CIRCUIT COURT FOR THE 31ST JUDICIAL CIRCUIT OF MICHIGAN

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

M.M. by her Next Friend DANIELLE MCDONALD, C.P. and A.P. by their Next Friend BRIANNA GRIFFIN, MARIE BILLS and, KATHLEEN TANTON,

Plaintiffs,

-v-

Case No. W-24-000546-CZ
HON. MICHAEL L. WEST

SHERIFF MAT KING, ST. CLAIR COUNTY, SECURUS TECHNOLOGIES, LLC, PLATINUM EQUITY, LLC, TOM GORES, MARK BARNHILL and DAVID ABEL

Defendants.

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OPINION AND ORDER

On May 20, 2024 the Court heard oral arguments in connection with Defendants Sheriff Mat King's and St. Clair County's motion for summary disposition filed pursuant to MCR 2.116(C)(8) & (10). The matter was taken under advisement so the Court could review in detail the legal authority relied on by the parties. The factual and legal issue before the Court involves an alleged constitutional right to in-person contact visitation between a parent inmate and the inmate's child or the inmate and his or her immediate family at the St. Clair County Intervention Center, hereafter the jail. The present visitation policy at the jail prohibits all in-person contact visitation.

A Few More Pertinent Facts

Plaintiffs like to refer to the jail's policy as a total family visitation ban, which it is not. Inmates and their families are still entitled to the same number of visits and time restrictions as existed under the old policy. Visitation is accomplished through a phone/video system which allows for the inmate to remain in their assigned pod and the visitors to be assembled in a designated video conferencing area near the entrance to the facility. The old policy allowed for the visitors to enter deep into the jail facility, access the second floor, and then walk to an assigned pod (7 in total) where a face-to face visit would take place through a thick fiberglass window and then return to the main entrance. There is no charge for the video conferencing visits. They have always been free.

Questions Presented

This case presents a question of whether a constitutional right exists to in-person contact visits at the St. Clair County jail between the county inmate and the inmate's family. Within that question is, if such a right exists, is it a fundamental constitutional right or lesser constitutional right recognized and protected under the Michigan Constitution and then, what level of scrutiny applies to the jail's policy that infringes upon that right in determining if the policy is unconstitutional. If no constitutional right to in person contact visits exists there is no need to examine the jail's visitation policy. The level of scrutiny question would then be moot.

The Existence of a Constitutional Right

The alleged constitutional right Plaintiffs claim exists under the Michigan Constitution is described by Plaintiffs as a right to "Family Integrity and Familial

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Association." They claim this right is embodied in the liberty clause of the Due Process provisions in Art I, Sec. 17 and the Equal Protection clause in Art I, Sec. 2 of the Michigan Constitution. Plaintiffs also claim there is a right to "intimate familial association" within Art I, Sec. 3. It is undisputed this alleged right has never been found to exist in a jail or prison setting. Plaintiffs are asking this Court to expand upon the limited liberty interest found to exist in *Reist v Bay Circuit Judge*, 396 Mich 326 (1976) to include a right of "family integrity" and then apply that to the jail's current visitation policy.

Federal courts applying the United States Constitution and its principals have rejected finding such a liberty interest exists in a prison setting for over 40 years. See *Block v Rutherford*, 468 US 576 (1984), *Kentucky Dept. of Corrections v Thompson*, 490 US 454, 4651 (1989), and *Overton v Bazzetta*, 539 US 126, 131 (2003). Plaintiffs want this Court to ignore the most recent 40 years of authority from the Supreme Court of the United States and instead adopt the pre-*Block* reasoning of the Federal District Court for the Eastern District of Michigan in *O'Bryan v Saginaw County*, 437 F Supp 582, 598 (ED Mich 1977) which has been rejected by the *Block* and *Overton* courts. Plaintiffs argue this Court is not bound by and should not consider federal court precedent interpreting the United States Constitution when the only question before the Court involves the Michigan Constitution. Their argument is flawed. It is flawed because when it suits them they want the Court to recognize what they deem to be favorable Michigan authority that is based on the interpretation of the United States Constitution but not recognize that authority when analyzing the Defendants'

arguments. You cannot have it both ways. It is both reasonable and appropriate for the Court to consider persuasive non-binding authority in deciding a question of first impression.

