

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CATHERINE YOUNG : CIVIL ACTION
 :
 v. :
 :
 DONALD T. VAUGHN, et al. : No. 98-4630

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

July 31, 2000

Plaintiff Catherine Young ("Young"), alleging a violation of her right to maintain her marriage, filed this action under 42 U.S.C. § 1983 and Pennsylvania's Official Visitation of Prisons Act, 61 Pa. C.S.A. § 1091 et seq. Young filed a motion for partial summary judgment on November 15, 1999. Defendants Donald Vaughn ("Vaughn") and Martin Horn ("Horn") filed a cross-motion for summary judgment. Plaintiff withdrew her claims under 61 Pa. C.S.A. § 1091 et seq.; this converted her motion for partial summary judgment to a motion for summary judgment. Plaintiff's motion for summary judgment will be denied; defendants' cross-motion for summary judgment will be granted.

BACKGROUND

Young married inmate Herndon Steele ("Steele") at SCI Graterford ("Graterford") on August 22, 1997 after continuously communicating and visiting with Steele at Graterford since March, 1996. On September 27, 1997, Young's visiting privileges were suspended for six months for engaging in improper sexual contact with Steele on a visit on September 25, 1997.

On February 5, 1998, Young joined the Pennsylvania Prison Society ("PPS") as an Official Visitor as part of her college program. On March 12, 1998, Young attempted to visit Graterford as an Official Visitor; her six month suspension had 13 days remaining at the time. Young was recognized by a guard and not permitted to enter. On March 13, 1998, Young's visiting privileges were indefinitely terminated.

On August 28, 1998, Young filed a motion for a preliminary injunction to restore her visiting privileges. On September 2, 1998, Young filed a complaint under 42 U.S.C. § 1983 and the Official Visitation of Prisons Act, 61 Pa. C.S.A. § 1091 et seq.

Steele was transferred to SCI Coal Township on October 22, 1998. On November 5, 1998, Steele was transferred to SCI Mahanoy where he is currently in custody. The superintendent at Mahanoy has stated that if Steele's security level changes, Young's termination may be reevaluated.

Judge Robert F. Kelly denied plaintiffs motion for a preliminary injunction on March 19, 1999. The case was transferred to this judge on December 8, 1999.

DISCUSSION

A motion for summary judgment will be granted if there are no genuine issues of material fact and the evidence establishes that the moving party is entitled to judgment as a matter of law.

See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Both parties agree that the material facts in this case are not in dispute and only questions of law remain.

In order to succeed on a § 1983 claim, Young must show that she was deprived of a right under the Constitution or laws of the United States by a person acting under color of state law. See 42 U.S.C. § 1983. Prison officials were undoubtedly acting under color of state law. The key issue is whether any constitutional right has been implicated.

There is a constitutional right to marry. See Zablocki v. Redhail, 434 U.S. 374 (1978). The right to marry even survives imprisonment, but substantial restrictions on a prisoner's right to marry may be imposed. See Turner v. Safley, 482 U.S. 78, 95 (1987).

Young claims her "right to maintain a meaningful marriage" was violated by the termination of her visitation privileges. The Supreme Court has recognized certain marriage related constitutional rights, such as contraceptive use, see Griswold v. Connecticut, 381 U.S. 479 (1965), and childbearing, see Carey v. Population Services Int'l, 431 U.S. 678 (1977), but not a "right to maintain a meaningful marriage."

Regardless, Young is not completely cut off from her husband. Although she is unable to visit Steele, Young can communicate with him; she is able to correspond with Steele and

receive phone calls from the prison. Young's asserted right to maintain a meaningful marriage is more correctly a claim for visitation rights.

Convicted prisoners, their family and spouses have no constitutional right to visitation. See Mayo v. Lane, 867 F.2d 374, 375-76 (7th Cir. 1989); Thorne v. Jones, 765 F.2d 1270, 1273-74 (5th Cir. 1985); Africa v. Vaughn, No. CIV. A. 96-0649, 1996 WL 65445, at *1 (E.D. Pa. Feb. 14, 1996); Walters v. United States, No. CIV. A. 94-1801, 1995 WL 144657, at *1 (E.D. Pa. Mar. 14, 1995); Buehl v. Lehman, 802 F.Supp. 1266, 1270 (E.D. Pa. 1992); Flanagan v. Shively, 783 F.Supp. 922, 934 (M.D. Pa. 1992), aff'd, 980 F.2d 722 (3d Cir. 1992), cert. denied, 510 U.S. 829 (1993); White v. Keller, 438 F.Supp. 110, 114 (D.Md. 1977), aff'd, 588 F.2d 913 (4th Cir. 1978). Face to face contact with a spouse is important in a marriage, but it is not a federal constitutional right.

Even if there were a fundamental right to visitation, the indefinite termination of Young's visitation privileges would still be valid if "reasonably related to legitimate penological interests." Turner, 482 U.S. at 89.¹

¹Young argues for a stricter standard of review requiring that: 1) the regulation further an important or substantial government interest, such as security, order, or rehabilitation; and 2) the limitations on the right are no greater than necessary or essential to the protection of the government interest. See Procnier v. Martinez, 416 U.S. 396, 413 (1974). The United States Supreme Court limited Martinez to regulations concerning

The factors for determining reasonableness include: 1) a rational connection between the prison decision and the governmental interest supported; 2) the existence of alternative means of exercising the abridged right; 3) the impact of an accommodation of the abridged right on prison resources; and 4) the absence of alternatives for exercising the right at de minimis cost to penological interests. See id. at 89-91.

The defendants claim the decision to terminate Young's visitation privileges was based on security concerns. There is a rational connection between restricting visitation and institutional security. See Block v. Rutherford, 468 U.S. 576, 586 (1984). Visitors are a security risk, and deference should be given to prison officials' visitation decisions. See Bell v. Wolfish, 441 U.S. 520, 547 (1979); Abu-Jamal v. Price, 154 F.3d 128, 136 (3d Cir. 1998). Young has alternative means of communication. Young is able to write to and converse by telephone with her husband. See Robinson, 841 F.2d at 1157; Buehl, 802 F.Supp. at 1271.

The only way to accommodate Young is to reinstate her

outgoing mail from prisoners because prison security is affected to a lesser extent from outgoing mail than from incoming mail. See Thornburgh v. Abbott, 490 U.S. 401, 413 (1989). Regulations concerning incoming mail from prisoners and nonprisoners are evaluated under Turner. See id. Given the serious implications for prison security from visitation, the Turner standard should be applied.

visitation privileges.² Reinstating Young's visitation privileges would require close scrutiny of her actions and reallocation of prison resources in view of her history of misconduct. There is no available alternative that would restore Young's visitation at a de minimis cost to penological interests. Indefinite termination of visitation privileges is harsh, but it is not unduly so because of the reallocation of prison resources necessary to monitor Young's actions in the prison if she is allowed visitation. The defendants' actions were "reasonably related to legitimate penological interests" and were not an "exaggerated response." Turner, 482 U.S. at 89-90.

CONCLUSION

There is no constitutionally protected right to prison visitation. Plaintiff's motion for summary judgment will be denied. Defendants' cross-motion for summary judgment will be granted.

²There is no evidence of the availability of non-contact visiting facilities in the record.

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ORDER

AND NOW this 31st day of July, 2000, after careful consideration of the plaintiff's motion for summary judgment, defendants' cross-motion for summary judgment, plaintiff's response, defendants' reply, and argument, and in accordance with the attached memorandum,

it is **ORDERED** that:

1. Having withdrawn her claims under Pennsylvania's Official Visitation of Prisons Act, 61 Pa. C.S.A. § 1091 et seq., Counts III and IV of plaintiff's complaint are hereby **DISMISSED**.

2. Plaintiff's motion for summary judgment is **DENIED**.

3. Defendants' cross-motion for summary judgment is **GRANTED**.

4. Judgment **ENTERED** in favor of defendants Vaughn and Horn and against plaintiff Young.

5. The Clerk of Court is instructed to mark this case **CLOSED**.

Norma L. Shapiro, S.J.