REL: September 3, 2021

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

1200102

Ex parte Michael Todd Scoggins and Matthew Tyler-Crimson Scoggins

PETITION FOR WRIT OF MANDAMUS

(In re: Michael Todd Scoggins and Matthew Tyler-Crimson Scoggins

v.

Stephen J. Bailey et al.)

(Calhoun Circuit Court CV-19-900730)

1200103, 1200104, 1200105, and 1200106

Ex parte Michael Todd Scoggins and Matthew Tyler-Crimson Scoggins

PETITIONS FOR WRIT OF MANDAMUS

(In re: Stratcap Investments, Inc.

v.

Michael Thomas Scoggins, as special conservator for the estates of Michael Todd Scoggins and Matthew Tyler-Crimson Scoggins, minors)

(Calhoun Circuit Court, CV-12-900098, CV-12-900099, CV-12-900100, and CV-12-900101)

1200107

Ex parte Michael Todd Scoggins and Matthew Tyler-Crimson Scoggins

PETITION FOR WRIT OF MANDAMUS

(In re: Michael Thomas Scoggins, as administrator of the estate of George Thomas Scoggins, deceased

v.

Bobby Blankenship et al.)

(Calhoun Circuit Court, CV-98-996)

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MENDHEIM, Justice.

Before us are petitions for writs of mandamus in six cases with interrelated facts and parties. The petitioners in each of the cases are brothers Michael Todd Scoggins and Matthew Tyler-Crimson Scoggins (sometimes collectively referred to as "the brothers"). The brothers seek to set aside orders in some of the cases, to intervene in some of the cases, and to order the Calhoun Circuit Court to permit the interpleader of funds by a third party in one case. As this opinion details, we grant two of the petitions and deny four of them.

I. Facts

The procedural history in these cases is complex, but a thorough understanding of it is necessary to our disposition of the petitions before us. The petitions involve five interrelated phases of litigation. The first phase of litigation concerned a wrongful-death action initiated in 1998 in the Calhoun Circuit Court because of the untimely death of the brothers' father, an action which was settled in 2002. The second phase of litigation began in 2010 when two petitions were filed in the Calhoun Probate Court

seeking to have a "special conservator" appointed to the minor estate of each brother for the purpose of "reopening" the wrongful-death action, and that phase of litigation continued in the Calhoun Circuit Court the same year. The third phase of litigation began in 2012 when four petitions were filed in the Calhoun Circuit Court pursuant to the Alabama Structured Settlement Protection Act ("the ASSPA"), Ala. Code 1975, § 6-11-50 et seq., seeking permission to transfer the structured-settlement-payment rights for some annuities that were created as a result of the settlement of the wrongful-death action. The fourth phase of litigation began in 2019 when the brothers, now past the age of majority, filed what they styled an "emergency motion" in the wrongful-death action that led to a hearing and an order from the Calhoun Circuit Court. The fifth phase of litigation also began in 2019 when the brothers initiated a new action in the Calhoun Circuit Court against entities involved in the previous phases of litigation. Again, a detailed recitation of each phase is necessary to understand our disposition of the mandamus petitions.

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A. The Wrongful-Death Action

On October 28, 1998, the brothers' father, George Thomas Scoggins ("George"), was killed in an industrial accident while working for Barbour Threads, Inc. At that time, Michael and Matthew were five and three years old, respectively. The brothers' paternal grandfather, Michael Thomas Scoggins ("Thomas"), was appointed administrator of George's estate because George previously had divorced the brothers' mother, Jerri Pounds Scoggins.[1] On November 4, 1998, Thomas, as the personal representative of George's estate, commenced a wrongful-death action in the Calhoun Circuit Court against Gaston County Dyeing Machine Company, International Dyeing Equipment Company, Inc., Bobby Blankenship, and Barbour Threads, Inc. Michael and Matthew were represented by guardians ad litem in the wrongful-death action. The wrongful-death action was overseen by circuit judge Sam Monk.

In the spring of 2002, the parties engaged in settlement negotiations. On May 3, 2002, Thomas filed a petition for a hearing regarding a

[1]In the submissions provided for these mandamus petitions, the first name of the brothers' mother is spelled both as "Jerri" and "Gerri."

potential pro ami settlement.[2] On May 21, 2002, the circuit court entered

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[2]"A pro ami settlement is a settlement involving an infant or minor." Ex parte CityR Eagle Landing, LLC, 296 So. 3d 288, 290 n.1 (Ala. 2019).

> "This Court has recognized the special nature of an attempted settlement of a minor's claim. Before such a settlement can be approved, there must be a hearing, with an extensive examination of the facts, to determine whether the settlement is in the best interest of the minor. Large v. Hayes, 534 So. 2d 1101 (Ala. 1988); Abernathy v. Colbert County Hospital Board, 388 So. 2d 1207 (Ala. 1980); Tennessee Coal, Iron & R.R. Co. v. Hayes, 97 Ala. 201, 12 So. 98 (1892)."

Maryland Cas. Co. v. Tiffin, 537 So. 2d 469, 471 (Ala. 1988). However, a pro ami settlement may not be required in a wrongful-death action in which a minor is a distributee of the settlement proceeds because "[t]he Wrongful Death Act, § 6-5-410,[Ala. Code 1975,] creates the right in the personal representative of the decedent to act as agent by legislative appointment for the effectuation of a legislative policy of the prevention of homicides through the deterrent value of the infliction of punitive damages." Steele v. Steele, 623 So. 2d 1140, 1141 (Ala. 1993). Thus, the personal representative has the authority to settle a wrongful-death claim even though "[i]n a wrongful death action the personal representative is only the nominal or formal party. He sues as statutory trustee for the benefit of the designated beneficiaries, who are the real parties in interest." Board of Trs. of Univ. of Alabama v. Harrell, 43 Ala. App. 258, 261, 188 So. 2d 555, 557 (1965). See William E. Shreve, Jr., Settling the Claims of a Minor, 72 Ala. Law 308, 315-16 (2011). But see also Roby v. Benton Express, Inc., No. 2:05cv494-MHT, May 19, 2006 (M.D. Ala. 2006) (not published in Federal Supplement) (finding that "court's approval [of the final settlement of a wrongful-death claim] is necessary because the decedent ... left surviving him minor children ... who will receive a portion of the settlement.").

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an order stating:

> "This matter came on for hearing of motions for pro ami hearing. Following oral argument of the parties, it is ordered as follows: The interest of the minors in this matter are as distributees of the estate and are not personal in nature. The representatives have the authority to settle this matter. No pro ami is necessary in this matter."

On May 30, 2002, a "Settlement Agreement and Release" was executed between Thomas and the remaining various defendants ("the structured settlement").[3] The structured-settlement amount totaled approximately $2,775,000, which, after deducting attorney fees and expenses, totaled $1,490,914.99. Under the terms of the structured settlement, that money was to be used to purchase four annuities -- two each in Michael's and Matthew's names. Two of the annuities would be purchased from American General Insurance Company, which assigned its future obligation for payment to American General Annuity Service Corporation

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[3]" 'Structured settlement' is the name given to a type of money settlement in which, in its usual form, a defendant purchases an annuity contract in favor of a plaintiff. The annuity assures that an annuity provider will make payments to the plaintiff according to an agreed schedule." Jerry M. Custis, Litigation Management Handbook § 10:117 (2020) (footnotes omitted).

1200102, 1200103, 1200104, 1200105, 1200106, and 1200107 (the American General entities are collectively referred to as "American General"). Two of the annuities would be purchased from Mass Mutual Insurance Company, which assigned its future obligation for payment to MassMutual Assignment Company (the Mass Mutual entities are collectively referred to as "MassMutual"). The annuities provided for periodic payments and lump-sum payments on various dates. More specifically, the structured settlement designated the annuity payments to unfold as follows:

For Michael, from MassMutual:

- $125/month from Nov. 1, 2009, to Oct. 1, 2010
- $25,000 due Nov. 1, 2010
- $4,000 semi-annually from July 1, 2013, to June 1, 2017
- $500/month from July 1, 2013, to June 1, 2017
- $125,000 due Nov. 28, 2018
- $375,000 due Nov. 28, 2020
- $657,745.80 due Nov. 28, 2023

For Michael, from American General:

- $125/month from Nov. 1, 2009, to Oct. 10, 2010
- $25,000 due Nov. 1, 2010
- $4,000 semi-annually from July 1, 2013, to June 1, 2017
- $500/month from July 1, 2013, to June 1, 2017
- $125,000 due Nov. 28, 2018
- $375,000 due Nov. 28, 2020
- $830,307.38 due Nov. 28, 2023

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For Matthew, from MassMutual:

- $125/month from Nov. 1, 2009, to Oct. 1, 2010
- $30,000 due Nov. 1, 2010
- $4,000 semi-annually from July 1, 2015, to June 1, 2019
- $500/month from July 1, 2015, to June 1, 2019
- $125,000 due May 31, 2020
- $375,000 due May 31, 2022
- $804,292.38 due May 31, 2025

For Matthew, from American General:

- $125/month from Nov. 1, 2009, to Oct. 10, 2010
- $30,000 due Nov. 1, 2010
- $4,000 semi-annually from July 1, 2015, to June 1, 2019
- $500/month from July 1, 2015, to June 1, 2019
- $125,000 due May 30, 2020
- $375,000 due May 30, 2022
- $1,004,762.82 due May 30, 2025

The structured settlement dictated that the monthly payments of $125 for each brother from the annuities were to be made to Jerri, the brothers' mother and natural guardian. Annuity payments starting on November 1, 2010, were to be paid to the "Legal Conservator of the Estate of Michael Todd Scoggins" and to the "Legal Conservator of the Estate of Matthew Tyler-Crimson Scoggins"; no legal conservators for the brothers' estates had been appointed at the time the structured settlement was executed. Payments after Michael and Matthew each reached the age of

majority were to be made to Michael and Matthew directly.[4] The structured settlement contained a nonassignment provision concerning the annuity payments that provided:

> "Plaintiffs[5] acknowledge that the Periodic Payments cannot be accelerated, deferred, increased or decreased by Plaintiff or any Payee;[6] nor shall Plaintiff or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise; any attempted transaction in violation of any of these restrictions shall be invalid and void."

On July 19, 2002, a joint stipulation of dismissal of the wrongful-death action was filed in the circuit court. The annuities were purchased after the execution of the structured settlement.

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[4]Michael was born on November 28, 1993, and thus reached the age of majority on the same date in 2012. Matthew was born on May 31, 1995, and thus reached the age of majority on the same date in 2014.

[5]In the structured settlement, "Plaintiffs" is defined as: "Michael Thomas Scoggins as Administrator of the Estate of George Thomas Scoggins; Michael and Matthew Tyler-Crimson Scoggins, minors, by and through their natural guardian and next friend, Gerri Pounds Scoggins and jointly by and through their next friend Michael Thomas Scoggins."

[6]In the structured settlement, the "Payee" is defined based on the period when a person receives annuity payments, and thus includes Jerri Pounds Scoggins, the brothers' mother; the legal conservator of the brothers' estates; or Michael and Matthew, once each reached the age of majority.

