

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**ROBERT GLEN COE, APPELLEE v. DON SUNDQUIST, GOVERNOR, ET  
AL., APPELLANTS**

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

---

**No. M2000-00897-SC-R9-CV**

---

**ORDER**

On April 18, 2000, appellee, Robert Glen Coe filed a complaint in the Circuit Court for Davidson County for declaratory and injunctive relief alleging that his execution by lethal injection, scheduled for 1 a.m., April 19, 2000, violates state law. A hearing was held on the complaint and the trial court entered an order enjoining and restraining the appellants from carrying out the planned execution of Coe pending further orders of the court. In the same order the trial court suggested that the appellants pursue an interlocutory appeal pursuant to Rule 9, T.R.A.P. The appellants have now filed in this Court an application for an interlocutory appeal by permission pursuant to Rule 9, T.R.A.P. In addition, the appellants have filed a motion asking this Court to assume jurisdiction, or, in the alternative, “to vacate stay.” The appellee filed a request for oral argument and a response to the appellants’ filings. Upon review, this Court is of the opinion that the motion to vacate the order of the trial court granting an injunction is well-taken.

This Court is the highest judicial tribunal of the state and all other courts are constitutionally inferior tribunals subject to the actions of the Court. 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), overruled on other grounds, Aaby v. Strange, 924 S.W.2d 623 (Tenn. 1996). Since 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 judge may be authorized to issue a stay of execution under certain circumstances upon the filing of a proper petition for post-conviction relief, see Tenn. Code Ann. § 40-30-220, or a petition for writ of habeas corpus, see Tenn. Code Ann. § 29-21-119, this case is neither a post-conviction case nor a habeas case, but rather an action for a declaratory judgment under Tenn. Code Ann. § 29-14-101, et seq. No jurisdiction exists under the declaratory judgment statutes to supersede a valid order of this Court. In those cases where an inferior court has exceeded its jurisdiction, this Court has the right, power and duty to protect its decree. See Youree v. Youree, 217 Tenn. 53, 60, 394 S.W.2d 869, 872 (1965). All members of this Court agree that the order of the trial court enjoining and restraining the execution, which effectively amounted to a stay of the execution scheduled by this Court’s order of April 11, 2000, exceeded the jurisdiction of the trial

court. A majority of this Court likewise concludes that the order of the trial court should be vacated. Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that the order of the Davidson County Circuit Court enjoining and restraining the execution of the appellee is VACATED.

While this Court declines to assume jurisdiction pursuant to Tenn. Code Ann. § 16-3-201(d), we note in relation to the merits of the issues raised in the lower court that the Uniform Administrative Procedures Act (UAPA), Tenn. Code Ann. § 4-5-101, et seq., does not apply to the Department of Correction policy prescribing the protocol for carrying out lethal injections in this state. Tenn. Code Ann. § 4-5-102(10) defines a “rule” as an “agency statement of general applicability, that implements or prescribes law or policy or describes the procedures or practice requirements of any agency.” The definition expressly excludes “statements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public,” Tenn. Code Ann. § 4-5-102(10)(A), as well as “[s]tatements concerning inmates of a correctional or detention facility.” Tenn. Code Ann. § 4-5-102(10)(G). The lethal injection policy at issue here fits squarely within both exclusions. The policy is therefore not a rule under the UAPA. See Mandela v. Campbell, 978 S.W.2d 531, 534-35 (Tenn. 1998).

Furthermore, the State of Tennessee has affirmatively approved legally authorized executions as a method of punishment, and it is reasonable to assume that by authorizing execution by lethal injection the General Assembly contemplated physician involvement in the process. See Thorburn v. Dept. of Corrections, 78 Cal. Rptr.2d 584 (Cal. App. 1998). In addition, no public policy is violated by allowing physicians or anyone else to participate in carrying out a lawful sentence. In fact, “the employment of tested procedures used in the practice of medicine is consistent with the purpose behind the imposition of death by lethal injection, which is to impose death in as humane a manner as possible.” State v. Webb, 2000 WL 123963, \*2, \_\_\_ A.2d \_\_\_, \_\_\_ (Conn. 2000).

In conclusion, a majority of this Court orders that the motion to vacate is GRANTED and the motion to assume jurisdiction is DENIED. Accordingly, the request for oral argument is DENIED.

---

E. RILEY ANDERSON,  
CHIEF JUSTICE

---

FRANK F. DROWOTA, III,  
JUSTICE

(Concurring in Part/Dissenting in Part)

ADOLPHO A. BIRCH, JR.,  
JUSTICE

---

JANICE M. HOLDER,  
JUSTICE

---

WILLIAM M. BARKER,  
JUSTICE