

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

**SUPREME COURT DOCKET NO. 2002-299**

**NOVEMBER TERM, 2002**

In re Clinton Bedell

}	APPEALED FROM:
}	
}	Addison Superior Court
}	
}	DOCKET NOs. 55 & 58-3-02 Ancv
}	
}	Trial Judge: Matthew I. Katz
}	
}	
}	

In the above-entitled cause, the Clerk will enter:

Petitioner Clinton Bedell appeals the dismissal of his complaint against various state agencies for violation of his civil rights as a result of his transfer from a Vermont prison to a correctional facility in Virginia. We affirm.

Petitioner is serving a sentence of six-to-thirty-five years for sexual assault on a minor. We take as true the allegations in petitioner's complaint. Ass'n of Haystack Prop. Owners, Inc. v. Sprague, 145 Vt. 443, 444 (1985). Petitioner alleges that the Vermont Department of Corrections allowed petitioner to marry while he was incarcerated. A few weeks after his marriage, the Department transferred petitioner to a correctional facility in Virginia. In March 2002, he filed the present action against a number of state agencies claiming that the transfer violated his rights to marry, to procreate, and to enjoy conjugal visits with his new wife. The State moved to dismiss the complaint on grounds that it failed to state a claim for relief. See V.R.C.P. 12(b)(6). Without opinion, the trial court granted the motion, and this appeal followed.

We note first that petitioner's pro se brief in this matter does not meet this Court's standards. See V.R.A.P. 28(a) (setting forth briefing standards). Most troubling is petitioner's failure to clearly identify the issues he would like this Court to decide. See V.R.A.P. 28(a)(3) (appellant must identify the specific claims of error below). Nevertheless, considering petitioner's pro se status, we will examine the record to determine whether the trial court's dismissal of petitioner's complaint was proper. See Beyel v. Degan, 142 Vt. 617, 619 (1983) (although appellant's brief was inadequate under Court's rules, Court would consider those issues which appellant appeared to have raised, in consideration of his pro se status).

We will affirm the dismissal of petitioner's complaint if the record shows that petitioner's complaint sets forth no facts or circumstances which if proven, would entitle petitioner to relief. Sprague, 145 Vt. at 446. Here, petitioner claims he has certain civil rights that survive his incarceration, namely a right to marry, to procreate, and to engage in conjugal visits. He claims that by removing him from the state of Vermont to serve his sentence in Virginia, the State violated those civil rights. Petitioner's claim has no merit.

Although prison inmates do not leave constitutional protections behind when they enter the corrections system, many of their constitutional rights are restricted upon incarceration for valid penological reasons. Hernandez v. Coughlin, 18 F.3d 133, 136-37 (2d Cir. 1994). Thus, prisoners retain the fundamental right to marry during their term of imprisonment, Turner v. Safley, 482 U.S. 78, 95-96 (1987), but the key attributes of marriage " physical intimacy, cohabitation, and procreation " are necessarily curtailed. Gerber v. Hickman, 291 F.3d 617, 621 (9th Cir. 2002) (en

banc). " The loss of the right to intimate association is simply part and parcel of being imprisoned for conviction of a crime." Id. As the United States Supreme Court observed in Turner v. Safley, " most inmate marriages are formed in the expectation that they ultimately will be fully consummated" upon the inmate' s release from prison. Turner, 482 U.S. at 96.

In this case, the parties agree that petitioner was allowed to marry while he was in prison. The trial court therefore properly dismissed his claim that the State interfered with his fundamental right to marry. Because the Constitution does not require the State to allow petitioner to procreate or to have conjugal visits with his new wife, the trial court properly dismissed petitioner' s complaint for failure to state a claim for relief.

Affirmed.

BY THE COURT:

---

Jeffrey L. Amestoy, Chief Justice

---

John A. Dooley, Associate Justice

---

James L. Morse, Associate Justice