

Michigan Court of Appeals Rules Neuropsychological Exams May be Video Recorded

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On remand from the Michigan Supreme Court of an interlocutory appeal, the Michigan Court of Appeals has determined, in an unpublished opinion, that neuropsychological examinations may be video recorded.

In the cases *Schaumann Beltran v. Jemmete, M.D./ Schaumann Beltran v. University of Michigan Regents, et al*, the plaintiff initiated a medical malpractice action against the physician and a separate Court of Claims action against the University Defendants. The minor plaintiff agreed to submit to a neuropsychological evaluation.

The dispute arose over the plaintiff attorney's demands to be present for the evaluation and that the evaluation be video recorded. The defendants opposed this on the basis that a third-party observer and a video recording would be intrusive, would influence the conduct of the evaluation and would undermine the validity of the findings.

The trial court had ordered the neuropsychological evaluation but allowed the plaintiff to video record the evaluation in lieu of having her attorney present. The defendants appealed the court's order. The appellate court concluded that the trial court lacked authority to order the video recording under MCR 2.311(A).

On appeal to the Michigan Supreme Court, the high court ruled that video recording of the examination is a "condition of the examination under MCR 2.311(A), and within the authority of the Court to direct." The Supreme Court remanded to address whether the trial court's order allowing video recording was an abuse of discretion.

The defendants' position was that video recording was a condition of the examination and, therefore, a request for a protective order under MCR 2.302(C), required a showing of good cause. The appellate court determined that 2.302 does not apply and that under MCR 2.311(A), the trial court may order a video recording as a condition of the examination. The court rule governing examinations was "all inclusive" and provides "safeguards to protect the examinee," according to the appellate court. The order for video recording was not outside the range of principled outcomes and so not an abuse of discretion.

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The appellate court rejected guidance under the Federal Rules of Civil Procedure and federal case law, distinguishing them from the Michigan Court Rules. The appellate court did not address the affidavit of the examining neuropsychologist opposing video recording or the neuropsychological standard of practice which would be violated by recording or third-party observation.