STATE OF VERMONT

SUPERIOR COURT Washington Unit	CIVIL DIVISION No. 21-CV-2591

STEVEN CHAPIN,
Appellant,

v.

JAMES BAKER, COMMISSIONER,
VERMONT DEP'T OF CORRECTIONS
Appellee.

RULING ON THE STATE'S MOTION TO DISMISS

Vermont prisoner and appellant Steven Chapin filed this action seeking Rule 74 review of a Department of Corrections case-staffing decision on August 8, 2021 pursuant to 28 V.S.A. § 724, which permits limited review of certain decisions following a furlough violation. The decision at issue would ensure that Mr. Chapin is not eligible for furlough for an extended time. The State has filed a motion to dismiss. Though the disputed decision does not appear to have arisen out of a technical violation of furlough conditions, the State does not seek dismissal on that basis. Rather, it argues that: (1) the notice of appeal is insufficiently pleaded for Rule 8 purposes; (2) the notice of appeal fails to allege on its face that Mr. Chapin was on furlough prior to the decision and that he otherwise is entitled to review under § 724; and (3) for the same reasons, he lacks "standing."

The State's arguments are meritless and substantially misunderstand the nature of this action. Under Rule 74, a case such as this is initiated with a *notice of appeal*, not a complaint. V.R.C.P. 74(a). The purpose of the notice of appeal is to notify the parties and the court that the proceeding that began in the agency is continuing, and it triggers the appellate court's jurisdiction. The applicable standards are basic:

> The timely filing of a notice of appeal is jurisdictional. Other failures to comply with the appellate rules in taking an appeal do not affect the validity of the appeal, but are grounds for "appropriate" action. Courts liberally construe the requirements of Rule 3. If a litigant's action is the functional equivalent of what the rule requires, we will find compliance. If a litigant files in a timely fashion a document that specifically indicates an intent to appeal and gives sufficient notice of that intent, there is compliance with the requirement to file a notice of appeal. An error in compliance with [appellate procedure] will affect the validity of an appeal only if it is prejudicial to another party.

In re Shantee Point, Inc., 174 Vt. 248, 259–60 (2002); see also *Casella Const., Inc. v. Dept. of Taxes*, 2005 VT 18, ¶ 6, 178 Vt. 61 ("A notice of appeal serves two functions—it informs 'the parties and the tribunals concerned that the proceedings are not concluded so they may respond accordingly,' and it invokes 'appellate jurisdiction by accomplishing the transfer of the cause to the reviewing authority while the question sought to be reviewed remains open to appeal.'" (citations omitted)).

Mr. Chapin's notice of appeal specifically identifies the decision he is appealing—the case-staffing decision on August 8. It also identifies the appellee (the State), the court to which the appeal is being taken (Washington Civil Division), and he signed it.

The State's argument that he was supposed to include a set of allegations that would explicitly show that he is entitled to relief under 28 V.S.A. § 724 is simply wrong. That is not the purpose of a notice of appeal. The State's assertion that without such allegations it has no way to know whether he even was on furlough prior to the decision is hyperbole. Surely the Department of Corrections does not keep track of inmate furloughs by asking inmates which have been on furlough and when. The court notes that the DOC appears to have had no trouble submitting the administrative record relevant to the August 8 decision in response to the notice of appeal that it now finds so deficient. The court also notes that Rule 74(d) requires a statement of questions only where otherwise "required by law," and here there is no such requirement. These arguments have no merit.

Nontechnical violation

In the State's reply, it argues for the first time that the decision at issue in this case is not subject to review under 28 V.S.A. § 724 because it arose out of a nontechnical violation of furlough conditions (conduct amounting to a new crime). Ordinarily, the court would not address an issue first raised in a reply because doing so deprives the opposing party of a fair opportunity to respond. See *Bigelow v. Dept. of Taxes*, 163 Vt. 33, 37–38 (1994). In this case, however, the issue is straightforward and efficiency counsels in favor of giving Mr. Chapin an opportunity to respond, after which the court will take the issue under advisement.

Order

For the foregoing reasons, the State's motion to dismiss is denied as to the issues properly raised. Mr. Chapin has 14 days to respond to the nontechnical-violation issue that the State first raised in its reply, after which the court will take that matter under advisement.

Electronically signed on 10/18/2021 10:41 AM, pursuant to V.R.E.F. 9(d)

Robert A. Mello
Superior Judge