STATE OF MICHIGAN

COURT OF APPEALS

KAREN BURRIS, Plaintiff-Appellee,	FOR PUBLICATION June 25, 2013 9:10 a.m.
v	No. 303104 Wayne Circuit Court
K.A.M. TRANSPORT, INC., M & Y EXPRESS, INC. and ALY MOHAMED MAAROUF, Defendants-Appellants.	LC No. 10-002857-NI

Before: M. J. KELLY, P.J., and MURRAY and BOONSTRA, JJ.

MURRAY, J.

We must decide whether the trial court abused its discretion under MCR 2.311(A) by denying defendants K.A.M. Transport, Inc., M & Y Express, Inc., and Aly Mohamed Maarouf, an opportunity to have plaintiff Karen Burris submit to additional independent medical examinations when plaintiff previously submitted to similar independent medical examinations in another case involving the same alleged injuries. For the reasons articulated below, we hold the trial court abused its discretion when it denied defendants' motion to compel independent medical examinations. Accordingly, we reverse and remand for further proceedings.

I. FACTUAL BACKGROUND & PROCEEDINGS

This appeal originates from an automobile accident that occurred on September 28, 2009. On that date, plaintiff was a passenger in a vehicle that was stopped for a red light at a turnaround on Southfield Road while Maarouf was driving a semi tractor-trailer in the course of his employment with K.A.M. Transport and/or M & Y Express. Allegedly, Maarouf turned left and struck plaintiff's vehicle with substantial force. Plaintiff alleged that she suffered a serious impairment of body function and/or permanent serious disfigurement, including a closed head injury, spinal injuries, additional external and internal injuries to the head, neck, shoulders, arms, knees, back, chest and other parts of her body, as well as traumatic shock and injury to her nervous system, causing her severe mental and emotional anguish in addition to more general sickness and disability, all of which interfered with her enjoyment of life and required psychiatric treatment.

In March 2010, plaintiff filed a third-party action against defendants and in October 2010, plaintiff filed a separate, first-party no-fault benefits action against Automobile Club Insurance Association ("AAA").[1] On December 30, 2010, defendants filed a motion to compel plaintiff to appear for independent medical examinations by a neuropsychologist, a psychiatrist, and a physical medicine and rehabilitation specialist. According to defendants, plaintiff indicated that she would not attend defendants' independent medical examinations without a court order pursuant to MCR 2.311 because, as part of the AAA litigation, plaintiff had already appeared for independent medical examinations by an orthopedic surgeon, a physical medicine and rehabilitation physician, a neuropsychologist, a neurosurgeon, and a dentist. Defendants argued that there was good cause to require their own independent medical examinations because the existence and extent of plaintiff's alleged physical and mental injuries were in controversy and defendants' "ability to select the appropriate and most skilled individuals to assist in the case should not be hampered by someone else's choice." Moreover, defendants argued that AAA's independent medical examinations "were conducted in the past," and defendants were entitled to current independent medical examinations to determine plaintiff's present condition.

Plaintiff opposed defendants' motion to compel independent medical examinations, arguing that good cause to require additional independent medical examinations did not exist because defendants were attempting to "duplicate testimony" by having plaintiff undergo additional independent medical examinations that would unfairly provide defendants with two specialty doctors that disagreed with plaintiff's treating physicians. Plaintiff maintained that defendants were entitled to their own independent medical examinations, or the use of AAA's independent medical examinations, but not both.

After hearing oral argument on defendants' motion, the trial court denied the motion and offered the following rationale for doing so:

> It appears that at least five independent medical examinations have already been conducted plus the other medical involved in this case. It seems to me that should be sufficient for all of the parties on the Defense side. This [sic], any additional examinations appear to be overburdensome [sic] and really puts the Plaintiff in an unfair disadvantage.

Subsequently, defendants filed an application for leave to appeal this order. Initially, we denied the application for leave to appeal "for failure to persuade the Court of the need for immediate appellate review." *Burris v KAM Transp Inc*, unpublished order of the Court of Appeals, entered November 28, 2011 (Docket No. 303104). However, on October 24, 2012, our Supreme Court, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on leave granted. *Burris v KAM Transp, Inc*, 493 Mich 873; 821 NW2d 570 (2012).

