

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00409-CV

Susan England, Appellant

v.

Janice Kolbe, as Guardian of The Estate of Edna Moon, Appellee

**FROM THE DISTRICT COURT OF HAYS COUNTY, 207TH JUDICIAL DISTRICT
NO. 12-0361, HONORABLE GARY STEEL, JUDGE PRESIDING**

MEMORANDUM OPINION

In this fraud and breach of fiduciary duty case, Susan England appeals the trial court's imposition of "death penalty" sanctions against her and, alternatively, the propriety of the damages awarded to Janice Kolbe as guardian for Edna Moon. We will reverse the sanctions order to the extent it denied England's demand for a jury trial on the issue of damages and remand for a new trial on damages alone. We affirm the trial court's order in all other respects.

Background

England and Kolbe are the two surviving children of Edna and Howard Moon. In the 2004 time frame, England was assisting her aging parents with their finances as her father suffered from dementia and her mother suffered from macular degeneration. England performed banking transactions, prepared income taxes, oversaw investment accounts, and managed various real properties owned by the Moons. Howard Moon died in January 2007, and Edna Moon was the sole

beneficiary of his estate. England continued to assist her mother with finances through a power of attorney executed in February 2007 until approximately December 2011. At some point during this time, a family dispute arose over England's role in Moon's finances and the care Moon was receiving from England's son, Casey Lee, who lived with Moon and served as her caregiver. In July 2009, Kolbe and her late sister Barbara McHale contacted Adult Protective Services (APS) about England's use of Moon's funds. The APS investigation concluded that England had not improperly used Moon's funds.

In December 2011, Moon revoked England's power of attorney and gave Kolbe power of attorney to assume her financial affairs. On behalf of Moon, Kolbe requested an accounting of Moon's finances from England and asked that she turn over all documents relating to Moon's financial affairs. England did not respond to the requests. In February 2012, Moon then initiated this suit for breach of fiduciary duty, fraud, conversion, and conspiracy to commit fraud against England and Lee.¹ Kolbe was appointed as guardian of Moon's estate in approximately March 2013.²

Moon alleged in her petition that during the time England managed her finances, England withdrew funds from Moon's accounts, sold stocks and other investments, retained proceeds for her own use, and transferred additional funds of Moon's to her own bank accounts, all

¹ The trial court severed Moon's claims against Lee, and Lee is not a party to this appeal.

² Moon's late daughter Barbara McHale was also given power of attorney with Kolbe in 2011 and made requests to England about their mother's financial matters. McHale was appointed as guardian of Moon's person in March 2013 when Kolbe was appointed guardian of Moon's estate. After McHale's death during the pendency of this litigation, Kolbe assumed McHale's role as guardian of Moon's person.

without permission. Moon also asserted that England engaged in real estate transactions with Moon's funds. Some of those transactions alleged England used Moon's funds to purchase properties titled in England's name alone and transferred Moon's interests in other properties to England via gift deeds.

From the beginning of the suit, England's position was essentially that she did not manage her mother's finances; rather, she only assisted her mother when asked. As part of discovery, Moon served numerous discovery requests on England. In her responses from September 2012, England minimized her involvement in Moon's finances and stated that Moon held only five bank accounts at three different institutions. She further stated in her responses that she was the sole owner of the properties titled in her name and that no funds of Moon's had been used in the purchase of those properties. When asked to disclose any transfers of money or property from Moon or her late husband, England disclosed that Moon had transferred her interest in two pieces of real property, referred to by the parties as "Rest Haven" and "Ranch Road 12," to England by gift deed. Rest Haven was later sold to a third party, and Ranch Road 12 was an income-producing rental property. England disclosed no stock transactions or other monetary transfers.

England similarly testified in her deposition in November 2013 that she only helped Moon file income taxes, pay bills when Moon asked, and occasionally make deposits to and transfers from Moon's account. She stated that she deposited the rents from the Ranch Road 12 rental property into Moon's account on a monthly basis, even though Moon had transferred that property

to her via gift deed.³ With regard to transfers, England stated that Moon sometimes asked her to “park” funds ranging from \$20,000 to \$40,000 in England’s savings account because Moon “didn’t want large sums of money in her checking account.” When asked about other accounts to which she may have transferred money, she said it was only to Moon’s Frost Bank account and England’s one savings account. England denied using the “parked” funds for her own benefit and stated that they were returned to Moon. She also asserted that she did not know much information about Moon’s investments and denied receiving mail for Moon at her addresses, including bank and investment account statements. However, England admitted for the first time in her deposition that Moon had gifted her holdings in three stocks—Microsoft, Telefonica, and one other company that she could not recall. England further stated that she purchased at least four other pieces of real property with her own funds, referred to by the parties as “Hilliard Road,” “La Playa,” “Park Place,” and “Bonnyview.” England lived in Port Aransas at both the La Playa and Park Place properties between 2007 and 2011.

