

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SARAH POLZIN,

Petitioner,

v.

PETER HUIBREGTSE,

Respondent.

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OPINION AND ORDER

08-cv-437-slc<sup>1</sup>

Petitioner Sarah Polzin is the ex-wife of a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. She alleges that ever since her ex-husband was transferred to that prison, she has been denied contact visits without cause. She says that this restriction violates her right to equal protection under the Fourteenth Amendment and her

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<sup>1</sup>Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. It is this court's expectation that the parties in a case assigned to the magistrate judge will give deliberate thought to providing consent for the magistrate judge to preside over all aspects of their case, so as to insure that all cases filed in the Western District of Wisconsin receive the attention they deserve in a timely manner. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the purpose of issuing this order only, I am assuming jurisdiction over the case.

right of association under the First Amendment and the due process clause.

Petitioner seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915. From a review of her affidavit of indigency, I conclude that petitioner is unable to prepay the \$350 filing fee.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. §1915(e)(2). Having reviewed petitioner's complaint, I conclude that it states a claim upon which relief may be granted with respect to petitioner's right of association claim but not with respect to her equal protection claim.

To state a claim for a violation of her right to equal protection, petitioner would have to allege that respondent Peter Huibregtse was treating her differently from other visitors without a rational basis. Hudson v. Palmer, 468 U.S. 517, 523 (1984). Petitioner's complaint shows that she cannot prevail on her equal protection claim because she alleges that respondent, the warden of the prison and the only person she is suing, denies contact visitation to *everyone* who visits the prison. It is petitioner, not respondent, who wishes to have different sets of rules for different inmates in the same prison. In particular, petitioner believes that because her ex-husband is assigned to general population rather than

segregation like most prisoners at Boscobel, his visitation rules should be the same as general population prisoners elsewhere in the state. However, to the extent that petitioner is being treated differently from visitors to other prisons, that is not something for which respondent may be held liable because he is treating all visitors to his prison the same.

With respect to her claim under the right of association, I have concluded in the past that prisoners retain a limited right of association while they are incarcerated and that limitations on that right are evaluated under the standard set forth in Turner v. Safely, 482 U.S. 78, 89 (1987). E.g., King v. Frank, 328 F. Supp. 2d 940, 945 (W.D. Wis. 2004). See also Overton v. Bazzetta, 539 U.S. 126 (2003) (assuming that prisoners retain some right of intimate association while incarcerated and applying Turner standard). Under that standard, the question is whether the restriction on petitioner's ability to visit her incarcerated ex-husband is reasonably related to a legitimate penological interest. The same standard applies in any case involving prison administration, even when, as in this case, the rights of nonprisoners are involved. Thornburgh v. Abbott, 490 U.S. 401, 411 n.9 (1989).

The Supreme Court upheld a blanket ban on contact visits in Block v. Rutherford, 468 U.S. 576 (1984), a case involving pretrial detainees. Despite recognizing the potential benefits that contact visits might bring, the Court concluded that the jail's ban was "reasonably related to the security of the facility" because allowing contact visitation heightened the risk of bringing contraband into the prison. Id. at 586-87. In addition, the

Court said that even if it were feasible to classify detainees as high risk and low risk, a flat rule was reasonable because different classifications “could well create tension between those allowed contact visits and those not.” Id. at 587. The Court acknowledged that the jail could have addressed these security concerns through other measures such as strip searches of detainees after a contact a visit, but the Court concluded that the costs of such an alternative were greater than what the Constitution requires. Id. at 588 n.9.

Although it would seem that Block dooms petitioner’s claim, the Court of Appeals for the Seventh Circuit has held that each potentially unconstitutional restriction applied in the prison context must be viewed on its own merits. District courts may not assume when screening a complaint that a prison official’s justification for a restriction is legitimate or that it is reasonably related to that justification. Lindell v. Frank, 377 F.3d 655, 658 (7th Cir. 2004). See also Blonder-Tongue Lab., Inc. v. University of Illinois Foundation, 402 U.S. 313, 329 (1971) (explaining that due process prohibits barring a litigant who was not a party to a prior action from litigating the identical issue despite existing decisions on the issue that are contrary to the litigant's position). Accordingly, I must allow petitioner to proceed with this claim.

ORDER

IT IS ORDERED that

1. Petitioner Sarah Polzin's request to proceed in forma pauperis, dkt. #2, is GRANTED. Petitioner may proceed with her claim that respondent Peter Huibregtse violated her constitutional right of association under the First and Fourteenth Amendments by refusing to allow her to have contact visits with her ex-husband.

2. Petitioner's claim that respondent violated her right to equal protection is DISMISSED for petitioner's failure to state a claim upon which relief may be granted.

3. For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that she files with the court. Once petitioner learns the name of the lawyer that will be representing respondent, she should serve the lawyer directly rather than respondent. The court will disregard documents petitioner submits that do not show on the court's copy that she has sent a copy to respondent or to respondent's attorney.

4. Petitioner should keep a copy of all documents for her own files. If she is unable to use a photocopy machine, she may send out identical handwritten or typed copies of his documents.

5. Because petitioner is not a prisoner, she is not covered by this court's informal service agreement with the Attorney General's office. Therefore, I am sending copies of

petitioner's complaint and this order to the United States Marshal for service on respondent.

Entered this 4th day of August, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge