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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 BITTERROOT
PUBLIC LIBRARY'S BRIEF IN
SUPPORT OF MOTION TO
COMPEL PLAINTIFF'S
PARTICIPATION IN PRETRIAL
ORDER**

INTRODUCTION

This brief supports the motion of Defendants City of Hamilton (“City”) and Bitterroot Public Library (“BPL”) for an order requiring Plaintiff (“Mr. Spreadbury”) to participate in drafting a Pretrial Order in the above case, including providing his contentions and his discovery, exhibit, and witness lists. It would be an abuse of discretion to deny this motion.

BACKGROUND

A trial in the above matter involving Mr. Spreadbury’s claims against the City and BPL is scheduled for June 25, 2012, at 8:30 a.m. Those claims are limited. Further, a final pretrial conference is set for June 14, 2012, at 2:15 p.m. By May 31, 2012, the parties are to submit a Final Pretrial Order. [Doc. 182, pp. 2-3.]

On May 3, 2012, a proposed pretrial order was provided to Mr. Spreadbury.

The accompanying email reads as follows:

In accordance with the Court’s Scheduling Order and the Local Rules, attached is a proposed Pretrial Order in *Spreadbury v. City of Hamilton and Bitterroot Public Library*, Cause No. CV-11-064-M-DWM. We tried to state facts in the sections for the nature of the action and the agreed facts without characterization. Please provide your contentions, exhibits lists, discovery lists and witness lists. We will insert them in the Pretrial Order. If you have other concerns with the proposed Pretrial Order, please let us know. Also, we will get you

copies of our exhibit, discovery and witness lists when they are finalized.

[Exh. A, p. 2.]

On May 7, 2012, Mr. Spreadbury phoned a paralegal at the offices of Boone Karlberg P.C. to tell her she had committed fraud. He also asked that Boone Karlberg discontinue receiving litigation funds from MMIA. Mr. Spreadbury confirmed these allegations by an email. The email concluded, "I disagree with the pretrial order and feel it is silly to think getting away with fraud is acceptable."

[Exh. A, p. 1.] In this connection, the Court denied Mr. Spreadbury leave to assert a claim of alleged public fraud involving MMIA. [Doc. 85, pp. 6-10.] In addition, evidence or argument relating to the alleged public fraud, along with evidence or argument concerning alleged misconduct by the attorneys at Boone Karlberg P.C., has been excluded at trial. [Doc. 255, p. 1, Nos. 1, 2.]

On the same day, an email was sent to Mr. Spreadbury. It disagreed with Mr. Spreadbury's assertions. It advised that, in any event, the assertions were immaterial to moving the matter, including the pretrial order, forward. It advised that if Mr. Spreadbury disagreed with something in the nature of the action or the agreed facts in the proposed pretrial order it would be removed. Also, he could propose something different. The email advised that Mr. Spreadbury could draft his own contentions. It asked Mr. Spreadbury to provide the expected length of Plaintiff's case. It requested Mr. Spreadbury to provide a list of his contentions

and his exhibit, discovery and witness lists, and to provide whatever modifications to the nature of the action, agreed facts and Plaintiff's trial time and legal issues which he proposes. Finally, it asked Mr. Spreadbury to direct his phone calls to one of the attorneys, rather than a female paralegal. [Exh. A, p. 1.]

On May 8, 2012, the exhibit lists for the City and BPL were provided to Mr. Spreadbury. [Exh. B.] On May 11, 2012, Mr. Spreadbury sent an email which reads, "Please expect a draft of a pretrial document by the end of the day. I will see a representative of your firm on Monday." In response, an email was sent to Mr. Spreadbury which reads, "What time will you be in our office so that we can schedule accordingly." [Exh. C.] Mr. Spreadbury never came to the law office on Monday, May 14, 2012. However, on that day, the witness lists for the City and BPL were provided to Mr. Spreadbury. [Exh. D.]

On May 16, 2012, Mr. Spreadbury sent an email which reads:

a pre-trial meeting has been set, and ordered by the court this week. The meeting is scheduled for **Friday May 18, 2012 1 pm** at the Russell Smith Courthouse 201 E. Broadway Missoula MT 59803, 2nd floor at commons area near clerk's office.

[Exh. E.]

That afternoon, an email was sent to Mr. Spreadbury advising that the Court had not authorized a meeting at the Federal Courthouse. The email continues:

. . . We would be happy to accommodate this meeting on Friday, May 18, 2012, at 1:00 p.m. at our offices. Please let us know at your

earliest convenience so we can reserve a conference room. In the alternative, please provide us with the information requested in our previous emails to you regarding the Pretrial Order.

[Exh. F.]

On Thursday, May 17, 2012, Mr. Spreadbury sent an email to Shannon Holdsambeck, a paralegal, alone. No attorney was copied. It reads, "No permission is needed to enter the Federal Courthouse." It also reads, "I will not meet in your office. Please confirm Friday 1:00 p.m. or be in contempt of court."

[Exh F.] An automated computer response was sent back to Mr. Spreadbury advising that Ms. Holdsambeck was out of the office until Monday, May 21, 2012.

[Exh. G.] Despite this notice, Mr. Spreadbury sent a second email to Ms.

Holdsambeck, alone. It also was not copied to any attorney. The email reads:

There are three lawyers assigned to this case from Boone. My alternate location is the Missoula Public Library, due to not ever being asked to leave, I have access.

If Mr. Leonard, or Ms. Prinzing-Jones is available to act on behalf of the defendants [sic] there needs to be an agreeable third party site like the either courthouse [sic] or the public library. There is necessary work to be completed.

[Exh. G.]

After discovering the emails to Ms. Holdsambeck, alone, an email was sent on Friday, May 18, 2012, to Mr. Spreadbury. It was sent by “William L. Crowley c/o Melissa Otis, Paralegal.” It reads:

Your email on Friday, May 11, 2012, reads, ‘Please expect a draft of a pretrial document by the end of the day. I will see a representative of your firm Monday.’ In response, I sent you an email which reads, ‘What time will you be in our office so that we can schedule accordingly.’

As you know, my paralegal, Shannon, is out of the office until Monday. Late this morning, I became aware that you have been sending emails to Shannon, alone, despite knowing that she is out of the office. We sent you a proposed pretrial order on May 7, 2012, asking you to provide your contentions and your discovery, exhibit and witness lists. We offered to provide you with blank discovery, exhibit and witness lists to assist you. We also asked you to provide alternatives, modifications and additions to the nature of the action, the agreed facts and the trial length. We told you that if you don’t agree with something in the proposed nature of the action or agreed facts, it would be removed. We told you that you draft your own contentions. On May 8, 2012, we provided you our exhibit lists. We have also provided you our witness lists. We have received nothing back from you relating to the pretrial order.

Your emails on May 12, 2012, were sent to Shannon, alone, despite the fact that you know she is out of the office until Monday. Those emails announce that we will be in contempt of court if we don’t meet with you at the Federal Courthouse. They also advise the meeting will be at the Missoula Public Library and ‘There is necessary work to be completed.’

Once again, you are welcome to come to our office. All that we ask is that you tell us what time so we can accommodate you. In the alternative, please provide us with the items requested in our email, dated May 7, 2012, so we can put it in draft form. A meeting in the Federal Courthouse has not been authorized, and a meeting at ‘an agreeable third party site’ like the Missoula Public Library is

unnecessary. There does not have to be a big production to move things forward. Further, please know that the time available next week is very restricted.

[Exh. H.]

On Sunday, May 20, 2012, Mr. Spreadbury responded. His email to Ms. Otis, with copies to the attorneys, reads as follows:

Dear Melissa,

I have communicated with Sharon [sic] Holdsambeck as assistant to Bill Crowley. I have no idea who you are, and don't really care to communicate with you.

Mr. Crowley gave me conflicting statement that he wanted to meet in the Boone offices, then said he was out of the office Thursday and Friday. We were ordered to meet by US Magistrate Lynch last week, which I tried to coordinate on several occasions.

I am assuming one of the regognized [sic] attorneys: Crowley, Prinzing-Jones, or Leonard can and will meet with me early next week preferably Monday outside Boone offices.

I'm sorry I did not read you [sic] entire email, I have no idea why you are working on this case, or contacting me.

[Exh. H.]

On Sunday afternoon, an email was sent to Mr. Spreadbury advising that a motion would be filed to compel his participation in putting a final pretrial order together. As an alternative, the motion would seek a dismissal of Mr.

Spreadbury's remaining claims against the City and BPL. He was advised that we would state in the motion that he opposes the motion unless he advises otherwise.

