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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,
CITY OF HAMILTON, LEE
ENTERPRISES, INC., and BOONE
KARLBERG P.C.

Defendants.

Cause No. CV-11-064-M-DWM

**BRIEF IN SUPPORT OF
BOONE KARLBERG P.C.'S
MOTION TO DISMISS**

Defendant Boone Karlberg P.C. respectfully submits this brief in support of its motion to dismiss all claims against Boone Karlberg P.C., William L. Crowley

and Natasha Prinzing Jones (collectively “Boone Karlberg”) for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff alleges Boone Karlberg defamed him in court pleadings. Court pleadings are privileged under Montana law, and, therefore, by statute cannot constitute defamation nor can privileged statements in court pleadings support Plaintiff’s other allegations, if any, against Boone Karlberg. Thus, even if Plaintiff’s factual allegations were taken as true, Plaintiff’s claims against Boone Karlberg cannot succeed. Dismissal of all allegations against Boone Karlberg should be granted.

I. FACTUAL BACKGROUND

In May or June 2009, Plaintiff Michael Spreadbury met with Senior Librarian Nansu Roddy at the Bitterroot Public Library (the “library”). [See Amended Complaint (“Am. Cmplt.”), p. 6, ¶ 31.] Plaintiff requested that a handwritten letter written by another person detailing local government corruption be placed on the reserve shelf of the library. *Id.* Ms. Roddy, on behalf of the library, refused. *Id.* After multiple interactions with library staff, Plaintiff was banned from the library. [See Am. Cmplt., p. 6, ¶¶ 32-35.] Despite the ban, witnesses reported to local law enforcement that Plaintiff returned the library property, and

Plaintiff was subsequently charged with criminal trespass. [See Am. Cmpl., p. 7, ¶¶ 43-46.]

While the criminal trespass charge was pending, Plaintiff approached Ms. Roddy outside the library, and, as a result of that encounter, Ms. Roddy sought and obtained an Order of Protection against Plaintiff. [See Joint Answer of Defendants Bitterroot Public Library and City of Hamilton to Amended Complaint (“City Ans.”), p. 6, ¶ 21.] Plaintiff repeatedly attempted to modify, re-litigate or otherwise collaterally attack the Order of Protection. [See City Ans., pp. 6-7, ¶ 21.] All attempts were denied, including a Petition for Rehearing where the Montana Supreme Court warned Plaintiff that further legal filings against Ms. Roddy “may be sanctioned by the imposition of costs, attorney’s fees and/or other monetary or non-monetary penalties under M.R.App.P. 19(5).” *Id.*

Based on Plaintiff’s encounter with Ms. Roddy, Plaintiff was charged with felony intimidation. *Id.* Plaintiff pleaded no contest to the felony intimidation charge and was sentenced on October 20, 2010. *Id.* Plaintiff has appealed the felony conviction and the sentence has been stayed pending the appeal.

II. PROCEDURAL BACKGROUND

Plaintiff’s complaint arises from litigation in the State of Montana court system in which Boone Karlberg represented parties adverse to Plaintiff. It is well

settled that on a motion to dismiss, this Court may consider matters of public record which are outside the pleadings. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986). Thus, without converting this motion to summary judgment, the Court may take judicial notice pursuant to Federal Rule of Evidence 201 of the following related cases and the matters of record in those proceedings:

1. *Roddy v. Spreadbury*, DV-10-93 (Protective Order Action): Bitterroot Public Library Senior Librarian Nansu Roddy was granted an order of protection against Plaintiff on November 20, 2009, following a hearing before Hamilton City Judge Reardon. On appeal to the District Court, Judge Larson affirmed the order of protection on May 20, 2010, based upon a review of the record. Boone Karlberg represented Ms. Roddy in DV-10-93 and during Plaintiff's appeal to the Montana Supreme Court in Appellate Cause No. DA 11-0017. Relevant orders are attached hereto for the Court's convenience at Exh. A.
2. *Spreadbury v. Roddy*, DV-10-224 (Emotional Distress Case - Roddy): Plaintiff sued Nansu Roddy for infliction of emotion distress. Summary judgement was entered in favor of Ms. Roddy on October 5, 2010, and Notice of Entry of Judgment was filed and served on November 1, 2010. The time for appeal expired on or about December 3, 2010. Plaintiff did not appeal. Boone Karlberg represented Ms. Roddy in DV-10-224. Relevant pleadings and order are attached hereto for the Court's convenience at Exh. B.
3. *Spreadbury v. Bell*, DV-10-223 (Emotional Distress Case - Bell): Plaintiff sued Hamilton City Attorney Ken Bell for infliction of emotional distress. Summary dismissal was granted in favor of City Attorney Bell on September 22, 2010, and judgement was entered on September 22, 2010. The dismissal was affirmed on appeal on

April 5, 2011, in Appellate Cause No. DA-10-442. Plaintiff's petition for rehearing under Rule 20 is pending. Boone Karlberg represented City Attorney Bell in DV-10-223 and presently represents City Attorney Bell in Appellate Cause No. DA-10-442. Relevant pleadings and orders are attached hereto for the Court's convenience at Exh. C.

