

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

JEREMY E. DEVERS and PATRICIA E.
LOCKE,

Plaintiffs,

v.

KEVIN MOONEY, both individually and in
his official capacity as Bullitt County Clerk,

Defendant.

Case No. _____

Electronically Filed

VERIFIED COMPLAINT

Preliminary Statement

1. In this 42 U.S.C. § 1983 suit, Plaintiffs assert both official and individual capacity claims against Defendant and seek a declaratory judgment, preliminary and permanent injunctive relief, and damages. Specifically, Plaintiff Patricia Locke is engaged to marry Plaintiff Jeremy Devers, an inmate at the Kentucky State Reformatory. After having known each other for more than twenty years, and after deciding that they wish to solemnize their feelings for (and commitment to) one another through marriage, Plaintiffs applied for and obtained a marriage license from Defendant in March, 2012. However, before Plaintiffs were able to marry (and before the marriage license expired), Defendant adopted a policy, based upon an authoritative construction of Kentucky Revised Statute (KRS) § 402.110, that both applicants seeking a marriage license must appear “in-person” in order to obtain a valid license. Moreover, Defendant retroactively applied this policy to revoke Plaintiffs’ previously-issued marriage license without prior

notice or an opportunity to appeal that adverse decision. Because Plaintiff Devers' incarceration prevents him from appearing in-person at Defendant's office, and because prison officials refuse to transport him to obtain a marriage license, KRS § 402.110's in-person requirement thus directly and substantially burdens Plaintiffs' rights of intimate association and marriage by completely foreclosing their ability to obtain a valid marriage license and thus get married so long as Plaintiff Devers remains incarcerated. Plaintiffs therefore assert that, in his official capacity, Defendant's enforcement of KRS § 402.110's in-person requirement, as applied to their intended future marriage license application, violates their fundamental rights of association and marriage secured by the First and Fourteenth Amendments. Plaintiffs also assert individual capacity claims based upon Defendant's revocation of their previously-issued marriage license as a violation of their fundamental rights of association and marriage under the First and Fourteenth Amendments, as well as their procedural due process rights under the Fourteenth Amendment.

Jurisdiction and Venue

2. The Court has jurisdiction over this case under 28 U.S.C. § 1331, which provides for original district court jurisdiction over cases presenting federal questions.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b), because all parties reside in Kentucky, the Defendant (in both his individual and official capacities) resides in Bullitt County, and a substantial part of the events or omissions giving rise to the claim occurred in the Western District of Kentucky.

Parties

4. Plaintiff Jeremy E. Devers (Devers), is an adult citizen of Kentucky, residing in Oldham County, Kentucky. Plaintiff Devers is an inmate at the Kentucky State Reformatory located in Oldham County, Kentucky.

5. Plaintiff Patricia E. Locke (Locke), is an adult citizen of Kentucky residing in Jefferson County, Kentucky.

6. Defendant Kevin Mooney (Mooney) is the duly elected Bullitt County Clerk who, in his official capacity, is responsible for, *inter alia*, receiving applications for (and issuing) marriage licenses. Defendant in his official capacity is located in Bullitt County, Kentucky. Defendant Mooney, in his individual capacity, is an adult citizen of Kentucky residing in Bullitt County, Kentucky.

Factual Allegations

7. At all relevant times, Defendant Mooney, both in his individual and official capacities, acted under color of state law.

8. Plaintiffs Devers and Locke have known each other since 1988, having first dated (and then briefly lived together) that year. Plaintiff Devers first proposed marriage to Locke in 1988, but the Plaintiffs subsequently ended their relationship in 1989 without having married.

9. Following Devers' arrest and subsequent conviction resulting in his current incarceration, he and Ms. Locke resumed contact in 2001. Plaintiffs exchanged correspondence and talked by phone for several months but did not resume their prior relationship.

10. Plaintiffs next exchanged correspondence in 2005 or 2006.

11. In 2011, Locke and Devers again exchanged correspondence which led to frequent telephone conversations and authorized visits at Kentucky State Reformatory. As a result of these communications, both Locke and Devers recognized the enduring nature of their near lifelong love and affection for one another.

12. Devers proposed marriage (and Locke accepted) in January, 2012. Neither Devers nor Locke has previously been married.

13. Following their engagement, Plaintiffs decided that they wished to be married regardless of Devers' incarceration. Thus, they began exploring how to obtain a marriage license and conduct a marriage ceremony while he remains in custody.

14. Locke first contacted the Oldham County Clerk's office by telephone in March, 2012, but was notified that she could not obtain a marriage license due to Devers' inability to appear in-person at the clerk's office to jointly submit the application.

