

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

TIMOTHY AND CYNTHIA HOLT,)
)
 Plaintiffs,)
)
 vs.) Case No.: 1:08-cv-01285 JDB-egb
)
 MACY'S, INC., and)
 DEPARTMENT STORES NATIONAL BANK)
)
 Defendants.)

ORDER GRANTING
MOTION FOR INDEPENDENT MEDICAL EXAMINATION
OF THE PLAINTIFF, CYNTHIA HOLT

Before the Court is Defendants' Motion for an independent medical examination of the Plaintiff, Cynthia Holt, pursuant to Rule 35 of the Federal Rules of Civil Procedure. Plaintiffs have responded. This matter was referred to the Magistrate Judge for determination.

Rule 35 of the Federal Rules of Civil Procedure states:

(a) Order for an Examination.

(1) In General. The court where the action is pending may order a party whose mental or physical condition--including blood group--is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) Motion and Notice; Contents of the Order. The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

In *Beightler v. Suntrust Banks, Inc.*, the defendant requested an Independent Medical Examination (IME) of the plaintiff based on the plaintiff's claims for emotional distress, allegations of specific mental disorders and plaintiff's potential evidence of prior psychiatric

records. *Beightler*, 2008 WL 1984508, *1 (W.D.Tenn.). In that case, this Court examined the plaintiff's request to see if the "in controversy" and "good cause" requirements had been met in accordance with Rule 35 of the Federal Rules of Civil Procedure. The Court restated that "a person's mental condition can be placed in controversy simply on the pleadings alone" and noted that "courts have held that a plaintiff's claim for intentional infliction of emotional distress has placed the plaintiff's mental condition in controversy." The Court went on to note that "the mental suffering that leads to an intentional infliction of emotional distress claim is the essence of that claim, and thus, it is the essence of the controversy and an issue in the case." Accordingly, the Court held that because the claim was based on the existence of a mental injury, the plaintiff had placed his mental condition in controversy as required by Rule 35.

This Court in *Beightler* further examined if the "good cause" requirement had been established by the plaintiff in demonstrating both relevance and need. In *Beightler*, the defendant's prior psychiatric evaluation was not obtained from an independent medical source, and this Court ruled that the defendant was entitled to have the plaintiff examined to rebut any conclusions contained in the prior evaluation. Additionally, this Court held that because the issues related to the plaintiff's mental condition, psychiatric evaluation, and damages were at the heart of his claim for emotional distress, these issues satisfied the good cause requirement.

Here, Defendants have met the "in controversy" and "good cause" requirements under Federal Rule 35 of Civil Procedure. Mr. and Mrs. Holt, like the plaintiffs in *Beightler*, have made claims for emotional distress. Ms. Holt's mental condition is in controversy in this case. Her claim is based upon the existence and aggravation of a mental condition, her alleged Post Traumatic Stress Disorder. Good cause exists for an independent medical examination of Ms.

Holt, as both relevance and need exists in this case. Ms. Holt's prior psychiatric evaluation was not obtained from an independent medical source, and Defendants should be entitled to have Plaintiff examined to rebut any conclusions contained in the prior evaluation. Additionally, because the issues related to Ms. Holt's mental condition, psychiatric evaluation, and damages are at the heart of her claim for emotional distress, these issues satisfy the good cause requirement.

Accordingly, the Court finds that this motion is well taken and is **GRANTED**. It is therefore **ORDERED** that Defendants are allowed to conduct the independent medical examination of Plaintiff Cynthia Holt by Dr. Joel A. Reisman, M.D., at his office located at 5170 Sanderlin Avenue, Memphis, Shelby County, Tennessee 38117 on a date and time mutually agreeable to the parties, but no later than February 26, 2010.

s/Edward G. Bryant
EDWARD G. BRYANT
U.S. MAGISTRATE JUDGE

Date: **February 1, 2010**

ANY OBJECTIONS OR EXCEPTIONS TO THIS ORDER MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE ORDER. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.