

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

WAYNE DOYLE,

Plaintiff,

:

Case No. 3:07-cv-003

-vs-

District Judge Thomas M. Rose  
Chief Magistrate Judge Michael R. Merz

:

CLARK COUNTY PUBLIC LIBRARY,  
et al.,

Defendants.

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**ORDER TO *PRO SE* PLAINTIFF**

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Plaintiff is hereby notified that Defendants have filed an Amended Motion to Dismiss this case pursuant to Fed. R. Civ. P. 12(b)(6) on various grounds (Doc. No. 46). Plaintiff is required to respond to this Motion not later than April 23, 2007.

The Amended Motion to Dismiss was made under Fed. R. Civ. P. 12(b)(6) whose purpose is to allow a defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true. *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993), citing *Nishiyama v. Dickson County, Tennessee*, 814 F.2d 277, 279 (6th Cir. 1987). Put another way, “The purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of the statement of the claim for relief; it is not a procedure for resolving a contest about the facts or merits of the case.” Wright & Miller, *FEDERAL PRACTICE AND PROCEDURE: Civil 2d* §1356 at 294 (1990). In other words, the purpose of the Motion is not to test Plaintiff’s evidence or proof of his claims. Instead, a motion under Rule 12(b)(6) essentially claims that, even if everything a plaintiff says in his Complaint is true, he is still not entitled to relief. Plaintiff should prepare his response with this standard in mind.

March 31, 2007.

s/ **Michael R. Merz**  
Chief United States Magistrate Judge