After England’s deposition, when interviewing England’s ex-boyfriend, Moon learned that England had at least four additional bank accounts at a different bank not previously disclosed in her discovery responses or deposition. As the case continued, Moon eventually discovered, through her own research, a total of twenty-four bank accounts at eight different institutions that held money for England or Moon. Only after Moon independently discovered the bank accounts and confronted England did England admit the existence of these additional accounts. Additionally, after

³ England also admitted that she included the rental payments on Moon’s income taxes rather than her own.

testifying in deposition that Moon gave England three stock holdings, England amended her discovery responses but failed to include those stocks. Instead, she included the proceeds of the sale of two other stocks, AT&T and Altria, neither of which had been previously disclosed. Moon further discovered after obtaining copies of account statements from Schwab and other investment accounts that the statements had been mailed to England's address in Port Aransas, despite her denying she received them during her deposition. Moon filed a motion to compel and for sanctions based on this conduct by England. The trial court warned England not to "hide behind the log" in her discovery responses and, in July 2014, granted Moon's motion to compel and for sanctions. In its order, the trial court compelled England to respond to discovery, produce documents, and pay sanctions in the amount of \$15,000 and attorney's fees of \$3,000.

In September 2014, England provided Moon with an expert report of Michael Turner, a certified public accountant, questioning some of the characterizations made in Moon's expert's report. However, in December 2014, less than thirty days before trial was scheduled in the matter, England produced a "Supplemental Forensic Accounting Report," which included a full report of England's and Moon's accounts and showed, for the first time, that England had removed \$694,394 from Moon's accounts. The report also revealed that several real properties—Hilliard Road, La Playa, Park Place, and Bonnyview—had been purchased exclusively with Moon's funds but were titled in England's name alone, contradicting England's prior deposition testimony. At Turner's deposition in January 2015, he alleged for the first time a "silent partnership" between Moon and England. After this information was revealed in Turner's expert report and deposition, England was deposed again, at which time she admitted to managing Moon's financial affairs and that she had

used Moon's funds for the purchase of the additional properties. She also testified that she had not disclosed the information previously because Moon did not want her other daughters to know about their arrangement. England further admitted that she had used funds from this "partnership" to pay legal fees, including the \$18,000 in sanctions and attorney's fees that the court had previously ordered, attorney's fees in the guardianship litigation involving Moon, and other personal litigation. Shortly after her deposition, England provided Moon a third expert report from Turner, which again changed the characterizations of England's use of Moon's funds. Turner later testified during the damages portion of the trial, at which time he withdrew as England's expert, refused to stand by the characterizations of funds made in his reports, and agreed that "England's explanations ha[d] morphed over the time [he had] worked with her."

When these new facts and theories were revealed, Moon filed a second motion for sanctions requesting that the court strike England's pleadings, award Moon attorney's fees, establish a constructive trust on all of England's property obtained by her bad acts, and any other relief that the trial court deemed just. After a hearing, the trial court granted Moon's motion for sanctions, striking all of England's pleadings, granting Moon a default judgment on all issues of liability, and denying England's request for a jury trial on damages. In the trial court's March 11 order granting these sanctions, the court relied on Texas Rules of Civil Procedure 215 and 13; section 10.003 of the Texas Civil Practice and Remedies Code; and the court's inherent power as the bases for its sanctions. The trial court then held a damages trial in which it awarded Moon actual damages in the amount of \$1,458,251; awarded punitive damages in the amount of \$1,000,000; set aside and declared void the gift deeds for the Rest Haven and Ranch Road 12 properties; and imposed a

constructive trust on certain assets of England, including her homestead, automobile, and bank accounts. After the denial of a motion for new trial, this appeal followed.

