

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

MICHAEL E. SPREADBURY,

CV 11-64-M-DWM-JCL

Plaintiff,

vs.

FINDINGS AND
RECOMMENDATIONS

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.

Before the Court is Plaintiff Michael Spreadbury's motion for injunctive relief. For the reasons stated below, the Court recommends that the motion be denied.

I. BACKGROUND

A detailed description of the background facts giving rise to this action is set forth in the Court's findings and recommendation entered July 28, 2011. (Dkt. # 75.) For present purposes, a brief summary of those facts will suffice.

Spreadbury became embroiled in a dispute with Defendant Nansu Roddy, the assistant director of the Bitterroot Public Library in Hamilton, Montana. As a result of that dispute, Spreadbury's library privileges were terminated. Roddy also obtained a court order of protection against Spreadbury. Ultimately, Spreadbury was charged with criminal trespass for subsequently entering the library, and felony intimidation for conduct directed toward Roddy.

Defendant Lee Enterprises, Inc. published articles about Spreadbury's tribulations. When Spreadbury attempted to prevent Lee Enterprises from publishing further articles, Defendant Ryan Oster, the Hamilton Chief of Police, directed Spreadbury to stay away from Lee Enterprises' business offices.

Spreadbury advances numerous claims for relief against the various Defendants. His pleading sets forth claims under 42 U.S.C. § 1983 for violations of his rights under the United States Constitution. He also asserts claims under Montana law, including claims for defamation. His pleading includes requests for injunctive relief which form the basis for his present motion for injunctive relief.

II. DISCUSSION

Spreadbury's request for injunctive relief is, in substance, a motion for a preliminary injunction. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer

irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Network Automation, Inc. v. Advanced Systems Concepts, Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011) (quoting *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). After *Winter*, the Ninth Circuit Court of Appeals still employs a “sliding scale” analysis as follows: “the elements of the preliminary injunction tests are balanced, so that a stronger showing of one element may offset a weaker showing of another.” *Vanguard Outdoor, LLC v. City of Los Angeles*, ___ F.3d ___, 2011 WL 2175891, *3 (9th Cir. 2011) (quotation omitted). The sliding scale/balancing test may support the issuance of a preliminary injunction if “the likelihood of success is such that serious question[s] going to the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *Id.* (quotation omitted). See also *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011) (referring to the “serious questions” test). Even so, the plaintiff must still demonstrate that the other two elements of the preliminary injunction standard also support the request for an injunction. *Vanguard Outdoor, LLC*, 2011 WL 2175891 at 3; *Alliance*, at 1132.

The party seeking a preliminary injunction bears the burden of demonstrating that he or she is entitled to the injunction. *United States v. Arizona*,

641 F.3d 339, 344 n.1 (9th Cir. 2011). In view of this burden, “a request for a preliminary injunction may be denied on the sole ground that the plaintiff has failed to raise even ‘serious questions’ going to the merits.” *Vanguard Outdoor, LLC*, 2011 WL 2175891 at *3 (citation omitted). If the court finds the plaintiff has failed to raise serious questions and failed to demonstrate a fair chance of success on the merits, then the motion may be denied without consideration of the other factors. *Id.* Finally, the district court has discretion in determining whether to grant or deny a request for a preliminary injunction. *Thalheimer v. City of San Diego*, ___ F.3d ___, 2011 WL 2400779, *3 (9th Cir. 2011).

Spreadbury presents very cursory and limited arguments in support of his request for injunctive relief. Spreadbury’s moving papers merely refer to the allegations in his pleading, and his requests for injunctive relief in Counts 22 through 25. Based only on those allegations, Spreadbury now moves for an order (1) preventing Defendant Boone Karlberg, P.C. from engaging in further defamation,¹ (2) preventing Defendant Lee Enterprises from defaming his character, (3) preventing “the Hamilton Montana Police Department” from further violating his constitutional rights, and (4) requiring Defendant Bitterroot Public

¹The details of Boone Karlberg’s role in this case are discussed in the Court’s recommendation entered July 21, 2011 (Dkt. # 67), and need not be restated in this recommendation.

Library to reinstate his library privileges. Spreadbury also requests the Court “quash a civil order of protection[.]”

Upon review of Spreadbury’s motion, the Court finds Spreadbury has entirely failed to meet his burden of demonstrating his entitlement to a preliminary injunction. Other than reiterating his claims for injunctive relief, Spreadbury presents no further arguments or evidence in support of his requests, and he does not address any of the elements of the standard for the issuance of a preliminary injunction. Significantly, he has made no effort to demonstrate any likelihood of success under the “serious questions” test as to any of his claims for injunctive relief.

A. Boone Karlberg

On July 21, 2011, the Court recommended that Spreadbury’s claims against Boone Karlberg be dismissed. Dkt. # 67. Therefore, he is not entitled to a preliminary injunction against Boone Karlberg.

