

# SUPREME COURT OF ARKANSAS

No. 07-382

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,

VS.

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,

**Opinion Delivered** September 4, 2008

MOTION FOR TAXATION OF COSTS.

GRANTED IN PART; DENIED IN PART.

## 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.*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (May 8, 2008) ("*Alpharma I*"). We also affirmed the circuit court's ruling on the issue of expert testimony. *Id.* 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. Alharma*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (June 19, 2008) (*per curiam*) (“*Alharma 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 Alharma Inc. and Alharma Animal Health Company (“Alharma”), pursuant to Ark. Sup. Ct. R. 4-2(b) and 6-7 (2007), filed a motion for the taxation of costs against the Greens. Specifically, Alharma requests \$500 in brief costs, pursuant to Ark. Sup. Ct. R. 6-7(a) or (c), and other costs for the Greens’ alleged noncompliance with Ark. Sup. Ct. R. 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 Alharma’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*.<sup>1</sup>

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<sup>1</sup> 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).

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.