4. *State v. Spreadbury*, DC-09-154 (Felony Intimidation Case): Plaintiff pleaded no contest to Felony Intimidation in violation of Mont. Code Ann. § 45-5-203 and was sentenced on October 21, 2010, to one year supervised release and time served of 21 days. Relevant orders are attached hereto for the Court's convenience at Exh. D.

It is Boone Karlberg's representation of City Attorney Bell and Ms. Roddy in matters 1-3 above that forms the basis of Plaintiff's allegations against Boone Karlberg in this case. Because statements made in those pleadings form the basis for the current action, and because such statements are privileged as a matter of law, the motion to dismiss should be granted. Additionally, Boone Karlberg owed no legal duty to Plaintiff, and Plaintiff's Amended Complaint does not set forth an actionable claim for conspiracy against Boone Karlberg.

III. LEGAL STANDARD

A defendant may move to dismiss a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) if the plaintiff has failed to state a claim on which relief may be granted. In considering a motion to dismiss, all facts set forth in the plaintiff's complaint are to be accepted as true, and reasonable inferences are to

be drawn in favor of the plaintiff. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).

To survive a 12(b)(6) motion, the complaint does not need detailed factual allegations, but “requires more than labels and conclusions”. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* at 555. The plaintiff must plead enough facts to state a claim that is plausible on its face, not merely conceivable. *Id.* at 570. If the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has not shown that the pleader is entitled to relief. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). “The Federal Rules do not require courts to credit a complaint’s conclusory statements without reference to its factual context.” *Id.* at 1954.

IV. LEGAL ARGUMENT

Under Montana law, statements made in a judicial proceeding are privileged and cannot sustain a defamation action or other action against Boone Karlberg in this matter. Because Plaintiff’s claims are based entirely on statements made in judicial proceedings, all allegations against Boone Karlberg fail to state a cause of action on which relief can be granted, and should be dismissed pursuant to Federal Rule of Civil Procedure. 12(b)(6). Furthermore, Plaintiff cannot establish

Boone Karlberg owed him a legal duty, nor is there factual support for an alleged “conspiracy” set forth in the Amended Complaint. Finally, there is no factual or legal basis for a claim of tortious interference with prospective economic advantage, the grant of injunctive relief or the award of punitive damages.

A. Statements in Legal Pleadings Are Privileged and Cannot Support Plaintiff’s Claims Against Boone Karlberg.

Montana statute describes “defamation” as either libel or slander.

Mont. Code Ann. § 27-1-801. The statute is clear - defamation, if it exists, is one of these two things. Libel is defined under Mont. Code Ann. § 27-1-802 as a:

“[F]alse and unprivileged publication by writing, printing, picture, effigy, or other fixed representation that exposes any person to hatred, contempt, ridicule, or obloquy or causes a person to be shunned or avoided or that has a tendency to injure a person in the person’s occupation.” (Emphasis added.)

Slander is defined under Mont. Code Ann. § 27-1-803 as a:

[F]alse and unprivileged publication other than libel that:

- (1) charges any person with crime or with having been indicted, convicted, or punished for crime;
- (2) imputes in a person the present existence of an infectious, contagious, or loathsome disease;
- (3) tends directly to injure a person in respect to the person’s office, profession, trade, or business, either by imputing to the person general disqualification in those respects that the office or other occupation peculiarly requires or by imputing something with reference to the

person's office, profession, trade, or business that has a natural tendency to lessen its profit;

(4) imputes to a person impotence or want of chastity; or

(5) by natural consequence causes actual damage.

(Emphasis added).

Thus, defamation can exist under either theory – libel or slander – only if the statement in question is unprivileged. Under Mont. Code Ann.

§ 27-1-804, “A privileged publication is one made . . . in any legislative or judicial proceeding or in any other official proceeding authorized by law.”

Mont. Code Ann. § 27-1-804 (emphasis added).

The Montana Supreme Court has consistently held this statute applicable to parties' pleadings. In *Montana Bank of Circle, N.A. v. Ralph Meyers & Son, Inc.*, 769 P.2d 1208 (Mont. 1989), the Court affirmed summary judgment on claims including defamation. The Court observed: “It has long been held that statements made in a judicial proceeding are absolutely immune and a cause of action for defamation cannot be predicated thereon.” 769 P.2d at 1213 (citing *Bollinger v. Jarrett*, 406 P.2d 834 (Mont. 1965)).

