

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
ROOM 4040
NEWARK, NJ 07101
973-776-7862

LETTER ORDER

Re: Jionni Conforti v. St. Joseph’s Healthcare System, Inc., et al.
Civil Action No. 2:17-cv-00050-CCC-CLW

This matter comes before the Court on Defendants St. Joseph’s Healthcare System, Inc., St. Joseph’s Hospital and Medical Center, and Father Martin D. Rooney’s (“Defendants”) Motion for Reconsideration of the Court’s Opinion and Order Denying Defendants’ Motion to Compel a Mental Examination of Plaintiff . (ECF No. 119). Plaintiff Jionni Conforti (“Plaintiff”) opposes the Motion. (ECF No. 126). The Court declined to hear oral argument pursuant to Federal Rule of Civil Procedure 78. For the reasons set forth below, Defendants’ Motion is **DENIED**.

Background

On January 22, 2020, after consideration of the papers, oral argument, and supplemental deposition transcripts, this Court issued an Opinion and Order denying Defendants’ Motion to Compel Mental Examination of Plaintiff. (ECF No. 116). Under Federal Rule of Civil Procedure 35, the Court may order a “mental examination” of a party if that party’s “mental or physical condition is in controversy” and if the movant demonstrates “good cause” for the examination. *Id.* §§ (a)(1); (a)(2)(A). The movant must make “an affirmative showing” that (1) the subject’s condition “is really and genuinely in controversy” and (2) “good cause exists” for the examination. *Schlagenhauf v. Holder*, 379 U.S. 118 at 121 (1964). This Court found that Defendants failed to meet both prongs of the *Schlagenhauf* test.

Defendants now move for reconsideration of that Opinion and Order on several grounds. (Def.’s Br., ECF No. 120). First, Defendants contend that this Court contradicted its prior ruling when the Court found that Plaintiff’s emotional distress claim did not place his mental condition “in controversy” under Rule 35. (*Id.* at p. 4). Second, Defendants argue that the Court “erred in not giving Defendants the opportunity to take the depositions of [Dr. Ian Tang and Rissy Batista] before compelling Defendants to fully brief” their Rule 35 Motion. (*Id.*). Third, according to Defendants, the Court engaged in an “improper” *sua sponte* inquiry of the qualifications of Dr. Donald Raymond Reeves, Jr., the psychiatrist engaged by Defendants to conduct the Rule 35 examination. (*Id.* at p. 5). In support of their Motion, Defendants now submit a Declaration from Dr. Reeves, in which he details his qualifications, the proposed methods and topics of his Rule 35 examination, and the necessity of conducting a forensic psychiatric clinical examination to assess Plaintiff’s emotional distress claims. (ECF No. 121).

Legal Standard

“The purpose of a motion for reconsideration...is to correct manifest errors of law or fact or to present newly discovered evidence.” *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (quoting *Harsco Corp. v. Zlotnicki*, 779 F. 2d 906, 909 (3d Cir. 1985)). The party moving for reconsideration must demonstrate: “(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion...or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” *Id.*

Discussion

Defendants raise three specific challenges to the Court’s ruling. The Court will address each in turn. First, Defendants argue that the Court erred in finding that Plaintiff did not place his mental condition “in controversy” by asserting emotional distress damages. (Def.’s Br., ECF No. 120, at p. 8). In particular, Defendants argue that the Court contradicted its August 15, 2019 ruling permitting the depositions of three of Plaintiff’s medical providers. (*Id.*). The Court recognizes the discrepancy in its discussions of Plaintiff’s emotional distress damages. In its prior Opinion, the Court found that in light of Plaintiff’s complex history of mental health issues, Plaintiff’s emotional distress “cannot be neatly reduced to ‘garden variety’ distress at this stage.” (ECF No. 104, at p. 8). By contrast, in its ruling on Defendants’ Rule 35 Motion, the Court observed “Plaintiff has repeatedly reiterated that his damages will be limited to ‘standard’ emotional distress....Plaintiff’s characterization of his damages claim is consistent with the language in the Complaint, which contains standard language concerning the emotional distress damages typically sought in discrimination cases.” (ECF No. 116, at p. 4).

While Defendants may be correct that the Court’s discussions of Plaintiff’s emotional distress damages are internally inconsistent to some degree, this inconsistency does not disturb the Court’s ultimate conclusion that Plaintiff has not placed his mental condition “in controversy” within the meaning of Rule 35. As discussed in the Court’s Opinion, Rule 35 and *Schlagenhauf* require the Court to view Plaintiff’s emotional distress damages claim through a different lens than the Rule 26 relevance analysis and the patient-psychotherapist privilege waiver analysis. (ECF No. 116, at pp. 3-4) (“Rule 35 examinations...are subject to a separate and more exacting standard than other forms of discovery. Plaintiff’s history of depression and anxiety, no matter how extensive or complicated, cannot on its own sustain Defendants’ burden under Rule 35.”) Defendants do not point to any clear error of law or fact made by the Court in concluding that Defendants did not make an affirmative showing that Plaintiff has placed his mental condition in controversy.

Second, Defendants urge the Court to reconsider its Opinion in light of discovery taken after the briefing on the Rule 35 Motion was completed. (Def.’s Br., ECF No. 120, at p. 12). After the Rule 35 Motion was briefed, Defendants deposed Dr. Ian Tang, an endocrinologist who diagnosed Plaintiff with gender dysphoria and supervised Plaintiff’s gender-confirming hormone therapy. Defendants also deposed Rissy Batista, a therapist and mental health clinician who began treating

Plaintiff in March 2015 and also diagnosed Plaintiff with gender dysphoria.¹ Defendants argue that the Tang and Batista depositions revealed that these providers “hastily accepted Conforti’s self-diagnosis of gender dysphoria.” (*Id.* at p. 13). The newly revealed “haphazard way” in which these providers arrived at their diagnoses “presents a change in circumstances that warrants Dr. Reeves’s examination so that he may evaluate Conforti’s gender dysphoria.” (*Id.*)

Contrary to Defendants’ assertions, the Tang and Batista depositions do not constitute “new evidence that was not available when the court [denied] the motion.” *Max’s Seafood Cafe ex rel. Lou-Ann, Inc.*, 176 F.3d at 677. Counsel for Defendants discussed the Tang and Batista depositions at length during the December 3, 2019 oral argument on the Motion. (Transcript of Oral Argument, at pp. 7-11). Immediately following oral argument, Defendants submitted the Tang and Batista deposition transcripts to the Court for review. (ECF No. 116, at p. 6). In its Opinion, the Court discussed the Tang and Batista depositions in detail and included their testimony in the Rule 35 analysis. (*Id.* at pp. 6-8). The Court acknowledged the Defendants’ perceived shortcomings in Tang and Batista’s testimony and concluded that good cause did not exist for a Rule 35 examination regardless. (*Id.* at p. 8).

As their final point of objection, Defendants assert that the Court “erred in questioning Dr. Reeves’s qualifications” *sua sponte*. (Def.’s Br., ECF No. 120, at p. 14). Defendants point out that Plaintiff did not challenge Dr. Reeves’s qualifications. (*Id.*) Further, Defendants contend that the Court did not request further information about Dr. Reeves’s qualifications and proposed examination, yet unfairly relied on the absence of this information to deny Defendants’ Rule 35 motion. (*Id.* at p. 15).

This objection does not constitute adequate grounds for a reconsideration of the Court’s decision. Under Rule 35, it is *Defendants* who have the burden of affirmatively demonstrating that there is good cause for Dr. Reeves’s examination. Rule 35 places the obligation on Defendants – rather than on the Court or on Plaintiff – to make this showing. While Defendants are correct that Rule 35 does not “obligate a moving party to present a sworn statement attesting to the qualifications of an expert or the intended examination,” (Def.’s Br., ECF No. 120, at p. 15), other Rule 35 Movants have attempted to meet the good cause standard by submitting materials from their proposed experts about the necessity of a mental examination. *See, e.g., McLaughlin v. Atl. City*, No. CIV 05-2263 RMB, 2007 WL 1108527, at *2 (D.N.J. Apr. 10, 2007) (plaintiff “relied on” psychiatric expert’s “letter to support his argument that this Court should order a psychiatric examination of Officer Raddi.”). The Court properly considered the absence of such materials in its Rule 35 analysis.

Defendants’ related argument that the Court’s analysis of Dr. Reeves’s qualifications is premature fails for similar reasons. Defendants contend that as long as they clear a minimum threshold of proffering a licensed medical professional to conduct the Rule 35 examination, any further inquiry into their expert’s qualifications in the Rule 35 analysis is inappropriate. (Def.’s Br., ECF No. 120, at p. 15). According to Defendants, “[w]hether an expert is qualified is appropriately addressed pre-trial, by *in limine* motion, after the completion of expert discovery.” (*Id.*) However, as

¹ Dr. Ian Tang and Rissy Batista’s treatment of Plaintiff is summarized in the Court’s August 15, 2019 Opinion and Order granting in part and denying in part Plaintiff’s Motion to Quash subpoenas of his medical providers. (ECF No. 104, at pp. 4-6).

discussed above, the Court may look beyond Dr. Reeves's qualifications and inquire into the propriety and usefulness of Dr. Reeves' examination as part of the Rule 35 inquiry.

Even if the Court were to take into account Dr. Reeves's newly submitted Declaration, this Declaration does not warrant a reconsideration of the Court's conclusion that Defendants have failed to demonstrate good cause for a Rule 35 examination. As the Court stated in its original ruling, "[w]here a movant can explore a party's psychiatric condition through other discovery methods, the movant must 'produce more than conclusory statements by a psychiatric expert to support its burden of proof' that it is entitled to an IME under Rule 35. *McLaughlin*, 2007 WL 1108527, at *3." (ECF No. 116, at p. 8). Conclusory statements by a psychiatric expert are precisely what Defendants have proffered here. Dr. Reeves states, "Based on my review of Mr. Conforti's allegations in the Complaint, his deposition testimony in this matter, and medical records....my professional opinion is that a comprehensive forensic psychiatric clinical examination of Mr. Conforti, given his known preexisting psychiatric disorder, is necessary to assess the psychiatric distress he claims he suffered[.]" (ECF No. 121, ¶ 8). Therefore, "Defendants have not sustained their burden of specifically demonstrating that the extraordinary remedy of a Rule 35 examination is necessary here." (*Id.*)

Conclusion

Defendants have failed to demonstrate either the availability of new evidence or the need to correct a clear error of law or fact in the Court's Order denying Defendants' Motion to compel an examination under Federal Rule of Civil Procedure 35. Therefore, the Motion for Reconsideration of that decision is denied. The Clerk of Court shall terminate ECF No. 119 upon entry of this Order.

March 30, 2020

s/Cathy L. Waldor
CATHY L. WALDOR
United States Magistrate Judge