

SUPREME COURT OF LOUISIANA

No. 2019-C-1964

JUANITA W. FONTENOT AND  
JUNE T. WILDER

V.

GILCHRIST CONSTRUCTION COMPANY, LLC

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
THIRD CIRCUIT, PARISH OF ALLEN

**PER CURIAM**

Granted in part. La. Code Civ. P. art. 1472 provides, “[i]f a party fails to admit . . . the truth of any matter as requested under Article 1466, and if the party requesting the admissions thereafter proves. . . the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses **incurred in making that proof, including reasonable attorney’s fees.**” [emphasis added]. The federal courts, interpreting the virtually-identical provisions of Rule 37 of the Federal Rules of Civil Procedure, have explained a near “but for” relationship must exist between the discovery violation and the activity for which fees and expenses are awarded. *See, e.g., Tequila Centinela, S.A. de C.V. v. Bacardi & Co.*, 248 F.R.D. 64, 69–70 (D.D.C. 2008).

In the case at bar, we find the district court did not err in awarding attorney fees as a sanction for discovery violations under La. Code Civ. P. art. 1472. However, the district court committed legal error by awarding attorney fees on a percentage basis without making a factual finding as to which portion of the fee related to activities directly resulting from the discovery violation. Although the court of appeal reduced the quantum of the award, it engaged in no meaningful analysis to determine which portion of the plaintiffs’ attorney fees which attributable solely to the discovery violation.

Accordingly, the portion of the court of appeal’s judgment amending and affirming the attorney fee award is vacated and set aside. The case is remanded to the district court for the purpose of making a specific factual finding, after an appropriate evidentiary hearing, as to the reasonable amount of attorney fees which can be attributed solely to the discovery violation.

In all other respects, the writ is denied.