

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ECCLESIASTICAL DENZEL WASHINGTON,)	
Register No. 990079,)	
)	
Plaintiff,)	
)	
v.)	No. 08-4092-CV-C-NKL
)	
MATT BLUNT, et al.,)	
)	
Defendants.)	

ORDER

On May 6, 2009, United States Magistrate Judge William A. Knox recommended that the parties’ motions for summary judgment and plaintiff’s request for a preliminary injunction be denied. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on May 21 and 22, 2009, and by defendants on May 26, 2009. The issues raised in the exceptions were adequately addressed in the report and recommendation. Plaintiff, an asthmatic, has been exposed to environmental tobacco smoke and has suffered exacerbations of his symptoms and asthma attacks. The court is not persuaded that exposing plaintiff to known triggers and then treating his symptoms is constitutionally adequate, if the triggers are sufficiently severe and present an unreasonable risk to his health or safety. And on that issue, there are genuine issues of material fact. The court finds that the recommendation of the Magistrate Judge is correct and should be adopted.

Once counsel has been appointed for plaintiff and given an opportunity to conduct limited discovery, if necessary, defendants may seek leave to file a supplemental dispositive motion.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of May 6, 2009, is adopted. [82] It is further

ORDERED that plaintiff's motion of October 9, 2008, for a preliminary injunction is denied. [40] It is further

ORDERED that the parties' motions for summary judgment are denied and counsel be appointed and given a period of time to determine whether discovery should be reopened for very limited purposes. [63, 70]

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: June 24, 2009
Jefferson City, Missouri