B. The "Reopening" of the Wrongful-Death Action

In March 2010, Thomas, through attorney Stephen J. Bailey, filed two petitions in the Calhoun Probate Court styled: "In re: Estate of Matthew Tyler-Crimson Scoggins, a Minor," and "In re: Estate of Michael Todd Scoggins, a Minor." The petitions sought to have Thomas named conservator for the brothers in order to "reopen" the wrongful-death action for the purpose of obtaining a ruling that a sale of the structured-settlement-payment rights was in the best interests of Michael and Matthew. Even though Thomas had sought powers as general conservator for the brothers,[7] in the two identical orders the probate court entered on the petitions on April 20, 2010, Thomas was limited to the role of "special conservator" for a specific purpose.

> "The above-styled cause was brought before the Court on the Petition of Michael Thomas Scoggins, paternal grandfather

[7]Thomas submitted proposed orders to the probate court in which he sought "all the powers and duties [of a conservator] conferred under Ala. Code [1975,] § 26-2A-152" -- which lists the general powers of a conservator -- the specific power to sell the structured-settlement-payment rights for the brothers' benefit, and the power "[t]o establish a trust for the benefit of" each of the brothers "with the proceeds from the sale of said annuities."

> of Matthew Tyler-Crimson Scoggins,[8] hereinafter referred to as 'the minor,' for appointment of a Special Conservator for the minor. Petitioner presents to this Court his request to petition the Calhoun Circuit Court to reopen case No. CV 98-996 [the wrongful-death action] for a judicial determination of whether the best interest of the minor may be served by authorizing the sale of the structured settlement established for the benefit of the minor, pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act [Ala. Code 1975, § 26-2A-1 et seq.].
>
> "....
>
> "Present were petitioner, by and through his counsel of record, Steve Bailey, Esq; the minor, Matthew Tyler-Crimson Scoggins, and his Guardian ad Litem ...; and the Court notes for the record the presence of the natural mother of the minor, Gerri Pounds Scoggins.
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> "Upon due consideration of the evidence adduced in this matter, the Court finds that a basis exists for the appointment of a Special Conservator for the limited purpose of petitioning the Circuit Court of Calhoun County to reopen Case No. CV 98-996 for the judicial determination of whether the best interest of the minor may be served by authorizing the sale of the structured settlement established for the benefit of the minor. The Court notes that a Conservatorship was not established for the minor as a result of the settlement of the Circuit Court case; that structured settlements were devised for two minors, with annuity payments being made according

[8]As we noted in the text, the probate court issued an order identical in wording for Michael Todd Scoggins.

to the structured settlement for each minor, and these settlements were established solely in Circuit Court.

"It is therefore ORDERED, ADJUDGED, and DECREED as follows:

"A. That the Petition for the appointment of a Special Conservator over the Estate of Matthew Tyler-Crimson Scoggins is hereby granted;

"B. Michael Thomas Scoggins is hereby appointed Special Conservator for the limited purpose of filing a Petition with the Circuit Court to reopen Case No. CV 98-996;

"C. The minimum bond of $10,000, with good and sufficient surety, is taken and accepted by the Judge of Probate;

"D. The Special Conservator, Michael Thomas Scoggins, does not have any power or authority at this time to receive and/or manage the funds which are the assets of the Estate of Matthew Tyler-Crimson Scoggins.

"E. The Special Conservator does have the limited authority to proceed with his Petition to reopen Circuit Court Case No. CV 98-996.

"F. The Special Conservator has the continuing duty to inform this Court of the finding of the Circuit Court, after which time the case will be transferred back to the Probate Court for further proceedings, unless otherwise addressed ... in the Circuit Court, to include an increase of the Special Conservator's bond, if applicable, which must occur prior to any funds being received by the Special Conservator on behalf of the minor.

> "The Probate Court herein requests that the Circuit Court send via facsimile a copy of the ruling of the Circuit Court immediately upon entering the same."

(Emphasis added.)

On June 30, 2010, Thomas, through attorney Bailey, filed in the Calhoun Circuit Court a "Motion for Authorization to Sell Part or All of Four Structured Settlements" in the wrongful-death action. In pertinent part, that motion provided:

> "Comes the petitioner, Michael Thomas Scoggins ('Thomas'), Special Conservator of the estates of Michael Todd Scoggins ('Michael'), a minor, and Matthew Tyler-Crimson Scoggins ('Matthew'), a minor (Order Granting Special Conservatorship attached as Exhibits 1 and 2), and:
>
> "1. Respectfully petitions this honorable court for an order to accept an offer to sell all or part of four (4) structured settlement payment rights for the minors Michael and Matthew.
>
> "....
>
> "44. An order allowing the estate to sell part or all of the four annuities ... is sought because Michael and Matthew wish to use the immediately available funds to provide them a comfortable and safe home, provide each of them reliable transportation when each reaches age 16, increase their standard of living, provide adequate funds for their college education, and provide the needed medical services that both boys are presently foregoing for lack of money;

> "WHEREFORE, Petitioners request that:
>
> "A. Tim Burgess be appointed Guardian-Ad-Litem to represent and protect the interests of Michael Todd Scoggins and Boice Turner be appointed Guardian-Ad-Litem to represent and protect the interests of Matthew Tyler-Crimson Scoggins;
>
> "B. Administrator, Thomas, be authorized to sell all or part of the remaining payments of Michael Todd Scoggins['s] and Matthew Tyler-Crimson Scoggins['s] structured settlements; and
>
> "C. All such other just and equitable relief be granted herein as may be appropriate in the premises and proof."

As the text of this "Motion for Authorization" indicated, copies of the probate court's orders were attached to the motion as exhibits, but the motion itself requested granting Thomas authority to sell all the structured-settlement-payment rights stemming from the annuity payments, a power that the probate court expressly denied to Thomas as "special conservator."

On July 6, 2010, the circuit court appointed a guardian ad litem for each brother in the proceeding concerning the "Motion for Authorization."[9]

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[9]At the time the "Motion for Authorization" was filed, Michael was 16 years old and Matthew was 15 years old.

The circuit judge presiding in the proceeding was Brian Howell. Judge Howell would also preside over all the remaining litigation described in this rendition of the facts.

On July 6, 2011, Bailey acquired Thomas's signature as "Settlor" for "The Michael Todd Scoggins Trust" and the "Matthew Tyler-Crimson Scoggins Trust" ("the trusts"). Bailey drafted the trust instruments, and he named himself and Michael D. Askew as the "trustees." As drafted, the trust instruments did not require the trustees to post a bond or require any kind of court oversight. Thomas funded the trusts with $10 for each trust.

On August 11, 2011, the circuit court entered an order in the wrongful-death action titled "Findings of Fact and Order for Partial Sale of Structured Settlements and Establishment of Spendthrift Trust for Each Minor". The order noted that a hearing on the "Motion for Authorization" had been held on June 22, 2011, and that those present at the hearing included "Steve Bailey, Esq., for petitioner, Michael Thomas Scoggins, and Boice Turner, Esq., Guardian Ad Litem for Matthew Tyler-Crimson Scoggins, a minor." The order observed that, on November 1,

2010, American General had mailed to Jerri annuity-payment checks for $25,000 each that were drawn to the order of "the legal conservator of the estate of Michael Todd Scoggins, a minor," and to the order of "the legal conservator of the estate of Matthew T.C. Scoggins, a minor." Also on November 1, 2010, MassMutual had issued annuity-payment checks for $30,000 each that were drawn to the order of the same recipients but were "mailed to and ... held by Ferilisi Jolly Associates, Inc., pending appointment of a conservator for each minor." The order related that Jerri had deposited the checks from American General in her credit-union account, that the circuit court had ordered her to give an accounting for how the funds had been spent for the brothers, but that approximately $22,0000 had been spent that constituted "unsubstantiated disbursements." The circuit court thus concluded:

> "There is no family capable of adequately serving as conservator for the minors and thereby safeguarding their past and future annuity payments. ... [T]his court finds that it is not only in the best interest but is imperative that an irrevocable discretionary distribution standard trust for each minor, as attached to this order, receive past and future annuity payments on behalf of each minor."

The trusts referenced by the circuit court were the trusts that Bailey had created and for which Thomas served as settlor. The circuit court ordered Ferilisi Jolly Associates, Inc., to have the MassMutual checks redrawn so that they would be payable to the trusts Bailey had created. The order further empowered Thomas, "as Special Conservator of the Estate of Michael Todd Scoggins, a minor," and "as Special Conservator of the Estate of Matthew Tyler-Crimson Scoggins, a minor," to "execute any agreements necessary to effectuate the sale" of most of the future payments provided in the structured settlement,[10] with the proceeds of that sale to be deposited in the trusts. No mention was made in the August 11, 2011, order concerning the probate court's April 20, 2010, order, and neither Thomas nor Bailey reported the findings of the circuit court to the probate court at any time thereafter.

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[10]The circuit court ordered that the following annuity payments were not to be sold and would be kept for Michael until 2023: From MassMutual, $657,745.80 due November 28, 2023; from American General, $830,307.38 due November 28, 2023. Likewise, it ordered that the following annuity payments were not to be sold and would be kept for Matthew until 2025: From MassMutual, $804,292.38 due May 31, 2025; from American General, $1,004,762.82 due May 30, 2025.

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Subsequently, Bailey held an auction for the sale of the structured-settlement-payment rights the circuit court had permitted to be sold, and Stratcap Investments, Inc. ("Stratcap"), was the successful bidder. On November 21, 2011, the circuit court entered an order amending its August 11, 2011, order to correct some details of the original order, but it concluded by stating that, "[e]xcept as specifically modified herein, the court's previous order shall have full effect."[11]

On December 12, 2011, the circuit court denied a "Motion of the Guardian-Ad-Litem for Matthew Tyler Scoggins to rescind the previous Order of this court dated August 11, 2011, and the Amendment to that Order entered on November 21, 2011." That order noted that, at a December 6, 2011, hearing on that motion, those present included "Matthew Tyler-Crimson Scoggins, Michael Todd Scoggins, their mother

[11]The November 21, 2011, order corrected the aggregate sum of the purchase price for the structured-settlement-payment rights in the four annuities because they sold for a higher price than the initial offer Bailey had received. The new sale price was $860,936. Additionally, the August 11, 2011, order had identified the purchaser as Granoff Enterprises, Inc., but Stratcap ended up as the high bidder, and so the November 21, 2011, order corrected that detail.

Jerri Scoggins and their grandparents Mr. and Mrs. Michael Thomas Scoggins. Also present before the court were the Guardian-Ad-Litem for Matthew Tyler-Crimson Scoggins, T. Boice Turner, Jr., and the Guardian-Ad-Litem for Michael Todd Scoggins, Timothy Burgess." The circuit court stated that it was denying the motion to rescind the previous orders because "[t]he Court previously found that it was in the best interest of the boys to sell the annuities and to allow the funds to be held and managed in trust for their benefit. The testimony presented on December 6, 2011, reinforces the Court's previous finding ...."

C. The Stratcap Petitions in 2012

On February 4, 2012, Stratcap filed four petitions in the Calhoun Circuit Court pursuant to the ASSPA seeking the circuit court's approval of transfer agreements between Thomas, as special conservator for the brothers' estates, and Stratcap concerning structured-settlement-payment rights from the four annuities[12] ("the Stratcap actions").[13] The petitions

[12]Section 6-11-51(16), Ala. Code 1975, defines "structured settlement payment rights" as follows:

"Rights to receive periodic payments under a structured

stated that "on April 20, 2010, the [Calhoun] Probate Court ... issued an order authorizing [Thomas] to sell certain annuity payments" on behalf of the brothers' estates. Both the petitions and the transfer agreements named Thomas as the "transferor/payee" and Stratcap as the "transferee"

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settlement, whether from the structured settlement obligor or the annuity issuer, where:

> "a. The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this state.
>
> "b. The structured settlement agreement was approved by a court or responsible administrative authority in this state.
>
> "c. The structured settlement agreement is expressly governed by the laws of this state."

