

William L. Crowley  
Natasha Prinzing Jones  
Thomas J. Leonard  
Tracey Neighbor Johnson  
BOONE KARLBERG P.C.  
201 West Main, Suite 300  
P.O. Box 9199  
Missoula, MT 59807-9199  
Telephone: (406)543-6646  
Facsimile: (406) 549-6804  
bcrowley@boonekarlberg.com  
npjones@boonekarlberg.com  
tleonard@boonekarlberg.com  
tnjohnson@boonekarlberg.com  
*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

**TRIAL BRIEF OF DEFENDANTS  
CITY OF HAMILTON AND  
BITTERROOT PUBLIC LIBRARY**

On behalf of Defendants City of Hamilton (“City”) and Bitterroot Public Library (“BPL”). This addresses the liability, damage and evidentiary issues expected arise at trial.

## **I. LIABILITY**

### **A. Law of the Case:**

Under the law of the case doctrine, parties are precluded from reasserting issues already determined by the Court. Exceptions exist if (1) the Court’s decision was clearly erroneous, (2) an intervening change in the law has occurred, (3) the evidence is substantially different, (4) other changed circumstances exist, or (5) a manifest injustice will result. *Mendenhall v. National Transp. Safety Bd.*, 213 F.3d 464, 469 (9<sup>th</sup> Cir. 2000); *U.S. v. Alexander*, 106 F.3d 874, 876 (9<sup>th</sup> Cir. 1997) (doctrine applies to prior decisions of the same court). A failure to apply the law of the case doctrine absent the existence of one of the exceptions is an abuse of discretion. *U.S. v. Cuddy*, 147 F.3d 1111, 1114 (9<sup>th</sup> Cir. 1998).

Under the Court’s prior determinations, limited claims against the City and BPL remain for trial. The Court identified them as follows:

1. Whether Officer Snavelly negligently (unreasonably) investigated Mr. Spreadbury’s trespass on August 20, 2009, and whether Mr. Spreadbury was damaged or injured as a result. [Doc. 250, pp. 39-43.]

2. Whether Officer Murphy negligently (unreasonably) investigated allegations Mr. Spreadbury was stalking the Library Director, and whether Mr. Spreadbury was damaged or injured as a result. [Doc. 250, pp. 39-43.]

3. Whether Plaintiff's library privileges were negligently (unreasonably) revoked, and whether Plaintiff was damaged or injured as a result. [Doc. 250, pp. 44-46.]

Among the Court's prior determinations relating to Mr. Spreadbury's federal claims, the following are noted:

1. BPL, Brophy, Smith, Roddy, Snavelly, Murphy, Oster and Steele are entitled to qualified immunity on Mr. Spreadbury's federal civil rights claims. [Doc. 250, pp. 9-30.] Bell and Lint are entitled to absolute prosecutorial immunity on Mr. Spreadbury's claim of malicious prosecution. [Doc. 250, pp. 31-32.]

2. There is no evidence Mr. Spreadbury's constitutional rights were violated, and the City and BPL are entitled to a summary judgment on the civil rights claims against them. [Doc. 250, p. 32.]

3. BPL did not have a constitutionally protected obligation to add material to the Library's collection. [Doc. 250, pp. 10-11.]

4. Mr. Spreadbury was afforded adequate due process relating to the termination of his library privileges. [Doc. 250, pp. 12-20.]

5. Officer Snavely's conduct in investigating Plaintiff and reporting on that conduct does not rise to the level of a constitutional violation. [Doc. 250, pp. 22-25.]

6. Officer Murphy's conduct did not violate the First Amendment or the Fourteenth Amendment. [Doc. 250, pp. 26-28.]

7. Police Chief Oster's conduct did not violate a constitutional right. [Doc. 250, pp. 29-30.]

8. As Mr. Spreadbury does not have any federal claims against the City and Library Defendants, his claim for punitive damages under federal is moot. [Doc. 250, p. 35.]

Similarly, among the Court's prior determinations relating to Mr. Spreadbury's state law claims, the following are noted:

1. BPL and the City are entitled to a judgment on Plaintiff's claim that he was maliciously prosecuted for trespass. Probable cause to prosecute Plaintiff existed. [Doc. 250, pp. 50-52.]