Rulings of the Supreme Court of the United States

In 1984 in the case of *Block v Rutherford*, 468, US 576, 104 S Ct 3227 (1984) the Supreme Court upheld a county jail's policy of no contact visitation with inmates. Plaintiffs, in a class action lawsuit, claimed they had a due process right to contact visits and the jail's policy violated that right. The Supreme Court found the jail's policy reflected a reasonable, nonpunitive response to legitimate security concerns and was consistent with the Fourteenth Amendment. The court appeared to gloss over whether the due process clause provided for such a right in the abstract and focused primarily on whether the jail's policy advanced a legitimate governmental interest of allowing jail administrators to adjust policies regarding jail security concerns. The end result was no constitutional right to contact visits.

In *Kentucky Dept. of Corrections v Thompson*, 490 US 454, 461, 109 S Ct 1904 (1989), the Supreme Court held "the denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence, Hewitt *v Helms* 459 US at 468, 103 S Ct at 869, and therefore is not independently protected by the Due Process clause". This case did not involve a blanket ban on contact visits.

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In *Overton v Bazzetta*, 539 US 126, 131, 123 S CT 2162 (2003), the Supreme Court stated the following in response to a Michigan Dept. of Corrections policy that prohibited contact visits with inmates, among other things.

> We have said that the Constitution protects "certain kinds of highly personal relationships," *Roberts v United States Jaycees*, 468 U.S. 609, 618, 619-620, 104 S. Ct. 3244 82 L.Ed.2d 462 (1984). And outside the prison context, there is some discussion in our cases of a right to maintain certain familial relationships, including association among members of an immediate family and association between grandchildren and grandparents.
>
> This is not an appropriate case for further elaboration of those matters. The very object of imprisonment is confinement. Many of the liberties and privileges enjoyed by other citizens must be surrendered by the prisoner. An inmate does not retain rights inconsistent with proper incarceration. And, as our cases have established, a freedom of association is among the rights least compatible with incarceration. See *Jones, supra*, at 125-126, 97 S. Ct. 2532; *Hewitt v Helms*, 459 U.S. 460 103 S. Ct. 864, 74 L.Ed.2d 675 (1983). Some curtailment of that freedom must be expected in the prison context.
>
> We do not hold, and we do not imply, that any right to intimate association is altogether terminated by incarceration or is always irrelevant to claims made by prisoners. We need not attempt to explore or define the asserted right of association at any length or determine the extent to which it survives incarceration because the challenged regulations bear a rational relation to legitimate penological interests. This suffices to sustain the regulation in question. See *Turner v Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 96 L.Ed.2d 64 (1987). We have taken a similar approach in previous cases, such as *Pell v Procunier*, 417 U.S. 817, 822, 94 S. Ct. 2800 41 L.Ed.2d 495 (1974), which we cited with approval in *Turner*. In *Pell*, we found it unnecessary to decide whether an asserted First Amendment right survived incarceration. Prison administrators had reasonably exercised their judgment as to the appropriate means of furthering penological goals, and that was the controlling rationale for our decision. We must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them. *Overton* at 131-132.

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Plaintiffs do not recognize the existence of these cases. They make no attempt to analyze them or distinguish them in light of the jail's actual visitation policy, which is not a total ban on visitation as argued in their reply brief. The lessons from these cases are relevant and important to the issues involved in this case.

The Michigan Authority

While there is not a wealth of Michigan case law on the subject matter involved in this case, there is some. In *Faler v Lenawee County Sheriff*, 161 Mich App 222, 230 (1987), the county's jail policy barred contact visits and jail visits for persons under the age of 16. Faler and his daughter sued and claimed their First Amendment right to association and Fourteenth Amendment right to liberty and equal protection were violated by the policy. The Court of Appeals disagreed and held "[A]though certain parental rights have been deemed to be fundamental liberties, such as the right to raise children, *Meyer v Nebraska*, 262 US 390, 399 43 S Ct 625, 67 L Ed 1042 (1923); *Reist v Bay Circuit Judge*, 396 Mich 326, 348; 241 NW2d SS (1976), we find no authority for the proposition that a parent and a child have a fundamental right to visitation without restrictions when the parent is an imprisoned felon." *Faler* at 230. Before making this finding the court noted the type of association sought by Faler with is daughter is not one of the associational rights protected by the First Amendment. The court further noted, even if the right to visitation was protected the age restriction in the visitation policy was reasonably related to maintaining security and safety in the jail.

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Because no fundamental right or suspect classification was implicated by the visitation policy the Court of Appeals concluded the rational basis test should be used to review the visitation policy. In doing so it found no violation of the plaintiffs' rights as protected by the First and Fourteenth Amendments. *Faler* was decided pursuant to MCR 2.116(C)(8) since no factual development could possibly support a right to recovery. *Faler* at 230.

