

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE**

**S.L., T.L.L., T.L., C.L., J.L.,
N.L., D.L., and H.L., by their next
Friend Onisha Lyle, Z.T.E., Z.W., K.W.,
by their next friend, Monica Garfield,
A.H., by her next friend Karla Darling,
A.B. and E.B., by their next friend
Brya Bishop, O.W., by her next friend
Martreanna Browning, LE'ESSA HILL,
FLORENCE MARBLE and PAUL
MARBLE, individually and on behalf
of a class of similarly situated persons,**

Plaintiffs,

v.

**SHERIFF CHRISTOPHER SWANSON,
GENESEE COUNTY, GLOBAL TEL*LINK
CORP. (doing business as VIAPATH
TECHNOLOGIES) AND DEB ALDERSON,**

Defendants.

CASE NO. 24-120601-CZ

HONORABLE CELESTE D. BELL

ORDER AND OPINION

FILED

DEC 30 2024

GENESEE COUNTY CLERK

PRESENT: THE HONORABLE CELESTE D. BELL, Circuit Judge

On June 4 and June 25, 2024, this Court heard oral arguments on Genesee County and Sheriff Swanson's ("the County Defendants" or simply "the County") Motion to Dismiss in Lieu of Answer pursuant to MCR 2.116(C)(7) and (C)(8), Defendant Global Tel*Link Corporation's ("ViaPath") Motion for Summary Disposition under MCR 2.116(C)(8), and Deb Alderson's ("Alderson") Motion for Summary Disposition under (C)(1) or, alternatively, (C)(8), and Plaintiffs' Motion for a Preliminary Injunction. In addition to the original filings, the parties were permitted to submit supplemental briefs, which were filed on July 30, 2024. The matter was taken under advisement to permit the court to review in detail the extensive legal authority cited by the parties, and to allow the parties to potentially resolve the matter due to changed circumstances. Resolution did not occur. Accordingly, this opinion resolves the relevant issues.



BACKGROUND

In 2014, the County enacted a new policy which prohibited in-person family visits at the Genesee County Jail. At that time, the County entered into an agreement with Securus Technologies to make electronic communications available for inmate-family visits. In 2018, the County switched providers from Securus to defendant Global Tel*Link, d/b/a ViaPath.

On March 15, 2024, Plaintiffs, who are family members of then-current or former inmates of the Genesee County Jail, filed this action challenging the County Defendants' policy prohibiting in-person family visits at the jail. Plaintiffs included in the action ViaPath, the current vendor contracted by Genesee County to provide communication services for the jail, and Deb Alderson, the Chief Executive Officer of ViaPath. Plaintiffs' complaint alleges that the latter defendants conspired with the County Defendants regarding the county's policy to limit in-person visitation.

Plaintiffs sought a preliminary injunction to prohibit the County Defendants from enforcing what they characterize as a "family visitation ban," contending that it infringes on Plaintiffs' asserted fundamental rights to family integrity and intimate association. Notably, in June 2024, Sheriff Swanson, in partnership with Motherly Intercession and the Greater Flint Health Coalition, announced a program for child visitation between inmates and their children set to commence on July 6, 2024. Plaintiffs, however, wished to continue with this matter due to future implications.

LEGAL STANDARDS

Whether a court has personal jurisdiction over a party is a question of law. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426 (2001). A plaintiff bears the burden of establishing jurisdiction over a defendant by making a prima facie showing of jurisdiction to defeat a motion for summary disposition. *Id.* at 427. In determining whether that burden is met, courts reviewing a motion for summary disposition consider the documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Id.* When allegations in the pleadings are contradicted by documentary evidence, the plaintiff may not rest on mere allegations but must produce admissible evidence of his or her prima facie case establishing jurisdiction. *Glenn v TPI Petro, Inc*, 305 Mich App 260, 266 (2003).

A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). If such material is submitted, it must be considered. *Id.*; MCR 2.116(G)(5). Moreover, the substance or content of the supporting proofs must be admissible in evidence. *Maiden*, 461 Mich at 119; MCR 2.116(G)(6). The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant. *Maiden*, 461 Mich at 119.

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint. *Id.*; *El-Khalil v. Oakwood Healthcare, Inc.* 504 Mich 152, 159-160 (2019) (citations omitted). When considering a motion under MCR 2.116(C)(8), a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. *Id.* A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery. *Id.*

The purpose of a preliminary injunction is to preserve the status quo pending a final hearing regarding the parties' rights." *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 647-648 (2012). To obtain a preliminary injunction, the moving party bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction. *Id.* at 648. The court must determine that:

- (1) the likelihood that the party seeking the injunction will prevail on the merits;
- (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued,
- (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and
- (4) the harm to the public interest if the injunction is issued.

