

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

HAROLD BRYAN WILSON, and)	CASE NO. 8:16CV524
RILEY NICOLE SHADLE,)	
)	
Plaintiffs,)	
)	SECOND
vs.)	AMENDED COMPLAINT
)	
SCOTT FRAKES, Director,)	
JEFF WOOTEN, Warden,)	
JASON GEERDES,)	
ROBERT MADSEN, WARDEN,)	
in their Official Capacity,)	
)	
Defendants.)	

COMES NOW Harold Bryan Wilson and Riley Nicole Shadle, Plaintiffs and brings this suit against Scott Frakes, Director, Jeff Wooten, Warden, Jason Geerdes, and Robert Madsen, Warden, in their official capacities based upon their violation of the Constitutional rights of these plaintiffs. Plaintiffs allege a violation of their right to marry. They allege a violation of their right to petition for redress of grievances. They allege interference with their right of access to the Courts. Plaintiffs allege that each of these Defendants was acting under color of state law and in their official capacity.

JURISDICTION

1. This Court has jurisdiction over this suit under 28 U.S.C. § 1983.

2. These claims arise under the Fourteenth Amendment's Due Process Clause and the Fourteenth Amendment's Equal Protection Clause. This suit alleges that each Defendant was acting under color of state law and in their official capacity. At the same time, Plaintiffs deny that these Defendants were acting under official policy of the State of Nebraska or the Nebraska Department of Correctional Services since what policy that had existed allowed inmate marriages until revoked by Defendant Frakes, leaving the Defendants free to make up whatever standardless response to the Plaintiffs marriage request they wished.

3. Wilson has complied with the requirements of the Prisoner's Litigation Reform Act. He filed a marriage request form. It was denied by defendant Jason Geerde. Wilson has properly exhausted available administrative steps.

4. Riley Nicole Shadle has also complied with the requirements of the Prisoner's Litigation Reform Act. She filed a marriage request form which was denied. Shadle has properly exhausted available administrative steps.

PARTIES

5. Plaintiff Harold Bryan Wilson is an unmarried adult inmate currently in the custody of the Nebraska Department of Correctional Services (hereinafter NDCS). At the time he originally filed this suit, he was

confined at the Lincoln Correctional Center (hereinafter LCC), in Lincoln, Lancaster County, Nebraska. He is now confined at the Nebraska State Penitentiary (hereinafter NSP), also located in Lincoln, Lancaster County, Nebraska.

Plaintiff Wilson was married according to the law of Nebraska. This marriage was dissolved according to the law of Nebraska.

Subsequently, Harold Wilson participated in a “handfasting” ceremony which according to his Wiccan religious beliefs was the equivalent of a marriage. However, this union was not licensed by the state of Nebraska. Moreover, at the time of the ceremony Nebraska did “not recognize same-sex marriages.” *Wilson v. Hopkins*, 8:13-cv-00130, filing # 39, p. 6. Wilson dissolved this union under the tenets of the Wiccan religion, although without using the procedures set forth in Nebraska law.

6. Plaintiff Riley Nicole Shadle is an unmarried adult inmate currently in the custody of the NDCS. She was and remains confined at LCC.

7. Scott Frakes is the Director of NDCS. He possesses the ultimate authority within the NDCS to authorize the marriage sought by Plaintiffs.

8. Jeff Wooten is the Warden of the LCC.

9. Jason Geerdes is a unit manager at LCC.

10. Robert Madsen is the Warden of the NSP.

FACTUAL ALLEGATIONS

I. MARRIAGE REQUESTS

11. On November 15, 2016, Wilson submitted a marriage intention form through administrative channels seeking permission to marry Riley Nicole Shadle. Geerde denied Wilson's marriage intention form without dating his signature.

12. Shadle signed a copy of the Wilson marriage intention form, indicating that she wished to marry Harold Wilson. She submitted it on December 7, 2016. This form was also denied. Subsequently, she submitted another marriage intention form, which has also been denied.

