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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2006-2007

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Ex parte Paula Denise Shively

PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF CIVIL APPEALS

(In re: Paula Denise Shively

v.

CRR Hospitality, LLC, et al.)

(Baldwin Circuit Court, CV-04-577;  
Court of Civil Appeals, 2050271)

PER CURIAM.

WRIT DENIED. NO OPINION.

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See, Lyons, Woodall, Stuart, Smith, Bolin, and Parker,  
JJ., concur.

Cobb, C.J., dissents.

Murdock, J., recuses himself.

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COBB, Chief Justice (dissenting).

I respectfully dissent from the denial of this petition for the writ of certiorari. To the extent this Court's denial rests upon a strict application of the particularity and specificity requirements of Rule 39(a)(1)(D), Ala.R.App.P., I believe that such an application should defer to the policy set out in Rule 1 for applying the Alabama Rules of Appellate Procedure:

"These rules shall not be construed to extend or limit the jurisdiction of these appellate courts as established by constitution or law. They shall be construed so as to assure the just, speedy, and inexpensive determination of every appellate proceeding on its merits."

(Emphasis added.)

Based upon my review of Paula Denise Shively's petition, I conclude that Shively adequately asserted that a conflict exists between the no-opinion affirmance issued by the Court of Civil Appeals in her case and that court's opinion in City of Auburn v. Brown, 638 So. 2d 1339 (Ala. Civ. App. 1993). I believe that Shively's assertion of a conflict sufficiently raised for review the issue whether in affirming the trial court's judgment, the Court of Civil Appeals disregarded the treating physician's testimony concerning the origin and

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extent of Shively's injuries. I believe that if Shively's position that the Court of Civil Appeals did ignore the treating physician's testimony is supported by the record, her position would have merit; therefore, I would have granted the petition for a review of the record on that basis.