

EXHIBIT E

MONTANA TWENTY-FIRST JUDICIAL DISTRICT
RAVALLI COUNTY

COPY

MICHAEL E. SPREADBURY,
Plaintiff,

vs. Cause No. DV-10-223

KENNETH S. BELL,
Defendant.

Taken at the Ravalli County Courthouse
205 Bedford Street, Hamilton, Montana
Friday, August 6, 2010

The Honorable Jeffrey H. Langton Presiding.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

Plaintiff, Michael E. Spreadbury, appearing pro se.

For the Defendant: NATASHA PRINZING JONES
Boone Karlberg P.C.
201 West Main Street, Suite 300
Missoula, MT 59802

FRIDAY, AUGUST 6, 2011

10:07:46 1
10:07:46 2 THE COURT: Very well, the matter is deemed
10:07:48 3 submitted. The Court will issue a written ruling.

10:07:52 4 There's a second case involving different
10:07:54 5 counsel. That's *Spreadbury v. Bell*, DV-10-223. Miss
10:08:11 6 Jones is here on behalf of Mr. Bell, and Mr. Spreadbury
10:08:13 7 again pro se. This is a 12(b)(6) motion on dismissal on
10:08:17 8 such a motion, while argument is not required the way it
10:08:21 9 is required on summary judgment motion, I felt it
10:08:27 10 appropriate in this case to hear legal argument. We'll
10:08:30 11 follow the same format as we just utilized; again, the
10:08:33 12 moving party goes first, the party opposing is in the
10:08:37 13 middle and the moving party with the burden closes.
10:08:40 14 Miss Jones.

10:08:41 15 MS. JONES: Thank you, Your Honor. And I'll
10:08:43 16 be brief. I don't think that there's much that I can
10:08:46 17 add to the briefing on this issue. I would simply
10:08:48 18 highlight this: That this is a motion to dismiss and so
10:08:52 19 we are bound to the record. However, I provided the
10:08:55 20 Court with the authority that allows the Court to take
10:08:58 21 judicial notice of related proceedings. And those
10:09:01 22 related proceedings, of course, are the criminal cases
10:09:04 23 involving the same person, Mr. Spreadbury. And so this
10:09:09 24 is relevant because Mr. Spreadbury has tried to view
10:09:13 25 what Mr. -- City Attorney Bell's role in the protective

10:09:18 1 order hearing was in a vacuum. And the Court, of
10:09:22 2 course, can take judicial notice, in the context of a
10:09:25 3 motion to dismiss, of the related proceedings so that we
10:09:28 4 have context for his role there. And it becomes clear
10:09:31 5 that his role there was related to the criminal
10:09:33 6 proceedings because Nansu Roddy, who was moving for the
10:09:37 7 protective order at that time, was also a key witness in
10:09:40 8 a criminal matter, the criminal trespass case, and the
10:09:43 9 victim of a crime that was under investigation with the
10:09:45 10 assistance of City Attorney Bell, and that is the felony
10:09:49 11 intimidation charge that was subsequently filed against
10:09:51 12 Mr. Spreadbury for the exact conduct that was at issue
10:09:55 13 in the order of protection hearing. And for those
10:09:58 14 reasons, of course, it was absolutely appropriate for
10:10:03 15 City Attorney Bell to participate in that hearing. And
10:10:06 16 indeed, Mr. Spreadbury himself was represented by his
10:10:09 17 public defender who had been assigned to him in the
10:10:13 18 criminal trespass case.

10:10:16 19 Then, of course, it is that immunity
10:10:22 20 applies. And with that I'll leave it to the briefs on
10:10:24 21 immunity, as that's been the issue of multiple legal
10:10:30 22 briefs by Mr. Spreadbury and myself, as well as in
10:10:33 23 related cases on that issue, so I don't think I can add
10:10:36 24 anything to that.

10:10:37 25 THE COURT: Thank you. Mr. Spreadbury.

10:10:39 1 MR. SPREADBURY: Yes, Your Honor. Thank
 10:10:46 2 you. If it pleases the Court, I just have a few
 10:10:50 3 comments. We can say all we want to that Ken Bell was
 10:10:54 4 acting within his authority and there's all these
 10:10:58 5 criminal charges. Well, if you think that sitting on a
 10:11:02 6 public park owned by the City of Hamilton in a public
 10:11:06 7 place with, I don't know what you'd call it, liberty,
 10:11:10 8 freedom of access, definitely freedom of assembly, which
 10:11:15 9 is in both constitutions of the flags on either side of
 10:11:18 10 you, and if you think asking a librarian for help is a
 10:11:22 11 felony, then, you know, let's talk about the criminal
 10:11:25 12 matter.