About 10 years later a different panel on the Court of Appeals in *Blank v Department of Corrections* 222 Mich App 385, 408 (1977), aff'd 462 MIch 103 (2000), followed and applied the reasoning of the court in *Faler*. *Blank* was a complicated case involving the constitutionality of the administrative rule making authority of the Michigan Department of Corrections. The Plaintiffs/Petitioners advanced numerous arguments challenging the rules adopted pursuant to that authority. One of the rules gave the Department of Corrections discretions for the decision to restrict family visitation as a sanction for specified instances of misconduct. A different rule set forth circumstances under which visits may be limited under which visits may be limited to non-contact visitation which was not necessarily limited to non-family visitation. In addressing the challenges, the court held:

> To the extent that petitioners argue that the visitation rules infringe on their constitutional rights to associate, the argument must fail. "visitation with a prisoner by his friends and family are not part of those associational rights." *Faler v Lenawee County Sheriff*, 161 Mich App 222, 228; 409 NW2d 791 (1987), citing *Thorne v Jones,* 765 F2d 1270, 1273 (CA 5, 1985) Therefore, there can be no unconstitutional infringement on the right to associate. *Blank* at 408.

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In *Bazzetta, v Corrections Dept. Director*, 231 Mich App 83 (1998) a different panel of Court of Appeals judges had the opportunity to address the same Department of Corrections administrative rules regarding the Department of Corrections' visitation policy discussed in *Blank, supra.*

> Plaintiffs contend that the circuit court improperly dismissed their constitutional claims. We disagree.
>
> Plaintiffs alleged that the DOC's rules that "prohibit visits from former prisoners, prohibit all but certain members of the public from visiting more than one prisoner and prohibition [sic] (theirs) against certain family members and denial of visits from friends and family under the age of eighteen" violates their right to equal protection. They further alleged violation of their fundamental right to integrity in family relationships, to freedom of speech and association, to due process, and to be free from cruel or unusual punishment.
>
> This court has previously rejected constitutional challenges to the DOC's visitation policy. In *Blank v Dep't of Corrections*, 222 Mich App 385; 564 NW2d 130 (1997), this Court considered and rejected the petitioners' challenges to 1995 AACS, R 791.6607, 791.6609, 791.6611, 791.6614, and 791.5505. The petitioners argued that the rules violated the prisoners' rights to due process, freedom of association, free exercise of religion, and effective assistance of counsel. This Court held that visitation with a prisoner by family and friends was not protected by a constitutional right to associate. Concluding that the rules "are reasonably related to the control and management of the state's penal institutions," the Court found them constitutionally valid. *Blank supra* at 409.
>
> The Sixth Circuit Court of Appeals has rejected these plaintiffs' challenges to the regulations under the United States Constitution. Relying on the decisions of the United States Supreme Court, the court explained that "the problems of prison administration are peculiarly for resolution by prison authorities and their resolution should be accorded deference by the courts." *Bazzetta*, 124 F3d 779. In evaluating regulations that allegedly implicate prisoners' constitutional rights, the appropriate inquiry is whether the regulations are reasonably related to and supportive of legitimate penological interest. *Id.* The fact that the regulations allegedly impinged on the constitutional rights of noninmates did not change the standard used to evaluate the regulations. "Viewed from a constitutional standpoint, if, as we now hold, the prison officials properly limited the visitation rights of the prisoners because the

limitations were reasonably related to legitimate penological interests, the effect of these regulations upon persons outside the prison was largely irrelevant." *Id.* At 780. The Sixth Circuit Court of Appeals upheld the district court's ruling that the regulations were constitutional.

We find the Sixth Circuit Court of Appeals' analysis of plaintiffs' constitutional claims is persuasive in resolving plaintiffs' claims under the state constitution. This Court also evaluates prison regulations that allegedly impinge on prisoners' constitutional rights to determine if the regulations are reasonably related to legitimate penological interest. *Blank supra* at 408. We agree with the Sixth Circuit Court of Appeals that this standard should be used even where the regulations also allegedly impinge on noninmates' rights. Although we are not bound by the Sixth Circuit Court of Appeals' application of this standard in *Bazzetta,* plaintiffs have offered no compelling reason to depart from it. Therefore, because these regulations reasonably relate to prison administration and management concerns, they do not violate either the prisoner-plaintiffs' or the noninmate-plaintiffs' rights under the Michigan Constitution.

