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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
MOTION FOR PROTECTIVE
ORDER**

INTRODUCTION

On behalf of the City and Library Defendants, this opposes Plaintiff's motion for a protective order, dated July 18, 2011. It would be an abuse of discretion to grant the motion. Plaintiff has not made a particular and specific demonstration of facts supporting the necessity of a protective order. *Kamp Implement Co., Inc. v. J.I. Case Co.*, 630 F. Supp. 218, 219 (D. Mont. 1986).

The information relating to Plaintiff's confrontation with Defendant Roddy on November 4, 2009, is relevant to the claims and defenses in this matter. Next, the exemption to the initial disclosure requirements upon which Plaintiff relies does not apply in this case, and Plaintiff's motion is not addressed to discovery within the ambit of a protective order. In fact, Plaintiff's motion, if granted, delays the Defendants' ability to address the merits of the claims against them.

DISCUSSION

Plaintiff's motion for a protective order seeks an order restricting the use of information relating to his November 4, 2009, confrontation with Defendant Roddy. Plaintiff argues the information is not relevant to the claims in this action. [Plaintiff's Motion for Protective Order, 7/18/11, pp. 2-3.] However, as addressed in the City and Library Defendants' brief, filed July 8, 2011, in opposition to Plaintiff's motion to strike (Doc. 65), Plaintiff has not demonstrated how the

information is irrelevant to the claims and defenses in this matter, and especially with Plaintiff refusing to answer written discovery served on him, one cannot say with certainty that the information is irrelevant.

In fact, Plaintiff's First Request for Injunctive Relief, dated July 18, 2011, establishes the relevance of information. In his request, Plaintiff seeks, in part, an order quashing an Order of Protection against him. [Plaintiff's First Request, 7/18/11, p. 3.] The Order of Protection arose out of Plaintiff's confrontation with Defendant Roddy on November 4, 2009. [Doc. 65, pp. 2-3.] Incidentally, the Montana Supreme Court dismissed Plaintiff's appeal of the Protective Order, and that Court also denied Plaintiff's petition for rehearing, warning Plaintiff not to harass Defendant Roddy. [Montana Supreme Court Cause No. DA-11-0017.]

Plaintiff argues that a protective order should be issued because proceedings ancillary to a proceeding in another court are exempt from the initial disclosure requirements under Rule 26(a)(1)(B)(viii), Fed. R. Civ. P. However, the exemption relied upon by Plaintiff does not apply to this case.

State v. Spreadbury, Montana Supreme Court Cause No. DA-10-619, is identified by Plaintiff as the proceeding "in another court." [Plaintiff's Motion for Protective Order, 7/18/11, p. 2.] Cause No. DA-10-619 is an appeal of Plaintiff's felony intimidation judgment, another proceeding which arose from Plaintiff's

confrontation with Defendant Roddy on November 4, 2009. In the District Court, Plaintiff entered a *nolo contendere* plea to the charge of felony intimidation. On appeal, despite his plea, Plaintiff now argues the District Court did not have jurisdiction to try the criminal offense as probable cause did not exist to believe Plaintiff committed the offense. [Appellant's Brief, 4/1/11, p. 1, Cause No. DA-10-619.] However, prior to Plaintiff's plea, the Ravalli County District Court denied Plaintiff's motion to dismiss the intimidation charge for a failure to establish probable cause, and the Montana Supreme Court denied Plaintiff's petition for writ of supervisory control concerning the matter. [Montana Supreme Court Order, *Spreadbury v. Montana*, Twenty-First Judicial District Court No. OP-10-0145 (4/27/10).]

The purpose of the initial disclosure is to provide notice of certain matters relating to the claims and defenses in an action, including those people and documents that a party may use to support his or her claims or defenses. Rule 26(a)(1)(A), Fed. R. Civ. P.. Here, Plaintiff has not explained why this civil rights action is ancillary to his appeal in his state criminal proceeding. Specifically, he has not explained how his Montana Supreme Court appeal in the felony intimidation proceeding exempts him from the initial disclosure requirements in this action. Moreover, fundamentally, he has not explained how such an

exemption, if any, would entitle him to a protective order from discovery under Rule 26(c), Fed. R. Civ. P. In fact, Plaintiff's motion is more akin to a motion *in limine* or a motion to stay proceedings than a motion for protective order.

In reality, Plaintiff's motion, if granted, would delay the Defendants' ability to address the merits of Plaintiff's claims against them. For example, the City and Library Defendants filed a motion to compel Plaintiff to answer discovery served on him. [Doc. 56.] The motion has been granted. [Doc. 68.] From the perspective of the City and Library Defendants, Plaintiff's motion for a protective order seeks to avoid Plaintiff's discovery responsibilities. If Plaintiff seeks an order in this action quashing the Order of Protection against him, he cannot legitimately argue the information relating to his confrontation with Ms. Roddy on November 4, 2009, is irrelevant to his claims in this action. In this connection, the City and Library Defendants would like to get to the basis of Plaintiff's claims so they can address the merits of Plaintiff's claims against them.

CONCLUSION

It would be an abuse of discretion to grant Plaintiff's motion for protective order. Plaintiff has not demonstrated how his motion is related to discovery or why a protective order is necessary.

DATED this 27th day of July, 2011.

/s/ William L. Crowley
William L. Crowley
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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 876 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
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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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