[13]The Stratcap petitions named Thomas as the defendant in the four actions, but that was a formality given that Thomas did not oppose the transfers, which is typical in such transfer transactions. See, e.g., Daniel W. Hindert and Craig H. Ulman, Transfers of Structured Settlement Payment Rights: What Judges Should Know About Structured Settlement Protection Acts, 44 Judges' Journal, Issue No. 2, 19, 28 (Spring 2005) (explaining that "most applications for approval of transfers of structured settlement payment rights are unopposed").

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under the ASSPA for the transfer sales.[14] Under the terms of the transfer agreements, Stratcap agreed to pay to the transferor/payee a total of $660,000 for the rights to payments from the American General and MassMutual annuities belonging to Michael and to pay the transferor/payee a total of $590,000 for the rights to payments from the American General and MassMutual annuities belonging to Matthew. As required by the ASSPA, the petitions averred that all procedural requirements for the transfers had been fulfilled, including that "the transfer[s] do[] not contravene ... the order of any court"; that "the Payee has been advised in writing by the Transferee to seek independent professional advice regarding the transfer"; that the transferee provided the payee "a separate disclosure statement" concerning the terms of the transfers; and that the transferee provided "all interested parties a notice

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[14]Section 6-11-51(8), Ala. Code 1975, defines a "payee" as "[a]n individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder." Section 6-11-51(20) defines a "transferee" as "[a] party acquiring or proposing to acquire structured settlement payment rights through a transfer; provided that the term does not include a secured party who has not received a transfer of the structured settlement payment rights as the term 'transfer' is defined in subdivision (18)."

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of the proposed transfer[s] and the application for [their] authorization."[15] The transfer agreements provided that the rights to the annuity payments would be assigned to Stratcap's assignee, The Suzanne Farver Charitable Trust ("the Farver trust").

On March 13, 2012, the circuit court held a hearing on Stratcap's transfer petitions. The notices for that hearing indicated that American General and MassMutual were given notice of that hearing but that the brothers were not given such notice. On April 26, 2012, the circuit court entered four orders, each entitled "Unopposed Order Approving Transfer of Structured Settlement Payment Rights." The orders approved the transfers of the structured-settlement-payment rights from the four annuities to Stratcap and, ultimately, the Farver trust. Each order named Thomas, as special conservator for the brothers' estates, as the "payee" for the transactions and concluded that the transfers were in the best interest of the payee. The orders additionally stated that all the procedural

[15]See Ala. Code 1975, §§ 6-11-53 and 6-11-55(b).

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The amounts received from the sale of the payment rights of the annuities were deposited in the trusts, and the Farver trust began receiving the annuity-payment streams. Thereafter, Michael and Matthew received some benefits from trust funds, but over the years payments from the trusts decreased and, eventually, ceased altogether.

D. The Emergency Motion to Terminate the Trusts

On March 8, 2019, the brothers filed in the wrongful-death action an "Emergency Motion for Accounting and Termination of Trust." The brothers filed the motion because they were alarmed by the apparently woeful state of the trusts despite the fact that no less than $1.25 million had been deposited in the trusts from the foregoing sales of the rights to annuity payments. On April 5, 2019, the circuit court held a hearing on the motion at which Bailey belatedly appeared. The circuit court permitted the brothers' counsel to cross-examine Bailey, and, as a subsequent order from the circuit court on the motion concluded, "Bailey's testimony was both shocking and revealing." Based on that testimony and

the evidence presented by the brothers, the circuit court, on April 11, 2019, entered an order granting the brothers the relief they requested. In the course of doing so, the circuit court related much of what had transpired since Judge Howell had started handling the litigation in 2010. Discussing its decision on August 11, 2011, to authorize the sale of structured-settlement-payment rights, the circuit court explained:

> "The Court was not made aware that the petitioner grandfather Mr. Bailey represented had no authority from the Probate Court to receive or manage any funds on behalf of the two minor brothers at that time. To the contrary, Mr. Bailey led the Court to believe that his client was fully empowered by the Probate Court to act on behalf of the minor brothers seeking the sale of the annuities previously established for their benefit. Believing Mr. Bailey's representations to be truthful, this Court considered the petition and ultimately granted the petition allowing the sale for the annuities which had been established to benefit Michael and Matthew Scoggins. ... [A]n auction was held by Mr. Bailey to sell the four annuities established for the benefit of Michael and Matthew Scoggins, although neither Mr. Bailey nor his client, Michael Thomas Scoggins, had any authority whatsoever over the annuities in question. None of those deficiencies were reported to this Court and the Court is now aware that none of these events were reported back to the Probate Court as it had ordered in its grant of limited conservatorship. Instead, Mr. Bailey requested that the funds resulting from the sales of these annuities be paid over to the trust[s] that he had established outside the purview of this Court.

"....

"During his testimony, Mr. Bailey confirmed that as a consequence of the petitions and trusts mentioned above, he ultimately received 'in trust' in May of 2012 approximately $1.2 million dollars as the sales proceeds of the four annuities previously established to benefit Matthew Tyler-Crimson Scoggins and Michael Todd Scoggins.

"Mr. Bailey testified that once he had control of the money under the trusts he drafted, he determined who was paid, in what amount and when payments were made. He determined who was hired with those funds and what items should be purchased. The Court was shocked to hear that Mr. Bailey determined the fees he should be paid, as well as those to co-trustee, Michael Askew, and trust advisor, Alyssa Baxley. According to Mr. Bailey's testimony, he paid himself based on 'what [he] needed.' He admitted that none of those fees had been independently determined or judicially reviewed and that none of the purchases he made with trust funds, which included houses and vehicles, had been approved by any court. In fact, on January 19, 2019 as mentioned above, Bailey submitted a partial listing of disbursements and receipts for periods from January 2016 to 2018. That listing shows that Bailey had paid himself from the 'Matthew Scoggins Trust' $179,559.90 and from the 'Michael Todd Scoggins Trust' $150,421.91 in the last two years alone. Mr. Bailey's listing submitted in January of 2019 showed that nearly every single disbursement made over the past 12 months was made to himself with virtually no money being paid to the alleged beneficiaries, Michael and Matthew Scoggins. Mr. Bailey testified that by November or early December 2018, he had spent all of the funds that he had received in the trusts he established. Mr. Bailey testified that he has provided no accounting to Michael or Matthew Scoggins even after these

brothers reached their majority in 2012 and 2014. No accounting was made to either of them or to this Court.

"Mr. Bailey testified that he had used some of the money to purchase real estate held in the trust name. Two parcels with houses still remain in the name of the trusts according to Bailey and both are in arrears on taxes. Bailey testified that he also unilaterally appointed other co-trustees including one who was an employee of his law firm and listed as a trustee on deeds. Other documents admitted during Bailey's testimony show tax records for 'trust' property being directed to Bailey's wife, Cindy. None of the real property is held in the names of Michael or Matthew Scoggins, individually.

"Further, Bailey testified that he had established LLCs to purchase vehicles for the two brothers but admitted neither LLC currently held any assets. In short, according to Mr. Bailey, he had exhausted all the funds with the only remaining assets of the trusts he established being the two pieces of real estate, specifically: [property in] Helena, Alabama, and [property in] Pell City, Alabama. During Bailey's operation of the trusts he established, he admitted that the funds he received were maintained under his control in accounts over which he was the authorized signor.

"During his testimony before the Court, Bailey claimed to have no memory of the limited authority granted by the Probate Court and he denied reading those orders attached to the pending motion. He did acknowledge however that Mr. Askew, his original co-trustee, had resigned as trustee and had given Mr. Bailey notice of that in late 2015 at which time the investment accounts for the two brothers collectively still totaled over $850,000.00. Thereafter, Mr. Bailey admitted that he alone controlled the distribution of the assets himself and since that time, had spent all of those funds, with

> hundreds of thousands of dollars being paid by Bailey to himself.
>
> "The Court having heard this testimony and reviewed the documents presented by the [brothers], finds this motion is well taken. The Court further concludes that a fraud has been perpetrated on this Court by Mr. Bailey in the proceedings under which he sought and received access to the annuities and funds belonging to Matthew and Michael Scoggins. In light of all these facts, the Court finds that any trusts previously created by Mr. Bailey for the benefit of the [brothers], and specifically The Matthew Tyler-Crimson Scoggins Trust and The Michael Todd Scoggins Trust to be void and any authority Mr. Bailey has assumed under those documents is hereby extinguished. The Court further directs that the remaining assets identified by Bailey held by those trusts[,] specifically the real estate located [in] Helena, Alabama, and [in] Pell City, Alabama, shall be transferred to the purported beneficiaries of the trusts. The Court therefore ORDERS that the Pell City house is to be promptly transferred to Matthew Tyler-Crimson Scoggins and that the Helena house is to be promptly transferred to Michael Todd Scoggins.
>
> "Furthermore, in light of Mr. Bailey's admission that he has spent all the [brothers'] funds and has identified payments to himself of $329,981.81 for the period from January 2016 to December 2018, the Court orders and directs that Stephen Bailey pay that amount to the Clerk of this Court within 30 days of the date of this order to await further order of the Court. Since Mr. Bailey only provided some documentation pertaining to his activities on April 5, 2019, the Court directs that this matter will be reset upon the motion of the [brothers] to determine further liability arising under these actions."

(Capitalization in original; emphasis added.)

E. The 2019 Action and Related Filings

On September 25, 2019, the brothers commenced an action in the Calhoun Circuit Court against Bailey, Stratcap, and the Farver trust ("the 2019 action"). The brothers asserted multiple claims against the various defendants. Against Bailey, they asserted claims of legal malpractice, breach of fiduciary duty, fraudulent suppression, fraudulent misrepresentation, and negligence. Against Stratcap, they asserted claims of fraudulent suppression and fraudulent misrepresentation. Against Bailey and Stratcap, they asserted claims of fraud, conversion, and a constructive trust. Against Bailey, Stratcap, and the Farver trust, they asserted claims of unjust enrichment, money had and received, and accounting. The brothers also sought a declaratory judgment stating that "the sale to Stratcap and assignment to The Farver Trust of annuities intended to benefit [the brothers] is due to be declared void since it was the product of fraudulent conspiracy by parties, none of whom had any authority whatsoever to act on behalf of [the brothers]," and that restitution of the annuities should be made in the amount of "any distribution made since the sale" of the annuities.

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The brothers notified American General and MassMutual of the action. Subsequently, both American General and MassMutual moved to intervene in the 2019 action. In its motion to intervene, American General asserted that the motion was "made on the grounds that American General is obligated to make the annuity payments that are the subject of this litigation and may be exposed to double or multiple liability," and it asked the circuit court to grant the motion to intervene "and allow American General to file its Complaint in Interpleader" in order "to protect itself from the adverse and competing claims of the claimants." Similarly, in its motion to intervene, MassMutual requested "permission to bring a claim for interpleader to determine the proper payees for certain structured settlement payment annuity payments." The circuit court granted the motions to intervene in the 2019 action filed by American General and MassMutual.