10:11:26 13 In fact, Ken Bell was in a civil proceeding
 10:11:29 14 like we are right now and there was no criminal stuff
 10:11:33 15 going on. I hate to use the word "stuff." But it's
 10:11:37 16 very clear in MCA 7-4-4604, which are the duties of a
 10:11:45 17 city attorney. None of them listed, and I have that in
 10:11:50 18 my pleadings, Your Honor, none of them listed include
 10:11:56 19 representing an employee who is not a city employee or
 10:12:00 20 even entering a civil courtroom like we're here right
 10:12:04 21 now. None of those duties. They are -- the duties are
 10:12:08 22 to prosecutor for the city, to draft ordinances for the
 10:12:12 23 city, and do whatever other services that the City
 10:12:17 24 Council, upon a vote, deems the city attorney should do.
 10:12:20 25 And I might be missing one there, but it's definitely

10:12:23 1 not being in a civil courtroom.

10:12:25 2 I'm going to go on to the conflict of
10:12:29 3 interest that Mr. Bell engaged in. He sat in a criminal
10:12:36 4 courtroom, as I was being arraigned, as a stand-in
10:12:40 5 prosecutor on November 10th in Justice Clute's
10:12:46 6 courtroom, and then on November 20th he was in this
10:12:52 7 aforementioned civil hearing on behalf of Nansu Roddy,
10:12:56 8 which she is not a city employee. She is an employee of
10:13:00 9 the Bitterroot Public Library, which is an independent
10:13:03 10 library district who gets funding from the City,
10:13:05 11 however, she is not an employee of the City of Hamilton.
10:13:10 12 So he prosecuted one party ten days prior, and then came
10:13:14 13 in to, I guess you'd call it defended or represented
10:13:20 14 non-city business on November 20th, 2009, in Municipal
10:13:25 15 Court in Hamilton. Just as a layman, that appears to
10:13:30 16 me -- oh, and then we have the sitting on the library
10:13:36 17 lawn prosecution. I believe there was a date sometime
10:13:38 18 in November. I can't quite remember, but he was also
10:13:41 19 the prosecutor on that case. The trial, I know, was
10:13:43 20 February 18, 2010. November -- it doesn't matter, so
10:14:02 21 I'm going to move on.

10:14:02 22 So Ken Bell acted outside of the duties, so
10:14:02 23 if you act outside of the duties, that's one of the
10:14:02 24 requirements for emotional distress is to be outrageous.
10:14:02 25 It's outrageous for Ken Bell to be in a civil courtroom

10:14:05 1 as a city attorney without including any city business.
 10:14:11 2 So that's one of the requirements for emotional distress
 10:14:15 3 cases. I've already talked about the conflict of
 10:14:19 4 interest.

10:14:23 5 It's a well-established fact that
 10:14:25 6 prosecutors have no immunity in civil courtrooms.
 10:14:29 7 Mr. Corn is sitting right here. He has no immunity in
 10:14:32 8 this civil courtroom. He's the prosecutor for Ravalli
 10:14:35 9 County. If he were to say something to me or anything
 10:14:40 10 else, that could be used as defamation. That could be
 10:14:43 11 used as misrepresentation. You know, one of his
 10:14:47 12 deputies could say, which they have, if this were
 10:14:51 13 anybody else but Mike Spreadbury, we would have dropped
 10:14:55 14 this case. So when they say something like that, they
 10:14:58 15 only have qualified immunity, if anything. So there's
 10:15:01 16 certain stages of immunity. And in a civil courtroom,
 10:15:06 17 there's no immunity. So Ken Bell, it's a
 10:15:09 18 well-established fact and observed, in a civil
 10:15:12 19 courtroom, no immunity.

10:15:17 20 The other thing I'll get into is the fact
 10:15:19 21 that there is a burden of proof. And respectfully, I'm
 10:15:24 22 getting from the defense counsel that, it's just in her
 10:15:28 23 pleadings, that there is immunity. I don't see any
 10:15:34 24 burden there. I don't see any proof that, okay, he was
 10:15:37 25 in a civil courtroom, here's how he has immunity right

10:15:41 1 there in that courtroom. If he's outside of his duties
 10:15:44 2 and he's also in a civil courtroom, he's lost in space,
 10:15:49 3 Your Honor. He has no immunity.

