THIRD DIVISION
DILLARD, P. J.,
GOBEIL and HODGES, JJ.

March 11, 2020

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A19A1998. BUBNIAK et al. v. KAMLER, JR. et al.

GOBEIL, Judge.

Following a defense jury verdict in this trust litigation, the trial court awarded defendants James J. Kamler, Jr. ("Jim"), individually and as trustee of his deceased mother's trust, and Connie L. Kamler ("Connie") $553,911.19 in attorney fees and litigation costs pursuant to OCGA §§ 9-15-14 and 9-11-37. On appeal, plaintiffs Judy Bubniak and E. Jean Southward (collectively referred to as the "Plaintiffs") challenge the award, asserting that (1) they presented justiciable issues of law and fact which were properly determined by a jury; (2) the trial court failed to apportion fees to the sanctionable conduct; and (3) the defendants failed to follow the proper procedure for an award of fees under OCGA § 9-11-37.[1] We find no error and affirm.

[1] The Plaintiffs have not appealed the jury's verdict.

The record shows that Virtue Kamler ("Virtue") had five children: Jim, Southward, Bubniak, Linda Bellew, and Mary Rockwell.[2] In 1998, Virtue created the 1998 V. Kamler Revocable Trust (the "Trust"). Under the terms of the Trust, Virtue was the grantor and sole beneficiary during her lifetime, and she named her children as residual beneficiaries of the Trust. Virtue transferred most of her property into the Trust and served as trustee of the Trust from its creation until May 21, 2007. Southward served as trustee from May 21, 2007 until November 30, 2007. Virtue again served as trustee until May 17, 2008, at which time Jim became trustee of the Trust, a position which he has held since that time.

As relevant to the case sub judice, Section 10.05 of the Trust agreement provides that: "A Trustee may charge additional fees for services it provides that are not comprised within its duties as Trustee. . . ." Under Section 4.02 (b) of the Trust agreement, the "Trustee may make distributions for [Virtue's] benefit in any one or more of the following ways: . . . To other persons and entities for [Virtue's] use and benefit[.]" Section 10.09 of the Trust does not require the trustee to produce an accounting unless requested by a beneficiary, and further provides that the failure of any person to object to an accounting by giving written notice to the trustee within

[2] Bellew and Rockwell were not parties to the underlying action.

60 days of receipt of the accounting shall be deemed an assent by such person to the accounting. Section 11.01 provides that the "Trustee shall exercise these powers in the manner [the] Trustee determines to be in the best interests of the beneficiaries. [The] Trustee shall not exercise any of its powers in a manner that is inconsistent with the right of the beneficiaries to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts." Section 11.09 of the Trust provides that the "Trustee may make secured or unsecured loans to any person (including a beneficiary) . . . for any term or payable on demand, with or without interest." Finally, Section 11.11 provides that "the determination of [the] trustee with respect to the payment of expenses shall be conclusive upon the beneficiaries."

Virtue began suffering from dementia in either 2005 or 2006. In August 2009, dissatisfied with her assisted living facility, Virtue moved from California to Cobb County, Georgia, where she lived with Jim, Connie, and their daughter, Brittany Kamler. Jim initially hired outside help to assist Virtue with bathing, but she expressed her desire for her family to care for her, in exchange for compensation from the Trust. During the time Virtue lived with the Kamlers, they provided her with round-the-clock, in-home care. In addition to dementia, Virtue suffered from other ailments, including incontinence and a lack of mobility. When the Kamlers could no

longer care for her in their home, Virtue moved into an assisted living facility near the Kamlers' home in 2011, and she died on April 27, 2012, at approximately 93 years of age. Bubniak and Southward did not visit Kamler in Georgia between 2009 and her death in 2012. While Virtue lived in the Kamler's home, they charged the Trust an average of $18 per hour for round-the-clock in-home care, at a cost of approximately $15,000 per month. The family, including Bubniak, did not take issue with the Trust paying Virtue's expenses while she lived in an assisted living facility, but they did not agree that the Kamlers should be compensated at such a high rate to care for Virtue in their home.

On October 3, 2013, the Plaintiffs filed the underlying action against Jim, individually and as trustee of the Trust, Connie, and two LLCs that Jim and Connie owned, seeking an accounting of the Trust and asserting, inter alia, claims of breach of fiduciary duty and breach of the Trust agreement. Specifically, in their 15-count complaint,[3] the Plaintiffs alleged that Jim and Connie used the LLCs to acquire real

[3] The Plaintiffs asserted 15 claims for relief in their complaint: breach of fiduciary duty, self-dealing, and failure to act in the best interests of the Trust (Count I); breach of fiduciary duty and waste (Count II); breach of Trust agreement and failure to adhere to non-administrative purpose of Trust (Count III); breach of Trust agreement and failure to fulfill the administrative purpose of the Trust (Count IV); breach of Trust agreement and failure to administer the Trust expeditiously (Count V); conversion (Count VI); breach of Trust agreement and failure to provide adequate

property with funds wrongfully taken from the Trust and sought damages in excess of $2,500,000. The defendants answered the complaint and denied all material allegations.

During an extended discovery period, the defendants served discovery requests on the Plaintiffs, including requests for admission. Many of these requests for admission sought to have the Plaintiffs admit that they had "no evidence" to support the allegations in their complaint. The Plaintiffs denied the relevant requests to admit.

On May 22, 2015, the Plaintiffs filed a motion for summary judgment, claiming that Jim "used the Trust bank account as his own personal piggy bank, and made several lavish purchases at the expense of the Trust beneficiaries." On July 7, 2015, Jim filed a motion for partial summary judgment, and Connie and the LLC defendants filed a motion for summary judgment. The trial court did not rule on either of the defendants' respective motions for summary judgment. However, on October 20, 2015, the Plaintiffs filed a dismissal with prejudice as to the LLC defendants, leaving

---

accounting (Count VII); negligence (Count VIII); gross negligence (Count IX); negligence per se (Count X); damages for loss or depreciation of value of Trust property (Count XI); damages for profit made by trustee through breach of Trust (Count XII); damages for interest that would have reasonably accrued to the Trust had there been no breach (Count XIII); punitive damages (Count XIV); and attorney fees and expenses of litigation (Count XV).

Jim, individually and as trustee of the Trust, and Connie as the remaining defendants (hereinafter, the "Defendants"). Thereafter, on November 10, 2015, the trial court denied the Plaintiffs' motion for summary judgment, concluding that they had failed to show that they were entitled to judgment as a matter of law with respect to each count of the complaint.

On January 9, 2017, the Defendants provided the Plaintiffs with an accounting of the Trust, covering the period from May 31, 2008, to January 5, 2017 (the "Trust Accounting").[4] The Plaintiffs did not object to the accounting within 60 days as required by Section 10.09 of the Trust agreement. Instead, they first provided the Defendants with written objections to the accounting on July 12, 2018, approximately four days before trial.

The Defendants moved to dismiss the action for failure to prosecute, or, in the alternative, for the court to set a deadline for the Plaintiffs to identify their experts, conduct discovery related to the experts, and for the parties to submit a consolidated pretrial order. The trial court did not expressly rule on the motion to dismiss, but

[4] Jim first provided an accounting on June 24, 2013, before the Plaintiffs had filed suit. The Plaintiffs' counsel objected that same day, citing Section 10.09 of the Trust agreement. In addition to the Trust Accounting, the Defendants filed supplemental accountings covering the periods of January 5, 2017, to May 17, 2018, and May 18, 2018, to July 11, 2018.

entered an order setting deadlines for discovery matters and the filing of the pretrial order. The Plaintiffs failed to comply with the relevant deadlines, and the court excluded their experts as a consequence. On August 10, 2017, the Plaintiffs filed an amended complaint for breach of fiduciary duty, alleging several additional causes of action against Connie.

