

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KEVIN DAVIS,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil No.
)	
BRIAN COLEMAN, Superintendent SCI Fayette,)	
)	
<i>Defendant.</i>)	
)	

VERIFIED COMPLAINT

The right to marry is a fundamental right protected by the U.S. Constitution that cannot be denied because of the incarceration of one partner to the marriage. Plaintiff Kevin Davis, who has been incarcerated at SCI Fayette since 2007, wants to marry his fiancée, Norma Scott. But SCI Fayette administrators have interfered with his ability to exercise this fundamental right by preventing him from obtaining a marriage license. In Pennsylvania, both parties to a marriage must appear in person to apply for a marriage license. Although inmates at other state prisons are able to fulfill this requirement, either by meeting with the official granting the license at the institution or by using the institution’s video conferencing equipment, SCI Fayette administrators have failed to make either option available to inmates. In 2014, administrators informed Mr. Davis that inmates cannot get married at SCI Fayette and advised him that the only avenue available to him and his fiancée would be for him to work toward a difficult-to-obtain Incentive Based Transfer to another institution that does allow inmate marriage. Mr. Davis is seeking an injunction requiring SCI Fayette to allow him to utilize the institution’s video conferencing

equipment to communicate with the Fayette County Register of Wills, or with the Register of Wills of another County that is willing to accept his application via video conference, for the purpose of conducting the necessary interview for a marriage license.

JURISDICTION AND VENUE

1. Plaintiff brings this action pursuant to 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution.

2. This court has jurisdiction under 28 U.S.C. §1331 over the constitutional claims as well as those arising under 42 U.S.C. § 1983.

3. Venue is proper pursuant to 28 U.S.C. §1391(b)(2) because the events giving rise to this action occurred in Fayette County within the Western District of Pennsylvania.

PARTIES

4. Plaintiff Kevin Davis is an inmate currently incarcerated at the State Correctional Institution at Fayette (“SCI Fayette”).

5. Defendant Brian Coleman is an employee of the Pennsylvania Department of Corrections (“DOC”), serving as the Superintendent of SCI Fayette. He is responsible for the overall oversight, operation, and administration of SCI Fayette. He is sued in his official capacity. Defendant Coleman has acted, and continues to act, under color of state law at all times relevant to this Complaint.

FACTS

6. Plaintiff Kevin Davis is an unmarried man over the age of eighteen years.

7. Mr. Davis is engaged to marry Norma Scott, whom he has known for more than 40 years.

8. Ms. Scott is a resident of Pennsylvania.

9. Ms. Scott is an unmarried woman over the age of eighteen years.
10. Ms. Scott and Mr. Davis are not related to each other.
11. In Pennsylvania, couples who wish to be married must first obtain a license by appearing in person before a clerk authorized by the county court to issue marriage licenses to be examined under oath. 23 Pa. Cons. Stat. Ann. §§1301, 1306.
12. Pennsylvania courts have suggested that this “in person” standard can be met by a face-to-face interview via video conferencing.
13. Pennsylvania law provides an exception to the “in person” requirement for active military service, allowing the applicant to submit an affidavit verifying the necessary information. 23 Pa. Cons. Stat. Ann. §1306(b)-(d).
14. Pennsylvania law does not provide any similar exception to the “in person” requirement for individuals who are incarcerated. 23 Pa. Cons. Stat. Ann. §1306.
15. Pursuant to DOC Policy, DC-ADM 821, “Inmate Marriages,” the DOC will approve requests by inmates to be wed if the inmate is able to be interviewed in person or by video by the local office responsible for marriage licenses, the inmate and his fiancé assume all costs related to the marriage license and ceremony, and there are no legitimate penological interests adversely affected by the request.
16. The office responsible for issuing marriage licenses in Fayette County is the Fayette County Register of Wills.
17. The current Register of Wills is Donald Redman.
18. The Fayette County Register of Wills refuses to travel to SCI Fayette, or send a deputy, so that Mr. Davis can sign a marriage license application in the presence of the Register of Wills or his deputy.

19. Upon information and belief, Defendant Coleman, and his officers, agents, and employees refuse to reach an agreement with the Fayette County Register of Wills allowing the Register of Wills to conduct the marriage license interview, or have a deputy conduct the interview, via video conferencing.

20. Upon information and belief, compatible video conferencing equipment is readily available to both Defendant Coleman and the Fayette County Register of Wills.

