

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

| | | |
|--------------------------------|---|------------------------|
| AMERICAN HUMANIST |) | |
| ASSOCIATION, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | CIVIL ACTION |
| v. |) | |
| |) | No. 17-2554-KHV |
| JOSEPH NORWOOD, et al., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

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