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. This case has proceeded fitfully since. Before the court are plaintiff's third motion for appointment of counsel (dkt. 33), in which she makes alarming accusations about the conduct of defendant's attorney during plaintiff's aborted deposition on July 13, 2010; and defendant's motion to finish plaintiff's deposition at the courthouse and to extend the August 9, 2010 deadline for filing a motion for summary judgment, along with four affidavits refuting plaintiff's accusations of improper conduct, (Dkt. 34).

For the reasons stated below, plaintiff's motion is denied and defendant's motion is granted in part and denied in part.

On August19, 2009, I denied plaintiff's first motion for appointment of counsel, finding she was able to represent herself in this case, which is neither factually or legally difficult, despite plaintiff's assertions to the contrary. On October 29, 2009, I denied plaintiff's second motion for appointment of counsel, once again finding that she was able to represent herself. On November 6, 2009, Attorney Carrie Vance of Community Justice, Inc. appeared on plaintiff's behalf, but on January 26, 2010, I granted Vance's motion to withdraw based on her claim that her office was financially overburdened by this lawsuit. Since then, plaintiff has prosecuted this lawsuit case on her own (although she has received assistance from her husband who is not a

lawyer but who has some pro se litigation experience). Now plaintiff has filed a third motion for appointment of counsel.

Again, plaintiff argues that she is not able to prosecute the case herself because the complexity of the case exceeds her capacity to present it to a jury. It appears that plaintiff's motion was triggered by the blow-up at her deposition on July 13, 2010. I was made aware of these issues by telephone during the deposition. 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.

The fact that plaintiff was not able to complete her deposition is not grounds for appointment of counsel. As I previously stated, I must consider both the complexity of the case and the plaintiff's ability to litigate it herself. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). In her motion, plaintiff fails to present any new facts showing that she is unable to represent herself in this case, which, despite her assertions to the contrary, is neither factually nor legally difficult. In 1997-9, plaintiff trained as a paralegal (although she is not certified). She has been taking on-line Legal Studies classes since 2007 and expects her associates degree in 2010. I spoke with plaintiff during her deposition and found her to be articulate, intelligent and assertive. Plaintiff's over-the-top allegations of malicious behavior and discriminatory comments by defendant's lawyer–contested by everyone else in the room–are incredible and do not establish that plaintiff is in over her head.

Plaintiff's problems with this lawsuit are not due to an inability adequately to represent her own interests, but seem to arise from her suspicion–unfounded from what the court can

discern–that defendant's attorney is trying to take advantage of plaintiff's pro se status. The question all this raises to the court is: why plaintiff is so resistant to disclosing her evidence supporting her lawsuit? It took many months of correspondence, motions to compel, and telephonic motion hearings for plaintiff to produce documents in response to defendant's thorough, but routine written discovery requests. At this point, plaintiff should have copies of the documents she produced to the defendant and plaintiff should know from defendant's requests what topics are going to be explored in this case. It should not be that difficult for plaintiff to review these documents to refresh her recollection about her own background information. It should not be that difficult for plaintiff to get ready to explain at a deposition the basis for her claims of employment discrimination, and to have with her any notes or other documents that are relevant to these claims as well as the names of any corroborating witnesses and what she expects them to say.

In light of this, it is hard to understand why plaintiff (and her husband) felt so pressured and put-upon at plaintiff's aborted July 13 deposition. Apart from this, there is nothing about the evidence, the nature of plaintiff's claims, or the defendant's treatment of plaintiff that suggests that plaintiff must have a lawyer's assistance to present her case fairly and adequately. In short, nothing has changed in this case that would cause me to change the conclusion of my August 19 and October 29, 2009 orders, that plaintiff is not entitled to appointment of counsel in this case.

So now we must find a way to complete plaintiff's deposition. As a starting point, the court is *not* going to order that plaintiff's deposition take place in the courthouse. This would only be a crutch that would make one side or the other more likely to seek court intervention, a remedy that should be a last resort, not a first instinct. Even so plaintiff must understand that, wherever she is deposed, she has an obligation to sit for a complete deposition. If plaintiff

cannot or will not do this, then she runs the risk that she will not be allowed to continue with her lawsuit. Plaintiff chose to file this lawsuit in which she makes serious accusations against defendant. Plaintiff has a right to be heard on these accusations, but defendant has an equal right to discover everything plaintiff knows that could be relevant to the resolution of plaintiff's lawsuit. Therefore plaintiff must sit for a continued deposition on August 4, 5 or 6, 2010–this Wednesday, Thursday or Friday–and must make every effort to complete the deposition. Plaintiff has until then to review her documents and think about what happened in order to be prepared to answer defendant's questions. A failure to complete this deposition on the second try likely will have serious consequences.

Finally, the summary judgment motion deadline is moved to August 16, 2010.

ORDER

IT IS ORDERED that:

(1) Plaintiff's third motion for appointment of counsel, dkt. 33, is DENIED.

(2) Defendant's motion to continue plaintiff's deposition and to extend the motion deadline is GRANTED IN PART and DENIED IN PART as stated above.

Entered this 30th day of July, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge