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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

MICHELLE MULHERN,

Plaintiff and Appellant,

v.

ROBYN MARIE DUNGAN et al.,

Defendants and Respondents.

C066731

(Super. Ct. No.
09CVPM0165593)

In two requests for admission, plaintiff Michelle Mulhern asked defendant Robyn Marie Dungan to admit that Dungan's negligence caused a motor vehicle collision. Dungan denied the requests for admission. Mulhern ultimately prevailed in a jury trial and then made a motion to recover her attorney's fees from Dungan pursuant to Code of Civil Procedure section 2033.420,¹

¹ Undesignated statutory references are to the Code of Civil Procedure.

which provides cost-of-proof sanctions against a party who unreasonably denies a request to admit a matter of substantial importance that is subsequently proven true. The trial court denied Mulhern's motion for attorney's fees.

Mulhern contends the trial court applied the wrong legal standard and abused its discretion in denying her motion for attorney's fees. Mulhern argues the trial court improperly placed the burden on her to prove there was "no good reason" for Dungan to deny the requests for admission, and that the trial court incorrectly injected a subjective, bad faith standard into the analysis.

We conclude the trial court did not apply the wrong legal standard and did not abuse its discretion. Although the jury determined that the accident was caused by Dungan's negligence, there is evidence in the record to support the trial court's conclusion that Dungan had a reasonable ground to believe she would prevail on the matter when she denied Mulhern's requests for admission.

We will affirm the trial court order.

BACKGROUND

Dungan was driving her minivan on March 7, 2007, and rear-ended Mulhern's car (the March accident). Mulhern and Dungan were injured and their vehicles were damaged. After Mulhern sued Dungan, Dungan claimed she was not negligent because she had a seizure while driving. The dispute in this appeal is based on the fact that Dungan did not mention that she had a

seizure at the time of the March accident until after Mulhern filed her lawsuit.

Dungan saw her physician, Dr. James Mu, hours after the March accident. According to Dr. Mu, Dungan was able to communicate with him during that visit. Dungan told Dr. Mu she did not remember what happened but she may have hit her head, face and chest on the side door or window of her vehicle during the collision. Dungan denied losing consciousness during the accident.

Dr. Mu conducted a neurological examination and concluded that, aside from neck pain, Dungan was "normal." Dr. Mu's records showed that Dungan had general mild drowsiness on the day of the March accident -- he testified that her prescription medications potentially caused drowsiness -- but Dungan, a registered nurse, did not report that she had blacked out, a circumstance that Dr. Mu would have noted in his records. Dungan did not report any seizure symptoms to Dr. Mu. Dr. Mu saw Dungan again in March, four times in April, and twice in May. At trial, Dr. Mu did not recall that Dungan ever reported to him that she believed she had a seizure or blackout at the time of the March accident.

About two months before the March accident, Dungan had complained to Dr. Mu about depression, difficulty focusing and drowsiness, which were side effects from her medication, and Dr. Mu adjusted Dungan's medications. Dr. Mu treated Dungan for back pain and other issues, but his records did not show any complaint concerning seizure-type symptoms prior to the March

accident. Dungan testified she never had a seizure before the March accident and no one ever warned her that she was at risk for seizures.

Almost three months after the March accident, Dungan rear-ended another car on June 1, 2007 (the June accident). On that occasion, Dungan's aunt Patty Norton was with Dungan when the collision occurred. Dungan remembered preparing to stop for a red traffic light, but the next thing she remembered was opening her eyes and seeing paramedics around her. According to Norton, when Dungan was almost at a complete stop, Dungan's foot stepped on the gas, Dungan convulsed, turned blue and purple and foamed at the mouth, and her van struck the car in front of her.

Dungan consulted with neurologist Dr. Harvinder Birk five days after the June accident. Dr. Birk diagnosed Dungan with complex partial seizure syndrome or epilepsy. In a letter dated June 6, 2007, Dr. Birk reported to Dr. Mu that Dungan's aunt witnessed Dungan having tonic-clonic jerks; that Dungan had no previous history of seizures but her brother had seizures and was treating with Dr. Birk; and that Dungan had ringing in the ears, trouble swallowing, balance and memory problems, fatigue, and numbness in the left half of her body for which she had been evaluated in 2006 by another neurologist.

Dungan did not tell Dr. Birk or Dr. Mu that, on the day of the March accident, she had a blackout or seizure. Dungan told Dr. Birk that the day of the June accident was the first time she had a seizure. Dr. Birk continued to treat Dungan for seizures.

The victim of the June accident sued Dungan in 2007 (the Anderson action). Dungan answered written interrogatories in the Anderson action in December 2007. Dungan was deposed in that case in January 2008.

Almost two years after the March accident, on March 3, 2009, Mulhern sued Dungan in this action (the Mulhern action). Mulhern then served Dungan with requests for admission. Among other requests, request for admission number 1 asked Dungan to admit that the March accident was caused by Dungan's negligence, and request for admission number 2 asked Dungan to admit that her negligence was the sole cause of the March accident. Dungan denied the requests on July 22, 2009. In an accompanying form interrogatory response, Dungan said she had a seizure at the time of the March accident; she recalled driving past a Blockbuster store, but recalled nothing after that until after the collision occurred; she was not negligent; the collision was caused by a medical condition; she did not know, and had no reason to know, about the medical condition at the time of the March accident; in June 2007 she had a grand mal seizure; and she believed the March accident may have been caused by a seizure as well, although not as severe as the grand mal seizure that occurred in June 2007.

Dungan admitted she did not report to anyone that she had a seizure or blacked out on the day of the March accident until after Mulhern sued her. In September 2009, Dungan informed Dr. Birk that she may have suffered a seizure prior to the June accident. In a letter dated September 4, 2009, Dr. Birk

informed Dr. Mu that Dungan had an "episode" prior to the June accident which may have been a seizure but he did not have any "confirmation."

At trial, Dungan claimed the March accident occurred because she had a seizure while driving. Dungan remembered driving past a Blockbuster store prior to the collision and then "blackness." The first thing Dungan recalled after the collision was seeing a man by her car window. She testified she could not remember everything that happened after the collision. She did not remember talking with Officer Greg Wilkes (the police officer at the accident scene) and did not remember talking to Dr. Mu or her mother, who drove her to Dr. Mu's office. She did not remember how she left the accident scene. She also testified that she did not remember moving her van, although she described in detail at her deposition how she moved her van after the March accident from the street to a parking area. Dungan claimed she was confused, hysterical and crying following the accident.

Mulhern testified that although Dungan was crying and upset, Dungan did not appear confused and when asked to move her van, Dungan moved it without apparent difficulty. Mulhern and Officer Wilkes both testified that Dungan communicated clearly with them at the accident scene.

It was undisputed that Dungan did not tell Mulhern on the day of the March accident that Dungan had blacked out, had a seizure or was experiencing any medical problem. It was also undisputed that Dungan did not tell Officer Wilkes that she

believed a medical condition or seizure caused the accident. Officer Wilkes opined that, based on the damaged areas on the vehicles, Dungan had turned the wheel of her van in an attempt to avoid the collision prior to impact, suggesting that Dungan was conscious immediately before the collision.

Dr. Birk also testified at trial. Dungan's trial counsel asked Dr. Birk to opine based on the following hypothetical: if, at the time of the March accident, Dungan blacked out while driving, later remembered only some things, was confused, did not know her surroundings, had a grand mal seizure three months later and multiple seizures thereafter, did Dungan experience a seizure on the day of the March accident? Dr. Birk opined that, under the circumstances stated in the hypothetical, there was a probability, and it was likely, that Dungan had a seizure on the day of the March accident.

The jury was not persuaded by Dungan's evidence and found in favor of Mulhern. After judgment was entered, Mulhern filed a motion for attorney's fees pursuant to section 2033.420, seeking to recover \$21,650 in attorney's fees incurred to prove that Dungan's negligence caused the March accident, a fact that Dungan had denied in response to request for admission numbers 1 and 2.

In her opposition to Mulhern's motion for attorney's fees, Dungan presented the declaration of her attorney Robin J. Smith, who averred that he contacted Dr. Birk "[d]uring the course of litigation" to determine whether Dungan had a seizure on the day of the March accident. Smith's declaration said Dr. Birk stated

he could not be certain whether Dungan had a seizure on the day of the March accident because he did not examine Dungan until after the June accident. But when told of the symptoms Dungan described in her deposition, Dr. Birk said it was probable that Dungan had a partial complex seizure on the day of the March accident and that a seizure caused her to lose consciousness. Dungan pointed out that, at trial, Dr. Birk also testified based on a hypothetical drawn from Dungan's testimony that it was probable Dungan had a seizure on the day of the March accident.

The trial court denied Mulhern's motion for attorney's fees. It stated that in evaluating whether a good reason existed for denying a request to admit, "'a court may properly consider whether at the time the denial was made the party making the denial held a reasonably entertained good faith belief that the party would prevail on the issue at trial.' [Citation.]" The trial court found that, based on Smith's declaration concerning his conversation with Dr. Birk and the evidence presented at trial, Dungan had a "reasonable, good faith belief" that she would prevail at trial, and the fact the jury did not find the evidence in favor of Dungan persuasive did not indicate that Dungan acted unreasonably in asserting the defense.

Mulhern appeals from the order denying her motion for attorney's fees.

STANDARD OF REVIEW

The determination of whether a party is entitled to cost-of-proof sanctions under section 2033.420 is within the sound

discretion of the trial court. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1275-1276 (*Laabs*); *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864 [discussing section 2033, subdivision (o), which is the predecessor to section 2033.420]; *Brooks v. American Broadcasting Co.* (1986) 179 Cal.App.3d 500, 508 (*Brooks*) [discussing section 2034, subdivision (c), which is the predecessor to section 2033, subdivision (o)].) Our review of an order denying a motion for sanctions under section 2033.420 is deferential. (*Stull v. Sparrow, supra*, 92 Cal.App.4th at p. 864.) The trial court's order is presumed correct. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Laabs, supra*, 163 Cal.App.4th at pp. 1271, 1275, fn. 20.) An abuse of discretion will be found only where the party challenging the order shows that the trial court exceeded the bounds of reason. (*Stull v. Sparrow, supra*, 92 Cal.App.4th at p. 864; *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 637, fn. 10.) The bounds of reason are defined by the particular law being applied. (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297.) Action that is inconsistent with the applicable principles of law is an abuse of discretion. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326-327 [ruling reviewed for abuse of discretion will not be disturbed ""unless (1) improper criteria were used [citation]; or (2) erroneous legal assumptions were made [citation]" [citation]. . . . "Any valid pertinent reason stated will be sufficient to uphold the order."""]; *City of Sacramento v. Drew, supra*, 207 Cal.App.3d at pp. 1297-1298.)

But where the trial court's determination "falls within the permissible range of options set by the legal criteria," we will uphold the trial court's ruling even if we disagree with it. (*Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 831-832; *Stull v. Sparrow, supra*, 92 Cal.App.4th at p. 864.)

DISCUSSION

I

Mulhern contends the trial court applied the wrong legal standard. She argues the trial court improperly placed the burden on her to prove there was "no good reason" for Dungan to deny the requests for admission, and that the trial court incorrectly injected a subjective, bad faith standard into the analysis. Accordingly, we begin our discussion with a recitation of the correct legal standard.

Subject to restrictions not relevant here, a party to a lawsuit may obtain discovery by a written request that another party to the action admit the truth of specified matters of fact, opinion relating to fact, or application of law to fact. (§ 2033.010.) "The primary purpose of [such] requests for admissions is to set at rest triable issues so that they will not have to be tried; they are aimed at expediting trial. [Citation.]" (*Brooks, supra*, 179 Cal.App.3d at p. 509.)

The party to whom a request for admission is directed must respond in writing under oath to each request by answering the substance of the request or setting forth an objection to the request. (§ 2033.210, subs. (a) & (b).) Each answer in

response to a request for admission must be complete and straightforward as the information reasonably available to the responding party permits. (§ 2033.220, subd. (a).)

If a party fails to admit the truth of any matter stated in a request and if the party requesting that admission thereafter proves the truth of that matter, the party requesting the admission may move the trial court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees.² (§ 2033.420, subd. (a).) The trial court must

² Effective July 1, 2005, the Civil Discovery Act (§ 2016.010 et seq.) was reorganized without substantive change, and the cost-of-proof provision in section 2034, subdivision (o) was re-enacted as section 2033.420. (Stats. 2004, ch. 182, § 23, pp. 800, 892-893; 2 Witkin, Cal. Evidence (2011 supp.) Discovery, § 172, p. 289.) Section 2034, subdivision (o), which took effect on July 1, 1987, provided, "If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this section, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make this order unless it finds that (1) an objection to the request was sustained or a response to it was waived under subdivision (l), (2) the admission sought was of no substantial importance, (3) the party failing to make the admission had reasonable ground to believe that that party would prevail on the matter, or (4) there was other good reason for the failure to admit." (Stats. 1987, ch. 86, § 15, p. 346.) Before July 1, 1987, the cost-of-proof provision was found in section 2034, subdivision (c), which provided, in relevant part, "If the court finds that there were no good reasons for the denial and that the admissions sought were of substantial importance, the order shall be made." (Stats. 1957, ch. 1904, § 3, p. 3336.)

make such order unless it finds (1) an objection to the request was sustained or a response to it was waived under section 2033.290, (2) the admission sought was of no substantial importance, (3) the party failing to make the admission had reasonable ground to believe that that party would prevail on the matter, or (4) there was other good reason for the failure to admit. (§ 2033.420, subd. (b).) The party who denied the request for admission has the burden of demonstrating that the denial was justified under one of the four exceptions listed in section 2033.420. (*Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 735-736 [analysis impliedly placed burden of justifying the denial of requests for admission on the responding party]; 1 Hogan & Weber, Cal. Civil Discovery (2d ed. 2005) Requests for Admission, § 9.21, p. 9-58 [party who failed to make an admission may avoid the cost-of-proof sanction by justifying or excusing the failure]; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2012) ¶ 8:1408, p. 8G-39 [similar].)

In determining whether a denial was justified, a trial court may consider whether “at the time the denial was made the party making the denial held a reasonably entertained good faith belief that the party would prevail on the issue at trial.” (*Laabs, supra*, 163 Cal.App.4th at p. 1276; *Brooks, supra*, 179 Cal.App.3d at p. 511.) “[I]t is [not] enough for the party making the denial to ‘hotly contest’ the issue. . . . [T]here must be some reasonable basis for contesting the issue in

question before sanctions can be avoided.” (*Brooks, supra*, at p. 511.)

In *Brooks*, the plaintiff denied, in response to a request for admission from the defendants, that his vehicle was over the centerline of the highway at a particular point. (*Brooks, supra*, 179 Cal.App.3d at p. 507.) The appellate court found that the trial court properly determined there was no good reason for the denial because long before the request for admission was denied, the California Highway Patrol prepared its report concluding, based on tire marks at the scene, that plaintiff’s vehicle was over the centerline, plaintiff’s counsel failed to make a reasonable inquiry about the conclusions in the report, and plaintiff did not contest the issue at trial. (*Id.* at pp. 512-513.) In contrast, plaintiff had a reasonable basis for denying a different request for admission because he relied on the anticipated testimony of an eyewitness. (*Id.* at pp. 512-513.)

Here, there is no indication in the record that the trial court improperly shifted the burden of proof to Mulhern or applied the wrong standard. In finding a reasonable ground for the denials, the trial court relied on the evidence presented by Dungan, including the expert opinion of Dr. Birk and Smith’s declaration about his conversation with Dr. Birk during discovery proceedings. The trial court concluded that Dungan had a “reasonable, good faith belief that she would prevail on the matter at trial.” Although section 2033.420, subdivision (b) (3) is not to be evaluated based on the responding party’s

unsubstantiated belief, we perceive no error in the trial court's determination from this record. (*Laabs, supra*, 163 Cal.App.4th at p. 1277 [finding no abuse of discretion where the trial court "could have easily concluded that at the time plaintiff refused to admit such matters she reasonably held a good faith belief that she would prevail at trial on these issues"]; *Brooks, supra*, 179 Cal.App.3d at p. 511 [trial court may consider whether "at the time the denial was made the party making the denial held a reasonably entertained good faith belief that the party would prevail on the issue at trial"].)

Mulhern also asserts that the trial court erred by finding that section 2033.420 costs of proof may be imposed only in "the extreme case." At the hearing on Mulhern's motion the trial court stated that it would be an "extreme case . . . where . . . the consequence for defending oneself in a suit is to -- in a tort case like this such that the Defendant has to pay damages or costs and attorneys' fees, rather, under the statute." Nonetheless, the trial court's final order properly applied the standard enunciated in *Brooks, supra*, 179 Cal.App.3d 500, 511 and adopted in *Laabs, supra*, 163 Cal.App.4th 1242, 1276.

II

Mulhern further asserts that the trial court abused its discretion in denying her motion for attorney's fees. But the record contains sufficient basis for the trial court's conclusion that Dungan had a reasonable ground to deny the requests for admission.

During discovery Dungan explained that she suffered a seizure that caused the March accident. Dungan denied request for admission numbers 1 and 2 based on that defense. At trial, Dungan presented evidence supporting her defense, namely her testimony about the symptoms she exhibited on the day of the March accident and the expert opinion of her neurologist, Dr. Birk. Dungan testified that on the day of the March accident she blacked out while driving; there were gaps in her memory about what happened after the collision, specifically she did not recall talking with Officer Wilkes at the collision scene, moving her car off to the side of the road, and talking with Dr. Mu hours after the collision; she had never blacked out prior to the March accident; three months after the March accident she had a seizure while driving; and she had other seizures thereafter. Like Dungan, Dr. Mu testified that on the day of the March accident, Dungan reportedly did not remember what happened during the accident. Additionally, Dr. Birk testified that he diagnosed Dungan with complex partial seizure syndrome after the June accident and Dungan had multiple seizures while treating with him.

Contrary to Mulhern's claim, Dr. Birk did not merely testify that a seizure was possible at the time of the March accident. Dr. Birk testified, based on a hypothetical which assumed facts to which Dungan testified, that there was a probability, and it was likely, that Dungan had a seizure on the day of the March accident. (1 Witkin, Cal. Evidence (4th ed. 2000) Opinion Evidence, § 27, pp. 556-557 [it is acceptable to

use a hypothetical question to elicit the opinion of an expert].) The trial court relied on Dr. Birk's opinion in ruling on Mulhern's section 2033.420 motion.

The trial court also credited Smith's declaration that in responding to the subject requests for admission, Dungan relied on the opinion of Dr. Birk, who advised Smith that based on the symptoms described by Dungan, it was probable that Dungan had a seizure on the day of the March accident and that a seizure caused her to lose consciousness. Dungan testified at trial that she raised with Dr. Birk the issue of a seizure in relation to the March accident before she responded to the form interrogatories propounded in the Mulhern action. We defer to the trial court's credibility determinations and the weight the trial court assigned to the evidence, inferences drawn therefrom, and determination of any conflicts and inconsistencies in the evidence. (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 334 [involving class action certification decision which is also reviewed for abuse of discretion]; *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 765 [in reviewing a trial court's imposition of a discovery sanction, the reviewing court defers to the trial court's credibility determinations].) Although the jury was not persuaded by the evidence presented by Dungan, this evidence and defense counsel's declaration nevertheless supports the trial court's finding that at the time she answered Mulhern's requests for admission, Dungan had a reasonable ground to deny the requests for admission. Mulhern was not entitled to

cost-of-proof sanctions simply because the jury ultimately found in her favor. (*Brooks, supra*, 179 Cal.App.3d at p. 513.)

Mulhern points to various instances where Dungan attested to the fact that the June accident was the first time she had a seizure or blackout. On a Department of Motor Vehicles (DMV) form dated November 18, 2007, Dungan verified that her epilepsy began on the day of the June accident. In response to a form interrogatory concerning her affirmative defenses in the Anderson action, Dungan said that prior to the June accident she did not know she had a medical condition which affected her ability to control and drive a motor vehicle. Similarly, when she was deposed in the Anderson action, Dungan testified that prior to the June accident she had never blacked out.

At trial, Dungan admitted denying in the Anderson action that she had a seizure prior to the June accident, and admitted that she never disclosed in the Anderson action that she blacked out on the day of the March accident. Dungan explained, however, that when she responded to discovery requests in the Anderson action she never discussed with any doctor the issue of whether she also had a seizure on the day of the March accident. Dungan averred that she did not explore this issue until after the Mulhern action was initiated, after she had already responded to the discovery requests in the Anderson action and submitted the DMV form. But Dungan testified she raised the issue of a seizure in relation to the March accident with Dr. Birk before she responded to the form interrogatories propounded in the Mulhern action. Based on Dungan's

explanation, it was not unreasonable for the trial court to find that the statements Dungan made prior to the Mulhern action did not foreclose her claim that she had a reasonable ground to deny the requests for admission in this case.

Mulhern next urges that, even if the denials were justified at the time they were made, Dungan had a continuing obligation to eliminate issues prior to trial, and information acquired after the denials required Dungan to admit that her negligence caused the March accident. The court in *Brooks, supra*, 179 Cal.App.3d at page 510, stated that amending a response to a request for admission when after-acquired information showed that the request should be admitted is one fact that a trial court should consider in assessing whether there was good reason for denying the request. But the court in *Brooks* also recognized that the issue of the duty to supplement discovery responses under California law was unsettled, and *Brooks* did not decide the issue. (*Brooks, supra*, 179 Cal.App.3d at p. 511, fn. 7.) One appellate court has since held that the Civil Discovery Act (§ 2016.010 et seq.) imposes no ongoing duty to update responses to requests for admission. (*Burch v. Gombos* (2000) 82 Cal.App.4th 352, 359 ["Indeed, the statute authorizes amending or withdrawing a response only where a court finds the original admission 'was the result of mistake, inadvertence, or excusable neglect'"].)

This record does not demonstrate that Mulhern asked Dungan to update her response to the requests for admission or the corresponding form interrogatories. The record contains

Dungan's response to supplemental interrogatories from Mulhern, in which Dungan stated that her prior interrogatory responses were complete and no supplemental response was due. We cannot determine from the record, however, whether this supplemental interrogatory response relates to the original form interrogatory responses. There is also no showing that any later-acquired information required Dungan to admit that her negligence caused the March accident. Instead, as we have explained, at trial Dungan presented evidence supporting her defense, even though she was ultimately unsuccessful.

Mulhern also claims that section 2033.420, subdivision (b) is substantially different from its predecessor statute, section 2034, subdivision (c), which provided that sanctions must be ordered if the trial court found no "good reasons" for the denial. To the extent Mulhern suggests cases interpreting the predecessors to section 2033.420 are inapplicable, Mulhern's reliance on *Brooks, supra*, 179 Cal.App.3d 500, which discusses section 2034, subdivision (c), and *Stull v. Sparrow, supra*, 92 Cal.App.4th 860, which discusses section 2033, subdivision (o), undercuts her claim. Moreover, Mulhern fails to explain how the change in the statutory language requires reversal in this case. Because her claim is not supported by legal analysis and citation to authority, it is forfeited. (*Okasaki v. City of Elk Grove* (2012) 203 Cal.App.4th 1043, 1045, fn. 1; *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656 ["It is the appellant's responsibility to support claims of error with citation and

authority; this court is not obligated to perform that function on the appellant's behalf"].)

The record supports the trial court's conclusion that Dungan had a reasonable ground to deny the requests for admission. The trial court did not abuse its discretion in denying Mulhern's motion for attorney's fees.

DISPOSITION

The order is affirmed.

MAURO, J.

We concur:

NICHOLSON, Acting P. J.

BUTZ, J.