IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
June 20, 2023 Session

DIANNE HAMILTON, AS CONSERVATOR ON BEHALF OF CASSIE MCGILL v. METHODIST HEALTHCARE MEMPHIS HOSPITALS

Appeal from the Circuit Court for Shelby County
No. CT-0531-19 Mary L. Wagner, Judge

No. W2022-00054-COA-R3-CV

This appeal arises from a health care liability action filed in circuit court by a conservator on behalf of a ward. After a three-week jury trial resulted in a mistrial, the conservator took a nonsuit. The conservator refiled the complaint against only one defendant hospital, asserting that it was vicariously liable for the actions of a doctor based on a theory of apparent agency. The defendant hospital moved for summary judgment on the basis that the conservator had entered into a consent agreement agreeing not to sue the doctor in the refiled suit if the doctor agreed to withdraw his motion for discretionary costs. According to the defendant hospital, this agreement releasing the alleged agent from liability extinguished the conservator's right to pursue a vicarious liability claim against the principal. In response, the conservator took the position that the consent agreement was not binding because it was never approved by the probate court that appointed her. The circuit court granted summary judgment to the defendant hospital, finding that the order appointing the conservator authorized her to dispose of property, execute instruments, enter into contracts, pursue legal causes of action, and manage money, thereby authorizing her to enter into the consent agreement. The circuit court found nothing in the order of appointment, the relevant statutes, or caselaw that would impose a mandatory requirement for approval of the settlement by the probate court. Because the conservator had released the alleged agent from liability, the circuit court found that the conservator could not pursue vicarious liability claims against the defendant hospital. The conservator filed a motion to alter or amend, asking the circuit court to consider an "Advisory Opinion" of the probate court on the matter. The circuit court denied the motion, explaining that it respectfully disagreed with the Advisory Opinion of the probate court. The conservator appeals. We affirm and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and JEFFREY USMAN, J., joined.

Robert L. J. Spence, Jr., and Andrew M. Horvath, Memphis, Tennessee, for the appellant, Dianne Hamilton, Conservator on behalf of Cassie McGill.

Kevin Baskette, Laura L. Deakins, and William C. Podesta, Memphis, Tennessee, for the appellee, Methodist Healthcare Memphis Hospitals.

OPINION

I. FACTS & PROCEDURAL HISTORY

This healthcare liability case arises from the treatment of 24-year-old Cassie McGill at Methodist Healthcare Memphis Hospitals ("Methodist") in 2011. Ms. McGill's mother was appointed as her conservator by the probate court of Shelby County. In 2012, Ms. McGill's mother, as conservator, filed suit against numerous defendants, including Methodist, in circuit court. Relevant to this appeal, the complaint alleged that Methodist was vicariously liable for the acts of defendant Robert Neal Rayder, M.D., a physician who treated Ms. McGill in the emergency department, based on an agency theory.

The case was eventually tried before a jury in 2018. The day before the jury trial began in circuit court, the probate court entered an "Order Granting Emergency Petition to Appoint Additional Co-Conservator" for Ms. McGill. This order named Diane Hamilton, the paternal aunt of Ms. McGill, as "an additional Co-Conservator of the person and property of [Ms. McGill]." The order of appointment stated:

> The following rights of the Respondent [Ms. McGill] are removed from the Respondent and transferred to the Co-Petitioner/Co-Conservator Diane Hamilton: the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, give or refuse consent to medical and mental examinations and treatment and/or hospitalization, and pursue legal causes of actions on behalf of the Respondent.

The attached "Conservator's Certificate" stated that Ms. Hamilton possessed the powers stated in the order, including "the power to collect, receive, and manage the monies, property, and effects of the Ward[.]"

During the three-week jury trial in circuit court, Ms. Hamilton was substituted as the conservator suing on behalf of Ms. McGill in the style of the case. The claims against Dr. Rayder were voluntarily dismissed. At the conclusion of the plaintiff's proof, the circuit court entered a partial directed verdict in favor of Methodist, concluding that the

conservator failed to provide any expert medical proof establishing the standard of care applicable to Dr. Rayder for administering a particular drug called Imitrex. However, the remainder of Methodist's motion for directed verdict was denied. The jury deliberated on the remaining issues and ultimately announced that it was unable to reach a unanimous verdict, and the conservator asked for, and was granted, a mistrial. The circuit court entered a scheduling order setting a new trial date. However, on November 26, 2018, the conservator voluntarily dismissed Methodist, the last remaining defendant, without prejudice, and an order to this effect was entered by the circuit court.