15. Locke also contacted the Jefferson County Clerk's office by telephone in March, 2012, but was again informed that Devers' inability to appear in-person to submit the application precluded them from obtaining a marriage license.

16. Locke then learned that the Bullitt County Clerk's office provided a form entitled "Addendum To The Marriage License — Person Incarcerated" (Inmate Addendum) that would enable inmates to obtain a marriage license.

17. Upon receiving a copy of Defendant's Inmate Addendum form, Devers fully and accurately completed the form and signed it on March 26, 2012. Devers' signature on the Inmate Addendum form was notarized by a Notary Public employed by the Kentucky State Reformatory on March 26, 2012.

18. After receiving the completed Inmate Addendum from Devers, Ms. Locke went to the Bullitt County Clerk's office on March 30, 2012 where she completed and signed an "Application for Marriage License" (Marriage Application) form provided by that office. Locke then tendered both properly completed forms — the Marriage Application and the Inmate Addendum — to the office of the Bullitt County Clerk and paid the proscribed fee.

19. When Locke submitted Plaintiffs' Marriage Application to the office of the Bullitt County Clerk on March 30, 2012, both Plaintiffs were over the age of eighteen, unrelated by blood, not married to another person, and not otherwise disqualified from marrying one another under Kentucky law. *See generally* KRS Chapter 402.

20. Because Plaintiffs satisfied the requirements for marriage under Kentucky law, tendered fully completed copies of the forms required by Defendant's office, and paid the requisite fee, the office of the Bullitt County Clerk issued Plaintiffs a valid Kentucky marriage license on March 30, 2012.

21. Once issued, Plaintiffs retained a property interest in the unexpired marriage license that is recognized and protected by the Due Process clause of the Fourteenth Amendment.

22. Upon obtaining their marriage license, Plaintiffs Devers and Locke notified prison officials, arranged for an official to conduct the ceremony, and (with the approval of prison officials) scheduled their wedding date for April 26, 2012.

23. On or about April 24, 2012, Chaplain Turner, an employee of the Kentucky Department of Corrections, orally notified Devers that Defendant had revoked Plaintiffs' marriage license, thus the scheduled wedding would not take place.

24. Defendant did not notify either Devers or Locke prior to revoking their marriage license, nor did Defendant afford Plaintiffs a post-revocation process by which to appeal that adverse decision.

25. Defendant's revocation of Plaintiffs' marriage license — without prior notice, a meaningful opportunity to be heard, or a post-revocation review of that adverse decision — constitutes a denial Plaintiffs' property rights without constitutionally adequate procedural due process.

26. Both Devers and Locke suffered emotional distress, psychological harm, humiliation, and pain and suffering as a result of Defendant's last-minute revocation of their marriage license.

27. On April 27, 2012, Devers received a letter from Kentucky State Reformatory's then-Warden, Cookie Crews, dated April 26, 2012. [*See attached Plaintiffs' Exhibit 1.*] The letter stated that the Bullitt County Clerk's office "will not honor" Plaintiffs' previously-issued (and unexpired) marriage license [*id.*], and included an attached letter from Defendant dated April 20, 2012. [*See attached Plaintiffs' Exhibit 2.*]

28. In his April 20, 2012 letter, Defendant stated:

Effective April 17, 2012 the Bullitt County Clerk's office will only be issuing marriage licenses when both parties are present to complete and sign the application and license. (KRS402.110) we have been using the ADDENDUM TO THE MARRIAGE LICENSE — PERSON INCARCERATED form provided by the KDLA for inmate licenses, but

because of a conflict with KRS402.110 we will no longer be honoring this form.

This position comes after the KCCA seeking legal counsel on the subject and I seeking counsel from my Bullitt County Attorney's office. Both are directing county clerks and myself to honor KRS402.110 that "every blank space required to be filled by the applicants is so filled before delivering it to the licensee.

A refund will be issued to anyone possessing an unused valid license, 30 days old or less. The license and identification will be needed to issue the refund to the original purchaser.

[Plaintiffs' Exhibit 2.]

29. As authoritatively construed and enforced by Defendant in his official capacity as Bullitt County Clerk, KRS § 402.110 thus requires that (without exception) both applicants seeking a marriage license must appear in-person at the clerk's office to complete and sign the application. [*Id.*]

30. Because Devers is not eligible for parole for more than two years, and because Plaintiffs remain committed to marrying one another before that time, they intend to again seek a marriage license from Defendant while Devers remains incarcerated.

31. Devers and Locke presently meet the legal requirements for marriage in Kentucky; both are over the age of eighteen years old; neither is married; the two are not related to one another by blood; they are not otherwise disqualified from marrying one another under Kentucky law; and Plaintiff Locke can afford to pay the application fee. *See generally* KRS Chapter 402.

