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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-121

DECEMBER TERM, 2010

Charles Gundlah	}	APPEALED FROM:
	}	
	}	
v.	}	Washington Superior Court
	}	
	}	
Andrew Pallito	}	DOCKET NO. 180-3-09 Wncv
		Trial Judge: Geoffrey W. Crawford

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

Plaintiff, a Vermont inmate currently incarcerated in Florida, appeals from the trial court's dismissal of his complaint for review of governmental action. V.R.C.P. 75. Plaintiff claims that the under the Interstate Corrections Compact (ICC), Vermont is obligated to provide him with a kosher diet in Florida, and its refusal to do so violates the Federal and Vermont Constitutions, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. § 2000cc-1 to 2000cc-5, and 28 V.S.A. § 803. The trial court dismissed plaintiff's complaint, concluding that his grievance should be brought in Florida. We affirm.

On appeal from the granting of a motion to dismiss, we review the legal claims asserted therein de novo. Nichols v. Hofmann, 2010 VT 36, ¶ 4. We take all facts as alleged by plaintiff as true and will grant dismissal where it is beyond a doubt that there exist no facts or circumstances that would entitle the plaintiff to relief. Id.

The facts, when viewed in this light, are as follows. Plaintiff is under the supervision of the Vermont Department of Corrections (DOC) and currently incarcerated in Florida pursuant to the ICC. He is a practicing Jew and is being denied a kosher diet. Florida has a policy against kosher meals based on security and economic interests and instead has eliminated pork and pork products from its food. Plaintiff exhausted his administrative remedies grieving the denial of a special diet through Vermont DOC. He then filed suit in Vermont pursuant to Vermont Rule of Civil Procedure 75, claiming that his rights were being violated because he did not have the same access to a kosher diet that is provided in Vermont prisons. The trial court dismissed the complaint under Vermont Rule of Civil Procedure 12(b)(6) without addressing plaintiff's substantive claims. The court held that the question of whether plaintiff is entitled to a kosher diet is a matter under the control of the Florida Department of Corrections and not Vermont DOC. Therefore, the court concluded that Vermont is not the appropriate jurisdiction for plaintiff's complaint and dismissed the case.

Plaintiff bases his right to a special diet on several statutes and constitutional provisions. Before addressing these substantive claims, however, we must address the threshold question of

whether plaintiff's grievance should be brought in Florida, as the trial court concluded. The ICC was enacted to facilitate interstate transfer of prisoners, equal treatment of out-of-state inmates, and adequate procedural protections for those inmates. See Daye v. State, 171 Vt. 475, 480 (2000). The ICC specifies:

> All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

28 V.S.A. § 1604(e). Plaintiff asserts that the second sentence of this subsection requires Vermont to provide him with a kosher diet because such a diet is a "legal right" that he would have if confined in Vermont. The State argues that under the first part of the subsection, there is no violation of plaintiff's rights as long as he is receiving treatment equal to other inmates in Florida.

We interpret the statute by examining the plain language and will implement that language if it does not conflict with the overall legislative scheme. Nichols, 2010 VT 36, ¶ 7. We addressed this statute in Daye v. State, where the plaintiffs claimed that prisoners who were incarcerated in Virginia were entitled to the same visitation policy as inmates in Vermont. 171 Vt. at 481. The plaintiffs based their argument on the second part of § 1604, as plaintiff does here. We held that the statute did not entitle out-of-state inmates to the same visitation policy as that applied in Vermont facilities because, when viewed in its entirety, the ICC grants the receiving state authority over inmates' "discipline, visitation, classification, and grooming." Id. at 482 (quotation omitted). Thus, while the sending state retains jurisdiction over the inmate for transfer, release, and other general matters, 28 V.S.A. § 1604(c), the receiving state determines the specifics of the confinement so that all inmates are treated equally, id. § 1604(e).

We conclude that the same principle applies to this case, and that Florida has authority over plaintiff's diet. Plaintiff's construction of the statute would undermine the intent of the ICC to entrust in the receiving state the supervision over the inmate's daily living. If Vermont retained authority over plaintiff's diet, it would have to manage plaintiff's care on a daily basis and provide plaintiff with benefits not accorded other inmates. This would conflict with the purpose of the ICC to provide "confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources." 28 V.S.A. § 1601. Plaintiff was legally transferred to confinement in Florida and any grievance he has about the daily conditions of his confinement there should be addressed to officials in that state.

Plaintiff contends that our holding in Nichols v. Hofmann, 2010 VT 36, compels a ruling in his favor. In Nichols, we held that inmates transferred out-of-state to a private corrections facility were entitled to the use of phone cards because that right was specifically provided for by statute, 28 V.S.A. § 802a(c). 2010 VT 36, ¶¶ 12-13. According to plaintiff, Nichols holds that if a "right" is accorded by statute, rather than DOC policy, then it must be afforded to out-of-state inmates under 28 V.S.A. § 1604. Even assuming that plaintiff is correct and a kosher diet is a

right conferred by 28 V.S.A. §803, we are not persuaded by plaintiff's reasoning. Nichols did not involve interpretation of the ICC, but a private contract, and as such its holding was specifically limited to that circumstance. Id. ¶¶ 8, 11. Because this case involves the ICC, we conclude that Nichols is not controlling.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice