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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-JCL

**RESPONSE OF DEFENDANTS
CITY OF HAMILTON AND
BITTERROOT PUBLIC LIBRARY
TO PLAINTIFF'S OBJECTION TO
FINDINGS AND
RECOMMENDATION OF U.S.
MAGISTRATE JUDGE**

INTRODUCTION

On July 28, 2011, the U.S. Magistrate Judge entered Findings and Recommendation that Plaintiff's partial summary judgment motion on his claims against the Defendant City of Hamilton ("City") and Defendant Bitterroot Public Library ("Library") be denied. [Doc. 76.] This responds to Plaintiff's Objection (Doc. 86), dated August 6, 2011, to the Findings and Recommendation. Rule 72(b)(2), Fed. R. Civ. P. It would be an abuse of discretion to reject or modify the recommendation of the U.S. Magistrate Judge. Plaintiff's objections are without merit.

DISCUSSION

The U.S. Magistrate Judge concluded that Plaintiff failed his burden of establishing the absence of a genuine issue of material fact or an entitlement to a judgment as a matter of law. Rule 56(a), Fed. R. Civ. P. Specifically, Plaintiff did not identify factual or evidentiary matters supporting his entitlement to a summary judgment. Instead, he merely presented argument in support of his motion. [Doc. 76, pp. 4-5.] The U.S. Magistrate Judge was correct.

Rule 72(b)(2), Fed. R. Civ. P., requires a party to file "specific written objections to the proposed findings and recommendations." As with his summary judgment argument, the conclusory argument in Plaintiff's Objection, dated

August 6, 2011, fails to satisfy the standard in the procedural rule. Rule 72(b)(2), Fed. R. Civ. P.; *see also Parkinson v. U.S.*, 175 F. Supp. 2d 1233, 1240-41 (D. Idaho 2001). At most, Plaintiff simply identifies his claims and allegations and urges that they be resolved in his favor while disparaging the Court and the parties. *Spencer v. Bouchard*, 449 F.3d 721, 725 (6th Cir. 2006). As such, his objection should be rejected for this reason.

Separately, Plaintiff's objection should be rejected for other reasons as well. To begin with, the only "evidence" which Plaintiff offered in support of his summary judgment motion was alleged admissions in the City Defendants' Answer. However, Plaintiff misrepresented the content or substance of the matter admitted and denied in the Answer. [Doc. 32, pp. 7-9; Doc. 76, pp. 4-5.] As such, the matter relied upon by Plaintiff did not support his entitlement to a summary judgment.

That aside, there were other deficiencies in Plaintiff's summary judgment motion which were not addressed by the U.S. Magistrate Judge. [Doc. 76, p. 6.] For example, Plaintiff still does not have a Fifth Amendment claim. [Doc. 30, pp. 3 and 5.] The City and the Library are not federal entities or federal actors. *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). Therefore, Plaintiff's Fifth Amendment claims fail as a matter of law.

Likewise, although Plaintiff still has refused to answer the discovery served on him, his First Amendment claim appears to be based on the Library's refusal to place certain materials in its reference section, and by Plaintiff's trespass criminal proceedings. [Doc. 30, pp. 2-6.] However, Plaintiff does not have a constitutional right to require the inclusion of material of his sole choosing in an municipal library collection. *See U.S. v. American Library Ass'n, Inc.*, 539 U.S. 194, 210 n. 4 (2003). Further, the evidence does not support Plaintiff's argument that he was prosecuted for a "peaceful assembly" on public property. Instead, he continued to harass Library staff and disrupt Library operations. [Doc. 33, Nos. 3-5.] Specifically, Plaintiff did not demonstrate the elements of a First Amendment claim. *See Mendocino Environmental Center v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir. 1999); *Barney v. City of Eugene*, 20 Fed. Appx. 683, 685 (9th Cir. 2001).

Next, Plaintiff's Fourteenth Amendment claim appears to be based on three things, including (1) Plaintiff's prosecution for criminal trespass, (2) the revocation of Plaintiff's library privileges and (3) police officer requests that he not enter the business offices of the *Ravalli Republic*. [Doc. 30, pp. 3-5.]

However, Plaintiff does not have a substantive due process right to be free from prosecution without probable cause. *Albright v. Oliver*, 510 U.S. 266, 271 (1994). Also, he did not establish a violation of any other right in connection with his prosecution. [Doc. 33, Nos. 6 and 12.] As such, he has not established a due process claim based on his criminal trespass prosecution. *Mendocino, supra*, 192 F.3d at 1300.

As to the revocation of library privileges, Plaintiff harassed staff and disrupted Library operations. [Doc. 33, Nos. 3-5; *and see* Nos. 6-11.] In this connection, Plaintiff has not demonstrated the existence of a property or liberty interest. *Wedges/Ledges of California, Inc. v. City of Phoenix, Ariz.*, 24 F.3d 56, 62 (9th Cir. 1994). Also, he has not demonstrated a denial of due process. *Matthews v. Eldridge*, 434 U.S. 319, 332 (1976).

As to the *Ravalli Republic*, Plaintiff has not demonstrated how a police officer asking Plaintiff not to enter the business premises of the *Ravalli Republic* transcends into a civil rights claim. [Doc. 33, pp. 6-7, No. 17.] In any event, Plaintiff has not made any effort to establish that a governmental policy or custom caused a violation of his rights. *Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005). By the same token, Plaintiff made no showing as to why he is

entitled to a partial summary judgment on his state law claims. [Doc. 32, pp. 19-22.] Therefore, he is also not entitled to a summary judgment on those claims.

CONCLUSION

The Findings and Recommendation of the U.S. Magistrate Judge concerning Plaintiff's motion for partial summary judgment on his claims against the City and Library are correct. The Findings and Recommendation should be affirmed. Just as with his summary judgment argument, Plaintiff's objections are not specific or supported by the record or the law. Therefore, his objections should be rejected by the Court.

DATED this 10th day of August, 2011.

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

DATED this 10th day of August, 2011.

/s/ William L. Crowley
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*Attorneys for Defendants Bitterroot
Public Library, City of Hamilton and
Boone Karlberg P.C.*

CERTIFICATE OF SERVICE

I hereby certify that, on the 10th day of August, 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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