

# ARKANSAS COURT OF APPEALS

DIVISIONS I, III & IV

No. CV-16-936

THOMAS BURTON AND CINDY  
BURTON

APPELLANTS

V.

AMERICAN GAMEBIRD RESEARCH  
EDUCATION AND DEVELOPMENT  
FOUNDATION, INC.

APPELLEE

**Opinion Delivered:** May 10, 2017

APPEAL FROM THE LAFAYETTE  
COUNTY CIRCUIT COURT  
[NO. 37CV-15-21]

HONORABLE CARLTON D. JONES,  
JUDGE

DISMISSED WITHOUT PREJUDICE

---

## RITA W. GRUBER, Chief Judge

Thomas and Cindy Burton appeal the denial of their motion for attorney's fees in the action filed against them by American Gamebird Research Education and Development Foundation, Inc. (AGRED). This case is a companion case to *American Gamebird Research Education & Development Foundation, Inc. v. Burton*, 2017 Ark. App. 297, which we also hand down today. The Burtons assert that under Arkansas Code Annotated section 16-22-308 (Repl. 1999), they were entitled to attorney's fees as the prevailing party in a contract case. AGRED responds that attorney's fees were unavailable because its claim sounded in tort.

The Burtons' sole point on appeal is that the trial court erred in ruling that attorney's fees were statutorily unavailable. Because today we reverse and remand the underlying case, *see id.*, the merits of the present appeal are not ripe for our review.

Dismissed without prejudice.

VIRDEN, GLADWIN, HARRISON, GLOVER, WHITEAKER, HIXSON, MURPHY, and BROWN, JJ., agree.

Cite as 2017 Ark. App. 283

*McMath Woods P.A.*, by: *Samuel E. Ledbetter*, and *Joseph Hamilton Kemp, PLLC*, by:  
*Joseph Hamilton Kemp*, for appellants.

*Bell & Boyd, PLLC*, by: *Michael W. Boyd* and *Karen Talbot Gean*, for appellee.