

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

ROBERT GLEN COE,
Plaintiff,

v.

WICKY BELL, in his Official Capacity
Warden, KR (Knox) Maximum
Security Institution,
Tennessee.

Case No. 3-06-0246
Judge Trauger

MEMORANDUM and ORDER

Plaintiff Robert Glen Coe has filed a Motion for Leave to File Amendment to Complaint (Docket No. 17).¹ Plaintiff has also filed a Motion for Evidentiary Hearing (Docket No. 15).

A. Motion for Leave to File Amended Complaint

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend a pleading should be "freely given when justice so requires." Fed.R.Civ.P. 15(a). Thus, leave should be given unless there is a showing of undue delay, bad faith or dilatory motive on the part of the moving party, undue prejudice to the non-moving party, or futility of the proposed amendment. See *Porter v. Davis*, 171 U.S. 178, 182, 53 S. Ct. 227 (1962); *Hahn v. Star Bank*, 190 F.3d 708, 713 (6th Cir. 1999).

In his motion for leave to amend, Plaintiff seeks to amend his complaint in two respects.

¹According to Plaintiff, counsel for Defendant was contacted to determine whether there was any objection to the proposed amendments, but counsel for Defendant "could not state whether [Defendant] opposes this motion for leave to amend or agrees to it." (Docket No. 17 at 4)

This document was entered on the docket in compliance with Rule 58 and/or Rule 79 of the FRCP, on 3/21/06 by [initials]

First, he seeks to amend Paragraph 20 of his Emergency Complaint to read as follows:

20. Once Mr. Coe is strapped onto the gurney, he will have no meaningful access to the courts to raise legitimate Ford claims or Eighth Amendment claims. Allowing counsel to be present at the execution with access [to a] telephone[] and *additionally allowing one mental health professional to be present at the execution*, is the only possible way Mr. Coe will be able to bring to this court or any other court a grievance for violation of his aforementioned constitutional rights in the execution chamber. *Excluding counsel, and a mental health professional, forecloses Mr. Coe from any meaningful opportunity to present this court claims based on such constitutional violations.*

(Docket No. 17 at 1 (additions in *italics*))

Plaintiff also wishes to amend the prayer of his complaint to read as follows:

WHEREFORE, PREMISES CONSIDERED, Mr. Coe prays

a. This court enter a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) prohibiting the execution of Robert Coe unless the Warden allows counsel, *and a mental health professional* to be present at the execution with access to a telephone, to safeguard his meaningful access to the courts.

b. This court, after a hearing, enter a preliminary injunction and/or permanent injunction prohibiting the execution of Robert Coe unless the defendant allows counsel, *and a mental health professional* to be present at the execution with access to a telephone to safeguard his meaningful access to the courts, pursuant to Rule 65 of the Federal Rules of Civil Procedure.

(Docket No. 17, at 2)

There is no evidence of undue delay, prejudice, bad faith or futility of amendment before the court. Accordingly, Plaintiff is permitted to amend his complaint as set forth in his Motion for Leave to Amend Complaint.

B. Motion for Evidentiary Hearing

Plaintiff moves this court for an evidentiary hearing in order "to resolve factual disputes pertinent to the court's granting a preliminary injunction." (Docket No. 18 at 1) Plaintiff contends that this court cannot resolve his request for a temporary restraining order and/or preliminary injunction without an evidentiary hearing because there are disputed issues of fact.

Specifically, Plaintiff argues that the following disputed facts require that this court hold an evidentiary hearing: (1) Defendant disputes that Plaintiff will demonstrate at the time of his execution; (2) Plaintiff disputes that he is malingering; and (3) Defendant disputes that Plaintiff has shown "sufficient actual injury." (Docket No. 19 at 2)

On March 10, 2000, this court set this matter for a hearing on April 3, 2000 at 10 a.m. at the conclusion of a telephonic conference. During that conference, Plaintiff's counsel raised these same issues in arguing for an evidentiary hearing. The court denied that request. The court again denies Plaintiff's request. The resolution of the constitutional issues raised in the Amended Complaint do not involve disputed issues of fact.

CONCLUSION

Plaintiff's Motion for Leave to File Amendment to Complaint (Docket No. 17) is **GRANTED**. Defendant is **ORDERED** to file a response to the amendments to the Complaint as much in advance of the hearing set for April 3, 2000 at 10 a.m. as is reasonably possible.

Plaintiff's Motion for Evidentiary Hearing (Docket No. 18) is **DENIED**.

It is so **Ordered**.

Retired this 31st day of March, 2000.


ALBERTA A. TRAUGER
United States District Judge