testimony. Following the appellate proceedings, both sides sought taxation of appellate costs.

PROCEDURAL HISTORY

The Washington County Circuit Court granted summary judgment to the poultry-producer appellees. In the prior appeal, the Arkansas Supreme Court reversed the summary judgment as to the poultry producers and remanded for trial, while affirming the circuit court's ruling concerning expert testimony. The court later denied some of the Greens' requested appellate costs but awarded other costs. In this proceeding, the court considered Alpharma's motion for taxation of costs and affirmed it in part and denied it in part.

DISPOSITION

other

CASES CITED

- Green v. Alpharma, Inc., 373 Ark. 378, 284 S.W.3d 29 (2008)
- Green v. Alpharma, 374 Ark. 67, 285 S.W.3d 665 (2008) (per curiam)
- Jones v. Jones, 327 Ark. 195, 938 S.W.2d 228 (1997)

OPINION

PER CURIAM.

286 S.W.3d 677 (2008) Mary E. GREEN and Michael B. Green, Individually and as Parents, Next Friends and Natural Guardians of Michael Green During his Minority; and Michael Green, Individually, Appellants, v. ALPHARMA, INC.; Alpharma Animal Health Co.; George's Farms, Inc.; George's Processing, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; Simmons Poultry Farms, Inc.; And Tyson Foods, Inc., Appellees.

No. 07-382. Supreme Court of Arkansas. September 4, 2008. *678 Lundy & Davis, LLP (Lake Charles, LA), by: Hunter W. Lundy, Clayton A.L. Davis, and Keith Prudhomme, (Fayetteville, AR), by: Jason M. Hatfield, for appellants. Shook, Hardy & Bacon, LLP, by: Robert T. Adams, John S. Johnston, and Steven D. Soden; and Taylor Law Firm, by: Timothy Brooks, for appellees Alpharma, Inc., and Alpharma Animal Health.

PER CURIAM. On May 8, 2008, we reversed the Washington County Circuit Court's grant of summary judgment in favor of the Appellee poultry producers and remanded the case for trial as to the poultry producers. See *Green v. Alpharma, Inc.*, 373 Ark. 378, 284 S.W.3d 29 (2008) ("Alpharma I").

We also affirmed the circuit court's ruling on the issue of expert testimony. *Id.*, 284 S.W.3d 29. Later, Appellants Mary E. Green and Michael B. Green, individually and as parents, next friends, and natural guardians of Michael Green during his minority (collectively "the Greens") filed a motion for taxation of costs for briefing costs, filing fee, and actual costs for the production of the record on appeal.

In *Green v. Alpharma*, 374 Ark. 67, 285 S.W.3d 665 (2008) (per curiam) ("Alpharma II"), we denied the Greens' request to recover \$500 in briefing costs, but we awarded the Greens the \$100 filing fee, as well as one-half the amount of the requested costs for the record.

On June 26, 2008, Appellees Alpharma Inc. and Alpharma Animal Health Company ("Alpharma"), pursuant to Arkansas Supreme Court Rules 4-2(b) and 6-7, filed a motion for the taxation of costs against the Greens. Specifically, Alpharma requests \$500 in brief costs, pursuant to Rule 6-7(a) or (c), and other costs for the Greens' alleged noncompliance with Rule 4-2 in producing an allegedly deficient Abstract and Addendum.

On July 2, 2008, the Greens filed their response and recommended that we deny or dismiss Alpharma's motion. Arkansas Supreme Court Rule 6-7 provides for the taxation of costs in favor of a prevailing party on appeal. Subsection (a) states that the "appellee may recover brief costs not to exceed \$3.00 per page; total costs not to exceed \$500." Further, subsection (c) states that we "may assess appeal costs according to the merits of the case" when we have affirmed in part and reversed in part.

Thus, with regard to Alharma's request for brief costs, we grant \$500 in briefing costs because we affirmed the circuit court's ruling in its favor on the issue of expert testimony in Alharma I.[1] However, we deny Alharma's request for taxation of costs for any alleged deficiency in the Greens' Abstract and Addendum under Rule 4-2.

We made no such finding either in Alharma I or Alharma II. For this reason, we decline to award these costs to Alharma. Motion affirmed in part; denied in part. NOTES [1] Further, we note that we have jurisdiction over this matter although the mandate in Alharma I was issued on June 19, 2008. See *Jones v. Jones*, 327 Ark. 195, 938 S.W.2d 228 (1997).