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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., 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 SUPPORT OF MOTION *IN LIMINE***

INTRODUCTION

This supports the City and Library Defendants' motion *in limine* dated February 1, 2012. Any evidence, testimony, opinions or argument should be excluded at trial concerning the following matters:

1. Motion *in Limine* No. 1: Alleged misconduct by Boone attorneys;

2. Motion *in Limine* No. 2: Alleged public fraud and references to the Montana Municipal Interlocal Authority and its providing a defense and indemnity;

3. Motion *in Limine* No. 3: Plaintiff's alleged ostracism in Hamilton, Montana;

4. Motion *in Limine* No. 4: The Defendants caused Plaintiff to lose the Mayoral election;

5. Motion *in Limine* No. 5: Alleged bad acts of Defendants unrelated to Plaintiff;

6. Motion *in Limine* No. 6: Alleged corruption, cover-up or code of silence;

7. Motion *in Limine* No. 7: Plaintiff's opinions; and

8. Motion *in Limine* No. 8: Claims already decided against Plaintiff.

The Court has the discretionary authority to determine motions *in limine*. This is particularly important where allowing evidence or argument is contrary to

the law and would threaten to undermine the integrity and fairness of the trial. *See, e.g., Amarel v. Connell*, 102 F.3d 1495, 1515 (9th Cir. 1996); *Jacobs v. Laurel Volunteer Fire Dept.*, 26 P.3d 730 ¶ 12 (Mont. 2001). Applying these considerations, it would be an abuse of discretion to deny any portion of this motion.

DISCUSSION

A. Motion *in Limine* No. 1: Alleged Misconduct by Boone Attorneys.

On July 21, 2011, the U.S. Magistrate Judge issued findings and recommendations on Boone Karlberg P.C.'s ("Boone") motion to dismiss Plaintiff's claims against it. The determination recommended that Boone's motion to dismiss be granted and Plaintiff's claims against it be dismissed. Specifically, the findings and recommendations addressed Plaintiff's claims against Boone for alleged civil rights violations, defamation, negligence, tortious interference with prospective economic advantage, infliction of emotion distress and punitive damages. [Doc. 67, pp. 8-21.] The District Court adopted the findings and recommendations of the U.S. Magistrate Judge. [Doc. 107.]

Similarly, on August 10, 2011, the U.S. Magistrate Judge entered an order which denied Plaintiff's request to file a second amended complaint as it related to claims against Boone. Specifically, Plaintiff's claims of alleged public fraud against Boone and Defendant Bitterroot Public Library ("BPL") were rejected.

Also, additional claims of defamation against Boone were rejected. [Doc. 85, pp. 6-10 and 13-14.]

Despite these determinations, Plaintiff continues to maintain, "Defendant Boone is a defendant in this case." [Doc. 123, p. 3.] According to Plaintiff, Boone is more concerned with harassing Plaintiff in this action than in limiting "its liability as a civil rights defendant." [Doc. 137, p.4.] In this connection, Plaintiff continues to argue that Boone has defamed him prior to and in this action. [Doc. 123, p. 2; Doc. 138, p. 2; Doc. 170, p. 6; Doc. 185, pp. 2-3.] Plaintiff argues that Boone has acted with "deception," has attempted to distract "a disabled IFP *pro se*," has tampered with Plaintiff's mail and has violated Plaintiff's right to speak in this action. [*See, e.g.*, Docs. 137, pp. 2-4; Doc. 170, pp. 2 and 4.] Plaintiff argues that Boone is too arrogant to understand that chasing rabbits will not improve the defense of the case. [Doc. 195, p. 4.] In summary, according to Plaintiff, Boone has acted maliciously in conspiring to violate Plaintiff's rights, in abusing the judicial process and in engaging in bad-faith litigation conduct. [Doc. 138, pp.1-2; Doc. 185, pp. 2-3.]

Evidence, testimony, opinions and arguments about alleged misconduct of Boone attorneys is not relevant. Rules 401 and 402, Fed. R. Evid. As was stated in *Amax Coal Co. v. Adams*, 597 N.E.2d 350, 352 (Ind. App. 1992), concerning rhetorical broadsides between counsel, "material of this nature is akin to static in a

radio broadcast. It tends to blot out legitimate argument." Stated differently, evidence, testimony, opinions and arguments about alleged misconduct of Boone's attorney has no probative value, and even if it did, it's value is substantially outweighed by a danger of unfair prejudice, confusion of the issues or misleading the jury and by considerations of undue delay and waste of time. Rule 403, Fed. R. Evid. Therefore, Motion *in Limine* No. 1 should be granted.

B. Motion *in Limine* No. 2: Alleged Public Fraud and References to the Montana Municipal Interlocal Authority ("MMIA") and Its Providing Defense and Indemnity.

In his proposed Second Amended Complaint, Plaintiff alleged his "public fraud" theory. He asserted that the BPL was accepting ineligible funds as a municipality which funds were being paid to Boone to defend the action. [Doc. 21, p. 1.] Plaintiff also filed a supplement to his proposed amended complaint asserting that his public fraud theory involves the MMIA. He alleged MMIA is a publically-funded corporate entity that provides litigation defense and liability protection to some Montana municipalities. Plaintiff alleged the MMIA was improperly providing funding to pay Boone in this lawsuit and MMIA did so in prior state court actions involving Plaintiff. [Doc. 85, pp. 7-8.]

Despite the Court's prior determination rejecting Plaintiff's proposed Second Amended Complaint as it relates to alleged public fraud, Plaintiff has continued to advance his public fraud theory. [Doc. 170, p. 6, No. 4.] For

example, Plaintiff served written discovery on Boone on November 22, 2011. Three of the discovery requests were addressed to Plaintiff's public fraud theory. [Doc. 174, pp. 2-4.] Similarly, in response to discovery requests served separately on the City of Hamilton ("City") and BPL, they each denied Request for Admission No. 4. It asked the City and Library to each admit or deny that "Defendant Ken Bell set up litigation defense payment through Montana Municipal Interlocal Authority (MMIA), for Defendant Bitterroot Public Library, although eligible for coverage for litigation funds due to independent status from City of Hamilton." Also, Interrogatory No. 6 addressed to BPL asked it to explain how it is eligible for litigation expenses from MMIA "although an independent entity from the Defendant City of Hamilton . . . ."

Setting aside the Court's determination on Plaintiff's public fraud theory, he has not demonstrated a wrongful act or a violation of his rights to support his public fraud theory. In fact, Plaintiff does not have standing to assert his public fraud theory. [Doc. 24, pp. 4-9.] In any event, as with Motion *in Limine* No. 1, above, evidence or argument concerning Plaintiff's public fraud theory is irrelevant. Rule 402, Fed. R. Evid. In addition, it should be excluded under Rule 403, Fed. R. Evid.

Separately, evidence concerning a defendant's indemnity or insurance status is not admissible concerning whether he or she acted wrongfully. Rule 411, Fed.

R. Evid. The exceptions to Rule 411, Fed. R. Evid., do not apply here, and federal and state case law precludes such evidence or argument. *See, e.g., Larez v. Holcomb*, 16 F.3d 1513, 1518-19 (9th Cir. 1994) (§ 1983 Claims); and *Gurnsey v. Conklin Co., Inc.*, 751 P.2d 151, 154 (Mont. 1988).

In summary, the Court should grant Motion *in Limine* No. 2. Evidence or argument concerning Plaintiff's public fraud theory and references to MMIA, and its providing a defense or indemnity should be excluded.

C. Motion *in Limine* No. 3: Plaintiff's Alleged Ostracism in Hamilton, Montana.

Plaintiff has alleged he has been ostracized in Hamilton, Montana. Such evidence or argument should be excluded. While Plaintiff is entitled to his perception that people in Hamilton, Montana, have ostracized him because of the acts or omissions of the Defendants, as opposed to his own acts, omissions and statements, none of the Defendants have any control over the people in Hamilton, and Plaintiff's theory is speculation. Further, the probative value of such evidence is substantially outweighed by the danger of unfair prejudice, misleading the jury and waste of time. Rule 403, Fed. R. Evid. In summary, Motion *in Limine* No. 3 should be granted.

