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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
DISMISS PLAINTIFF'S CLAIMS
FOR FAILURE TO COMPLY
WITH COURT ORDER**

INTRODUCTION

This supports the motion of Defendants City of Hamilton (“City”) and Bitterroot Public Library (“BPL”) to dismiss Plaintiff’s remaining claims against them for a failure to comply with the Court’s Order, filed May 23, 2012. [Doc. 289.] That order required Plaintiff to participate in preparing a final pretrial order in this case by serving on defense counsel on May 25, 2012, a written statement setting forth information required by Local Rule 16.4(a). Plaintiff has not complied with the Court Order, and he has not given any indication he plans to provide the information required by the rules and the Court. Therefore, his remaining claims against the City and BPL should be dismissed.

DISCUSSION

Under Local Rule 16.4(a), Rules of Procedure, United States District Court, District of Montana, a failure to cooperatively participate in the preparation of a final pretrial order is subject to an appropriate sanction, which may be dispositive in nature. [See Doc. 289, p. 2.] With this in mind, a dismissal of a case for a failure to comply with a court’s order is a matter of discretion for the court. Further, to dismiss a case for a failure to comply with a court order, five factors are considered. These include (1) the public’s interest in expeditious resolution of litigation, (2) the court’s need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy favoring disposition of cases on their merits, and

(5) the availability of less drastic sanctions. *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987).

The circumstances leading to the Court's prior Order (Doc. 289) are set forth in the brief supporting the City and BPL's motion to compel Plaintiff's participation in preparing a final pretrial order. [Doc. 288, pp. 2-8.] On May 23, 2012, the Court entered its order granting the motion. According to the order, Plaintiff was required to serve a written statement on defense counsel on May 25, 2012. The written statement was to set forth information, in accordance with Local Rule 16.4, concerning the nature of the action, agreed facts, the relief sought, witnesses, exhibits, discovery documents, deposition excerpts and summaries and an estimate of the time to present Plaintiff's case. [Doc. 289, pp. 2-3.] Further, the Court's prior order notes that a failure to cooperatively participate in the preparation of a final pretrial order "will result in appropriate sanction – which may be dispositive in nature – being entered against any recalcitrant party that inhibits the preparation of the final pretrial order." [Doc. 289, pp. 1-2.] The Court's prior order also states, "The failure of any party to comply with this order will result in the imposition of an appropriate sanction." [Doc. 289, p. 3.]

Plaintiff has not complied with the Court's order, filed May 23, 2012. [Doc. 289.] He has not provided the defense attorneys with the information identified in

the order. Likewise, Plaintiff has not given any indication that he intends to comply with L.R. 16.4 or the Court's prior order. On May 22, 2012, a day before the Court's order, Plaintiff sent an email to the defense attorneys. It reads:

Dear Attorneys of Record
Spreadbury v. Bitterroot Public Library et. al.

As the Plaintiff in this matter, I have chosen a route for dismissal of this case. I am assuming that a non-monetary settlement prior to preparation for trial will be accepted by your clients. My requests are few, and are contained in the settlement agreement attached. Signatures for agreement are contained in the attached motion for voluntary dismissal which complies with Rule 41 and its associated parameters.

While I have no problem with Mr. Jeffrey Smith of GLR, I have no experience with Ms. Harper Poe and assume professional conduct will occur.

As for Boone Karlberg, I wish to work with Ross Tilman, or Matt Hayhurst due to no partner, associate, or attorney of record willing to conduct a pre-trial conference as was court ordered in this case. I realize an attorney of record from Boone will have to sign this agreement.

My phone is 363-3877.

This paperwork is being served on the court with my signature, and to the Defendants.

Thank you,

Michael Spreadbury

[Exh. A to this Brief.]

In response, Mr. Leonard sent Plaintiff an email. It reads as follows:

Mr. Spreadbury,

I strongly urge you not to file the documents you forwarded as currently written. Stating that your motion for 'voluntary dismissal' is unopposed would be a misrepresentation to the Court on your part. The fact is, your motion is not a motion for 'voluntary dismissal.' Instead, it appears you are making a settlement offer, and dismissal is contingent upon my clients' agreement to certain terms. Of course, I will forward your offer to my clients for review and consideration, but it would be false to represent or imply to the Court that an agreement has been reached.

You know full well that we have bent over backwards trying to orchestrate a pretrial conference with you. Moreover, you may very well prefer to work with different attorneys in our firm, but alas, that is not your choice.

I will let you know when we have had a chance to confer with our clients regarding your offer. Before that time, please refrain from filing anything with the Court, or at least modify the documents you intend to file so that they accurately reflect the facts (i.e., the City Defendants have thus far not agreed to any of your terms). Thank you.

Thomas J. Leonard

[Exhibit B to this Brief.]

