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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., and BOONE
KARLBERG P.C.

Defendants.

Cause No. CV-11-064-M-DWM

**BOONE KARLBERG P.C.'S
REPLY IN SUPPORT OF
MOTION TO DISMISS**

Defendant Boone Karlberg P.C. respectfully submits this reply brief in further support of its motion to dismiss all claims in the Amended Complaint¹ against Boone Karlberg P.C., William L. Crowley and Natasha Prinzing Jones (collectively “Boone Karlberg”) for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). The matters raised by Plaintiff Michael E. Spreadbury (“Spreadbury”) in his Response to Boone Karlberg PC Motion, Brief in Support to Dismiss; Rule 12(b)(6) (“Spreadbury’s 12(b)(6) Resp.”) do not state nor support colorable claims against Boone Karlberg. [See Dkt. 37.] Spreadbury’s conclusory allegations against Boone Karlberg lack factual support and should be rejected by the Court. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1954 (2009) (The Federal Rules do “not require courts to credit a complaint’s conclusory statements without reference to its factual context.”).

In Boone Karlberg’s initial brief, the Court was asked to take judicial notice of the following related matters all of which were previously decided against Spreadbury: (1) *Roddy v. Spreadbury*, DV-10-93 and Appellate Cause Nos.

¹Spreadbury seeks to further amend his complaint to add allegations of an alleged “public fraud.” Co-Defendants City of Hamilton and Bitterroot Public Library have filed a Brief in Opposition to Plaintiff’s Motion for Leave to File Second Amended Complaint and Co-Defendant Lee Enterprises, Inc. has joined in the brief. [Dkt. 24, 34.]

DA-10-352 and DA-11-0017; (2) *Spreadbury v. Roddy*, DV-10-224; (3) *Spreadbury v. Bell*, DV-10-223 and Appellate Cause No. DA-10-442; and (4) *State v. Spreadbury*, DC-09-154. Unhappy with the outcome in these matters, Spreadbury now attempts to collaterally attack the previous rulings by suing the lawyers. Spreadbury's attempts to re-argue the merits of past cases do not support claims against Boone Karlberg.

I. Spreadbury Cannot Re-Litigate Matters Previously Decided by the Montana Supreme Court

Rather than provide the Court with factual support for his claims against Boone Karlberg, Spreadbury makes conclusory arguments regarding the underlying merits of previous cases in which courts ruled against Spreadbury. The arguments presented by Spreadbury do not state claims against Boone Karlberg. Spreadbury's response to the motion dismiss makes clear that he is improperly attempting to re-litigate the merits of prior actions under the guise of alleged claims against Boone Karlberg.

For example, Spreadbury states in response to Boone Karlberg's motion to dismiss that he "did not violate any court rules by conversing with Roddy November 4, 2009." [Dkt. 37, p. 4.] Spreadbury complains that "City Judge Reardon did not find issues of fact, conclusions of law to make the order

permanent per MCA§ 40-15-201(2).” [Dkt. 37, p. 10]. Spreadbury argues he “was handed court restrictions by Hamilton Judge Reardon of loss of 2nd Amendment right to arms, restricted travel.” [Dkt. 37, p.12.] Spreadbury states that his arguments in opposition to the order of protection were of “little interest from a State Judge Larson.” [Dkt. 37, p. 9.]

These exact arguments were made to and rejected by City Court Judge Reardon, District Court Judge Larson and the Montana Supreme Court. Based on Spreadbury’s “conversing with Roddy on November 4, 2009,” an Order of Protection was issued by Hamilton City Judge Reardon and affirmed by District Court Judge Larson in DV-10-93. [Dkt. 14, pp. 1-8.] Spreadbury’s attempts to overturn or modify the Order of Protection on appeal were rejected *twice* by the Montana Supreme Court in DA-0017. [Dkt. 14, pp. 9-13.] Indeed, the Montana Supreme Court warned Spreadbury:

We caution Michael from using this matter as a means of harassing Roddy. Further pleading filed before this Court in this matter without good cause may be sanctioned by the imposition of costs, attorneys fees, and/or other monetary or nonmonetary penalties under M. R. App. P. 19(5).

[Dkt. 14, pg. 12.]

Spreadbury further claims to this Court that City Attorney Ken Bell was “acting in civil courtroom November 20, 2009 as official misconduct

MCA§ 45-7-401.” This argument too was specifically rejected by District Court Judge Larson in DV-10-223 and by the Montana Supreme Court in DA-10-442 who both concluded City Attorney Bell acted within the scope of his official duties and, thus, was entitled to immunity. [See Dkt. 12, Exh. C.]

Finally, Spreadbury claims that Boone Karlberg “den[ied] Spreadbury access to court.” [Dkt. 37, p. 3.] Not so. Simply because multiple courts have rejected Spreadbury’s allegations in favor of legal authority presented by Boone Karlberg on behalf of its clients does not establish Boone Karlberg denied Spreadbury access to court.

Spreadbury’s conclusory attempts to re-argue the merits of previous cases do not state viable claims against Boone Karlberg. The motion to dismiss should be granted.

II. Conclusory Allegations of Malice Cannot Support Claims Against Boone Karlberg

Statements made in judicial pleadings are privileged pursuant to Mont. Code Ann. § 27-1-804(2), which does not reference the term “malice.” Spreadbury has cited a separate provision, subsection (4), which, by its terms, applies to “true reports” made about legal proceeds, not statements made during or “in” judicial proceedings which fall within subsection (2). Mont. Code Ann.

§ 27-1-804. However, even assuming that Mont. Code Ann. § 27-1-804(4) applied here, which it does not, Spreadbury's conclusory allegations of alleged malice are unsupported. In fact, Spreadbury's allegations of malice are contradicted by the public record.

Spreadbury initiated two lawsuits against City Attorney Bell and Senior Librarian Nansu Roddy. Spreadbury also repeatedly tried to modify or have dismissed the Order of Protection issued in favor of Ms. Roddy. In response to Spreadbury's legal actions and arguments, Boone Karlberg has appropriately and accurately informed the courts of matters of public record and made solid legal arguments in opposition to Spreadbury. The fact that Spreadbury has disagreed with counsel and the courts who have ruled against him does not render truthful reports of the facts and good faith legal arguments "malicious." Indeed, Spreadbury's conclusory attempts to label the privileged statements "malicious" is unsupported and belied by the public record. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (proper pleading "requires more than labels and conclusions").

For example, Spreadbury complains that Boone Karlberg has referenced Spreadbury's alleged association with the FBI. Spreadbury has, in fact, on multiple occasions claimed that he "holds clearance by FBI" and claims he has an

association with the Department of Justice. Spreadbury's pleadings wherein he references FBI clearance and the Department of Justices are attached hereto as Exhibit 1. Spreadbury even claimed he was acting on "**direct advice of the Federal Bureau of Investigation (FBI) Helena Montana, Office.**" [See Out of Time Appeal Rule 4(6), *Roddy v. Spreadbury*, DA-11-0017, p. 1 (Jan. 14, 2011) (emphasis in original), Exh. 1.] As recently as May 6, 2011, Spreadbury continues to claim "[t]he FBI gives me standing to inform any judge who is presiding over a case involving public fraud." [See Email from Spreadbury to Crowley, attached as Exhibit 2.] Boone Karlberg's fair and truthful citation to Spreadbury's own words falls squarely within the definition of privileged communications. See Mont. Code Ann. § 27-1-804(2).

Likewise, the public record clearly demonstrates that Spreadbury was charged with misdemeanor criminal trespass, Spreadbury was convicted of trespass², an Order of Protection was granted and affirmed on appeal, and Spreadbury did, in fact, plead no contest to felony intimidation. [See Dkt. 12, Exhs. A-D, Dkt. 14.] These are facts established by the public record regardless whether Spreadbury disagrees with the outcome of these previous matters. Boone

² A copy of the criminal sentence for criminal trespass in CR-2009-0053 is attached hereto as Exhibit 3.

Karlberg's citation to the public record in court cases in which it has acted falls squarely within the definition of privileged communications. *See* Mont. Code Ann. § 27-1-804(2).

Spreadbury's Amended Complaint and 12(b)(6) response make clear that he is relying entirely on privileged statements in judicial pleadings as the only basis for his claims against Boone Karlberg. *Montana Bank of Circle, N.A. v. Ralph Meyers & Son, Inc.*, 769 P.2d 1208, 1213 (Mont. 1989) ("It has long been held that statements made in a judicial proceeding are absolutely immune and a cause of action for defamation cannot be predicated thereon."); Mont. Code Ann. § 27-1-804(2). Spreadbury's bare and unsupported, conclusory allegations of malice do not defeat the privileged nature of statements in previous pleadings. The motion to dismiss should be granted.

III. Spreadbury Has Not Set Forth Facts to Establish Boone Karlberg Took "State Action" Under "Color of Law"

Spreadbury responds to the motion to dismiss with bare, conclusory statements that Boone Karlberg acted under color of law. Yet, Spreadbury provides no factual support or legal authority for his claims. Indeed, no such facts or authority exist upon which Spreadbury could rely.

A plaintiff cannot simply use the phrase "color of law" to support

allegations of state action. Actual facts must be pleaded from which a plausible claim for relief could be granted. *Twombly*, 550 U.S. at 545; *Ashcroft, supra*. The Ninth Circuit has previously held that “merely resorting to the courts and being on the winning side of a lawsuit” does support a conspiracy claim under section 1983:

Schucker’s conclusory allegations that Judge Jourdane conspired with the law firms are insufficient to support his section 1983 claim. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (per curiam). Invoking state legal procedures does not constitute “joint participation” or “conspiracy” with state officials sufficient to satisfy section 1983’s state action requirement. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 n. 21, 102 S. Ct. 2744, 2755 & n. 21, 73 L. Ed. 2d 482 (1982).

Schucker v. Rockwood, 846 F.2d 1202, 1205 (9th Cir. 1988).

Like in *Schucker*, the fact that Boone Karlberg represented the winning parties in prior cases against Spreadbury is not sufficient to support a claim that Boone Karlberg took state action under color of law. Spreadbury’s conspiracy claims against Boone Karlberg lack factual support. The motion to dismiss should be granted.

Conclusion

Spreadbury’s conclusory allegations lack any factual basis and must be rejected. And, Spreadbury’s reliance on statements made in judicial pleadings fail to state a claim upon which relief may be granted. All claims against Boone

Karlberg should be dismissed.

DATED this 19th day of May, 2011.

/s/ Natasha Prinzing Jones
Natasha Prinzing Jones
BOONE KARLBERG P.C.
Attorneys for Defendants
Bitterroot Public Library, City of
Hamilton and Boone Karlberg P.C.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(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 1,702 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 19th day of May, 2011.

/s/ Natasha Prinzing Jones
Natasha Prinzing Jones
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot
Public Library, City of Hamilton and
Boone Karlberg P.C.*

CERTIFICATE OF SERVICE

I hereby certify that, on the 19th day of May, 2011, a copy of the foregoing document was served on the following persons by the following means:

 1 CM/ECF

 Hand Delivery

 2 Mail

 Overnight Delivery Service

 Fax

 E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
 700 South Fourth Street
 Hamilton, MT 59840

/s/ Natasha Prinzing Jones
Natasha Prinzing Jones
BOONE KARLBERG P.C.
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