In *Hauptman v. Edwards, Inc.*, 553 P.2d 975 (Mont. 1976), the Montana Supreme Court held that the trial court erred in refusing to dismiss a cross

complaint that requested damages for slander of title because of the filing of a lis pendens by plaintiff. The Court held that the “plaintiff’s publication of a lis pendens was privileged and not subject to a slander of title action.” 553 P.2d at 979.

Plaintiff’s specific allegations against Boone Karlberg refer exclusively to publications made in judicial proceedings. [See Am. Cmplt., ¶ 62 (“Defendant Boone Karlberg PC, party to cause of action William L. Crowley Esq. did publish in pleading Spreadbury threatened Bell . . .”); ¶ 63 (“Defendant Boone Karlberg PC acting in civil conspiracy with client Bell when defaming Spreadbury in published pleadings to courts in State of Montana.”); ¶ 163 (“Defendant Boone Karlberg, Crowley, Jones published, republished false information about Spreadbury being charged with criminal trespass in court documents in State of Montana after case was properly dismissed, not relevant to fact, background of pled case.”)].

Those statements are privileged under Montana law, and, therefore, by definition cannot be defamatory. Consequently, even if every fact alleged by Plaintiff were true, the plain language of § 27-1-804 and the consistent holdings of the Montana Supreme Court foreclose the possibility of recovery on Plaintiff’s

defamation claim against Boone Karlberg. Because statements made in court pleadings cannot support a defamation claim, Count 16 must be dismissed.

This same reasoning applies to all allegations against Boone Karlberg. Reading Plaintiff's Amended Complaint liberally, the only specific allegations against Boone Karlberg stem from privileged statements in pleadings. Therefore, because statements made in legal pleadings are privileged, Counts 8, 15, 16, 20, 21 and 26, and any other allegations against Boone Karlberg related to statements in pleadings, should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

B. Plaintiff's Conspiracy Claims Under § 1983 Are Unsupported.

Plaintiff alleges "Plaintiff believes, and is prepared to show...that Defendants listed, together, individually, and as pairs conspired to deprive the Constitutional rights of Plaintiff." [See Am. Cmplt., p. 5, ¶ 25, 27.] Plaintiff further alleges "two or more Defendants...contrive[d], and execute[d] criminal charges...keeping Plaintiff out of office." [See Am. Cmplt., p. 5, ¶ 26, p. 24, ¶¶ 190-94.] Finally, Plaintiff claims "Defendant Boone Karlberg PC acting in civil conspiracy with client Bell when defaming Spreadbury in published pleadings to courts in State of Montana." [See Am. Cmplt., p. 10, ¶ 63.]

However, setting aside the privileged nature of Boone Karlberg's statements, Plaintiff's allegations fail to state a claim of conspiracy against Boone Karlberg.

Plaintiff's obligation to allege his entitlement to relief requires more than labels and conclusions. That is, the allegations must rise above a speculation level, and conclusory allegations must follow from other facts alleged by Plaintiff. *Twombly*, 127 S. Ct. at 1964-65; *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992). The allegations must cross the line between conceivable and plausible. *Twombly*, 127 S.Ct. at 1974.

Just as with the unlawful anti-trust conspiracy claims in *Twombly*, 127 S. Ct. at 1961, 1964, and the attorney conspiracy allegations in *Steel v. City of San Diego*, 726 F. Supp. 2d 1172, 1182-83 (S.D. Cal. 2010), there are no factual allegations illustrating an agreement or the participation in an agreement by Boone Karlberg to violate Plaintiff's rights or achieve some other unlawful objective. *See Fonda v. Gray*, 707 F.2d 435, 438 (9th Cir. 1983) ("To prove a conspiracy between private parties and the government under § 1983, an agreement or 'meeting of the minds' to violate constitutional rights must be shown."). Stated differently, Plaintiff's conspiracy claims against Boone Karlberg do not cross the line from conceivable to plausible. *Iqbal*, 129 S.Ct. at 1949 (standard "asks for more than a sheer possibility that a defendant has acted unlawfully"). Further, as

established by the public record, Plaintiff's conflicts with the library and the criminal charges resulting from Plaintiff's conduct all occurred before Boone Karlberg undertook the representation of Roddy, City Attorney Bell and the City of Hamilton in the various lawsuits and appeals initiated by Plaintiff.

Any and all claims against Boone Karlberg based upon an alleged conspiracy lack factual support and should be dismissed.

C. Boone Karlberg Owed No Legal Duty to Plaintiff.

Count 15 alleges a cause of action for negligence, which requires the existence of a legal duty between Boone Karlberg and Plaintiff. The existence of a legal duty is a question for the Court. *Dukes v. City of Missoula*, 119 P.3d 61, ¶ 11 (Mont. 2005). "Absent a duty, breach of duty cannot be established and a negligence action cannot be maintained." *Sikorski v. Johnson*, 143 P.3d 161, ¶ 13 (Mont. 2006).

Here, Boone Karlberg did not owe Plaintiff a legal duty concerning the communication of information. Boone Karlberg did not have a professional relationship with Plaintiff and did not communicate information to Plaintiff for the purpose of guiding Plaintiff. *See, e.g., Durbin v. Ross*, 916 P.2d 758, 763-64 (Mont. 1996). Thus, absent a legal duty, any negligence-based claim against Boone Karlberg, including Count 15, should be dismissed.

D. Plaintiff's Emotional Distress Claims Lack Support.

In Counts 20 and 21, Plaintiff alleges Defendants conspired to charge Plaintiff with a crime and defamed him thereby causing emotional distress. [See Am. Cmplt., pp. 23-24.] However, as set forth above, Boone Karlberg's statements in pleadings are privileged and, thus, cannot form the basis of either negligent or intentional infliction of emotional distress. And, there is no factual support of a conspiracy claim against Boone Karlberg. Moreover, Plaintiff has not "introduced sufficient evidence to support a prima facie case for intentional infliction of emotional distress", *Sacco v. High Country Independent Press, Inc.*, 896 P.2d 411, 427 (Mont. 1995), nor has Plaintiff alleged emotional distress of actionable severity. *Renville v. Fredrickson*, 101 P.3d 773, ¶ 15 (Mont. 2004).

Both the IIED and the NEID claims in Counts 20 and 21 against Boone Karlberg lack factual support and should be dismissed.

E. Plaintiff's Claim for Tortious Interference With Prospective Economic Advantage Fails to State a Claim Against Boone Karlberg.

Plaintiff provides no facts in support of his claimed "prospects for economic advantage" or how actions by Boone Karlberg interfered with such prospects. If Plaintiff intended to reference his unsuccessful mayoral race, the public record clearly demonstrates that Boone Karlberg's involvement as counsel of record for

Roddy, City Attorney Bell and the City of Hamilton in cases initiated by Plaintiff all occurred after Plaintiff lost the election. Regardless, Boone Karlberg's statements in pleadings could not form the basis of a claim for interference with economic advantage, because such statements are privileged as a matter of law.

Thus, to the extent Plaintiff has attempted to plead a claim against Boone Karlberg for alleged tortious interference with prospective economic advantage, Plaintiff fails to state a claim against Boone Karlberg.

F. There is No Legal Basis for Injunctive Relief Against Boone Karlberg.

Again, viewing the Amended Complaint in the light most favorable Plaintiff, the only alleged improper actions by Boone Karlberg were privileged statements in Court pleadings. Because such statements are entitled to absolute immunity under the law, there is no basis from which future injunctive relief may be ordered. *See* Mont. Code Ann. §27-19-201. Likewise, there is no legal authority under which Plaintiff may civilly arrest any associate at Boone Karlberg. Count 22 lacks any factual or legal support and should be dismissed.

G. Punitive Damages Against Boone Karlberg Are Unsupported.

Plaintiff's Amended Complaint fails to set forth a claim against Boone Karlberg for conspiracy, defamation or negligence as explained above. No party is entitled to maintain a punitive damage claim as a matter of right. *Spackman v.*

Ralph M. Parsons Co., 414 P.2d 918, 924 (Mont. 1996). Plaintiff has, likewise, failed to support any allegation of actual malice against Boone Karlberg with specific facts or legal authority to bypass the privileged nature of Boone Karlberg's statements in court pleadings. Finally, Plaintiff has no independent claim for punitive damages under the law. *Paulson v. Kustom Enterprises, Inc.*, 483 P.2d 708 (Mont. 1971); *Finstad v. W.R. Grace & Co.*, 8 P.3d 778, 782 (Mont. 2000). Count 26 should be dismissed.

V. CONCLUSION

Based on the foregoing, Defendant Boone Karlberg respectfully requests that all claims and legal counts against Boone Karlberg be dismissed for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

DATED this 3rd day of May, 2011.

/s/ Natasha Prinzing Jones
Natasha Prinzing Jones
BOONE KARLBERG P.C.
Attorneys for Defendants
Bitterroot Public Library, City of
Hamilton and Boone Karlberg P.C.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 3,000 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 3rd day of May, 2011.

/s/ Natasha Prinzing Jones
Natasha Prinzing Jones
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot
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CERTIFICATE OF SERVICE

I hereby certify that, on the 3rd day of May, 2011, a copy of the foregoing document was served on the following persons by the following means:

 1 CM/ECF

_____ Hand Delivery

 2 Mail

_____ Overnight Delivery Service

_____ Fax

_____ E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
 700 South Fourth Street
 Hamilton, MT 59840

/s/ Natasha Prinzing Jones
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