

William L. Crowley
Natasha Prinzing Jones
Thomas J. Leonard
BOONE KARLBERG P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula, MT 59807-9199
Telephone: (406)543-6646
Facsimile: (406) 549-6804
bcrowley@boonekarlberg.com
npjones@boonekarlberg.com
tleonard@boonekarlberg.com

*Attorneys for Defendants Bitterroot Public Library,
City of Hamilton and Boone Karlberg P.C.*

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

**DEFENDANT BOONE
KARLBERG P.C. AND CITY AND
LIBRARY DEFENDANTS'
RESPONSE TO PLAINTIFF'S
OBJECTIONS TO FINDINGS AND
RECOMMENDATION
CONCERNING INJUNCTIVE
RELIEF**

INTRODUCTION

On August 3, 2011, the U.S. Magistrate Judge entered Findings and Recommendation concerning Plaintiff's motion for injunctive relief. It was recommended that Plaintiff's motion for injunctive relief be denied. [Doc. 79.] on August 10, 2011, Plaintiff filed an objection to these Findings and Recommendation. [Doc. 91.] On behalf of Defendant Boone Karlberg P.C. ("Boone") and the City and Library Defendants, this responds to Plaintiff's objections. It would be an abuse of discretion to reject or modify the Findings and Recommendation of the U.S. Magistrate Judge. Plaintiff's objections are without merit.

DISCUSSION

The U.S. Magistrate Judge determined that Plaintiff failed to meet his burden of demonstrating an entitlement to a preliminary injunction. Plaintiff presented no argument or evidence in support of his request for a preliminary injunction. Also, significantly, he did not demonstrate any likelihood of success under the serious questions test. [Doc. 79, pp. 3-5.] The U.S. Magistrate Judge's determinations were correct. Plaintiff does not recognize the difference between argument and evidence.

Rule 72(b)(2), Fed. R. Civ. P., requires a party to file “specific written objections to the proposed findings and recommendations.” The arguments in Plaintiff’s objection do not 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 various claims and allegations and urges that they be resolved in his favor. *Spencer v. Bouchard*, 449 F.3d 721, 725 (6th Cir. 2006). As such, Plaintiff’s objections and argument should be rejected by the Court.

Under his motion for injunctive relief, Plaintiff sought an order (1) preventing Boone from engaging in further defamation, (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 Library to reinstate his library privileges. Plaintiff also requested the Court to “quash a civil order of protection” relating to Defendant Roddy. [Doc. 79, pp. 4-5.] In his objection, Plaintiff complains about the alleged acts or omissions of Ravalli County Sheriff Hoffman apparently relating to a prior civil rights action by Plaintiff. [Doc. 91, pp. 6-7.] However, Plaintiff does not explain how his argument relating to the alleged acts or

omissions of a county sheriff gives rise to injunctive relief against the City and Library Defendants relating to the limited matters listed above. [Doc. 79, pp. 4-5.]

Next, Plaintiff continues his allegation that Boone defamed him by imputing that he has committed a crime. [Doc. 91, p. 5, No. 7.] However, he provides no substance in support of his argument. Further, on July 21, 2011, the U.S. Magistrate Judge recommended that Plaintiff's claims against Boone be dismissed. [Doc. 67.] Fundamentally, statements in pleadings and court documents are privileged. Also, Plaintiff has not demonstrated why Boone's alleged acts, omissions or statements qualify as state action or conspiracy.

Under his motion for injunctive relief, Plaintiff sought an order preventing "the Hamilton, Montana Police Department" from further violating his constitutional rights. [Doc. 79, p. 4, No. 3.] In support of this portion of his motion for injunctive relief, Plaintiff argued only that Defendant Oster (Police Chief) violated his right to liberty protected under the Fifth and Fourteenth Amendments to the United States Constitution. He also alleged Defendant Oster failed to take action to correct alleged violations of Plaintiff's rights. However, Plaintiff did not identify specific conduct by Defendant Oster on which he based his claim for injunctive relief. Instead, it appeared that he was referring to Defendant Oster's conduct in directing Spreadbury to stay away from the offices

of Defendant Lee Enterprises. In this connection, Plaintiff failed to demonstrate that Defendant Oster violated a protected liberty interest of Plaintiff. [Doc. 79, pp. 8-9.]

Plaintiff's objection does not address his allegations relating to Defendant Oster. [Doc. 91.] Instead, Plaintiff now alleges that the City and Detective Murphy participated in his unlawful detention in July 2011 for writing on sidewalk. [Doc. 91, p. 3, No. 2; p. 5, No. 5.] Plaintiff is asking the Court to consider and determine matter that was not provided to the U.S. Magistrate Judge. In any event, Plaintiff has not demonstrated why he is entitled to a preliminary injunction relating to this matter. *Network Automation, Inc. v. Advance Systems Concepts, Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011). Plaintiff offers no evidence in support of his allegation, including the citation provided to him. In this connection, the City denies Plaintiff's allegation, including that a City officer arrested him in July 2011.

Plaintiff also alleges he was denied his right to speak on November 4, 2009. [Doc. 91, p. 3, No. 2.] Plaintiff offers no evidence in support of his argument. In this connection, Plaintiff has refused to answer written discovery addressed to the matter despite a Court Order requiring him to answer the discovery. [Doc. 68; Doc. 55, p. 4 (Library Interrogatory No. 2); p. 7 (Brophy Interrogatory No. 6); p. 8

(Roddy Interrogatories Nos. 1, 4, 5).] The Court should not reward Plaintiff's refusal to participate in discovery. Also, Plaintiff's argument is inconsistent with his prior argument that the incident on November 4, 2009, is irrelevant to his claims in this matter. [Doc. 62, pp. 1-2; Doc. 71, p. 2.] In any event, Plaintiff's argument is inconsistent with the determinations of other courts. Plaintiff's conduct relating to Ms. Roddy on November 4, 2009, led to her obtaining a protective order against him, as well as a criminal charge of felony intimidation. [Doc. 69, pp. 7-8.] Plaintiff was represented by an attorney at the protective order hearing, and a City Court and a District Court both dismissed Plaintiff's requests for relief from the protective order. In addition, the Montana Supreme Court dismissed Plaintiff's appeal of the order of protection, and it denied Plaintiff's petition for a rehearing, warning Plaintiff not to harass Roddy. [Doc. 12-1, pp. 1-13.]

As to the felony charge of intimidation, Plaintiff pleaded no contest to the crime. Yet, despite the plea, he appealed to the Montana Supreme Court, arguing that the District Court did not have subject matter jurisdiction relating to the criminal charge as no probable cause existed for it. However, the Montana Supreme Court has rejected Plaintiff's appeal and argument. *State of Montana v. Spreadbury*, 2011 MT 176 (July 26, 2011). In doing so, the Supreme Court noted,

in part, that the District Court had denied Plaintiff's motion to dismiss the charges for a failure to establish probable cause to charge him with intimidation. [*Id.*, ¶ 4.]

In other words, as a matter of collateral estoppel and federal law, it is now established that Plaintiff acted on November 4, 2009, under circumstances that reasonably tended to produce a fear that Plaintiff would inflict physical harm on Defendant Roddy with the purpose of causing her to perform or omit to perform an act. MCA § 45-2-203 (intimidation); *Troutt v. Colorado Western Ins. Co.*, 246 F.3d 1150 (9th Cir. 2001) (collateral estoppel); *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (One cannot impugn an earlier criminal conviction under a 1983 claim.). In any event, Plaintiff has not demonstrated why he is entitled to a preliminary injunction relating to his right to speak on November 4, 2009, or his order of protection involving Ms. Roddy. [Doc. 91, p. 3, Nos. 2, 3; p. 4, No. 5.]

In connection with his allegations relating to the order of protection and his arrest in July 2011, Plaintiff argues his Fifth Amendment rights have been violated. [Doc. 91, p. 3, Nos. 2, 3.] However, 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). As a result, Plaintiff's insistence on continuing to assert a Fifth Amendment claim is a waste

of resources. [*See, e.g.*, Doc. 73, p. 4; Doc. 32, pp. 12-13; Doc. 53, p. 11 n. 1.]

Plaintiff has yet to explain why he has a Fifth Amendment claim.

Plaintiff's motion for injunctive relief sought an order requiring the Library to reinstate his library privileges. [Doc. 79, pp. 4-5.] Plaintiff argued the Library deprived him of his library privileges in violation of state law and his constitutional rights under the Fifth and Fourteenth Amendments. However, as to the Fourteenth Amendment, Plaintiff has not demonstrated that state law sets forth substantive predicates to govern official decision making or that it directs a particular outcome if the substantive predicates are met. Similarly, he does not demonstrate that he has not been provided procedural protections. [Doc. 79, pp. 7-8.] Plaintiff's objection does not provide any further substantive support for his claim and argument.

Plaintiff also argues that he has a permanent disability caused by the Defendants' conduct. [Doc. 91, p. 3, No. 1.] However, the Library addressed written discovery to Plaintiff concerning the "health care professionals" who have examined Plaintiff for bodily injury or emotional distress caused by the Defendants. [Doc. 55, p. 5 (Library Interrogatories Nos. 6 and 7).] Yet, to date, Plaintiff has refused to answer the discovery despite a Court Order requiring him to answer it. [Doc. 68.] Again, the Court should not reward Plaintiff's refusal to

participate in discovery. In any event, Plaintiff still has not demonstrated that he is likely to succeed on the merits of his claims, he is likely to suffer irreparable harm in the absence of preliminary relief, the balance of the equities tip in his favor or that an injunction is in the public interests. [Doc. 79, pp. 2-3 (citing *Network Automation, Inc., supra.*)]

Finally, Plaintiff complains about prior determinations by the U.S. Magistrate Judge or the Court. [Doc. 91, pp. 1-2, 5, 6, 8.] However, contrary to his obligation under Rule 72(b)(2), Fed. R. Civ. P., Plaintiff does not point to any specific matter in support of his arguments. In this regard, a judge's rulings generally do not constitute alleged bias or prejudice. *See, e.g., In re Complaint of Judicial Misconduct*, 599 F.3d 1087, 1088 (9th Cir. 2010). Here, Plaintiff has not presented specific evidence, as opposed to conclusory argument, in support of his various claims. Given this and Plaintiff's refusal to participate in discovery, Plaintiff has no one to blame but himself for the rulings against him. Certainly, the circumstances do not provide a legitimate basis to claim bias or prejudice.

CONCLUSION

The Findings and Recommendation of the U.S. Magistrate Judge concerning Plaintiff's motion for injunctive relief are correct, and the Findings and Recommendation should be affirmed by the Court. [Doc. 79.] Plaintiff's

objections are not specific, and they are not supported by the record, the evidence or the law. Therefore, his objection should be rejected by the Court. It is discordant that Plaintiff can refuse to comply with a Court Order requiring him to answer discovery relating to the basics of his various claims against the City and Library Defendants and, at the same time, argue that he is entitled to a preliminary injunction in this matter without providing support beyond conclusions and argument.

DATED this 16th day of August, 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 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 1,855 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 16th day of August, 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 16th 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
William L. Crowley
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot Public
Library, City of Hamilton,
and Boone Karlberg P.C.*