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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2012-2013

2110543

Garry Bearden

v.

Virgil H. Coker et al

Appeal from Calhoun Circuit Court
(CV-10-900418)

On Application for Rehearing

BRYAN, Judge.

APPLICATION FOR REHEARING OVERRULED.

Thompson, P.J., and Pittman, and Thomas, JJ., concur.

Moore, J., dissents, with writing.

2110543

MOORE, Judge, dissenting.

Although I concurred in the substituted opinion released by this court on June 22, 2012, upon consideration of Garry Bearden's application for rehearing directed to that opinion I have come to the conclusion that this court should have reversed the summary judgment entered by the trial court. See Drees v. Turner, 10 So. 3d 601, 603 (Ala. Civ. App. 2008) ("[A]lthough neither the parties nor the trial court had apparently been aware that the matter had been converted into a motion for a summary judgment, the failure to notify the parties that the motion had been converted was prejudicial to both parties and, therefore, the case was due to be remanded."). Accordingly, I respectfully dissent from this court's decision to overrule Bearden's application for rehearing.