NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-4152

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 11, 2009
LEONARD GREEN, Clerk

WAYNE DOYLE, Plaintiff-Appellant, v. JOHN MCCONAGHA; CLARK COUNTY LIBRARY, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

O R D E R

Before: BOGGS, Chief Judge; GILMAN and ROGERS, Circuit Judges.

Wayne Doyle, proceeding pro se, appeals a district court order dismissing his 42 U.S.C. § 1983 action, alleging the violation of his right to due process, in connection with a two-year ban imposed upon him by the Clark County, Ohio Library. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On March 21, 2005, Doyle was notified by letter that a female patron had complained to a security officer that Doyle harassed her by staring at her and following her around the library. The letter indicated that, as a result of the complaint, Doyle had violated the Library's Code of Conduct and, effective immediately, he was banned from the library for a period of two years. After an administrative appeal, Doyle's ban was upheld. Doyle then filed the instant complaint, alleging the violation of his right to due process in connection with the ban, malicious prosecution, intentional and negligent infliction of emotional distress, breach of contract, and a violation of the principles

of promissory estoppel. He also alleged that his rights were violated on account of his race, religion, education, and background. Doyle requested declaratory, injunctive, and monetary relief.

The defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). A magistrate judge recommended granting the motion, finding that Doyle's complaint failed to state a claim upon which relief can be granted. Over Doyle's objections, the district court adopted the magistrate judge's recommendation and dismissed the complaint. Doyle now appeals.

We review de novo a district court's dismissal of a complaint pursuant to Fed. R. Civ. P. 12(b)(6). *Marks v. Newcourt Credit Group, Inc*., 342 F.3d 444, 451 (6th Cir. 2003). In reviewing a Rule 12(b)(6) motion to dismiss, "[f]actual allegations must be enough to raise a right of relief above the speculative level . . . ." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007). The court need not, however, accept as true legal conclusions or unwarranted factual inferences. *Gregory v. Shelby County*, 220 F.3d 433, 446 (6th Cir. 2000).

Assuming for the sake of argument that there is a protected liberty interest in access to a public library, "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

Here, Doyle was notified of his two-year ban on March 21, 2005, in a letter that indicated he had violated the Library's Code of Conduct and could appeal his suspension at a hearing where he could present evidence, which he did. Therefore, Doyle was provided with notice of the charges against him and "an opportunity to present his side of the story." *Boals v. Gray*, 775 F.2d 686, 690 (6th Cir. 1985) (quoting *Goss v. Lopez*, 419 U.S. 565, 581-82 (1975)). We have previously concluded, in a case where a library patron was evicted from a public library for failing to wear shoes, that because the library notified the patron of his infraction and gave him an opportunity to be heard, the library did not infringe the patron's constitutional rights. *Neinast v. Bd. of Trs. of Columbus Metro. Library*, 346 F.3d 585, 597-98 (6th Cir. 2003). For the reasons given in the analysis of *Mathews v. Eldridge*, 424 U.S. 319 (1976), contained in the magistrate judge's Report and Recommendation of July 3, 2007, at 6-7, the procedure by which McConagha banned Doyle from the library did not violate Doyle's right to due process and Doyle failed to state a claim upon which relief could be granted.

Doyle's remaining claims similarly fail to state a claim upon which relief can be granted. His claim that his constitutional right to confront witnesses against him was violated because the complaining witness did not appear at the appeal hearing is without merit as the Confrontation Clause only applies to criminal prosecutions. *United States v. Kirby*, 418 F.3d 621, 627 (6th Cir. 2005) (citing *United States v. Aspinall*, 389 F.3d 332, 342 (2d Cir. 2004)). Regarding his claims of discrimination, in violation of the Equal Protection Clause, Doyle has failed to set forth facts, other than bare allegations, that his ban was the result of discrimination on the basis of his race, religion, education, or background. These facts are insufficient to state a claim for which relief can be granted. *Chapman v. City of Detroit*, 808 F.2d 459, 465 (6th Cir. 1986). Nor is there evidence to suggest that discrimination was a factor in the district court's denial of Doyle's motions for temporary restraining orders, his motion to amend his complaint, or his motion to proceed in forma pauperis. Finally, as the district court explained, Doyle's conclusory claims for recovery based on the state law theories of malicious prosecution, intentional and negligent infliction of emotional distress, and promissory estoppel do not state claims for which relief can be granted.

For the foregoing reasons, the judgment of the district court is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Leonard Green
Clerk

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Re: Case No. 07-4152, *Wayne Doyle v. John McConagha, et al*
Originating Case No. : 07-00003

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Michelle M. Davis
Case Manager
Direct Dial No. 513-564-7025
Fax No. 513-564-7098

cc: Mr. James Bonini

Enclosure

Mandate to issue