13. Geerde referred Wilson to the procedure by which a "sensitive nature" grievance can be filed with the Director of NDCS on December 9, 2016.

14. Harold Wilson filed a "sensitive nature" grievance with the Director of NDCS. This grievance sought permission for Wilson and Shadle to be married. The grievance was rejected on December 9, 2016.

II. INTERFERENCE WITH PETITIONING FOR REDRESS

15. Wilson sought to obtain a marriage license. In doing so, he corresponded with the Lancaster County Clerk. The Clerk provided a form affidavit which needed to be signed and notarized before it could be

submitted and without which a marriage license could not be issued by the Clerk. Wilson asked NSP to provide notary services, but Brad Exstrom, an NSP notary, refused to notarize the application.

16. Tom Pfieffer, an NSP notary, also refused to notarize the form.

17. On January 4, 2017, Wilson filed an inmate interview request asking for notary services.

18. On January 6, 2017, this request was denied. The denial said, “Mr. Wilson! You cannot marry another inmate so this marriage license will not be notarized.”

19. NDCS employees knew that the purpose for which Wilson sought authentication of his signature was to seek access to the government to obtain a marriage license.

20. The NDCS staff routinely and without consideration of the content of the document to be notarized provide notarial services to many inmates. They denied similar service to Wilson solely based on the content of the document he sought to have authenticated.

21. The refusals to notarize Wilson’s signature, done under color of state law and in their official capacity, were intended to prevent or interfere with Wilson’s effort to seek redress from the government. The refusals were intended to prevent or interfere with Wilson’s right to marry. The refusals

were not done in good faith or with a reasonable belief that the refusals were lawful. The refusals were done in the absence of any penological purpose or justification.

III. RETALIATORY TRANSFER

22. At some point, both Plaintiffs were housed at the LCC.

23. After their desire to marry became known, Wilson was transferred to NSP. He was not provided with an “official” justification for the transfer.

24. On November 15, 2016, Geerdes personally denied Wilson’s marriage intention form. He told Wilson that either Shadle or Wilson “had to go.” He also said it would be easier to transfer Wilson than Shadle. When confronted by Wilson, Geerdes admitted that he is responsible for the transfer.

25. Wilson alleges, based upon the timing of Wilson’s transfer and contemporaneous statements made by Geerdes, that the transfer was in retaliation for Wilson’s efforts to obtain permission to marry and was done under color of state law and in his official capacity.

26. Wilson agrees that prisoners can be transferred even when free people cannot. He accepts that the prison may transfer him for any legal reason or for no reason at all. He disputes that the NDCS and these

defendants can transfer him in retaliation for the exercise or attempted exercise of a constitutional right.

27. Wilson's transfer was intended to prevent or interfere with Wilson's effort to marry. The transfer was not done in good faith or with a reasonable belief that the transfer was lawful. The transfer served no lawful penological purpose.

28. Shadle was removed from her cell and placed in segregation on October 31, 2016.

29. Shadle was not provided with a reason for her being placed in segregation.

30, Shadle was released from segregation on December 5, 2016, only after Wilson had been transferred from LCC to NSP.

31. Shadle alleges, based on the timing, duration and purposelessness of her prolonged segregation that it was done under color of state law and in their official capacity and done in retaliation for her efforts to obtain permission to marry.

32. Shadle's prolonged segregation was intended to prevent or interfere with her effort to marry Wilson. Placing Shadle in segregation was not done in good faith or with a reasonable belief that the segregation was justified, lawful or for a legitimate penological purpose.

33. Persons who are not confined in Nebraska's prisons are entitled to be free from unreasonable seizures. Inmates have far less freedom. However, even within a prison, inmates are subject only to those conditions of confinement which are foreseeable and necessary to ensure the safe functioning of the institution and the carrying out of their sentence.

34. Free unmarried people of sufficient age may select whomever they wish to marry. They may obtain a notarization of their application and they may in fact marry any other eligible consenting person.

35. Plaintiffs assert that none of the named defendants have any penological reason to deny their marriage intention forms.

36. The formerly applicable agency regulations used to unambiguously authorize inmate weddings and expressly limited the discretion of the Director. *Nebraska Department of Correctional Services Admin Reg.* § 208.01 (II)(D)(3)(a) provided that “Inmates in the Department’s custody **will be allowed** to marry **unless** the Warden finds that **the marriage presents a threat to security or order of the institution or to public safety.**”(Emphasis supplied)

37. And *Nebraska Department of Correctional Services Admin Reg.* § 208.01 (II)(D)(3)(b) reinforced the claim that Wilson and Shadle were at one time authorized by regulation to seek permission to marry. It provided, in

part, that “if both parties to the marriage are inmates, each inmate must submit a Marriage Intention Form to the Religious Coordinator at their facility.”

38. These administrative regulations may have been repealed and to have been replaced with an unwritten policy of granting facility wardens and the director of the NDCS with unfettered discretion to grant or deny marriage without the exercise of professional discretion or the application or consideration of any penological purpose.

39. There is no reason to believe that Plaintiffs’ marriage would present a threat to security or order of either institution.

40. There is no reason to believe that Plaintiffs’ marriage would present a threat to public safety.

41. Throughout the process of each Plaintiff applying for permission to marry no defendant has claimed or even suggested that there was any institutional or penological concern with the proposed marriage.

42. Geerdes explained his denial by writing “Denied.”

43. Another prison official, whose signature is illegible, typed: “In accordance to A.R. 205.04 which is available to you during approved Law Library time.(sic) Inmates will normally not be permitted to marry other inmates due to potential risks to the safety, security or good order of the

facility. If an inmate wants to marry another inmate, he or she may file a grievance of a sensitive nature to the Director outlining special circumstances which may warrant an exception. The director reserves the right to approve inmate-to-inmate marriages in the case of special circumstances.”

44. Defendants, or their predecessors in office, acting in bad faith, under color of state law, in their official capacity and for the purpose of preventing the exercise of Plaintiff’s constitutional rights, transferred Wilson from LCC to NSP.

45. Moreover, defendants have access to technology which would permit the marriage of these plaintiffs without transporting them at all. Plaintiffs could participate in a marriage ceremony using in-place skype-like video conferencing equipment at no cost to the defendants or the state of Nebraska.

CLAIMS

I. MARRIAGE REQUESTS

46. Wilson and Shadle assert that they have a basic, substantive due process based constitutional right to marry that survives a conviction and an order of incarceration. Plaintiffs have asked these named Defendants for permission to marry. Acting under color of state law and in their official

capacities, these Defendants have deliberately denied Plaintiffs' application to marry with no penological basis.

47. Plaintiffs acknowledge that the right to marry is NOT absolute.

48. Where, as here, a state agency has abandoned the opportunity to self-regulate through the implementation of administrative regulations, a prison administrator or actor cannot claim a unilateral, arbitrary, and unlimited power to deny the Marriage Intention Forms without any justification, or to affirmatively, as these defendants have done, erect barriers to interfere with the right of Plaintiffs to marry.

49. Plaintiffs assert that there is no reasonable alternative means by which they may exercise their constitutional right to marry.

50. Plaintiffs assert that their marriage would cause no adverse impact on prison personnel or resources.

51. Plaintiffs assert that their marriage would have no adverse impact on public safety.

52. Plaintiffs deny that there are any legitimate and not exaggerated penological interests impacted by this proposed marriage. Even if some hypothetical interests might exist, which Plaintiffs deny, those interests can be protected at de minimis cost and inconvenience without obstructing or interfering with the marriage.

53. Plaintiffs are being denied the Equal Protection of the law when the institutional Defendants, acting under color of state law, in their official capacity and for the purpose of obstructing and interfering with Plaintiffs' efforts to marry and without a reasonable penological purpose, erect barriers which do not exist between people who are not confined.

II. INTERFERENCE WITH PETITIONING FOR REDRESS OF GRIEVANCES

54. Staff, including Brad Exstrom and Tom Pfieffer, acting under color of state law and in their official capacity, intentionally and for the illegal purpose of obstructing or interfering with Wilson's effort to obtain a marriage license refused to authenticate and notarize his signature on a required government affidavit.

55. The refusals to notarize Wilson's signature were intended to prevent or interfere with Wilson's effort to seek redress from the government. The refusals were not done in good faith or with a reasonable belief that the refusals were lawful or based on any legitimate penological interest.

56. The failure to authenticate and notarize Wilson's signature on the application and affidavit needed to obtain a marriage license caused delay and unnecessary expense without justification or reason.

57. Wilson was denied the Equal Protection of the law when, based solely upon the content of the document and for the purpose of obstructing and interfering with his efforts to seek redress of grievances, he was denied the authentication of his signature required by the Lancaster County Clerk because free people can obtain notary services without having their documents censored for content.

58. Censoring content in the provision of notary services serves no valid penological purpose especially where the purpose for refusing notary services in this case was to interfere with Wilson's communication with the government.

III. RETALIATORY TRANSFER AND PROLONGED, UNNECESSARY SEGREGATION

59. Wilson was transferred from LCC to NSP without any legitimate penological justification and solely for the purpose of obstructing and interfering with his efforts to marry.

60. The effect of the transfer of Wilson has been (1) to increase the difficulty of coordinating the efforts of both Plaintiffs to obtain permission to marry, (2) to obstruct and interfere with the filing of court documents, (3) to drive a wedge into the relationship between Plaintiffs, (4) cause emotional harm to both Plaintiffs, (5) to manufacture the illusion of a transportation

issue surrounding the marriage ceremony, (6) to prevent Wilson from providing love and support to Shadle during her medical situation.¹

61. The effect of the prolonged and unnecessary segregation of Shadle has been (1) to increase the difficulty of coordinating the efforts of both Plaintiffs to obtain permission to marry, (2) to obstruct and interfere with the filing of court documents, (3) to drive a wedge into the relationship between Plaintiffs, (4) to cause emotional harm to both Plaintiffs, (5) to manufacture the illusion of a transportation issue surrounding the marriage ceremony and (6) to prevent Shadle from providing love and support to Wilson during his medical situation.

PRAAYER FOR RELIEF

62. The Plaintiffs seek declaratory relief finding that whatever institutional or departmental policy, if any there be, which infringes upon the Constitutional right of these Plaintiffs to marry is unconstitutional.

63. The Plaintiffs seek injunctive relief preventing these Defendants, their agents and officers, from implementing or relying upon whatever unconstitutional policy there may be to prevent these Plaintiffs from marrying.

¹ The specifics of the medical situations referred to in ¶¶ 60 and 61 have been omitted pursuant to the privacy redaction rules of this Court. Details will be provided to Defendants and the Court upon request.

64. Wilson and Shadle bring these claims under the Due Process Clause of the Fourteenth Amendment and under the Equal Protection Clause of the Fourteenth Amendment. The Plaintiffs bring this suit under 42 U.S.C. § 1983.

65. Plaintiffs ask this Court to grant an injunction allowing them to complete the application process without obstruction or interference by these Defendants, their successors or subordinates.

66. Plaintiffs ask this Court to grant an injunction preventing these Defendants from obstructing or interfering with their efforts to marry.

67. Plaintiffs ask for any further relief to which they may be entitled, including but not limited to costs, filing fees, necessary expenses, expert witness and discovery costs, reimbursement to the Federal Practice Fund, and a reasonable attorney fee.

68. Plaintiffs seek trial in Lincoln, Nebraska. Plaintiffs are not asking for a trial by jury.

/s/ Michael D. Gooch

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Second Amended Complaint has been served upon Dave Lopez, Assistant Attorney General, by electronic filing using CM/ECF this 17th day of October 2017.

/s/ Michael D. Gooch

Michael D. Gooch