

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT HOLDS THAT A PARTY WHO PREVAILS ON A CAUSE OF ACTION TO RECOVER ACTUAL DAMAGES UNDER THE ARKANSAS DECEPTIVE TRADE PRACTICES ACT IS ELIGIBLE FOR AN AWARD OF ATTORNEY'S FEES, EVEN WHEN IT IS NOT THE PREVAILING PARTY IN THE OVERALL ACTION.

In *G & K Services Co., Inc. v. Bill's Super Foods, Inc.*,¹ the Court of Appeals for the Eighth Circuit affirmed an award of \$82,766.50 in attorney's fees to G & K Services and remanded for further proceedings on Bill's Super Foods' claim for attorney's fees under the Arkansas Deceptive Trade Practices Act (ADTPA).² The court held the ADTPA establishes an independent basis for awarding fees, and that a prevailing party under the Act may be awarded attorney's fees, even if that party is not the overall prevailing party for purposes of Ark. Code Ann. § 16-22-308.³

This case arose because G & K Services, a provider of uniform and facilities services, sued Bill's Super Foods, a grocery store chain, for breach of contract and sought liquidated damages.⁴ Bill's Super Foods counter-claimed asserting common-law claims and a violation of the ADTPA.⁵ In September 2009, the district court granted summary judgment on G & K's contract claims, but ruled that a trial was needed to determine the proper amount of damages.⁶ After a trial in May 2013, a jury awarded \$50,837.92 in damages to G & K Services, and found in favor of G & K on Bill's Super Foods common-law counterclaims.⁷ However, the jury found in favor of Bill's counter-claim under the ADTPA and awarded it \$25,418.96 in damages.⁸

Both parties moved for attorney's fees; G & K relied on Ark. Code Ann. § 16-22-308 and Bill's cited the ADTPA.⁹ Ark. Code Ann. § 16-22-308 provides that "the prevailing party may be allowed a reasonable attorney's fee."¹⁰ The ADTPA states that "[a]ny person who suffers actual damage or injury as a result of an offense or violation as defined in this chapter has a cause of action to recover actual damages, if appropriate, and reasonable attorney's fees."¹¹ The district court denied Bill's request and relied on G & K's argument holding that G & K was the prevailing party, so it was the only party eligible to recover attorney's fee.¹² The court awarded G & K \$82,766.50 in fees after reducing their initial request by \$22,860 for time devoted to causes of action where G & K were unsuccessful, and by \$4,320 for excessive time spent on jury instructions.¹³ Bill's

¹ 766 F.3d 797 (8th Cir. 2014).

² *Id.* at 799.

³ *Id.* at 802.

⁴ *Id.* at 799.

⁵ *Id.*

⁶ *Id.*

⁷ *G & K Services*, 766 F.3d at 799.

⁸ *Id.* at 800.

⁹ *Id.*

¹⁰ *Id.* at 802.

¹¹ *Id.* at 801.

¹² *Id.* at 800.

¹³ *G & K Services*, 766 F.3d at 800.

filed a motion to reconsider, arguing the award to G & K was excessive and that Bill's was entitled to attorney's fees regardless of not being the overall prevailing party.¹⁴ The district court denied the motion and held that Bill's did not offer authority to support its position that the "prevailing party rule" of Ark. Code Ann. § 16-22-308 is trumped by the ADTPA.¹⁵ The court further held that attorney's fees for a successful ADTPA claim are not mandatory.¹⁶

On appeal, the court reviewed the district court's award of attorney's fees and the amount of that award relying on Arkansas law.¹⁷ Bill's presented four arguments regarding the award of attorney's fees: 1) the fee award was excessive in light of G & K's degree of success; 2) the hourly rates claimed by G & K's attorneys was excessive; 3) G & K's description of time and activity were inadequate; and 4) the court failed to consider the *Chrisco* eight factors, which guide the Arkansas courts in awarding attorney's fees.¹⁸ The court of appeals rejected Bill's challenges explaining the district court considered the degree of success as evidenced by its reduction in the award amount and that the court presumed the district court was familiar with the litigation and the market rates and therefore ruled appropriately.¹⁹ Further, the court of appeals found the attorneys' documentation of the amount of time spent was sufficient to support the court's conclusion.²⁰ Lastly, the court of appeals explained that even though the district court did not address all eight factors, it did address most of them.²¹ The court of appeals elaborated stating that *Chrisco v. Sun Indus., Inc.* acknowledges, "there is no fixed formula in determining the computation of attorney's fees," which the court took to mean that it is not necessary to discuss each factor in every case.²²

For his second point on appeal, Bill's broadly asserted that an award is mandatory under the ADTPA.²³ However, the court of appeals inferred the legislature's intent in passing the ADTPA was to give courts discretion in awarding attorney's fees to a private party when it prevails on a claim under the Act.²⁴ The court noted that the statute did not mention whether an award is mandatory or not.²⁵ Further, the court distinguished the preceding subsection that explicitly states awarding attorney's fee to the attorney general is mandatory.²⁶ The court also looked to Arkansas case law for guidance, which provided that courts are not required to award attorney's fees and that it is up to their discretion in determining the amount to award.²⁷

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* This is a diversity case governed by Arkansas law. *Id.*

¹⁸ *Id.* at 800–01.

¹⁹ *G & K Services*, 766 F.3d at 800–01.

²⁰ *Id.* at 801.

²¹ *Id.*

²² *Id.* at 801 (quoting *Chrisco v. Sun Indus., Inc.* 304 Ark. 227, 800 S.W.2d 717).

²³ *Id.*

²⁴ *Id.* at 801–02.

²⁵ *G & K Services*, 766 F.3d at 801.

²⁶ *Id.* at 800.

²⁷ *Id.* at 801 (citing *FMC Corp. v. Helton*, 360 Ark. 465, 202 S.W.3d 490).

Case Survey: G & K Services Co., Inc. v. Bill's Super Foods, Inc., 766 F.3d 797 (8th Cir. 2014)

While the court of appeals agreed with the district court that awarding attorney's fees under the ADTPA is not mandatory, the court disagreed that the prevailing party rule forbid Bill's from appropriate attorney's fees.²⁸ The court explained that the prevailing party rule arises through statute, but that the ADTPA establishes a separate basis for awarding fees.²⁹ Therefore, the court remanded this issue and held that a party who prevails on a cause of action to recover actual damages under the ADTPA is eligible for an award of fees, even if the party is not the overall prevailing party.³⁰

This case illustrates that the prevailing party rule of Ark. Code Ann. § 16-22-308 does not exclude a successful party under the Arkansas Deceptive Trade Practices Act from collecting attorney's fees.

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²⁸ *Id.* at 802.

²⁹ *Id.*

³⁰ *Id.*