

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TERI DUFF,

Plaintiff,

v.

Case No: 8:16-cv-532-T-30JSS

HOME DEPOT U.S.A., INC.,

Defendant.

**ORDER ON DEFENDANT’S MOTION TO COMPEL PLAINTIFF’S RULE 35
PHYSICAL EXAMINATION WITHOUT PLAINTIFF’S PROPOSED CONDITIONS**

THIS MATTER is before the Court on Defendant’s Motion to Compel Plaintiff, Teri Duff’s, Rule 35 Physical Examination without Plaintiff’s Proposed Conditions (“Motion”). (Dkt. 18.) In the Motion, Defendant seeks to compel Plaintiff to undergo a physical examination by Dr. John Shim on March 3, 2017, at 11:00 a.m. “to permit Defendant to properly evaluate the nature and extent of Plaintiff’s claimed injuries.” (Dkt. 18 at 2.) No invasive or diagnostic testing will be performed. (Dkt. 18 at 2.)

In her Complaint, Plaintiff alleges that due to Defendant’s negligence on August 16, 2013, Plaintiff was “seriously injured when a section of a fence structure in the outdoor garden department fell and struck the Plaintiff on or about the head and neck area causing her to fall to the ground.” (Dkt. 2 ¶¶ 8-9.) Plaintiff specifically alleges that Defendant’s negligence caused Plaintiff bodily injury, past and future medical expenses, pain and suffering, loss of capacity to lead and enjoy a normal life, mental anguish, loss of income or diminution of earning capacity, physical impairment, inconvenience, permanent injury, disfigurement and scarring, and aggravation of an existing disease or physical defect. (Dkt. 2 ¶ 15.)

Under Federal Rule of Civil Procedure 35, a court may, on a motion for good cause shown, order a party to submit to a physical or mental examination by a suitably licensed or certified examiner when the party's medical condition is "in controversy." Fed. R. Civ. P. 35(a). In a negligence action, a plaintiff places his or her mental or physical injury in controversy by asserting a mental or physical injury, thereby providing the defendant with "good cause for an examination to determine the existence and extent for such asserted injury." *Schlagenhauf v. Holder*, 379 U.S. 104, 119 (1964). Here, Plaintiff alleges that Defendant's negligence caused Plaintiff to sustain physical injuries. (Dkt. 2 ¶ 15.) Plaintiff's physical condition is therefore in controversy and good cause exists for Defendant's request for a physical examination of Plaintiff.

Finally, the Court notes that according to Defendant's Motion, Plaintiff does not consent to the requested physical examination unless the examination is videotaped or unless Plaintiff's counsel may be present for the examination. (Dkt. 18 at 2.) However, Plaintiff failed to file a response in opposition to the Motion. Consequently, the Court presumes Plaintiff has no objection to Defendant's Motion. *See* M.D. Fla. Local R. 3.01(b).

Upon consideration of the Motion and in accordance with Federal Rule of Civil Procedure 35, it is

ORDERED:

1. Defendant's Motion to Compel Plaintiff, Teri Duff's, Rule 35 Physical Examination without Plaintiff's Proposed Conditions (Dkt. 18) is **GRANTED**.

2. As set forth in the Motion, the physical examination to be performed upon the Plaintiff is scheduled as follows:

Date:	March 3, 2017
Time:	11:00 a.m.
Place:	12780 Race Track Road, Suite 200

Tampa, Florida 33626

Examiner: **John Shim, M.D.**

Phone No.: **(813) 814-9521**

Manner: The comprehensive examination will consist of non-invasive testing and examination of the Plaintiff to determine the nature and extent of Plaintiff's alleged injuries to those parts of her body as a result of the incident alleged in the Complaint. The examination will be a physical examination determined to be necessary by the physician to make a report on the nature and extent of Plaintiff's alleged injuries.

Scope: The physical examination will be conducted to fully assess the current condition of Plaintiff's injuries and to determine future treatment. Said examination shall be conducted pursuant to Rule 35 of the Federal Rules of Civil Procedure.

Conditions: The initial expense of the examination shall be borne by Defendant.

DONE and ORDERED in Tampa, Florida, on February 27, 2017.



JULIE S. SNEED
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record