

IN THE COURT OF APPEALS OF TENNESSEE

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APPELLATE COURT CLERK
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STEPHEN MICHAEL WEST, <i>et al.</i> ,)	
)	
Plaintiffs-Appellees,)	
)	
v.)	Davidson County Chancery
)	No. M2015-01305-COA-R10-CV
DERRICK D. SCHOFIELD, <i>et al.</i> ,)	
)	
Defendants-Appellants.)	

**RESPONSE TO PLAINTIFF-APPELLEES’
“NOTICE THAT PENDING MOTION FOR
RULE 10(D) APPEAL IS NOW MOOT”**

The Defendants-Appellants, Derrick D. Schofield, *et al.*, have applied to this Court for extraordinary interlocutory review of the chancery court order of July 14, 2015, permitting the testimony of the State’s executioner and a mid-trial discovery site visit to Riverbend Maximum Security Institution. The Court stayed the chancery court’s order pending resolution of the application and directed a response from the appellees on or before July 29, 2015. Two days later, the appellees filed a “notice” with this Court that the application is “now moot” because appellees have withdrawn their request for the testimony of the executioner and for the site visit. Plaintiffs further assert that the chancery court “approved the request.”

Appellees do not request dismissal, denial, or other relief related to the pending application for extraordinary appeal or the stay order of this Court, even assuming a “notice” were an appropriate vehicle to do so, and no action of this Court is warranted in response to the


appellees' filing. The defendants' application seeks relief from an interlocutory order of the chancery court related to the relevance and admissibility of proof in a trial that is ongoing. The trial of this matter commenced July 7, 2015, and under the Supreme Court mandate, must be concluded no later than August 7, 2015. *West, et al. v. Schofield, et al.*, No. M2014-00320-SC-R11-CV (Tenn., Order, Mar. 10, 2015) (attached). The chancery court's improper order is no less effective because the plaintiffs declined to pursue the proof in their case-in-chief.

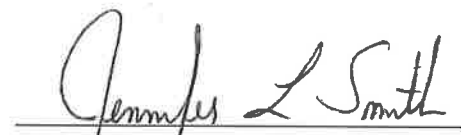
A moot case is one that has lost its character as a present, live controversy. *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. App. 1994). It seeks a judgment on a matter that, when rendered, cannot have any practical effect upon a then-existing controversy; one in which no relief can be granted; or one in which the judgment rendered cannot be carried into effect. *Boyce v. Williams*, 389 S.W.2d 272, 277 (Tenn. 1965). Here, until the proof is closed and the case submitted for decision by the chancery court, the State defendants remain subject to the chancery court's order. Plaintiffs' declaration regarding their present intentions does not eliminate the great risk of harm that prompted the State's application for extraordinary appeal in the first instance. Indeed, just this day, the chancery court announced in open court that it would permit the plaintiffs to reopen discovery (and presumably their case-in-chief) as to the development and administration of the lethal injection protocol and to take the depositions of defendant Schofield, Tennessee Department of Correction General Counsel Debra Inglis, and Warden David Westbrook, expressly reversing its pre-trial order denying that same discovery. Given the fluidity of the chancery court's rulings throughout this proceeding, the controversy before this Court—which encompasses the scope of its authority under the Declaratory Judgments Act, not to mention the Supreme Court's mandate on remand—remains alive.

This Court's order staying the chancery court's evidentiary rulings should remain in effect pending appellees' answer and the Court's resolution in due course of the application for extraordinary appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I hereby certify that a true and exact copy of the foregoing application was forwarded by United States mail, first-class postage prepaid, on the 22nd day of July, 2015, to the following:

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