

Court of Appeals, State of Michigan

ORDER

Sara Giles v Harper University Hospital

Docket No. 331978

LC No. 15-004550-NH

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

Pursuant to MCR 7.205(E)(2), the Court orders that the Wayne Circuit Court's February 23, 2016 order is REVERSED. Plaintiff placed her injuries in controversy by virtue of the allegations in her complaint and provided defendants with good cause for an examination. See *Burris v Dam Transport, Inc.*, 301 Mich App 482, 490; 836 NW2d 727 (2013), quoting *Schlagenhauf v Holder*, 379 US 104, 118-119; 85 S Ct 234; 13 L Ed 2d 152 (1964) (“[a] plaintiff in a negligence action who asserts mental or physical injury places that mental or physical injury clearly in controversy and provides the defendant with good cause for an examination to determine the existence and extent of such asserted injury”) (emphasis in *Burris*). Whether plaintiff previously treated with a physical medicine and rehabilitation specialist is irrelevant to this conclusion since MCR 2.311(A) does not condition a defendant's right to an independent medical examination (IME) on a plaintiff's prior treatment decisions. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 528; 672 NW2d 181 (2003) (clear and unambiguous language in court rules must be interpreted as written). Further, since plaintiff alleged that she received extensive physical therapy, rehabilitation and home care due to her injuries, defendants have good cause to determine the existence and extent of her injuries through an IME by a specialist with expertise in physical medicine and rehabilitation, even if this ultimately means different doctors will conduct different examinations of the same injuries. *Schlagenhauf*, 379 US at 119; *Burris*, 301 Mich App at 491-492, citing *Peters v Nelson*, 153 FRD 635, 638-639 (ND Iowa, 1994) (rejecting the plaintiff's claim that an IME by a neurosurgeon was duplicative of an IME by a neuropsychologist where the plaintiff's mental condition was in controversy). The trial court erred in denying defendants' motion to compel.

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 03 2016

Date


Chief Clerk