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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

**CITY AND LIBRARY
 DEFENDANTS' BRIEF IN
 OPPOSITION TO PLAINTIFF'S
 OBJECTION AND MOTION TO
 EXCLUDE LIABILITY EXPERTS**

INTRODUCTION

On January 18, 2012, Plaintiff filed his objection and motion to exclude the City and Library Defendants' liability experts. [Doc. No. 202.] This responds to Plaintiff's arguments concerning the liability experts. Specifically, Plaintiff's motion to exclude the liability experts should be denied. At best, Plaintiff's arguments go to the weight of the testimony and not whether the testimony is admissible. A copy of the City and Library Defendants' Liability Expert Disclosure is attached as Exhibit "A."

DISCUSSION

Plaintiff's objection and motion are addressed to Trista Smith, Kenneth Bell and Ryan Oster. Plaintiff presents no argument in connection with the opinion testimony of Dr. Robert Brophy. With this in mind, Plaintiff's arguments concerning Ms. Smith, Mr. Bell and Mr. Oster are addressed below.

A. Trista Smith

According to Plaintiff, the decision not to add Mr. Pilkey's letter to President Obama to the Bitterroot Public Library ("BPL") collection violated the right to read statement of the American Library Association ("ALA"). [Doc. 170, pp. 4-5; Doc. 170-2; Doc. 170-3; Doc. 184, p. 5.] Ms. Smith's testimony is addressed to this matter.

According to Plaintiff, Ms. Smith has limited experience, and she is not qualified to testify concerning the application of the ALA right to read statement. [Doc. 202, pp. 2-3 and 8.] Under Rule 702, Fed. R. Evid., an expert must be qualified by his or her knowledge, skill, experience, training or education to testify as an expert. Such qualification helps to insure the testimony represents specialized knowledge and is helpful to the decision maker. *See, e.g., Kumho Tire Ltd. Co. v. Carmichael*, 526 U.S. 137, 149 (1999).

Contrary to Plaintiff's argument, Ms. Smith is qualified by her knowledge, skill, experience, training and education to testify concerning the application of ALA standards. Ms. Smith holds a Master of Library Science degree from San Jose State University. She is a member in good standing of the ALA. She worked as a Library Aide for seven years in California. She was a Library Assistant at the Los Angeles City Public Library in Valenico, California, in 2009. She also was the Library Director for the Darby Community Public Library in Darby, Montana, and she is the current Library Director at BPL. (Exhibits "B"- "D" hereto.) At best, Plaintiff's argument goes to the weight of Ms. Smith's testimony, which is a matter for the fact finder. *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 150 (2000); *C & E Services, Inc. v. Ashland, Inc.*, 539 F. Supp. 2d 316, 323 (D.D.C. 2008).

Next, as Ms. Smith is BPL's Library Director and she is a Defendant in this action, Plaintiff argues she has a conflict of interest. [Doc. 202, p. 2.] However, to show a conflict of interest, Plaintiff must show: (1) he had a confidential relationship with Ms. Smith, and (2) he disclosed confidential information to Ms. Smith which is relevant to the current litigation. *Hewlett-Packard Co. v. EMC Corp.*, 330 F. Supp. 2d 1087, 1092-93 (N.D.Cal. 2004). Here, there is no evidence of a conflict, and Plaintiff has not presented any such evidence.

Plaintiff argues Ms. Smith is not independent and is biased. [Doc. 202, pp. 1-4.] However, again, Plaintiff presents no evidence in support of his argument. Certainly Ms. Smith is the current Director for BPL and is a Defendant in this action. However, she is not alleged to have committed any act, omission or statement which is alleged to have violated Plaintiff's rights. She was not employed at BPL at the time of the events in this lawsuit, and she did not participate in any decisions concerning Plaintiff. [Doc. 152, no. 56.]

