

John W. Larson, District Judge  
Fourth Judicial District Dept. 3  
Missoula County Courthouse  
Missoula, MT 59802  
(406) 258-4773

FILED  
DEBBIE HARMON, CLERK

AUG 19 2010  
*Debbie Harmon*  
DEPUTY

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MONTANA <sup>21st</sup> ~~4th~~ JUDICIAL DISTRICT COURT, <sup>RAVALLI</sup> ~~MISSOULA~~ COUNTY

MICHAEL E. SPREADBURY,  
Plaintiff,  
vs.  
KENNETH S. BELL,  
Defendant.

Dept. 3  
Cause No. DV-10-223 /27

**OPINION AND ORDER  
GRANTING DEFENDANT BELL'S  
RULE 12(b)(6) MOTION TO  
DISMISS**

Before the Court is the Defendant Bell's Rule 12(b)(6) Motion to Dismiss. Briefs have been filed and the matter is now ready for decision.

**Background**

The Court finds the facts as the following. On April 26, 2010, Plaintiff Spreadbury filed a Complaint against Hamilton City Attorney, Defendant Kenneth Bell, for Intentional Infliction of Emotional Distress allegedly caused by Defendant examining a witness in a civil order of protection hearing on November 20, 2009, in Cause CV-2009-168 in Hamilton, Montana. On May 7, 2010, Plaintiff filed an Amended Complaint alleging that Defendant intentionally caused him emotional distress when "Bell proceeded in leading

1 the witness through gestures, to give false testimony on the interaction  
2 between Plaintiff [Spreadbury] and Petitioner [witness] which occurred on  
3 November 4, 2009." See Amended Complaint. Plaintiff seeks \$275,000.00  
4 and costs for alleged damages caused by Defendant's examination of the  
5 public librarian that resulted in an order of protection against Plaintiff.  
6

7 **Standard**

8 Pursuant to Mont. R. Civ. P. 12 (b)(6), a party may move to  
9 dismiss for failure of the pleading to state a claim upon which relief can  
10 be granted. "A complaint should not be dismissed for failure to state a  
11 claim unless it appears beyond doubt that the plaintiff can prove no set  
12 of facts in support of a claim which would entitle the plaintiff to relief.  
13  
14 *Snelsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 10, 325 Mont. 148,  
15 152, 104 P.3d 445, 449 (citing *Dukes v. Sirius Constr., Inc.*, 2003 MT  
16 152, ¶ 11, 316 Mont. 226, 231, 73 P.3d 781, 784). "A motion to  
17 dismiss under Rule 12(b)(6), M.R.Civ.P., has the effect of admitting all  
18 well-pleaded allegations in the complaint." *Id.* "In considering the  
19 motion, the complaint is construed in the light most favorable to the  
20 plaintiff and all allegations of fact contained therein are taken as true.  
21  
22 *Id.* "[S]hould defendants desire any further degree of specificity, they  
23 may obtain the same by use of the appropriate discovery devices such  
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1 as depositions, interrogatories and requests to admit." *Willison v.*  
2 *Taylor*, 194 Mont. 123, 128, 634 P.2d 1180, 1183 (1981) (citation  
3 omitted). "This Court does not favor the short circuiting of litigation at  
4 the initial pleading stage unless a complaint does not state a cause of  
5 action under any set of facts." *Id.*

### 7 Discussion

8 Defendant Bell argues that Defendant's action were related to  
9 maintaining criminal charges in directly related criminal matters, and his status  
10 as the Hamilton City Attorney renders him Immune from suit. Defendant  
11 argues that his appearance in a civil matter is not outside the scope of his  
12 position as City Attorney, nor does an appearance in a civil matter disqualify  
13 him from immunity. Defendant argues that leading a witness by gestures is an  
14 insufficient action to create intentional infliction of emotional distress claim.  
15 Defendant also argues that the Montana Supreme Court has held that parties  
16 may be judicially estopped from contesting the legal existence of a  
17 governmental entity that has operated for over one hundred years.

18 Plaintiff Spreadbury responds that Defendant is not entitled to immunity  
19 because the City of Hamilton does not exist. Plaintiff argues that Defendant is  
20 not entitled to immunity because Defendant is not a judge, Defendant's  
21 actions occurred in a civil courtroom, and Nansu Roddy, the librarian, was not  
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a city employee.

1 This Court takes judicial notice of the proceedings in CV-2009-168  
2  
3 where the alleged false testimony was given and other related criminal  
4 matters. Pursuant to M.C.A. § 3-11-301, "[t]he city attorney must prosecute all  
5 cases for the violation of any ordinance and prosecute, conduct, and control all  
6 proceedings" under the city court's jurisdiction. City Attorney Bell was acting  
7 within the scope of his office when he examined the witness regarding the  
8 order of protection against Plaintiff in city court. As such, Defendant Bell is  
9 entitled to immunity from liability for actions he performs as part of his position  
10 as City Attorney. *Rosenthal v. County of Madison*, 2007 MT 277, ¶ 29, 339  
11 Mont. 419, ¶ 29, 170 P.3d 493, ¶ 29.  
12  
13

14 For the foregoing reasons,  
15

16 IT IS HEREBY ORDERED that Defendant Bell's Rule 12(b)(6) Motion  
17 to Dismiss is GRANTED, as Plaintiff can prove no set of facts which would  
18 entitle him to relief against City Attorney Bell.  
19

20 DATED this 17<sup>th</sup> day of August 2010.  
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24 \_\_\_\_\_  
25 JOHN W. LARSON, District Judge  
26

Copies of the foregoing were sent to:

8-19-10  
*Debbie Harmon*

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William Crowley  
Natahsa Prinzing Jones  
Boone Karberg P.C.  
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1 William L. Crowley  
Natasha Prinzing Jones  
2 BOONE KARLBERG P.C.  
201 West Main, Suite 300  
3 P.O. Box 9199  
Missoula, MT 59807-9199  
4 Tel: (406)543-6646

5 *Attorneys for Defendant Ken Bell*

FILED  
DEBBIE HARMON, CLERK

AUG 27 2010

DEPUTY

8 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

9 MICHAEL E. SPREADBURY,

10 Plaintiff,

11 v.

12 KENNETH S. BELL,

13 Defendant.

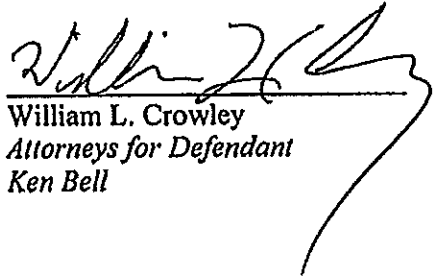
Cause No. DV-10-223

NOTICE OF ENTRY OF ORDER OF  
DISMISSAL

15 Pursuant to Rule 77(d), Mont. R. Civ. P., please take notice that an Order of Dismissal,  
16 filed August 19, 2010, has been entered in favor of Defendant Kenneth S. Bell, and against the  
17 Plaintiff. A copy of the Order of Dismissal is attached. It determines all of Plaintiff's claims  
18 against Defendant Kenneth S. Bell in the action.

19 DATED this 25<sup>th</sup> day of August, 2010.

20 BOONE KARLBERG P.C.

21   
22 \_\_\_\_\_  
23 William L. Crowley  
24 *Attorneys for Defendant*  
25 *Ken Bell*

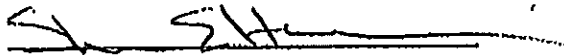
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing was duly served by U.S. Mail upon the following at  
his address this 25<sup>th</sup> day of August, 2010.

Michael E. Spreadbury  
700 South Fourth Street  
Hamilton, MT 59840

BOONE KARLBERG P.C.

By: 

1 John W. Larson, District Judge  
2 Fourth Judicial District Dept. 3  
3 Missoula County Courthouse  
4 Missoula, MT 59802  
5 (406) 258-4773

FILED  
DEBBIE HARMON, CLERK

AUG 19 2010

*Debbie Harmon*  
DEPUTY

6 MONTANA <sup>21st</sup> ~~FOURTH~~ JUDICIAL DISTRICT COURT, <sup>RAVALLI</sup> ~~MISSOULA~~ COUNTY

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Dept. 3  
Cause No. DV-10-223 /27

8 Plaintiff,

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a city employee.

1           This Court takes judicial notice of the proceedings in CV-2009-168  
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14           For the foregoing reasons,  
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16           IT IS HEREBY ORDERED that Defendant Bell's Rule 12(b)(6) Motion  
17 to Dismiss is GRANTED, as Plaintiff can prove no set of facts which would  
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19

20           DATED this 17<sup>th</sup> day of August 2010.  
21

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25           \_\_\_\_\_  
26           JOHN W. LARSON, District Judge

Copies of the foregoing were sent to:

8-19-10  
*Debbie Harmon*

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Michael E. Spreadbury  
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1 Hon. John W. Larson  
District Judge  
2 Fourth Judicial District, Dept. 3  
Missoula County Courthouse  
3 200 West Broadway  
Missoula, MT 59802  
4 (406) 258-4773

FILED  
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SEP 27 2010  
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MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

MICHAEL E. SPREADBURY,  
Plaintiff,  
v.  
KENNETH S. BELL,  
Defendant.

Cause No. DV-10-223 / 39  
JUDGMENT

On August 19, 2010, the Court granted the motion to dismiss filed by Defendant Kenneth Bell. Accordingly,

GOOD CAUSE APPEARING, judgment is hereby entered in favor of Defendant Bell.

This matter is DISMISSED WITH PREJUDICE.

ORDERED this 22<sup>nd</sup> day of September, 2010.

*[Signature]*  
Hon. John W. Larson  
District Judge

c: Michael E. Spreadbury  
Natasha Prinzing Jones and William L. Crowley

I certify that I forwarded copies of  
this instrument to counsel of record.  
9-27-10 *[Signature]*  
Debbie Harmon, Clerk  
By *[Signature]* Deputy