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MONTANA TWENTY-FIRST JUDICIAL DISTRICT

RAVALLI COUNTY

MICHAEL E. SPREADBURY

Plaintiff,

vs.

Cause No. DV-10-222

ANGELA B. WETZSTEON and
GEORGE H. CORN,

Defendants.

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 .

For the Defendants: MICHAEL R. KING
Special Assistant Attorney General
Risk Management and Tort Defense
Division
1625 11th Avenue, Middle Floor
P.O. Box 200124
Helena, MT 59620-0124

Reported by Tamara Stuckey
Official Court Reporter, State of Montana.

FRIDAY, AUGUST 6, 2010

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THE COURT: The first case we're going to hear this morning is the *Spreadbury v. Wetzsteon and Corn*. That's a motion for summary judgment. Mr. King.

MR. KING: Yes, Your Honor.

THE COURT: This is your motion.

MR. KING: Yes.

THE COURT: And typically, the way I hear motions, this is not what a full-blown argument would be in the Montana Supreme Court or the U.S. Supreme Court. It's more like the Ninth Circuit. I allow about 10 or 15 minutes for each side to mention any point that you think needs mentioning, either it's reemphasizing something in your brief or responding to something in the other briefs. My rules during this hearing, as in all hearings, are that nobody is going to interrupt the party presenting, even if you might have an objection. You can raise that in your argument. It's your motion, Mr. King, so you get to begin and you get to close. Mr. Spreadbury, you are in the middle. And so he has the burden, Mr. King does, and he will argue twice; you will argue once. Mr. King.

MR. KING: Thank you, Your Honor. As this Court may know, this case arises out of Mr. Spreadbury's criminal prosecution on August 8th of 2006 in the

09:47:35 1 Ravalli County Justice Court. Mr. Spreadbury alleges,
09:47:39 2 as I understand his Amended Complaint, that the Ravalli
09:47:44 3 County Attorney's Office did four things that entitle
09:47:48 4 him to monetary and injunctive relief from and against
09:47:52 5 Angela Wetzsteon and George Corn. All four of those
09:47:57 6 things, those allegations, lack merit.

09:48:00 7 The first allegation, as I understand, in
09:48:03 8 the Amended Complaint is that Mr. Spreadbury alleges
09:48:07 9 that Angela Wetzsteon presented evidence during
09:48:10 10 Mr. Spreadbury's criminal trial that the Ravalli County
09:48:14 11 Attorney's Office did not provide to him prior to trial
09:48:16 12 in a timely basis this. This allegation lacks merit
09:48:22 13 because a prosecutor's alleged failure to provide
09:48:26 14 discovery in a timely manner involves a prosecutorial
09:48:30 15 function for which Miss Wetzsteon and Mr. Corn enjoy
09:48:34 16 prosecutorial immunity. And Mr. Spreadbury in that
09:48:39 17 regard has cited no legal authorities to the contrary.

09:48:42 18 Secondly, Mr. Spreadbury alleges that the
09:48:45 19 Ravalli County Attorney's Office filed a motion to
09:48:47 20 continue his trial to a period of time when he would be
09:48:51 21 out of town, thus in some way causing Justice Bailey or
09:48:56 22 Justice of the Peace Bailey to issue a Warrant for his
09:48:59 23 arrest for his failure to appear at the trial. This
09:49:04 24 allegation lacks merit because filing motions,
09:49:07 25 particularly motions for continuance, again, is a

09:49:12 1 prosecutorial function for which Mr. Corn and Miss
09:49:17 2 Wetzsteon have prosecutorial immunity. And again,
09:49:21 3 Mr. Spreadbury has cited no legal authorities to the
09:49:24 4 contrary. In addition, Mr. Spreadbury hasn't produced
09:49:30 5 any evidence that -- showing that Angela Wetzsteon or
09:49:35 6 George Corn in any way participated in Judge Bailey's
09:49:38 7 issuance of the Arrest Warrant.

09:49:43 8 And finally, the Arrest Warrant was
09:49:46 9 issued -- it was issued by Judge Bailey. It's facially
09:49:50 10 valid. There's no evidence to the contrary. And in any
09:49:52 11 event, to the extent Mr. Spreadbury is asserting a false
09:49:57 12 arrest charge, it's clearly barred by the two-year
09:49:59 13 statute of limitations.

09:50:02 14 His third allegation alleges that the
09:50:07 15 Ravalli County Attorney's Office misrepresented the
09:50:10 16 spelling of Angela Wetzsteon's last name to
09:50:13 17 Mr. Spreadbury's unspecified detriment. I'm not sure
09:50:16 18 what kind of a claim this is, but the best I could make
09:50:19 19 of it was that it was a misrepresentation claim, and the
09:50:23 20 Affidavits -- the undisputed affidavit testimony of
09:50:27 21 Angela Wetzsteon and George Corn shows that they didn't
09:50:35 22 intend by any such misspelling of Angela Wetzsteon's
09:50:39 23 last name to cause him any harm. Mr. Spreadbury
09:50:43 24 certainly hasn't produced any facts, let alone specific
09:50:46 25 facts, to the contrary.

09:50:50 1 Fourthly, Mr. Spreadbury alleges that as a
09:50:55 2 result of the first three allegations, Miss Wetzsteon
09:50:57 3 and Mr. Corn intentionally inflicted emotional distress
09:51:01 4 upon him. Obviously, if the first three allegations
09:51:04 5 lack merit, as they do, then his fourth allegation,
09:51:07 6 intentional infliction of emotional distress, lacks
09:51:11 7 merit. But more than that, you can't maintain in
09:51:15 8 Montana a claim for intentional inflection of emotional
09:51:20 9 distress when you are legally entitled to do what you
09:51:23 10 have done, and everything that George Corn and Angela
09:51:27 11 Wetzsteon have done in this case, they are legally
09:51:30 12 entitled to do as prosecutors for the State of Montana.

09:51:34 13 So all four of Mr. Spreadbury's allegations
09:51:38 14 of wrongdoing in this case lack merit. As a result of
09:51:42 15 that, this Court should grant George Corn's and Angela
09:51:48 16 Wetzsteon's Motions For Summary Judgment and dismiss
09:51:51 17 Mr. Spreadbury's Amended Complaint with prejudice.
09:51:57 18 Thank you, Your Honor.

09:51:59 19 THE COURT: Mr. Spreadbury.

09:52:00 20 MR. SPREADBURY: Thank you, Your Honor. If
09:52:02 21 it pleases the Court, I'd also like to thank the judge
09:52:05 22 for coming down to Ravalli County Twenty-First District.
09:52:10 23 I do have a few things I'd like to say. Angela
09:52:14 24 Wetzsteon, on August 8th, 2007 -- not 2006 -- was
09:52:20 25 unauthorized to practice law. She was not licensed.

09:52:24 1 She was licensed 10/9/08, is the date, so it's
09:52:32 2 October 9th of 2008, which is prior to that date. There
09:52:37 3 is also attorney witnesses, my retained attorney, that
09:52:41 4 Miss Wetzsteon was practicing without supervision, which
09:52:45 5 is in violation of the Student Practice Act issued by
09:52:49 6 the Montana Supreme Court April 30th, 1975. Without
09:52:54 7 those items, a bar license, swearing an oath to the
09:53:00 8 Constitution and the third item that I mentioned,
09:53:03 9 unsupervised, she has no immunity.

09:53:07 10 Just like I stand in front of you here
09:53:09 11 today. I'm not a prosecutor. This is a civil
09:53:11 12 proceeding. I don't want to get off track, but a
09:53:15 13 student, unsupervised, without a bar license has
09:53:20 14 no -- in the words of Mr. King, he used "legally
09:53:24 15 entitled." That's not the case whatsoever. In fact,
09:53:27 16 his office is charged with the duty of protecting the
09:53:31 17 public from unauthorized practice of law, and here he is
09:53:36 18 protecting somebody who did engage in the unauthorized
09:53:40 19 practice of law.

09:53:42 20 I submitted to the Court, and I just gave a
09:53:45 21 copy -- a second copy to opposing counsel. Here is a
09:53:50 22 certified receipt for my Complaint. Would you like to
09:53:52 23 see this, Your Honor? It was within the docket. You
09:53:52 24 may have already see it.

09:53:54 25 THE COURT: It's already in the file.

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MR. SPREADBURY: It is. You can see it if you like.

In terms of George Corn as a supervisor or in an administrator function, the Montana Supreme Court, in 1995, in *Kelman v. Losleben*, says that a prosecutor is not entitled to immunity engaged in administrative duties. If he was sitting at his desk right over here and Angela Wetzsteon was downstairs in the Justice Courts, outside of the speedy trial time period, eight months into a trial, I don't see how George Corn is entitled to any immunity whatsoever. He assigned Angela to the case and that's an administrative duty. The Supreme Court has already determined, Your Honor, that there is no immunity. There is no civil liability immunity in that situation.

I'll continue. The other thing, is as you said in the beginning, the defense counsel, Michael King, from the attorney General's Office has the burden here -- and I do realize he has a rebuttal to my statement. However it's a well-established fact, in *Morley and Walker* in the Ninth Circuit in 1999 -- I have a printout of it right here -- "an official seeking immunity bears the burden of demonstrating that immunity attaches to a particular function." I haven't seen any segment of this 2007 case where Angela Wetzsteon in

09:55:38 1 front of a justice of the peace or George Corn, wherever
09:55:42 2 he was, not in the courtroom, how that is entitled to
09:55:46 3 immunity. So I just stated a case. I just read from
09:55:51 4 the case that says that the prosecutors have the burden
09:55:56 5 of showing both reasonableness, sir, Your Honor, and
09:56:00 6 that the specific task is entitled to immunity. And I
09:56:06 7 I'd go ahead and say that George Corn assigning a
09:56:10 8 non-bar-licensed, non-supervised student is not a
09:56:12 9 reasonable decision to be made by a prosecutor. So
09:56:16 10 that's my argument why there isn't immunity -- there's
09:56:19 11 no immunity assigned to this.

09:56:22 12 Mr. King would like the Court to think that
09:56:24 13 none of my claims were intentional -- for intentional
09:56:30 14 distress have any merit. There's a photo that I think
09:56:33 15 he was talking about or some evidence he was talking
09:56:35 16 about. If something is given outside of the Rules of
09:56:39 17 Criminal Procedure, otherwise known as discovery, that
09:56:44 18 is outside of the Rules of Evidence, and so that's not
09:56:50 19 something where a counsel can say this was -- I call it
09:56:55 20 tampered evidence, which is what it was. It was
09:56:59 21 actually altered. Someone scratched their own face. It
09:57:02 22 altered my life to where my career with a very
09:57:07 23 well-established path was purposely and intentionally
09:57:12 24 destroyed, and that's what these IIED cases are all
09:57:17 25 about, is that emotional distress occurred and they were

09:57:20 1 done intentionally. I would say that assigning a
09:57:24 2 prosecutor, without a license, unsupervised, violating
09:57:29 3 the act of the Supreme Court would be an intentional
09:57:31 4 act. That's an intentional act.

09:57:33 5 Like I said before, that case, October 8th,
09:57:37 6 2008, the appearance was January 5th, so that's outside
09:57:40 7 of speedy trial completely. It's a misdemeanor. Not
09:57:45 8 only that, if I had a retained attorney, Sasha Brownlee,
09:57:49 9 in the courtroom for me, there's no need for a judge to
09:57:51 10 sign a Failure to Appear Warrant, and if Angela
09:57:55 11 Wetzsteon were in the courtroom, there's no -- she has a
09:57:59 12 duty as an officer of the Court, and if she's certified
09:58:03 13 by her dean, which she is, for two years of competent
09:58:06 14 legal school, she would know that that is her duty to
09:58:09 15 say, Your Honor, the Defendant may not be here -- this
09:58:13 16 is a misdemeanor trial. It's a well-established fact in
09:58:15 17 this Court and in this state that there is no crime of
09:58:20 18 failure to appear. There's no need for this Warrant.
09:58:23 19 So by omission, she's claiming in her Affidavit that she
09:58:27 20 didn't hear it. She didn't see it. I'm not quite sure
09:58:30 21 exactly what she's saying. She's trying to get out it.
09:58:33 22 But if she's in a courtroom and it's mentioned that
09:58:35 23 we're going to issue a warrant for failure to appear, as
09:58:39 24 a court officer, even as an assumed court officer with
09:58:43 25 the certification from her Dean, that means she has the

09:58:47 1 onerous to uphold the rules of the Court, the
09:58:52 2 constitutional rights and the State rights.

09:58:57 3 I'll finish here. The tort issue that
09:59:02 4 Michael King is bringing up says it's only two years for
09:59:06 5 false arrest. It's a well-established fact in this
09:59:09 6 State that it's four years to bring a tort claim in
09:59:15 7 front of a Court. That's why we're standing here today.
09:59:17 8 This was three years ago, 2007, and we're here within
09:59:20 9 the four-year time limit. Perhaps there's some other
09:59:24 10 requirement I'm not aware of for the two years. I know
09:59:27 11 for a fact in a federal court I can bring a tort up to
09:59:30 12 four years, and I believe it's the same in this court.

09:59:35 13 The Affidavits never said anything that she
09:59:37 14 was supervised in the courtroom. I'm referring to
09:59:39 15 Angela Wetzsteon. If a student is not supervised, I'll
09:59:45 16 just say -- I'm not going to say I was a teacher, but I
09:59:49 17 also was student teaching. My teacher was in the
09:59:53 18 courtroom. I had no power to put people in jail. I had
09:59:56 19 no power to do the things that a prosecutor can do, and
10:00:00 20 there's a very important reason to this Student Practice
10:00:03 21 Act. It's clinical instruction. You're not getting
10:00:06 22 clinical instruction when you're standing there alone.
10:00:09 23 You're not being watched. You're not being checked, and
10:00:12 24 that's the problem with this case, and this has caused
10:00:16 25 immeasurable and irreparable damage to my life, to my

10:00:21 1 future and an unbearable stress to my family. And this
10:00:28 2 is the reason why the case -- the Complaint was filed.

10:00:34 3 I don't think we need to argue on the facts
10:00:36 4 right now. We're talking about immunity. I'm going to
10:00:40 5 end with a case where even if immunity is granted, it
10:00:48 6 still doesn't give them immunity from civil liability.
10:00:54 7 *Smith* on behalf of *Smith Butte Silver Bow*, 1994,
10:00:58 8 "Prosecutor immunity does not shield a prosecutor from
10:01:00 9 civil liability for all acts or omissions." So, in
10:01:06 10 other words, even if you do find there's immunity,
10:01:08 11 there's still civil liability involved. This hearing is
10:01:11 12 not the end all for this case for a couple of reasons.
10:01:15 13 For this quote right here that they don't end with
10:01:20 14 prosecutorial immunity, but also if it gets appealed up
10:01:24 15 to the Supreme Court, they may send it right back and
10:01:27 16 say it was incorrect to issue immunity because in
10:01:34 17 *Losleben*, like I quoted earlier, the administrative
10:01:37 18 duties of someone like George Corn saying, Hey, Angela
10:01:40 19 go down to Justice Court and prosecute this case, that's
10:01:44 20 an administrative duty. And that was already
10:01:48 21 established by the Supreme Court in the state that that
10:01:51 22 doesn't bring immunity.

10:01:56 23 Also, the last thing is an action that lacks
10:01:59 24 probable cause, it stops all immunity. My attorney --
10:02:03 25 and it's well established, it's in the docket. My

10:02:05 1 attorney, Sasha Brownlee, was bringing the case for
10:02:09 2 justifiable force and a couple other constitutional
10:02:11 3 rights that are irrelevant here. But the fact that
10:02:15 4 there's probable cause issue where it was justifiable
10:02:19 5 force for this situation would totally erase immunity
10:02:24 6 for the Defendants, George Corn and Angela Wetzsteon.
10:02:28 7 This is found in American Jurisprudence Second Edition
10:02:32 8 in Section 102.

10:02:35 9 So lastly, Your Honor, I'd like to
10:02:37 10 respectfully object to the assigning of immunity to the
10:02:46 11 Defendants. I'd like that to be in the official record.
10:02:50 12 Because I feel very strongly, in the research that I've
10:02:53 13 done in cases involving -- I couldn't find any with
10:02:58 14 students, but especially with respect to Mr. Corn and
10:03:01 15 administrative duties, it's a well-established fact and
10:03:04 16 precedent in the Montana Supreme Court that no immunity
10:03:07 17 is available. So as a plaintiff here, I'm asking the
10:03:10 18 Court to enter my objection respectfully because I do
10:03:16 19 not believe, very strongly, immunity is available here
10:03:18 20 to the Defendants.

10:03:20 21 THE COURT: Very well.

10:03:22 22 MR. SPREADBURY: Thank you.

10:03:22 23 THE COURT: Mr. King.

10:03:23 24 MR. KING: Very briefly, Your Honor. Just a
10:03:25 25 couple points. First of all, I want to address the

10:03:33 1 issue of the Student Practice Rule and the argument by
10:03:38 2 Mr. Spreadbury that Miss Wetzsteon wasn't authorized
10:03:43 3 under the Rule. Mr. Spreadbury hasn't produced any
10:03:52 4 evidence that refutes any part of Angela Wetzsteon's
10:03:55 5 Affidavit concerning her qualifications under the
10:04:00 6 Student Practice Rule. It's his burden to come forward
10:04:03 7 with specific facts that refute her Affidavit and he
10:04:07 8 simply hasn't done it. Saying that she isn't authorized
10:04:16 9 is not a substitute for presenting facts that she, in
10:04:20 10 fact, wasn't authorized. So there's no factual basis
10:04:23 11 for the statement that she wasn't authorized under the
10:04:25 12 Rule in the first place.

10:04:27 13 Secondly, the argument that she needed a
10:04:34 14 supervising attorney with her during his criminal trial
10:04:38 15 is mistaken. The Student Practice Rule very clearly
10:04:44 16 states in Paragraph 2 that, quote, "An eligible law
10:04:49 17 student may also appear in any criminal matter on behalf
10:04:51 18 of the State with the written approval of the
10:04:54 19 supervising lawyer and the prosecuting attorney or his
10:04:58 20 authorized representative." And there's no dispute that
10:05:02 21 she was authorized by her boss, Mr. Corn, and
10:05:05 22 Mr. Fulbright, her supervising attorney during that
10:05:10 23 trial, to appear at that trial. The requirement for
10:05:14 24 having supervision appears in Subsection 2(a) of the
10:05:19 25 Rule, not Subsection 2(b), which I just quoted. And

10:05:24 1 that has to do with criminal defense attorneys
10:05:28 2 representing defendants who have a legal right to legal
10:05:35 3 counsel. Under those circumstances, the Rule requires
10:05:40 4 the presence of a supervising attorney, but not under
10:05:42 5 Subsection (b), which is the subsection of the rule
10:05:45 6 pursuant to which Miss Wetzsteon appeared at
10:05:48 7 Mr. Spreadbury's criminal trial.

10:05:51 8 With respect to Mr. Spreadbury's argument
10:05:55 9 that George Corn isn't entitled to prosecutorial
10:05:59 10 immunity because he's an administrative attorney or
10:06:02 11 supervising attorney, that argument was done away with
10:06:05 12 by the U.S. Supreme Court in *Van de Kamp v. Goldstein*,
10:06:10 13 which I cite on page 5 of the Reply Brief in Support of
10:06:13 14 Summary Judgment. And Mr. Spreadbury, despite all the
10:06:22 15 legal research he purports to have done, hasn't provided
10:06:24 16 this Court with any legal authorities to the contrary.

10:06:29 17 Mr. Spreadbury takes issue with a photograph
10:06:32 18 apparently. He claims it was altered by somebody. What
10:06:38 19 he has failed to do, and it's his burden to do, if he
10:06:42 20 thinks that is an issue in this case, is to present
10:06:44 21 evidence that the two people he sued, George Corn and
10:06:47 22 Angela Wetzsteon, had something to do with any such
10:06:50 23 alteration, and he hasn't produced any such evidence to
10:06:53 24 this Court in that regard.

10:06:57 25 Finally, I've been practicing in the Tort

10:07:07 1 Claims Division for the State of Montana for almost
10:07:10 2 15 years now, and it's the first I've ever heard that a
10:07:14 3 four-year statute of limitations applies to torts. This
10:07:17 4 Court is well aware there's a three-year general statute
10:07:20 5 of limitations for tort claims. In the case of a false
10:07:25 6 arrest claim, there's a two-year statute. I don't know
10:07:27 7 what legal authorities Mr. Spreadbury is relying on to
10:07:30 8 the contrary, but I do know this: He hasn't presented
10:07:34 9 any to this Court. So this Court should grant summary
10:07:38 10 judgment, and on behalf of George Corn and Angela
10:07:41 11 Wetzsteon, I would request respectfully that the Court
10:07:44 12 do so. Thank you.

10:07:46 13 THE COURT: Very well, the matter is deemed
10:07:48 14 submitted. The Court will issue a written ruling.

15 (Proceedings concluded.)
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C E R T I F I C A T E

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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 19th day of September, 2011.

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