

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

APR 27 1998

**PATRICK FISHER**  
Clerk

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DEAN ALAN MILLER,

Plaintiff-Appellant,

v.

ROBERT D. HANNIGAN, Warden,

Defendant-Appellee.

No. 97-3327  
(Dist. of Kansas)  
(D.C. No. 96-CV-3009)

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**ORDER AND JUDGMENT\***

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Before **BALDOCK**, **EBEL**, and **MURPHY**, Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. Accordingly, we honor the parties' requests and order the cause submitted without oral argument.

Dean A. Miller, proceeding *pro se*, appeals the district court's grant of summary judgment in favor of Robert D. Hannigan, the Warden of the Hutchinson

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata* and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Correctional Facility. In his complaint, Miller alleged that his constitutional rights were being violated by his exposure to environmental tobacco smoke (“ETS”). In light of the fact that the Hutchinson facility had recently adopted a smoking ban and the vague and conclusory nature of Miller’s allegations, the district court concluded that no reasonable factfinder could conclude that Hannigan was deliberately indifferent to Miller’s right to be free from exposure to ETS. This court reviews a grant of summary judgment *de novo*, applying the same standards as the district court. *See Pietrowski v. Town of Dibble*, 134 F.2d 1006, 1008 (10th Cir. 1998).

We have carefully reviewed the parties’ briefs on appeal, the district court’s Memorandum and Order, and the entire record before this court. Based upon that review, we conclude that the district court committed no reversible error and **AFFIRM** for substantially those reasons set forth by the district court.

ENTERED FOR THE COURT

Michael R. Murphy  
Circuit Judge