Id.

DISCUSSION

A

This case presents the question of whether a constitutional right exists to in-person

contact visits between county jail inmates and the inmate's family. If no constitutional right exists as asserted by Plaintiffs, other claims asserted in this case are rendered meaningless, including review of the jail visitation policy and the existence of a civil conspiracy. This court concludes that the alleged constitutional rights to in-person contact visits with an inmate are not rights protected under the liberty or equal protection clauses of the Michigan constitution. It further concludes that, if such rights exist, there has been no violation because the jail's policy was, and is, reasonably related to legitimate penological interests consistent with the federal standard of review stated in *Turner v Safley*, 482 US 78 (1987).

B

Plaintiffs claim that a fundamental right to Family Integrity and Familial Association 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. The court disagrees.

The Equal Protection Clause of the Michigan Constitution provides, "[n]o person shall be denied the equal protection of the laws." Mich Const Art 1§ 2. The scope and standard of the Michigan Equal Protection Clause are coextensive with those rights protected by the federal Equal Protection Clause. *Doe v Dep't of Social Servs*, 439 Mich 650, 670-674 (1992). While equal protection generally requires that similarly situated individuals be treated similarly, "it is well established that even if a law treats groups of people differently, it will not necessarily violate the guarantee of equal protection." *Id.* at 661. Accordingly, not all discriminatory classifications will be held to violate the Equal Protection Clause. *Havey v State*, 469 Mich 1, 6-7 (2003). Unless the action infringes on a fundamental right, discriminates against a "suspected" class, such as race, ethnicity or national origin, or discriminates against a "quasi-suspect" class invoking intermediate scrutiny, the state action is analyzed under rational basis review. *Id.* at 7.

Both Michigan courts applying the Michigan Constitution and federal courts applying the United States Constitution have rejected finding such a liberty interest exists in a prison setting. See *Faler v Lenawee County Sheriff*, 161 Mich App 222, 228 (1987) ("We find no authority for the proposition that a parent and child have a fundamental right

to visitation without restrictions when the parent is an imprisoned felon.”¹; *Blank v Dep’t of Corrections*, 222 Mich App 385, 408-409 (1997), *aff’d* 462 Mich 103 (2000). See also *Block v Rutherford*, 468 US 576 (1984) (county jail’s no-contact visitation policy upheld); *Overton v Bazzetta*, 539 US 126 (2003) (Michigan Department of Corrections policies restricting in-person visits upheld), *Kentucky Dept. of Corrections v Thompson*, 490 US 454 (1989).

Plaintiffs attempt to distinguish the above cases on several grounds, but none are persuasive to the court. The legal authority cited in this opinion clearly establishes that there is no constitutionally protected fundamental right—either a liberty interest or family integrity right to association—regarding visitation policies in Michigan jails and prisons. This court will not find one.²

C

As noted above, the court further concludes that, even if a fundamental right were to exist as asserted, there has been no violation. Restrictions on prisoners’ rights are constitutional, under both the federal and Michigan constitutions, if they are reasonably related to legitimate penological interests. *Turner v Safley*, 482 US 78, 89 (1987); *Bazzetta v Dep’t of Corrections Director*, 231 Mich App 83, 87-88 (1998).

As referenced above, in *Overton v Bazzetta*, 539 US 126, 130 (2003), the United States Supreme Court upheld two Michigan Department of Corrections policies restricting in-person visits to inmates against challenges arising under the First, Eighth, and Fourteenth Amendments. The Court noted that “[m]any of the liberties and privileges enjoyed by other citizens must be surrendered by a prisoner.” *Id.* at 131. The Court identified four factors relevant to assessing the constitutionality of a prison regulation on inmate visitors: (1) whether the regulation has a valid, rational connection to a legitimate government interest; (2) whether alternative means are open to inmates to exercise the asserted right; (3) what impact an accommodation of the right would have on guards and inmates and prison resources; and (4) whether there are ready alternatives to the regulation. *Id.* at 132 (citing *Turner v Safley*, 482 US at 89-91). The prisoner bears the

¹ The court acknowledges the distinction between a convicted felon and a pretrial detainer, but does not find that distinction to alter the resolution on this matter.

² The court takes judicial notice of a similar action having been filed in at least one other Michigan county. That court also declined to recognize the constitutional right asserted by Plaintiffs.

burden of proving the unconstitutionality of the regulation, not the government. See *Turner*, 482 US at 89-91.

In this case, the court finds that these factors are satisfied. First, there is a rational connection between the policy and the legitimate governmental interest. The termination of in-person visits was implemented to promote increased internal security and increased safety of staff and inmates by way of reducing the entrance of contraband within the jail. Plaintiffs contend, and Sheriff Swanson does not deny, that there was a financial component to the decision: the jail had budgetary issues and was looking for ways to reduce costs and, if possible, generate income. This does not negate, however, the overall concern with the security of the jail. *Overton* explicitly held that the maintenance of internal security was a legitimate penological interest. *Overton*, 539 US at 133.

Second, the new policy replaced in-person visits with an audio/video system that allows inmates and their visitor to see and speak to each other freely and privately. The visitor can be in any location; s/he does not have to be physically present at the jail. This is an advantage to the family members who are not local or mobile. The analysis is not whether one type of visitation is better than the other. The issue is whether the alternative means is reasonable. See *Overton*, 539 US at 136. The court finds that it is.

For the third factor, the court must examine the impact an accommodation of the right would have on personnel and inmates and prison resources. The new policy clearly satisfies this factor. The resources and staff necessary under the video visitation system is much less and more manageable. It provides for greater security within the housing area within the jail by not allowing the public to directly access those areas.

Finally, factor four requires the court to examine whether there are ready alternatives to the regulation. Plaintiff offers no other alternative or solution to the jail's concerns other than a return to full contact visitation. This completely ignores the security risks, logistical and related financial concerns the new policy tried to address. These are not de minimis costs to valid penological interests. See *id.* The absence of ready alternatives is evidence of the reasonableness of a prison regulation. See *Turner*, 482 US at 90. Thus, the fourth factor is also satisfied.

Because *Turner* is satisfied, this court must defer to the jail officials. See *Blank*, 222 Mich App at 408. ("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.”). Accordingly, the court concludes that Plaintiffs have not met their burden to prove the unconstitutionality of the policy.

D

Plaintiffs assert a civil conspiracy claim against the Defendants. They contend that they allege facts showing that the County Defendants and ViaPath worked together with a common goal of using unlawful means to generate revenue. The court finds that this claim is without merit.

In Michigan, a claim for conspiracy must allege (1) a combination of two or more persons who, (2) by some concerted action, (3) set to accomplish either a criminal or unlawful purpose or a lawful purpose by criminal or unlawful means. *Fenestra Inc v Gulf Am Lan Corp*, 37 Mich 565, 593 (1966). Here, Plaintiffs allege the Defendants pursued the same goal of increasing revenue and profits through the unlawful means of depriving Plaintiffs of in-person family visits, in contravention of their rights under the Michigan constitution. However, Plaintiffs have no unlawful act to rely on nor is there concerted action between the defendants to limit visits. The court has found that no constitutional right exists that was violated by the implementation of the communications system contracted for by the County Defendants. Additionally, the decision to limit in-person visits at the Jail was made solely by the County, not Securus, the original vendor and contractor at the time of the policy change, or ViaPath, whose contract was entered after the change to video visitation had already been implemented for several years. Accordingly, the conspiracy claims against all defendants fail.

CONCLUSION

The court cannot conclude without noting several facts. First, the court notes that although Plaintiffs describe their challenge as against a “Family Visitation Ban,” no such ban truly existed at the Genesee County Jail. Moreover, as noted in the first paragraph of this opinion, circumstances changed shortly after the filing of Plaintiffs’ complaint. Sheriff Swanson implemented a program at the jail titled, Operation Restore, to provide opportunities for in-person visitation between inmates and their children. The program commenced on July 6, 2024, and continues to date. It appears to be highly successful based on what this court what it has seen from its chambers’ window (a perfect view of the

jail parking lot) on the Saturdays it has chosen to spend at the courthouse. The program offers exactly what the Plaintiffs sought in this action: physical contact between inmates and their children. The court understands the Plaintiffs' concern that the policy the current administration has adopted could change without an injunction, but the court does not find the legal authority to insert itself in the decisions of the jail in this matter.

Accordingly, for the reasons stated above, the County Defendants' motion to dismiss and the motions for summary disposition by defendants ViaPath and Alderson are granted under MCR 2.116(C)(8).³ Additionally, Plaintiffs' motion for a preliminary injunction and motion for class certification are denied as moot.

IT IS SO ORDERED.

This order resolves all pending claims and closes this case.

Date 12/30/24



CELESTE D. BELL, Circuit Judge (P41453)

³ Because of the court's conclusion regarding the asserted constitutional right, the court does not reach the jurisdictional issue raised by defendant Alderson.