Analysis

England challenges the judgment of the court in thirteen issues. In her first and second issues, she asserts that the trial court's sanctions striking her pleadings and denying her a jury trial on damages were not directly related to the offending behavior and were excessive. *See TransAmerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991). She further asserts in her third issue that these sanctions violated her due-process rights. *See id.* In her fourth, fifth, and sixth issues, she argues that the trial court erred in relying on Texas Rules of Civil Procedure 13 and 215.5, as well as section 10.001 of the Texas Civil Practice and Remedies Code as the bases for its sanctions. England's final seven issues challenge the propriety of the trial court's damages award because it constituted a violation of the "one satisfaction" rule, improperly imposed a constructive trust lien and claim against her homestead, used an improper measure of damages, erroneously set aside gift deeds, awarded excessive punitive damages, and cited incorrect authority for pre- and post-judgment interest.

Court's Authority to Impose Sanctions

In her fourth, fifth, and sixth issues, England challenges the court's authority to impose sanctions under Texas Rules of Civil Procedure 13 and 215.5 and section 10.001 of the Texas Civil Practice and Remedies Code. Specifically, she asserts that the district court erred in ordering sanctions under Texas Rule of Civil Procedure 13 and section 10.001 of the Texas Civil

Practice and Remedies Code because it failed to “identify with particularity” the pleading or motion that violated Rule 13 or section 10.001. England also challenges the court’s ruling under Rule 215.5, which is not referenced in the court’s sanctions order.

Assuming England intended to challenge the sanctions under Rule 215.3, which is the specific section referenced in the order, the rule was properly relied upon by the trial court. Rule 215.3 authorizes a trial court to impose a variety of sanctions “if the court finds a party is abusing the discovery process in seeking, making or resisting discovery.” Tex. R. Civ. P. 215.3; *see also JNS Enter., Inc. v. Dixie Demolition, LLC*, 430 S.W.3d 444, 453 (Tex. App.—Austin 2013, no pet.). Here, the district court specifically found that England gave false answers to discovery requests and lied in her depositions about her knowledge of Moon’s assets and her role in managing Moon’s finances. She came forward with the truth on these issues only when Moon learned the information from a third party. Making false representations and actively concealing evidence from the requesting party certainly qualifies as an abuse of the discovery process, the ultimate goal of which is a search for the truth. *See Jampole v. Touchy*, 673 S.W.2d 569, 573 (Tex. 1984), *disapproved of on other grounds by Walker v. Packer*, 827 S.W.2d 833 (Tex. 1992) (noting that “the ultimate purpose of discovery is to seek the truth, so that disputes may be decided by what the facts reveal, not by what facts are concealed”); *see also JNS*, 430 S.W.3d at 453 (concluding that fabrication of evidence and lying during deposition about evidence were sanctionable under Rule 215); *Vaughn v. Texas Emp’t Comm’n*, 792 S.W.2d 139, 144 (Tex. App.—Houston [1st Dist.] 1990, no writ)

(holding that false discovery responses offended discovery process and are sanctionable under Rule 215). As such, the court properly based its sanction on Rule 215.3.⁴

Because the court properly relied on Rule 215, which alone supports the ruling, we overrule England's fourth, fifth, and sixth issues.

Justness of the March 11 Sanctions Order

In her first three issues, England challenges the sanctions as not directly related to the offensive conduct, excessive, and imposed in violation of her due-process rights under *TransAmerican Natural Gas Corp. v. Powell*. We review a trial court's imposition of sanctions for an abuse of discretion. *Cire v. Cummings*, 134 S.W.3d 835, 838 (Tex. 2004). The ruling will be reversed only if the trial court acted "without reference to any guiding rules and principles," such that its ruling was arbitrary or unreasonable. *Id.* at 839 (quoting *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex. 1985)) (internal quotation marks omitted). We are not limited to the findings of fact entered by a trial court; rather, we must make an independent inquiry of the entire

⁴ Additionally, the sanctions order states that it granted Moon's motion for sanctions under "Texas Rules of Civil Procedure Rules 13, 215, Texas Civil Practice and Remedies Code Section 10.001, *et seq.* and the inherent powers of the court" An appellant must challenge all independent grounds supporting a complained-of ruling or judgment. *See Midway Nat'l Bank of Grand Prairie, Tex. v. West Tex. Wholesale Supply Co.*, 453 S.W.2d 460, 460–61 (Tex. 1970); *Riley v. Cohen*, 03-08-00285-CV, 2009 WL 416637, at *1 (Tex. App.—Austin Feb. 19, 2009, pet. denied) (mem. op.); *In re Hansen*, No. 05-06-00585-CV, 2007 WL 824587, at *1–3 (Tex. App.—Dallas Mar. 20, 2007, no pet.) (mem. op.) (holding that when sanctions ordered under Rule 13 and Chapter 10, and appellant complained of order only under Rule 13, any error was harmless because "the unchallenged independent ground fully supports the complained-of ruling"). Because England failed to challenge the sanctions order on the basis of the court's inherent powers, an independent ground upon which sanctions were based, any error by the court in relying on Rule 13 or section 10.003 would be harmless.

