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Attorneys for City and Library Defendants

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., BOONE
KARLBERG P.C., DR. ROBERT
BROPHY, TRISTA SMITH, NANSU
RODDY, JERRY STEELE, STEVE
SNAVELY, STEVEN BRUNER-
MURPHY, RYAN OSTER,
KENNETH S. BELL, and JENNIFER
LINT,

Defendants.

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

**DEFENDANT CITY'S BRIEF IN
OPPOSITION TO PLAINTIFF'S
CONTEMPT MOTION**

INTRODUCTION

Plaintiff has filed a “Response to Boone Contempt Claim.” [Doc. 140.] In part, he moves the Court to hold Boone Karlberg P.C. in criminal contempt. [Doc. 140, pp. 1, 4-6.] However, it would be an abuse of discretion to grant Plaintiff’s criminal contempt motion. It is not supported by the law or the record.

Fundamentally, Plaintiff cannot establish that Boone Karlberg P.C. deliberately, recklessly or willfully disregarded a clear and definite order of the Court. *U.S. v. Powers*, 629 F.2d 619, 627 (9th Cir. 1980).

DISCUSSION

Plaintiff describes his filing as “Response to Boone Contempt Claim” and his contempt motion as a cross-claim. [Doc. 140, pp. 1, 4-5.] The descriptions are confusing. While the City Defendants have filed a motion (Doc. 134) to strike a computer blog used by Plaintiff as an Exhibit in this case, the City Defendants have not filed a contempt motion directed at Plaintiff.¹

In support of his motion, Plaintiff relies on a state statute. MCA § 45-7-309. [Doc. 140, pp. 5-6.] However, state law has no application in this federal action.

¹ Defendant City of Hamilton filed a contempt motion against Plaintiff in Cause No. DV-10-639, District Court, Ravalli County, Montana.

Plaintiff seeks to hold Boone Karlberg P.C. in criminal contempt. [Doc. 140, pp. 1, 4-6.] Criminal contempt is appropriate when the actor defies public authority and willfully refuses obedience. It requires proof beyond a reasonable doubt. *Whitaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 2002). The determination rests within the Court's discretion. *Diamontiney v. Borg*, 918 F.2d 793, 795 (9th Cir. 1990). Fundamentally, to prove criminal contempt, one must show (1) a clear and definite order exists and (2) the contemnor knows of the order and the contemnor deliberately, recklessly or willfully disregarded the order. *Gates v. Shinn*, 98 F.3d 463, 467-68 (9th Cir. 1996); *U.S. v. Powers*, *supra*.

According to Plaintiff, Boone Karlberg P.C. violated a court order by submitting police reports under seal. [Doc. 140, pp. 4-5.] The argument is not supported by the record.

In its Order, filed October 20, 2011 (Doc. 125), the Court denied the City Defendants' motion for leave to file a statement of undisputed facts and associated police reports under seal. The Court determined that the City Defendants have not (1) identified the specific police reports they wanted to have filed under seal, (2) have not described the specific information within each police report that is confidential, and (3) have not articulated the requisite compelling reasons why the information should remain under seal. [Doc. 125, pp. 3-4.] Specifically, the Court stated, "Therefore, it is hereby ordered that the Defendants' motion for leave to

file their statement of undisputed facts and associated police reports under seal is denied without prejudice.” [Doc. 125, p. 4.]

As a result, the City Defendants filed their second motion to file under seal. While the brief supporting the motion generally describes the particular police reports, no police reports were filed with the Court. [Docs. 127 and 128, pp. 4-6.] Further, the supporting brief identifies that the Court denied the first motion “without prejudice.” [Doc. 128, p. 2.]

Plaintiff’s contempt motion reads, “On October 31, 2011 (TR #134), not two weeks later Defendant Boone submitted police reports, without leave, and under seal. Defendant Boone’s actions are in contempt of this Court.” [Doc. 140, p. 4.] However, contrary to Plaintiff’s argument, no police reports have been filed with the Court by the City Defendants. In summary, Plaintiff cannot show Boone Karlberg P.C. has deliberately, recklessly or willfully disregarded a clear and definite order of this Court. *U.S. v. Powers, supra*.

Plaintiff also argues that Boone Karlberg P.C. has unlawfully disclosed social security numbers. [Doc. 140, p. 4.] The matter is addressed in connection with Plaintiff’s motion for Rule 11 sanctions. [Doc. 143, pp. 2-9.] The argument is without merit. More fundamentally, Plaintiff cannot show that Boone Karlberg

P.C. deliberately, recklessly or willfully disregarded a court order on connection with the subpoenas issued in this case. *U.S. v. Powers, id.*

Plaintiff attempts to justify his use of a computer blog as an exhibit in this case. [Doc. 140, p. 3.] However, Plaintiff's argument is without merit. The blog quotes a police report which contains confidential criminal justice information. A State District Court has determined that the police report contains confidential criminal justice information and is not an initial offense report. [Doc. 135-1, pp. 7-8.] This highlights the problem with Plaintiff using the blog as an exhibit. He not only has disregarded Montana statutes on the dissemination of confidential criminal justice information, but also he has disregarded a State District Court Order.

CONCLUSION

Plaintiff's motion to hold Boone Karlberg P.C. in criminal contempt should be denied. Plaintiff cannot show Boone Karlberg P.C. deliberately, recklessly or willfully disregarded a court order. *U.S. v. Powers, supra.* In this connection, a groundless motion for sanctions is, itself, sanctionable. *See Alliance to End Repression v. City of Chicago*, 899 F.2d 582, 583-84 (7th Cir. 1990).

DATED this 14th day of November, 2011.

/s/ William L. Crowley
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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 833 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 14th day of November, 2011.

/s/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot
Public Library, City of Hamilton and
Boone Karlberg P.C.*

CERTIFICATE OF SERVICE

I hereby certify that, on the 14th day of November, 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/ William L. Crowley
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