32. Pursuant to Corrections Policies and Procedures (CPP) 14.3, Department of Corrections officials will not transport Devers, or any inmate, to a County Clerk's

office for the purpose of submitting a marriage license application. [*See attached Plaintiffs' Exhibit 3.*]

33. KRS § 402.110's in-person requirement, as applied to Plaintiffs, completely forecloses their ability to obtain a valid marriage license and thus be married so long as Devers remains incarcerated.

34. Plaintiffs are suffering — and unless Defendant's enforcement of KRS § 402.110's in-person requirement is enjoined, will continue to suffer — irreparable harm for which they have no adequate remedy at law for the complete denial of their fundamental rights to association and marriage secured by the First and Fourteenth Amendments.

CLAIMS FOR RELIEF

First Cause of Action (Both Plaintiffs) First Amendment — Association

35. As applied, KRS § 402.110's in-person requirement imposes a direct and substantial burden upon Plaintiffs' right of intimate association by completely foreclosing Plaintiffs' ability to obtain a valid marriage license and thus be legally married so long as Devers remains incarcerated.

36. As applied, KRS § 402.110's in-person requirement is neither closely tailored to promote an important state interest, nor is it rationally related to any legitimate state interest.

37. In his official capacity, Defendant's continuing enforcement of KRS § 402.110's in-person requirement constitutes an ongoing and impermissible infringement of Plaintiffs' fundamental right of intimate association secured by the First Amendment,

as applied to the state by operation of the Fourteenth Amendment to the United States Constitution.

**Second Cause of Action (Both Plaintiffs)
Fourteenth Amendment — Marriage**

38. As applied, KRS § 402.110's in-person requirement, imposes a direct and substantial burden upon Plaintiffs' right to marry by completely foreclosing Plaintiffs' ability to obtain a valid marriage license and thus be married so long as Devers remains incarcerated.

39. As applied, KRS § 402.110's in-person requirement is neither closely tailored to promote an important state interest, nor is it rationally related to any legitimate state interest.

40. In his official capacity, Defendant's continuing enforcement of KRS § 402.110's in-person requirement constitutes an ongoing and impermissible infringement of Plaintiffs' fundamental right to marry secured by the Fourteenth Amendment to the United States Constitution.

**Third Cause of Action (Both Plaintiffs)
Fourteenth Amendment — Procedural Due Process**

41. On or about April 17, 2012, Defendant revoked Plaintiffs' previously-issued (and otherwise valid) marriage license for failing to comply with a subsequently-adopted policy requiring individuals seeking a marriage license to submit their application in-person.

42. Prior to revoking Plaintiffs' marriage license, Defendant did not provide Plaintiffs with prior notice or an opportunity to be heard, nor did he provide Plaintiffs with any administrative process by which to appeal that adverse decision.

43. In his individual capacity, Defendant's actions thus deprived Plaintiffs of a vested property right in the previously-issued marriage license in violation of their procedural due process rights secured by the Fourteenth Amendment.

44. Defendant's actions directly resulted in both Plaintiffs suffering emotional distress, psychological harm, humiliation, and pain and suffering due to the unannounced revocation of their marriage license just days before their scheduled marriage ceremony.

**Fourth Cause of Action (Both Plaintiffs)
First and Fourteenth Amendments — Association and Marriage**

45. In his individual capacity, Defendant's decision to retroactively apply the in-person requirement and revoke Plaintiffs' previously-issued marriage license imposed a direct and substantial burden upon Plaintiffs' rights of intimate association and marriage.

46. Defendant's retroactive application of the in-person requirement and revocation of Plaintiffs' previously-issued marriage license was not closely tailored to promote any sufficiently important state interest, nor was it rationally related to any legitimate state interest.

47. Thus, Defendant's individual-capacity actions revoking Plaintiffs' marriage license violated their fundamental rights of intimate association and marriage secured by the First and Fourteenth Amendments to the United States Constitution.

48. Defendant's actions directly resulted in both Plaintiffs suffering emotional distress, psychological harm, humiliation, and pain and suffering due to the unannounced revocation of their marriage license just days before their scheduled marriage ceremony.

WHEREFORE, the Plaintiff requests that this Court:

1. Declaratory judgment finding that KRS § 402.110's in-person requirement, as applied to Plaintiffs, is unconstitutional under the First and Fourteenth Amendments;
2. Issue preliminary and permanent injunctive relief barring Defendant, in his official capacity, from enforcing KRS § 402.110's in-person requirement against Plaintiffs in the future so long as Devers' inability to satisfy the in-person requirement is due solely to his incarceration;
3. Judgment in Plaintiffs' favor for those individual-capacity claims against Defendant for unlawfully revoking Plaintiffs' previously-issued marriage license in violation of their rights of intimate association, marriage, and procedural due process secured by the First and Fourteenth Amendments, and award Plaintiffs monetary damages in an amount not to exceed \$2,000.00 per Plaintiff for those individual-capacity claims;
4. Award Plaintiffs their costs, including reasonable attorney fees, pursuant to 42 U.S.C. § 1988; and
5. Grant any additional relief to which Plaintiffs may be entitled.

Respectfully submitted,

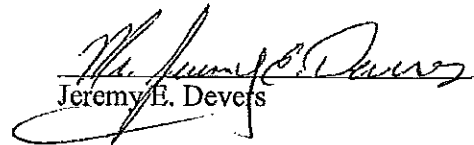
/s William E. Sharp
William E. Sharp
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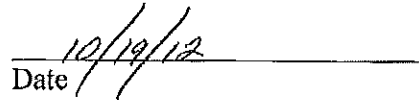
Attorney for Plaintiffs

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I make the following declaration under penalties of perjury:

I verify that I have read the complaint in this case and that the facts alleged in it are true, to the best of my knowledge, information and belief.

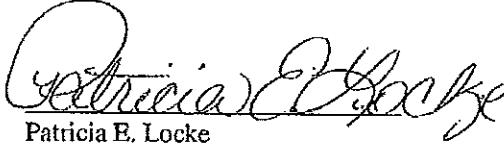

Jeremy E. Devers

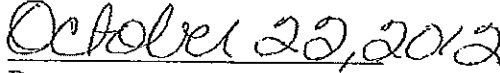

Date

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I make the following declaration under penalties of perjury:

I verify that I have read the complaint in this case and that the facts alleged in it are true, to the best of my knowledge, information and belief.


Patricia E. Locke


Date



DEPARTMENT OF CORRECTIONS

LaDonna H. Thompson
Commissioner

Kentucky State Reformatory
3001 W. Hwy 146
LaGrange, Kentucky 40032
Telephone: 502/222-9441
www.kentucky.gov

Cookie Crews
Warden

April 26, 2012

Jeremy Devers #109736
Unit B, Dorm 11

Re: Correspondence

Please be advised I am in receipt of a letter seeking marriage between you and Patricia Locke.

I regret to inform you that the Bullitt County Clerks Office will not honor this license, (see attached memo for explanation).

Sincerely,


Cookie Crews, Warden

/tas

cc: File



P.O. Box 6 • 149 N. Walnut
Shepherdsville, Kentucky 40165

Kevin Mooney
Bullitt County Clerk

Phone (502) 543-2513
Fax (502) 543-9121

April 20, 2012

To whom it may concern;

This letter is to address the policy change regarding marriage licenses for inmates. Effective April 17, 2012 the Bullitt County Clerk's office will only be issuing marriage licenses when both parties are present to complete and sign the application and license. (KRS402.110) We have been using the ADDENDUM TO THE MARRIAGE LICENSE – PERSON INCARCERATED form provided by the KDLA for inmate licenses, but because of a conflict with KRS402.110 we will no longer be honoring this form.

This position comes after the KCCA seeking legal counsel on the subject and I seeking counsel from my Bullitt County Attorney's office. Both are directing county clerks and myself to honor KRS402.110 that "every blank space required to be filled by the applicants is so filled before delivering it to the licensee."

A refund will be issued to anyone possessing an unused valid license, 30 days old or less. The license and identification will be needed to issue the refund to the original purchaser.

Sincerely,

A handwritten signature in black ink that reads "Kevin Mooney".

Kevin Mooney

Bullitt County Clerk



D-H


DEPARTMENT OF CORRECTIONS

LaDonna H. Thompson
Commissioner

Kentucky State Reformatory
3001 W. Hwy 146
LaGrange, Kentucky 40032
Telephone: 602/222-9441
www.kentucky.gov

Clark Taylor
Warden

To: Inmate Population

From: Clark Taylor, Warden 

Date: August 21, 2012

Re: Marriages

In accordance with CPP 14.3, MARRIAGE OF INMATES, an inmate is permitted to get married if he receives the approval of the warden. The inmate shall submit a written request from himself and his fiancée to one of the chaplains. If either party had previous marriages, the inmate must also submit copies of divorce decrees. Once the required information is submitted to the chapel, the information will be forwarded to my office for a decision. If approved, the fiancé shall be responsible for obtaining a valid marriage license. Inmates will not be transported in order to obtain a marriage license. Once a marriage license is obtained and verified, the marriage shall be coordinated and scheduled through the institutional chaplains. Please see the institutional Chaplain for a complete list of guidelines.

/tas

xc: Wide Distribution
File