As the parties prepared for trial, the court ordered the parties to appear for a pretrial conference to review issues related to the preparation of a comprehensive pretrial order The consolidated pretrial order was entered on November 1, 2017. Additionally, the Plaintiffs moved for an order of declaratory judgment, seeking a declaration prohibiting the Defendants from "using any fees paid to defend this action on their behalf as a part of their calculations for reimbursement in any purported Trust accounting submitted by or on behalf of the defendants covering any time period during the pendency of this action." The trial court denied this request, finding that the Plaintiffs assented to the Trust Accounting and stating, in relevant part, that "[a] jury must resolve all of Plaintiffs' claims after a trial, including whether the expenses paid by the Trust after the Trust Accounting dated January 5, 2017, were appropriate." .

This action was assigned initially to Judge A. Gregory Poole. Upon specially setting the case for trial, the trial court appointed Senior Judge G. Grant Brantley to assist Judge Poole and preside over the trial. In turn, Judge Brantley presided over the case at the June 18, 2018 pretrial hearing. At this hearing, the Defendants posited that the Plaintiffs' assent to the Trust Accounting constituted an assent to the transactions contained therein. The Plaintiffs countered that their assent extended only to the accuracy of the Trust Accounting, but not to the propriety of the transactions under the terms of the Trust.

The case was tried before a jury from July 16, 2018 to July 19, 2018. Bubniak and Southward were the sole witnesses to testify on behalf of the Plaintiffs. In support of the Plaintiffs' claims, other than personal opinion and speculation, neither Southward nor Bubniak offered evidence that the complained-of expenditures violated the terms of the Trust. For example, Southward testified as to her general belief that Jim "took money, gave himself and his family gifts, and overspent the [T]rust[ ] by thousands of dollars." However, she failed to offer corresponding evidence to support these concerns. Bubniak testified that Virtue "never" would have spent $17,000 per month in home health care costs, and she believed that the funds distributed to Jim were not for Virtue's benefit or welfare. While under Jim's care,

Virtue fell out of bed and had to be hospitalized for treatment of a brain hematoma. According to Bubniak, the fact that Virtue fell out of bed meant that she was not receiving 24-hour per day care. The Plaintiffs did not offer evidence of average healthcare costs in Cobb County at the time Jim and Connie provided in-home care for Virtue.

Following the close of the Plaintiffs' evidence at trial, Jim moved for a directed verdict. Jim premised his motion on (1) the November 30, 2017 order regarding the Plaintiffs' assent to the Trust Accounting; (2) the Plaintiffs' failure to present evidence from which the jury could calculate their damages with reasonable certainty; (3) the language of Section 11.11 of the Trust, which dictates that the actual expenses paid from the Trust are conclusive as to the beneficiaries; and (4) the Plaintiffs' failure to support their "concerns" about expenditures from the Trust with evidence of specific amounts they contend were taken from the Trust improperly.

In weighing the motion for directed verdict, the trial court queried the Plaintiffs' counsel on the issue of damages:

> [THE COURT]: And I have heard [the Plaintiffs] say that they had no problem with [Jim] being paid and paying the expenses of the trust but that [the Defendants] took too much. Whether or not that's enough to get

> to the jury is a real issue. [The Plaintiffs] didn't show where there was too much [taken], but they said it was too much.
>
> [THE COURT]: How will the jury sit down . . . and calculate this?
>
> [PLAINTIFFS' COUNSEL]: It will come out through the testimony of the defendant.

The trial court then asked if $700,000 had been expended from the Trust to cover the costs of Virtue's care for the 780 days she resided with the Defendants, to which the Plaintiffs' counsel responded: "That is correct." Upon hearing this response, the trial court summarily denied Jim's motion for directed verdict. Connie also moved for a directed verdict as to all claims pending against her, and the Plaintiffs immediately dismissed her with prejudice from the action.

With regard to reasonable costs for in-home healthcare, the defense offered the expert testimony of Debra Url Greenwood, a home healthcare agency owner. Greenwood opined that $18-19 per hour was a reasonable cost for in-home, round-the-clock healthcare in Cobb County between 2009 and 2012. To counter the Plaintiffs' claim that $700,000 had been spent on Virtue's care over a two-year period, Jim testified that he took out a loan from the Trust in 2010 in the amount of $478,000, which was authorized by Section 11.09 of the Trust. Michael Jaye, the

forensic accountant who compiled the Trust Accounting, testified that Jim paid back this loan in full with interest. Thus, the amount expended for Virtue's care between 2009 and 2012 was significantly lower than $700,000, and this fact was evident from the information contained in the Trust Accounting. Additionally, Jaye testified that Jim's trustee fee was properly calculated in accordance with OCGA § 53-12-210.

