

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CESAR MOSS,)	
)	
PLAINTIFF,)	
)	
v.)	CASE NO. 2:10cv-766-MEF
)	
STATE OF ALABAMA DEPARTMENT)	
OF CORRECTIONS; et al.,)	(WO-Do Not Publish)
)	
DEFENDANTS.)	

MEMORANDUM OPINION AND ORDER

The Complaint in this matter purports to seek relief pursuant to the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12102, *et. seq.* (“ADA”). *See* Doc. # 1 at p. 2. Moreover, the Plaintiff’s brief in opposition to the Defendants’ motion for summary judgment also included a reference to Plaintiff seeking relief pursuant to the ADA. Despite these two separate assertions, the Complaint contained absolutely no factual basis for a claim pursuant to the ADA. Additionally, the evidentiary record contained no evidence which would support such a claim. While Defendants have asked for summary judgment on all of Plaintiff’s claims, they appear to have made no argument whatsoever about claims pursuant to the ADA.

Pursuant to the Federal Rules of Civil Procedure, this Court is authorized to grant summary judgment on grounds not raised by a party. By prior Order, this Court advised the parties that it was inclined to grant a partial summary judgment to Defendants on the ADA claims pursuant to Federal Rule of Civil Procedure 56(f)(2) on the grounds that Plaintiff had

neither alleged facts in support of such claims, nor could support for such claims be found in the factual record before this Court. Despite being given a reasonable opportunity to oppose the Court's announced intended action, no party filed any opposition. Accordingly, it is hereby ORDERED that partial summary judgment is entered in favor of Defendants on the ADA claims set forth in the Complaint and those claims are DISMISSED with PREJUDICE.

DONE this the 29th day of June, 2011.

/s/ Mark E. Fuller
UNITED STATES DISTRICT JUDGE