Meanwhile, while the application for leave to appeal with this Court was pending, the AAA neuropsychologist who had examined plaintiff died, prompting defendants to file a motion

[1] The AAA litigation was settled and dismissed in April 2012.

to compel an independent medical examination by a neuropsychologist. The trial court granted the motion. Additionally, plaintiff's counsel has conceded to this Court that defendants may have an IME performed on plaintiff by a psychiatrist. Thus, only the trial court's denial of an independent medical examination by a doctor with expertise in physical medicine and rehabilitation is at issue on appeal.

II. ANALYSIS

MCR 2.311(A) provides a trial court with discretion to order a party to submit to a physical or mental examination. See *Muci v State Farm Mut Auto Ins Co*, 478 Mich 178, 190-191; 732 NW2d 88 (2007) (contrasting MCR 2.311(A) and MCL 500.3151). This Court reviews the trial court's exercise of its discretion for an abuse of discretion. *Swagler v Sinai Hosp of Greater Detroit*, 461 Mich 959; 609 NW2d 184 (2000); *Dierickx v Cottage Hosp Corp*, 152 Mich App 162, 170; 393 NW2d 564 (1986) (applying GCR 1963, 311.1). The interpretation and application of court rules present a question of law that is reviewed de novo. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009).

MCR 2.311(A) states:

> When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental or blood examination by a physician (or other appropriate professional) or to produce for examination the person in the party's custody or legal control. The order may be entered only on motion for good cause with notice to the person to be examined and to all parties. The order must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made, and may provide that the attorney for the person to be examined may be present at the examination.

Here, there is no dispute that plaintiff's mental and physical conditions are in controversy. Thus, according to the plain language of the court rule, the court "may" order plaintiff to submit to physical and mental examinations by medical professionals if the court finds good cause to do so. We now turn to whether good cause existed to order the IMEs under MCR 2.311.

"In the context of our court rules, '[g]ood cause simply means satisfactory, sound or valid reason[.]' The trial court has broad discretion to determine what constitutes 'good cause.'" *Thomas M Cooley Law Sch v Doe*, ___ Mich App ___; ___ NW2d ___ (Docket No. 307426, issued April 4, 2013), slip op, p 10.[2] Because we have not located a Michigan case that discusses

[2] In the context of no-fault benefits, "good cause" under MCL 500.3159 for a trial court to limit mental or physical examinations in a dispute "may only be established by a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." *Muci*, 478 Mich at 192 (quotation marks and citations omitted).

good cause under the rule in the context of a request for additional medical examinations, and because the language of that court rule is similar to its federal counterpart, FR Civ P 35, we look to the cases interpreting the federal rule. *Abela v Gen Motors Corp*, 469 Mich 603, 606-607; 677 NW2d 325 (2004) (the decisions of the lower federal courts may provide persuasive reasoning). FR Civ P 35 states, in pertinent part:

> **(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.

The seminal case interpreting FR Civ P 35, and in particular the "good cause" and "in controversy" requirements of that rule, is *Schlagenhauf v Holder*, 379 US 104; 85 S Ct 234; 13 L Ed 2d 152 (1964). In *Schlagenhauf*, 379 US at 118-119, the Supreme Court explained that the "good cause" and "in controversy" requirements of FR Civ P 35

> are not met by mere conclusory allegations of the pleadings—nor by mere relevance to the case—but require an affirmative showing by the movant that each condition as to which the examination is sought is really and genuinely in controversy and that good cause exists for ordering each particular examination. Obviously, what may be good cause for one type of examination may not be so for another. *The ability of the movant to obtain the desired information by other means is also relevant.*
>
> Rule 35, therefore, requires discriminating application by the trial judge, who must decide, as an initial matter in every case, whether the party requesting a mental or physical examination or examinations has adequately demonstrated the existence of the Rule's requirements of 'in controversy' and 'good cause,' which requirements, as the Court of Appeals in this case itself recognized, are necessarily related. This does not, of course, mean that the movant must prove his case on the merits in order to meet the requirements for a mental or physical examination. Nor does it mean that an evidentiary hearing is required in all cases. This may be necessary in some cases, but in other cases the showing could be made by affidavits or other usual methods short of a hearing. It does mean,

> though, that the movant must produce sufficient information, by whatever means, so that the district judge can fulfill his function mandated by the Rule.
>
> Of course, there are situations where the pleadings alone are sufficient to meet these requirements. *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.* [Citations omitted and emphasis added.]