D. Motion *in Limine* 4: The Defendants Caused Plaintiff to Lose the Mayoral Election.

Plaintiff ran for Mayor of City of Hamilton. According to the *Ravalli Republic*, he lost the election on November 3, 2009. Plaintiff received 205 votes. Jerry Steele received 756 votes, nearly four times as many votes. [*Ravalli Republic*, 11/4/09, "Steele Elected Hamilton Mayor."] Plaintiff alleges that the Defendants' acts or omissions cost him the election.

Evidence or argument concerning this matter should be excluded for the same reasons as Plaintiff's ostracism allegations. The matter is speculative. Further, the probative value of such evidence is substantially outweighed by the danger of unfair prejudice, misleading the jury and a waste of time. Rule 403, Fed. R. Evid.

E. Motion *in Limine* No. 5: Defendants' Alleged Bad Acts Unrelated to Plaintiff.

On the Internet, under the heading of "We the People of Montana," Plaintiff stated that the BPL was announcing the opening of a pedophilia room using public funds. According to Plaintiff's publication, the room was inspired by Michael Jackson, was referred to by Library staff as "Neverland" and was equipped with mood lights. Nansu Roddy was alleged to have said the lighting was to help the "children feel more comfortable." It also stated that Dr. Brophy approved all of the improvements and is assured that MMIA was more than adequate to cover any

mishaps or community complaints. According to the publication, the Bitterroot Public Library would be committing the white-collar crime of public fraud if public funds were used to defend the resulting complaints. [Doc. 155-1 (Exh. RR).]

Next, in his objection to the City and Library Defendants' liability experts, Plaintiff alleges Defendant Oster obstructed justice, tampered with evidence and covered up a felony injury accident on September 14, 2007, in Hamilton, Montana. [Doc. 203, p. 6.] Likewise, on the Internet, Plaintiff has said Defendant Oster encouraged pre-trial detainees in the Ravalli County Detention Center to commit suicide.

Plaintiff should not be allowed to offer evidence or argument at trial concerning alleged bad acts of the Defendants which are unrelated to Plaintiff. Such evidence or argument is irrelevant. Rule 402, Fed. R. Evid. Even if such evidence was somehow relevant, its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury and waste of time. Rule 403, Fed. R. Evid.

Separately, such evidence or argument is inadmissible hearsay. Rule 802, Fed. R. Evid. It also is not a matter which Plaintiff has personal knowledge. Rule 602, Fed. R. Evid. Next, it is inadmissible character evidence. Rules 404 and 608, Fed. R. Evid. Specifically, evidence of other crimes, wrongs or acts is not

admissible to prove the character of a person in order to show action in conformity therewith. Rule 404(b), Fed. R. Evid. In addition, due to the dangers of character evidence, evidence of other crimes, wrongs or acts is admissible only under very limited circumstances. It must (1) prove a material point, (2) not be too remote in time, (3) be supported by sufficient evidence that the defendant actually committed the other act, and (4) be similar to the claim at issue. *See, e.g., U.S. v. Garcia-Orozco*, 997 F.2d 1302, 1304 (9th Cir. 1993). Further, the evidence must satisfy the requirements of Rule 403, Fed. R. Evid. *See U.S. v. Mayans*, 17 F.3d 1174, 1183 (9th Cir. 1994).

Here, Plaintiff cannot satisfy the above requirements with regard to his allegations of other bad acts of the Defendants unrelated to the Plaintiff. Therefore, Motion *in Limine* No. 5 should be granted.

F. Motion *in Limine* No. 6: Alleged Cover-up or Code of Silence.

On the Internet, Plaintiff has charged officials with Ravalli County and the City of Hamilton are corrupt and are engaged in cover ups and a code of silence. Evidence or argument concerning these matters should be excluded.

