

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

AMERICAN HUMANIST )  
ASSOCIATION, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JOSEPH NORWOOD, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION

No. 17-2554-KHV

MEMORANDUM AND ORDER

On September 20, 2017, plaintiffs filed this action against defendants, seeking damages under 42 U.S.C. § 1983. Complaint (Doc. #1). On December 15, 2017, defendants filed Defendants’ Motion To Dismiss, Or In The Alternative, Motion For Summary Judgment (Doc. #11) which asserts that plaintiffs failed to exhaust administrative remedies. On December 28, 2017, plaintiffs filed a notice for Voluntary Dismissal Without Prejudice (Doc. #13) pursuant to Rule 41(a)(1)(A)(i), Fed. R. Civ. P.

Under Rule 41(a)(1)(A)(i), plaintiffs can voluntarily dismiss an action without a court order by filing “a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Because defendants moved for summary judgment before plaintiffs filed their notice of dismissal, the Court overrules plaintiffs’ dismissal pursuant to Rule 41(a)(1)(A)(i).

**IT IS THEREFORE ORDERED** that plaintiffs’ Voluntary Dismissal Without Prejudice (Doc. #13) filed December 28, 2017 is **OVERRULED**. Plaintiffs may seek voluntary dismissal under Rule 41(a)(1)(A)(ii) with defendants’ consent.

Dated this 2nd day of January, 2018 at Kansas City, Kansas.

s/ Kathryn H. Vratil  
Kathryn H. Vratil  
United States District Judge