The precise question here is whether the trial court abused its discretion when it found no good cause under the court rule to order an additional independent medical examination because: (1) the independent medical examinations already performed for a different defendant in a related case were sufficient for these defendants to use in this case and (2) the general unfairness to a plaintiff in having to oppose more than one defense expert at trial.

Turning to the federal decisions addressing whether good cause exists to order a plaintiff to undergo an additional examination, in *Vopelak v Williams*, 42 FRD 387 (ND Ohio, 1967), the district court ordered the plaintiff to submit to examinations by a local doctor and dentist, even though before filing suit she had previously submitted to examinations by a New York doctor and dentist at the request of the defendants' insurance carrier. The district court noted that although FR Civ P 35 did not limit the number of examinations, a court should "require a stronger showing of necessity before it will order such repeated examination." *Id*. at 389. In granting the second examinations, the *Vopelak* Court recognized the practical difficulty that the defendants faced in having out-of-state doctors testify, noted the passage of time since the initial examination, and that there had been representations of changes in the plaintiff's physical condition. *Id*.

In *Lewis v Neighbors Constr Co*, 49 FRD 308 (WD Mo, 1969), the plaintiff—like the plaintiff in this case—contended that a second examination would unfairly benefit the defense at trial. The plaintiff filed an action against the defendant in state court and submitted to an independent medical examination under the state discovery rules. Once the action was removed to federal court, the defendant moved for another medical examination by a different physician under FR Civ P 35. While the plaintiff was willing to undergo re-examination by the same doctor who conducted the independent medical examination two years earlier, he argued that having an examination by a second physician was unfair and would allow the defendant "to obtain 'an advantage in the Medical testimony.'" *Id*. at 309. The court granted the defendant's request for another independent medical examination, reasoning that:

> The fact that plaintiff has, in another state two years ago, been subjected to a previous examination of the same condition in another case is no bar to the granting of a second examination. Rule 35 does not limit the number of examinations. Even when an examination has been previously ordered in the same case, a subsequent examination may be ordered if the Court deems it necessary. . . . This [proposed] examination should not result in any evidentiary prejudice to the plaintiff when any cumulative evidence may be the subject of

objection, comment, or both, by the plaintiff at the trial. [*Lewis*, 49 FRD at 309 (citation omitted).]

In *Peters v Nelson*, 153 FRD 635 (ND Iowa, 1994), the plaintiff sued the defendants, alleging intentional torts and negligence relating to mental injuries suffered from child abuse. In the course of discovery, the plaintiff disclosed her medical expert, a licensed psychologist, and provided the defendants with a copy of the evaluation. In response, the defendant sought independent medical examinations by a psychiatrist and a neuropsychologist. Plaintiff submitted to the examination by the psychiatrist, but refused to submit to an examination by the neuropsychologist, arguing that the defendants were only entitled to one independent medical examination related to the alleged mental injuries, not two. The plaintiff also argued that there was not good cause to require a second independent medical examination and a second mental examination would be duplicative and potentially painful and dangerous. *Id*. at 636-637.

In granting the defendants request for a second independent medical examination, the trial court noted that while Rule 35 required showing good cause, the ultimate decision to order an examination, as well as which expert conducts the examination, was in the discretion of the trial court. But, the Rule also did not place a limit on the number of examinations. *Peters*, 153 FRD at 637, 639. Rather, "[e]ach request for an independent medical examination must turn on its own facts, and the number of examinations to which a party may be subjected depends solely upon the circumstances underlying the request. Even when an examination has been previously ordered in the same case, a subsequent examination may be ordered if the court deems it necessary." *Id*. at 637-638. The trial court also noted that while "needlessly duplicative, cumulative, or invasive" examinations are generally not permitted, in this case, good cause to order a second independent medical examination existed because the plaintiff had placed her mental condition in controversy, there was no evidence of expert witness shopping, and the second examination was not duplicative because it was a different evaluation by a different expert to fully evaluation the plaintiff's alleged mental injuries. *Id*. at 638-639.

We conclude that the trial court abused its discretion in denying defendants' request for an independent medical examination by a doctor with expertise in physical medicine and rehabilitation. While there can be cases where it is not an abuse of discretion for a trial court to decline ordering a second independent medical examination, such as where the second examination would be duplicative, *Peters*, 153 FRD at 638-639, under the facts of this case, it was an abuse. Plaintiff does not argue—and the trial court did not find—that defendants request for independent medical examinations by a doctor with expertise in physical medicine and rehabilitation would be duplicative or unnecessary. Additionally, the exams were taken in the AAA case almost three years ago, and the passage of time has been found to constitute good cause for ordering a second independent medical examination, and the persistence of plaintiff's impairment is a critical issue in this case. See *Vopelak*, 42 FRD at 389. While it is true that AAA's independent medical examination by a doctor with expertise in physical medicine and rehabilitation provided defendants with some ability to obtain relevant information produced for another case, *Schlagenhauf*, 379 US at 118, in the ordinary course defendants should be able to retain their own experts to assist in the defense of their own case, and should not normally be required to rely on experts retained by other parties in another case.

Just as importantly, the trial court's reasoning—that allowing the examinations would be overly burdensome and place plaintiff at an unfair disadvantage at trial—does not support its conclusion. As observed by the *Lewis* court, plaintiff's concern about restricting the evidence presented to the jury can be addressed through motions in limine, objections, and by limiting the presentation of cumulative evidence at trial, *Lewis*, 49 FRD at 309, without deterring discovery. There is also a ceiling on the number of expert witnesses that a party can call at trial. See MCL 600.2164(2). Hence, precluding defendants from obtaining IMEs of plaintiff by their own expert medical physicians was not supported by the trial court's reasoning. For these reasons we hold that the trial court abused its discretion in denying defendants' motion to compel an independent medical examination.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

No costs to either party. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Mark T. Boonstra

STATE OF MICHIGAN

COURT OF APPEALS

KAREN BURRIS,

Plaintiff-Appellee,

v

K.A.M. TRANSPORT, INC., M & Y EXPRESS, INC. and ALY MOHAMED MAAROUF,

Defendants-Appellants.

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June 25, 2013

No. 303104
Wayne Circuit Court
LC No. 10-002857-NI

Before: M. J. KELLY, P.J., and MURRAY and BOONSTRA, JJ.

M. J. KELLY, P.J. (*dissenting*).

On appeal, the majority concludes that the trial court abused its discretion when it determined that defendants K.A.M. Transport, Inc., M & Y Express, Inc., and Aly Mohamed Maarouf had not established grounds for subjecting plaintiff Karen Burris to additional invasive medical examinations and, on that basis, denied defendants' motion to compel Burris to submit to the requested examinations. Under the facts of this case, I cannot agree that the trial court abused its discretion. Therefore, I must respectfully dissent.

Our Supreme Court has long recognized that Michigan courts have the discretion to direct a party to submit to examination when the party's injuries are at issue. See *Logan v Agricultural Society of Lenawee County*, 156 Mich 537, 541-542; 121 NW 485 (1909) (holding that the trial court did not abuse its discretion when, relying on the plaintiff's physician's affidavit that it would be detrimental to plaintiff's wellbeing, it denied the defendant's motion to compel the plaintiff to submit to a medical examination); *Graves v City of Battle Creek*, 95 Mich 266 (1893) (holding that trial courts have the discretion to order a party to submit to bodily examination, but cautioning that this includes the discretion to refuse such a request where "the necessities of the case are not such as to call for it", or where the party's "sense of delicacy . . . may be offended", or where the examination is "cumulative" or is otherwise unnecessary). Our Supreme Court eventually codified this procedure by court rule.

