

5442-106
DPW/slc

**IN THE CIRCUIT COURT OF ILLINOIS
CHAMPAIGN COUNTY, SIXTH JUDICIAL CIRCUIT**

DERVANNA H.A. TROY-MCKOY,)
)
Plaintiff,)
)
vs.)
)
GEORGE GOLLIN, BRAD SCHWARTZ, and)
THE BOARD OF GOVERNORS OF THE)
UNIVERSITY OF ILLINOIS,)
)
Defendants.)

Case No. 16-L-106

FILED
SIXTH JUDICIAL CIRCUIT
13 JAN 23 2017
[Signature]
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

**DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

NOW COMES the defendant, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS ("the University"), improperly designated as "THE BOARD OF GOVERNORS OF THE UNIVERSITY OF ILLINOIS", by its attorneys, HEYL, ROYSTER, VOELKER & ALLEN, and respectfully moves this Court to dismiss the Complaint filed by the plaintiff, DERVANNA H.A. TROY-MCKOY, with prejudice, pursuant to 735 ILCS 5/2-619(a)(1), and in support thereof, states:

1. On November 17, 2016, the University filed a section 2-619 motion to dismiss plaintiff's Complaint and a memorandum of law in support. 735 ILCS 5/2-619(a)(1). The sole basis for the University's motion was that this Court does not have jurisdiction over the subject matter of the action pursuant to the Illinois Court of Claims Act, 705 ILCS 505/8(d), and the University of Illinois Act, 110 ILCS 305/1 -- both of which vest exclusive jurisdiction in the Illinois Court of Claims for claims for damages against the State, including claims against the University and its employees sounding in tort. In the case at bar, plaintiff's Complaint for False Light

sounds in tort and is asserted against the University and two of its employees acting within the scope of their official duties and legal authority. Accordingly, this Court lacks subject matter jurisdiction over plaintiff's claims.

2. This Court entered a Scheduling Order on November 29, 2016, ordering plaintiff "to file any materials in opposition to the motion, including a memorandum of law and deliver a copy to the Court at is chambers no later than **12/30/16**." (Emphasis added.) Plaintiff did not file a response to the University's motion to dismiss with the Court before the December 30, 2016 Court-ordered deadline, and pursuant to the Court's Scheduling Order, that alone is a sufficient basis for the Court to grant the University's motion and dismiss this case.

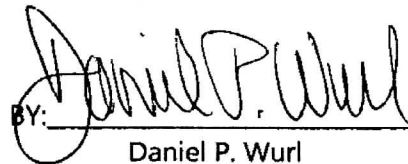
3. In fact, plaintiff did not file anything until January 17, 2017, when he filed a response entitled "Plaintiff's Opposition To Denied [sic] Defendant's Motion to Dismiss Complain [sic] and Memorandum of Law in Support." Plaintiff did not serve his response on the University's counsel, nor did he file a proof of service indicating that he had done so. Instead, the University's counsel, upon checking the Circuit Clerk's website on January 19 to determine the status of the case, discovered that plaintiff had filed a late response on January 17. The University's counsel had to obtain a copy of plaintiff's filing from the Circuit Clerk's office.

4. Not only did plaintiff file an untimely response, but he failed to rebut, or even address, in his response the legal argument raised in the University's motion to dismiss, namely, that this Court lacks subject matter jurisdiction over his Complaint. Instead, plaintiff presented questionable arguments and numerous exhibits that have no bearing on the issue of this Court's subject matter jurisdiction.

5. Because plaintiff has not rebutted, or even addressed, the legal authorities cited in the University's motion and memorandum of law to support its argument that this Court lacks subject matter jurisdiction over this case, the University stands on the legal authorities and arguments set forth in its motion to dismiss and memorandum of law in support filed on November 17, 2016.

WHEREFORE, defendant, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, respectfully requests that this Court enter an Order: (1) dismissing plaintiff's Complaint for False Light with prejudice and to award to this defendant its costs herein; and (2) granting such other and further relief as the Court deems appropriate and just.

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ILLINOIS, Defendant

BY: 

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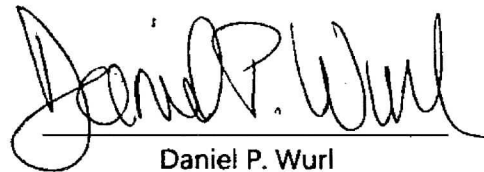
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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** was served upon all parties of record to the above cause by e-mail and by regular mail by enclosing the same in an envelope addressed to such parties at their address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Box in Champaign, Illinois, on the 23rd day of January, 2017.

Dervanna H. A. Troy-McKoy
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A handwritten signature in black ink that reads "Daniel P. Wurl". The signature is written in a cursive style with a large, looping initial "D".

Daniel P. Wurl

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