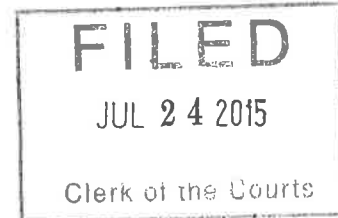


IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

STEPHEN WEST, ET AL. v. DERRICK D. SCHOFIELD, ET AL.

**Chancery Court for Davidson County
No. 131627I**



No. M2015-01305-COA-R10-CV

ORDER

Pending before this court is a Tenn. R. App. P. 10 application for an extraordinary appeal seeking review of the trial court's ruling allowing the appellees to visit the prison and to take the testimony of a Department of Correction employee who may carry out executions by lethal injection. On July 15, 2015, this court stayed the trial court's ruling and ordered the appellees to file an answer to the application on or before July 29, 2015. The appellants have now filed a supplement to their Tenn. R. App. P. 10 application seeking review of a new order entered by the trial court on July 22, 2015, allowing the appellees to take the discovery depositions of the Commissioner of the Department of Correction, the Department's General Counsel, and the Warden of Riverbend Maximum Security Institution. The appellants also request an immediate stay of the July 22, 2015 order pending disposition of their application.

The Supreme Court has mandated that, in this declaratory judgment action, the lethal injection protocol "must be assessed on its face against the constitutional challenges levied by the Plaintiffs." *West v. Schofield*, 460 S.W.3d 113, 126 (2015). To the extent the intent of the July 22, 2015 order is to allow discovery to determine whether, as the appellees contend, a "hidden" or "shadow" lethal injection protocol exists, such discovery is consistent with a facial challenge, and we will allow the discovery to proceed. The parties should not, however, be allowed to engage in discovery not reasonably calculated to lead to the discovery of the existence or content of a hidden or shadow protocol.

It is, therefore, ordered that the appellants' motion to stay the trial court's July 22, 2015 order is denied. However, the discovery shall be limited to discovery reasonably

calculated to lead to the discovery of the existence or content of a hidden or shadow lethal injection protocol.

It is further ordered that the answer to be filed by the appellees on or before July 29, 2015, shall address the issues raised in the supplement to the appellants' Tenn. R. App. P. 10 application as well as the issues raised in the original Tenn. R. App. P. 10 application.

PER CURIAM