Indeed, Ms. Smith's Interrogatory No. 1 asks Plaintiff to identify her acts, omissions or statements which violated Plaintiff's federal rights. In response, Plaintiff answered, "It is well established practice in 42 U.S.C. § 1983 cases to name successor of defendant in the aforementioned Defendant Gloria Langstaff no longer employed at Defendant Public Library. Defendant Trista Smith is named as Defendant Langstaff absence (sic)" Ms. Smith's Interrogatory No. 2 to

Plaintiff asked him to identify those acts, omissions or statements which violated Plaintiff's State Constitutional Rights. Plaintiff answered, "Trista Smith is lawful replacement for former Director Langstaff" In summary, Plaintiff has not presented any legitimate basis for his claims against Ms. Smith, and at best, his argument goes to the weight of her testimony. *Reeves, id.; C & E Services, Inc., id.* In summary, Plaintiff's motion to exclude Ms. Smith's testimony should be denied.

B. Kenneth Bell

As understood, a basic premise to Plaintiff's lawsuit is his unique view that he cannot be excluded from or charged with trespass upon public property. [*See*, Doc. 160; Doc. 202, p. 4.] Mr. Bell's testimony goes to this matter.

The BPL premises and building are a limited public forum. They are not open for use by all members of the public regardless of their conduct. That is, a person may be excluded as long as the exclusion serves a valid purpose, is not based on expressive conduct and other alternatives exist for the person's communication. *Souders v. Lucero*, 196 F.3d 1040, 1043 (9th Cir. 1999); *U.S. v. Adams*, 388 F.3d 708 (9th Cir. 2004).

In *Souders, supra*, Mr. Souders used the Oregon State University Library and attended public events on campus. However, following complaints about him by females, Mr. Souders was provided notice of his exclusion from the library.

When he ignored the notice, he was arrested in the library for trespass. Further, in affirming a summary judgment against Mr. Souders in his civil rights lawsuit, the Court wrote in part as follows:

Souders' argument-that he has a right to be on the OSU campus, regardless of his conduct, because he is a member of the general public and the campus is open to the public-goes too far. This cannot be the case. Whatever right he has to be on campus must be balanced against the right of the University to exclude him. The University may preserve such tranquility as the facilities' central purpose requires. *See* Laurence H. Tribe, *American Constitutional Law* 690 (1980). Not only must a university have the power to foster an atmosphere and conditions in which its education mission can be carried out, it also has a duty to protect its students by imposing reasonable regulations on the conduct of those who come onto campus.

(196 F.3d at 1045.)

Next, some of Plaintiff's arguments concerning Mr. Bell have already been determined against Plaintiff by the Courts. For example, Plaintiff argues Mr. Bell committed official misconduct by acting outside the scope of his duties at the protective order hearing involving Ms. Roddy on November 20, 2009. [Doc. 202, p. 4.] However, in a prior lawsuit by Plaintiff against Mr. Bell, the Ravalli County District Court determined that Mr. Bell was acting within the scope of his office on November 20, 2009. [Doc. 153-2, p. 4.] The state district court was affirmed by the Montana Supreme Court. *Spreadbury v. Bell*, 264 P.3d 516 ¶¶ 5-6 (Mont. 2011).

Plaintiff also argues Defendant Bell withheld public documents from Plaintiff. [Doc. 202, p. 5.] However, in a prior separate lawsuit by Plaintiff against Mr. Bell and the City of Hamilton, the Ravalli County District Court determined the documents contained “confidential criminal justice information.” [Doc. 135-1, pp. 7-8.] Specific to the “library report,” the Ravalli County District Court determined “ . . . the demands of individual privacy with respect to such statements and information clearly exceed the merits of public disclosure.” [Doc. 135-1, pp. 16-17.] Further, on November 23, 2011, the Ravalli County District Court granted a summary judgment to Mr. Bell and the City of Hamilton on Plaintiff’s damage claims, including his claims under 42 U.S.C. 1983, for an alleged withholding of documents. (Exhibit “E” hereto.) Plaintiff has appealed the decisions to the Montana Supreme Court.

Separately, Plaintiff argues Mr. Bell is biased, is unreliable, has a conflict of interest and is not qualified. [Doc. 202, pp. 2-6.] However, as with Ms. Smith, Plaintiff has not provided evidence to support the arguments. At best, Plaintiff’s argument goes to the weight of Mr. Bell’s testimony. *Reeves, supra; C & E Services, Inc., supra*. In summary, Plaintiff’s motion to exclude Mr. Bell’s testimony should be denied.

C. Ryan Oster

Mr. Oster is the Police Chief for the City of Hamilton. As reflected in the City and Library Defendants' Expert Disclosure (Exhibit "A"), Chief Oster would provide opinion testimony on whether cause existed to arrest and charge Plaintiff with trespass and intimidation.

According to Plaintiff, Chief Oster deprived Plaintiff on July 9, 2009, of the right to enter the place of business of Defendant Lee Enterprises. [Doc. 202, p. 6.] However, Plaintiff's argument has already been rejected by this Court. [Doc. 79, p. 9.] ("Those circumstances, however, fail to demonstrate that Spreadbury has a protected liberty interest in accessing the business offices of Lee Enterprises – a private entity.") [Doc. 121, p. 13.]

Next, Plaintiff argues Chief Oster obstructed justice, tampered with evidence and covered up a felony automobile accident on September 14, 2007. [Doc. 202, p. 6.] However, Plaintiff made the same argument in Cause No. DV 11-535, *Spreadbury v. Mahar, City of Hamilton, Boone Karlberg P.C.*, Montana Twenty-First Judicial District Court, Ravalli County. However, upon the Defendants' motion to declare Plaintiff a vexatious litigator, he dismissed the action. In any event, Plaintiff has not presented any evidence to support his allegation. His allegations are contrary to the police report concerning the

accident and the City Court records concerning the driver's guilty plea to a violation of the traffic rules.

Fundamentally, Plaintiff has not presented adequate evidence to support any argument that Chief Oster has a conflict of interest, is unreliable or is unqualified to provide his proposed testimony. Again, at best, Plaintiff's argument goes to the weight of Chief Oster's testimony. *Reeves, supra; C & E Services, Inc., supra*. In summary, Plaintiff's motion to exclude Chief Oster's testimony should be denied.

D. Miscellaneous Matters

Plaintiff cites *Bourjaily v. U.S.*, 483 U.S. 171 (1987), in support of his motion. [Doc. 202, p.3.] However, that decision dealt with whether an out-of-court statement of an alleged co-conspirator was hearsay evidence. It has no application here.

Plaintiff also seeks to exclude the testimony of Ms. Smith, Mr. Bell and Chief Oster under Rule 403, Fed. R. Evid. However, contrary to his burden, Plaintiff has not established why the probative value of the proposed testimony is substantially outweighed by a danger of unfair prejudice, confusion of issues, misleading the jury or undue delay. Rule 403, Fed. R. Evid. As such, his argument should be rejected.

CONCLUSION

Plaintiff's arguments concerning the proposed testimony of Ms. Smith, Mr. Bell and Chief Oster is not well taken. Therefore, his motion to exclude the testimony of these individuals should be denied.

DATED this 26th day of January, 2012.

/s/ William L. Crowley
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BOONE KARLBERG P.C.
Attorneys for City and Library Defendants

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 1,811 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 26th day of January, 2012.

/s/ William L. Crowley
William L. Crowley
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CERTIFICATE OF SERVICE

I hereby certify that, on the 26th day of January, 2012, a copy of the foregoing document was served on the following persons by the following means:

- 1, 3 CM/ECF
- _____ Hand Delivery
- 2 Mail
- _____ Overnight Delivery Service
- _____ Fax
- _____ E-Mail

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