On April 3, 2020, the brothers filed in the wrongful-death action a "Motion to Set Aside Findings of Fact and Orders Approving the Sale of Annuity Payments." That motion specifically asked the circuit court to set aside its August 11, 2011, and November 21, 2011, orders that empowered

Thomas to sell certain structured-settlement-payment rights. The brothers argued that the circuit court should set aside those orders "[d]ue to the fraud perpetrated upon this Court" "by Bailey and others" and "direct any future payments under the outstanding annuity contracts from [American General] and MassMutual be paid as originally required to [the brothers] or, in the alternative, be paid to the clerk of the court as the Court may designate ... in order to protect the interest of [the brothers]." Additionally, the brothers requested that they be "substituted as the correct and real parties in interest in this matter [the wrongful-death action] in place of [Thomas,] previously denominated as 'Special Conservator.' "

On May 20, 2020, the Farver trust filed a motion to intervene in the wrongful-death action. In that motion, the Farver trust argued:

> "Because the [brothers'] Motion to Set Aside requests this Court set aside its prior order allowing for the sale of the Annuity Payments, and direct that any future payments be paid to the [the brothers] or to the Clerk of Court -- when they are supposed to be paid to the [Farver] Trust -- the Co-Trustees of the [Farver] Trust have an interest in this action which potentially could be adversely affected if they are not allowed to intervene."

On the same date, the circuit entered an order stating: "Motion to Intervene filed by John G. Brant and Thomas E. Zanecchia, co-trustees of Suzanne Farver Charitable Trust is hereby Granted." However, the style of the case in which the order was entered was "Stratcap Investments, LLC v. Scoggins, Michael T.," i.e., one of the Stratcap actions.

On June 26, 2020, the circuit court denied the brothers' April 3, 2020, motion to set aside the August 11, 2011, and November 21, 2011, orders in the wrongful-death action. The order did not provide a rationale for the ruling, and it did not address the brothers' request to be substituted as the real parties in interest in the wrongful-death action.

On July 27, 2020, American General filed a "Motion for Interpleader Relief" in the 2019 action. On September 21, 2020, the Farver trust filed an objection to American General's motion for interpleader relief on the ground that the circuit court's April 26, 2012, orders in the Stratcap actions were final judgments that American General must honor by continuing to pay the Farver trust. The same day, the brothers filed a response to American General's motion for interpleader relief in which they stated that they did not oppose American General's desire to

1200102, 1200103, 1200104, 1200105, 1200106, and 1200107 interplead funds. The brothers also countered the Farver trust's objection by arguing that "[d]efendants Bailey, Stratcap, and the Farver Trustees here worked together to perpetrate a fraud on the Court -- the end result of which [was] the 2012 [Stratcap-action] orders and the wrongful sale and transfer of [the brothers'] annuity streams to (ultimately) the Farver Trustees." On October 1, 2020, the circuit court entered an order denying American General's motion for interpleader relief, stating that "American General remains obligated to deliver the annuity payments to the Farver Trust in accordance with the Court's April 26, 2012, orders entered in case nos. CV-2012-900098 and CV-2012-900100 [the Stratcap actions pertaining to American General's annuities]."

On October 2, 2020, Michael filed a motion to intervene in the Stratcap actions and to consolidate those actions with the 2019 action. In that motion, Michael noted that he had never been served with notice of Stratcap's petitions for transfer of the structured-settlement-payment rights and that Thomas, in his capacity as "special conservator," did not have the authority to sell those rights on his behalf. Michael argued that "Stratcap, Bailey, the Farver Trustees are all before the Court as parties

to this action [the Stratcap actions]," but that Michael was not before the court and "no one hereto represents his interest." With respect to consolidation, Michael argued that the Stratcap actions should be consolidated with the 2019 action "so that all of these overlapping issues can be brought before the Court and properly addressed" because otherwise "conflicting resolutions could be obtained, thereby leading to confusion and further complicating the posture of these cases."

Also on October 2, 2020, the brothers filed an amended complaint in the 2019 action in which they added constructive-trust claims against American General and MassMutual. Both MassMutual and American General eventually filed answers to the amended complaint. Along with its answer, MassMutual filed a cross-claim for release and indemnity from Stratcap. Along with its answer, American General filed a counterclaim against the brothers alleging breach of the transfer agreements pursuant to which certain structured-settlement-payment rights had been sold to Stratcap.

On October 7, 2020, the circuit court denied Michael's motion to intervene as the real party in interest in the Stratcap actions and to

1200102, 1200103, 1200104, 1200105, 1200106, and 1200107 consolidate those actions with the 2019 action. In the order, the circuit court explained: "It is the opinion of the Court that these actions are concluded and no legitimate and legal purpose would be served by consolidating them with each other and with the 2019 case."

On October 29, 2020, the brothers filed in the wrongful-death action, in the Stratcap actions, and in the 2019 action a "Motion to Reconsider" certain orders of the circuit court in each of those actions. Specifically, the brothers asked for reconsideration of the circuit court's denial of: (1) American General's motion to interplead annuity funds in the 2019 action; (2) Michael's motion to intervene or to be substituted as the real party in interest in the Stratcap actions and to consolidate those actions with the 2019 action; and (3) the brothers' motion to set aside the circuit court's 2011 orders in the wrongful-death action that empowered Thomas to sell certain structured-settlement-payment rights for the brothers' benefit. The brothers reiterated the arguments made in those previous motions. However, they additionally contended that the circuit court's orders of August 11, 2011, and November 21, 2011, in the wrongful-death action should be declared "void ab initio" because, they asserted, the

circuit court lacked subject-matter jurisdiction to reopen that action eight years after it had been dismissed by joint stipulation of the parties.

On November 9, 2020, the circuit court denied the brothers' motion to reconsider without elaboration. On November 12, 2020, the brothers filed the present petitions for a writ of mandamus. Simultaneously the brothers filed a motion to consolidate the petitions, which this Court subsequently granted.

II. Standard of Review

Other standards of review will be implicated in the course of our analysis, but the primary relevant standard is the one pertaining to petitions for the writ of mandamus.

> " 'Mandamus is an extraordinary remedy and will be granted only where there is "(1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court." Ex parte Alfab, Inc., 586 So. 2d 889, 891 (Ala. 1991). This Court will not issue the writ of mandamus where the petitioner has " 'full and adequate relief' " by appeal. State v. Cobb, 288 Ala. 675, 678, 264 So. 2d 523, 526 (1972) (quoting State v. Williams, 69 Ala. 311, 316 (1881)).'

> "Ex parte Ocwen Fed. Bank, FSB, 872 So. 2d 810, 813 (Ala. 2003). The standard of review on a petition for a writ of mandamus is whether the trial court exceeded its discretion in taking or failing to take the challenged action. See Ex parte Par Pharm., Inc., 58 So. 3d 767, 773 (Ala. 2010). '"'"Mandamus will lie to direct a trial court to vacate a void judgment or order."'"' Ex parte LERETA, LLC, 226 So. 3d 140, 143 (Ala. 2016) (quoting Ex parte Trust Co. of Virginia, 96 So. 3d 67, 69 (Ala. 2012), quoting in turn Ex parte Scrushy, 940 So. 2d 290, 294 (Ala. 2006), quoting in turn Ex parte Sealy, L.L.C., 904 So. 2d 1230, 1232 (Ala. 2004))."

Ex parte Alfa Ins. Corp., 263 So. 3d 689, 695 (Ala. 2018).

III. Analysis

As the extensive rendition of the facts makes clear, the litigation presented in these mandamus petitions spans several years and implicates multiple issues. We believe that the best approach to explain the proper disposition for each petition is to address the challenged circuit-court orders chronologically with respect to each phase of the litigation. Thus, we will first address the circuit court's denial of the brothers' motion to set aside the August 11, 2011, and November 21, 2011, orders that empowered Thomas to sell certain structured-settlement-payment rights for the brothers' benefit. Next, we will address the circuit court's denial of Michael's motion to intervene in the Stratcap actions and

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to consolidate those actions with the 2019 action. Finally, we will address the circuit court's denial of American General's motion to interplead annuity-payment funds in the 2019 action.

A. The Motions to Set Aside the Circuit Court's 2011 Orders (Case No. 1200107)

The brothers argue that the circuit court clearly erred in denying their April 3, 2020, motion to set aside its orders of August 11, 2011, and November 21, 2011, in the wrongful-death action -- and in denying their October 29, 2020, motion to reconsider that denial -- because the circuit court lacked subject-matter jurisdiction to enter those orders.

At the outset, instead of directly addressing this contention, the Farver trust challenges the brothers' right to mandamus review of this issue.[16] The Farver trust acknowledges that "[i]t is well settled that

[16]We note that the Farver trust was the only party to substantively respond to the brothers' petitions. American General and MassMutual filed briefs with this Court for the most part stating that they take no substantive position concerning the brothers' arguments and that their only concern is ensuring that the correct parties receive the subject annuity payments. Stratcap did not file a brief with this Court (nor did it file any responses below in the circuit court).

' "[t]he question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus." "We review de novo whether the trial court had subject-matter jurisdiction." ' Ex parte PinnOak Res., LLC, 26 So. 3d 1190, 1198 (Ala. 2009)." Ex parte Casey, 88 So. 3d 822, 827 (Ala. 2012). However, the Farver trust also notes that

> " ' "[a] writ of mandamus will issue only in situations where other relief is unavailable or is inadequate, and it cannot be used as a substitute for appeal." ' Ex parte Moore, 880 So. 2d 1131, 1133 (Ala. 2003) (quoting Ex parte Empire Fire & Marine Ins. Co., 720 So. 2d 893, 894 (Ala. 1998))."

Shamburger v. Lambert, 24 So. 3d 1139, 1142 (Ala. Civ. App. 2009). The Farver trust contends that the brothers could have appealed the denial of their motion to set aside the 2011 orders in the wrongful-death action, but that they failed to do so, and that, therefore, mandamus as a remedy is unavailable to challenge the order denying their motion. The Farver trust elaborated on this argument in its "preliminary response" to the mandamus petitions, explaining that "[m]otions for relief from a judgment or order are governed by Rule 60(b), Ala. R. Civ. P. 'The denial of a Rule 60(b) motion is reviewable on appeal.' Image Auto, Inc. v. Mike Kelley Enterprises, Inc., 823 So. 2d 655 (Ala. 2001)." The Farver trust's

1200102, 1200103, 1200104, 1200105, 1200106, and 1200107 preliminary response, p. 7. In other words, the Farver trust contends that the brothers' April 3, 2020, motion to set aside the 2011 orders in the wrongful-death action was, in substance, a Rule 60(b), Ala. R. Civ. P., motion for relief from judgment. Instead of filing an appeal after the circuit court denied that motion on June 26, 2020, the brothers elected to file a "Motion to Reconsider" on October 29, 2020, raising the new argument that the 2011 orders were "void ab initio." The circuit court denied that motion on November 9, 2020, and the brothers filed their petitions for a writ of mandamus on November 12, 2020. The Farver trust thus contends that "[m]andamus is not a substitute for [the brothers'] failure to timely appeal the denial of their Rule 60(b) motion." Id.

However, inherent in the Farver trust's argument is the assumption that the August 11, 2011, and November 21, 2011, orders were final judgments because, "[b]y its terms, [Rule 60(b), Ala. R. Civ. P.,] makes clear that it applies only to final judgments; and interlocutory orders and judgments are not subject to the restrictive provisions of the Rule until

they become final."[17] Ford Motor Credit Co. v. Carmichael, 383 So. 2d 539, 541 (Ala. 1980).

