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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 **DEFENDANTS BITTERROOT PUBLIC LIBRARY AND CITY OF HAMILTON'S OBJECTIONS TO ORDER, FINDINGS AND RECOMMENDATIONS**

Pursuant to Rule 72(b)(2), Fed. R. Civ. P., Defendants Bitterroot Public Library ("Library") and City of Hamilton ("City") object to the U.S. Magistrate Judge's Findings and Recommendations, dated March 6, 2012. (Dkt. 250). Specifically, the Library and City object to the Magistrate's conclusions that certain state law negligence claims should survive summary judgment, and that Plaintiff has viable claims for injunctive relief and punitive damages. The Court should modify these portions of the Findings and Recommendations and grant summary judgment to the City Defendants on all of Plaintiff's claims.

BACKGROUND

This action arises from Plaintiff Michael Spreadbury's ("Spreadbury") interactions with staff and patrons of the Bitterroot Public Library in Hamilton, Montana. The undisputed facts of record are summarized in the Magistrate's Findings and Recommendations (Dkt 250), and are set forth in detail in the City Defendants' Statement of Undisputed Facts, as well as the many exhibits attached thereto. (Dkt. 152, 158). The Library and City will not repeat those facts here, but incorporate the same by reference.

On November 17, 2011, the City Defendants filed two summary judgment motions – one on Spreadbury's federal claims, and one on Spreadbury's state law claims. (Dkt. 149, 151.) On March 6, 2012, the Magistrate issued an Order,

Findings and Recommendations. (Dkt. 250.) All of Spreadbury's federal claims, and the majority of Spreadbury's state law claims, were dismissed as a matter of law. However, the Magistrate determined that certain state law negligence claims should survive. Notably, the Magistrate employed case law from Maryland and the District of Columbia to craft a new and markedly more limited interpretation of Montana's public duty doctrine. (Dkt. 250, pp. 40-42). Finding the doctrine did not apply under the facts, the Magistrate determined the City Defendants did "not present the alternative argument that Spreadbury's claims fail because the undisputed evidence of record establishes the individual Defendants acted with the requisite degree of care." (Dkt. 250, p. 39.)

Pursuant to the foregoing analysis, the Magistrate determined disputed issues of fact remained as to: (1) whether Defendant Steve Snavely negligently investigated Spreadbury's trespass on August 20, 2009 (Dkt. 250, pp. 39-43.); (2) whether Defendant Steven Bruner-Murphy negligently investigated allegations that Spreadbury was stalking the Library Director (Dkt. 250, pp. 44-46); and (3) whether Defendant Robert Brophy negligently revoked Spreadbury's library privileges (Dkt. 250, pp. 44-46). Because the Magistrate found these claims remained for trial, he declined to grant summary judgment on Spreadbury's claim for injunctive relief relating to access to the library, and declined to dispose of

Spreadbury's claim for punitive damages under Montana law. (Dkt. 250, p. 59-64.)

It was error to deny summary judgment on the few claims referenced above. First, the Magistrate did not apply Montana law on the public duty doctrine, which establishes no special relationship existed between the City Defendants and Spreadbury under the undisputed facts, and therefore no actionable duty in tort. Second, even assuming the question of duty was not dispositive, Spreadbury's negligence claims still fail because the undisputed facts show the elements of breach and causation cannot be proved. Next, because denying Spreadbury access to the library was not unconstitutional or negligent, there can be no claim for injunctive relief. Finally, the City Defendants demonstrated an absence of disputed fact on the question of malice, so no claim for punitive damages exists. Because no disputed issues of material fact remain, the Court should modify the Magistrate's Findings and Recommendations, and grant the City Defendants' motions for summary judgment in their entirety.

ANALYSIS

I. THE MAGISTRATE ERRED IN IMPOSING A NEW EXCEPTION TO MONTANA'S PUBLIC DUTY DOCTRINE.

The Magistrate determined that although Spreadbury's negligence claims may be based on acts the Library and City performed in the public interest, the

public duty doctrine "is simply inapplicable." (Dkt. 250, p. 40.) Although Spreadbury never made the argument, the Magistrate imposed a new limitation on Montana's public duty doctrine that has never appeared in any of public duty cases issued by the Montana Supreme Court. The Magistrate found "the public duty doctrine is inapplicable where a law enforcement officer is not merely performing a general duty to protect citizens from private harms, but is instead acting affirmatively towards a plaintiff and is, him or herself, the injurious force that caused harm to the plaintiff." (Dkt. 250, p. 41.) In altering Montana's public duty doctrine, the Magistrate relied on an unpublished state court decision from Maryland, *Jones v. State*, 2012 WL 555569, *10 (Md. 2012), and a federal district court decision from the District of Columbia, *Liser v. Smith*, 254 F.Supp.2d 89, 102 (D.D.C. 2003). These decisions do not apply in Montana, and would not save Spreadbury's negligent investigation claims even if they did.