Despite Mr. Leonard's email, Plaintiff filed a motion for voluntary dismissal on May 23, 2012. [Doc. 290.] Plaintiff's motion inaccurately suggests the Defendants have reached a settlement agreement with him. Further, at a minimum, Plaintiff's motion indicates a desire to dismiss his claims rather than to comply with L.R. 16.4 or the Court's prior order. [Doc. 289.]

On May 23, 2012, a copy of the Court's prior order was emailed to Plaintiff.

[Exhibit C, p. 2 to this Brief.] On May 25, 2012, Plaintiff sent "Shannon"

Holdsambeck an email. It reads:

The case is going to be dismissed Sharon.

Please remind the three attorneys of the Crime committed by Ken Bell in a civil courtroom November 20, 2009 as an order of protection 'without finding of fact, conclusions of law' imposed that I am asking to have removed.

Make sure to have a great weekend.

I wasnt the one who refused to meet. It was your firm. That's compelling.

Michael Spreadbury

[Exhibit C, p. 2 to this Brief.]

Ms. Holdsambeck responded:

Thank you for your email. We understand your email to mean the case will be dismissed with prejudice and without condition.

[Exh. C, p. 1 to this Brief.]

In response, Plaintiff sent an email to "Shannon" Holdsambeck which reads:

Sharon,

The last email only says that the case will be dismissed. That is when your principals become more professional, and actually resolve the case as presented. The paperwork in front of the court has an agreement. Terms of the release are printed in court documents. This is informal email communications.

We can go to trial if your associates cannot either agree to the terms or meet with me in a professional matter. That could not happen for the court ordered pre-trial meeting.

I write in plain english. Lawyers interpret things, lie, and act in ways I don't understand.

Please let me know what your firm would like me to do with the 20-30 photographs of tampered mail with your logo, and address on them.

[Exhibit C, p. 1 to this Brief.]

The above emails from Plaintiff do not demonstrate any intention to comply with L.R. 16.4 or the Court's prior order. [Doc. 289.] A jury trial is set in this matter for June 25, 2012. A final pretrial conference is set for June 14, 2012. By May 31, 2012, the parties are to submit a final pretrial order, proposed jury instructions and trial briefs. Also, the parties are to notify the Court Reporter of their intent to use Real Time and notify the I.T. Supervisor of their intent to use CD Rom or videoconferencing. [Doc. 182, p. 2.]

With this in mind, Plaintiff's failure to obey the Court's prior order concerning the pretrial order prejudices the City and BPL. They are faced with attempting to comply with the Court-ordered deadlines without knowledge of the information required by Local Rule 16.4, which would shape their submittals to the Court. This interferes with the Defendants' ability to prepare for trial and threatens judicial integrity. *Malone, id.*, at 131.

Whether prejudice exists sufficient to support an order of dismissal is judged, in part, by the strength of Plaintiff's reason for noncompliance. *Malone, id.*, at 131. Here, Plaintiff does not have any reasonable excuse. His noncompliance is intentional and unjustified. Further, even if Plaintiff really believes defense counsel are liars and have refused to meet with him, he still had a duty to obey the Court's order. *Malone, id.*, at 131-32.

Plaintiff's refusal undermines the public's interest in expeditious resolution of litigation and the Court's interest in docket control. The Court, the City and BPL are faced with a potential unreasonable delay in the trial. Plaintiff's dilatory and unreasonable conduct impedes a resolution of the remaining claims in this matter, and it impedes the Court's ability to maintain a reasonable approach to the trial. *Malone, id.*, at 131.

Next, a consideration of less drastic alternatives does not mitigate against a dismissal of Plaintiff's claims against the City and BPL. *Malone, id.* In this connection, an explicit discussion of alternatives is unnecessary if the District Court actually tries alternatives before employing the ultimate sanction of dismissal. Here, the Court's prior order tried an alternative to a dismissal of claims. It also warns an appropriate sanction which may be dispositive in nature will result from a failure to comply with the order. [Doc. 289, p. 2.] A warning suffices to meet the "consideration of alternatives" factor. *Malone, id.*, at 132.

With the above in mind, it is respectfully suggested that a sanction for Plaintiff's failure to comply with the Court's prior order short of a dismissal of Plaintiff's claims is inadequate to protect the Court and the Defendants from prejudice and unnecessary time and expense. Plaintiff has not shown any indication of his intention to comply with the Court's prior order. In fact, Plaintiff has shown a history in this action of refusing to accept the authority of the Court. [See, e.g., Docs. 49, 103, 129, 160, 161, 167, 168, 194, 195, 197.]

Plaintiff's remaining claims against the City and BPI should be dismissed with prejudice. Plaintiff has not complied with the Court's order concerning providing information for the pretrial order to the Defendants.

DATED this 29th 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 1,795 words, excluding the parts of the brief exempted by L.R. 7.1(d)(2)(E).

DATED this 29th 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 29th 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
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