Shortly thereafter, on December 7, 2018, the conservator mailed a pre-suit notice letter indicating her intent to recommence a health care liability action against Dr. Rayder and Methodist. On February 6, 2019, a "Consent Agreement" was executed by counsel for Dr. Rayder and counsel for Ms. Hamilton, as conservator on behalf of Ms. McGill. The Consent Agreement provided:

> COME NOW the Plaintiff, Dianne Hamilton, as Conservator on behalf of Cassie McGill ("Plaintiff"), by and through undersigned counsel of record, and Robert Neal Rayder, M.D. ("Dr. Rayder"), by and through undersigned counsel of record, and hereby agree by consent as follows:
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> WHEREAS Plaintiff hereby agrees to forego naming and bringing suit against Dr. Rayder as a defendant in his individual capacity in any re-filed lawsuit against Defendant, Methodist Healthcare Memphis Hospitals, doing business as Methodist LeBonheur Germantown Hospital, thereby allowing the February 6, 2018 order of nonsuit as to Dr. Rayder in his individual capacity entered in Shelby County Circuit Court No. CT-003205-12 to operate as a final dismissal as to Dr. Rayder in his individual capacity and,
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> WHEREAS Dr. Rayder hereby agrees not to pursue his discretionary costs pursuant to Tenn. R. Civ. P. 54 following his voluntary dismissal as an individual defendant from the previous lawsuit (Shelby County Circuit Court docket no. CT-003205-12; Div. VII) in the amount of $13,896.28, as itemized in Dr. Rayder's March 7, 2018 Motion for Discretionary Costs, and therefore, Dr. Rayder agrees to file a notice of withdrawal of his Motion for Discretionary Costs filed on March 7, 2018 in Shelby County Circuit Court No. CT-003205-12 within ten (10) days of the date of this agreement[.]
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> BY AND THROUGH UNDERSIGNED COUNSEL OF RECORD, THE PARTIES HEREBY AGREE BY CONSENT TO THE FOREGOING THIS 6th DAY OF FEBRUARY, 2019.[1]

That same day, Ms. Hamilton refiled the complaint for health care liability on behalf of Ms. McGill in circuit court, naming Methodist as the sole defendant. The complaint

[1] Dr. Rayder subsequently withdrew his motion for discretionary costs.

alleged that Methodist was vicariously liable for the actions of Dr. Rayder based on a theory of apparent agency.

The circuit court entered an order dismissing any claims against Methodist alleging vicarious liability pertaining to the administration of Imitrex based on res judicata. It reasoned that Methodist was granted a partial directed verdict on this claim during the jury trial based on the lack of expert proof, and therefore, the trial court's ruling on this claim had become final for purposes of appeal when the conservator took a nonsuit as to all remaining claims against Methodist. Thus, the circuit court held that the conservator's attempt to assert "the exact same claims" in the refiled action was barred by res judicata.

Methodist subsequently filed a motion for summary judgment as to all remaining vicarious liability claims based on the Consent Agreement executed by the attorneys representing the conservator and Dr. Rayder. Methodist relied on the Tennessee Supreme Court's decision in *Abshure v. Methodist Healthcare-Memphis Hospitals*, 325 S.W.3d 98, 106 (Tenn. 2010), in which the Court explained that "there are certain circumstances in which it would be improper to permit a plaintiff to proceed solely against a principal based on its vicarious liability for the conduct of an agent," and one of those circumstances is "when the plaintiff has settled its claim against the agent[.]" Methodist noted that the only claims asserted here were vicarious liability claims for the actions of Dr. Rayder. As such, Methodist asserted that the complaint should be dismissed in its entirety based on the settlement agreement in which the conservator entered into a covenant not to sue Dr. Rayder, thereby releasing him from liability.