Evidence or argument of this kind is prejudicial and confusing. It presents the likelihood of misleading the jury. Rule 403, Fed. R. Evid. For example, courts have precluded general condemnations concerning an alleged "code of silence" among police officers because this type of argument is unfairly prejudicial. *See,*

e.g., Townsend v. Benya, 287 F. Supp. 2d 868, 876 (N.D.Ill. 2003), *but see U.S. v. Abel*, 469 U.S. 45 (1984).

Blanket allegations of alleged corruption, cover up or a code of silence induce bias and prejudice among jurors. Further, to suggest the existence of such matters is more prejudicial than probative. Therefore, Motion *in Limine* No. 6 should be granted.

G. Motion *in Limine* No. 7: Plaintiff's Opinions.

In this proceeding, Plaintiff has offered his personal opinions as if they were facts. For example, Plaintiff's statement of disputed facts (Doc. 171) in opposition to the City and Library Defendants' summary judgment motion includes the following:

1. BPL violated policy with respect to Plaintiff's submission to the Library. [Doc. 171, p. 2, nos. 3-4.] According to Plaintiff, BPL's decision not to add the letter to President Obama to its collection violated the right to read statement of the ALA. [Doc. 170, pp. 4-5; Doc. 170-2; Doc. 170-3.]

2. BPL violated Plaintiff's right to liberty and equal protection by unlawfully removing Plaintiff's library privileges. [Doc. 171, p. 2, No. 7.]

3. The trespass charge against Plaintiff is malicious prosecution. [*Id.*, p. 3, No. 9.]

4. Defendant Brophy was negligent in removing Plaintiff's library privileges and abused process in the denial of his library privileges. [*Id.*, pp. 3-4, nos. 16 and 20.]

5. Defendant Oster violated Plaintiff's Fifth Amendment right to liberty and Fourteenth Amendment right to equal protection by asking Plaintiff not to return, to enter a business open to the public at 232 W. Main, Hamilton, Montana (Lee Enterprises). [*Id.*, p. 5, No. 26.]

6. Defendant Snavely did not uphold Plaintiff's right under Montana Code to use the Library violating Plaintiff's liberty interest (Fifth Amendment). [*Id.*, p. 6, No. 36.]

7. Defense litigation for BPL is being paid by municipal insurance, a public fraud of City of Hamilton taxpayers. [*Id.*, p. 7, No. 42.]

At trial, Plaintiff should be required to testify as to the facts and not in the form of his personal opinions. Otherwise, the integrity and fairness of the trial is threatened. *See, e.g., Jacobs v. Laurel Volunteer Fire Dept.*, 26 P.3d 730 ¶ 12 (Mont. 2001) (addressing motions *in limine*).

Plaintiff's opinions are not admissible expert opinions. Allowing expert opinion evidence is based on the assumption that the testimony is both reliable and helpful to the decision maker. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 148 (1999); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592

(1993); Rule 702, Fed. R. Evid. Here, Plaintiff is not qualified by his knowledge, skill, experience, training or education to express the above and other opinions. Rule 702, Fed. R. Evid. In any event, the opinions listed are legal opinions. They state the legal implications to be given to an alleged set of circumstances. They direct or tell the jury how to decide the matter. *Elsayed Mukhtar v. California State University, Hayward*, 299 F.3d 1053, 1065, n. 10 (9th Cir. 2002). As such, Plaintiff's opinions are not admissible. In summary, Motion *in Limine* No. 7 should be granted.

H. Motion *in Limine* No. 8: Claims Already Decided Against Plaintiff.

Plaintiff asserts matter already determined against him by the courts. Testimony and argument concerning such matters should be excluded.

For example, Plaintiff seeks relief in connection with an order of protection relating to Defendant Roddy. [Doc. 79, pp. 4-5; Doc. 91, p. 3, No. 3.] However, Plaintiff's conduct relating to Ms. Roddy on November 4, 2009, led to her obtaining a protective order against him, as a well as to a criminal charge of felony intimidation. [Doc. 69, pp. 7-8.] Plaintiff was represented by an attorney at the time of the protective order hearing, and a City Court and a State District Court dismissed Plaintiff's requests for relief from the protective order. In addition, the Montana Supreme Court dismissed Plaintiff's appeal of the order of protection,

and it denied Plaintiff's petition for rehearing, warning Plaintiff not to harass Ms. Roddy. [Doc. 12-1 and Doc. 124, pp. 1-13.]

As to the charge of felony intimidation, Plaintiff pleaded no contest to the charges of intimidation. [Doc. 12-4.] Despite the plea, he appealed to the Montana Supreme Court arguing the District Court did not have subject matter jurisdiction as no probable cause existed for the criminal charge. The Montana Supreme Court rejected Plaintiff's appeal and argument. *State v. Spreadbury*, 257 P.3d 392 (Mont. 2011). In part, the Supreme Court noted the District Court had denied Plaintiff's motion to dismiss the intimidation charges for a failure to establish probable cause. [*Id.*, ¶ 4.]

On May 7, 2010, Plaintiff filed an amended complaint in *Spreadbury v. Roddy*, Cause No. DV 10-224, Montana Twenty-first Judicial District Court, Ravalli County. It alleged infliction of emotional distress by Ms. Roddy resulting from information Ms. Roddy gave a police officer and Municipal Judge. On October 7, 2010, the Ravalli County District Court entered its order granting Ms. Roddy's summary judgment motion. [Doc. 12-2, pp. 1-13.]

On May 7, 2010, Plaintiff also filed an amended complaint in *Spreadbury v. Ken Bell*, Cause No. DV-10-223, in the Ravalli County District Court. It also alleged infliction of emotional distress by Mr. Bell. However, on August 19, 2010, the state district court granted Mr. Bell's motion to dismiss the complaint.

Similarly, on April 5, 2011, the Montana Supreme Court affirmed the District Court's order. Plaintiff filed a petition for rehearing, but it was denied. Specifically, the Montana Supreme Court agreed that Mr. Bell was acting within the scope of his office as City Attorney in connection with Ms. Roddy and protective order hearing. [Doc. 12-3, pp. 1-17.]

Next, Plaintiff alleges the city is not a validly incorporated municipality. [Plaintiff's Final Amended Discovery, dated 1/30/12, pp. 3-4, nos. 15 and 18.] If so, Plaintiff's civil rights claims should be dismissed. However, in *Spreadbury v. Bell*, Cause No. DV 10-223, Ravalli County District Court, Plaintiff made the same argument. In his Second Reply to Mr. Bell's motion to dismiss, Plaintiff argued, "The City of Hamilton is not a lawful municipality in Montana." On August 19, 2012, after noting Plaintiff's argument, the Ravalli County District Court granted Mr. Bell's motion to dismiss. [Doc. 12-3, p. 6.] The determination was affirmed by the Montana Supreme Court. [Doc. 12-3, p. 12.]

In *Spreadbury v. Kenneth Bell and City of Hamilton*, Cause No. DV 10-639, in the Ravalli County District Court, Plaintiff alleged and argued that the police report, "the library report," was public criminal justice information and was an initial offense report and was wrongfully being withheld by Defendant Bell and the City. However, the Ravalli County District Court reached a different conclusion. [Doc. 135-1, pp. 7-8 and 16-17.] Further, on November 23, 2011, the

Ravalli County District Court awarded Mr. Bell and the City a summary judgment on Plaintiff's damage claims based on alleged withholding of documents, including the claims under 42 U.S.C. 1983. [Exhibit "A" hereto.]

As a matter of law, Plaintiff should not be able to contradict matter which has already been determined against him by courts. *Troutt v. Colorado Western Ins. Co.*, 246 F.3d 1150, 1156-1158 (9th Cir. 2001); *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (One cannot impugn an earlier criminal conviction under a 1983 claim). As a result, Motion *in Limine* No. 8 should be granted.

DATED this 1st day of February, 2012.

/s/ William L. Crowley
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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 3,199 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 1st day of February, 2012.

/s/ William L. Crowley
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CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of February, 2012, a copy of the foregoing document was served on the following persons by the following means:

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