**COURT OF APPEALS**
**DECISION**
**DATED AND RELEASED**

July 20, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 94-1466**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT IV**

**LOUIE E. AIELLO and**
**MARTIN GREEN,**

**Plaintiffs-Appellants,**

**v.**

**GARY R. MCCAUGHTRY,**
**ANNA SECCHI, THOMAS DONOVAN**
**and NEVIN WEBSTER,**

**Defendants-Respondents.**

APPEAL from a judgment and an order of the circuit court for Dane County: ROBERT R. PEKOWSKY, Judge. *Affirmed*.

Before Eich, C.J., Gartzke, P.J., and Vergeront, J.

PER CURIAM. Wisconsin Correctional System inmates Louie E. Aiello and Martin Green appeal from a judgment and order dismissing their 42 U.S.C. § 1983 action against various prison officials. They claim Green was

denied meaningful access to the courts because an institutional policy deprived him of Aiello's legal assistance. For the reasons set forth below, we affirm.

## BACKGROUND

At the time of the complaint, Aiello and Green were inmates incarcerated in different wings of Waupun Correctional Institution (WCI). After a prison disturbance in 1992, security measures were implemented requiring inmates in different wings to use the law library at different times. Prior to this policy, Aiello assisted Green in the law library with Green's legal filings. After its adoption, Aiello was no longer permitted to assist Green in the library. They could, however, continue to communicate by intra-institutional mail, and both were free to work on legal matters with inmates housed in their respective wings.

When Aiello's request to secure a joint library pass with Green was denied by Thomas Donovan, WCI's assistant education director, Aiello commenced this lawsuit. Originally, Aiello filed as sole plaintiff, alleging that defendants had violated portions of the Wisconsin Administrative Code providing for reasonable access to courts and legal assistance. Later, the circuit court granted Aiello's motion to amend the complaint to name Green a co-plaintiff and to allege a cause of action under 42 U.S.C.§1983.

## ANALYSIS

### Standard of Review

On review of a summary judgment, we employ the same methodology as the trial court. Our review is therefore de novo. ***Reel Enters. v. City of La Crosse***, 146 Wis.2d 662, 667, 431 N.W.2d 743, 746 (Ct. App. 1988). Under § 802.08(2), STATS., we must determine whether a genuine issue exists as to any material fact. On summary judgment, the court does not decide issues of fact: it determines whether there is a genuine issue of fact. ***Grams v. Boss***, 97 Wis.2d 332, 338, 294 N.W.2d 473, 477 (1980). Where, as here, both parties move for summary judgment, the court may assume there is no dispute as to the facts.

***Powalka v. State Mut. Life Assurance Co. of America***, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972) ("`[T]he practical effect of the bilateral summary judgment motions was the equivalent of a stipulation as to the facts'") (citation omitted).

Failure to State a Claim

We agree with the circuit court that Aiello and Green have failed to state a claim. Under ***Hossman v. Spradlin***, 812 F.2d 1019, 1021-22 n.2 (7th Cir. 1987), in order to state a claim for denial of access to the courts, a plaintiff must demonstrate that a restriction or limitation imposed on his access somehow prejudiced him in pending or contemplated litigation.[1]

Even "inconvenient" and "highly restrictive" regulations governing prison law library use do not violate constitutional guarantees if "meaningful" access is preserved. ***Id.*** at 1021. The relevant inquiry is whether inmates have been given a "`reasonably adequate opportunity'" to present their claims. ***Martin v. Tyson***, 845 F.2d 1451, 1456 (7th Cir.), *cert. denied,* 488 U.S. 863 (1988) (*quoting* ***Bounds v. Smith***, 430 U.S. 817, 823 (1977)).

There is no requirement that an inmate be permitted access to any "*particular*" lay legal assistant. ***Gometz v. Henman,*** 807 F.2d 113, 116 (7th Cir. 1986) (emphasis in original). In fact, the Constitution does not require access to any individual assistant. Access to "adequate law libraries" is another constitutionally acceptable method to assure meaningful access to the courts. ***Bounds v. Smith***, 430 U.S. 817, 828 (1977); *see* ***DeMallory v. Cullen***, 855 F.2d 442, 446 (7th Cir. 1988) (state must provide inmates with law library or assistance of person trained in law, not both).

For the foregoing reasons, we conclude that Aiello and Green have failed to state a claim. Both had access to the law library, both had access to other inmates housed in the same wing, and they could communicate with one

[1] No prejudice need be shown where there is an allegation of substantial and continuous limitation to court access. ***DeMallory v. Cullen***, 855 F.2d 442, 448 (7th Cir. 1988). However, as discussed below, both Aiello and Green were permitted meaningful access to the courts, and therefore this exception is not applicable to this appeal.

another by intra-institutional mail. Their only complaint is that they were not permitted to work with one another.[2] However, there is no constitutional or administrative requirement that they be permitted to do so.[3]

Because we conclude that Aiello and Green have failed to state a claim, we need not consider their arguments concerning the named defendants' qualified immunity. ***Sweet v. Berge***, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983).

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[2] By the time Aiello and Green had become co-plaintiffs to this case, the library policy had been changed to permit co-parties to work together personally. Therefore, the complaint here can only fairly be read to refer to the time when Aiello was merely helping Green with Green's own legal filings.

[3] Aiello and Green argue that defendants violated WIS. ADM. CODE §§ DOC 309.26(2) and 309.29(2). Section DOC 309.26(2) permits the Department of Corrections to make reasonable policies related to court access, and § DOC 309.29(2) permits institutions to regulate the time and place for provision of legal services to other inmates. Splitting the institution into separate non-communicating wings is a reasonable response to compromised prison security. Further, permitting access to the law library and to some but not all lay inmate assistants is a reasonable regulation of the provision of services.