

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

FILED

NOV 03 2010

**STEPHEN MICHAEL WEST v. GAYLE RAY, IN HER
CAPACITY AS TENNESSEE'S COMMISSIONER OF
CORRECTION, ET AL.**

Clerk of the Courts

Chancery Court for Davidson County
No. 10-1675-I

No. M2010-02275-COA-R9-CV

ORDER

Stephen Michael West has filed a Tenn. R. App. P. 9 application for permission to appeal from an order entered by the Chancery Court for Davidson County declining to issue a temporary injunction prohibiting the defendants from carrying out his execution using the current lethal injection protocol. Mr. West is scheduled to be executed by lethal injection on November 9, 2010, pursuant to a July 15, 2010 order of the Tennessee Supreme Court.

Mr. West filed the current action for declaratory and injunction relief asserting that the current lethal injection protocol violates the Eighth and Fourteenth Amendments to the United States Constitution and Art. 1, §14 of the Tennessee Constitution. On October 25, 2010, Mr. West filed a motion for temporary injunction seeking to enjoin the defendants from carrying out his execution by means of the lethal injection protocol during the pendency of his lawsuit challenging that protocol. The trial court denied the request for a temporary injunction based on the Tennessee Supreme Court's decision in *Coe v. Sundquist*, No. M2000-00897-SC-R9-CV (Tenn. April 19, 2000) (order vacating injunction). Pursuant to *Coe*, neither the trial court nor this court has jurisdiction under the declaratory judgment statutes to supersede a valid order of the Tennessee Supreme Court. Accordingly, we concur with the trial court's decision that it lacked jurisdiction to grant the temporary injunction requested by Mr. West. This court also lacks authority to enjoin the execution which has been established by the Tennessee Supreme Court. To grant the Rule 9 application would, in these circumstances, be a fruitless gesture since we cannot grant the relief requested. We therefore deny the application for permission to appeal.

It is, therefore, ordered that the application for permission to appeal be denied. The motion to expedite the appeal is denied as moot. The costs are taxed to Stephen Michael West.

PER CURIAM
