MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

ROBERT F. COOPER,	Cause No.: CDV-2009-588
Plaintiff,	
v.	**ORDER ON DEFENDANT'S MOTION TO DISMISS**
WILIAM GLASER,	
Defendant.	

BACKGROUND

Plaintiff Robert F. Cooper (Cooper) filed a complaint *pro se* on July 6, 2009, alleging that Defendant William Glaser (Glaser) committed acts of defamation against him on the floor of the Montana House of Representatives on March 5, 2009. Plaintiff claims that Glaser "committed acts of Defamation, both slander and libel, in regards to me, Robert F. Cooper."

On August 5, 2009, Glaser filed a motion to dismiss under Rule 12(b)(6) of the Montana Rules of Civil Procedure, supported by brief, asserting that Glaser, as a duly elected and acting state legislator, had absolute immunity for statements made on the floor of the House of Representatives, and that the

1   complaint should therefore be dismissed. Cooper has filed a responsive brief and

2   a motion to deny Glaser's motion to dismiss. The Court concludes that Glaser's

3   motion is well taken, and that the action should be dismissed.

4   **DISCUSSION**

5   In addressing a motion to dismiss under Rule 12(b)(6), M.R.Civ.P., a

6   court must consider the complaint in the light most favorable to the plaintiff and

7   accept the allegations in the complaint as true. *Goodman Realty, Inc. v. Monson*,

8   267 Mont. 228, 231, 883 P.2d 121, 123 (1994). The only relevant documents

9   when considering a motion to dismiss are the complaint and any documents it

10   incorporates by reference. *Cowan v. Cowan*, 2004 MT 97, ¶ 11, 321 Mont. 13,

11   89 P.3d 6. A complaint should not be dismissed under Rule 12(b)(6), M.R.Civ.P.,

12   unless it appears that the plaintiff can prove no set of facts in support of his claim

13   which would entitle him to relief. *Wheeler v. Moe*, 163 Mont. 154, 161, 515 P.2d

14   679, 683 (1973). In other words, dismissal is justified only when the allegations

15   of the complaint clearly demonstrate that plaintiff does not have a claim. *Id.* For

16   these reasons, a trial court rarely grants a motion to dismiss for failure to state a

17   claim upon which relief can be granted.

18   Cooper's allegations of defamation are based on statements Glaser

19   allegedly made about him on the floor of the House of Representatives. No

20   official record of the proceedings is attached to the complaint, but, as set forth

21   above, when considering a motion to dismiss under Rule 12 (b)(6), the Court

22   accepts the allegations as true.

23   Article V of the Montana Constitution relates to the makeup,

24   structure, authority, and qualifications of state legislators. Section 8, which

25   concerns legislative immunity, provides:

1   A member of the legislature is privileged from arrest during
attendance at sessions of the legislature and in going to and returning
2   therefrom, unless apprehended in the commission of a felony or a
breach of the peace. **He shall not be questioned in any other place**
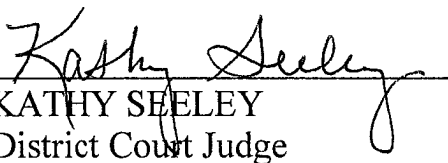3   **for any speech or debate in the legislature.**

4 (Emphasis added.)

5   It is apparent from the plain language of the provision that the

6 immunity covers statements made by a legislator during legislative proceedings,

7 which is the situation here. The Court need not discuss the laws on defamation, or

8 the application of such laws to the instant case since the constitutional protection is

9 absolute. Plaintiff cites cases and statutory provisions from other jurisdictions, but

10 it is the Montana Constitution that controls in this case. "We have recognized that

11 statutes conflicting with the Montana Constitution are generally subordinate to the

12 constitution and if possible must be interpreted to harmonize with it." *Pengra v.*

13 *State*, 2000 MT 291, ¶ 14, 302 Mont. 276, 14 P.3d 499 (citation omitted).

14   Based upon the foregoing,

15   **IT IS HEREBY ORDERED** that Defendant William Glaser's

16 motion to dismiss is GRANTED and Plaintiff Robert F. Cooper's complaint is

17 dismissed with prejudice.

18   DATED this _____1ˢᵗ_____ day of October 2009.

19

20   _____
                                      KATHY SEELEY
21   District Court Judge

22

23 pcs: Robert F. Cooper
        Mark D. Parker/Casey Heitz
24

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