> "Interlocutory orders and judgments are ... not brought within the restrictive provisions of Rule 60(b), Alabama Rules of Civil Procedure, which provides for relief from final judgments. Instead, such orders are left within the plenary power of the court that rendered them to afford relief from them as justice requires."

Hallman v. Marion Corp., 411 So. 2d 130, 132 (Ala. 1982). An interlocutory order is one that addresses fewer than all the claims, or fewer than all the parties, in a given action. See, e.g., McGlothlin v. First Alabama Bank, 599 So. 2d 1137, 1139 (Ala. 1992) ("An order as to fewer than all parties, or dealing with fewer than all claims, does not terminate the action as to any parties or claims."). As is abundantly clear from Part B of the rendition of the facts, the circuit court's August 11, 2011, order purporting to empower Thomas to sell certain structured-settlement-payment rights, as well as its modification of that order on November 21,

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[17]Rule 60(b), Ala. R. Civ. P., provides in part that, "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding ...." (Emphasis added.)

2011, did not finally adjudicate the claims of any party in the wrongful-death action. Indeed, even if those orders were to be construed as attempts to modify the final judgment in the wrongful-death action, four structured-settlement payments were left untouched by the circuit court's 2011 orders. Moreover, the 2011 orders did not adjudicate the claims of any party to the wrongful-death action because the defendants in the wrongful-death action did not participate in the "reopening" of the action and Thomas was not acting in his capacity as personal representative of George's estate when he filed the June 30, 2010, "Motion for Authorization." The 2011 orders also did not modify the final judgment in the wrongful-death action because the final judgment was simply a joint stipulation of dismissal with prejudice filed by the parties on July 19, 2002. Because the August 11, 2011, and November 21, 2011, orders were not final judgments, a Rule 60(b) motion was not an appropriate method to attack those orders. A mandamus petition is the appropriate method to seek review of an interlocutory order, see Ex parte T.J., 89 So. 3d 744, 746 (Ala. 2012) ("A petition for a writ of mandamus is the proper vehicle for seeking review of an interlocutory order."), particularly an order

denying a motion that questions the authority of the lower court to enter a previous order, see Ex parte Dowling, 477 So. 2d 400, 402 (Ala. 1985) (noting that "mandamus is the proper remedy to vacate an order the trial court had no power to enter").

Having determined that the brothers' method for seeking review of the circuit court's denial of its "Motion to Set Aside" the 2011 orders was appropriate, we arrive at the substantive question of whether the brothers are correct that the circuit court lacked the authority to enter those orders. The brothers summarize their argument this way:

> "The court's 2011 Order was wholly separate from the final judgment entered in the Wrongful Death Case. In other words, the court lacked the subject matter jurisdiction to re-open a case dismissed with prejudice eight years earlier to invade and override the terms of an agreement that was never before the court in the first place."

The brothers' reply brief, p. 7.

The Farver trust's response to this argument is that the probate court

> "instructed [Thomas] to petition the circuit court to re-open an existing case .... The circuit court here was not asked to interpret a settlement agreement, nor was there a dispute about settlement terms. Rather, the Motion for Authorization

> was filed to obtain statutorily required approval to sell the Annuity Payments.
>
> > "The Farver Trust is unaware of any cases interpreting Alabama's SSPA to require that a new case be opened, and the plain language of the statute contains no such requirement. It provides only that no transfer shall be effective unless 'approved in advance in a final court order or order of a responsible administrative authority.' Ala. Code [1975,] § 6-11-53."

The Farver trust's brief, pp. 16-17.

The Farver trust's argument confuses the requirements for effectuating a transfer of structured-settlement-payment rights provided in the ASSPA, which was the subject of the Stratcap actions, with the subject of the "reopening" of the wrongful-death action. The probate court stated in its April 20, 2010, order naming Thomas as "special conservator" that the purpose of "reopening" the wrongful-death action was "for the judicial determination of whether the best interest of the [brothers] may be served by authorizing the sale of the structured settlement established for the benefit of the [brothers]." In its August 11, 2011, order, the circuit court expressly concluded that it was in the brothers' best interests for some of the structured-settlement-payment rights to be sold, and for the

proceeds of that sale to be placed in trusts for the benefit of the brothers, and it authorized Thomas to effectuate that sale. Thus, the circuit court purported to modify the terms of the structured settlement.[18] Putting

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[18]The brothers argue that the 2011 orders contradicted the nonassignment provision in the structured settlement. However, as MassMutual observes in its brief (see MassMutual's brief, p. 4 n.2), the nonassignment provision in the structured settlement was for the benefit of the obligors -- American General and MassMutual -- and they were aware of the assignment and permitted it to occur.

> "Abston's policy with Auto-Owners does provide that '[n]o interest in this policy may be assigned without our written consent.' Abston argues that to the extent Auto-Owners honored Abston's assignment, Auto-Owners is in breach, because it had not consented to the assignment. This assertion, however, is a non sequitur. Even assuming that this provision was not limited to the assignment of insurance coverage from Abston to someone else, Abston's assignment of the right to payment could constitute a breach only on the part of Abston, not Auto-Owners. See Restatement (Second) of Contracts at § 322, cmt. d [(1979)] ('Ordinarily a contractual prohibition of assignment is for the benefit of the obligor. In such cases third parties cannot assert the invalidity of a prohibited assignment if the obligor makes no objection.'). Accordingly, Auto-Owners' honoring of the assignment would constitute, if anything, a waiver of the consent requirement. Cf. Southland of Alabama, Inc. v. Julius E. Marx, Inc., 341 So. 2d 127, 130-31 (Ala. 1976) (holding that a lessor, who knew of a lessee's assignment and who had accepted rent from the assignee, waived the lease's requirement that the lessor consent prior to subletting)."

aside for the moment the fact that the circuit court's August 11, 2011, order went beyond the scope intended by the probate court for "reopening" the wrongful-death action, the determinations in the circuit court's 2011 orders plainly were different than the procedural requirements of the ASSPA. This is all the more clear from the fact that Stratcap subsequently filed the four transfer petitions in the circuit court in an effort to fulfill the requirements of the ASSPA and thus effectuate the transfers of certain structured-settlement-payment rights. In short, whether the procedures of the ASSPA were correctly followed in the Stratcap actions does not affect whether the circuit court had the authority to entertain the "Motion for Authorization" in the wrongful-death action.

We subsequently will address the Stratcap actions in Part B of this analysis, but here we deal with the "reopening" of the wrongful-death action. The unequivocal fact is that the wrongful-death action was dismissed by joint stipulation on July 19, 2002. "'"[T]he effect of a

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Auto-Owners Ins. Co. v. Abston, 822 So. 2d 1187, 1193 (Ala. 2001).

voluntary dismissal ... is to render the proceedings a nullity and leave the parties as if the action had never been brought." ' Ex parte Sealy[, L.L.C.], 904 So. 2d [1230,] 1236 [(Ala. 2004)] (quoting In re Piper Aircraft Distrib. Sys. Antitrust Litig., 551 F.2d 213, 219 (8th Cir. 1977)) (emphasis added)." Gallagher Bassett Servs., Inc. v. Phillips, 991 So. 2d 697, 700 (Ala. 2008). This Court further explained the effect of a joint dismissal, such as the one filed in the wrongful-death action, in Greene v. Town of Cedar Bluff, 965 So. 2d 773, 778-79 (Ala. 2007):

> "The first action, filed by CCC and Green, was terminated upon the filing of the stipulation for dismissal signed by all the parties and filed with the Cherokee Circuit Court on February 24, 2005. We addressed the effect of a dismissal under Rule 41(a)(1)[, Ala. R. Civ. P.,] on the trial court's jurisdiction in Ex parte Sealy, L.L.C., 904 So. 2d 1230, 1235-36 (Ala. 2004), as follows:
>
> > " 'Although cases involving a Rule 41(a)(1) dismissal "are not perfectly analogous to cases in which the ... court lacks subject matter jurisdiction, both contexts present the question of the court's continuing power over litigants who do not, or no longer, have a justiciable case before the court." Chemiakin v. Yefimov, 932 F.2d 124, 128 (2d Cir. 1991). Thus, it is sometimes stated that a Rule 41(a)(1) dismissal deprives the trial court of "jurisdiction" over the "dismissed claims." Duke Energy Trading & Mktg., L.L.C. v. Davis, 267 F.3d

> 1042, 1049 (9th Cir. 2001); see Safeguard Business Sys., Inc. v. Hoeffel, 907 F.2d 861, 864 (8th Cir. 1990); see also Gambale v. Deutsche Bank AG, 377 F.3d 133, 139 (2d Cir. 2004); Netwig v. Georgia Pacific Corp., 375 F.3d 1009, 1011 (10th Cir. 2004); Meinecke v. H & R Block of Houston, 66 F.3d 77, 82 (5th Cir. 1995); Williams v. Ezell, 531 F.2d 1261, 1264 (5th Cir. 1976) ("The court had no power or discretion to deny plaintiffs' right to dismiss or to attach any condition or burden to that right. That was the end of the case and the attempt to deny relief on the merits and dismiss with prejudice was void.").
>
> " 'Similarly stated, "[t]he effect of a voluntary dismissal without prejudice is to render the proceedings a nullity and leave the parties as if the action had never been brought." In re Piper Aircraft Distrib. Sys. Antitrust Litig., 551 F.2d 213, 219 (8th Cir. 1977). Moreover, " '[i]t carries down with it previous proceedings and orders in the action, and all pleadings, both of plaintiff and defendant, and all issues, with respect to plaintiff's claim.' " Id. (quoting 27 C.J.S. Dismissal and Nonsuit § 39 (1959)). In particular, "Rule 41(a)(1)(I)[, Fed. R. Civ. P.,] prevents an award of 'costs' against the party who dismisses the suit voluntarily. Only the filing of a second suit on the same claim allows the court to award the costs of the first case. See Rule 41(d)[, Fed. R. Civ. P.]. ..." Szabo Food Serv., Inc. v. Canteen Corp., 823 F.2d 1073, 1077 (7th Cir. 1987).'

"Although Ex parte Sealy dealt with a dismissal under Rule 41(a)(1)(I) and here we deal with a dismissal under

> Rule 41(a)(1)(ii), we see no basis for a different result.[19] After the filing of the stipulation of dismissal, the trial court lacked authority to entertain the first action; therefore, its subsequent orders in that action are void."

(Emphasis added.) See also Walker Bros. Inv., Inc. v. City of Mobile, 252 So. 3d 57, 62 (Ala. 2017) (stating that the effect of a voluntary dismissal is that it " ' "ipso facto deprived the trial court of the power to proceed further with the action and rendered all orders entered after its filing void." ' Synovus [Bank v. Mitchell], 206 So. 3d [568,] 571 [(Ala. 2016)] (quoting Sealy, 904 So. 2d at 1236).").

No authority was offered in the circuit court's August 11, 2011, and November 21, 2011, orders, and none is provided by the Farver trust, explaining how the circuit court had the authority, based on Thomas's "Motion for Authorization," to "reopen" the wrongful-death action eight

[19]Rule 41(a)(1)(I), Ala. R. Civ. P., concerns dismissals effectuated by "filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs," whereas Rule 41(a)(1)(ii) concerns dismissals effectuated by "filing a stipulation of dismissal signed by all parties who have appeared in the action."

years after it was dismissed with prejudice.[20] As the brothers have observed, the structured settlement was not even directly approved by the circuit court for purposes of the dismissal of the wrongful-death action, and the circuit court did not expressly retain jurisdiction to enforce the terms of the structured settlement, so even the guise of enforcing the structured settlement did not offer an avenue for reviving the wrongful-death action so long after it was disposed of. Cf. Ex parte Caremark Rx, LLC, 229 So. 3d 751, 757 (Ala. 2017) (noting, in a case in which "the trial court approved the parties' settlement," that "a trial court nevertheless continues to hold 'residual jurisdiction' even after th[e] 30-day [postjudgment] period expires such that it can still take any steps that are necessary to enforce its judgment"); Bates v. Stewart, 99 So. 3d 837, 854 (Ala. 2012) (finding that a trial court "clearly exceeded its discretion ...

[20]The "Motion for Authorization" did not ask the circuit court "to revisit ... the efficacy of the purported dismissal itself as a judgment," which the circuit court would have had the authority to consider pursuant to a Rule 60(b)(4), Ala. R. Civ. P., motion, but rather the motion asked the circuit court to approve an alteration to the terms of the structured settlement. Synovus Bank v. Mitchell, 206 So. 3d 568, 574 (Ala. 2016) (Murdock, J., concurring specially).

when it reopened a final judgment entered more than eight years before" but concluding that the portion of the trial court's order that sought "to examine the trust documents to ensure that the ... trust was established in accordance with the terms of the settlement agreement ... was within the trial court's authority to enforce the terms of the settlement agreement"); George v. Sims, 888 So. 2d 1224, 1227 (Ala. 2004) ("Although a trial court has 'residual jurisdiction or authority to take certain actions necessary to enforce or interpret a final judgment,' that authority is not so broad as to allow substantive modification of an otherwise effective and unambiguous final order." (quoting Helms v. Helms' Kennels, Inc., 646 So. 2d 1343, 1347 (Ala. 1994))).

The only purported authority for "reopening" the wrongful-death action is the probate court's April 20, 2010, order, but, even though the probate court had the authority to appoint a legal conservator for the then-minor brothers' estates under the Alabama Uniform Guardianship and Protective Proceedings Act ("the AUGPPA"), Ala. Code 1975, § 26-2A-1 et seq., such authority could not empower the circuit court to revive an action that had so long ago ceased to exist.

In Gallagher Bassett Services, 991 So. 2d at 700-01, this Court held:

> "After the stipulation of dismissal was filed in this case, there ceased to be a justiciable controversy over which the court had 'continuing power.' [Ex parte Sealy, L.L.C.,] 904 So. 2d [1230,] at 1235 [(Ala. 2004)]. Thus, on October 19, 2006, when Gallagher filed its motion to intervene, there was no case in which Gallagher could intervene. The trial court thus lacked authority over Gallagher's motion, either to grant or deny it. It follows that its order denying Gallagher's motion is void."

Likewise, in the wrongful-death action the circuit court lacked the authority to entertain the "Motion for Authorization" filed eight years after the filing of the joint stipulation of dismissal, and therefore its August 11, 2011, and November 21, 2011, orders granting that motion were void.[21]

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[21]Several of our past cases have described this lack of authority to revive a defunct case as a "loss of jurisdiction" or even a "loss of subject-matter jurisdiction." See, e.g., Ex parte Progressive Specialty Ins. Co., 31 So. 3d 661, 663 & n.2 (Ala. 2009); State v. Webber, 892 So. 2d 869, 870 (Ala. 2004); Ex parte Allstate Life Ins. Co., 741 So. 2d 1066, 1071 (Ala. 1999). It is more accurate to say that the problem at issue here is the exercise of jurisdiction over the particular case rather than the existence of jurisdiction over the type of case, the latter of which describes subject-matter jurisdiction. See Commonwealth v. Steadman, 411 S.W.3d 717, 722 (Ky. 2013) (explaining in detail that "[t]here is a significant difference between general subject-matter jurisdiction and jurisdiction over a particular case"). As the United States Supreme Court has noted, "the judicial power unalterably includes the power to render final judgments"

However, the probate court's April 20, 2010, order raises another problem with the circuit court's exercise of power in its 2011 orders.

> "As to the administration of guardianships and conservatorships, the probate court is a court of general and original jurisdiction. See Ala. Const.1901, § 144; Ala. Code 1975, § 12-13-1(b)(6) and (b)(7); see also Ala. Code 1975, § 26-2A-31(a). Nevertheless, pursuant to Ala. Code 1975, § 26-2-2,
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> > " '[t]he administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court, at any time before the final settlement thereof by the guardian or conservator of any such guardianship or conservatorship or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward without assigning any special equity, and an order of removal must be made by the court or judge upon the filing of a sworn petition by any such guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward, reciting in what capacity the petitioner acts and that in the opinion of the petitioner such guardianship or conservatorship can be better

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"with regard to a particular case or controversy." Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 231, 227 (1995). This necessarily means that the judicial power does not include the authority to revisit a final disposition in a particular case, except in the specifically defined circumstances provided in Rule 60(b), Ala. R. Civ. P., that are inapplicable here.

> administered in the circuit court than in the probate court.' "

Ex parte Casey, 88 So. 3d 822, 827-28 (Ala. 2012) (footnotes omitted). As the brothers have repeatedly argued, and as we have carefully recounted in this opinion, the probate court in its April 20, 2010, order appointed Thomas only as "special conservator," not as general conservator over the brothers' estates. Thus, in his designated capacity, Thomas did not have the legal authority to remove a protective proceeding concerning the brothers' estates to the circuit court. This is, presumably, why the probate court had ordered Thomas to return to the probate court after he had obtained a determination from the circuit court as to whether a sale of structured-settlement-payment rights was in the brothers' best interests. Moreover, Thomas did not file in the circuit court a proper petition for the removal of the conservatorship proceedings regarding the brothers' estates, and the circuit court did not enter such an order of removal.

> "[W]e conclude here, as we did in DuBose [v. Weaver, 68 So. 3d 814 (Ala. 2011)], that the 'filing of a petition for removal in the circuit court and the entry of an order of removal by that court are prerequisites to that court's acquisition of jurisdiction over' a conservatorship proceeding under § 26-2-2. ...

> "....
>
> "For the foregoing reasons, we conclude that the circuit court never obtained subject-matter jurisdiction over the conservatorship proceeding and that the orders entered by the circuit court in case no. CV-09-0144 are void and therefore due to be vacated."

Beam v. Taylor, 149 So. 3d 571, 576-77 (Ala. 2014). The circuit court's 2011 orders authorizing the sale of certain structured-settlement-payment rights clearly implicated the brothers' estates, yet the circuit court did not have jurisdiction over the brothers' estates when it entered those orders. We recognize that the circuit court's actions in this regard were precipitated by the facts that Thomas and his attorney Bailey blatantly ignored the probate court's April 20, 2010, order and instead falsely gave the circuit court the impression that Thomas had been appointed legal conservator of the brothers' estates and that the circuit court therefore believed that Thomas had the authority to act on the brothers' behalf. Indeed, as the circuit court described in detail in its April 11, 2019, order in the wrongful-death action, "a fraud has been perpetrated on this [circuit] Court by Mr. Bailey in the proceedings under which he sought and received access to the annuities and funds belonging to Matthew and

Michael Scoggins." Even so, the fact that the circuit court believed that it had the authority to authorize Thomas to sell certain structured-settlement-payment rights does not alter the reality that the circuit court did not possess such authority.

From the foregoing, it is clear that the circuit court lacked the authority to enter its August 11, 2011, and November 21, 2011, orders in at least two respects. Accordingly, the circuit court erred in denying the brothers' motion to set aside those orders, and we therefore grant the petition for the writ of mandamus in case number 1200107 and direct the circuit court to declare those orders void.

B. The Motion to Intervene in the Stratcap Actions (Case Nos. 1200103, 1200104, 1200105, and 1200106)

The brothers contend that the circuit court erred in denying Michael's motion to intervene in or to be substituted as the real party in interest in the Stratcap actions and that this Court should issue a writ of mandamus ordering a reversal of that denial.[22] Before evaluating the

[22]We note that despite the brothers' repeated assertions in their briefs, we have no materials before us indicating that Matthew ever filed

brothers' arguments with respect to the denial of that motion, we address two arguments the brothers present for the first time in this Court asserting that the circuit court lacked jurisdiction with respect to the Stratcap actions.

First, the brothers present a general argument that, "because [the] 2011 wrongful-death orders are void due to want of subject-matter jurisdiction, the April 26, 2012, orders in the Stratcap [actions] are void as well." The brothers' brief, p. 20. This is so, the brothers say, because the April 26, 2012, orders "specifically incorporate and rely upon the void 2011 orders and require the parties thereto to 'discharge their obligations' under the August 11, 2011, and November [21, 2011,] orders from the wrongful-death case." Id.

The brothers offer no authority in support of their theory that the circuit court's lack of subject-matter jurisdiction to enter the 2011 orders in the wrongful-death action somehow extends to the April 26, 2012,

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a motion to intervene in the Stratcap actions. We have such a motion only from Michael, filed on October 2, 2020, seeking intervention in the two Stratcap actions that involved the transfer of annuity-payment rights that belonged to him.

orders approving the transfer of certain structured-settlement-payment rights to Stratcap and its assignee, the Farver trust. Moreover, this argument confuses the nature of the 2011 orders in the wrongful-death action with the nature of the April 26, 2012, orders in the Stratcap actions. As we explained in Parts B and C of the rendition of the facts and in Part A of this analysis, the 2011 orders in the wrongful-death action purported to determine that a sale of certain structured-settlement-payment rights was in the brothers' best interests, and those orders purportedly empowered Thomas to execute such a sale. In contrast, the April 26, 2012, orders, in accordance with the ASSPA, approved the transfer of certain structured-settlement-payment rights from the alleged "payee," Thomas,[23] to Stratcap and, in turn, its assignee, the Farver trust. As this Court has repeatedly explained, "a circuit court's subject-matter jurisdiction is derived from the Alabama Constitution and the Alabama Code." Campbell v. Taylor, 159 So. 3d 4, 10 (Ala. 2014). "Under the

[23]Thomas does not appear to have been the correct "payee" under the terms of the structured settlement or under the definition of that term in § 6-11-51(8), Ala. Code 1975. See supra note 14.

Alabama Constitution, a circuit court 'shall exercise general jurisdiction in all cases except as may be otherwise provided by law.' Amend. No. 328, § 6.04(b), Ala. Const. 1901 [now § 142, Official Recomp.]." Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006). Thus, as long as the Stratcap petitions were filed in accordance with the jurisdictional requirements of the ASSPA, the circuit court had subject-matter jurisdiction over the petitions.

Section 6-11-53, Ala. Code 1975, provides, in part:

> "No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by the court or responsible administrative authority ...."[24]

(Emphasis added.) Section 6-11-55, Ala. Code 1975, addresses the filing of petitions for the transfer of structured-settlement-payment rights.

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[24]Section 6-11-51(11), Ala. Code 1975, defines a "responsible administrative authority" as, "[w]ith respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement."

"(a) An application under [the ASSPA] for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in the county in which the payee resides, in the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business, or in any court or before any responsible administrative authority which approved the structured settlement agreement.

"(b) Not less than 20 days prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under Section 6-11-53, [Ala. Code 1975,] the transferee shall file with the court or responsible administrative authority a notice of the proposed transfer and the application for its authorization. Such notice and application shall include all of the following:

"(1) A copy of the transferee's application.

"(2) A copy of the transfer agreement.

"(3) A copy of the disclosure statement required under Section 6-11-52[, Ala. Code 1975].

"(4) A listing of each of the payee's dependents, together with each dependent's age.

"(5) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting a written response to the court or responsible administrative authority or by participating in the hearing.

> "(6) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.
>
> "(c) The notice and application required by subsection (b) shall be served on all interested parties in the manner provided by the Alabama Rules of Civil Procedure for the service of process."

(Emphasis added.)

The brothers have noted that the Calhoun Circuit Court did not approve the structured settlement. Even so, the ASSPA allows a transfer petition to be brought in any court in the county where the payee resides, assuming there is not another "responsible administrative authority" before which the petition must be brought. As we have observed, circuit courts possess general jurisdiction, and regardless of who the correct "payee" was for purposes of the Stratcap actions, it is undisputed that Thomas and the brothers resided in Calhoun County at the time the Stratcap petitions were filed in the Calhoun Circuit Court. Therefore, the

circuit court had subject-matter jurisdiction to entertain Stratcap's transfer petitions.

The brothers also contend that the circuit court lacked jurisdiction in the Stratcap actions because they were never given notice of the Stratcap petitions. Subsection 6-11-55(b)(5), quoted in full above, requires "interested part[ies]" to be given notice of the filing of transfer petitions so that they may "support, oppose, or otherwise respond to the transferee's application, either in person or by counsel." It is undisputed that the brothers did not receive notice of the Stratcap actions,[25] and the Farver trust does not deny that the brothers were "interested parties," which § 6-11-51(6) defines as, "[w]ith respect to any structured settlement, the

[25]The Farver trust argues that "[t]he brothers had actual notice of [Thomas's] efforts to sell the annuity payments" because "[t]hey attended the April 20, 2010, hearing on the Motion for Authorization" and "[t]hey also attended a circuit court hearing in 2011 on [Matthew's guardian ad litem's] motion to rescind the 2011 orders." The Farver trust's brief, p. 20. But this argument melds the "reopening" of the wrongful-death action in 2010 with the filing of the Stratcap petitions in 2012. The fact that the brothers were aware that Thomas had been authorized by the circuit court to sell certain structured-settlement-payment rights in the "reopening" of the wrongful-death action does not mean they must have known about the Stratcap actions, which concerned the actual transfer of structured-settlement-payment rights.

payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement." The brothers argue that the failure to give notice to interested parties, as required by § 6-11-55(b)(5) and in accordance with § 6-11-55(b)(6) of the ASSPA, is a jurisdictional defect that voids the transfers approved by the circuit court in the April 26, 2012, orders.

Our courts have not previously determined what effect a failure to notify interested parties has upon a structured-settlement transfer under the ASSPA, but, in arguing that such a failure is jurisdictional, the brothers presumably would rely upon the Court's often repeated statement that " '[a] judgment is void only if the court rendering it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process.' " Image Auto, Inc. v. Mike Kelley Enters., Inc., 823 So. 2d 655, 657 (Ala. 2001) (quoting Insurance Mgmt. & Admin., Inc. v. Palomar Ins. Corp., 590 So. 2d 209, 212 (Ala. 1991)) (emphasis added).

> "[T]he term 'due process,' in the context of providing a foundation for declaring a judgment void, refers to procedural, rather than substantive, due process:
>
> > "'"[I]t is established by the decisions in this and in Federal jurisdictions that due process of law means notice, a hearing according to that notice, and a judgment entered in accordance with such notice and hearing."'"

Ex parte Third Generation, Inc., 855 So. 2d 489, 492-93 (Ala. 2003) (quoting Neal v. Neal, 856 So. 2d 766, 781 (Ala. 2002), quoting in turn Frahn v. Greyling Realization Corp., 239 Ala. 580, 583, 195 So. 758, 761 (1940)).

The problem with this argument is that the ASSPA itself suggests that failures to fulfill its procedural requirements are remedied by holding the transferee accountable, not by voiding the transfer transaction. Section 6-11-54(a)(2)b., Ala. Code 1975, provides

> "(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer in the following cases:
>
> > "....
> >
> > "b. For any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the parties with the order of the court or responsible administrative authority or

> arising as a consequence of the transferee's failure to comply with [the ASSPA]."

(Emphasis added.) Similarly, § 6-11-56(f), Ala. Code 1975, provides:

> "Compliance with the requirements set forth in Section 6-11-52[, Ala. Code 1975,] and fulfillment of the conditions set forth in Section 6-11-53[, Ala. Code 1975,] shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions."

(Emphasis added.)

> "As of July of 2006, 46 states have enacted structured settlement protection statutes largely styled after the model Structured Settlement Protection Act developed by the National Structured Settlement Trade Association (Hindert & Ulman, [Transfers of Structured Settlement Payment Rights: What Judges Should Know about Structured Settlement Protection Acts, 44 Judges' Journal, Issue No. 2, 19 (Spring 2005)])."

In re 321 Henderson Receivables, L.P., 13 Misc. 3d 526, 529, 819 N.Y.S.2d 826, 829 (Sup. Ct. 2006). The brothers have not cited a single authority establishing that the lack of notice to an "interested party" voids a final judgment approving a transfer of structured-settlement-payment rights, as opposed to being remedied by pursuing claims against the transferee,

as the brothers are doing in the 2019 action against Stratcap.[26] We therefore decline to reach the conclusion that the April 26, 2012, orders are void based on the due-process argument presented to us by the brothers.

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[26]Both the brothers and the Farver trust argue that Ex parte Bashinsky, 319 So. 3d 1240 (Ala. 2020), supports their respective positions on this issue; neither party is correct. The brothers contend that the fact that the Bashinsky Court set aside a probate court's order appointing a temporary guardian and conservator because of a fundamental lack of due process -- Ms. Bashinsky was denied representation by legal counsel and the chance to present arguments on her behalf or to cross-examine witnesses in a hearing determining whether she needed a temporary guardian and conservator -- demonstrates that a lack of notice of a proceeding renders the orders stemming from that proceeding void. However, in addition to differences in the type of due-process violations that occurred in Bashinsky versus the alleged violation in this case, Ms. Bashinsky argued before the probate court that her due-process rights had been violated, whereas the brothers did not present to the circuit court their argument that the Stratcap orders were void because of a deprivation of due process. Thus, Bashinsky is no help to the brothers in establishing that their claimed deprivation of due process was a jurisdictional defect that can be raised for the first time in this Court. The Farver trust argues that Bashinsky indicated that a lack of notice is harmless error if the party is present despite a lack of notice, but, in making that argument, the Farver trust again relies on the mistaken notion that the fact that the brothers were represented in the "reopening" of the wrongful-death action somehow means they were aware of the Stratcap actions.

Having concluded that the circuit court's April 26, 2012, orders approving the transfers in the Stratcap actions are not due to be set aside on due-process grounds, we now address the circuit court's October 7, 2020, order denying Michael's motion to intervene in the Stratcap actions. In doing so, we first observe that, although Michael made a passing reference in his motion asking to be substituted as the real party in interest in the Stratcap actions, both the style and substance of the motion support construing it solely as a motion to intervene in the Stratcap actions. The only authority Michael cited in his motion was Rule 24, Ala. R. Civ. P., the rule addressing intervention. Moreover, at the time Stratcap filed the transfer petitions in 2012, the "legal conservator of the estate of Michael Todd Scoggins" would have been the correct party to substitute for Thomas, because Michael was still a minor, but no legal conservator was ever appointed. Therefore, for purposes of evaluating the circuit court's denial of Michael's motion, we construe it to

be a motion to intervene in the Stratcap actions, not a motion to be substituted as the real party in interest.[27]

We also note that the materials before us do not support the brothers' argument of a discrepancy or contradiction between the circuit court's denial of Michael's motion to intervene and the circuit court's granting a motion to intervene filed by the Farver trust. As we noted in Part D of the rendition of the facts, the Farver trust's motion to intervene clearly pertained to the wrongful-death action, not the Stratcap actions. The evidence for the foregoing conclusion includes: (1) that the Farver trust filed its motion to intervene a little more than a month after the

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[27]The Farver trust contends that the petition for the writ of mandamus on this issue should be rejected because " '[a] denial of a motion to intervene is always an appealable order.' " Jim Parker Bldg. Co. v. G & S Glass & Supply Co., 69 So. 3d 124, 130 (Ala. 2011) (quoting Farmers Ins. Exch. v. Raine, 905 So. 2d 832, 833 (Ala. Civ. App. 2004)). It is true that Michael did not appeal the denial of his motion to intervene, but the mandamus petition was filed on November 12, 2020, which was within 42 days of the circuit court's October 7, 2020, denial of that motion. We note that "a mandamus petition is the proper method by which to review the issue whether a party should be allowed to proceed as the real party in interest," Ex parte 4tdd.com, Inc., 306 So. 3d 8, 17 (Ala. 2020), and so we choose not to foreclose review on the basis that Michael should have filed an appeal rather than a petition for a writ of mandamus concerning his motion to intervene.

brothers filed their "Motion to Set Aside" the circuit court's 2011 orders in the wrongful-death action, which was five months before Michael filed his motion to intervene in the Stratcap actions; (2) that the Farver trust's motion directly referenced the brothers' "Motion to Set Aside" multiple times but never mentioned the Stratcap actions; (3) that the Farver trust's motion to intervene referenced the case number of the wrongful-death action; and (4) that the circuit court granted the Farver trust's motion to intervene on the same date it was filed. Thus, even though the circuit court's order granting the Farver trust's motion to intervene contained the style of one of the Stratcap actions, that was obviously a clerical error; the circuit court actually purported to permit the Farver trust to intervene in the wrongful-death action. Therefore, the fact that the circuit court granted a motion to intervene filed by the Farver trust in one action but denied Michael's motion to intervene in other actions is not evidence of an unfair contradiction from the circuit court.

The brothers also contend that they seek review of "orders denying petitioners' motions to set aside filed in the wrongful-death and Stratcap lawsuits." The brothers' brief, p. 2. However, in the materials before us,

we have no order from the circuit court denying a motion to set aside the April 26, 2012, orders it issued in the Stratcap actions. In fact, the only order the brothers cite in support of this statement is the circuit court's June 26, 2020, order that denied their motion to set aside the 2011 orders in the wrongful-death action. Likewise, despite statements in the brothers' briefs, Michael never directly argued in his October 2, 2020, motion to intervene that the circuit court's April 26, 2012, orders approving Stratcap's transfer petitions should be set aside. In that motion, Michael noted that he had not been given notice of the Stratcap petitions when they were filed and that "no legal conservator with [the] authority" to approve the reassignment of the rights to annuity payments "had ever been appointed for (then minor) Michael." However, Michael simply argued in his motion to intervene that there were "upcoming payments" provided by the structured settlement that "directly impact Michael and his claim to the annuity payments as presented in the 2019 Litigation" and that, because no one already in the Stratcap actions represented Michael's interests, he should be allowed to intervene in the Stratcap actions. Further, Michael asked for the Stratcap actions to be

1200102, 1200103, 1200104, 1200105, 1200106, and 1200107 consolidated with the 2019 action. Thus, it was not apparent in Michael's motion to intervene that he was seeking to intervene in the Stratcap actions in order to contend that the Stratcap actions must be set aside based on a fraud upon the court or a lack of subject-matter jurisdiction.

