

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**ROBERT GLEN COE, PLAINTIFF v. DON SUNDQUIST, GOVERNOR, ET
AL., DEFENDANT**

**Circuit Court for Davidson County
No. 00C-1089**

No. M2000-00897-SC-R9-CV

SEPARATE CONCURRING/DISSENTING ORDER

I agree with my colleagues that a Circuit Court is without authority to stay, enjoin, or otherwise interfere with the orders of this Court. This Court is the highest judicial tribunal of the state and all other courts are constitutionally inferior tribunals subject to its actions. Barger v. Brock, 535 S.W.2d 337, 340 (Tenn. 1976). A trial court has no power to enjoin or stay an appellate court order. Seessel v. Seessel, 748 S.W.2d 422, 423 (Tenn. 1988). Because a Circuit Court is without power or jurisdiction to stay a decree of this Court, any such order by a Circuit Court for that purpose will be vacated. Dibrell v. Eastland, 11 Tenn. (3 Yerg) 507 (1832). While a trial court may be authorized to stay an execution under certain circumstances, such circumstances are not here presented. Rather, this is an action for a declaratory judgment under Tenn. Code Ann. § 29-14-101, et seq., and no jurisdiction is granted under that act to empower a Circuit Court to thwart an order of this Court.

Having said that, the issues raised are, however, justiciable. In this cause, Robert Glen Coe filed a complaint in the Circuit Court for Davidson County seeking a declaratory judgment and injunctive relief against those state officers whose responsibility it may be to carry out the execution by administration of a lethal substance. Essentially, Coe relied upon two grounds – one broad – the other narrow.

In the broad ground, Coe in a general way finds fault with the State's intended implementation of the execution. He specifically contends that the injection of lethal drugs by allegedly non-licensed persons is statutorily impermissible and that injection of the lethal drugs by licensed health-care professionals is medically unethical. While I am of the opinion that this ground does, indeed, involve legal issues of first impression which appear to be meritorious, the need for an immediate decision persuades me to pretermitt this ground and hasten to address Coe's narrow ground for relief that I consider to be dispositive. In this ground, Coe insists that the protocol and procedures established for accomplishing the execution by lethal injection have not been adopted pursuant to the Tennessee Uniform Administrative Procedures Act ("TUAPA") as required by Tenn. Code Ann. §§ 4-5-101 through -227 (Supp. 1999) and Tenn. Code Ann.

§40-23-114(c)(2000).

In my view, the Department of Correction's failure to follow the TUAPA when enacting the protocol and procedures governing execution by lethal injection flaws the process, with the result that these protocols and procedures, if implemented, would violate settled Tennessee law.

Accordingly, I would stay the execution pending resolution of these issues.

ADOLPHO A. BIRCH, JR., Justice