

IN THE SUPREME COURT OF FLORIDA

AMANDA JEAN HALL, etc.,

Petitioner,

v.

R.J. REYNOLDS TOBACCO CO.,

Respondent.

Case No. SC11-1611
L.T. No. 1D10-2820

ORIGINAL

BY 

PETITIONER'S MOTION FOR APPELLATE ATTORNEY'S FEES

Pursuant to Florida Rule of Appellate Procedure 9.400 and sections 59.46 and 44.103(6)(b), Florida Statutes, Petitioner Amanda Jean Hall moves the Court for an award of appellate attorney's fees and states:

1. Before trial, the parties participated in court-ordered nonbinding arbitration pursuant to section 44.103, Florida Statutes. The arbitration panel issued a verdict awarding Ms. Hall \$200,000. (**Exhibit A.**) Within thirty days, R.J. Reynolds rejected the arbitration determination and moved for a trial de novo. (**Exhibit B.**)

2. After the jury trial in this case, the trial court entered final judgment awarding Ms. Hall \$3.25 million in compensatory damages and \$12.5 million in punitive damages. (**Exhibit C.**) That judgment has since been affirmed by the First District, and Reynolds' requests for review in this Court and the United States

Supreme Court have been denied. *R.J. Reynolds Tobacco Co. v. Hall*, 70 So. 3d 642 (Fla. 1st DCA), *rev. denied*, 67 So. 3d 1050 (Fla. 2011), *cert. denied*, 132 S. Ct. 1795 (2012).

3. Pursuant to section 44.103(6)(b), a plaintiff is entitled to recover reasonable attorney's fees incurred after an arbitration award if the defendant rejects the award, files for a trial de novo, and then suffers a judgment of at least 25 percent more than the arbitration award. Because that has happened here, Reynolds is required to pay Ms. Hall's attorney's fees. Section 59.46 makes clear that any statutory basis for attorney's fees at the trial court level also authorizes appellate fees.

4. The First District granted Ms. Hall's motion for appellate attorney's fees (**Exhibit D**), but its precedent indicates that a separate motion in this Court is required to recover appellate attorney's fees incurred for work in this Court. *Unifirst Corp. v. COJ*, No. 1D09-820, 2011 WL 6851240 (Fla. 1st DCA Dec. 30, 2011) (citing *Milanick v. Osborne*, 6 So.3d 729, 731 (Fla. 5th DCA 2009)). While Ms. Hall disagrees with that precedent, she files this motion to avoid the need to argue over that.

5. Ms. Hall seeks these fees for all of the time spent in this Court as it reasonably flows from her defense of Reynolds' appeal to the First District, regardless of whether she prevails on the bond statute issue here, because she has

prevailed in upholding the judgment. Alternatively, Ms. Hall will plainly be entitled to appellate fees if she prevails on her challenge to the bond statute.

6. Though Ms. Hall's challenge may now be moot because the judgment against Reynolds is final and the subject statute therefore no longer provides for a stay, that is no reason to deny Ms. Hall the right to recover her full attorney's fees. It is not uncommon for this Court to require litigants to continue to argue an appeal in this Court even after the underlying case is moot. *See Holly v. Auld*, 450 So. 2d 217, 218 n.1 (Fla. 1984) ("It is well settled that mootness does not destroy an appellate court's jurisdiction ... when the questions raised are of great public importance or are likely to recur."); *N.W. v. State*, 767 So. 2d 446, 447 n.2 (Fla. 2000) (noting that this Court may address an issue presented by a technically moot case if the case "presents a controversy capable of repetition, yet evading review") Accordingly, it would be inequitable for the successful plaintiff to have her right to attorney's fees denied or limited because her case became moot.¹

¹ If this proceeding were dismissed as moot, one or more of the other *Engle* class members who joined as amici would continue the challenge and bring the matter back before the Court. Based on rejected proposals for settlement, the vast majority of those plaintiffs are entitled to appellate fees if/when they prevail in their appeals.

For example, the undersigned counsel represents Finna Clay, whose judgment has been affirmed by the First District Court of Appeal. Reynolds agrees that it owes her appellate fees, but has refused to pay the judgment because it contends that the bond statute at issue in this case continues the automatic stay during the time in which it has the right to file a petition for writ of certiorari in the Supreme Court of the United States.


WHEREFORE, Petitioner respectfully requests this Court enter an order determining that she is entitled to appellate attorney's fees in accordance with the foregoing and remand for the trial court to determine the reasonable amount if the parties cannot agree.

Respectfully submitted,

AVERA & SMITH, LLP

THE MILLS FIRM, P.A.

