

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

JUDITH A. ERICKSON,

Plaintiff,

v.

LARSON-JUHL, INC.,

Defendant.

ORDER

00-C-174-C

This is a civil case in which plaintiff Judith A. Erickson is suing her former employer, defendant Larson-Juhl, Inc. for alleged violations of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34, the Americans with Disabilities Act, 42 U.S.C. §§ 12102 - , and the Family Medical Leave Act, 29 U.S.C. § 2615(a)(1). Plaintiff contends that she was terminated illegally and that as a result she is entitled to front pay, lost benefits through the age of retirement, expenses for psychological counseling in the amount of \$25,000 and damages for mental anguish and emotional distress in the approximate amount of \$100,000. The case is before the court because plaintiff objects to the magistrate judge's ruling that she must make herself available for a psychological examination in Madison, Wisconsin, and that the

examination take place without the “parameters” plaintiff believes should be imposed upon it. See 28 U.S.C. § 636(b)(1)(A) (“A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate’s order is clearly erroneous or contrary to law.”)

Plaintiff has no legal basis for objecting to the examination sought by defendant. By injecting the subject of psychological damages into this lawsuit, she has put her psychological state into issue. Defendant is entitled to examine into her psychological state to determine for itself what portion, if any, is fairly attributable to her termination. Plaintiff complains about the possibility that the examiner will delve into areas not relevant to this proceeding, such as her childhood and domestic experiences, medical or drug use, medical history and sexual relations. Her labeling these subjects as irrelevant suggests a lack of understanding of the claim of psychological damages, at best; at worst, it suggests an improper effort to hide these matters from defendant. Plaintiff’s psychological state cannot be evaluated without knowledge of her entire history and her present circumstances. Otherwise, there is no way of knowing whether her current state is the product of her termination or of other factors, such as childhood abuse, consumption of alcohol, a pre-existing psychiatric condition or marital troubles.

Plaintiff objects to having to travel to Madison for the examination, arguing that there are many qualified psychologists in the Ashland area. However, having the examination in

Madison makes sense, despite the inconvenience to plaintiff, because the trial will be held here. Finally, the magistrate judge acted properly in denying plaintiff's request to tape record the examination. Injecting a tape recording into a psychological interview is bound to change the dynamics of the session and interfere with the examiner's ability to perform his evaluation.

Plaintiff has shown no reason why the magistrate judge's order is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A). Indeed, her objections merely confirm the good sense of the original order and of the magistrate judge's decision to impose costs on plaintiff for resisting defendant's well-justified discovery.

ORDER

IT IS ORDERED that plaintiff Judith A. Erickson's motion to reconsider the magistrate judge's orders of November 3 and November 6, 2000, is DENIED.

Entered this 14th day of November, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge