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John W. Larson, District Judge
Fourth Judicial District Dept. 3
Missoula County Courthouse
Missoula, MT 59802
(406) 258-4773

FILED
DEBBIE HARMON, CLERK

AUG 19 2010
Debbie Harmon
DEPUTY

21st
MONTANA ~~FOURTH~~ JUDICIAL DISTRICT COURT, ~~MISSOULA~~ *RAVALLI* COUNTY

MICHAEL E. SPREADBURY,
Plaintiff,
vs.
KENNETH S. BELL,
Defendant.

Dept. 3
Cause No. DV-10-223 /27

**OPINION AND ORDER
GRANTING DEFENDANT BELL'S
RULE 12(b)(6) MOTION TO
DISMISS**

Before the Court is the Defendant Bell's Rule 12(b)(6) Motion to Dismiss. Briefs have been filed and the matter is now ready for decision.

Background

The Court finds the facts as the following. On April 26, 2010, Plaintiff Spreadbury filed a Complaint against Hamilton City Attorney, Defendant Kenneth Bell, for Intentional Infliction of Emotional Distress allegedly caused by Defendant examining a witness in a civil order of protection hearing on November 20, 2009, in Cause CV-2009-168 in Hamilton, Montana. On May 7, 2010, Plaintiff filed an Amended Complaint alleging that Defendant intentionally caused him emotional distress when "Bell proceeded in leading

1 the witness through gestures, to give false testimony on the interaction
2 between Plaintiff [Spreadbury] and Petitioner [witness] which occurred on
3 November 4, 2009." See Amended Complaint. Plaintiff seeks \$275,000.00
4 and costs for alleged damages caused by Defendant's examination of the
5 public librarian that resulted in an order of protection against Plaintiff.
6

7 **Standard**

8 Pursuant to Mont. R. Civ. P. 12 (b)(6), a party may move to
9 dismiss for failure of the pleading to state a claim upon which relief can
10 be granted. "A complaint should not be dismissed for failure to state a
11 claim unless it appears beyond doubt that the plaintiff can prove no set
12 of facts in support of a claim which would entitle the plaintiff to relief.
13

14 *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 10, 325 Mont. 148,
15 152, 104 P.3d 445, 449 (citing *Dukes v. Sirlus Constr., Inc.*, 2003 MT
16 152, ¶ 11, 316 Mont. 226, 231, 73 P.3d 781, 784). "A motion to
17 dismiss under Rule 12(b)(6), M.R.Civ.P., has the effect of admitting all
18 well-pleaded allegations in the complaint." *Id.* "In considering the
19 motion, the complaint is construed in the light most favorable to the
20 plaintiff and all allegations of fact contained therein are taken as true.
21 *Id.* "[S]hould defendants desire any further degree of specificity, they
22 may obtain the same by use of the appropriate discovery devices such
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1 as depositions, interrogatories and requests to admit." *Willson v.*
2 *Taylor*, 194 Mont. 123, 128, 634 P.2d 1180, 1183 (1981) (citation
3 omitted). "This Court does not favor the short circuiting of litigation at
4 the initial pleading stage unless a complaint does not state a cause of
5 action under any set of facts." *Id.*

7 Discussion

8 Defendant Bell argues that Defendant's action were related to
9 maintaining criminal charges in directly related criminal matters, and his status
10 as the Hamilton City Attorney renders him immune from suit. Defendant
11 argues that his appearance in a civil matter is not outside the scope of his
12 position as City Attorney, nor does an appearance in a civil matter disqualify
13 him from immunity. Defendant argues that leading a witness by gestures is an
14 insufficient action to create intentional infliction of emotional distress claim.
15 Defendant also argues that the Montana Supreme Court has held that parties
16 may be judicially estopped from contesting the legal existence of a
17 governmental entity that has operated for over one hundred years.
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21 Plaintiff Spreadbury responds that Defendant is not entitled to immunity
22 because the City of Hamilton does not exist. Plaintiff argues that Defendant is
23 not entitled to immunity because Defendant is not a judge, Defendant's
24 actions occurred in a civil courtroom, and Nansu Roddy, the librarian, was not
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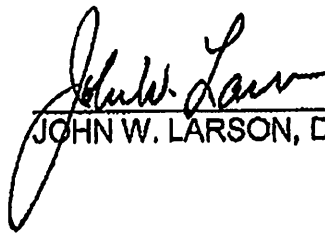
a city employee.

This Court takes judicial notice of the proceedings in CV-2009-168 where the alleged false testimony was given and other related criminal matters. Pursuant to M.C.A. § 3-11-301, "[t]he city attorney must prosecute all cases for the violation of any ordinance and prosecute, conduct, and control all proceedings" under the city court's jurisdiction. City Attorney Bell was acting within the scope of his office when he examined the witness regarding the order of protection against Plaintiff in city court. As such, Defendant Bell is entitled to immunity from liability for actions he performs as part of his position as City Attorney. *Rosenthal v. County of Madison*, 2007 MT 277, ¶ 29, 339 Mont. 419, ¶ 29, 170 P.3d 493, ¶ 29.

For the foregoing reasons,

IT IS HEREBY ORDERED that Defendant Bell's Rule 12(b)(6) Motion to Dismiss is GRANTED, as Plaintiff can prove no set of facts which would entitle him to relief against City Attorney Bell.

DATED this 17th day of August 2010.



JOHN W. LARSON, District Judge

Copies of the foregoing were sent to:

*8-19-10
Debbie Harmon*

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Michael E. Spreadbury
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1 Hon. John W. Larson
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2 Fourth Judicial District, Dept. 3
Missoula County Courthouse
3 200 West Broadway
Missoula, MT 59802
4 (406) 258-4773

FILED
DEBBIE HARMON, CLERK
SEP 27 2010
[Signature]
DEPUTY

8 MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

9 MICHAEL B. SPREADBURY,
10 Plaintiff,

Cause No. DV-10-223 / 39

JUDGMENT

11 v.

12 KENNETH S. BELL,
13 Defendant.

14
15 On August 19, 2010, the Court granted the motion to dismiss filed by Defendant Kenneth
16 Bell. Accordingly,

17 GOOD CAUSE APPEARING, judgment is hereby entered in favor of Defendant Bell.

18 This matter is DISMISSED WITH PREJUDICE.

19 ORDERED this 22ND day of September, 2010.

20
21 *[Signature]*
22 Hon. John W. Larson
District Judge

23 c: Michael B. Spreadbury
24 Natasha Prinzing Jones and William L. Crowley

25 I certify that I forwarded copies of
this instrument to counsel of record.
9-28-10 *[Signature]*
Debbie Harmon, Clerk
By *[Signature]* Deputy

FILED

April 6 2011

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

DA 10-0442

IN THE SUPREME COURT OF THE STATE OF MONTANA

2011 MT 67N

MICHAEL E. SPREADBURY,

Plaintiff and Appellant,

v.

KENNETH S. BELL,

Defendant and Appellee.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DV 10-223
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Michael E. Spreadbury, (self-represented litigant); Hamilton,
Montana

For Appellee:

Natasha Prinzing Jones, William L. Crowley; Boone Karlberg, P.C.;
Missoula, Montana

Submitted on Briefs: February 23, 2011

Decided: April 5, 2011

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Michael E. Spreadbury appeals the order entered by the Twenty-First Judicial District, Ravalli County, granting Hamilton City Attorney Kenneth S. Bell's motion to dismiss Spreadbury's complaint alleging intentional infliction of emotional distress. Spreadbury challenges the District Court's conclusion that Bell was entitled to immunity from the suit, asking that we reverse and remand for trial.

¶3 On April 26, 2010, Spreadbury filed the complaint against Bell for intentional infliction of emotional distress allegedly resulting from Bell's examination of a witness in a civil order of protection hearing held in Hamilton City Court on November 20, 2009. Previously Spreadbury had unsuccessfully attempted to persuade staff at the Bitterroot Public Library in Hamilton to include a particular document in the library's collection. Various other actions grew out of these and related incidents, including the civil order of protection, which public librarian Nansu Roddy sought against Spreadbury after an interaction with him on November 4, 2009. The city court granted the order of protection, which was affirmed by the district court, and this Court has subsequently denied Spreadbury's untimely attempts to appeal the order. *See* Cause No. DA 10-0352, *Roddy v. Spreadbury*, August 10, 2010 Order; Cause No. DA 11-0017, *Roddy v. Spreadbury*, February 8, 2011 Order, *reh'g denied*, March 15, 2011.

¶4 In this action, Spreadbury alleged in his amended complaint that the appearance of Bell at the civil order of protection hearing was "not part of his duties as City Attorney," that Bell was

"allowed by the court to examine the witness," and "proceeded in leading the witness through gestures, to give false testimony on the interaction between Plaintiff and Petitioner which occurred Nov[ember] 4 2009," further alleging that Bell "acted as Hamilton City Attorney for non city business or city interest in a city court against [Spreadbury]." The complaint alleged severe emotional distress caused as a result and prayed for compensatory damages of \$250,000 and punitive damages.

¶5 In ruling on Bell's motion to dismiss pursuant to M. R. Civ. P. 12(b)(6), the District Court took judicial notice of the civil order of protection proceeding and other related criminal matters. The court concluded that Bell was "acting within the scope of his office when he examined the witness regarding the order of protection against [Spreadbury] in city court," and thus was "entitled to immunity from liability for actions he performs as part of his position as City Attorney." We review de novo a district court's ruling on a motion to dismiss pursuant to Rule 12(b)(6). *Spencer v. Beck*, 2010 MT 256, ¶ 7, 358 Mont. 295, 245 P.3d 21.

¶6 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions. The issues in this case are legal and are controlled by settled Montana law, which the District Court correctly interpreted.

¶7 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ PATRICIA COTTER
/S/ MICHAEL E WHBAT

/S/ BRIAN MORRIS