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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2012-2013

1120769

Ex parte Jennifer Ann Vest (Herron)

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS

(In re: Jennifer Ann Vest (Herron))

v.

David Jeremy Vest)

(Elmore Circuit Court, DR-01-492.02;
Court of Civil Appeals, 2100647)

BOLIN, Justice.

WRIT DENIED. NO OPINION.

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Moore, C.J., and Stuart and Main, JJ., concur.

Murdock, J., concurs specially.

Bryan, J., recuses himself.

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MURDOCK, Justice (concurring specially).

I question the conclusion reached by the Court of Civil Appeals in its opinion on remand from this Court that the mother in a post-divorce proceeding had waived her affirmative defense arising under Ala. Code 1975, § 6-5-440, by failing to assert that defense in a motion to dismiss or to transfer filed in that proceeding. Ex parte Vest, [Ms. 2100647, January 11, 2013] ___ So. 3d ___ (Ala. Civ. App. 2013). Because this waiver issue is not presented in the petition for certiorari review now before this Court, however, I concur in denying that petition.