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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2015-2016

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O.S. and J.A.S.

v.

E.S.

Appeal from Walker Circuit Court
(DR-10-900006)

After Remand from the Alabama Supreme Court

PITTMAN, Judge.

This court, on February 27, 2015, issued an opinion noting that the prior judgment of this court, which had affirmed the judgment of the Walker Circuit Court, had been reversed, and the cause remanded, by our supreme court in Ex parte O.S., [Ms. 1121134, June 20, 2014] ___ So. 3d ___ (Ala.

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2014); we therefore reversed the judgment of the Walker Circuit Court and remanded the cause for the entry of a judgment dismissing, for lack of subject-matter jurisdiction, an action involving a claim brought by E.S. ("the wife") against O.S. and J.A.S. ("the grandparents") seeking to set aside a judgment of the Walker Probate Court allowing the grandparents to adopt the wife's child, B.T.S ("the child"). Our supreme court has since reversed this court's February 27, 2015, judgment. Ex parte E.S., [Ms. 1140889, Oct. 30, 2015] ___ So. 3d ___ (Ala. 2015). In compliance with the October 30, 2015, decision of our supreme court, we vacate our February 27, 2015, judgment "insofar as it directed the [Walker Circuit Court] to dismiss the wife's action for lack of subject-matter jurisdiction," and we now remand the cause to that court with instructions "to transfer the wife's action to the probate court pursuant to Ala. Code 1975, § 12-11-11."

JUDGMENT OF FEBRUARY 27, 2015, VACATED IN PART; REVERSED AND REMANDED WITH INSTRUCTIONS.

Thomas, Moore, and Donaldson, JJ., concur.

Thompson, P.J., concurs specially.

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THOMPSON, Presiding Judge, concurring specially.

I agree that this court must comply with our supreme court's mandate to order the circuit court to transfer this matter to the probate court. However, I agree with Justice Shaw's writing in Ex parte E.S., [Ms. 1140889, Oct. 30, 2015] ___ So. 3d ___ (Ala. 2015). I am not convinced that a vertical transfer, rather than a transfer between divisions of the circuit court, was intended as the purpose of § 12-11-11, Ala. Code 1975, or that that statute should be interpreted as providing for such a transfer. I hope that our supreme court will reconsider its position if the opportunity to do so arises in future.