The modern discovery practice has its origins with GCR 1963, 311.1, which was modeled on Fed R Civ P 35. See 2 Honigman & Hawkins, Mich Court Rules Annotated (2d ed, 1967), p 207 (noting that Rule 311 was "written in the language" of Fed R Civ P 35). Although the Supreme Court expanded the availability of physical and mental examinations as a discovery tool with the adoption of GCR 1963, 311.1, see 2 Honigman & Hawkins, Mich Court Rules

Annotated (2d ed, 1967), p 207, it also provided limitations designed to protect litigants from abusive discovery practices. Specifically, GCR 1963, 311.1 provided that a party could only be compelled to submit to an examination by order and then only if the party's physical or mental condition was "in controversy" and the moving party showed "good cause" for the examination. The rule also clarified that the trial court had the discretion to impose reasonable restrictions on the conduct of the examination. GCR 1963, 311.1. By adopting this rule, our Supreme Court entrusted trial courts with the discretion—and the duty—to carefully balance a party's right to be free from abusive or excessive invasions of privacy with the opposing party's right to seek the truth through reasonable discovery. And these limitations on the unfettered use of physical and mental examinations remain materially unchanged in the current rule. See MCR 2.311(A).

Under MCR 2.311(A), a trial court may order—but is not required to order—a party "to submit to a physical or mental or blood examination." However, the trial court's authority to order a party to submit to an examination is not unlimited. The trial court may only make such an order when the party's "mental or physical condition . . . is in controversy." MCR 2.311(A). Additionally, the court may not sua sponte order a party to submit to an examination; rather, the court's order "may be entered only on motion" after the moving party demonstrates "good cause" for the request. MCR 2.311(A). Thus, a trial court only has the discretion to order a party to submit to a physical or mental examination if the party's physical or mental condition is in controversy and the opposing party requests such an order by motion and after showing good cause for the examination. Even if these criteria are met, however, MCR 2.311(A) still provides the trial court with wide discretion to deny or reasonably limit the request. Therefore, it is beyond reasonable dispute that litigants do not have a "right" to conduct a physical or mental examination of the opposing party however often they might like and under whatever conditions they might like.[1]

Here, although the basis for the trial court's decision is not entirely clear, it appears that the trial court determined that defendants did not establish good cause. Therefore, I shall first address whether defendants established good cause sufficient to trigger the trial court's discretion to order Burris to submit to further examination. Because Michigan's former and current court rule was patterned after Fed R Civ P 35, Michigan courts have turned to federal authorities for guidance.[2] Specifically, Michigan courts have relied on *Schlagenhauf v Holder*, 379 US 104; 85 S Ct 234; 13 L Ed 2d 152 (1964) in determining the proper construction of both GCR 1963, 311.1 and its successor, MCR 2.311(A). See *LeGendre v Monroe County*, 234 Mich App 708, 723-726; 600 NW2d 78 (1999); *Brewster v Martin Marietta Aluminum Sales, Inc*, 107 Mich App 639, 642-645; 309 NW2d 687 (1981).

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[1] The record in this case illustrates what I perceive to be a long-abused practice that is clearly prohibited under MCR 2.311(A): the scheduling of medical examinations without first moving for permission and demonstrating good cause.

[2] Michigan courts may rely on federal authorities that interpret analogous provisions of the federal rules. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 378 n 7; 775 NW2d 618 (2009).

In *Schlagenhauf*, the Court noted that, although trial courts have the inherent authority to limit discovery so as to prevent their bad faith use or undue annoyance, embarrassment, or oppression,[3] Rule 35 contained an explicit limitation on the use of physical and mental exams: the matter to be discovered must be in controversy and the movant must affirmatively demonstrate good cause. *Schlagenhauf*, 379 US at 117. The "good cause" requirement, the Court explained, was not a mere formality, but rather an express limitation on the use of the rule. *Id.* at 118. As such, a party could not establish good cause by asserting that the party's physical or mental condition is relevant to the matter in controversy; the moving party must instead affirmatively show good cause for the *particular* examination that he or she desires. *Id.*

In examining what will constitute good cause, the Court in *Schlagenhauf* stated that there are "situations where the pleadings alone are sufficient to" establish good cause, such as where a plaintiff in a negligence action asserts a mental or physical injury. *Id.* at 119. However, it did not frame that statement as an absolute rule—that is, it did not provide that a trial court must, as a matter of course, determine that a defendant has good cause for conducting a physical or mental examination in a negligence action where the plaintiff has alleged a physical or mental injury. Rather, the Court explained that the motion must be evaluated in light of the unique facts underlying the specific request: "Obviously, what may be good cause for one type of examination may not be so for another. The ability of the movant to obtain the desired information by other means is also relevant." *Id.* at 118. And it is the movant's burden to "produce sufficient information, by whatever means, so that the [] judge can fulfill his function mandated by the Rule." *Id.* at 119.