At the close of the defense case, Jim renewed his motion for a directed verdict. When referencing the $700,000, the trial court stated that it had "learned a lot since" the denial of the previous motion for directed verdict. Nevertheless, the trial court again denied the motion, but stated its reason for doing so:

> I'm going to let the rest[5] of it go to the jury. I don't want this case to have to be retried by any other judge. If I am afforded the opportunity, I will reconsider all arguments on a motion for judgment NOV.

After deliberating for approximately 30 minutes, the jury returned a defense verdict. The trial court entered judgment on the jury's verdict, and thereafter, the Defendants filed a motion for attorney fees pursuant to OCGA §§ 9-15-14 and 9-11-37.

---

[5] The Defendants also moved for a directed verdict on the Plaintiff's claims for attorney fees under OCGA §§ 13-6-11 and 53-12-302, and the trial court granted the motion.

The trial court conducted a two-day hearing on the motion at which the Defendants presented the testimony of their attorneys, as well as detailed, itemized billing statements showing the date the fees and expenses were incurred and paid. Based on its review of the evidence and argument of counsel, the trial court awarded the Defendants $553,911.19 in attorney fees and litigation costs in an exhaustive, 58-page order. Specifically, the court noted that the January 5, 2017 Trust Accounting should have resolved any concerns or questions that the Plaintiffs had regarding the propriety of the Trust expenditures. The Plaintiffs failed to object to the Trust Accounting within 60 days, and failed to present any evidence in support of their claims at trial. Thus, the court reasoned, all of the Plaintiffs' actions subsequent to March 13, 2017, which was more than 60 days after receipt of the Trust Accounting, were sanctionable. The trial court also highlighted the dearth of evidence that the Plaintiffs presented in support of their claims at trial. After considering testimony from the Defendants' attorneys, the trial court concluded that the requested fees were reasonable, and incurred as a result of the sanctionable conduct. The instant timely appeal followed.

1. The Plaintiffs first argue that the trial court erred in granting attorney fees pursuant to OCGA § 9-15-14 (a) and (b).

(a) The Plaintiffs contend that OCGA § 9-15-14 (a) fees are not warranted because they presented justiciable issues of law and fact during all phases of litigation. We disagree.

Under OCGA § 9-15-14 (a), a trial court shall award reasonable and necessary attorney fees where a party has asserted a position that lacked any justiciable issue of law or fact so that it could not be reasonably believed that a court would accept it. We review an award of attorney fees under OCGA § 9-15-14 (a) under an "any evidence" standard. *Doster v. Bates*, 266 Ga. App. 194, 196 (1) (596 SE2d 699) (2004) (citation omitted). In so doing, we determine whether the claim or defense asserted below had some factual merit or presented a justiciable issue of law. Id.

In its order, the trial court noted that, "[b]efore trial, Plaintiffs and Plaintiffs' counsel made inaccurate representations regarding Plaintiffs' claims and what the evidence would show." Specifically, the court recounted Plaintiffs' counsel's representations that the evidence would show that Virtue did not want to move in with the Defendants in Georgia, the Defendants housed her in a closet in their home, and kept the Plaintiffs away from Virtue while she lived in Georgia. However, at trial, the Plaintiffs failed to support these claims. Moreover, the Plaintiffs' failure to present any evidence to support their claims or to prove their alleged damages

constitutes a complete absence of justiciable issue of law or fact such that it could not be reasonably believed that a court would accept the asserted claim.

Here, the trial court determined that the Plaintiffs failed to exercise a minimum amount of diligence after receiving the Trust Accounting and at that point, they

> knew or should have known that Plaintiffs did not have the evidence to prove their causes of action or alleged damages. If Plaintiffs had the evidence, they would have presented it at trial, but they did not. By March 13, 2017, Plaintiffs should have dismissed all their claims in this action.