On May 21, 2012, Mr. Spreadbury telephoned and left a phone message. The message states that he would like to set up a conference during the week of May 21 “as he has tried to do on several occasions.” An email was sent to Mr. Spreadbury later that day. It reads:

In response to your phone message left for Tom Leonard, we can meet on Thursday afternoon (5/24) at 1 p.m. or Friday afternoon (5/25) at 1 p.m. at our offices. As indicated last week, the time available this week to devote to your case is restricted. We will reserve a conference room to accommodate the meeting. In the interim, it would be helpful if you would send us your contentions and your exhibit, discovery and witness lists, together with any suggested changes to the nature of the action, agreed facts and the time for your case. Also, in the interim, I am going forward with the motion to require you to participate in putting a pretrial order together. As indicated before, I am stating that you oppose the motion. As your case is just one of at least 20 active cases I have going, I don't have time to play games.

[Exh. I.]

DISCUSSION

A federal court has the inherent discretionary power to manage the cases before it. *F.J. Hanshaw Enterprises, Inc. v. Emerald River Development, Inc.*, 244 F.3d 1128, 1136 (9th Cir. 2001); *see also* Rule 16, Fed. R. Civ. P. Here, the Court should exercise that authority to require Mr. Spreadbury to participate in putting a final pretrial order together, including providing his contentions and witness, exhibit and discovery lists, together with providing whatever suggested modifications he may have to the proposed pretrial order provided to him on

May 3, 2012. Otherwise, the Court's Scheduling Order, the final pretrial conference and the administration of this case is thwarted. The result is unnecessary time and expense incurred by the Court, the City and BPL.

As reflected above, Mr. Spreadbury has been provided a proposed pretrial order, including the contentions of the City and BPL. He has been provided with the exhibit and witness lists of the City and BPL. Witness, discovery and exhibit forms have been offered to Mr. Spreadbury. It is anticipated, work schedules permitting, that Mr. Spreadbury will be provided the proposed jury instructions of the City and BPL this week. On the other hand, despite his representation that a pretrial document would be provided on May 11, 2012, nothing has been received from Mr. Spreadbury.

Mr. Spreadbury is welcome to come to the offices of Boone Karlberg P.C. for the purposes of meeting concerning the proposed pretrial order. All that is asked is that he provide a time so the meeting can be accommodated. Instead, he refuses to come to the law office, insisting the meeting take place at "an agreeable third party site" like the federal courthouse or the Missoula Public Library.

It is reasonable that the meeting, if any, occur at the offices of Boone Karlberg P.C. Staff, technology and forms are available to assist in putting a pretrial order together. Further, defense counsel avoids being told in a public place that he has no human value and is a waste of space as has occurred in a prior

telephone call by Mr. Spreadbury. Stated differently, there is less chance of disrupting a “third party site” which is devoted to other purposes.

In the alternative, as requested several times, Mr. Spreadbury should be ordered to provide Boone Karlberg P.C. with his contentions and his exhibit, discovery and witness lists, together with any modifications to the proposed pretrial order which was sent to him on May 3, 2012. Those will be put into another proposed pretrial order and returned to Mr. Spreadbury for his review. If necessary, Boone Karlberg P.C. can provide Mr. Spreadbury with forms for witness, exhibit and discovery lists, as has been offered to him.

If Mr. Spreadbury insists on refusing to participate in putting a pretrial order together, his remaining negligence claims against the City and BPL should be dismissed. [Doc. 250, pp. 39-46.] The Court, the City and BPL should not be forced to incur unnecessary time and expense by virtue of Mr. Spreadbury’s intransigence and his desire to reargue issues which the Court has already determined against him.

CONCLUSION

The motion of the City and BPL for an order requiring Mr. Spreadbury to participate in drafting a pretrial order in the above case should be granted. It would be an abuse of discretion to deny the motion.

DATED this 21st day of May, 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 2,347 words, excluding the parts of the brief exempted by L.R. 7.1(d)(2)(E).

DATED this 21st day of May, 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 21st day of May, 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
2 E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
700 South Fourth Street
Hamilton, MT 59840
3. Anita Harper Poe
Jeffrey B. Smith
Garlington, Lohn & Robinson, PLLP
350 Ryman Street
P.O. Box 7909
Missoula, MT 59807-7909

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