UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION

**** CAPITAL CASE ****

CIVIL ACTION NO. 06-CV-22-KKC

BRIAN KEITH MOORE PLAINTIFF

VS: **O R D E R**

JOHN D. REES, ET AL. DEFENDANTS

The lead plaintiff in this case, death row inmate Brian Keith Moore, filed the present action on April 19, 2006, alleging that carrying out his death sentence through application of Kentucky's lethal injection procedure would violate the Eighth Amendment's prohibition against "Cruel and Unusual Punishments." Kentucky death row inmate Jeffrey Leonard was permitted to intervene as a plaintiff by Order dated August 25, 2006.

On November 22, 2006, the Kentucky Supreme Court affirmed the determination of the Franklin Circuit Court after a full trial on the merits that, as applied to death row inmates Thomas Clyde Bowling and Ralph Baze, Kentucky's method of lethal injection to carry out their death sentences did not violate the Eighth Amendment. *Baze v. Rees*, Ky., 2006 WL 3386544 (2006).

Four days after losing their appeal before the Kentucky Supreme Court, Baze and Bowling filed motions in this case seeking to intervene as plaintiffs on an emergency basis, seeking to assert the same Eighth Amendment claims they pressed in the state courts [Record Nos. 100, 101]. Plaintiffs Moore and Leonard have filed responses indicating they have no objection [Record Nos. 102, 103, 105, 107]. Defendants have filed a response asserting that

Baze's and Bowling's claims are barred under Kentucky principles of claim preclusion and issue preclusion, and that this Court must afford full faith and credit to the judgment of the Franklin Circuit Court under 28 U.S.C. §1738. Defendants also contend that the proposed interveners' motion is untimely and therefore does not satisfy the requirements of Rule 24(b) [Record No. 112]. Baze and Bowling reply that their motion is timely. They further assert that the claims they wish to present herein are not barred by claim preclusion because the Franklin Circuit Court's refusal to let them depose members of the execution team prevented them from fully and fairly presenting their claims in that litigation [Record No. 113].

While the briefing provided by the parties is instructive, the parties have not addressed whether the *Rooker-Feldman* doctrine may apply under these circumstances. *See Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). Therefore, to assist the Court in ruling on the pending motions to intervene, and because there is insufficient evidence to indicate that the motions must be decided on an emergency basis, the parties will be directed to file supplemental briefs on this issue.

Accordingly, it is hereby **ORDERED** as follows:

(1) Proposed interveners Baze and Bowling shall file, on or before January 5, 2007, a single, combined supplemental memorandum, not to exceed 20 pages, addressing solely any potential application of the *Rooker-Feldman* doctrine.

(2) The defendants shall file, on or before January 22, 2007, a supplemental memorandum in response, not to exceed 20 pages, addressing solely this issue.

(3) No other or further briefing shall be permitted unless directed by Order of the Court. The matter will stand submitted for decision upon filing of the defendants' response.

Dated this 8th day of December, 2006.

Signed By:
Karen K. Caldwell
United States District Judge