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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2011-2012

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Ex parte T.K.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS

(In re: T.K.

v.

M.G.)

(Marshall Juvenile Court, JU-09-300249;
Court of Civil Appeals, 2091162)

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BOLIN, Justice.

WRIT QUASHED. NO OPINION.

Woodall, Shaw, and Main, JJ., concur.

Murdock, J., concurs specially.

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MURDOCK, Justice (concurring specially).

This Court granted the petition for certiorari review in this case to consider the issue whether the dispute presented was merely a custody dispute between two parents, as to which the juvenile court would not have had jurisdiction, or, in fact, was a dependency proceeding, as to which the juvenile court would have had jurisdiction. See Ala. Code 1975, § 12-15-114(a) ("A dependency action shall not include a custody dispute between parents."); § 12-15-102(8)a.2. (defining a "dependent child" as a child "[w]ho is without a parent ... willing and able to provide for the care, support, or education of the child." (emphasis added)); and T.K. v. M.G., [Ms. 2091162, April 1, 2011] ___ So. 3d ___, ___ (Ala. Civ. App. 2011) (Moore, J., dissenting). Of particular relevance to this case is the fact that

"dependency is a status created by law that either is true of a child or is not. That is, either a child is dependent or it is not. A child cannot be dependent vis-à-vis one parent but not dependent as to the other parent. If the child is not dependent 'as to one parent,' then the child is not dependent."

Ex parte W.E., 64 So. 3d 637, 638 (Ala. 2010) (Murdock, J., concurring specially).

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The concerns expressed by Judge Moore in his dissenting opinion below are critical concerns that need to be addressed by this Court. Nonetheless, I concur in quashing the writ in this case. Although (a) Rule 39(g)(1), Ala. R. App. P., allows a petitioner to rely on the argument made in the petition to this Court rather than filing a separate brief, and (b) questions of subject-matter jurisdiction are presented, we are hampered in our attempt to address those questions by the fact that neither party has provided this Court with a brief and the fact that the petition provides only general principles of law without attempting to apply those principles to the particular facts of this case. Ultimately, however, this Court is not able to undertake, itself, the task of applying those principles to the facts of this case and addressing the questions presented because the record does not contain a transcript of the final evidentiary hearing in the trial court that resulted in the finding of "dependency."