

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Dale Joseph Burke, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 North Dakota Department of Correction )  
 and Rehabilitation, et. al., )  
 )  
 Defendants. )

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Case No. 1:12-cv-131

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Before the Court is Plaintiff Dale Joseph Burke’s “Motion for Preliminary Injunction.” filed on May 2, 2014. See Docket No. 75. The matter was referred to Magistrate Judge Charles S. Miller for the issuance of a Report and Recommendation. The Defendants filed a response in opposition to the motion on May 7, 2014. See Docket No. 76. The Plaintiff filed a reply brief on May 15, 2014. See Docket No. 81. On May 20, 2014, Judge Miller issued a Report and Recommendation wherein he recommended that Burke’s motion be denied. Both parties were given fourteen (14) days to object to the Report and Recommendation. No objections were filed.

In his motion, the Plaintiff contends a preliminary injunction is necessary because the Defendants are retaliating against him for initiating this action by denying him medical treatment. The Defendants contend the Plaintiff’s motion is improper because it has nothing to do with his underlying claims in the present action. Judge Miller agreed with the Defendants and the undersigned concurs. The contentions in the motion for a preliminary injunction have nothing to do with the underlying claims and do not constitute a basis for a preliminary injunction.

The Court has carefully reviewed the Report and Recommendations, relevant case law, and the entire record, and finds the Report and Recommendations to be persuasive.

Accordingly, the Court **ADOPTS** both Report and Recommendation (Docket No. 84) in its entirety and **DENIES** Burke's requests for a preliminary injunction. (Docket No. 75).

**IT IS SO ORDERED.**

Dated this 30th day of July, 2014.

*/s/ Daniel L. Hovland*  
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Daniel L. Hovland, District Judge  
United States District Court