Because we have no motion or order pertaining to setting aside the April 26, 2012, orders in the Stratcap actions, we elect not to address the brothers' contention that we should direct the circuit court to set aside those orders based upon a fraud perpetrated upon the circuit court. We recognize that "a judgment procured by fraud on the court itself may be set aside by any court, trial or appellate, on its own motion, even after three years." Ex parte Waldrop, 395 So. 2d 62, 62 (Ala. 1981) (emphasis added). However, in deciding whether to uphold or to set aside a judgment on this basis, "[c]ourts are to weigh the interest of justice against the need for finality of judgments in examining a claim of fraud on the court." Christian v. Murray, 915 So. 2d 23, 29 (Ala. 2005). Because the circuit court stated in its October 7, 2020, order denying Michael's motion to intervene that "[i]t is the opinion of the Court that these actions are concluded," it might be inferred that the circuit court believed the

need for finality outweighed the interest of justice in this instance. But we have nothing from the circuit court actually confirming that it performed any such balancing of interests, and it certainly was not given the benefit of arguments delineating the pros and cons of such a determination. Because that issue was not squarely presented to the circuit court in the motion to intervene, and it is squarely presented to the circuit court in the 2019 action, we forgo addressing it in this review.

Absent any due-process or fraud-based argument in support of the motion to intervene, we are left with a discretionary denial of a motion that sought intervention well after the Stratcap actions had concluded.[28]

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[28]The general standard of review for denial of a motion to intervene, whether it is an intervention as a matter of right or a permissive intervention, is whether the trial court exceeded its discretion. See, e.g., State v. Estate of Yarbrough, 156 So. 3d 947, 951 (Ala. 2014) (" 'The standard of review applicable in cases involving a denial of a motion to intervene as of right is whether the trial court has acted outside its discretion.' " (quoting Black Warrior Riverkeeper, Inc. v. East Walker Cnty. Sewer Auth., 979 So. 2d 69, 72 (Ala. Civ. App. 2007))); Jim Parker Bldg. Co. v. G & S Glass & Supply Co., 69 So. 3d 124, 129 (Ala. 2011) (" 'The standard of review for a denial of a motion for permissive intervention is whether the trial court abused its discretion.' " (quoting Universal Underwriters Ins. Co. v. Anglen, 630 So. 2d 441, 443 (Ala. 1993)) (footnote omitted)).

Indeed, as we already have observed, the circuit court stated in its October 7, 2020, order that it was denying Michael's motion to intervene because "[i]t is the opinion of the Court that these actions are concluded and no legitimate and legal purpose would be served by consolidating them with each other and with the 2019 case."

This Court has stated:

> "Generally, postjudgment motions to intervene are disfavored. Duncan v. First Nat'l Bank of Jasper, 573 So. 2d 270, 275 (Ala. 1990). The rationale behind this general principle is the assumption that allowing intervention after a judgment has been entered will prejudice the rights of the existing parties or substantially interfere with the orderly processes of the court."

Magee v. Boyd, 175 So. 3d 79, 140 (Ala. 2015). See also Randolph Cnty. v. Thompson, 502 So. 2d 357, 364 (Ala. 1987) ("[M]otions for intervention after judgment have not met with favor in the courts."). This Court has gone so far as to state that "there is no right of appeal from the denial of a motion to intervene in a defunct action." Gallagher Bassett Servs., 991 So. 2d at 700. This is not to say, however, that a right to intervene must be denied if it is filed subsequent to a final judgment. "The court must consider the totality of the circumstances in determining whether the

motion for intervention is timely and not merely the point to which the action has progressed at the time the motion is filed." QBE Ins. Corp. v. Austin Co., 23 So. 3d 1127, 1132 (Ala. 2009).

There have been at least two instances in which this Court has permitted a party to intervene after a final judgment had been entered and after the time for filing a postjudgment motion had expired, which was the situation presented here. See State v. Estate of Yarbrough, 156 So. 3d 947, 952 (Ala. 2014), and Randolph Cnty. v. Thompson, 502 So. 2d at 365. However, in both Thompson and Estate of Yarbrough, the interventions were expressly sought as a matter of right under Rule 24(a)(2), Ala. R. Civ. P., this Court permitted the interventions (that the circuit courts had denied them) for the purpose of allowing the intervening parties to appeal the underlying judgments, and the intervenors had sought to intervene as soon as they were aware of the judgments in question. See, e.g., Estate of Yarbrough, 156 So. 3d at 950 (recounting that the State filed its motion to intervene in the circuit court five days after this Court had dismissed its appeal but had ordered that the State had a right to intervene in order to appeal the final judgment);

Thompson, 502 So. 2d at 365 (noting that Randolph County filed its motion to intervene "just one week" after it had become aware of the litigation).

In this instance, Michael's motion did not clearly delineate whether he was seeking permissive intervention or intervention as a matter of right. This is important because "trial courts have broader discretion in denying a motion for permissive intervention as untimely under Rule 24(b) than they do in denying as untimely a motion to intervene as of right under Rule 24(a)." QBE Ins. Corp., 23 So. 3d at 1131. As we have already mentioned, Michael also did not clearly indicate in his motion that he was seeking to set aside the circuit court's orders approving the transfers of certain structured-settlement-payment rights. Such an argument is especially important when a party seeks to intervene after a final judgment has been entered because otherwise the motion to intervene serves no relevant purpose in the "defunct" action. Phillips, 991 So. 2d at 700. Finally, and perhaps most importantly, the facts do not show that Michael filed his motion to intervene as soon as he was aware of the Stratcap actions. Michael reached the age of majority on

November 28, 2012, and both he and his brother were aware from the time of the entry of the circuit court's 2011 orders in the wrongful-death action -- litigation in which they were represented by guardians ad litem -- that certain structured-settlement-payment rights would be sold and that payments to them would be coming from the trusts rather than from annuity payments. Indeed, in their March 8, 2019, "Emergency Motion for Accounting and Termination of Trust," the brothers noted:

> "16. While certain distributions were made by the Trustees to [Michael] and Matthew after 2012, these distributions did not come close to totaling the amount of money held in each Trust.
>
> "....
>
> "18. [Michael] and Matthew have been unable to get in contact with the 'Trustees' or gain clarity as to the balance of the Trusts' accounts. Bailey and Askew have not returned phone calls and have not provided a formal accounting of the funds in the Trust accounts or the disbursements made therefrom. Nor has money been provided to [Michael] and Matthew in many months.
>
> "19. In May of 2018, Matthew filed a pro se motion for an accounting with the [circuit] Court, requesting an accounting of all monies held by the Trusts and the current ledger of the remaining monies."

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Although it is not clear exactly when Michael knew about the Stratcap actions, it is clear that he was aware of them well before he filed his motion to intervene on October 2, 2020. Given that the Stratcap actions had concluded over eight years before Michael filed his motion to intervene, that it was unclear from the motion what relief Michael was seeking other than consolidation of the Stratcap actions with the 2019 action, and that under the ASSPA the remedy for errors with respect to the transfers involves pursuing claims against Stratcap, which the brothers are already doing in the 2019 action, we cannot say that the circuit court exceeded its discretion in denying Michael's motion to intervene in the Stratcap actions. Therefore, we deny the petitions for the writ of mandamus in case numbers 1200103, 1200104, 1200105, and 1200106.

C. American General's Motion to Interplead Funds in the 2019 Action (Case No. 1200102)

The brothers petition this Court for a writ of mandamus seeking review of the circuit court's October 1, 2020, order denying American

General's motion to interplead annuity payments in the 2019 action.[29] As we recounted in Part E of the rendition of the facts, the circuit court denied the motion for interpleader relief with the explanation that "American General remains obligated to deliver the annuity payments to the Farver trust in accordance with the [circuit] Court's April 26, 2012, orders entered in case nos. CV-2012-900098 and CV-2012-900100 [the Stratcap actions pertaining to American General's annuities]."

> "Interpleader is a means by which a party may prevent being subjected to double or multiple liability. See Rule 22, Ala. R. Civ. P. The purpose of interpleader 'is to bring all claimants to a fund into court in one action and determine who is entitled to the fund or to a portion of it.' Ex parte Lewis, 571 So. 2d 1069, 1075 (Ala. 1990) (Maddox, J., dissenting). ' "Historically, interpleader was available to protect a party who recognized an indebtedness, was willing to pay it, but was

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[29]In their initial brief, the brothers ask this Court to "order interpleader of the annuity payment streams held by American General and MassMutual in the 2019 [action]." The brothers' brief, p. 29 (emphasis added). Neither a motion to interplead funds from MassMutual nor a circuit-court order denying such a motion was included in the materials provided to the Court, and, therefore, our mandamus review of this issue cannot concern payments from MassMutual.

We also note, however, that American General in its brief to this Court states that it "maintains that the denial of its Motion for Interpleader Relief was in error." American General's brief, p. 6.

> only interested in paying it once. The interpleader procedure affords the payor an opportunity to clothe his disbursement with the protection of a judicial determination." ' Gilbert v. Congress Life Ins. Co., 646 So. 2d 592, 594 (Ala. 1994) (quoting 1 Champ Lyons, Jr., Alabama Rules of Civil Procedure Annotated, 344 (2d ed. 1986))."

Childersburg Bancorporation, Inc. v. Alabama Dep't of Env't Mgmt., 893 So. 2d 1142, 1145 (Ala. 2004).

> "The phase of interpleader known as the 'first stage' is conducted without evaluation of the merits of the various claims except possibly to determine whether the stakeholder's fears are more than unreasonable and groundless. Extended inroads into the merits at this phase are to be avoided except to the extent noted in order to make a determination as to the bona fides of the stakeholder's apprehension over multiple vexation."

1 Gregory C. Cook, Alabama Rules of Civil Procedure Annotated § 22.2 (5th ed. 2018).

In Part A of this analysis, we concluded that the circuit court's 2011 orders in the wrongful-death action must be set aside because the circuit court lacked the authority to enter those orders. As we noted in Part B of this analysis, the brothers are actively contesting the legitimacy of the circuit court's April 26, 2012, orders from the Stratcap actions in the 2019 action. Whether they ultimately will succeed in undermining the orders

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in the Stratcap actions is not relevant to whether American General's motion to interplead funds should be granted. What is relevant is that multiple parties clearly claim a stake in American General's annuity payments. The circuit court granted American General's motion to intervene in the 2019 action, which was filed with the intention of desiring to interplead its annuity-payment funds. Under those circumstances, the circuit court should have granted American General's motion for interpleader relief. Accordingly, we grant the petition for the writ of mandamus in case number 1200102 and direct the circuit court to set aside its order denying American General's motion for interpleader relief.

IV. Conclusion

Based on the foregoing, we grant the petition for the writ of mandamus in case number 1200107, which pertains to the circuit court's denial of the brothers' motion to set aside the circuit court's August 11, 2011, and November 21, 2011, orders in the wrongful-death action; we deny the petitions for the writ of mandamus in case numbers 1200103, 1200104, 1200105, and 1200106, which pertain to the circuit court's October 7, 2020, order denying Michael's motion to intervene in the

Stratcap actions; and we grant the petition for the writ of mandamus in case number 1200102, which pertains to the circuit court's October 1, 2020, order denying American General's motion for interpleader relief in the 2019 action.

1200102 -- PETITION GRANTED; WRIT ISSUED.

1200103 -- PETITION DENIED.

1200104 -- PETITION DENIED.

1200105 -- PETITION DENIED.

1200106 -- PETITION DENIED.

1200107 -- PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, and Stewart, JJ., concur.

Mitchell, J., recuses himself.