

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

ORLANDO MATTHEWS,

Plaintiff,

v.

MARTEN TRANSPORT, LTD.,
RANDY MARTEN, and
WILLIAM KENNEDY,

Defendants.

ORDER

04-C-0482-C

Plaintiff Orlando Matthews has moved for an order vacating the December 15, 2004 order of the United States Magistrate Judge, requiring plaintiff to submit to a deposition to be taken in a conference room in the federal courthouse in Madison, Wisconsin. (Although plaintiff does not say so, I am assuming that his motion is brought pursuant to 28 U.S.C. § 636(B)(1)(a), which authorizes a district court to reconsider any pretrial matter determined by a magistrate judge “where it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law.”) In an earlier order, entered after finding that plaintiff had engaged in “inappropriate and unacceptable” actions during defendants’ counsel’s attempt to take his deposition on December 9, 2004, the magistrate judge ordered

that plaintiff would have to submit to a deposition in Madison, Wisconsin, at defendants' request. Dec. 9, 2004 order, dkt. #33, at 1. The December 15, 2004 order added the condition that the deposition would go forward in the federal courthouse and was based on defendants' expressed need for security during the deposition.

After reading plaintiff's motion and his amendment to the motion, I will deny the motion as amended. The magistrate judge's December 15 order was based upon legitimate concerns raised by defendants' counsel after the aborted deposition in Memphis, Tennessee. Defendants began the discovery process in good faith and voluntarily undertook to schedule plaintiff's deposition in Tennessee, although they could have required him to appear in Madison for this purpose, since plaintiff chose this forum and submitted himself to this court's jurisdiction. Instead of cooperating, plaintiff brought his own audiotaping equipment and a camera and started the proceeding by photographing each of the participants, including the reporter. He insisted on making his own tape recording of the deposition, despite the presence of a certified reporter, and he told defendants' counsel that he would be unable to stay for the length of the deposition because of previously scheduled appointments, although he had had notice of his deposition for more than one month.

Plaintiff argues that he "had a right to protect his rights" by audiotaping the proceeding and photographing the participants. He is wrong in thinking that his actions were either proper or necessary to protect his rights. A certified court reporter is not a

representative of either side to a lawsuit, but a neutral official whose job is to take down testimony correctly and to protect the rights of all participants in the proceeding. Plaintiff's own tape recording would be of no value to him in his lawsuit. He could not use it in any court proceeding because it is not an official recording and he does not need it to prepare his case because he will have a copy of the transcript of the proceeding.

Given plaintiff's obduracy and refusal to cooperate in the first effort to take his deposition, it is inevitable that plaintiff's range of choices has been limited by the magistrate judge. Plaintiff may not want to make the effort or spend the money to travel to Madison for his deposition but he has brought this result upon himself. Defendants have rejected his request to have the deposition taken by telephone or video conference, as is their right under the magistrate judge's order, so he must appear in Madison, as the notice of deposition requires.

ORDER

Plaintiff's motion for reconsideration of the magistrate judge's December 15, 2004 order requiring him to appear for a deposition in the federal courthouse in Madison, Wisconsin, on December 28 and 29, 2004, is DENIED for plaintiff's failure to show that the order is clearly erroneous or contrary to law.

FURTHER, IT IS ORDERED that this suit will be subject to dismissal if

1. Plaintiff fails to appear for the deposition as ordered;
2. Plaintiff fails to cooperate with the deposition (“Cooperation” includes responding to questions, not operating his own recording equipment and not trying to photograph the participants);
3. Plaintiff attempts to end the deposition before defendants’ counsel have finished questioning him; or
4. Plaintiff makes any verbal or physical threats to defendants’ counsel or to any other participant in the deposition.

Entered this 27th day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge