

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

GARY LEE WHEELER, JR.

PLAINTIFF

v.

Case No. 2:11-CV-02002

DR. TINSMAN, Jail Doctor, Sebastian
County Detention Center; CAPTAIN
CONGER, Sebastian County Detention
Center; SHERIFF FRANK ATKINSON;
and NURSE LAURA AQUIRE

DEFENDANTS

ORDER

Currently before the Court is the Report and Recommendation (Doc. 35) filed in this case on August 1, 2012, by the Honorable James R. Marschewski, Chief United States Magistrate for the Western District of Arkansas, in regard to a Motion for Summary Judgment filed by Defendants. Also before the Court are Defendants’ Objections (Doc. 36) to the Report and Recommendations.

Having reviewed the case *de novo*, the Court finds that Defendants’ Objections to the Report and Recommendation offer neither law nor fact requiring departure from the Magistrate’s findings. Defendants base their objections largely on the argument that Plaintiff was not denied meaningful access to any of the jail’s services, programs, or activities, because Plaintiff was able to effectively ambulate using one leg. This objection appears to be premised on a reading of the ADA that would require either accommodating a person’s disability OR providing them access to services and activities. Defendants, however, have not cited to any case law that would support that position. In the case cited to by Defendants, *Baribeau v. City of Minneapolis*, 596 F.3d 465 (8th Cir. 2010), the Plaintiff was provided some accommodations for his disability, which the Eighth Circuit found to be reasonable under the circumstances. The Court agrees with the reasoning of the Magistrate in the

Report and Recommendation that *Baribeau* is factually distinguishable from the case at hand, and that there remains a genuine dispute of material fact as to whether Defendants violated Plaintiff's rights under the ADA given the circumstances of this case.

Therefore, the Court, being well and sufficiently advised, finds that the Report and Recommendations (Doc. 35) is proper and should be and hereby is **ADOPTED IN ITS ENTIRETY**. For the reasons stated herein and in the Magistrate Judge's Report and Recommendations, Defendants' Motions for Summary Judgment (Doc. 25) is **DENIED**.

IT IS SO ORDERED this 14th day of September, 2012.

P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE