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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

**RESPONSE OF BOONE
KARLBERG P.C. TO
PLAINTIFF'S REQUEST TO
RECONSIDER CLAIMS**

INTRODUCTION

Plaintiff has filed a “RESPONSE, LEAVE FILE MOTION TO RECONSIDER BOONE DEFAMATION, INJUNCTION RELIEF.” In it, Plaintiff requests leave to reconsider his claims for injunctive relief, defamation and negligence against Boone Karlberg P.C. (“Boone”). He also seeks to have Boone attorneys arrested. [Doc. 229, pp. 1, 4.] However, Plaintiff’s request does not satisfy the requirements to reconsider earlier determinations made by the Court. L.R. 7.3(a) and (b). Therefore, his request should be denied.

DISCUSSION

Plaintiff argues that Boone improperly obtained Plaintiff’s medical records through a Subpoena Duces Tecum which violated HIPAA and the Federal Privacy Act. [Doc. 229, p. 2.] However, Plaintiff’s argument has already been rejected by the Court. [Doc. 189, pp. 6-9.] Plaintiff has not presented any facts or law which are materially different from that presented to the Court at the time of its earlier orders. Also, contrary to Plaintiff’s argument, he does not present any new material facts. L.R. 7.3(a) and (b). Therefore, his request should be rejected.

Plaintiff also argues that Boone is continuing to defame him by references to his mental health records in Court documents. [Doc. 229, pp. 3-4.] However, again, Plaintiff’s argument has already been rejected by the Court. Any alleged defamation by Boone is privileged, and it does not represent state action. In

addition, the statements cannot serve as a basis for a negligence action. [Doc. 67, pp. 8-21; Doc. 107, pp. 3-12.] In any event, the quoted records with which Plaintiff is upset say what they say, and Boone has not misrepresented them. In summary, Plaintiff's argument does not satisfy the requirements for reconsideration. L.R. 7.3(a) and (b).

Next, Plaintiff argues his health information is not relevant to the case. However, the Court has rejected this argument. [Doc. 189, pp. 6-9.] Again, while Plaintiff argues that a false diagnosis has been presented, his argument is not supported by the relevant records. [Compare Doc. 229, pp. 2 and 4 with Doc. 220, pp. 3-6.]

Plaintiff seeks an injunction to stop what he sees as defamation in Court. [Doc. 229, pp. 3-4.] However, his argument has already been rejected by the Court. As has been noted by the Court, "Boone Karlberg is no longer a party to this case." Also, the claims against Boone have been dismissed, and there is no likelihood of success on those claims. [Doc. 79, p. 5; Doc. 121, pp. 4-5.] With this in mind, Plaintiff has not satisfied the requirements to reconsider his injunction request. L.R. 7.3(a) and (b).

Plaintiff seeks to have the Boone attorneys arrested. [Doc. 229, p. 4.] The remedy sought by Plaintiff is governed by state law. Rule 64(a), Fed. R. Civ. P. Here, Plaintiff has not pointed to any law which supports his request. Likewise,

he has not demonstrated an arrest of the Boone attorneys is necessary to secure the satisfaction of any potential judgment.

In fact, in *Spreadbury v. Kenneth S. Bell and City of Hamilton*, Cause No. DV-10-639, Montana Twenty-First Judicial District Court, Ravalli County, Plaintiff filed a motion for leave to have a criminal information filed against attorneys Crowley and Jones for requesting “privacy protected information.” [Exhibit A hereto.] The motion was denied as unsupported by any case law or statute. [Exhibit B hereto.] Similarly, Plaintiff has not identified any support here for his arrest request to this Court.

CONCLUSION

Plaintiff’s arguments have already been rejected by the Court. Further, Plaintiff has not satisfied the requirements to reconsider a prior determination of the Court. Therefore, Plaintiff’s request for reconsideration should be denied. Sometimes persistence can be a virtue. However, Plaintiff’s persistence in this instance is a waste of resources of Plaintiff, the Court and others.

DATED this 22nd day of February, 2012.

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

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(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 613 words, excluding the parts of the brief exempted by L.R. 7.1(d)(2)(E).

DATED this 22nd day of February, 2012.

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

CERTIFICATE OF SERVICE

I hereby certify that, on the 22nd day of February, 2012, a copy of the foregoing document was served on the following persons by the following means:

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