Rod Smith
Florida Bar No. 0202551
Mark Avera
Florida Bar No. 812935
Dawn M. Vallejos-Nichols
Florida Bar No. 0009891
2814 SW 13th Street
Gainesville, Florida 32608
(352) 372-9999 Telephone
(352) 375-2526 Facsimile



John S. Mills
Florida Bar No. 0107719
Courtney Brewer
Florida Bar No. 0890901
203 North Gadsden Street, Suite 1A
Tallahassee, Florida 32301
(850) 765-0897 Telephone
(850) 270-2474 Facsimile

Attorneys for Amanda Jean Hall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons by e-mail² this 25th day of June, 2012:

Counsel for R.J. Reynolds Tobacco Co.
Robert B. Parrish – rbp@mppkj.com
David C. Reeves – dcreeves@mppkj.com
Jeffrey A. Yarbrough – jyarbrough@mppkj.com
Karen Fitzpatrick – kfitzpatrick@mppkj.com
Lynn Scott – ldscott@mppkj.com

² The parties have agreed to accept service by email at the email addresses listed above in lieu of U.S. Mail and have further agreed that electronic service will be deemed service by mail for purposes of Fla. R. App. 9.420(e).

Elliot H. Scherker – scherkere@gtlaw.com
Julissa Rodriguez – rodriguezju@gtlaw.com
Gregory G. Katsas – ggkatsas@jonesday.com
Charles R.A. Morse – cramorse@jonesday.com

Counsel for Attorney General

Louis F. Hubener – lou.hubener@myfloridalegal.com
Rachel Nordby – rachel.nordby@myfloridalegal.com

Counsel for *Engle* Plaintiff Amici

Steven L. Brannock – sbrannock@bhappeals.com
Celene H. Humphries – chumphries@bhappeals.com
Christopher V. Carlyle – ccarlyle@appellatelawfirm.com
Lincoln J. Connolly – ljc@rbrlaw.com
Robert S. Glazier – glazier@fla-law.com
Christopher J. Lynch – clynch@hunterwilliamslaw.com
Joel S. Perwin – jperwin@perwinlaw.com
Richard B. Rosenthal – rbr@rosenthalappeals.com
Bard D. Rockenbach – bdr@flappellatelaw.com
David J. Sales – david@salesappeals.com
Matthew D. Schultz – mschultz@levinlaw.com

Counsel for American Tort Reform Association et al. Amici

George N. Meros – gmeros@gray-robinson.com
Charles Burns Upton II – cb.upton@gray-robinson.com



Attorney

IN THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

AMANDA JEAN HALL, as Personal
Representative of the Estate of
Arthur L. Hall, Sr., deceased,

Plaintiff,

v.

CASE NO.: 2007 CA 5098

R. J. REYNOLDS TOBACCO COMPANY,
et al.,

Defendant.

VERDICT FORM – NON-BINDING ARBITRATION

We, the Arbitrators return the following verdict:

1. Was smoking cigarettes manufactured by Defendant, R. J. REYNOLDS TOBACCO COMPANY a legal cause of the death of Arthur L. Hall, Sr.?

YES ✓

NO _____

2. Was there fault on the part of the decedent, Arthur L. Hall, Sr., which was a legal cause of his death?

YES ✓

NO _____

3. Please state the percentage of any fault that was a legal cause of Arthur L. Hall, Sr.'s death or damage to the Plaintiff that you charge to:

R. J. REYNOLDS TOBACCO COMPANY 40 %

ARTHUR L. HALL, SR. 60 %

TOTAL MUST BE 100 %

EXHIBIT A

Exhibit A

4. What is the amount of any damages sustained by Amanda Jean Hall in the loss of her husband's companionship and protection and in pain and suffering as a result of the decedent's death, past and future?

\$ 500,000.00

5. Was there reliance to his detriment by the decedent, Arthur L. Hall, Sr. with regard to the information concealed or omitted by the Defendant(s) regarding the health effects of cigarettes or their addictive nature?

YES _____

NO ✓

6. Under the circumstances of this case, state whether punitive damages are warranted against R. J. REYNOLDS TOBACCO COMPANY:

YES _____

NO ✓

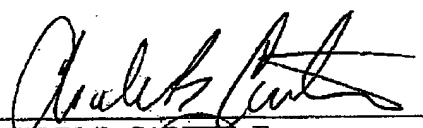
7. What is the total amount of punitive damages, if any, which you assess against Defendant, R. J. REYNOLDS TOBACCO COMPANY?

\$ -0-

TOTAL AMOUNT OF DAMAGES AWARDED TO PLAINTIFF
(\$500,000.00 x 40%)

\$ 200,000.00

SO SAY WE ALL THIS 5 day of November 2009.


CHARLES B. CARTER, Esq.


RAMONA M. CHANCE, Esq.


JOHN R. DOROUGH, Esq.

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, FLORIDA

AMANDA JEAN HALL, as Personal
Representative of the Estate of ARTHUR L. HALL,
SR., deceased,

Plaintiff,

v.

R.J. REYNOLDS TOBACCO COMPANY; PHILIP
MORRIS USA, INC.; LORILLARD TOBACCO
COMPANY; LORILLARD, INC.; LIGGETT
GROUP, LLC (f/k/a LIGGETT GROUP, INC., f/k/a
BROOKE GROUP, LTD., INC., f/k/a LIGGETT &
MYERS TOBACCO COMPANY); and VECTOR
GROUP LTD, INC. (f/k/a BROOKE GROUP,
LTD., INC.),

Defendants.

Case No. 01-2007-CA-5098

DEFENDANT, R.J. REYNOLDS TOBACCO COMPANY'S
MOTION FOR TRIAL DE NOVO

In accordance with Florida Rule of Civil Procedure 1.820(h), Defendant R.J.

Reynolds Tobacco Company hereby moves for a trial de novo by this Court.

Respectfully submitted,



J.W. Prichard, Jr.
Florida Bar No. 175528
Robert B. Parrish
Florida Bar No. 268739
Charles M. Trippe
Florida Bar No. 0069760
David C. Reeves
Florida Bar No. 0072303

EXHIBIT B

Exhibit B

NOV 20 2009

MOSELEY, PRICHARD, PARRISH,
KNIGHT & JONES
501 West Bay Street
Jacksonville, FL 32202
Telephone: (904) 356-1306
Facsimile: (904) 354-0194

Junius C. McElveen, Jr. (pro hac vice)
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-3726
Facsimile: (202) 626-1700

Stephanie E. Parker
Florida Bar No. 0688355
John F. Yarber
Florida Bar No. 0688932
John M. Walker
Florida Bar No. 0691021
JONES DAY
1420 Peachtree Street, N.E., Suite 800
Atlanta, GA 30309
Telephone: (404) 521-3939
Facsimile: (404) 581-8330


Attorneys for Defendant
R.J. REYNOLDS TOBACCO
COMPANY

Dated: November 17, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by
U.S. Mail on Plaintiff's counsel listed below this 17th day of November, 2009:

Rod Smith, Esq.
Dawn M. Vallejos-Nichols, Esq.
AVERA & SMITH, LLP
2814 SW 13th Street
Gainesville, FL 32608

A handwritten signature in dark ink, appearing to read 'Charles M. Trippe', is written over a horizontal line.

Charles M. Trippe
Attorney for
R.J. Reynolds Tobacco Company

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, FLORIDA

AMANDA JEAN HALL, as Personal
Representative of the Estate of
Arthur L. Hall, Sr., deceased,

CASE NO.: 07-CA-5098
DIVISION: J

Plaintiff,

v.

R. J. REYNOLDS TOBACCO COMPANY,
et al.,

Defendants.

FINAL JUDGMENT

Pursuant to the verdict in this action,

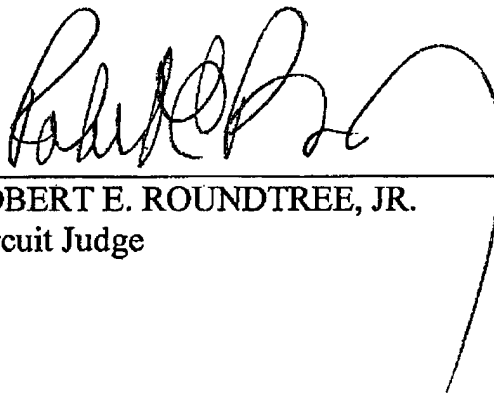
IT IS ADJUDGED that Plaintiff, AMANDA JEAN HALL, as
Personal Representative of the Estate of Arthur L. Hall, Sr., deceased, shall
recover from Defendant, R.J. REYNOLDS TOBACCO COMPANY, the
sum of THREE MILLION TWO HUNDRED AND FIFTY THOUSAND
DOLLARS (\$3,250,000.00) in compensatory damages and TWELVE
MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$12,500,000.00)
in punitive damages, for a total sum of FIFTEEN MILLION, SEVEN
HUNDRED AND FIFTY THOUSAND DOLLARS (\$15,750,000.00),

MAR 25 2010

which shall bear interest at 6% per annum from March 12, 2010 for which sum let execution issue.

This Court retains jurisdiction regarding the issues of attorney's fees and taxable costs.

DONE AND ORDERED in Chambers in Gainesville, Alachua County, Florida on this 23 day of March, 2010 *nunc pro tunc* to March 12, 2010.



ROBERT E. ROUNDTREE, JR.
Circuit Judge

cc: Rod Smith, Esq.
Dawn M. Vallejos-Nichols, Esq.
Dennis L. Murphy, Esq.
Robert B. Parrish, Esq.
Kate A. Furfari, Esq.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850) 488-6151

May 20, 2011

CASE NO.: 1D10-2820
L.T. No. : 07-CA-5098

R. J. Reynolds Tobacco
Company

v.

Amanda Jean Hall, As
Personal, Etc.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellee's motion filed January 25, 2011, for attorney's fees is granted. This case is remanded to the trial court for determination of the amount thereof if the parties are unable to agree on an amount.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Stephanie E. Parker
Elliot H. Scherker
David C. Reeves
Mark A. Avera
Dawn M. Vallejos-Nichols

Robert B. Parrish
Jeffrey Yarbrough
Dennis L. Murphy
Rod Smith
Hon. J.K. "Buddy" Irby, Clerk

Kathryn Furfari
Gregory G Katsas
Gregory J. Philo
John S. Mills

cc


JON S. WHEELER, CLERK