The trial court also highlighted the lack of evidence of (1) an error in the Trust Accounting; (2) expenses or transactions documented in the Trust Accounting that were not authorized by the Trust agreement; (3) how much the expenses of the Trust should have been and why; (4) any damage caused by a breach or tort committed by the Defendants; and (5) how Jim should have invested Trust assets differently and the amount of damages caused by Jim's alleged failure to invest properly. Based on the Plaintiffs' pursuit of this action despite a lack of evidence, the court determined that the Plaintiffs' claims presented such a complete absence of justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim. This conclusion is amply supported by evidence of record. See, e.g., *Cavin v.*

Brown, 246 Ga. App. 40, 43-44 (3) (538 SE2d 802) (2000) (affirming trial court's award of attorney fees under OCGA § 9-15-14 (a) when party's own evidence showed that his asserted defense could not possibly be believed).

Despite their failure to present competent evidence in support of their claims at trial, the Plaintiffs contend that the fee award is precluded by the trial court's denial of the Defendants' motions for summary judgment and directed verdict. This contention fails for two reasons.

First, the trial court did not grant *or* deny the Defendants' motions for summary judgment, it simply never ruled on the motions. Importantly, the motions for summary judgment were filed and considered before the Defendants provided the Plaintiffs with the Trust Accounting. Because the trial court found that the provision of the Trust Accounting was a crucial juncture in the case that should have resolved the litigation, the previously filed motions for summary judgment do not bar an award of fees.

Second, the denial of the motion for directed verdict does not prohibit the award of fees. In *Atwood v. Southeast Bedding Co.*, 236 Ga. App. 116, 118-119 (3) (511 SE2d 232) (1999), this Court affirmed an award of OCGA § 9-15-14 fees although the party had failed to prevail on motion for summary judgment and on

motion for directed verdict. In reaching that conclusion, we stated that "[i]n considering an award under OCGA § 9-15-14, a trial court is not necessarily bound by the denial of a motion for directed verdict. . . . A court's consideration of such a motion in the midst of trial should not automatically govern the application of OCGA § 9-15-14 relief, as the context and issue may differ." Id. at 118 (3).

In *Atwood*, the Court described situations where OCGA § 9-15-14 fees might be warranted, despite the denial of a motion for directed verdict. The Plaintiffs argue that the examples set forth in *Atwood* are not present in the instant case. In *Atwood*, the Court described that OCGA § 9-15-14 fees might be warranted where the trial court learns of evidence that "could not have been anticipated by the court when it addressed summary judgment" or where "a directed verdict could not be granted." Id. at 117-118 (3). However, the list of examples in *Atwood* is not exhaustive. And, OCGA § 9-15-14 does not prohibit fees in this context. As demonstrated by the trial court's detailed, extensive factual findings, the instant case appears to be the sort of "unusual case[ ]" authorizing fees after the denial of a motion for directed verdict. *Porter v. Felker*, 261 Ga. 421, 422 (2), (3) (405 SE2d 31) (1991) (explaining that "[w]e cannot require trial courts to be infallible. More importantly, if additional facts authorize an [attorney fees] award and the trial court is powerless to make an award,

then the purposes of [OCGA § 9-15-14] (deterrence of litigation abuses and recompensation for legal fees and costs) are thwarted"). And, as expressly described in *Atwood*, "a court may act expediently to deny [ ] a motion [for directed verdict] so as to achieve a verdict and avoid a second trial in the event its grant of the motion would be reversed on appeal." *Atwood*, 236 Ga. App. at 118 (3). In the case sub judice, the presiding judge had only been assigned to the case a few months before trial, and he denied the motion for directed verdict in part, on his express desire that the case not have to be "retried by any other judge."

In sum, the Plaintiffs failed to make a plausible argument based on case law and did not submit competent evidence to support their claims at trial. Under these circumstances because there is some evidence to support the trial court's order, we affirm the award of fees under OCGA § 9-15-14 (a).

(b) In support of their challenge to the trial court's award of OCGA § 9-15-14 (b) attorney fees, the Plaintiffs contend that their claims had substantial justification. We discern no error.

Under OCGA § 9-15-14 (b),

> [t]he court may assess reasonable and necessary attorney's fees and expenses of litigation in any civil action in any court of record if, upon

> the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification . . . or if it finds that an attorney or party unnecessarily expanded the proceeding by . . . improper conduct.

We review an award of fees under OCGA § 9-15-14 (b) for an abuse of discretion. *Shiv Aban, Inc. v. Ga. Dept. of Transp.*, 336 Ga. App. 804, 814-815 (2) (784 SE2d 134) (2016).

Here, the trial court concluded the Plaintiffs "unnecessarily expanded the proceedings by continuing to assert claims that they had no evidence to prove and by taking unjustified positions that resulted in unnecessary motions and unnecessary work for the [Defendants'] counsel." For example, the court noted that counsel for the Defendants offered to schedule a deposition of the accountant who prepared the Trust Accounting on behalf of the defense, but the "Plaintiffs ignored the offer." Instead, the Plaintiffs filed a motion to extend discovery for the purpose of taking the deposition of the Defendants' "newly identified" expert. The court also noted that, just before submitting the proposed consolidated pretrial order to the court, the Plaintiffs filed an amended complaint to add several additional claims against Connie, but "presented absolutely no evidence at trial of any wrongdoing by Connie[,]" "subject[ed] Connie to five years of litigation[,]" and voluntarily dismissed all of their

claims against her on the penultimate day of trial. Based on the foregoing, we conclude that the trial court specified the conduct upon which it based its decision, and its order shows that it properly exercised its discretion in awarding fees under OCGA § 9-15-14 (b). See *Grailer v. Jones*, 349 Ga. App. 625, 633-634 (5) (824 SE2d 118) (2019) ("when a trial court exercises its discretion in assessing attorney fees and costs of litigation under OCGA § 9-15-14, it is incumbent upon the court to specify the conduct upon which the award is made") (citation and punctuation omitted).

2. The Plaintiffs assert that the trial court erred in awarding fees under OCGA § 9-15-14 (d) because the trial court failed to apportion fees to the plaintiffs' specific sanctionable conduct. They contend that the award of fees is an impermissible lump sum, and that the trial court failed to make an independent determination as to the reasonableness and necessity of the fees and expenses that it awarded in this matter. These assertions are belied by the record.

OCGA § 9-15-14 (d) provides:

> Attorney's fees and expenses of litigation awarded under this Code section shall not exceed amounts which are reasonable and necessary for defending or asserting the rights of a party. Attorney's fees and expenses of litigation incurred in obtaining an order of court pursuant to the Code section may also be assessed by the court and included in its order.

The trial court's fee award must be supported by "sufficient proof of the actual costs and the reasonableness of those costs." *Hindu Temple and Community Center of High Desert, Inc. v. Raghunathan*, 311 Ga. App. 109, 117-118 (3) (714 SE2d 628) (2011) (citation omitted).

Here, the trial court limited its fee award to the Plaintiffs' sanctionable conduct. The Trust Accounting effectively addressed each and every one of the Plaintiffs' claims, and their continued prosecution of the lawsuit after the Trust Accounting showed that the claims were without merit was sanctionable. For this very reason, the trial court limited its award of fees to the conduct occurring after March 13, 2017, as this date was over 60 days after the Plaintiffs' receipt of the Trust Accounting, and over three and a half years after the litigation began. The trial court expressly found that "the fees and expenses the [Defendants] are claiming in the [motion for attorney fees] were all reasonable and necessary to defend against the claims asserted by Plaintiffs, to deal with all of the issues created by Plaintiffs from March 13, 2017 through the hearing, and to prosecute the [motion for attorney fees]." In reaching this conclusion, the court recited the pleadings and motions that the parties had filed after March 13, 2017. The court reviewed the billing statements from the Defendants' attorneys and relied on the hearing testimony from their attorneys, and concluded that

the requested fees were reasonable. The Plaintiffs' contentions that the trial court failed to distinguish between sanctionable and non-sanctionable conduct and failed to make an independent determination as to the reasonableness and necessity of the fees and expenses that it awarded in this matter in awarding fees are without support in the record.[6]

Because the trial court specified the conduct leading to the attorney's fee award and only awarded fees generated from sanctionable conduct, we affirm the OCGA § 9-15-14 fee award. See *Cohen v. Rogers*, 341 Ga. App. 146, 152 (2) (b) (798 SE2d 701) (2017) (affirming order awarding fees under OCGA § 9-15-14 where trial court "specified the conduct upon which the award was made") (punctuation omitted).

3. Finally, the Plaintiffs argue that the trial court erred by awarding fees pursuant to OCGA § 9-11-37 (a). Specifically, the Plaintiffs argue that in the absence of a motion to compel discovery, an award of fees under OCGA § 9-11-37 (a) is

[6] Here, because the trial court determined that *all* of the Plaintiffs' conduct after March 13, 2017, was sanctionable, and it limited the fee award to only those fees the Defendants incurred after that date, the trial court was not required to further subdivide the fee award. See, e.g., *Shooter Alley, Inc. v. City of Doraville*, 341 Ga. App. 626, 629 (1) (800 SE2d 588) (2017) (affirming award of OCGA § 9-15-14 attorney fees where trial court concluded that all of defendant's conduct in contempt proceedings was sanctionable).

improper. Additionally, the Plaintiffs maintain that the Defendants failed to prove the truth of the matter denied in the 2014 request for admission.

As an initial matter, where a party receives evasive or incomplete responses to discovery requests under OCGA § 9-11-36 (governing requests for admission), the aggrieved party may seek an order compelling the obstinate party's compliance with discovery. OCGA § 9-11-37 (a) (2).

> Failure to comply with a discovery order subjects a party to sanctions under OCGA § 9-11-37 (b) (2)[.] . . . The statute provides a two-step procedure by which a party frustrated with his opponent's refusal to submit to discovery may remedy the situation. First, a motion for [an] order compelling discovery must be made, heard and granted. The obstinate party is then afforded another opportunity to provide discovery. If [she] fails to do so, the second step is for the court to enter such order as is just, including the imposition of one or more of the sanctions set forth in OCGA § 9-11-37 (b) (2).

Tenet Healthcare Corp. v. Louisiana Forum Corp., 273 Ga. 206, 210 (3) (538 SE2d 441) (2000) (citation and punctuation omitted). However, when a party receives a substantive answer to a discovery request, that party is not required to file a motion to compel or seek clarification of that substantive response in order to obtain sanctions should they later learn that the answer provided was false or intentionally

misleading. As the Georgia Supreme Court has stated, an intentionally false response to a written discovery request, "particularly when it concerns a pivotal issue in the litigation, equates to a total failure to respond," triggering discovery sanctions. *Resurgens, P. C. v. Elliot*, 301 Ga. 589, 595-596 (2) (a) (800 SE2d 580) (2017).

Here, when asked to admit that they had no evidence to support their claims, the Plaintiffs denied the requests.[7] At trial, the Plaintiffs failed to produce evidence to support their claims, thus proving the truth of the matter denied. Such a denial "equates to a total failure to respond," and the trial court acted within its discretion in imposing discovery sanctions as a consequence. *Resurgens, P. C.*, 301 Ga. at 596 (2) (a).

4. The Defendants seek imposition of the ten percent statutory sanction authorized by OCGA § 5-6-6. Because the record in this case does not clearly reflect that the Plaintiffs pursued the appeal for delay only, we deny the request. *Warnock v. Davis*, 267 Ga. 336, 336 (2) (478 SE2d 124) (1996).

---

[7] For example, the Plaintiffs denied the request to admit that they had no evidence to show that Jim gave Trust property to himself, Connie, and Brittany. However, not only did the Plaintiffs never produce any such evidence, but the evidence at trial and the Trust Accounting showed that all disbursements from the Trust to the Defendants were either reimbursement for expenses incurred, or trustee fees.

Judgment affirmed. Dillard, P. J., and Hodges, J., concur.