***

Plaintiffs suggest that the trial court erred in granting defendants' motion for summary disposition because there had not been an adequate opportunity for discovery. We disagree. As recognized by the Sixth Circuit Court of Appeals, '[t]he issue in the instant case was basically one of law, viz., were the amendments of the prison regulations reasonably related to and supportive of legitimate penological interest." *Bazzetta,* 124 F2d 779. In these circumstances, no fair chance exists that further discovery will result in factual support for the nonmoving party. *Mackey v Dep't of Corrections,* 205 Mich App 330, 333-334; 517 N W 2d 303 (1994). Accordingly, we affirm the trial court's order granting defendants summary disposition with regard to plaintiffs' constitutional claims. *Bazzetta* at 86-89.

Plaintiffs' attempts to distinguish the above cases on several grounds. In this Court's view, the challenges are more form over substance. The differences in the visitation policies in the cases cited above from the instant policy are specific to a particular time and the particular issues facing jail administration and safety concerns at that time. Again, Plaintiffs misstate the facts and mislead an uninformed reader.

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There is no ban on parents visiting their children or other family members. There simply is no contact visitation under the jail's current visitation policy.

Plaintiffs' narrowly confined argument of the alleged constitutional right at issue of "family integrity and association" and the constitutional violation as only impacting the Constitution of the State of Michigan ignores a reasonable and rational constitutional analysis from all available sources. The most compelling fact that Plaintiffs appear unwilling to accept is this case involves a house of incarceration and that jail administrators, not courts, are best suited to establish visitation policies if they are reasonably related to legitimate penological interest. *Blank* 468 US at 589 *Doe v Michigan Dep't of Corrections*, 236 Mich App 801, 809 (1999). Because of the jail setting and because of the authority noted above there is no infringement of a constitutionally protected fundamental right.

<u>Analysis of the Constitutional Question</u>

The legal authority referenced above clearly establishes there is no constitutionally protected fundamental right regarding visitation policies in Michigan jails and prisons. Some of the cases suggest no constitutional rights are implicated if the policy is reasonably related to legitimate penological interests. Some of the other cases take the approach that if a constitutional right is alleged to be implicated the nature of the alleged constitutional right does not need to be examined so long as the policy advances reasonable and legitimate penological interest. *Bazzetta, supra.*

To simply say something is a constitutionally protected fundamental right really begs the question. It may be in one context and may not be in another. This case

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presents that situation. The right in *Reist v Bay Circuit Judge, supra*, of family integrity was fundamental in the context of an indigent party being afforded the right to appellate counsel at public expense and a transcript paid for at public expense in the appeal of a termination of parental rights case. It is not fundamental in the context of a jail/prison visitation policy that is related to a legitimate penological interest.

In this Court's view, no constitutional rights are implicated in this case, fundamental or otherwise. There is no liberty interest or family integrity right to association in a penal institution under the Michigan Constitution. This finding could end the discussion and result in the granting of Defendants' motion for summary disposition. However, even if such a right were to exist and because Plaintiffs have claimed it exists, this court finds there is still no violation of Plaintiffs' alleged constitutional rights because the jail's policy is reasonably related to legitimate penological interests consistent with the *Turner* standard of review. *Turner v Safley*, 482 US 78 (1987).

<u>The *Turner* Standard</u>

A review of *Turner v Safley*, 482 U.S. 78 (1987) and the cases that have applied it without question demonstrates the *Turner* standard of review is unique to prison settings and is a lesser standard than that advocated by Plaintiffs. While perhaps similar to the rational basis standard, it is different in that its application is tailored to the prison setting. In *Doe v Michigan Dept of Corrections*, 236 Mich App 801 (2000), remanded on other grounds, 463 Mich 982 (2001), the Court of Appeals discussed the application of *Turner*.

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> Rather, "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v Safley*, 482 U.S. 78, 89 (1987). Although this test is essentially the same as the rational basis test (a statute is valid "if the classification scheme it has created is rationally related to a legitimate government purpose," [citations omitted], its application requires consideration of four factors: (1) whether there is "a valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it," (2) "whether there are alternative means of exercising the right that remain open to prison inmates" (3) "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally, " and (4) whether the regulation "is an 'exaggerated response' to prison concerns" or there really are no alternatives "that fully accommodate the prisoner's rights at de minimus cost to valid penological interest," Turner, 482 U.S. at 89-91. Plaintiffs bear the burden of showing that the challenged regulation is unreasonable under *Turner* [citation omitted].

Shortly after deciding *Doe, supra*, the Court of Appeals in *Cain v Dept of Corrections*, 254 Mich App 600, 605-606 (2002) again adopted and applied the *Turner* standard in reviewing a Michigan Department of Corrections prison policy. The following passage was adopted by the Court of Appeals from the United States Supreme Court decision in *Shaw v Murphy*, 532 U.S. 223, 121 S. Ct. 1475 (2001).

> Moreover, under *Turner* and its predecessors, prison officials are to remain the primary arbiters of the problems that arise in prison management, ... Courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. If courts were permitted to enhance constitutional protection based on their assessments of the content of the particular communications, courts would be in a position to assume a greater role in decisions affecting prison administration. Seeking to avoid unnecessarily perpetuating the involvement of the federal courts in affairs of prison administration .... We reject an alteration of the *Turner* analysis that would entail additional federal court oversight [532 U.S. at 230-231 (internal quotation marks and parentheses omitted).] *Id.* at 230-31.

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The *Turner* standard was also adopted by the court in *Bazzetta v Dept of Corrections Director,* 231 Mich App 83, 88 (1998). Accordingly, the *Turner* standard is widely recognized in Michigan and should be applied here.

The Application of *Turner*

The Defendants have provided the Court as Exhibit 1 to their motion the affidavit of Lt. Richard Olejnik. Lt. Olejnik is responsible for the day-to day operations of the jail and the drafting of jail policies and procedures. This affidavit sets forth the history of the jail's old visitation policy, the problems, difficulties and limitations of the old policy and how the new policy has addressed the problems and concerns of the old policy, improved security and efficiently uses available visitation resources. It provides the basis for the Court's application of *Turner*.

First, there is a valid, rational connection between the new policy and the legitimate governmental interest of greater supervision of visitations in general, an easier visitation process for both visitors and jail staff and the elimination of the risk visitors can pass contraband to inmates during visitation. Many of these same concerns were recognized in the cases cited above, all of which found the policy advanced a legitimated penological interest. See *Faler, supra, Blank, supra, Block, supra,* and *Overton, supra.*

The second *Turner* factor involves an alternative means analysis. The new policy has replaced in-person contact visits, which also had limitations, and face-to-face visits through a thick plastic window with poor sound with an audio/video system that allows the inmate and the visitor to see each other and to speak easily and freely

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with each other and with greater privacy than having to scream through the glass in the presence of other visitors and inmates. They can also communicate by text and email. The analysis is not whether one type of visitation is better than another. The issue is whether the alternative means that are available are reasonable. See *Overton v Bazzetta*, 539 U.S. at 136. They clearly are.

The third *Turner* factor involves "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and the allocation of prison resources generally." The clear and obvious change in the logistics of inmate visitations from the old policy to the new policy satisfies this factor. In order to manage and supervise visitations at seven different locations in the jail, be diligent in looking for attempts to pass contraband, deal with disruptive child behaviors or any other disruptive behavior required significantly more personnel and resources than what is required under the new policy. It also provides for greater security within the housing area within the jail by not allowing the public to directly access those areas. The resources and staff necessary to operate the visitation center is a much more efficient use of the jail's visitation resources.

The final *Turner* factor involves whether the new policy is an exaggerated response to prison concerns. Plaintiffs offer no other alternative or solution to the jail's concerns other than a return to the old policy of face-to face visits and contact visits for trustees. The impact this reversion would have completely ignores the security risks, logistical concerns and related financial resources the new policy was

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aimed to address. These are not de minimus costs to valid penological interests. See *Overton* at 539 U.S. at 136. The fourth factor is also satisfied.

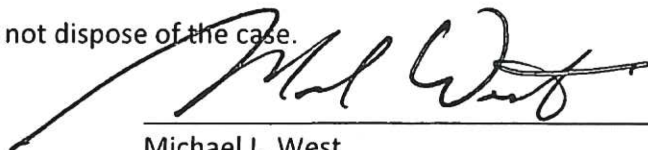
There is no balancing required as Plaintiffs suggest. Once *Turner* is satisfied, as it is, here, "deference is to be given to the considered judgment of the prison administrators who are charged with and trained in the running of penal institutions." *Cain v Dept of Corrections Director*, 254 Mich app at 605-607.

For all the reasons set forth above Defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) is GRANTED. Plaintiffs had also filed a motion seeking the entry of a preliminary injunction which they had noticed for hearing on the same date and time as Defendants' summary disposition motion. Because of this Court's ruling on Defendants' motion the issue of a preliminary injunction is now moot and will not be decided.

IT IS SO ORDERED.

This is not a final order and does not dispose of the case.

July 19, 2024



Michael L. West
Circuit Judge

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