

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 IN PART AND DENYING IN PART PLAINTIFFS' MOTIONS

Before this Court on referral [D.E. 61] are seven (7) motions filed by Plaintiffs' Counsel Kevin A. Snider ("Mr. Snider"): Plaintiffs' Emergency Motion for Conference with the Court, Motion for Protective Order and Exclude Evidence, Motion for Disqualification and Sanctions, Motion to Allow Depositions of Defendants Counsel, Motion to Suspend/Modify Scheduling Order, Motion to Allow Additional Claims and/or Parties, and Motion for any Other Relief [D.E.59] filed March 4, 2010. Defense Counsel Mr. Sean A. Hunt ("Mr. Hunt") filed a responsive pleading, Response in Opposition to Plaintiffs' Emergency Motion for a Conference with the Court, ETC. [D.E.64]. On March 19, 2010, the Court held a hearing at which time Mr. Snider and Mr. Hunt presented arguments on these motions.

The genesis of this dispute and each of Plaintiffs' motions is Mr. Hunt's use of a medical authorization to obtain Plaintiff Cynthia Holt's records from the Social Security Administration ("SSA"). Factually, it is undisputed that prior to her deposition on October 5, 2009, Plaintiff Cynthia Holt, through Mr. Snider, had provided Mr. Hunt two medical authorizations signed that

same day. One was titled “Medical Psychological Authorization” and the second “Authorization.” Both of these medical releases were left blank as to the intended recipients. Mr. Snider argued to the Court that Plaintiff’s intent was to limit the authorizations to only two medical providers, Drs. Hackney and Hunt (no relation to Defense Counsel Mr. Hunt). As Mr. Snider was unsure whether to insert the doctors’ names or the names of their clinics, he left them blank as to the recipients. The affidavit of Plaintiff Cynthia Holt [D.E. 63] states she did not authorize the release of her SSA medical information, that this was not discussed on October 5, 2009 and further, the releases were solely for Drs. Hackney and Hunt. Mr. Snider agreed. On the other hand, Defense Counsel Mr. Hunt agreed there were no discussions about SSA the day of the depositions, but that he understood these to be customary “blanket” medical releases, left blank to use in obtaining her various medical records, which he did. Significantly, after using the authorizations and receiving medical records, Mr. Hunt forwarded copies, including the records from the SSA, to Mr. Snider on October 21, 2009. According to Mr. Snider, he received these but actually only became aware of this SSA issue when his client was advised by a doctor conducting an independent medical evaluation that he had her SSA medical records. This prompted the filing of these motions on March 4, 2010.

In order to make a determination of these motions, this misunderstanding between Mr. Snider and Mr. Hunt as to the intent of the medical authorizations must be resolved. Both lawyers, as officers of the Court, are duly admitted to this United States District Court, Western District of Tennessee, and consistent with Local Rule 83.1(e) appear to be in compliance with the Code of Professional Responsibility. And as officers of the Court, they offered differing versions during their arguments in open court.

While these versions conflict, the Court finds the explanations of both counsel reasonable and understandable. Mr. Snider was not sure of what name to use and simply left each authorization blank as to the recipient. Plaintiff Cynthia Holt's affidavit, in essence, indicates unexpressed intent not to release her SSA file, but she agrees no one discussed this matter prior to the depositions on October 5, 2009 (with which Mr. Hunt agrees). The Court believes Mr. Hunt reasonably assumed these were left blank as a customary "blanket" medical release is. This assumption by Mr. Hunt was not unreasonable in the Court's view as judicial notice is taken that this discovery procedure of providing a blanket medical release on the condition counsel receives a copy of all documents obtained is not unusual. To complete the circle, Mr. Hunt did forward a copy of the discovered medical records to Mr. Snider. This is corroborative of Mr. Hunt's perspective of the events at hand. Additionally, there is clear evidence that Mr. Hunt and his client were requesting Plaintiff Cynthia Holt's SSA records as early as August 17, 2009. *See* letter of Ms. Catherine E. Sison [D.E. 64.3]. Ms. Sison specifically requests Mr. Snider have his client execute a release regarding the SSA disability benefits. The Court also acknowledges the discovery rights of Defendants to the medical history of the Plaintiff Cynthia Holt consistent with her claims in this lawsuit. This information is such that it is ultimately discoverable in the Court's view.

Mr. Snider, in his oral argument, raised an additional issue that within the SSA information obtained by Defendants. It was possible that the joint income tax returns for the Plaintiffs might have been included, which would have affected the rights of Plaintiff Timothy Holt. However, Mr. Snider was unable to confirm what years of tax returns, if any, were in the SSA file which had been sent to him by Mr. Hunt. As such, the Court declines to speculate on this possibility.

In hindsight, more communication among the parties may have avoided this dispute and the necessity of the Court's involvement, but the Court does determine that Counsel for Defendants acted appropriately, reasonably and with good faith in the matters raised by these motions. Accordingly, to the extent a hearing was held on March 19, 2010, Plaintiffs' Motion for Conference with the Court was GRANTED, but Plaintiffs' remaining motions are DENIED.

IT IS SO ORDERED.

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: **March 23, 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.