

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

<p>WAYNE DOYLE,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p>-vs.-</p> <p>CLARK COUNTY PUBLIC LIBRARY, <i>et al.,</i></p> <p style="padding-left: 100px;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. C-3-07-0003</p> <p>District Judge Thomas M. Rose Chief Magistrate Judge Michael Merz</p> <p><u>DEFENDANTS' AMENDED¹ CIVIL</u> <u>RULE 12(b)(6) MOTION TO DISMISS</u></p>
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NOW COME Defendants Clark County Public Library (hereafter, the "Library") and John McConagha and, pursuant to Fed. R. Civ. P. 12(b)(6), move this Court to dismiss Plaintiff's Amended Complaint on the grounds that it fails to state a claim upon which relief can be granted. Specifically:

- (1) Plaintiff is precluded from stating a claim for violation of his First Amendment rights to assembly peacefully and to visit the Library due to his failure to appeal to common pleas court the Library's administrative denial of his appeal challenging his two-year ban from entering Library property;
- (2) Plaintiff fails to state a claim for violation of his First Amendment right to liberty of movement without due process;
- (3) Plaintiff fails to state a claim for violation of his civil rights under 42. U.S.C. § 1983;
- (4) Plaintiff fails to state a claim under Ohio law for malicious prosecution, intentional or negligent infliction of emotional distress, breach of contract, or promissory estoppel;
- (5) Plaintiff's federal civil rights claims against Defendant McConagha are barred under the doctrine of qualified immunity;
- (6) Plaintiff's Ohio law claims are barred under Ohio's political subdivision immunity statute, O.R.C. Chapter 2744;

¹ Defendants inadvertently filed their Motion to Dismiss and Memorandum in Support without a Certificate of Service attached to their Memorandum in Support. Accordingly, Defendants file the instant Amended Motion and Amended Memorandum in Support to correct this oversight.

- (7) Plaintiff fails to state a claim of a conspiracy to violate his civil rights under 42 U.S.C. § 1985 or 18 U.S.C. § 241; and
- (8) Plaintiff fails to state a claim that he was denied his constitutional rights because of race, religion, education and background.

The reasons for this Motion are stated in the attached Memorandum in Support which is incorporated herein.

Respectfully submitted,

ZASHIN & RICH CO., L.P.A.

s/ Lois A. Gruhin

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Attorneys for Defendants,
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John McConagha

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served via regular U.S.

Mail on this 30th day of March, 2007 upon the following:

Wayne Doyle
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Springfield, Ohio 45506

Plaintiff, *Pro Se*

s/ Lois A. Gruhin

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Attorney for Defendants

Clark County Public Library and

John McConagha