In Montana, a government employee or unit owes no tort duty to any particular individual arising from functions performed in the public interest. *See, e.g., Massee v. Thompson*, 90 P.3d 394, ¶ 41 (Mont. 2004). The Montana Supreme Court has employed the public duty doctrine to define traditional tort principles for well over 20 years. *See, e.g., Phillips v. City of Billings*, 758 P.2d 772, 775 (Mont. 1988). The rationale underlying the public duty doctrine is that a

duty owed to all does not necessarily translate into a duty owed to every individual affected by government action. *See Nelson v. State*, 195 P.3d 293, ¶ 35 (Mont. 2008) (citing *Nelson v. Driscoll*, 983 P.2d 972, ¶ 21 (Mont. 1999)). The doctrine derives from the practical conclusion that any government unit "would be mired hopelessly in civil lawsuits if it were held responsible for every infraction of the law." *Prosser v. Kennedy Enterprises*, 179 P.3d 1178, ¶ 18 (Mont. 2008). Thus, the doctrine "prevents individual members of the public from using tort liability to constrain unduly a municipality's [or other government entity's] discretion to use its limited resources to promote the general welfare." *Id.*

An exception to the public duty doctrine arises where the plaintiff proves a special relationship. *See Nelson*, ¶ 36. A special relationship can be established in one of four ways: (1) by a statute intended to protect a specific class of persons, of which the plaintiff is a member, from a specific kind of harm; (2) by a government agent undertaking specific action to protect the plaintiff or the plaintiff's property; (3) by government actions that reasonably induce detrimental reliance by the plaintiff; and (4) by a state agent having actual custody of the plaintiff or a third person who harms the plaintiff. *Id.* These are the only exceptions to the public duty doctrine recognized in Montana.

The Magistrate used case law from other jurisdictions to craft a new exception to the public duty doctrine. The view that the doctrine only applies when the plaintiff is harmed by a third party or other independent source was adopted by the District of Columbia in *Liser*. That case involved an alleged unlawful arrest of the plaintiff. *Liser*, 254 F.Supp.2d at 93. In one paragraph of analysis, the court determined the public duty doctrine is inapplicable "where there is no allegation of a failure to protect," and "where the government itself is solely responsible" for the claimed injury. *Id.*

The District of Columbia's public duty doctrine is at odds with Montana's. As set forth above, the four exceptions to Montana's doctrine are well established. The District of Columbia, by contrast, views its doctrine strictly as "deal[ing] with the question whether public officials have a duty to protect individual members of the general public against harm from third parties or other independent sources." *Liser*, 254 F.Supp.2d at 102. It has followed this view since at least 1994. *See District of Columbia v. Evans*, 644 A.2d 1008, 1017, n. 8 (D.C. App. 1994). In the 17 years since it adopted this approach, however, it appears only one court has followed its lead. *See Jones, supra.*

Jones involved an attempt by two sheriff deputies to serve a search warrant at the plaintiff's home. *Id.*, *1. The Maryland court posed the following question:

"Does the public duty doctrine shield the State from a claim of negligence when its police officers commit intentional torts and/or constitutional violations?" *Id.* (emphasis added). The court determined it does not. *Id.*, *11. *Jones* is an unpublished decision subject to revision or withdrawal.

The Montana Supreme Court has never stated its public duty jurisprudence is limited to cases involving third parties or other independent sources. Montana's four special relationship exceptions have been defined and applied in a long line of cases. *See Driscoll*, ¶ 22. None suggest the limitation imposed in *Liser* is the law in Montana. *See Nelson*, ¶ 36. Indeed, the public duty doctrine has been applied in Montana where no third party tortfeasor is involved and the government actor is alleged to have caused direct injury. *See Eves v. Anaconda-Deer Lodge County*, 114 P.3d 1037, ¶ 6 (Mont. 2005) (public duty doctrine applied where County allegedly caused State Hospital patient's death by failing to search and recover him after he left the hospital); *Orr v. State*, 106 P.3d 100, ¶¶ 44-47 (Mont. 2004) (public duty doctrine applied where State failed to warn miners of dangers of asbestosis, though special relationship existed given the State's statutory duty to miners.)