2. BPL Chairman Brophy is entitled to a judgment on Plaintiff's negligent misrepresentation claim against him. [Doc. 250, pp. 47-48.]

3. Mayor Steele is entitled to a judgment on Plaintiff's defamation claim. Mayor Steele's statement about schizophrenia did not have defamatory meaning. [Doc. 250, pp. 54-56.]

4. The City and Library Defendants are entitled to a judgment on Plaintiff's claim for tortious interference with prospective economic advantage. Mr. Spreadbury has not established any economic or business interest that suffered damage. [Doc. 250, pp. 53-54.]

5. The City and Library Defendants are entitled to a summary judgment on Plaintiff's claims of negligent and intentional infliction of emotional distress. Mr. Spreadbury has not presented evidence of serious and severe emotional distress. [Doc. 250, pp. 57-59.]

6. The City and BPL are immune from an award of punitive damages. [Doc. 250, p. 61.]

**B. Modified or Reconfigured Claims:**

From the perspective of the City and BPL, Mr. Spreadbury is modifying or reconfiguring claims in an attempt to get around the Court's prior determinations. For example, Mr. Spreadbury's email, dated May 14, 2012, reads, in part, "Issue to add to the pretrial document is emotional distress of being falsely accused of crime by City police actors (trespassing, stalking)." However, the Court's summary judgment Findings and Recommendations determined that probable cause existed for the criminal trespass charge. [Doc. 250, pp. 51-53.] In part, the Court wrote, "Thus, probable cause existed as a matter of law to allow the filing of the criminal complaint against Spreadbury. Consequently, the City Defendants have satisfied

their summary judgment burden . . .”. [Doc. 250, p. 52.] Similarly, Officer Murphy prepared a report detailing what he was told and shown concerning a stalking complaint by the BPL Director. Apart from noting these things, Office Murphy did not accuse Mr. Spreadbury of “stalking,” and no charges were filed against Mr. Spreadbury. [Exh. J, p. 6 to Doc. 152; *see also* Doc. 250, pp. 51-52 n. 14.]

Mr. Spreadbury’s email, dated May 14, 2012, also reads, in part, “Issue to add to the pretrial document . . . second issue is defamation by publishing public report on these crimes although they were not committed.” The matter is beyond the scope of Plaintiff’s discovery responses. [Doc. 250, p. 54.] Further, whether the police reports are public reports or contain confidential criminal justice information is a legal question. *Estate of Donald v. Kalispell Regional Medical Center*, 258 P.3d 395 ¶ 17 (Mont. 2011). That is, whether the police report contains confidential criminal justice information involves the interpretation and application of MCA §§ 44-5-103 and 44-5-303. In this regard, Mr. Spreadbury knows that police reports are confidential criminal justice information. [Doc. 135-1, pp. 5 n.1, 8, 16-17, 23 (Order, Cause No. DV-10-639, Ravalli County District court).] Next, Mr. Spreadbury has already argued that the police reports are defamatory. [Doc. 138, pp. 1-2; Doc. 137, pp. 3-4.] Yet, the Court denied his motion for Rule 11 sanctions relating to the reports. In any event, the police

reports are privileged. MCA § 27-1-804; *Wolfe v. Williamson*, 889 P.2d 1177 (Mont. 1995).

Next, Mr. Spreadbury's email, dated May 14, 2012, reads, in part, "The library did not adhere to administrative due process, nor Montana law for removing privileges without cause, or remedy." However, the Court has already determined that Mr. Spreadbury was afforded adequate due process in terminating his library privileges. [Doc. 250, pp. 17-21.] In part, the Court determined that Mr. Spreadbury failed "to identify or present any facts suggesting that the procedures employed by the Library Defendants were defective." [Doc. 250, p. 19.]

Finally, Mr. Spreadbury's email, dated May 14, 2012, reads, in part, "Mr. Bell falsely claimed I threatened patrons/staff which never happened." However, this Court has determined Mr. Bell is entitled to absolute prosecutorial immunity on Mr. Spreadbury's claim for malicious prosecution. [Doc. 250, pp. 31-32, 36-37.] In this connection, the Court determined, "Spreadbury has failed to present evidence that suggests that in their dealings with Spreadbury either Bell or Lint engaged in conduct that was not 'intimately associated with the judicial phase of the criminal process' . . .". [Doc. 250, p. 32 (citation omitted).] In summary, Plaintiff cannot reformulate his allegations in an attempt to circumvent the Court's summary judgment determinations.

**C. Negligence:**

The City and BPL's proposed Instruction No. 18 addresses agreed facts. Those facts came from the City and BPL's proposed pretrial order provided to Plaintiff. It is believed those facts should be undisputed. However, it is noted that Plaintiff has not said, to date, that he agrees with them, and to counsel's knowledge, he has not proposed alternate agreed facts.

To sustain a negligence claim, Mr. Spreadbury must prove the City or BPL owed him a legal duty, they breached that duty, and the breach was the actual or cause in fact of their injuries. *Busta v. Columbus Hosp. Corp.*, 916 P.2d 122, 135, 139 (1996). In this connection, negligence is an objective standard. It is not what might have prevented a particular event. Instead, it is what reasonably prudent people would have done in the discharge of their duties under the circumstances as they existed at the time of the event. *Flansberg v. Montana Power Co.*, 460 P.2d 263, 267 (1969).

Causation is a fact relationship. It is not a relationship between alleged negligence and injury. Rather, it is a relationship between conduct and injury. *Schwabe ex rel. Estate of Schwabe v. Custer's Inn Associates, LLP*, 15 P.3d 903 ¶ 34 (Mont. 2000) (overruled on other grounds 15 P.3d 903). Conduct is a cause of injury if it leads up to and results in the injury. *Burns v. Eminger, supra*, 276 Pac. at 442.



The existence of a legal duty is a question of law for the Court. *Prindel v. Ravalli County*, 133 P.3d 165 ¶ 20 (Mont. 2006). Here, apart from the public duty doctrine, the officers did not owe Mr. Spreadbury a legal duty. *Phillips v. City of Billings*, 758 P.2d 772, 775 (Mont. 1988); *Prindel, supra*, ¶¶ 25, 34 (no duty to protect absent a special relationship).

Assuming a legal duty was owed to Mr. Spreadbury, the officers did not breach that legal duty or cause damages to Mr. Spreadbury. *Fisher v. Swift Transp. Co., Inc.*, 181 P.3d 601 ¶¶ 31-32 (Mont. 2008). Officer Snavelly filed reports about what he was told by Mr. Spreadbury and various witnesses. There is no evidence to suggest Officer Snavelly misrepresented what he was told, omitted information from his report, or otherwise prompted the City Attorney to file charges that were improper. Indeed, this Court has determined that probable cause existed to support the charge. [Doc. 250, pp. 50-52.] As such, even assuming a legal duty to Mr. Spreadbury, Office Snavelly did not breach a legal duty or cause Mr. Spreadbury injury.

Similarly, on July 15, 2009, Officer Murphy prepared a report detailing what he was told, and the documents that he was provided. Apart from preparing the report, Officer Murphy did not accuse Mr. Spreadbury of stalking, and no charges of any kind were filed against Mr. Spreadbury relating to the report. [Doc. 152, No. 20 and Exh. K.] Because Ms. Langstaff said her interactions with Mr.

Spreadbury had caused her and others emotional distress, Officer Murphy explained the procedure for filing for an order of protection, something Ms. Langstaff opted not to do. [Doc. 152, No. 20 and Exh. K.] Again, there is no evidence Officer Murphy breached a legal duty to Mr. Spreadbury. Also, there is no evidence Officer Murphy caused Mr. Spreadbury damages.

Next, assuming the existence of a legal duty, breach of that duty and causation, Mr. Spreadbury's own negligent acts or omissions caused his damages or injuries, if any. That negligence exceeded the negligence, if any, of the City and BPL representatives. Therefore, Mr. Spreadbury is barred from any recovery in this action. MCA § 27-1-702.

## **II. DAMAGES**

Mr. Spreadbury has not been forthcoming with information concerning alleged damages. Ryan Oster's Interrogatory No. 5 asked Mr. Spreadbury to identify the nature and amount of compensatory damages sought by him. Mr. Spreadbury's response to Oster's Interrogatory No. 5 reads:

Compensatory damages against Defendants are consistent with court precedent for *IIED*, *NIED* cases in Montana, and §1983 cases previously tried.

As understood, Mr. Spreadbury alleges he has become disabled due to Defendants' alleged acts or omissions thereby foreclosing his employability. However, the claim is not supported by competent evidence.

Mr. Spreadbury's own testimony is not competent to establish the existence, cause and permanence of an alleged injury when lay people cannot plainly see or infer it. Instead, qualified medical testimony from an expert witness is necessary to prove the existence, cause or permanence of such injuries. *See, e.g., Bleek v. Supervalu, Inc.*, 95 F. Supp. 2d 1118, 1121 (D. Mont. 2000). Here, Plaintiff has not disclosed any qualified medical expert to testify concerning his alleged disability, its cause or its permanence. Therefore, his damage claims involving such matters fail.

Likewise, Mr. Spreadbury's claims relating to an alleged loss of employability suffer from a similar failing. A plaintiff must produce evidence from which it can reasonably be inferred that the defendant's negligent conduct caused the injuries and damages alleged. *Scott v. Robson*, 597 P.2d 1150, 1155 (Mont. 1979). Stated differently, damages may not be based on speculation. *Los Angeles Memorial Coliseum Com'n v. National Football League*, 791 F.2d 1356, 1360 (9<sup>th</sup> Cir. 1986). As an evidentiary matter, inferences must be based on legally proven facts. They must be a deduction warranted by a consideration of the usual propensities of people. *See, e.g., MCA § 26-1-501 and 26-1-502*. Inferences may not be based on speculation. *Conley v. R.J. Reynolds Tobacco Co.*, 286 F. Supp. 2d 1097, 1103-04 (N.D. Cal. 2002). Further, someone's intent is not lightly to be

inferred. *Salinas Val. Broadcasting Corp. v. N.L.R.B.*, 334 F.2d 604, 613 (9<sup>th</sup> Cir. 1964) (proof of unlawful intent).

Here, Mr. Spreadbury has not disclosed any past or prospective employer as a witness. Likewise, he has not disclosed any document relating to a termination or refusal of employment. Indeed, he has fought the disclosure of such information. [Docs. 176-178.] Instead, Mr. Spreadbury proposes to testify concerning what others have done, why they did it and what they were thinking. Such evidence is speculation and beyond the qualifications of Mr. Spreadbury. Such testimony does not give rise to any reasonable inferences. Therefore, such evidence should be excluded, and Mr. Spreadbury's damage claims based on such matters fail.

In any event, Mr. Spreadbury's damage claims based on emotional distress and loss of income are not supported by the evidence. For example, Mr. Spreadbury's disability and distress were not caused by any act or omission of a representative of the City or BPL. [City Trial Exhs. 523-535.]

### **III. PUNITIVE DAMAGES**

The Court has determined that the City and BPL are immune from punitive damages. It also has determined the individual Defendants are statutorily immune from the state law claims against them. [Doc. 250, pp. 38, 42, 43, 46, 47.]

However, given the interplay between employee immunity under MCA § 2-9-305

and governmental entity immunity from punitive damages under MCA § 2-9-105, the Court has deferred ruling on whether a governmental entity can be liable for punitive damages on claims to which the employee is statutorily immune from liability. [Doc. 250, p. 61-63.]

There is nothing in the purpose or the language of the employee indemnity provisions in MCA § 2-9-305 that supports a legislative intention that a governmental entity must indemnify a punitive damage award on a claim for which the employee is statutorily immune. The City, itself, is clearly immune from any direct claim of punitive damages under state law. MCA § 2-9-105. Interpreting MCA § 2-9-305 to make cities indemnify punitive damage award against an immune employee destroys the operation and affect of MCA § 2-9-105.

The language structure and object of MCA § 2-9-305 does not support a conclusion that the Legislature intended that governmental entities indemnify punitive damage awards involving immune employees. For example, while the employee immunity provisions of MCA § 2-9-305(5) exclude malicious conduct as conduct not to be considered for employee immunity, the employee indemnity provision of MCA § 2-9-305(4) excludes malicious conduct for indemnity purposes. In summary, the operation between MCA §§ 2-9-105 and 2-9-305(4) - (6), establishes a legislative intent that a governmental entity is not required to indemnify punitive damage awards against employees.