record, including the evidence, arguments of counsel, the written discovery on file, and the circumstances surrounding the party's alleged discovery abuse, to determine if the court abused its discretion in imposing the sanction. *U.S. Fid. & Guar. Co. v. Rossa*, 830 S.W.2d 668, 672 (Tex. App.—Waco 1992, writ denied); *see also U.S. Foodservice, Inc. v. Winfield Project Mgmt., LLC*, No. 03-14-00405-CV, 2016 WL 1639804, at *2 (Tex. App.—Austin Apr. 20, 2016, no pet.) (mem. op.).

There are three legitimate purposes of discovery sanctions: 1) to secure compliance with discovery rules; 2) to deter other litigants from similar misconduct; and 3) to punish violators. *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 850 (Tex. 1992) (citing *Bodnow Corp. v. City of Hondo*, 721 S.W.2d 839, 840 (Tex. 1986)). However, discovery sanctions must also be “just.” *Id.* (citing Tex. R. Civ. P. 215.2(b); *TransAmerican*, 811 S.W.2d at 917). Imposition of sanctions is appropriate only if (1) there is a direct relationship between the offensive conduct and the sanctions imposed—i.e., the sanctions must be directed against the abuse and abuser and be tailored to remedy any prejudice the abuse caused—and (2) the sanctions are not excessive—i.e., “the punishment should fit the crime.” *TransAmerican*, 811 S.W.2d at 917. The imposition of sanctions such as those imposed here is further limited by constitutional due-process concerns when the sanctions adjudicate the merits of a party's claims or defenses. *Id.* As such, the severe sanctions imposed here are not appropriate unless the offensive conduct justifies a presumption that the party's claims or defenses lack merit. *Id.* (citing *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 705–06 (1982)).

Sanction Striking England's Pleadings

In its March 11 sanctions order, the trial court struck all of England's pleadings and granted Moon a default judgment on liability on all of her claims and counterclaims. The trial court made more than fifty findings in which it detailed England's egregious discovery abuse throughout the litigation. Those findings, which are supported in the record, included that England lied in discovery responses, depositions, and court filings about her role in managing Moon's financial affairs; the existence and location of bank accounts; Moon's ownership interests in various real properties purchased with Moon's money; and the sales and transfers of Moon's stock and other investment holdings. Despite numerous discovery requests, England disclosed the existence of only five bank accounts at three institutions until Moon's attorneys learned of others from outside parties. England supplemented her responses only to reflect the information that Moon had discovered, ultimately reaching twenty-four accounts at eight institutions. After having been sanctioned \$18,000 for these actions, England continued to withhold information about the use of Moon's funds in numerous real estate purchases and other transactions. England's expert then introduced the "silent partnership" theory less than a month before trial (and more than two and a half years after suit was filed), and his report acknowledged England's use of \$694,394 from Moon's accounts and significantly changed the characterization of England's use of Moon's funds in their "silent partnership." It was only in this report that it became known that England had used Moon's funds to make down payments on several properties titled in England's name only. England admitted that she also paid the \$18,000 in sanctions, as well as other personal legal fees, with Moon's funds. The

trial court further stated that England was “dishonest” and characterized her misconduct throughout the litigation as “willful,” “vindictive,” “outrageous,” “offensive,” and “reprehensible.”⁵

Here, the evidence shows that a direct relationship exists between the trial court’s striking England’s pleadings and England’s offensive conduct. The information about accounts and transactions withheld by England throughout the discovery period was the principal evidence that Moon needed to succeed in most of her claims against England because the existence of these banking and investment accounts went to the heart of the issues in the case. Further, the district court made a finding that it was England who had committed these bad acts and was the responsible party for the misrepresentations and withholding of evidence. Therefore, the punishment was properly directed at the perpetrator of the offensive conduct. *See id.* at 917. As such, the trial court’s sanction striking England’s pleadings was directly related to the offensive conduct. *See id.*

The trial court’s sanction of striking England’s pleadings and entering a default judgment on liability was also not excessive. The trial court made findings that England’s misconduct throughout the litigation had been egregious and that she repeatedly lied and changed her version of the events to suit her needs at the time. Specifically, England changed her testimony about her role in Moon’s finances from providing her limited assistance in bill paying to forming a “secret partnership” for the purchase of significant real-property assets. The district court had

⁵ At a sanctions hearing, the trial court is entitled to judge the credibility of the witnesses and the weight to be given their testimony. *JNS Enter., Inc. v. Dixie Demolition, LLC*, 430 S.W.3d 444, 454–55 (Tex. App.—Austin 2013, no pet.). As the reviewing appellate court, it is not our place to substitute our judgment for that of the factfinder. *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex. 1998).

previously tested lesser sanctions against England after she had concealed bank accounts from Moon during discovery, but those sanctions did not stop England's continued misconduct. *See Cire*, 134 S.W.3d at 842 (requiring trial court to test lesser sanctions in all except the most egregious and exceptional cases). The trial court included in its order that "lesser sanctions are inappropriate" because they "would fail to adequately punish" England and "would fail to deter those who might be similarly tempted to provide false evidence and testimony." Not only was England sanctioned previously for similar conduct, but she then used Moon's funds to pay those sanctions, making it clear that lesser sanctions would not have effectively punished England's wrongdoing nor would they have adequately redressed the harm to Moon. *See id.* For the above reasons and given the egregiousness of England's misconduct, the record shows that the trial court adequately considered lesser sanctions and that the sanction striking England's pleadings was not excessive. *See id.*

Finally, because the court's sanction adjudicated the merits of England's claims and defenses, we must ensure that the offensive conduct justifies a presumption that England's claims and defenses lack merit. *See id.* The information about accounts and transactions withheld by England throughout the discovery period was the principal evidence that Moon needed to succeed in most of her claims against England and went to the heart of Moon's claims. If a party refuses to produce material evidence, despite the imposition of lesser sanctions, the court may presume that an asserted claim or defense lacks merit and dispose of it. *TransAmerican*, 811 S.W.2d at 918 (citing *Insurance Corp. of Ireland, Ltd.*, 456 U.S. at 705–06). Thus, because England continued to withhold material evidence, the trial court did not abuse its discretion in presuming England's claims and defenses lacked merit. *See id.*

England asserts that she presented evidence supporting her claims sufficient to rebut this presumption. Specifically, England points to the report from the APS investigation in 2009. However, the APS report only covered six months of financial records from one bank account given to them by England, even though England had commingled Moon's funds in at least twenty-four different accounts, as Moon later discovered. Further, during the time this report was filed, England lived in Port Aransas in the La Playa property. When the investigator interviewed Moon, Moon stated that she did not assist England in purchasing her home there, even though ultimately England admitted in her second deposition that she had used Moon's funds to purchase La Playa. So although the APS report ultimately concluded there was insufficient evidence of improper conduct, the report also suggests that England only selectively shared financial information with the investigators and that Moon was unaware of England's use of her money to purchase real estate, contradicting England's new "partnership" theory. The trial court could have reasonably considered this report additional evidence of England's history of deception and concealment in her management of her mother's funds and properly weighed it in imposing its sanctions order.

England also asserts that there was nothing in the record that would justify a presumption that her defenses of statute of limitations and statute of frauds lack merit. However, principles of estoppel can bar such defenses in instances of fraudulent concealment, an issue properly raised by Moon in her pleadings. *See Borderlon v. Peck*, 661 S.W.2d 907, 908 (Tex. 1983); *see also B. Mahler Interests, L.P. v. DMAC Constr., Inc.*, 503 S.W.3d 43, 54 (Tex. App.—Houston [14th Dist.] 2016, no pet.). As such, England's concealment of her use of Moon's funds and consistent

misrepresentations during the discovery process justified a presumption that England would be equitably estopped from relying on any such affirmative defenses.

Considering England's egregious misrepresentations about her management and use of Moon's funds and having rejected all of England's arguments regarding the trial court's imposition of this sanction, we conclude that the trial court did not abuse its discretion in striking England's pleadings and entering a default judgment on liability in favor of Moon. *See* Tex. R. Civ. P. 215.2(b); *Cire*, 134 S.W.3d at 838–39; *TransAmerican*, 811 S.W.2d at 917.

Sanction Denying Jury Trial on Damages

England further asserts in her first three issues that the trial court's order striking her demand for a jury trial on damages was an improper sanction. After the trial court struck England's pleadings and awarded Moon a default judgment on liability, it extended the sanctions hearing in order to hear arguments on whether it could deny England a jury trial on damages as an additional sanction. The trial court ultimately determined that it had the discretion to strike the jury demand as a sanction, and the order specifically refers to the denial of England's right to a jury trial on damages as a sanction. Assuming, without deciding, that the trial court had the discretion to strike a timely jury demand as a sanction, we must consider whether such a sanction, under the facts presented, is just under the standard provided in *TransAmerican*.⁶ We conclude it is not.

⁶ It is well established that a party has a right to a jury trial on damages after a death-penalty sanction on liability. *See* Tex. R. Civ. P. 243 (“If the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to damages and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury in which case the judgment by default shall be noted, a writ of inquiry awarded, and the cause entered on the jury docket.”); *Sims v. Fitzpatrick*, 288 S.W.3d 93, 103 (Tex. App.—Houston [1st Dist.] 2009, no pet.).

As discussed above, the trial court found egregious misconduct by England in the underlying litigation, and the findings on her misconduct are well supported by the record. However, in its sanction order striking the jury demand, the trial court states only that “a jury trial on damages would be impractical, confusing to the jury, and would impede the handling of the court’s business.” The trial court stated during the hearing that its reasoning for striking the jury demand was that it “would be wasting so much time and spending so much energy making sure that we didn’t interject defenses that [it] ha[d] struck.” Further, the trial court said that having a jury trial “just makes no sense to [the court] and is a waste of taxpayers’ money, judicial efficiency, and everything else.” While we can empathize with the trial judge’s logic, the practicality or difficulty of presenting damages evidence to a jury is a not proper consideration for a discovery sanction under the

However, the discovery rules provide a variety of sanctions for discovery abuse. *See* Tex. R. Civ. P. 215.2(b), 215.3. Although Rule 215.2 does not include striking a jury demand as a permissible sanction, it also does not limit the types of discovery sanctions the court may impose to those enumerated in the rule. *See* Tex. R. Civ. P. 215.2(b) (providing that trial court may impose sanctions for failure to comply with discovery “as are just, *and among others* the following . . .”) (emphasis added); *Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 372 S.W.3d 177, 186 (Tex. 2012) (stating that trial court may prohibit party from participating in damages hearing under Rule 215). In *Paradigm*, the supreme court held that even though a sanction outside those listed in Rule 215.2(b) may be permissible, the law requires that any sanction imposed by the trial court must be “just” and that “such an extreme sanction must be carefully tailored to comport with the requirements of *TransAmerican* and due process.” *Id.* Furthermore, the court noted that such a sanction must go “beyond” the *TransAmerican* presumption because “the damages issue is materially different.” *Id.* As such, a trial court may, under the proper circumstances, have the discretion to strike a jury demand for the damages trial, as long as “such a sanction is necessary to remedy the abuse.” *Id.* at 186; *see also Braden v. Downey*, 811 S.W.2d 922, 930 (Tex. 1991) (“[Rule 215.2(b)] generally authorizes a trial court to sanction discovery abuse by ‘such orders . . . as are just.’ We recognize that discovery abuse is widespread and we have given trial courts broad authority to curb such abuse. We caution, however, that this authority be exercised judiciously. Justice should not tolerate abuse, but injustice cannot remedy it.”). This court can find no case law upholding the striking of a jury demand as a sanction.

TransAmerican standard. Discovery sanctions are primarily intended to remedy discovery abuse and should be tailored to serve this remedial purpose. *TransAmerican*, 811 S.W.2d at 917. As the supreme court has stated, “the punishment should fit the crime,” and the sanction “should be no more severe than necessary to satisfy its legitimate purposes.” *Id.* We find nothing in the record demonstrating that the court’s sanction denying a jury trial was directly related to England’s offensive conduct, that it was necessary or designed to remedy England’s discovery abuse, or that it otherwise served any legitimate purpose of a discovery sanction. *See Chrysler Corp.*, 841 S.W.2d at 850; *TransAmerican*, 811 S.W.2d at 917; *see also Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 372 S.W.3d 177, 187 (Tex. 2012); *Young v. Young*, No. 03-14-00720-CV, 2016 WL 7339117, at *8 (Tex. App.—Austin Dec. 15, 2016, no pet.) (mem. op.) (holding that striking jury demand was not “just sanction” based on *TransAmerican* standard); *see In re K.A.C.O.*, No. 14-07-0311-CV, 2009 WL 508295, at *1 (Tex. App.—Houston [14th Dist.] Mar. 3, 2009, no pet.) (mem. op.) (same).

