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# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2013

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Ex parte David R. Wilson, M.D.

PETITION FOR WRIT OF MANDAMUS

(In re: Kenneth Bryant and Sally Foley, Coadministrators Ad Litem of the Estate of Kenneth Luke Bryant, deceased

v.

Baptist Health Centers, Inc., et al.)

(Marshall Circuit Court, CV-11-900238)

MAIN, Justice.

PETITION DENIED; NO OPINION.

Moore, C.J., and Murdock and Bryan, JJ., concur.

Bolin, J., concurs specially.

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BOLIN, Justice (concurring specially).

I continue to adhere to the tenets expressed in my special concurrence in Golden Gate National Senior Care, LLC v. Roser, 94 So. 3d 365 (Ala. 2012), regarding the inability of an administrator ad litem to initiate a wrongful-death action when the question of the capacity of the administrator ad litem to bring such an action is properly and timely presented to the trial court. Here, the petitioner is requesting mandamus relief based on a motion to dismiss directed to the plaintiffs' second amended complaint; therefore, any right to relief based on the affirmative defense of lack of capacity has been waived.