

Sharff v. Superior Court of San Francisco (1955) 44 Cal.2d 508

A plaintiff in a personal injury action may be ordered to submit to an independent medical examination by the defendant's doctor only if the plaintiff is permitted to have the presence of counsel.

CASE SUMMARY

After a personal injury action was set for trial, Defendant Belfast Beverages, Inc. moved to compel Plaintiff Roy A. Sharff to submit to an independent medical examination (IME) by Defendant's doctor without the presence of counsel. Plaintiff consented to the IME but requested to have her attorney present. The respondent court denied Plaintiff's request and directed Plaintiff to submit to the IME, staying all further proceedings until the examination was complete. Plaintiff brought this proceeding to request the case proceed without requiring her submit to the IME under the conditions specified.

The Supreme Court of California issued a writ of mandamus. A court may issue a writ of mandamus when a party "does not have any plain, speedy and adequate remedy in the ordinary course of law," and "the court by its order has imposed an unlawful condition upon" the party's rights. Here, the court found Plaintiff could seek a writ of mandamus because the respondent court's IME order was not appealable, and the order infringed on Plaintiff's right to proceed to trial. It is well-established that a "court may order a plaintiff in a personal injury action to undergo a physical examination by the defendant's doctor." During the examination, the doctor may ask necessary questions to "formulate an intelligent opinion regarding the nature and extent of the plaintiff's injuries," but may not make "inquiries into matters not reasonably related to the legitimate scope of the examination." Since there is a still possibility that the examining doctor will ask improper questions, however, a plaintiff "should be permitted to have the assistance and protection of an attorney." A plaintiff, as a lay person, should not be required or "expected to evaluate the propriety of every question at h[er] peril." Therefore, the court held that Plaintiff could not be compelled the submit to an IME unless she was entitled to have the presence of counsel. The respondent court, by not allowing this, imposed an unwarranted condition on the Plaintiff's right to have her case proceed to trial. As such, the court issued a writ of mandamus to allow the case to be tried without requiring Plaintiff to submit to the respondent court's order.

Belfiore-Braman v. Rotenberg (2018) 25 Cal.App.5th 234

A treating physician may be deemed a retained expert when the treating physician testifies not only from facts acquired in the physician-patient relationship but from facts acquired in anticipation of litigation.

Schreiber v. Estate of Kiser (1999) 22 Cal.4th 31

Under Code of Civil Procedure section 2034, a treating physician does not become a retained expert merely by giving opinion testimony concerning causation and the standard of care as long. Rather, this issue arises when the physician relies on information obtained independently from the context of treating the patient to testify.