

DOCKET NO: AANCV166022098S

SUPERIOR COURT

MCNEIL, MARILOU  
V.  
DOANE, ANNA Et AlJUDICIAL DISTRICT OF ANSONIA/  
MILFORD  
AT MILFORD

5/14/2018

ORDER

## ORDER REGARDING:

04/04/2018 141.00 REQUEST FOR PHYSICAL OR MENTAL EXAM PB 13-11(b)

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

## SUMMARY RULING ON THE DEFENDANT'S REQUEST FOR AN INDEPENDANT MEDICAL EXAMINATION

In this request, which the court treats as a motion (see P.B. § 11-2), the defendant indicates that she has requested an independent medical examination of the plaintiff. The plaintiff has objected to this request on the ground that the proposed examiner has performed other such examinations on behalf of defense firms in such a manner or to such an extent that concerns exist about his objectivity. For the following reasons, the defendant's motion is denied and the plaintiff's objection is sustained.

The disposition of the defendant's motion is controlled by Practice Book § 13-11 (b). The dispositive provision of this rule states that "no plaintiff shall be compelled to undergo a physical or mental examination by any physician to whom he or she objects." See also, General Statutes § 52-178a.

The defendant's request for the court to order the plaintiff to submit to an independent medical examination to whom she objects is expressly precluded by the plain and unambiguous language of the statute and rule that states that the plaintiff cannot be "compelled to undergo a physical . . . examination by any physician to whom [she] objects." *Id.* "The plaintiff has an unconditional statutory right to object to 'any physician.' She is entitled to object for any reason, including bias or personal dislike." *Privee v. Burns*, Superior Court, judicial district of New Haven, Docket No. CV 96 0395074, at 16 (June 1, 1999, Blue, J.)(749 A.2d 689).

The defendant is not without a remedy. *Id.* 16-19. The defendant may proceed to offer another doctor to do the examination or continue to engage the plaintiff's counsel regarding one who is acceptable. As explained by Judge Blue in *Privee v. Burns*, *supra*, 17-18, "there is nothing about this garden-variety case to suggest that numerous other orthopedic surgeons with the requisite skills cannot be found in [this] geographic area . . . notable for its abundance of skilled physicians." If the plaintiff exercises her "power of objection to the point where, as a practical matter, the defendant is rendered unable to obtain an independent examination" because, for example, "the plaintiff ends up objecting to every physician in the book," then the defendant has leave to seek appropriate relief. *Id.*, 17. That point has not yet been reached by the plaintiff. In any event, on the present record, "the solution . . . is not to compel the plaintiff to submit to an examination" by a certain date as requested by the defendant. *Id.*

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Judge: BARRY STEVENS