

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
TENNESSEE

Marcus Sewell, Jr. and Amber Sewell v. Wilderness Development
Corporation a/k/a Wilderness at the Smokies a/k/a/ Soaky Mountain

Sewell v. Wilderness Development Corp. · No. 3:24-CV-406-TAV-JEM · Decided December 3, 2025

SUMMARY

The United States District Court for the Eastern District of Tennessee grants the defendant’s motion to compel Marcus Sewell, Jr. to undergo a neuropsychological examination under Federal Rule of Civil Procedure 35. The court finds that his neuropsychological condition is in controversy and that good cause supports a second examination because the prior examination was incomplete and the existing assessments may be stale before trial. The parties are ordered to meet and confer regarding the examination’s parameters and file a joint status report.

CASE DETAILS

COURT	United States District Court for the Eastern District of Tennessee
JURISDICTION	United States District Court for the Eastern District of Tennessee
DECIDED	December 3, 2025
DOCKET	3:24-CV-406-TAV-JEM
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 35 to compel Plaintiff Marcus Sewell, Jr. to undergo a second independent neuropsychological examination in a personal-injury action. The magistrate judge granted the motion and ordered the parties to meet and confer regarding the examination parameters.
STANDARD OF REVIEW	The court applied the requirements of Federal Rule of Civil Procedure 35, including that the condition be in controversy and that good cause support the examination. Because the requested examination was successive, the court required a stronger showing of necessity and considered whether the prior examination was inadequate or incomplete and whether a substantial time had elapsed before trial.
PRECEDENTIAL VALUE	unpublished

PARTIES

Marcus Sewell, Jr., Amber Sewell v. Wilderness Development Corporation a/k/a Wilderness at the Smokies a/k/a Soaky Mountain

TOPICS

discovery dispute civil procedure expert testimony personal injury negligence

PRACTICE AREAS

civil procedure personal injury discovery

QUESTIONS PRESENTED

1. Whether Plaintiff's neuropsychological condition was in controversy under Federal Rule of Civil Procedure 35.
2. Whether Defendant established good cause to compel a second, targeted neuropsychological examination despite a prior independent medical examination.
3. What conditions and procedures the court was required to specify for the Rule 35 examination.

HOLDINGS

1. Plaintiff placed his neuropsychological condition in controversy by alleging traumatic brain injury, cognitive deficits, emotional and psychological injuries, and continuing limitations supported by medical and expert evidence.
2. Defendant established good cause for a second Rule 35 examination because the prior examination and clinical assessments were inadequate or incomplete for comprehensive neuropsychological evaluation, and more than two years would pass between the earlier assessments and the scheduled trial.
3. The court was required to specify the time, place, manner, conditions, scope, and examiner for the Rule 35 examination, and therefore ordered the parties to meet and confer and submit a joint status report proposing those parameters.

KEY QUOTATIONS

"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." (at 5)

"Where the moving party has already made an examination in the past, . . . the court will require a stronger showing of necessity before it will order repeated examinations." (at 6)

"The Court ORDERS the parties to (1) meet and confer, via in person, or by telephone or video conference, about the appropriate time, place, manner, conditions, and scope of the examination and (2) file a joint status report setting forth the parameters of the Rule 35 examination on or before December 8, 2025." (at 9)

FACTUAL BACKGROUND

Plaintiff Marcus Sewell, Jr. alleged that he was directed to use an occupied water slide at Defendant's waterpark in 2022, collided with another patron, and suffered traumatic brain and spinal injuries. Defendant obtained an August 2023 independent medical examination addressing structural and physiological aspects of the alleged injuries. Plaintiff later disclosed neuropsychological evidence based on earlier clinical assessments, and Defendant sought a comprehensive neuropsychological examination, asserting that the prior assessments lacked validity testing, omitted relevant cognitive domains, and were no longer current.

PROCEDURAL HISTORY

Plaintiffs filed a diversity personal-injury action arising from a 2022 waterpark incident and alleged traumatic brain injury, post-concussion syndrome, and continuing cognitive and psychological symptoms. Defendant previously obtained a physician examination limited primarily to structural and physiological issues, and later sought a neuropsychological examination after Plaintiff disclosed neuropsychological evidence. The court granted Defendant's motion to compel a second Rule 35 examination.

DISPOSITION

other

CASES CITED

- Schlagenhauf v. Holder, 379 U.S. 104, 118-19 (1964)
- S.R. v. Kenton Cnty. Sheriff's Office, No. 15-143, 2018 WL 11420453, at *2-4 (E.D. Ky. Feb. 12, 2018)
- Roberts v. AC Marine, Inc., No. 12-2317, 2013 WL 1814923, at *4 (E.D. La. Apr. 29, 2013)
- Booth v. Mohave Transp. Ins. Co., No. 13-6746, 2014 WL 3881203, at *4 (E.D. La. Aug. 6, 2014)
- Vopelak v. Williams, 42 F.R.D. 387, 389 (N.D. Ohio 1967)
- Daum v. Allstate Fire & Cas. Ins. Co., No. 13-64, 2014 WL 12600126, at *3 (D. Mont. Oct. 28, 2014)