The conservator responded by filing a declaration from her counsel, Andrew Horvath. Mr. Horvath acknowledged that Ms. Hamilton was appointed as conservator by the probate court prior to the jury trial, as "Cassie McGill's medical condition required appointment of a Conservator to pursue legal causes of actions on her behalf." However, he insisted that "any and all settlements on behalf of Cassie McGill, as a ward of the Shelby County Probate Court, had to be approved by the Probate Court." He stated that neither party to the February 6, 2019 Consent Agreement had presented it to the probate court for approval since its execution a year earlier. Thus, the conservator took the position that the Consent Agreement had "no binding effect whatsoever" and would be "at best a voidable contract." Counsel also denied that the conservator had entered into a "settlement" with Dr. Rayder. Methodist filed a reply, asserting that the precise terminology utilized to describe the Consent Agreement was inconsequential, as the effect of a covenant not to sue or a traditional settlement agreement is the same in this context.[2] Either way, Methodist

[2] According to *Abshure*, 325 S.W.3d at 107 (quotation omitted):

> This limitation occurs when the injured party extinguishes the agent's liability by conferring an affirmative, substantive right upon the agent that precludes assessment of liability against the agent. Alternatively, Tennessee courts have recognized that plaintiffs should not be permitted to pursue a vicarious liability claim against a principal when they

argued, the Consent Agreement had the legal effect of automatically extinguishing the liability of the principal for vicarious liability claims.

After a hearing, the circuit court directed the parties to submit supplemental briefs on the issue of whether it was necessary for the probate court to approve the Consent Agreement. In Methodist's supplemental briefing, it took the position that court approval was not required by the language of the order appointing Ms. Hamilton as conservator, the relevant statutes, or caselaw. In addition, Methodist argued that the issue of whether court approval was required was a legal issue and not a "fact" to be established by the declaration of an attorney. For statutory authority, Methodist relied on Tennessee Code Annotated section 34-1-121(b), which provided, at the time:

> (b) In any action, claim, or suit in which a minor or person with a disability is a party or in any case of personal injury to a minor or person with a disability caused by the alleged wrongful act of another, the court in which the action, claim, or suit is pending, or the court supervising the fiduciary relationship if a fiduciary has been appointed, *has the power* to approve and confirm a compromise of the matters in controversy on behalf of the minor or person with a disability. If the court deems the compromise to be in the best interest of the minor or person with a disability, any order or decree approving and confirming the compromise shall be binding on the minor or person with a disability.

(emphasis added). Methodist insisted that this statute gave the probate court "the power" to approve the settlement but did not mandate such approval. It pointed to mandatory language used in other statutes to require court approval of certain settlements. *See, e.g.*, Tenn. Code Ann. § 29-34-105(a) ("The court shall conduct a chambers hearing at which the minor and legal guardian are present to approve any tort claim settlement involving a minor that is ten thousand dollars ($10,000) or more.") Methodist also pointed out that the order appointing Ms. Hamilton as conservator granted her "the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, . . . and pursue legal causes of actions on behalf of [Ms. McGill]." Methodist contended that this language provided Ms. Hamilton with the power and authority to execute the Consent Agreement in the context of this litigation without obtaining additional approval.

Meanwhile, the conservator filed, in probate court, a "Motion for Instruction on Whether the Conservator has the Power to Extinguish a Claim Held by the Respondent Without Court Approval." Specifically, the conservator asked the probate court to enter an order "instructing that" its order appointing Ms. Hamilton as conservator did not grant her the right to enter into settlements or compromises without court approval. The conservator also filed a motion in the circuit court, asking it to stay its ruling on the motion

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have settled with the agent and have agreed not to pursue a claim against the agent.

for summary judgment pending an "order" from the probate court on the "Motion for Instruction." Methodist filed a response, arguing that the circuit court was "more than qualified" to decide the legal issue of the conservator's authority based on the order of appointment and the controlling law. In response, the conservator maintained that the pivotal question was "a black-and-white factual issue" – whether the probate court granted this power or not – rather than a legal issue. Thus, she maintained that it was appropriate to await a decision from the probate court stating whether or not it had granted the conservator this particular power.

After an additional hearing, the circuit court entered orders denying the motion to stay its ruling and granting Methodist summary judgment. The circuit court decided that the issue before it was a legal issue and that the court was capable of deciding it in the context of this case where all parties could be heard on the issue. The circuit court noted that the complaint against Methodist was based only on vicarious liability. It recognized "black letter law" in Tennessee that the release of an agent from liability relieves the principal from vicarious liability. The court found that Ms. Hamilton entered into a covenant not to sue Dr. Rayder and released him from liability, which was like a settlement agreement and subject to contractual principles. The court found that the order of appointment authorized Ms. Hamilton, as conservator, to dispose of property, execute instruments, enter into contracts, pursue legal causes of action, and manage money, which was "what [Ms. Hamilton] has done by entering into this consent agreement." The circuit court found that these grants of power to the conservator were consistent with the powers of conservators according to Tennessee Code Annotated section 34-3-107. Furthermore, the circuit court agreed with Methodist's position that Tennessee Code Annotated section 34-1-121(b) did not mandate court approval of the Consent Agreement, relying on this Court's decision in *Goodman ex rel. Goodman v. Home Away From Home, Inc.*, No. E2006-02064-COA-R3-CV, 2008 WL 2811312, at *4 (Tenn. Ct. App. July 22, 2008) ("This code section [] gives a court the power to approve a settlement, but does not mandate that the court must approve all settlements."). Thus, based on the language of the order of appointment and the controlling law, the circuit court concluded that court approval was not required. Accordingly, the court explained that summary judgment was appropriate because the conservator had entered into an agreement relieving Dr. Rayder from liability, so she could no longer pursue her vicarious liability claim against Methodist.

A few weeks after the circuit court entered its order granting summary judgment, the conservator filed a motion to alter or amend, noting that the probate court had issued an "Advisory Opinion" on the matter. The conservator characterized the probate court's Advisory Opinion as making two critical determinations: (1) its order did not provide the conservator with the right to settle and (2) pursuant to Tennessee law it could not convey the right to settle because court approval is mandatory. Thus, she asked the circuit court to alter or amend its order to correct a clear error of law and prevent manifest injustice. The probate court's "Advisory Opinion" was attached. In response, Methodist argued that the probate court's self-titled "Advisory Opinion" had no legal effect on the circuit court's

summary judgment order and was erroneous in its interpretation of the controlling law.

After an additional hearing, the circuit court entered an order denying the motion to alter or amend. The court reiterated its previous finding that the conservator had the power to extinguish the ward's claim via the Consent Agreement without any requirement of court approval. The circuit court acknowledged that court approval was required by statute for settlements involving *minors*, *see* Tenn. Code Ann. § 29-34-105, but it found no similar requirement for wards, according to Tennessee Code Annotated section 34-1-121(b) as interpreted in *Goodman*. The circuit court noted that it was undisputed that Ms. Hamilton had the authority to contract and to prosecute lawsuits on behalf of Ms. McGill. As such, it rejected Ms. Hamilton's position that she could not execute the Consent Agreement. The circuit court respectfully disagreed with the probate court's Advisory Opinion, noting that it relied heavily on cases involving minors, for which the separate statute applied to require court approval. Therefore, it found that the Consent Agreement was binding and extinguished Methodist's vicarious liability. The conservator timely filed a notice of appeal to this Court.

II. ISSUES PRESENTED

The conservator presents the following issues for review on appeal:

> 1. Whether a factual theory of liability, arising out of operative facts common to all theories of a party's single claim for medical negligence constitutes an independent legal claim subject to claim preclusion under the doctrine of res judicata.
> 2. Whether an interlocutory order dismissing a single factual theory of liability in an underlying lawsuit against one party becomes a final, appealable judgment under Tenn. R. App. P. 3 upon entry of a voluntary nonsuit pursuant to Tenn. R. Civ. P. 41.01.
> 3. Whether the trial court erred, in the context of summary judgment, in disregarding the express limitation imposed by the Probate Court on the Conservator to affirmatively extinguish the Ward's legal claims without Court approval, by ruling to the contrary and granting summary judgment, notwithstanding the Probate Court's unambiguous confirmation in the record that it did not grant the Conservator any such enumerated power.

For the following reasons, we affirm the decision of the circuit court and remand for further proceedings.

III. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there

is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. On appeal, we review a trial court's decision on a summary judgment motion *de novo* with no presumption of correctness. *Lemon v. Williamson Cty. Sch.*, 618 S.W.3d 1, 12 (Tenn. 2021) (citing *Tatham v. Bridgestone Ams. Holding, Inc*., 473 S.W.3d 734, 748 (Tenn. 2015)). We must "make a fresh determination about whether the requirements of Rule 56 have been met." *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 887 (Tenn. 2019) (citing *Rye v. Women's Care Ctr. of Memphis*, 477 S.W.3d 235, 250 (Tenn. 2015)). "The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law." *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008) (citing *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993)). However, "'[t]he evidence must be viewed in a light most favorable to the claims of the nonmoving party, with all reasonable inferences drawn in favor of those claims.'" *Cotten v. Wilson*, 576 S.W.3d 626, 637 (Tenn. 2019) (quoting *Rye*, 477 S.W.3d at 286). "If the undisputed facts support only one conclusion and that conclusion entitles the moving party to a judgment, then the trial court's grant of summary judgment is affirmed." *In re Est. of Cone*, 652 S.W.3d 822, 826 (Tenn. Ct. App. 2022).

