

SUPREME COURT OF ARKANSAS

Gerber Products Co. v. Hewitt

2016 Ark. 222 (2016) · No. CV-15-966 · Decided May 26, 2016

SUMMARY

The Supreme Court of Arkansas affirmed a circuit court ruling that mandatory donning and doffing activities, related preparation, and certain walking and waiting time constituted compensable work under the Arkansas Minimum Wage Act. The court held that the Act does not incorporate the Fair Labor Standards Act's 29 U.S.C. § 203(o) exception for clothing-changing time and that a collective-bargaining agreement could not waive the statutory compensation requirement.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Karen R. Baker; Brill; Hart; Rhonda K. Wood
JURISDICTION	Arkansas
DECIDED	May 26, 2016
DOCKET	CV-15-966
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gerber appealed the Sebastian County Circuit Court's order granting the employees partial summary judgment on liability for unpaid overtime wages under the Arkansas Minimum Wage Act.
STANDARD OF REVIEW	Summary-judgment rulings are reviewed to determine whether the evidentiary materials leave a material question of fact unanswered, viewing the evidence in the light most favorable to the nonmoving party and resolving doubts and inferences against the moving party. Statutory-interpretation issues are reviewed de novo.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Gerber Products Company d/b/a Nestlé Infant Nutrition d/b/a Nestlé Nutrition USA d/b/a Nestlé Nutrition USA-Infant Nutrition d/b/a Nestlé Nutrition USA-Performance Nutrition v. David Hewitt II et al., individually and on behalf of others similarly situated

TOPICS

wage and hour

flsa

statutory interpretation

standard of review

appellate procedure

PRACTICE AREAS

employment law

wage and hour

labor law

statutory interpretation

QUESTIONS PRESENTED

1. Whether mandatory donning and doffing, related preparation activities, and associated walking and waiting time constitute compensable work under the Arkansas Minimum Wage Act.
2. Whether the Arkansas Minimum Wage Act incorporates the Fair Labor Standards Act's 29 U.S.C. § 203(o) exception permitting exclusion of certain clothes-changing and washing time pursuant to a collective-bargaining agreement or custom and practice.
3. Whether the collective-bargaining agreement permitted Gerber to exclude the disputed activities from compensable time under the Arkansas Minimum Wage Act.

HOLDINGS

1. Mandatory donning and doffing activities, including changing clothes and shoes, applying protective equipment, lint rolling, and washing hands, constitute compensable work under the Arkansas Minimum Wage Act because they are required by Gerber's procedures and performed for Gerber's benefit.
2. Post-donning walking time to the place of duty and pre-doffing walking time from the time clock to the place of doffing are compensable when they are associated with the mandatory compensable activities.
3. The Arkansas Minimum Wage Act does not incorporate the FLSA's § 203(o) exception for clothes-changing and washing time excluded by a collective-bargaining agreement, custom, or practice.
4. A collective-bargaining agreement or custom and practice treating mandatory donning and doffing as noncompensable does not permit an employer to avoid the AMWA's overtime requirements.

KEY QUOTATIONS

"Thus, Gerber's mandatory donning and doffing activities clearly constitute "work" as contemplated by the AMWA." (2016 Ark. 222, at 10)

"We hold that the donning and doffing activities constitute compensable work under the AMWA, despite the custom and practice under the collective-bargaining agreement." (2016 Ark. 222, at 14)

"Further, we decline to engraft the FLSA's 203(o) exception into the AMWA." (2016 Ark. 222, at 14)

FACTUAL BACKGROUND

Employees at Gerber's Fort Smith baby-food facility were required to pass through a security turnstile, change into company uniforms and facility shoes, use a lint roller, don protective equipment, wash their hands, and walk to their workstations before clocking in. At the end of their shifts, they clocked out before removing the protective clothing. Gerber did not compensate employees for these activities during the relevant period,

pursuant to a custom and practice reflected in collective-bargaining agreements. The employees alleged that the uncompensated activities caused them to work more than forty hours per week without overtime pay.

PROCEDURAL HISTORY

The employees filed a class action in Sebastian County Circuit Court alleging that Gerber failed to pay for mandatory donning, doffing, washing, walking, and waiting activities. The circuit court initially denied both sides' summary-judgment motions, later granted the employees' motion for partial summary judgment, denied Gerber's motion, and entered a final judgment awarding \$3,001,669.84 in damages plus prejudgment and postjudgment interest. Gerber had twice removed the case to federal court, but the federal district court remanded it to state court. The Arkansas Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Quarles v. Courtyard Gardens Health & Rehab., LLC, 2016 Ark. 112
- Ryan & Co. AR, Inc. v. Weiss, 371 Ark. 43, 263 S.W.3d 489 (2007)
- Moore v. Moore, 2016 Ark. 105
- Cave City Nursing Home, Inc. v. Arkansas Department of Human Services, 351 Ark. 13, 89 S.W.3d 884 (2002)
- Department of Veterans Affairs v. Okeke, 2015 Ark. 275, 466 S.W.3d 399
- Scoggins v. Medlock, 2011 Ark. 194, 381 S.W.3d 781
- Potter v. City of Tontitown, 371 Ark. 200, 264 S.W.3d 473 (2007)
- Adair v. ConAgra Foods, Inc., 728 F.3d 849, 851 (8th Cir. 2013)
- Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123, 321 U.S. 590, 598 (1944)
- Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 690-91 (1946)
- Integrity Staffing Solutions, Inc. v. Busk, 135 S. Ct. 513, 517 (2014)
- Sandifer v. United States Steel Corp., 134 S. Ct. 870 (2014)
- Island v. Buena Vista Resort, 352 Ark. 548, 103 S.W.3d 671 (2003)
- Kellar v. Fayetteville Police Department, 339 Ark. 274, 5 S.W.3d 402 (1999)
- Barclay v. First Paris Holding Co., 344 Ark. 711, 42 S.W.3d 496 (2001)
- UMLIC 2 Funding Corp. v. Butcher, 333 Ark. 442, 970 S.W.2d 211 (1998)
- Mitchell v. JCG Industries, Inc., 929 F. Supp. 2d 827, 833 (N.D. Ill. 2013)
- Thompson v. Blessed Home Inc., 22 F. Supp. 3d 542, 550 (E.D. N.C. 2014)
- Kirchoff v. Wipro, Inc., 894 F. Supp. 2d 1346, 1350 (W.D. Wash. 2012)