Moon cites *Halsell v. DeHoyos*, 810 S.W.2d 371 (Tex. 1991), to support the trial court’s sanction. In *Halsell*, the supreme court held that a request for a jury trial made in advance of the thirty-day deadline is presumed to have been made at a reasonable time before trial. *Id.* at 371. The *Halsell* court further stated that a party may rebut that presumption by showing that the granting of a jury trial would operate to injure the adverse party, disrupt the court’s docket, or impede the handling of the court’s business. *Id.* Moon’s reliance on *Halsell* is misplaced because it does not address the justness of denying a right to a jury as a sanction; rather, it addresses when the presumption of timeliness of a jury demand may be overcome. *See id.*

However, even if we were to consider the court’s denial of England’s jury demand under the same prism as timeliness under *Halsell*, there is nothing in the record to support the denial. It is undisputed that Moon timely requested a jury trial more than thirty days prior to the trial setting and that the jury fee was paid.⁷ Further, the case was already set on the jury docket for trial the Monday following the sanctions hearing.⁸ Although the trial court made a finding that a jury trial would “impede the handling of the court’s business,” the record does not support such a finding. While we do not dispute the potential difficulty of educating the jury about the sanctions and England’s misconduct, the role of the trial court is such that it can effectively instruct the jury on these issues. The trial court has authority to determine what evidence is admitted before the jury. *See In re Slaughter*, 480 S.W.3d 842, 854 (Tex. Spec. Ct. Rev. 2015) (stating trial court is “gatekeeper” of evidence, and it is trial court’s responsibility “to determine whether evidence offered is relevant and reliable for a jury to consider”); *Huckaby v. A.G. Perry & Son, Inc.*, 20 S.W.3d 194, 202 (Tex. App.—Texarkana 2000, pet. denied) (noting trial court’s role as gatekeeper to determine admissibility of evidence). Additionally, the Rules of Civil Procedure allow the trial court to submit jury instructions “as shall be proper to render a verdict,” and a court has broad discretion to frame a jury charge. Tex. R. Civ. P. 277; *see also Imagine Auto. Group v. Boardwalk Motor Cars, Ltd.*, 430 S.W.3d 620, 645 (Tex. App.—Dallas 2014, pet. denied). The trial court’s duty to craft jury

⁷ Although it was Moon who initially paid the jury fee, she could not remove the case from the jury docket over England’s objection. Tex. R. Civ. Pro. 220; *see Monroe v. Alternatives in Motion*, 234 S.W.3d 56, 69 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (“A jury request and jury fee payment by one party inures to the benefit of all other parties to the suit”)

⁸ The extended hearing on the jury-demand issue and damages trial took place on Tuesday of the following week, the day after the jury trial had been scheduled to begin prior to the sanctions.

instructions and determine the admissibility of evidence during a jury trial on damages is a primary function of the court and would not “impede the handling of the court’s business.” We have found no authority that allows a trial court to deny a litigant her constitutional right to a jury simply because the case is complex. As to the other two *Halsell* factors, the trial court refused to enter a finding that the jury trial on damages would cause any harm to Moon and instead opined that a jury trial on damages may actually harm England because the jury instructions that would be required to explain the death-penalty sanctions would paint her as dishonest. The court further acknowledged that the case had been set on its jury docket for that same week, so there is nothing in the record to suggest that conducting a jury trial instead of a bench trial would have disrupted the court’s docket.

For the reasons outlined above, we hold that denying England’s right to a jury trial on damages was unjust, and the trial court abused its discretion in ordering such a sanction. We sustain England’s first three issues on appeal only to the extent they complain of the denial of England’s right to a jury trial on damages, and we reverse that portion of the sanctions order.

Conclusion

Having sustained England’s first three issues on appeal, we reverse the final judgment on damages and reverse the portion of the court’s March 11 sanctions order striking England’s demand for a jury trial on damages. We affirm the sanctions order in all other respects. We do not reach England’s final seven issues because we reverse the trial court’s damages award.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Goodwin and Bourland

Affirmed in Part; Reversed and Remanded in Part

Filed: March 30, 2017