10:15:55 4 Again, *Smith* on behalf of *Smith Butte-Silver*
 10:15:58 5 *Bow*, 1994, "Prosecutorial immunity does not shield
 10:16:01 6 prosecutor from civil liability for all facts or
 10:16:04 7 omissions." Definitely with probable cause here -- I'm
 10:16:08 8 standing on public property. Maybe Mr. Bell would like
 10:16:12 9 to charge me with trespassing today. I don't know. It
 10:16:14 10 would be another year of fun. I don't know. But if
 10:16:19 11 there's no probable cause, immunity stops dead. Just
 10:16:22 12 stops.

10:16:26 13 And in a situation where Bell is in a
 10:16:34 14 November 20th hearing for an order of protection, there
 10:16:38 15 is an argument that could be made that there's no
 10:16:41 16 probable cause for that because there is already
 10:16:45 17 indiscrepancies (sic) with the testimony of the
 10:16:52 18 detention of Nansu Roddy, what she made with the police
 10:16:54 19 and what she did with -- sworn to a judge. So there's a
 10:17:01 20 lot of things going on here where there's some
 10:17:02 21 improprieties. I've already asked for official
 10:17:06 22 misconduct of Mr. Bell to this Court. I don't get an
 10:17:12 23 answer. I have in the docket because I believe it
 10:17:14 24 happened.

10:17:15 25 I'll kind of end with the fact that there is

10:17:17 1 no criminal case involved here. November 20th, 2009 was
10:17:21 2 a civil proceeding. I was not allowed to speak. I was
10:17:26 3 advised by my counsel, who had just showed up at that
10:17:29 4 time that he wasn't prepared. We have another criminal
10:17:32 5 case involving this same incident. So I wasn't allowed
10:17:36 6 to speak to the fact that there was no danger involved.
10:17:41 7 There was no danger at all. So this wasn't a criminal
10:17:44 8 case. Trespassing is not a crime on public property if
10:17:50 9 you're sitting peacefully and it's open access to the
10:17:53 10 public. And I'll just end with the fact that this is
10:17:58 11 probably the easiest decision to make because Ken Bell
10:18:01 12 was in a civil courtroom. There's no immunity to
10:18:07 13 prosecutors, Your Honor, in a civil courtroom. It
10:18:09 14 doesn't get any clearer than that. And I'd like to
10:18:13 15 respect the Court and I hope we move forward with this
10:18:16 16 case.

10:18:16 17 If there is immunity assigned or dismissal
10:18:18 18 assigned, I'm going to ask the higher court to look at
10:18:21 19 this because I feel strongly that the immunity is
10:18:26 20 something that isn't assigned in a civil courtroom and
10:18:29 21 it should be established in this court. And I thank you
10:18:31 22 for your time.

10:18:33 23 THE COURT: Very well, Miss Jones, you may
10:18:34 24 conclude.

10:18:35 25 MS. JONES: I've already briefed the scope

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of the duties of the city attorney, which includes appearances in civil matters. There is no limitation on immunity or the duties of a prosecutor to purely criminal matters. There is no case or statute that says that. This was a city business case because the moving party for the protective order was the victim of a crime and was a key witness in another crime, and so it was clearly related to city business. And we can take it as true his allegation that she wasn't a city employee. We can take all of his allegations as true. The fact remains that given judicial notice of related proceedings, that Mr. Bell was acting in his scope as city attorney; that he was entitled to -- is entitled to immunity for his actions in that regard. Thank you.

THE COURT: The matter is deemed submitted. The Court will issue a written ruling in that matter.

(Proceedings concluded.)

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STATE OF MONTANA)
) ss.
COUNTY OF RAVALLI)

I, Tamara Stuckey, Official Court Reporter for the State of Montana, do hereby certify:

That I was duly authorized to and did report the proceedings in the above-entitled cause;

That the foregoing pages of this transcript constitute a true and accurate transcription of my stenotype notes.

I further certify that I am not an attorney, nor counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand on this 2nd day of September, 2011.

T. Stuckey

Tamara Stuckey
Official Court Reporter
State of Montana
Twenty-First Judicial District