

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

PAUL GILLPATRICK and)	Case No.
NICCOLE WETHERELL,)	
)	
Plaintiffs,)	
)	
vs.)	
)	COMPLAINT AND
NEBRASKA DEPARTMENT OF)	PETITION FOR
CORRECTIONAL SERVICES,)	DECLARATORY JUDGMENT
DIANE SABATKA-RINE in her official)	
capacity, DENISE SKROBECKI in her)	
official capacity, and MICHAEL)	
L. KENNEY, in his official capacity,)	
)	
Defendants.)	

COME NOW the Plaintiffs, Paul Gillpatrick and Niccole Wetherell, by and through counsel and for their complaint against the Defendants state and allege as follows:

THE PARTIES

1. Plaintiffs are incarcerated in the state of Nebraska. Paul Gillpatrick is incarcerated at the Nebraska State Penitentiary in Lincoln, Nebraska. Niccole Wetherell is incarcerated at the Nebraska Correctional Center for Women in York, Nebraska.

2. The Defendant Department of Correctional Services (hereinafter “DCS”) is an entity of state government.

3. The Defendant Michael Kenney is Director of DCS. Said Defendant is sued in his official capacity.

4. The Defendant Diane Sabatka-Rine is Warden of the Nebraska State Penitentiary. Said Defendant is sued in her official capacity.

5. The Defendant Denise Skrobecki is Warden of the Nebraska Correctional Center for Women. Said Defendant is sued in her official capacity.

BACKGROUND FACTS

6. Gillpatrick is an unmarried man over the age of eighteen.
7. Wetherell is an unmarried woman over the age of eighteen.
8. Gillpatrick is engaged to marry Wetherall.
9. Plaintiffs are not related.
10. Nebraska Department of Correctional Services' administrative policy regarding inmate marriages is to allow inmates to marry unless the Warden finds that the marriage presents a threat to security or order of the institution or to public safety. *Nebraska Dept. of Correctional Services Admin. Reg. (II)(D)(3)(a)*
11. Nebraska DCS' administrative policy requires inmates planning to marry to submit a Marriage Intention Form at least ten working days prior to the intended marriage date. *Nebraska Dept. of Correctional Services Admin. Reg. (II)(D)(3)(b)*
12. If both parties to the marriage are inmates, each inmate must submit a Marriage Intention Form to the Religious Coordinator at their respective facilities. *Nebraska Dept. of Correctional Services Admin. Reg. (II)(D)(3)(b)*
13. NCDS also requires that inmates find a clergy person or magistrate from the community to perform the ceremony. *Nebraska Dept. of Correctional Services Admin. Reg. (II)(D)(3)(b)*
14. NDCS will arrange space and time for marriage ceremonies, but will not transport inmates from one institution to another for the marriage ceremony. *Nebraska Dept. of Correctional Services Admin. Reg. (II)(D)(3)(c)*.
15. In Nebraska, marriage is considered to be a civil contract between a man and a woman. *Nebraska Rev. Stat. §42-101, and Nebraska Constitution Art. I, § 29.*

16. In Nebraska, a marriage license must be issued by a county clerk, and within one year it must be solemnized by a person authorized by law to solemnize marriages.

Nebraska Rev. Stat. §42-104.

17. Plaintiffs Gillpatrick and Wetherell have submitted Marriage Intention Forms at their respective facilities, including naming the clergy person willing to conduct the ceremony for them at no cost to the facility.

18. Defendant Sabatka-Rine or her agent has denied the Marriage Intention Form submitted by Plaintiff Gillpatrick. She has refused to make arrangements to transport Plaintiff Paul Gillpatrick to a place where he can become married and has refused to make alternative arrangements which would permit Plaintiff Gillpatrick to be married.

19. Defendant Skrobecki or her agent has denied the Marriage Intention Form submitted by Plaintiff Wetherell. She has refused to make arrangements to transport Plaintiff Nicole Wetherell to a place where she can become married and has refused to make alternative arrangements which would permit Plaintiff Wetherell to be married.

20. On July 26, 2013, Plaintiff Gillpatrick initiated the grievance process at Nebraska State Penitentiary and on August 12, 2012 Plaintiff Wetherell initiated the grievance process at the Nebraska Correctional Center for Women.

21. Plaintiff Gillpatrick completed the grievance process on September 4, 2013 and Plaintiff Wetherell completed the grievance process on September 14, 2012. The Plaintiffs' grievances properly asserted their constitutional right to marry each other, their having conformed with and satisfied all legal preconditions to becoming married; and their objection to the application of Nebraska Dept. of Correctional Services Admin. Reg. (II)(D)(3)(c) to their application. Both Plaintiffs' grievances were denied by Nebraska

Department of Correctional Services.

22. On April 3, 2013, Plaintiffs' attorneys informed former Director of Department of Correctional Services Robert Houston that prison administration at plaintiff's respective facilities denied their request to marry and reiterated the Plaintiffs' request to marry.

23. On April 15, 2013, former Director Houston responded through his legal counsel: "...legal and security concerns prohibit the NDCS from facilitating a marriage ceremony for inmates Gillpatrick and Wetherell."

24. On December 30, 2013, Plaintiffs' attorneys informed Director Kenney that prison administration at plaintiffs' respective facilities denied their request to marry and reiterated the Plaintiffs' request to marry.

25. On January 14, 2014, Director Kenney responded through his legal counsel that the "it is the Department's policy that it will not transport an inmate assigned to a secure facility to another secure facility to get married. That policy will not be changed at this time."

26. Plaintiffs' fundamental right to marriage was denied by Defendants' actions described herein.

27. But for the conduct of Defendants, the Plaintiffs would now be married.

28. As a proximate result of Defendants' actions complained above, including, but not limited to, Defendants' policies, customs, practices, and actions denying or impeding Plaintiffs' fundamental right to marry, each Plaintiff suffered significant emotional distress, the loss of benefits of marriage, and other damages.

29. There is no valid, rational connection between the policy prohibiting

accommodation to permit inmates to be married and any legitimate government interest because the policy, as applied to inmates who wish to marry each other, effectively prevents the inmates from their right to marry each other.

30. There are no alternative avenues for Plaintiffs to exercise their right to marry without accommodations of that right by Defendants. Plaintiffs are in the continued custody of the Nebraska Department of Corrections and are not at liberty to solemnize a marriage without some reasonable accommodation by the Defendants.

31. Accommodating Plaintiffs' rights to marry will have a de minimis impact on prison staff, inmates, and allocation of prison resources. Plaintiffs have offered to pay for staff time to transport them to a facility where they can be married, and Plaintiffs are willing to participate in the marriage ceremony by other means without transportation to the same physical location.

32. There are no alternative means for Plaintiffs to exercise their constitutional right to marry each other in the state of Nebraska.

CAUSE OF ACTION

33. The allegations contained in paragraphs 1 through 30 are hereby incorporated.

34. This cause of action is brought pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution, the Nebraska State Constitution, and 42 U.S.C. § 1983.

35. The Defendants' policies, customs, and practices prevent incarcerated individuals at separate facilities from marrying other incarcerated individuals.

36. As a direct and proximate result of the Defendants' policy, the Defendant DCS has denied and is continuing to deny the Plaintiffs' right to marry.

37. The right to marry is a fundamental right protected by the United States Constitution that cannot be denied because the partners to the marriage are incarcerated.

38. Unless enjoined by this Court, Defendants will continue to deny Plaintiffs' right to marry.

WHEREFORE, the Plaintiffs request the following relief:

39. A declaration, pursuant to 42 U.S.C. § 1983, that Defendants' policies, customs, and practices violate the constitution;

40. Enter a preliminary and permanent injunction requiring Defendants and their officers, agents, servants, and employees, to make such accommodations as necessary, consistent with legitimate penological concerns, to facilitate the completion of marriage application by plaintiffs;

41. For costs and attorney's fees as allowed by law; and

42. For such further relief as the Court may deem just and proper.

Dated this 25th day of February, 2014.

PAUL GILLPATRICK and
NICCOLE WETHERELL, Plaintiffs

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