

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MIRIAM BRIGGS-MUHAMMAD,

Plaintiff,

v.

WAL-MART ASSOCIATES INC., STORE 2335,

Defendant.

ORDER

09-cv-193-slc

On June 1, 2009, this court granted plaintiff Miriam Briggs-Muhammad leave to proceed *in forma pauperis* on her claim that defendant Wal-Mart Associates, Inc, Store 2335 retaliated against her in violation of Title VII for participating in litigation activities against defendant. The case has proceeded extremely slowly since then—even during the brief phase when plaintiff was represented by an attorney—due to plaintiff’s resistance to disclosing during routine discovery the evidence supporting her lawsuit.

For instance, plaintiff’s July 13, 2010 deposition was derailed by plaintiff’s behavior. Plaintiff was upset that she had not been provided the questions in advance, that the questions asked did not seem relevant to her, that her husband (a named witness in this lawsuit) could not sit with her, and that she could not suspend the deposition to visit the social security office. Ultimately plaintiff halted her deposition, claiming chest pains that caused her to call for an ambulance and visit a hospital emergency room.

After the court entered its July 30 order requiring plaintiff to complete her deposition, she filed her fourth motion for appointment of counsel, this time supporting her request with letters from a cardiologist (Dr. Ende) and her psychologist (Dr. Kushner). Dr. Ende’s July 30 letter reveals simply that he is trying to be supportive of his patient without misleading the court. There is no physical danger to plaintiff from subjecting her to the stress of a deposition; however,

there likely will be further disruptions and perhaps another visit to the ER with complaints of chest pains. Dr. Kushner opines in his August 5 letter that plaintiff will suffer “overwhelming anxiety” if she continues to represent herself, again with a prediction of a repeat performance of the July 13, deposition meltdown.

Defendant understandably opposes any further accommodation of plaintiff, pointing out that plaintiff presents an ever-moving target in response to defense discovery requests and court orders. The court sympathizes with defendant’s position and shares much of defendant’s skepticism about how we ended up at this juncture, but now plaintiff has introduced a new factor: her treating psychologist opines that plaintiff is not capable of representing herself in these proceedings, and that much of her behavior up to this point can be attributed to her psychological condition.

In light of this, the court feels compelled to give plaintiff one final chance. I am granting her motion for appointment of counsel and stay proceedings in this case in order to locate a lawyer who is willing to represent plaintiff during further proceedings in this case, up to and including any trial.

A lawyer accepting appointment in a case such as this takes on the representation with no guarantee of compensation for his or her work. Plaintiff should be aware that once she has a lawyer, the court communicates only with that lawyer and will no longer communicate directly with plaintiff about this case. The court also expects that plaintiff will communicate directly with her lawyer about any concerns and will allow the lawyer to exercise professional judgment to determine which matters to bring to the court’s attention. Plaintiff will not have the right to compel counsel to raise frivolous arguments or to follow every direction plaintiff might make.

Plaintiff should be prepared to accept her lawyer's strategic and tactical decisions even if plaintiff disagrees with some of them.

It is critical for plaintiff to get along with her lawyer because she will not get another. I suspect that plaintiff's retained attorney in this case withdrew for reasons other than those mentioned on the record, but I will not speculate. Suffice it to say that plaintiff is not going to get any more chances. This is it. She—and her husband, to the extent that he may be a driving force behind what's happening here—had better make it work with appointed counsel because if that lawyer asks to be excused due to client conflicts or disagreements, it will be very, very hard for plaintiff to persuade the court not to grant such a motion.

ORDER

IT IS ORDERED that:

(1) Plaintiff's fourth motion for appointment of counsel, dkt. 37, is GRANTED.

(2) Further proceedings in this case are STAYED pending appointment of counsel for plaintiff. When the court finds counsel willing to represent plaintiff, the court will hold a status conference to set a new schedule for trial.

(3) Defendant's motion for a scheduling order, dkt. 40, is DENIED.

Entered this 20th day of September, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge