

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

**NOTICE: Motions for reconsideration must be
received no later than 4:30 pm on the 10th day after
the decision was issued to be deemed timely filed.
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October 15, 2026

In the Court of Appeals of Georgia

A26A1710. HUNTLEY v. MILLER.

BARNES, Presiding Judge.

Blair Huntley brought this personal injury action against Onika Miller after an automobile collision. Following discovery, Miller filed a motion for partial summary judgment on Huntley’s claim for attorney fees under OCGA § 13-6-11, contending that there was no evidence that she acted in bad faith in causing the collision. The trial court granted partial summary judgment to Miller, but on the ground that Huntley’s counsel failed to appear at the hearing scheduled on the motion and for “good cause” having been shown under Uniform Superior Court Rule (“USCR”) 5.1. The trial court subsequently denied Huntley’s emergency motion for reconsideration. On appeal, Huntley contends that the trial court erred in relying on her counsel’s

nonappearance at the hearing and on USCR 5.1 to grant partial summary judgment to Miller, and she further argues that there was sufficient evidence to create a jury question as to whether Miller acted in bad faith. We agree with Huntley and reverse the judgment.

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” OCGA § 9-11-56(c). “Summary judgments enjoy no presumption of correctness on appeal, and an appellate court must satisfy itself de novo that the requirements of OCGA § 9-11-56(c) have been met.” *Cowart v. Widener*, 287 Ga. 622, 624(1)(a) (697 SE2d 779) (2010). In reviewing the trial court’s grant of a motion for summary judgment, “we must view the evidence, and all reasonable inferences drawn therefrom, in the light most favorable to the nonmovant.” *Id.* (quotation marks omitted).

So viewed, the evidence showed that on the morning of March 23, 2023, Huntley was driving northbound on South Atlanta Road in Cobb County. Miller was driving northbound behind Huntley. When Huntley stopped at an intersection

because of a red light, Miller did not brake in time and crashed into the back of Huntley's vehicle. Miller was issued a traffic citation for following Huntley too closely.

Huntley sued Miller for personal injuries she allegedly sustained in the collision, and she asserted claims for negligence and negligence per se and sought to recover general and special damages and OCGA § 13-6-11 attorney fees. In her answer and responses to Huntley's requests for admission, Miller admitted fault for the accident but contested the extent of Huntley's claimed injuries and damages. During her deposition, Miller testified that she has an astigmatism that "throws off [her] sight," that she wears prescription eyeglasses, and that her eye doctor told her that she should wear her glasses while driving.¹ Although it was "foggy and cloudy" on the morning of the collision, Miller acknowledged that she was not wearing her glasses at that time. Miller testified that she can "sometimes" tell she is getting closer to an object as a result of her astigmatism and can "kind of see" without her glasses.

¹ Although her driver's license did not restrict her to driving with corrective lenses, Miller testified that her driver's license was issued before she was prescribed glasses.

Following discovery, Miller moved for partial summary judgment on Huntley's claim for attorney fees under OCGA § 13-6-11, asserting that there was no evidence that she acted in bad faith in the underlying transaction. Huntley filed a response to the motion contending, among other things, that there was sufficient evidence to create a jury question over bad faith based on Miller's deposition testimony that she drove without her prescription eyeglasses despite knowing that she had an astigmatism that impaired her vision and despite medical instruction that she needed corrective lenses to drive.

The trial court scheduled a hearing on the summary judgment motion, but Huntley's counsel failed to appear at the hearing. The trial court subsequently entered its order granting partial summary judgment to Miller on Huntley's claim for OCGA § 13-6-11 attorney fees. The order stated that Huntley's counsel "did not appear" at the hearing, and that "good cause having been shown, pursuant to USCR 5.1," the trial court was granting the partial summary judgment motion. The order did not address the merits of Huntley's attorney fees claim.