Even the Magistrate has applied Montana's public duty doctrine where the government actors were alleged to be solely responsible for direct injury to the

plaintiff. In *Peschel v. City of Missoula*, 664 F.Supp.2d 1149, 1157-58 (D. Mont. 2009), an arrestee sued the city, city police chief, and city officers for an alleged unlawful arrest, excessive force, and failure to provide necessary medical care. The plaintiff alleged the government actors were solely responsible for his injuries. *Id.* No third party or independent source was involved. *Id.* Nonetheless, the Magistrate applied the public duty doctrine. *Id.*, 664 F.Supp.2d at 1166-67 (finding "Peschel's custody status satisfies the fourth special relationship exception.")[1]

In sum, Montana precedent offers no indication the public duty doctrine is limited by the view expressed by the District of Columbia and, more recently, Maryland. Nor is there a compelling reason for imposing such a limitation. Indeed, despite *Liser* and *Jones*, authority from other jurisdictions, including the Ninth Circuit, establishes the public duty doctrine applies where the government is alleged to be solely responsible for the very kind of harm alleged by Spreadbury in this case. *See, e.g., O'Brien v. City of Tacoma*, 2007 WL 2316464, *61 (9th Cir. 2007) (dismissing arrestee's claims against police officers for negligent investigation under Washington's public duty doctrine because "[t]he conduct of that investigation was the performance of a duty owed to the public at large."); *see*

[1]Although the plaintiff in *Peschel* did not argue for the application of *Liser*, the same is true here.

also, e.g., Lauer v. City of New York, 733 N.E.2d 184, 187-88 (N.Y. 2000) (man wrongly accused of homicide based on faulty investigation and autopsy report sued New York City, but claim dismissed because "[t]o sustain liability against a municipality, the duty breached must be more than that owed the public generally."); *Reno v. Chung*, 559 N.W.2d 308, 309 (Mich. App. 1997) (wrongly accused's claims for faulty investigation by medical examiner dismissed because, in performing "the public duty to detect crime and obtain evidence, defendant's relationship was with plaintiff's adversary, the prosecutor's office."

Moreover, the new exception imposed by the Magistrate is not supported by sound policy. In every case involving the public duty doctrine, the government is alleged to have caused direct injury to the plaintiff. Neither *Liser*, nor *Jones*, explains why the tort principles applicable to analyzing the government's duty should change, depending upon whether third parties or outside sources are also involved in the underlying injury-causing events. Fundamentally, it is the government's performance of a public duty that triggers application of the public duty doctrine, not its respective position in the causal chain. In each case involving the government's performance of a public duty, the core question is the same: Whether the government did something that gave rise to a special

relationship with the plaintiff, and thereby a duty in tort. Under Montana's well defined and recognized exceptions, no such relationship existed with Spreadbury.

Finally, even if *Liser* and *Jones* were the law in Montana, they would not change the result as it relates to Plaintiff's negligent investigation claims. Steve Snavely's investigation of Spreadbury's trespass, and Steven Bruner-Murphy's investigation into allegations of stalking (which Spreadbury was never even charged for), did not result in direct injury to Plaintiff. Rather, the basis for Plaintiff's claims is the officers, by negligently conducting their investigations, failed to protect him from the prosecutors, who later reviewed the evidence and charged Spreadbury with trespass. In other words, the new exception would only apply where "there is no allegation of a failure to protect," *see Liser*, 254 F.Supp.2d at 102(1), or where "police officers commit intentional torts and/or constitutional violations," *Jones*, *2. The exception has no application here, even if it was the law in Montana.

The Magistrate erred in applying Maryland and District of Columbia cases to materially change the scope of the public duty doctrine in Montana. The Court should apply the doctrine as it has been defined in the many Montana cases cited by the City Defendants. Because none of the special relationship exceptions apply, no actionable tort duty ran to Spreadbury, and his negligence claims should

be dismissed.