B. Lee Enterprises

Similarly, on July 28, 2011, the Court recommended that a majority of Spreadbury’s claims against Lee Enterprises be dismissed leaving only the limited factual predicate basis regarding the “comments” Lee Enterprises allegedly published about Spreadbury. That surviving claim, however, may also be subject

to dismissal under the Communications Decency Act. *See* Dkt. # 75 at 11 n.2. Consequently, Spreadbury has not identified any serious questions as to the merits of that remaining claim, has not demonstrated that the balance of hardships tips sharply in his favor, and has not shown that he will suffer irreparable harm.

C. Bitterroot Public Library

Spreadbury is also not entitled to injunctive relief against Defendant Bitterroot Public Library. Spreadbury alleges the Library deprived him of his liberty interest in his library privileges in violation of his “procedural due process rights.” *See* Dkt. # 10 at 7-9. But, he has not shown any likelihood of success on that claim.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that a state shall not “deprive any person of life, liberty, or property, without due process of law[.]” U.S. Const. Amend. XIV, § 1. The clause provides a basis for both substantive and procedural due process claims.

To succeed with a procedural due process claim, “the plaintiff must establish the existence of ‘(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; [and] (3) [a] lack of process.’” *Shanks v. Dressel*, 540 F.3d 1082, 1090 (9th Cir. 2008) (quoting *Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993)).

A protected liberty interest may arise from either the Due Process Clause itself, or a provision of state law. *Carver v. Lehman*, 558 F.3d 869, 872 (9th Cir. 2009). To determine whether a state law gives rise to a liberty interest, the court should “ascertain from state law the expectations and entitlements of the parties.” *Miller v. California*, 355 F.3d 1172, 1176 (9th Cir. 2004) (quoting *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 845-46 (1977)). Thus, to create a liberty interest, the state law “must set forth ‘substantive predicates’ to govern official decision making and [...] it must contain ‘explicitly mandatory language,’ i.e., a specific directive to the decisionmaker that mandates a particular outcome if the substantive predicates have been met.” *Valdez v. Rosenbaum*, 302 F.3d 1039, 1044 (9th Cir. 2002) (citation and quotations omitted).

Here, Spreadbury alleges he was deprived of his library privileges in violation of Montana law. The applicable statute at Mont. Code Ann. § 22-1-311 provides as follows:

Every library established under the provisions of this part shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

Even assuming the library privileges described in Mont. Code Ann. § 22-1-311 give rise to a protected liberty interest under federal law, Spreadbury fails to

demonstrate that the Bitterroot Public Library did not afford him the required procedural protections attendant to the loss of that interest. A procedural due process claim requires a plaintiff to prove he was denied adequate procedural protection. *Pinnacle Armor, Inc. v. United States*, ___ F.3d ___, 2011 WL 2040870, *5 (9th Cir. 2011). The plaintiff must demonstrate a lack of notice and opportunity for hearing prior to the deprivation of a liberty interest. *Lone Star Security & Video, Inc. v. City of Los Angeles*, 584 F.3d 1232, 1236 (9th Cir. 2009). Although Spreadbury alleges he was deprived of any opportunity to be heard in his efforts to appeal his loss of his library privileges, he has wholly failed to show that he is likely to succeed on the merits of those allegations. Spreadbury has not demonstrated the existence of serious questions as to the lack of procedural protections, or that the balance of hardships tip in his favor with respect to his loss of his library privileges.

D. City of Hamilton — Ryan Oster

With respect to the Hamilton Police Department or the City of Hamilton, Spreadbury's only argument in his motion pertains to Defendant Ryan Oster, the Chief of Police. He simply alleges Oster violated his right to liberty protected under the Fifth and Fourteenth Amendments to the United States Constitution. He further alleges Oster has failed to take action to correct violations of his rights.

Spreadbury does not identify Oster's specific conduct on which he bases his request for injunctive relief. Absent specification from Spreadbury, it appears he is referring to Oster's conduct in directing Spreadbury to stay away from Lee Enterprises' offices. Those circumstances, however, fail to demonstrate that Spreadbury has a protected liberty interest in accessing the business offices of Lee Enterprises — a private entity. Therefore, Spreadbury has failed to demonstrate a likelihood of success on that due process claim.

E. Order of Protection

Finally, Spreadbury does not identify or articulate any grounds in support of his request for an injunction quashing the order of protection obtained by Roddy. Having failed to meet his burden of demonstrating any merit to this request, he is not entitled to injunctive relief on that matter.

III. CONCLUSION

For the reasons discussed, IT IS HEREBY RECOMMENDED that Spreadbury's motion for a preliminary injunction be DENIED.

DATED this 3rd day of August, 2011.

/s/ Jeremiah C. Lynch
Jeremiah C. Lynch
United States Magistrate Judge