Huntley filed an emergency motion for reconsideration, seeking to have the summary judgment order vacated and set aside and the hearing reset. Huntley

asserted that her counsel failed to appear because counsel never received notice of the hearing through the PeachCourt e-filing system or any other means, and she submitted an affidavit from her counsel averring the same. The trial court denied the emergency motion for reconsideration.² In its order, the trial court stated that partial summary judgment had been granted to Miller on the attorney fees claim “because of [Huntley’s] counsel’s non-appearance” at the hearing, and the court found that notice of the hearing had been mailed to Huntley’s counsel. This appeal followed.

1. Huntley contends that the trial court erred in granting partial summary judgment to Miller based on her counsel’s failure to appear at the hearing on the motion. We agree. Failure to appear at a hearing “is not a sufficient basis for the grant of summary judgment.” *GeorgiaCarry.Org v. James*, 298 Ga. 420, 424(3) (782 SE2d 284) (2016). See *Anderson v. Matich*, 186 Ga. App. 84, 86(2) (366 SE2d 300) (1988) (“The trial court was not authorized to grant summary judgment to the plaintiff solely because the defendants did not appear at the summary judgment hearing.”). It is well-established that “[t]here is no such thing as a ‘default summary judgment,’” and

² The trial court entered its order denying the emergency motion for reconsideration before Huntley filed her timely notice of appeal from the summary judgment order.

“[t]he burden remains on the movant to show that there is no genuine issue of material fact and that [she] is entitled to judgment as a matter of law.” *Milk v. Total Pay & HR Solutions*, 280 Ga. App. 449, 450–51 (634 SE2d 208) (2006) (citation modified). Thus, irrespective of whether Huntley’s counsel failed to appear at the hearing, the burden remained on Miller to show that there was no genuine issue of material fact as to whether she acted in bad faith so as to support an award of OCGA § 13-6-11 attorney fees.

2. Huntley further contends that the trial court erred in relying on USCR 5.1 in granting partial summary judgment to Miller. Again, we agree. USCR 5.1 addresses the time within which a party may use the court’s compulsory process to compel discovery.³ It does not address the standard applicable to summary judgment, which

³ USCR 5.1 provides:

In order for a party to utilize the court’s compulsory process to compel discovery, any desired discovery procedures must first be commenced promptly, pursued diligently and completed without unnecessary delay and within 6 months after the filing of the answer. In any action in which an answer is not filed within 30 days of service, or by the date set forth in any extension or court order, the 6-month period shall begin to run 30 days after service. At any time, the court, in its discretion, may open, extend, reopen or shorten the time to utilize the court’s compulsory process to compel discovery.

is set forth in OCGA § 9-11-56(c),⁴ or the time period for moving for or responding to such a motion. See *id.*; USCR 6.2, 6.6.⁵ Accordingly, the trial court's reliance on USCR 5.1 was misplaced and provided no basis for awarding partial summary judgment to Miller.

⁴ OCGA § 9-11-56(c) provides:

The motion shall be served at least 30 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law; but nothing in this Code section shall be construed as denying to any party the right to trial by jury where there are substantial issues of fact to be determined. A summary judgment may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damage.

⁵ USCR 6.6 provides: "Motions for summary judgment shall be filed sufficiently early so as not to delay the trial. No trial shall be continued by reason of the delayed filing of a motion for summary judgment." USCR 6.2 provides in part: "Unless otherwise ordered by the judge or as provided by law, each party opposing a motion shall serve and file a response, reply memorandum, affidavits, or other responsive material not later than 30 days after service of the motion." See *Sherman v. Thomas-Lane Am. Legion Post 597*, 330 Ga. App. 618, 620(1) (768 SE2d 797) (2015) (applying USCR 6.2 in context of summary judgment).

3. In seeking partial summary judgment on Huntley's claim for OCGA § 13-6-11 attorney fees, Miller argued that there was no evidence that she had acted in bad faith in causing the accident so as to support an award of fees. Although the trial court did not address the merits of Miller's partial summary judgment motion, we may affirm a trial court's summary judgment ruling if right for any reason that was properly raised in the court below. See *Cook Pecan Co. v. McDaniel*, 337 Ga. App. 186, 192(3)(b) (786 SE2d 852) (2016).

OCGA § 13-6-11 provides in relevant part: "The expenses of litigation generally shall not be allowed as a part of the damages; but where the plaintiff has specially pleaded and has made prayer therefor and where the defendant has acted in bad faith, ... the jury may allow them." The bad faith supporting an award of OCGA § 13-6-11 attorney fees "must arise in the underlying transaction itself." *Love v. McKnight*, 321 Ga. 196, 199(2) n.5 (913 SE2d 614) (2025). And "the type of conduct in the underlying transaction that will support a claim for bad faith expenses of litigation in a tort action requires conduct that is generally indicative of intentional wrongdoing or of a reckless disregard of known harmful consequences and must be more than mere negligence." *Id.* at 199(2) (citation modified). A traffic law violation,

without more, “does not show the type of intentional or reckless conduct that has been required ... to demonstrate bad faith” under OCGA § 13-6-11. *Id.* at 202-03(3). But conduct that goes beyond such a violation and is “indicative of a conscious indifference to the consequences” can support a finding of bad faith. *Id.* at 199(2). See *Taylor v. Devereux Found.*, 316 Ga. 44, 90(VII) (885 SE2d 671) (2023) (evidence that defendant was consciously indifferent to the consequences of its failure to act was sufficient to support an award of bad faith attorney fees); *Nash v. Reed*, 349 Ga. App. 381, 383–84(1) (825 SE2d 853) (2019) (concluding that there was sufficient evidence of bad faith to support an award of attorney fees, where the defendant driver knew that the plaintiff pedestrian did not see his vehicle, but the defendant nevertheless chose not to honk his horn to alert the plaintiff or stop and allow the plaintiff to finish crossing the street, and instead swerved across the double yellow-line in an attempt to get around the plaintiff). The question of bad faith is generally for the jury to determine based on “its consideration of the facts and circumstances in the case.” *Tyler v. Lincoln*, 272 Ga. 118, 122(2) (527 SE2d 180) (2000).

Construing the evidence in the light most favorable to Huntley as the party opposing summary judgment and with all inferences drawn in her favor, we conclude

that there was sufficient evidence to create a genuine issue of material fact on the question of bad faith. As previously noted, Miller admitted in her deposition testimony that on the morning of the accident, she drove without her prescription eyeglasses that her eye doctor told her she needed to wear when driving. Miller further acknowledged that she needed eyeglasses because of an astigmatism that “throws off her sight” and that absent her glasses, she can only “sometimes” tell she is getting closer to an object and can “kind of see.” Given this testimony, a jury could conclude that Miller’s conduct went beyond mere inadvertence or distraction resulting in a traffic violation and instead reflected an affirmative decision to drive despite knowing that she had impaired vision that prevented her from accurately gauging how close she was to other cars. A jury could thus find that such conduct was “indicative of a conscious indifference to the consequences” so as to support an award of bad faith attorney fees. *Love*, 321 Ga. at 199(2). See *Nash*, 349 Ga. App. at 383–84(1). Compare *Love*, 321 Ga. at 203–04(4) (concluding that evidence was insufficient to submit claim of bad faith attorney fees to a jury when the evidence showed only that the defendant driver was distracted because he was talking on his cell phone). Because there is a genuine issue of material fact as to whether Miller acted in bad faith so as to preclude

summary judgment on the OCGA § 13-6-11 attorney fees claim, we cannot affirm the trial court under the right-for-any-reason rule. Accordingly, we reverse the judgment.

4. In light of our decision to reverse the trial court's grant of partial summary judgment to Miller on Huntley's claim for attorney fees under OCGA § 13-6-11, we need not address Huntley's remaining enumeration of error regarding the court's denial of her emergency motion for reconsideration.

Judgment reversed. Markle and Hodges, JJ., concur.