STATE OF MINNESOTA
IN COURT OF APPEALS
A09-108

Ronaldo S. Ligons,
Appellant,

vs.

Mary Perez, et al.,
Respondents.

Filed December 15, 2009
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-CV-08-1003

Ronaldo S. Ligons, Minnesota Correctional Facility-Stillwater, OID #171203, 970 Pickett Street North, Bayport, MN 55003 (pro se appellant)

Lori Swanson, Attorney General, Angela Behrens, Assistant Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101 (for respondents)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges summary judgment dismissing his constitutional claims regarding the Minnesota Department of Corrections' (DOC) policies governing inmate access to magazines and books. Appellant also contests the district court's denial of his

motions to appoint counsel and to certify the case as a class action. Because appellant presented no genuine issues of material fact and the district court did not err in granting summary judgment or abuse its discretion in denying appellant's motions, we affirm.

FACTS

Appellant Ronaldo S. Ligons is an inmate at the Minnesota Correctional Facility at Stillwater (MCF-STW). He was previously incarcerated at the Minnesota Correctional Facility at Oak Park Heights (MCF-OPH). In 2006, while at MCF-OPH, appellant received a letter by mail that included a copy of a book printed from the Internet. DOC policy only allows inmates to receive books from an authorized vendor or publisher. Minn. Dep't of Corr. Div. Directive 302.020(J) (May 1, 2007). The mailroom supervisor delivered the letter to appellant but not the additional material.

Appellant protested this decision through a prison "kite" (an intraprison communication between an inmate and prison staff). The mailroom staff informed him that the material printed from the Internet constitutes a book, and because it violated the policy on inmate receipt of books, it would not be delivered.

Appellant was later transferred to MCF-STW. While incarcerated there, appellant requested several issues of *In-Fisherman* magazine. DOC policy provides that inmates may only receive magazines sent as part of a subscription. *Id.* The mailroom refused to deliver the magazines to appellant, asking him to provide evidence that he subscribed to the magazine.

Appellant sent a kite protesting the magazine policy. He included a subscription label to show that he previously had a subscription to *In-Fisherman*. The mailroom

supervisor at MCF-STW allowed appellant to receive the issues because he was a past subscriber.

Appellant challenged the DOC's refusal to provide him with the Internet printing and the policy issues through the prisoner grievance system. He alleged that the DOC's magazine and book policies unconstitutionally impinge upon his First Amendment rights. The DOC investigated and dismissed both grievances.

Appellant commenced this action against respondents Joan Fabian, the Commissioner of the Minnesota Department of Corrections; Lynn Dingle, the former warden at MCF-STW; Mary McComb, the former associate warden of administration at MCF-STW; and Mary Perez, the mailroom supervisor at MCF-STW (collectively, respondents), alleging that the magazine and book policies violate his constitutional rights. During the litigation, appellant made five attempts to interpose motions to certify the case as a class action and obtain appointed counsel. The district court rejected each motion based on procedural irregularities, including lack of notice to respondents and failure to obtain a hearing date.

Respondents moved for summary judgment. In support of their motion, respondents submitted copies of appellant's prior grievances, the responses to those grievances, and copies of the relevant DOC policies on inmate mail and contraband. In addition, respondents filed detailed affidavits outlining the prison mail procedures, the rationale behind the DOC mail policies, and how the policies were applied to appellant.

Former MCF-STW associate warden McComb's affidavit describes her role as the correspondence review authority and the DOC's policies and procedures for handling

inmate magazines and correspondence. McComb explains that these policies are designed to manage the large volume of inmate correspondence and prevent contraband material from entering the prison. DOC policy defines contraband to include hate speech, escape instructions, or information on illegal drugs. Minn. Dep't of Corr. Div. Directive 301.030 (May 1, 2007). The DOC uses a centralized screening process for magazines that applies to multiple penal institutions. Even with centralized magazine screening, the subscription-only policy is necessary to limit the number of magazines that must be screened. Absent the subscription-only policy, there would be substantial delays in screening and delivering magazines to inmates. McComb further states that the publisher/vendor rule is designed to prevent someone from introducing contraband or coded messages into a prison facility through a book. The policy of limiting inmate access to books obtained from a publisher or vendor minimizes security risks.

MCF-STW mailroom supervisor Perez's affidavit contains additional details regarding the volume of inmate magazine requests received throughout the penal system. Even with the subscription-only policy in place, DOC staff must review 400 different magazine issues each week to make sure that they do not contain contraband or otherwise compromise prison security. Permitting inmates to receive single issues of magazines would significantly increase the burden on prison staff. Perez states that prison staff would be unable to meet this additional demand for screening.

The district court granted summary judgment in favor of respondents, concluding that the DOC magazine and book policies do not violate appellant's First Amendment

rights. The district court also rejected appellant's motion for class certification and appointed counsel as untimely. This appeal follows.

D E C I S I O N

I. The DOC magazine and book policies do not violate the First Amendment.

Appellant argues that the district court erred in granting summary judgment on his claim that the DOC violated his First Amendment rights by delaying his receipt of magazines[1] and preventing him from receiving book materials printed from the Internet. "On appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review both the existence of genuine fact issues and application of the law de novo. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). And we view the evidence in the light most favorable to the party against whom summary judgment was granted. *Id.*

A prison regulation that interferes with an inmate's First Amendment rights is only valid if that regulation is reasonably related to a legitimate penological interest. *Turner v. Safely*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261 (1987). In determining the legitimacy of a prison regulation, courts consider: (1) whether the regulation is rationally related to a legitimate and neutral government objective; (2) whether alternative means of exercising

[1] Appellant also attempted and failed to receive back issues of *Rodmaker* magazine due to the subscription-only policy. This issue was not raised before the district court, and we do not consider it here. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). But we note that the analysis presented here would apply to that denial as well.

the asserted right remain open to prison inmates; (3) the impact of accommodating the asserted constitutional right on prison officers, inmates, and resources; and (4) whether ready alternatives to the regulation are available. *Id*. at 89–90, 107 S. Ct. at 2262; *see also Thornburgh v. Abbott*, 490 U.S. 401, 413-14, 109 S. Ct. 1874, 1881–82 (1989) (applying these four factors to a First Amendment challenge to prison regulations concerning incoming publications). We address each factor in turn.

A. The policies are rationally related to legitimate and neutral government interests.

The first *Turner* factor examines whether the prison regulation is rationally related to a neutral, legitimate, government objective. *Thornburgh*, 490 U.S. at 414, 109 S. Ct. at 1882. A regulation meets this standard unless the connection between the objective and the regulation is "so remote as to render the policy arbitrary or irrational." *Turner*, 482 U.S. at 89–90, 107 S. Ct. at 2262.

The DOC's magazine policy is neither arbitrary nor irrational. It is designed to maintain security within the prison, limit the administrative burden on prison staff, and create an efficient system for reviewing inmate mail for contraband. The record demonstrates that a screening process is needed to permit inmates access to magazines without requiring prison staff to review every single magazine sent to a prison facility. The Perez and McComb affidavits articulate the need for and purpose of the subscription-only magazine policy. The legitimate security interest in screening magazines would be compromised if prison staff were required to screen single issues. Appellant cites no evidence to the contrary. On this record, we conclude that the magazine policy furthers

legitimate governmental interests in ensuring security within the prisons. *See Kristian v. State*, 541 N.W.2d 623, 629 (Minn. App. 1996) (holding that policy limiting amount of property inmates may possess is rationally related to a valid security interest), *review denied* (Minn. Mar. 19, 1996).

Appellant relies on *Prison Legal News v. Cook*, 238 F.3d 1145 (9th Cir. 2001), to support his argument that the magazine policy does not pass constitutional muster. This reliance is misplaced. *Cook* involved a regulation that prevented inmates from receiving any mail that was sent at standard nonprofit organizational rates. The *Cook* court held that the blanket ban on receiving mail from non-profit organizations did not meet the *Turner* standard because there was no rational relationship between the ban and a valid penological goal. *Id.* at 1151. No such blanket ban is even alleged here. All magazines are subject to the same policy. Inmates may not receive single magazine issues regardless of their content or the identity of the publisher. There is no record evidence that supports appellant's contention that the magazine policy itself or its implementation is subject to "haphazard" and "unconstitutional" treatment.

Likewise, the book policy is rationally related to a legitimate and neutral government interest. The policy of limiting inmate access to books sent by a publisher or vendor is designed to prevent contraband (such as coded messages) from being introduced through books. *See* DOC Div. Directive 301.030 (defining what materials are considered contraband, including sexually explicit materials, materials advocating racial violence, or materials containing information detailing the circumstances of another offender's crime). Respondents submitted competent evidence that allowing only

publishers or vendors to send books to inmates minimizes the burden on mailroom staff and security risks to both the prison population and staff. Appellant presents no evidence creating a genuine issue of material fact. We conclude that the book policy serves a legitimate penological goal.

Appellant contends that the book policy is arbitrary and enforced in a haphazard manner with respect to materials from the Internet. This argument is unavailing. Inmates may receive materials printed from the Internet, subject to the rules that govern other printed material, including the book policy. Requiring staff to screen book materials printed from the Internet impacts scarce resources and security concerns every bit as much as reviewing every page of a bound book. The fact that the Internet materials sent to appellant fit inside a single envelope is not determinative. A significant amount of material can fit inside one envelope, and the need for screening and staff time required to do so are the same as they would be if the inmate received a book.

B. The policies leave alternative means for inmates to exercise their First Amendment rights.

The second *Turner* factor assesses the availability of alternative means for inmates to exercise their First Amendment rights. *Turner*, 482 U.S. at 90, 107 S. Ct. at 2262. The magazine policy expressly permits inmates to receive magazines by subscription, or alternatively, to receive excerpts from magazines with correspondence. Likewise, inmates are free to receive books directly from vendors or publishers. Appellant provides no evidence that inmates are wholly deprived of the ability to exercise their First Amendment rights to obtain books and magazines.

While a complete ban on materials printed from the Internet may not comply with *Turner*, *see Clement v. Cal. Dep't of Corrections*, 220 F. Supp. 2d 1098 (N.D. Cal. 2002), that is not the situation here. The vendor/publisher policy responds to the practical problem of screening each page of a book for contraband. The policy applies equally to bound books and books printed from the Internet. If the amount of printed material is the equivalent of a book, then the material must be sent from an authorized publisher or vendor. If the amount of printed material can be effectively screened by prison staff without creating a burden, the inmate may receive the material. The critical point is that the policy provides inmates with an alternative way to obtain magazines and books—regardless of their content. We note that the *Clement* court indicated that regulations such as those at issue here would likely comply with *Turner*. 220 F. Supp. 2d at 1110 (stating that a prison may "directly regulate the quantity of pages or the number of pieces of mail received by each prisoner").

C. The policies protect against an adverse effect on the DOC's ability to process inmate mail.

The third *Turner* factor considers the impact that accommodating the asserted constitutional right would have on guards, inmates, and prison resources. 482 U.S. at 90, 107 S. Ct. at 2262. Respondents produced substantial, uncontradicted evidence that allowing inmates to receive single issues of magazines would adversely affect the DOC's ability to process inmate mail. Prison staff must screen 400 magazines a week to meet inmate demand and maintain security within the prison facilities. Delays in the screening process lead to inmate complaints that may cause substantial disruption. The

subscription-only policy permits prison staff to review magazines for contraband without unduly delaying inmate access. Given the DOC's financial constraints and the increasing inmate population, requiring prison staff to screen an even larger number of magazines for contraband would have a substantial adverse impact on prison resources. *See United States v. Stotts*, 925 F.2d 83, 87 (4th Cir. 1991) (recognizing that administrative and economic concerns are legitimate penological interests under *Turner* analysis).

Appellant contends that permitting inmates to receive lengthy materials printed from the Internet would not significantly burden prison staff. But as noted above, prison staff would have to examine each and every page of such materials for contraband. And while the DOC does not have a set page number or other precise standard for determining how much printed material constitutes a "book," respondents are best situated to make such a determination. *See Overton v. Bazzetta*, 539 U.S. 126, 132, 123 S. Ct. 2162, 2167 (2003) (reviewing court "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"). Appellant has not demonstrated any abuse of professional judgment in this case.

D. There are no ready alternatives to the DOC's policies.

The final *Turner* factor examines whether there is a ready alternative to the regulation. 482 U.S. at 90, 107 S. Ct. at 2262. A ready alternative is a method that fully accommodates the asserted right while imposing no more than a de minimis cost. *Id.* at 91, 107 S. Ct. at 2262; *Overton*, 539 U.S. at 136, 123 S. Ct. at 2169 (evaluating "whether

the prisoner has pointed to some obvious regulatory alternative"). The "existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an exaggerated response to prison concerns." *Turner*, 482 U.S. at 90; 107 S. Ct. at 2262 (quotation omitted). Any proposed alternative must be evaluated with the understanding that maintaining prison security is "central to all other corrections goals." *Pell v. Procunier*, 417 U.S. 817, 823, 94 S. Ct. 2800, 2804 (1974).

Appellant cites no evidence that supports his assertion that allowing inmate access to single issues of magazines would create no more than a de minimis cost. And respondents' uncontested evidence demonstrates otherwise; requiring mailroom staff to examine single magazine issues would create a substantial burden on an already overtaxed system. Indeed, McComb indicates that there are no reasonable alternatives to the centralized review of subscription publications. Even with the centralized system, the DOC expends substantial resources to screen magazines and prevent contraband from entering prisons. Appellant identifies no practical, ready alternative that achieves the goals of maintaining prison security and managing prison resources while allowing inmates access to single magazine issues.

Appellant's contentions with respect to the book policy are similarly unavailing. First, we note that appellant does not challenge the fact that respondents have a legitimate interest in preventing contraband from entering the prisons. Second, as McComb states, permitting unlimited access to materials printed from the Internet would circumvent the book policy. Appellant suggests classifying the Internet as a publisher or vendor. However, as the district court observed, this classification defies both common sense and

the purpose of the book policy. Because anyone can publish information on the Internet, there would be no way of knowing whether the publisher had slipped in coded messages or other contraband. Treating the Internet like a publisher does not constitute a ready alternative to the book policy and would undermine the purpose of the policy.

Because appellant failed to present any genuine issues of material fact and the DOC policies are reasonably related to legitimate penological interests, the district court did not err in granting summary judgment.

II. The magazine and book policies are not unconstitutional as applied to appellant.

While appellant does not specify whether he challenges the DOC policies on their face or as applied to him, we conclude that even if appellant's complaint were construed as an as-applied challenge, summary judgment is appropriate. The district court performed a thorough and searching examination of the record, construed appellant's complaint in a liberal manner, and determined that appellant had presented no genuine issues of material fact suggesting that the DOC applied the policies in a discriminatory manner as to him. The record indicates that the DOC policies apply to all inmates equally and that respondents' enforcement efforts did not specifically target appellant. Appellant submitted no evidence to the contrary. We conclude that the DOC policies are not unconstitutional as applied to appellant and the district court did not err in so holding.

III. The district court did not abuse its discretion in denying appellant's motions.

Finally, appellant contends that the district court erred by declining to consider his repeated requests for appointment of counsel and class certification. Appellant attempted

to bring five motions, all of which the district court rejected on procedural grounds. The rules require a litigant to obtain a motion date and time from the court administrator, provide timely notice of the hearing to the other parties, and serve and file the motion within the required period of time. Minn. R. Gen. Pract. 115.02–.04. While a district court, in its discretion, may waive these requirements and hear matters that were not properly submitted, the court is not obligated to do so. *Hopkins by LaFontaine v. Empire Fire & Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. App. 1991). And this court will only overturn the district court if it has abused its discretion. *See Parker v. O'Phelan*, 414 N.W.2d 534, 537 (Minn. App. 1987) (extension of time limit for filing motion is discretionary and will not be reversed unless the discretion has been abused), *aff'd*, 428 N.W.2d 361 (Minn. 1988); *see also Lee v. Lee*, 749 N.W.2d 51, 62 (Minn. App. 2008).

Our careful review of the record reveals no abuse of discretion. In May 2008, appellant filed a motion to certify the case as a class action and for the appointment of counsel. The court rejected this motion because appellant failed to give proper notice to respondents as required by Minn. R. Gen. Pract. 115.02. In a letter dated May 28, 2008, the district court informed appellant of the procedures he needed to follow in order to properly bring a motion before the court. Appellant filed the same motion on June 1, 2008, but failed to schedule a hearing. In its June 25, 2008 scheduling order, the district court explicitly informed all parties that the court would not accept motions filed after September 19, 2008. Appellant submitted the same motion in October 2008. The district court again rejected the motion. While courts may give some latitude to pro se litigants, such parties are held to the same standards as attorneys and must follow court rules.

Fitzgerald v. Fitzgerald, 629 N.W.2d 115, 119 (Minn. App. 2001). Appellant did not follow the rules or the procedures the district court established. Even considering appellant's incarceration and the burdens it places upon him, we conclude that the district court did not abuse its discretion in rejecting appellant's motions.

Affirmed.