21. Other state correctional institutions allow inmates to use video conferencing to conduct the interview required for issuance of a marriage license.

22. In March 2014, Mr. Davis wrote to Chaplain Lewis requesting information on the steps he needed to take to get married.

23. Chaplain Lewis informed Mr. Davis that it is not possible for inmates to get married at SCI Fayette, as the Register of Wills for Fayette County has refused to travel to SCI Fayette, and SCI Fayette and the Register of Wills have failed to reach an agreement to utilize video conferencing to complete the marriage license application.

24. In response to Mr. Davis' grievance on this issue, Debra Hawkinberry, the Community Corrections Program Manager, stated that she had been unsuccessful in making arrangements with the Fayette County Register of Wills allowing inmates to get married at SCI Fayette.

25. Ms. Hawkinberry advised Mr. Davis to work toward obtaining an incentive-based transfer to a facility that allows inmate marriages.

26. Upon information and belief, incentive-based transfers with the DOC are difficult to obtain and can take 5-7 years.

27. In response to Mr. Davis' grievance appeal, Defendant Coleman stated that SCI Fayette is not required to assist inmates in obtaining a marriage license.

28. Upon information and belief, Defendant Coleman is responsible for SCI Fayette's refusal to negotiate an agreement allowing the Register of Wills to conduct marriage license interviews of inmates incarcerated at SCI Fayette.

29. Mr. Davis' request to marry Ms. Scott would not adversely impact any legitimate penological interest.

30. As a result of the foregoing, Mr. Davis cannot sign a marriage license application in the presence of the Register of Wills or his deputy, the Register of Wills will not issue a marriage license, and Mr. Davis' marriage to his fiancée cannot be solemnized.

31. There are no alternative avenues for Mr. Davis to exercise his right to marry because he is in the continued custody of the DOC and is not at liberty to leave that custody to apply for a marriage license in person.

32. In addition to being deprived of the right to marry, the inability of Mr. Davis to marry deprives him of the benefits of federal and state law accorded to persons who are married, including, by way of example only, the right to make funeral arrangements for one's spouse and the ability to make decisions regarding the care of an incapacitated spouse (20 Pa. Cons. Stat. Ann. §5461(d)(1)(i)).

CAUSES OF ACTION

Count I – Violation of the Fourteenth Amendment Right to Marry

33. Plaintiff Kevin Davis incorporates Paragraphs 1 through 32 of this Complaint as if fully set forth herein.

34. Defendant's policies, customs, and practices prevent Mr. Davis from marrying his fiancée in violation of his fundamental right to marry.

RELIEF DEMANDED

WHEREFORE, Plaintiff Kevin Davis respectfully requests the following relief:

1. Declaratory judgment that Defendant violated Mr. Davis' constitutional and civil rights;
2. Preliminary and permanent injunctive relief ordering Defendant Coleman and his officers, agents, and employees to allow Mr. Davis to utilize the institution's video conferencing equipment to communicate with the Fayette County Register of Wills, or with the Register of Wills of another County that is willing to accept his application via video conference, for the purpose of conducting the necessary interview for a marriage license;
3. Reasonable attorneys' fees and costs; and
4. Such other relief the Court deems just and equitable.

Respectfully submitted,

/s/ Stephanie R. Reiss
Stephanie R. Reiss
Attorney ID: PA 88316
John K. Gisleson
Attorney ID: PA 62511
Morgan, Lewis & Bockius LLP
One Oxford Centre, 301 Grant St
Pittsburgh, PA 14219
T: (412) 560-3378
sreiss@morganlewis.com
jgisleson@morganlewis.com

/s/ Alexandra Morgan-Kurtz
Alexandra Morgan-Kurtz
Attorney I.D. No. 312631
Pennsylvania Institutional Law Project


429 Forbes Ave, Suite 800
Pittsburgh, Pa 15219
T: (412) 434-6175
amorgan-kurtz@pailp.org

/s/ Sara J. Rose
Attorney ID: PA 204936
ACLU of Pennsylvania
247 Fort Pitt Blvd.
Pittsburgh, Pa 15222
T: (412) 681-7864
srose@aclupa.org

VERIFICATION

I, Kevin Davis, have read the foregoing Verified Complaint and, pursuant to 28 U.S.C. § 1746, verify under penalty of perjury that the facts stated therein that relate to me specifically or that relate to 18 Pa. C.S. § 11.1304 in general are true and correct to the best of my knowledge, information, and belief.

Executed on 6/5/15


Kevin Davis