

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
COLUMBIA DIVISION

STEVEN C. MESSNER	)	
	)	
v.	)	NO. 1-11-0059
	)	JUDGE CAMPBELL
HICKMAN COUNTY, et al.	)	

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket No. 86), Objections filed by the Plaintiff in the form of a Motion for *De Novo* Determination and Supporting Memorandum (Docket Nos. 87 and 88)<sup>1</sup> and Defendants' Response thereto (Docket No. 89).

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(3) and Local Rule 72.03(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections, the Response, the underlying Motion and the file. Plaintiff's Objections are overruled, and the Report and Recommendation of the Magistrate Judge (Docket No.86) is adopted and approved.

Plaintiff's objection that the Magistrate Judge considered a legal argument not propounded by the Defendants with regard to Plaintiff's ADA claim is overruled. First of all, Defendants did raise the argument that Plaintiff was able to participate in the benefits and services offered to other inmates. Docket No. 74, pp. 9 and 11. Secondly, being excluded from participation in or being denied the benefits of services, programs or activities of a public entity (along with being subjected to discrimination) is the conduct prohibited by the ADA, pursuant to 42 U.S.C. § 12132.

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<sup>1</sup> Plaintiff's Motion for *De Novo* Determination (Docket No. 87) is GRANTED.

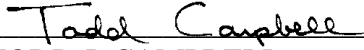
Plaintiff's argument that Defendants utterly refused him any accommodations whatsoever is overruled. The facts, as found by the Magistrate Judge and confirmed by the Court, indicate that Plaintiff was provided reasonable accommodations in his cell, both before and after his fall.

Plaintiff argues that the Magistrate Judge's recommendation concerning Plaintiff's Section 1983 claims related to his fall ignores facts and inferences favorable to the Plaintiff. The Court disagrees. The evidence presented indicates that Plaintiff received medical treatment after his fall and that Defendants were not deliberately indifferent to Plaintiff's medical needs.

For these reasons, the Report and Recommendation of the Magistrate Judge (Docket No. 86) is adopted and approved. Defendants' Motion for Summary Judgment (Docket No. 73) is GRANTED, and this action is DISMISSED.

The pretrial conference set for January 27, 2014, and the jury trial set for February 4, 2014, are canceled, and the Clerk is directed to close the file. Any other pending Motions are denied as moot. This Order shall constitute the final judgment in this case pursuant to Fed. R. Civ. P. 58.

IT IS SO ORDERED.

  
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TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE