STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities, ex rel. Alsenet Vargas, Complainant	:	CHRO No. 1110437
v.		
State of CT, Department of Correction, Respondent	:	January 10, 2013

RULING ON RESPONDENT'S MOTION TO DISMISS

The facts of this case illustrate the tension between the public policy to ensure that the State Department of Correction has absolute control over the running of correctional facilities, versus a person's rights to be free from discrimination while visiting such institutions. This ruling on the respondent's Motion to Dismiss is a very narrow ruling and may appear inapposite with the expanding public policy on eliminating discrimination. Nevertheless, the facts as applied to the current law demands such a result. Connecticut General Statutes protect the right of females to breast feed in places of public accommodations. The specific issue to be answered is, "are correctional facilities visiting rooms' places of public accommodation?" Based on the fact and circumstances of this case this tribunal finds that a correctional facility's visiting room is not a place of public accommodation, as currently contemplated under General Statute §46a-63. It is not in the power of this tribunal to expand the definition of a "public accommodation," to include a correctional facility; that is the purview of the General Assembly.

Additionally, the protections of General Statute §46a-71, which prohibits state agencies from discriminating in providing services, do not apply to the instant case. As a correctional facility is not there to serve the general public it is there to serve the needs of the state and its inmate population. For the reasons set forth below, the respondent's motion to dismiss is GRANTED.

I. PROCEDURAL HISTORY

On May 29, 2011 complainant alleged she was denied the right to breast-feed her child while visiting her husband, while he was incarcerated in the Hartford Correctional Facility. The basic facts of this case are not in dispute. On June 6, 2011 Alsenet Vargas filed her complaint with the CHRO alleging that her rights had been violated under Connecticut General Statutes §§ 46a-58(a), 46a-64(a), and 46(a)71. CHRO sent this complaint directly to the Office of Public Hearings without any agency investigation pursuant to Public Act 11-237, which developed the process of Merit Assessment and Early Legal Intervention. However, the vast majority of the facts are not disputed. Respondent filed this Motion to Dismiss On June 8, 2012 and complainant filed her objection on July 16, 2012. This tribunal heard oral argument on the motion to dismiss on July 25, 2012. Each party filed post-hearing briefs; the respondent filed its brief on August 9, 2012 and complaint filed its brief on November 30, 2012.

II. FACTS

On May 5, 2011 complainant was breast-feeding her daughter under a baby blanket while visiting with her husband at Hartford Correctional Facility. Complainant

was asked by a female Correctional Officer what she was doing. When complainant told the officer she was breast-feeding the officer asked her to stop. Complainant was denied again the ability to nurse when she visited her husband on May 31, 2011, and June 3, 2011. Respondent admits in its answer that it prevented complainant from nursing while visiting with her incarcerated husband. There is also agreement among the parties that Warden Ford offered the complainant the opportunity to leave the visiting room, nurse her daughter then return to the visiting room. In the normal course of visiting a correctional facility, visitors are not allowed to leave the room and then return.

III. STANDARD

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184 (1996); Upson v. State, 190 Conn. 622 (1983). In considering a motion to dismiss, facts are to be construed in the light most favorable to the non-moving party, in this case, the Complainant. Every reasonable inference is to be drawn in the Complainant's favor. *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 608 (1998); *Pamela B. v. Ment*, 244 Conn. 296, 308 (1998). The moving party bears a substantial burden to sustain a motion to dismiss.

IV. LAW AND ANALYSIS

In Connecticut a place of public accommodation is defined in General Statutes § 46a-63(1) as "any establishment which caters or offers its services or facilities or goods to the general public, including, but not limited to, any commercial property or building

lot, on which it is intended that a commercial building will be constructed or offered for sale or rent." General Statute § 46a-64 states that, "It shall be a discriminatory practice in violation of this section: (3) for a place of public accommodation, resort or amusement to restrict or limit the right of a mother to breast-feed her child." Complainant has not alleged that any other nursing women were allowed to breastfeed in the correctional facility's visiting room. Nor has complainant offered any law to support that a prisons' visiting rooms are places of a public accommodation.

Pursuant to General Statutes § 18-81, "The Commissioner of Correction shall administer, coordinate and control the operations of the department and shall be responsible for the overall supervision and direction of all institutions, facilities and activities of the department. The commissioner shall establish rules for the administrative practices and custodial and rehabilitative methods of said institutions and facilities in accordance with recognized correctional standards…."

"Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.' *Price v. Johnston,* 334 U.S. 266, 285, 68 S.Ct. 1049, [1060] 92 L.Ed. 1356 (1948)." *Roque v. Warden,* 181 Conn. 85, 93, 434 A.2d 348 (1980). The institutional consideration of internal security in the correction facilities themselves is essential to all other correction goals. *Id.*, at 97-98, 434 A.2d 348. General Statutes § 18-31a specifically mandates that the commissioner of correction shall establish rules for the regulation and government of ... community correctional centers ... and for the discipline and employment of inmates. Because the realities of running a correctional institution are complex and difficult, the courts give wide-ranging deference to the decisions of

prison administrators in considering what is necessary and proper to preserve order and discipline. *Buckley v. Warden,* 181 Conn. 286, 291, 435 A.2d 348 (1980)" (Internal quotation marks omitted) *State v. Walker* 35 Conn.App. 431, 646 A.2d 209 (1994.)

In *Quinnipiac Council, Boy Scouts of America, Inc. v. Commission on Human Rights & Opportunities*, 204 Conn. 287, 300 (1987), our Supreme Court observed that coverage under our public accommodations statute "depends, in each case, upon the extent to which a particular establishment has maintained a private relationship with its own constituency or a general relationship with the public at large." A prison's relationship with the public at large is ancillary to its primary purpose of incarcerating those convicted of a crime. The fact that a correctional facility separates those who are guilty of crime from the public at large does not establish a relationship with the public. General Statutes and public policy dictate that correctional facilities must have complete control over its operations. The Correctional Facility does not exist to serve the needs of visitors to the prison and does not cater or offer its services, facilities, or goods to the public at large. The purpose of a correctional facility is to administer and carry out the sentences of the prison population in the safest and most effective manner and is most definitely not a resort or amusement.

§ 46a-63(1) of the General Statutes does not include correctional facilities within its definition of public accommodation. In *Quinnipiac Council v. Commission on Human Rights and Opportunities,* 204 Conn. 287, 294 (1987) the court held that "If the language of a statute is plain and unambiguous, we need not look beyond the statute because we assume that the language expresses the intention of the legislature." See also General Statutes §1-2z. The legislature could have chosen to specifically included

Correctional Facilities, in its definition of public accommodation or as part of §46a-64(3) but it chose not to.

Taken together, General Statutes §§ 46a-63 and 46a-64 describe the elements of the complainant's claim. To prevail on the merits, the complainant must prove by a preponderance of the evidence that: (1) the respondent is a public accommodation, resort or amusement; (2) the respondent was denied her full and equal accommodations; and (3) the respondent's basis for said denial was her protected status. *Corcoran v. German Social Society Frohsinn, Inc.*, judicial district of New London at New London, Docket No. CV02-0562775s (June 1, 2005) (2005 WL 1524881, 3); rev'd on other grounds, 99 Conn. App. 839 (2007); on remand (February 21, 2008) (45 Conn. L. Rptr. 1) (2008 WL 642659, 3).

Further, There is no violation of §46a-58 as there is no protected right to visitation in a prison. An inmate does not have a liberty interest in access to visitors. *Santiago v. Commissioner of Correction,* 39 Conn.App. 674, 680, 667 A.2d 304 (1995); see also *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 460-61, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989). Furthermore, the Department of Correction Administrative Directive § 1 provides in relevant part that "visitation shall be considered a privilege and no inmate shall have entitlement to a visit." If an inmate does not have the right to visitors, conversely visitors do not have a right to visit. "A person seeking recovery for discriminatory practices must demonstrate that he or she has personally been deprived of access to goods or services or positions in a manner forbidden by the statute governing access to accommodations." *Quinnipiac Council, Boy Scouts of*

America, Inc. v. Commission on Human Rights and Opportunities, 204 Conn. 287, (1987.)

There is no dispute that complainant was prevented from breastfeeding. However, she cannot meet her burden of proving that this denial was in a place of public accommodation and thus she was not deprived of any protected right. Further, this is not an instance where the inmate is claiming that he lost a liberty interest or even a case where there is a denial of visitation. This case alleges a violation of a visitor's right to nurse in the visiting room, which is not a place of public accommodation. Complainant is unable to meet the first prong of the test to prevail on the merits.

Moreover, this situation does not trigger a strict scrutiny analysis; unlike the deprivation of a prisoner's guaranteed rights; there is no inherent right of any person to visit in a correctional facility. The Department of Correction determines the rules and policy regarding visitation of inmates. It may offend the sensibilities of some that a woman's right to nurse wherever they choose is not currently protected. Nevertheless, the law under General Statute § 46a-64 only protects the right to nurse in places of public accommodation, resort or amusement.

V. CONCLUSION

To establish a violation under General Statute § 46a-64(a)(3) the allegations must state that the right of a mother to breast-feed her child was restricted or limited in a place of public accommodation, resort or amusement. Based on the foregoing a prison visiting room is not a place of public accommodation in the context of the right to breast-feed. The Department of Correction's services are provided to inmates and not

the general public and there is no legal right to visit an incarcerated person. The complainant's fails to meet the necessary elements to state a prima facie case, therefore the Respondent's Motion to Dismiss is **GRANTED.**

It is so ordered this 10th day of January 2013.

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Michele C. Mount,
Presiding Human Rights Referee

cc.

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