Here, rather than rely on the extensive medical records already available to defendants, defendants' lawyer scheduled Burris for so-called "independent medical examinations" with three physicians: one specializing in physical medicine and rehabilitation, one specializing in psychiatry, and one specializing in neuropsychology. Defendants' lawyer did this without first obtaining a stipulation from Burris' lawyer and without moving for permission from the trial court.

On December 20, 2010, Burris' lawyer rejected defendants' lawyer's attempt to unilaterally schedule these examinations without any restrictions:

> You have requested three defense medical evaluations to evaluate my client. As previously indicated, my position is that you would be entitled to your own, but not also the PIP IME completed by my client within the same specialty. I will not get into the specifics . . .
>
> Additionally, you have requested an evaluation with Dr. Benedek and I have requested that the same be videotaped. I discussed these reasons with Mr. Davis.

[3] Michigan courts have a similar authority. See MCR 2.302(C).

After Burris' lawyer's refusal, defendants moved to compel the examinations under MCR 2.311(A). In response, Burris' lawyer pointed out that defendants' *own* no-fault carrier had already submitted Burris to *five* separate examinations, including one by a physical medicine and rehabilitation physician, and one by a neuropsychologist, and that their reports were all provided to defendants' lawyer. In addition, defendants already had Burris' medical records. Burris' lawyer asserted that defendants' requests were excessive and duplicative in light of the examination records and medical records already available to defendants. Burris further claimed that she was not treating with a psychiatrist, and that Dr. Benedek, who was defendants' proposed psychiatrist, was a well-known defense expert who allegedly had written reports and testified contrary to events that took place in past examinations, which would warrant some protective measure. Burris further argued that defendants failed to demonstrate good cause to "double up on defense experts." Notwithstanding these objections, Burris indicated that she had no objection to the additional examinations if defendants were not allowed the benefit of the additional no-fault experts' testimony and if the trial court allowed her to videotape the evaluation with Dr. Benedek.

At the hearing, defendants' lawyer responded to Burris' objections by noting that Burris had a list "of some 25 doctors" that might be called to testify. Defendants' lawyer also asserted that defendants "have the right to pick our experts." Defendants' lawyer noted too that the examinations from the no-fault case were older.

In denying defendants' motion, the trial court explained that defendants already received adequate discovery on Burris' medical condition and did not need to subject Burris to further examinations:

> It appears that at least five independent medical examinations have already been conducted plus the other medical [records] involved in this case. It seems to me that [that] should be sufficient for all of the parties on the Defense side. [Thus], any additional examinations appear to be [over burdensome] and really puts the Plaintiff [at] an unfair disadvantage.

I conclude that the trial court properly denied the motion because defendants failed to show good cause for the requested examinations. The record shows that they already had the reports from examinations conducted by five doctors, which included a physical medicine and rehabilitation physician and a neuropsychologist. They also had Burris' own medical records. Aside from baldly asserting a supposed right to pick their own experts and an oblique reference to the time since the last examinations, defendants failed to state why they needed these specific examinations by these specific experts. *Schlagenhauf*, 379 US at 118-119. Defendants also refused to acquiesce to any of Burris' proposed compromises. The trial court apparently took all these matters into consideration and, on that basis, determined that defendants had not met their burden to establish good cause.

Even if defendants minimally established good cause, the trial court still had the authority to deny the motion or grant it on a limited basis depending on the facts unique to the case. See MCR 2.311(A). Here, the trial court determined that defendants had adequate discovery on the disputed evidence and the ability to call the experts who conducted the original examinations. Moreover, following the trial court's original order denying defendants' request for the

examinations, the trial court entered an order compelling Burris to undergo an independent neuropsychological examination because the neuropsychologist from the original no-fault lawsuit had died. Consequently, the record shows that the trial court took reasonable steps to balance defendants' right to discovery and Burris' right to be free from burdensome and invasive examinations.

On this record, I cannot conclude that the trial court's decision to deny the motion fell outside the range of reasonable and principled outcomes. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).

For these reasons, I would affirm.

/s/ Michael J. Kelly