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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

**BRIEF OF CITY AND LIBRARY
DEFENDANTS AND DEFENDANT
BOONE KARLBERG P.C. IN
OPPOSITION TO PLAINTIFF'S
FIRST REQUEST FOR
INJUNCTIVE RELIEF**

INTRODUCTION

Plaintiff has filed his First Request for Injunctive Relief, dated July 18, 2011. On behalf of the City and Library Defendants, this opposes Plaintiff's request. It would be an abuse of discretion to grant Plaintiff a preliminary injunction. He has not made a clear showing that he is entitled to such relief.

DISCUSSION

A decision whether to grant or deny a preliminary injunction rests in the discretion of the Court. *Coffee Dan's, Inc. v. Coffee Don's Charcoal Broiler*, 305 F. Supp. 1210, 1212 (N.D. Cal. 1969). A preliminary injunction is an extraordinary and harsh remedy. A court may only grant such relief upon a clear showing that the plaintiff is entitled to it. The plaintiff must establish (1) a likelihood of success on the merits, (2) a likelihood a plaintiff will suffer irreparable harm absent an injunction, (3) the balance of the equities tip in favor of the plaintiff, and (4) an injunction is in the public's best interest. *Timbisha Shoshone Tribe v. Salazar*, 697 F. Supp. 2d 1181, 1186-87 (E.D. Cal. 2010). Here, Plaintiff has not satisfied any of the factors relating to a preliminary injunction. Therefore, it would be an abuse of discretion to grant it.

To begin with, Plaintiff's statements relating to Judge Molloy are not supported by the law or the record. [See Doc. 22, pp. 2-3.] Similarly, Plaintiff's

statement concerning Ms. Wetzsteon's childbirth is way out of line. [Plaintiff's First Request, 7/18/11, p. 2.] She is not even a party or a witness in this action. Fundamentally, Plaintiff's statements regarding Judge Molloy and Ms. Wetzsteon have nothing to do with the merits, if any, of Plaintiff's claims against the Defendants in this action, including whether he is entitled to a preliminary injunction.

Plaintiff seeks equitable or injunctive relief to (1) stop the Hamilton Police Department from further constitutional violations, (2) stop Boone Karlberg P.C. from defamation in pleadings, (3) reestablish his library privileges, and (4) quash an Order of Protection issued in favor of Defendant Roddy. [Plaintiff's First Request, 7/18/11, pp. 2-3.] However, as to each of these matters, Plaintiff has not demonstrated a likelihood of his success on the merits. He has not demonstrated a likelihood he will suffer irreparable harm absent an injunction. He has not shown that the balance of the equities tip in his favor, and he has not shown that an injunction or equitable relief is in the public's best interest. [See Docs. 12, 32, 53.] For example, as to alleged defamation by Boone Karlberg P.C., the U.S. Magistrate Judge has recommended that a motion to dismiss relating to these claims be granted. [Doc. 67.]

Specifically, as to the Order of Protection, a City Court and a District Court have dismissed Plaintiff's requests for relief from the Order. Also, the Montana Supreme Court dismissed Plaintiff's appeal of the Order of Protection, and it denied his petition for rehearing, warning Plaintiff not to harass Defendant Roddy. [Montana Supreme Court Case No. DA-11-0017.] Plaintiff has not demonstrated why he should be granted relief contrary to these earlier determinations.

Plaintiff also alleges Defendant Oster violated his Fifth and Fourteenth Amendment rights. [Plaintiff's First Request for Injunctive Relief, 7/18/11, pp. 3-4.] However, Plaintiff does not have a Fifth Amendment claim against any of the Defendants, including Defendant Oster. The Fifth Amendment applies to federal actors or entities. *See, e.g., Public Utilities Commission of District of Columbia v. Pollak*, 343 U.S. 451, 461 (1952); *American Bankers Mortg. Corp. v. Federal Home Loan Mortg. Corp.*, 75 F.3d 1401, 1406 (9th Cir. 1996). Here, Plaintiff's own allegations show that Defendant Oster is not a federal actor, and the Hamilton Police Department is not a federal entity.

Next, although Plaintiff has refused to answer the discovery served on him, his Fourteenth Amendment claim appears to be based on three things, including (1) his prosecution for criminal trespass, (2) his revocation of library privileges, and (3) requests made to him not to enter the offices of the *Ravalli Republic*.

[Doc. 30, pp. 3-5.] Here, while the Defendants contend probable cause existed to prosecute Plaintiff for trespass, there is no substantive due process right to be free from prosecution without probable cause. *See Albright v. Oliver*, 510 U.S. 266, 271 (1994). In any event, Plaintiff has not demonstrated that Defendant Oster or any of the other Defendants caused his prosecution for trespass. Likewise, Plaintiff has not demonstrated that Defendant Oster or any other Defendant caused a violation of his constitutional rights in connection with the revocation of his library privileges or the request that he not enter the *Ravalli Republic* office. *Mendocino Environmental Center v. Mendocino County*, 192 F.3d 1283, 1300-01 (9th Cir. 1999). In addition, contrary to the argument in Plaintiff's motion, Plaintiff has not demonstrated the basis for a *Monell* claim. [Doc. 32, pp. 16-17.]

Finally, according to Plaintiff, he seeks relief in connection with Counts 22-25 of his Second Amended Complaint. [Plaintiff's First Request, 7/18/11, p. 4.] However, as understood, Plaintiff has not been given leave to file a second amended complaint. [See Doc. 67, p. 2, n. 1.]

CONCLUSION

Plaintiff has not made a clear showing that he is entitled to equitable or injunctive relief. He has not demonstrated a likelihood of success on the merits, a likelihood that he will suffer irreparable harm absent an injunction, that the

balance of the equities tip in his favor, or that an injunction is in the public's best interest. Therefore, it would be an abuse of discretion to grant Plaintiff's First Request for Relief.

DATED this 27th day of July, 2011.

/s/ William L. Crowley
William L. Crowley
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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 918 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 27th day of July, 2011.

/s/ William L. Crowley
William L. Crowley
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 27th day of July, 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/ William L. Crowley
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