

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

FINAL PRETRIAL ORDER

In accordance with Rule 16, Fed. R. Civ. P., L.R. 16.4, Rules of Procedure, United States District Court, District of Montana, and the Court's Order, filed November 30, 2011 (Doc. 182), the parties submit this Final Pretrial Order to govern the trial in this matter.

NATURE OF ACTION

This action arises from Mr. Spreadbury's exclusion from the Bitterroot Public Library ("BPL") in Hamilton, Montana, and reports made by members of the Hamilton Police Department.

As a result of prior decisions of the Court, Mr. Spreadbury's claims remaining for trial against the City of Hamilton ("City") and BPL are limited.

Those claims include the following:

1. Whether City Police Officer Snavely negligently or 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 City Police Officer Murphy negligently or 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 Mr. Spreadbury's library privileges were negligently or unreasonably revoked, and whether Mr. Spreadbury was damaged or injured as a result. [Doc. 250, pp. 44-46.]

4. 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 punitive damages are

available at all relating to Nos. 1 and 2 above (*i.e.*, whether the City can be liable for punitive damages if awarded on claims to which the employee is immune from liability).

JURISDICTION AND VENUE

Jurisdiction of Mr. Spreadbury's claims remaining for trial is based on 28 U.S.C. § 1367. Venue is proper.

JURY

The trial in this matter shall begin on June 25, 2012, at 11:30 a.m. with a seven-member jury. The trial is expected to last two to three days.

AGREED FACTS

Those facts and matters agreed upon and requiring no proof at trial include the following:

1. On May 29, 2009, Mr. Spreadbury entered the BPL. He wanted to place a letter to President Obama written by another Bitterroot Valley resident in BPL's reserve collection. The letter alleged corruption by local officials.
2. Mr. Spreadbury's submission of the letter to be placed in the Library's reserve collection was refused.
3. Mr. Spreadbury made a similar demand of the North Valley Library in Stevensville, Montana. At the time, that library also refused Mr. Spreadbury's request.

4. On June 8, 2009, Mr. Spreadbury wrote to the Directors of both libraries concerning the refusals.

5. On June 9, 2009, Gloria Langstaff, BPL's Library Director, wrote to Mr. Spreadbury denying his request, citing library collection management policy.

6. On June 11, 2009, Mr. Spreadbury entered the BPL. His interaction with a library staff person was reported to law enforcement.

7. On June 11, 2009, Ms. Langstaff wrote to Mr. Spreadbury terminating his library privileges.

8. On June 15, 2009, Mr. Spreadbury requested library patrons outside the library to deliver a message to Ms. Langstaff.

9. On June 16, 2009, Mr. Spreadbury called the library to speak with Ms. Langstaff. He asked Ms. Langstaff to meet him off premises. She refused.

10. On June 16, 2009, Mr. Spreadbury emailed library board member Ellyn Jones.

11. On July 8, 2009, Mr. Spreadbury submitted a reconsideration request form to the library again demanding that the letter to President Obama be placed in the reserve collection.

12. On July 15, 2009, Mr. Spreadbury requested a library patron outside the library to deliver a letter to Ms. Langstaff. After reviewing the letter, Ms. Langstaff met with one or more members of the City Police Department.

13. On August 20, 2009, Ms. Langstaff called the City Police Department concerning Mr. Spreadbury being on library grounds. Officer Snavelly spoke with Mr. Spreadbury and Ms. Langstaff, and Officer Snavelly took a report. Mr. Spreadbury left the library grounds.

14. On August 20, 2009, Officer Snavelly met with Mr. Spreadbury at City Hall. Officer Snavelly warned Mr. Spreadbury not to go back to the library. Officer Snavelly told Mr. Spreadbury that if he returned, he would be charged with trespassing.

15. Mr. Spreadbury returned to the library on August 20, 2009. He spoke with a female patron, Kay Cousins.

16. Ms. Cousins reported the incident to the BPL, and Ms. Langstaff called law enforcement. Two officers responded and made a report.

17. That same day, Dr. Robert Brophy, on behalf of the BPL Board of Trustees, sent Mr. Spreadbury a letter. It stated the Board supported the Director's decision to ban Mr. Spreadbury from the library.

18. On August 25, 2009, Mr. Spreadbury wrote the BPL Board of Trustees complaining of the library ban.

19. Mr. Spreadbury was charged with criminal trespass for the instance on August 20, 2009.

ELEMENTS OF LIABILITY

A. Plaintiff's Contentions:

Mr. Spreadbury contends as follows:

1.

B. Defendants' Contentions:

The City and BPL contend as follows:

1. The Court's prior Orders are the law of the case for purposes of the trial in this action. Those Orders limit the claims against the City and BPL.

United States v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997).

2. The City and BPL deny Mr. Spreadbury's contentions except as admitted in their Answers or this Pretrial Order.

3. No representative of the City or BPL owed Mr. Spreadbury the legal duties alleged by him. *Philips v. City of Billings*, 758 P.2d 772, 775 (Mont. 1988); *Gonzales v. City of Bozeman*, 217 P.3d 487 ¶¶ 20-28 (Mont. 2009). *see also Gini v. Las Vegas Metropolitan Police Dept.*, 40 F.3d 1041, 1045 (9th Cir. 1994); *Gomez v. Whitney*, 757 F.2d 1005, 1006 (9th Cir. 1985).

4. No act or omission of a representative of the City or BPL breached a legal duty of care to Mr. Spreadbury. *Fisher v. Swift Transp. Co., Inc.*, 181 P.3d 601 ¶ 13 (Mont. 2008).

5. No act or omission of a representative of the City caused damage or injury to Mr. Spreadbury. *Jacobs v. Laurel Volunteer Fire Dept.*, 26 P.3d 730 ¶¶ 22-23 (Mont. 2001).

6. Mr. Spreadbury's own acts or omissions caused his damages or injuries, if any, and Mr. Spreadbury's negligence was greater than the negligence, if any, of any representative of the City or BPL. As a result, Mr. Spreadbury's own negligent acts or omissions bar his recovery in this action, or alternatively, Mr. Spreadbury's damages, if any, must be diminished in proportion to Mr. Spreadbury's own negligence. MCA § 27-1-702.

7. Mr. Spreadbury has not been damaged or injured in the manner or to the extent claimed. MCA § 27-1-201.

8. Mr. Spreadbury failed to mitigate his damages, if any. *Spackman v. Ralph M. Parsons Co.*, 414 P.2d 918, 921 (Mont. 1966).

9. The City and BPL cannot be liable in this action for damages in excess of the limitations in MCA § 2-9-108.

10. Any judgment, if any, awarded against the City or BPL is subject to the limitations in MCA §§ 2-9-317 and 2-9-318.

11. The City and BPL are immune from an award, if any, of punitive damages. MCA § 2-9-105.

12. The City and BPL are immune from vicarious liability on a punitive damage claim against a dismissed employee. MCA § 2-9-305. However, if the City or BPL can be vicariously liable for a punitive damage claim against an employee, then the evidence and standards which apply to such a claim are limited to those which apply to a direct claim against the employee.

RELIEF SOUGHT

Mr. Spreadbury seeks compensatory and punitive damages against the City and BPL. The City and BPL seek a dismissal of Mr. Spreadbury's claims against them on their merits.

LEGAL ISSUES

The legal issues include the following:

1. The scope and application of the Court's prior determinations in connection with Mr. Spreadbury's claims in this action.
2. The nature of any alleged acts or omissions of the City, BPL and their representatives and the legal elements of Mr. Spreadbury's claims against the City and BPL.
3. What items of compensatory damage Mr. Spreadbury may seek and the proper measure of damages to be applied.
4. What evidence may be admitted in support of Mr. Spreadbury's claims and the defenses to those claims.

5. Whether punitive damages may be awarded and the standards to be applied in connection with such a claim.

EXHIBITS

Attached to this Final Pretrial Order are the following separate exhibit lists:

1. Mr. Spreadbury's Will Offer Exhibits
2. Mr. Spreadbury's May Offer Exhibits
3. The City and BPL's Will Offer Exhibits (Exhibit A hereto)
4. The City and BPL's May Offer Exhibits (Exhibit B hereto)

Objections not disclosed on the exhibit lists, other than objections under Rules 402 and 403, Fed. R. Evid., are waived unless excused by the Court for good cause.

DISCOVERY DOCUMENTS

Attached to this Final Pretrial Order are the following discovery lists:

1. Mr. Spreadbury's Will Offer Discovery List
2. Mr. Spreadbury's May Offer Discovery List

WITNESSES

Attached to this Final Pretrial Order are the following separate witness lists:

1. Mr. Spreadbury's Will Call Witness List
2. Mr. Spreadbury's May Call Witness List
3. The City and BPL's Will Call Witness List (Exhibit C hereto)

4. The City and BPL's May Call Witness List (Exhibit D hereto)

TRIAL TIME

The parties estimate Mr. Spreadbury will take one to two days of the trial to complete his case in chief. The parties estimate the City and BPL will require one-half day to one day of the trial to complete their case in chief.

This Order supplements and supersedes the pleadings in this action.

ORDERED this ____ day of _____, 2012.

Hon. Donald W. Molloy
U.S. District Court Judge

APPROVED AS TO FORM
AND CONTENT:

Michael E. Spreadbury
Plaintiff pro se

William L. Crowley
Boone Karlberg P.C.
*Attorneys for Defendants City of
Hamilton and Bitterroot Public
Library*