#### IV. EVIDENTIARY ISSUES

It is anticipated that Mr. Spreadbury will attempt to modify or reconfigure his claims in an attempt to get around the prior determinations of the Court. Further, specific significant evidentiary issues were addressed in the City and Library Defendants motions *in limine*. [Docs. 212 and 219.] Those motions were granted by the Court. Specifically, the Court determined as follows:

1. Evidence or argument concerning alleged misconduct by Boone Karlberg attorneys is excluded. [Doc. 255, p. 1, No. 1.]
2. Evidence or argument concerning alleged public fraud and litigation defense by Montana Municipal Interlocal Authority is excluded. [Doc. 255, p. 1, No. 2.]
3. Speculative evidence of general community ostracism is excluded. [Doc. 255, p. 2, No. 3.]
4. Evidence or argument concerning Mr. Spreadbury's loss of the mayoral election is excluded. [Doc. 255, p. 2, No. 4.]
5. Evidence or argument relating to (a) BPL's conduct in opening an alleged "pedophilia room" and the alleged improper use of public funds to defend against complaints filed about the room and (b) Ryan Oster's alleged conduct in obstructing justice, tampering with evidence, covering up a felony injury accident

and encouraging pretrial detainees to commit suicide is excluded. [Doc. 255, p. 2, No. 5.]

6. Evidence or argument relating to an alleged coverup or code of silence is excluded. [Doc. 255, p. 3, No. 6.]

7. Plaintiff is precluded from expressing expert opinions or opinions that a policy was violated or Plaintiff's legal rights were violated. [Doc. 255, pp. 3-4, No. 7.]

8. Plaintiff is precluded from offering evidence or argument contradicting the prior decisions of the Court. [Doc. 255, p. 4, No. 8.]

One of Mr. Spreadbury's frequent topics has been the allegation that the City is not lawfully incorporated. [See, e.g., Doc. 214, p. 3, No. 2.] However, Plaintiff's argument is inconsistent with his own allegations. [Doc. 1-1, p. 3, ¶ 12, p. 17, ¶ 22, p. 18, ¶ 173, p. 28, ¶ 124.] In addition, the commission's journal, dated July 16, 1894, reads, in part, as follows:

. . . "In the Matter of the Incorporation of the Town of Hamilton, upon canvassing the returns of the election of said town, held the 14<sup>th</sup> day of July, 1894, it appearing to the board that a majority of the votes cast at said election were in favor of said incorporation . . ."

[City Trial Exh. 537.]

Indeed, in a 1982 special election, the City voters were posed the question whether to disincorporate the City. The voters decided against disincorporation. Under these circumstances, Mr. Spreadbury is estopped from challenging the

lawful incorporation of the City. *Rissetto v. Plumbers and Steamfitters Local 343*, 94 F.3d 597, 600 (9<sup>th</sup> Cir. 1996); *Choteau Library Bd. of Trustees v. Teton County Bd. of Com'rs*, 938 P.2d 1357, 1362 (Mont. 1997).

In any event, Plaintiff's "incorporation" argument is tied up in his "public fraud" argument. [Doc. 214, p. 3, No. 2.] However, the Court granted the City and Library Defendants' motion *in limine* concerning evidence or argument relating to alleged public fraud. [Doc. 255, p. 1, No. 2.] In summary, evidence or argument concerning the City's "ambiguous status of incorporation" and the defense of a "non-municipality" should be excluded. [Doc. 214, p. 3, No. 2; Rules 403 and 411, Fed. R. Evid.]

### CONCLUSION

Based on the evidence and the law, the City and BPL are entitled to a verdict and judgment in their favor on Mr. Spreadbury's claims against them. Further, the City and BPL anticipate making a motion for a judgment as a matter of law under Rule 50, Federal Rules of Civil Procedure.

DATED this 30<sup>th</sup> 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 3,177 words, excluding the parts of the brief exempted by L.R. 7.1(d)(2)(E).

DATED this 30<sup>th</sup> 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 30<sup>th</sup> 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*