IV. DISCUSSION

At the outset, we note that the conservator raises two issues on appeal regarding the trial court's decision to grant Methodist's partial motion to dismiss the vicarious liability claims that were based on allegations pertaining to the administration of Imitrex based on res judicata. Again, the trial court reasoned that Methodist was granted a partial directed verdict on this claim during the jury trial based on the lack of expert proof, and that ruling became final for purposes of appeal when the conservator took a nonsuit as to all remaining claims against Methodist, as it was the last remaining defendant. The circuit court held that the conservator's attempt to assert "the exact same claim" in the refiled action was barred by res judicata.

On appeal, Methodist urges this Court to begin with the third issue presented by the conservator on appeal, regarding the impact of the Consent Agreement on the conservator's vicarious liability claims. Methodist notes that the conservator's complaint only asserted vicarious liability, and therefore, the issue regarding the Consent Agreement would be "dispositive of the entire appeal" and provide a basis for affirming the dismissal of the complaint in its entirety. According to Methodist, if this Court affirms the trial court's decision that the conservator could no longer pursue *any* vicarious liability claims, the issues regarding the vicarious liability claim specifically pertaining to Imitrex would be pretermitted, as our decision would "equally apply to the Imitrex claim." The conservator did not dispute or oppose Methodist's position in its reply brief or during oral argument.[3]

[3] The conservator argues that her allegations regarding Imitrex constituted "a factual theory of liability" but not an "independent legal claim." She insists that she "only brought a single legal claim or

Thus, we will begin with the first issue raised by the conservator on appeal, which is dispositive of all vicarious liability claims asserted in this litigation.

The conservator frames the issue as:

> Whether the trial court erred, in the context of summary judgment, in disregarding the express limitation imposed by the Probate Court on the Conservator to affirmatively extinguish the Ward's legal claims without Court approval, by ruling to the contrary and granting summary judgment, notwithstanding the Probate Court's unambiguous confirmation in the record that it did not grant the Conservator any such enumerated power.

More succinctly, she argues that "the trial court erred by finding that the Conservator was granted the power to affirmatively extinguish Ms. McGill's legal claims without prior approval." Notably, the conservator does not dispute that her claims were all based on vicarious liability, nor does she engage in any analysis of the principles applicable to vicarious liability claims as set forth in *Abshure*. We note, however, that the Tennessee Supreme Court recently examined the framework set forth in *Abshure* in *Ultsch v. HTI Memorial Hospital Corporation*, No. M2020-00341-SC-R11-CV, --- S.W.3d. ----, 2023 WL 4630894 (Tenn. July 20, 2023). Our Supreme Court confirmed that there are "four situations in which . . . a plaintiff is precluded from exclusively pursuing a vicarious liability claim against the principal." *Id.* at *1 (citing *Abshure*, 325 S.W.3d at 106). One of those is "'when the plaintiff has settled its claim against the agent.'" *Id.* (quoting *Abshure*, 325 S.W.3d at 106).[4]

The narrow argument raised by the conservator on appeal is that the Consent Agreement she executed on behalf of Ms. McGill was not binding because she did not have the right to settle a claim without approval from the probate court. Although the circuit court held that court approval was not mandatory, the conservator argues that this holding conflicts with the order appointing her as conservator, the relevant statutes, and the probate court's Advisory Opinion on the matter.

We begin with the statutes and law applicable to conservatorships. "Conservators are court-appointed fiduciaries 'who act as agents of the court and their rights and responsibilities are set forth in the court's orders.'" *In re Conservatorship of Duke*, No.

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cause of action for medical negligence" and that the allegations regarding Imitrex were "factually inseparable from several of Plaintiff's other theories of liability."