II. THE UNDISPUTED FACTS PROVE BREACH AND CAUSATION ARE ABSENT, EVEN ASSUMING *ARGUENDO* A DUTY EXISTED.

Rejecting the City Defendants' public duty argument, the Magistrate declined to address the negligence claims further because, according to the Magistrate, the City Defendants did not present an argument that "the undisputed evidence of record establishes the individual Defendants acted with the requisite degree of care." (Dkt. 250, p. 39.) The City Defendants believe these issues were also before the Magistrate, but acknowledge their briefing on the negligence claims was not as clear as it could have been.

Although two separate summary judgment briefs were filed, both were based on the same Statement of Undisputed Facts (Dkt. 152, 158). In addition, to avoid unnecessary repetition, the City Defendants asked the Magistrate to read the brief on Spreadbury's federal claims first,"[a]s many of the issues overlap." (Dkt. 151, p. 2.) Unfortunately, because of this overlap, the City Defendants were less than clear in moving for summary judgment on all elements of Spreadbury's state law negligence claims. Because the alleged underlying breaches were discussed elsewhere, the City Defendants focused their negligence discussion on the element of duty and, specifically, the public duty doctrine. (Dkt. 149, pp. 5-7.)

The facts and evidence submitted by the City Defendants prove there are no genuine issues of material fact regarding the elements breach and causation, and the Court should grant summary judgment on the remaining claims, even if it agrees with the Magistrate's public duty analysis. It would be unfair to deny this relief on the basis of a lack of clarity in the City Defendants' briefing, particularly when the Magistrate denied summary judgment on the duty element based on a theory not raised or discussed by either party. Granting summary judgment on the record would also be consistent with judicial economy. Trial would be an unnecessary exercise because the record already establishes Plaintiff is not entitled to relief on any claim, and the City Defendants would therefore be entitled to a directed verdict at trial. Forcing a trial under these circumstances would be inconsistent with considerations of judicial economy and the Rules' underlying purpose to "secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1.

A. Defendant Snavely Breached No Duty to Spreadbury and Caused No Damages.

Defendant Snavely is a Hamilton Police Officer. Officer Snavely responded to calls that Spreadbury was trespassing and harassing library staff and patrons on August 20, 2009. Officer Snavely filed reports about what he was told by

Spreadbury and various witnesses. Not a shred of evidence suggests Officer Snavely breached any duty or caused any damages to Spreadbury. Instead, Spreadbury argues the trespassing charge later brought by the City Attorney was incorrect because Spreadbury was on public property at the time. No facts are alleged and no argument is made that anything in Officer Snavely's reports gave the prosecutor a false impression about where the trespass occurred, or indeed about anything that transpired on August 20, 2009.

The undisputed facts are as follows. On August 20, 2009, shortly after being banned from the Bitterroot Public Library, Spreadbury was observed on Library grounds in the Library gazebo. (Dkt. 152, 21.) The Library Director, Gloria Langstaff, called law enforcement. (Dkt. 152, 21.) Officer Snavely came to the Library, spoke with Spreadbury and others, and took a report. (Dkt. 152, 21.) Spreadbury then left the library grounds. (Dkt. 152, 21.)

Officer Snavely met with Spreadbury later that same day at City Hall. (Dkt. 152, 22.) Officer Snavely warned Spreadbury not to go back to the Library. (Dkt. 152, 22.) Nonetheless, Spreadbury returned to the Library that afternoon. (Dkt. 152, 23.) He confronted a female patron, Kay Cassens, in the Library gazebo. (Dkt. 152, 23.) Cassens went into the Library and reported the incident, and Ms. Langstaff called law enforcement. (Dkt. 152, 23.) Officer Snavely and one other

officer responded, but Plaintiff fled before their arrival. (Dkt. 152, 23.) Officer Snavely interviewed Cassens, Ms. Longstaff, and prepared a report describing the interviews. (Dkt. 152, 23.)

The undisputed facts establish Officer Snavely responded to the Library's calls and filed reports detailing what he observed and what he was told. That is all. No evidence suggests Officer Snavely did anything that misrepresented what he had learned, omitted information from his report, or otherwise prompted the City Attorney to file charges that were improper. As such, even assuming a tort duty ran to Spreadbury, nothing Officer Snavely did or failed to do could be characterized as a breach of that duty. Summary judgment is proper on this independent basis as well.

B. Defendant Bruner-Murphy Breached No Duty to Spreadbury and Caused No Damages.

Steven Bruner-Murphy is also a Hamilton Police Officer. On July 15, 2009, he met with Library Director Gloria Langstaff, who wished to make a "stalking report" against Spreadbury. (Dkt. 152, 20, Ex. K.) Officer Bruner-Murphy prepared a report detailing what Ms. Langstaff told him and the documents she showed him. (Dkt. 152, 20, Ex. K.) Apart from preparing the report, Officer Bruner-Murphy did not accuse Spreadbury of "stalking," and no charges of any

kind were filed against Spreadbury relating to the report. (Dkt. 152, 20, Ex. K.) Because Ms. Langstaff said her interactions with Spreadbury had caused her emotional distress, Officer Bruner-Murphy explained the procedure for filing for an order of protection – something Ms. Langstaff opted not to do. (Dkt. 152, 20, Ex. K.) In sum, the undisputed facts leave no question that Officer Bruner-Murphy breached no duty to Spreadbury and caused no damages.

C. The Library Board Breached No Duty to Spreadbury and Caused No Damages.

As set forth in the City Defendants' extensive Statement of Undisputed Facts, the Library Board did not negligently revoke Spreadbury's library privileges. The Magistrate correctly determined the Library's decision was in accordance with the due process protections under the U.S. Constitution. (Dkt. 250, pp. 11-21.) The evidence demonstrates the decision was based on the Library Operations Policy, and the documented confrontations Spreadbury instigated with Library staff. (Dkt. 152, 10.) The action was necessary to protect Library staff from intimidation, harassment, disruption of job duties, and to ensure the enjoyment of the Library by other patrons. (Dkt. 152, 10.)

III. SPREADBURY'S CLAIM FOR INJUNCTIVE RELIEF FAILS AS A MATTER OF LAW.

The Magistrate decided Spreadbury's claim for injunctive relief reinstating his privilege to access and use the Library should survive summary judgment, but only because his negligence claim on the revocation of this library privileges remained intact. (Dkt. 250, pp. 59-60.) As set forth above, Spreadbury's negligence claims fail as a matter of law. As such, his claim for injunctive relief should be dismissed as well.

IV. SPREADBURY'S CLAIMS FOR PUNITIVE DAMAGES SHOULD BE DISMISSED.

The City Defendants demonstrated an absence of disputed fact on the question of malice. The undisputed facts of record show the City Defendants neither acted nor failed to act with actual malice. Despite this showing, the Magistrate denied the City Defendants' motion on punitive damages. Specifically, the Magistrate took issue with the City Defendants' words that "it has not been shown" that malice was present. (Dkt. 250, p. 62.) According to the Magistrate, the City Defendants should have said "Spreadbury does not have enough evidence of an essential element of punitive damages to ultimately carry his burden at trial." (Dkt. 250, p. 62.) Respectfully, any lack of precision in the City Defendants' brief

does not change the fact that there is no evidence of malice under the undisputed facts, and Spreadbury did not even attempt to rebut this showing.

Moreover, the City and Library are statutorily immune from a claim for punitive damages. Mont. Code Ann. § 2-9-105 ("The state and other governmental entities are immune from exemplary and punitive damages."). The Magistrate suggests the City and Library may only be immune from punitive damages "for their own conduct," while remaining subject to liability for the conduct of their employees. (Dkt. 250, p. 61.) Respectfully, this construction is incorrect. A governmental entity always acts through its employees. That is the only way it can act. And yet, the Montana Legislature said what it said – governmental entities like the City and Library are not liable for punitive damages. Mont. Code Ann. § 2-9-105. This construction – the only reasonable construction of a plain and unambiguous statute – is in no way inconsistent with the Montana statute providing immunity to government employees acting within the course and scope of their employment. *See* Mont. Code Ann. § 2-9-306.

CONCLUSION

For the reasons stated, the City and Library respectfully request the Court modify the Magistrate's Findings and Recommendations, and grant summary judgment on all remaining claims against them.

DATED this 19th day of March, 2012.

/s/Thomas J. Leonard
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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 3,613 words, excluding the parts of the brief exempted by L.R. 7.1(d)(2)(E).

DATED this 19th day of March, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that, on the 19th day of March, 2012, a copy of the foregoing document was served on the following persons by the following means:

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