[4] In *Ultsch*, the Supreme Court set forth a narrow holding regarding the "operation of law" exception, which is a separate exception from the one applicable in this case. 2023 WL 4630894, at *7. The Court emphasized that its holding was "a narrow one" and was "not intended to abrogate the common-law framework for vicarious liability claims outside the health care liability context or in situations where its application to health care liability claims would not conflict with the Act." *Id.*

M2015-00023-COA-R3-CV, 2015 WL 5306125, at *8 (Tenn. Ct. App. Sept. 3, 2015) (quoting *AmSouth Bank v. Cunningham*, 253 S.W.3d 636, 641 (Tenn. Ct. App. 2006)). Tennessee Code Annotated section 34-3-107 provides, in pertinent part:

> (a) If the court determines a conservator is needed, the court shall enter an order which shall:
> (1) Name the conservator or co-conservators and, in the court's discretion, a standby conservator or co-conservators;
> (2) Enumerate the powers removed from the respondent and those to be vested in the conservator. To the extent not specifically removed, the respondent shall retain and shall exercise all of the powers of a person without a disability. The court may consider removing any rights of the person with a disability and vesting some or all in a conservator. Such rights may include, but are not limited to:
> (A) The right to give, withhold, or withdraw consent and make other informed decisions relative to medical and mental examinations and treatment;
> (B) The right to make end of life decisions . . . .
> (C) The right to consent to admission to hospitalization, and to be discharged or transferred to a residential setting, group home, or other facility for additional care and treatment;
> (D) The right to consent to participate in activities and therapies which are reasonable and necessary for the habilitation of the respondent;
> (E) The right to consent or withhold consent to any residential or custodial placement;
> (F) The power to give, receive, release, or authorize disclosures of confidential information;
> (G) The right to apply for benefits, public and private, for which the person with a disability may be eligible;
> (H) The right to dispose of personal property and real property subject to statutory and judicial constraints;
> (I) The right to determine whether or not the respondent may utilize a Tennessee driver license for the purpose of driving;
> (J) The right to make purchases;
> (K) The right to enter into contractual relationships;
> (L) The right to execute instruments of legal significance;
> (M) The right to pay the respondent's bills and protect and invest the respondent's income and assets;
> (N) The right to prosecute and defend lawsuits;
> (O) The right to execute, on behalf of the respondent, any and all documents to carry out the authority vested above; and
> (P) The right to communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail[.]

In accordance with this statute, the probate court entered an order appointing Ms. Hamilton as conservator of the person and property of Ms. McGill and vested her with "the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, give or refuse consent to medical and mental examinations and treatment and/or hospitalization, and pursue legal causes of actions on behalf of the Respondent." The attached "Conservator's Certificate" stated that her powers included "the power to collect, receive, and manage the monies, property, and effects of the Ward[.]"

On appeal, the conservator maintains that this case boils down to "a singular, controlling fact: whether the Conservator was or was not granted the power to extinguish Ms. McGill's legal claims without prior Court approval." We disagree with the conservator's position that this was a mere factual determination. Tennessee courts "have long recognized that orders and judgments should be construed like other written instruments," and their interpretation "involves questions of law that are reviewed de novo[.]" *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth*., 249 S.W.3d 346, 356 n.19 (Tenn. 2008); *see, e.g.*, *Loring Just. v. Hanaway*, No. E2022-00447-COA-R3-CV, 2023 WL 3451544, at *5 (Tenn. Ct. App. May 15, 2023) (rejecting the argument that the question of whether a juvenile court intended someone to be a court-ordered psychologist was "one of fact that a jury should decide" because the "interpretation of a trial court's order is a question of law we review de novo") (quotation omitted). To the extent that we are also required to interpret the controlling statutes, issues of statutory interpretation are likewise questions of law. *Recipient of Final Expunction Ord. in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch*, 645 S.W.3d 160, 167 (Tenn. 2022).

"We construe the language in a court order 'in light of its usual, natural, and ordinary meaning.'" *Gensci v. Wiser*, No. M2019-00442-COA-R3-CV, 2021 WL 752790, at *6 (Tenn. Ct. App. Feb. 26, 2021) (quoting *Konvalinka*, 249 S.W.3d at 359). The conservator argues that because the order of appointment did not *specifically* state that she was authorized "to settle," then that power remained with Ms. McGill. *See* Tenn. Code Ann. § 34-3-107 ("To the extent not specifically removed, the respondent shall retain and shall exercise all of the powers of a person without a disability."). However, this Court rejected a similar argument in *Nave v. Nave*, 173 S.W.3d 766 (Tenn. Ct. App. 2005). In that case, a wife insisted that a conservator "had no authority to file and maintain an action for annulment," relying on the same language in Tennessee Code Annotated section 34-3-107 regarding powers not "specifically" removed remaining with the ward. *Id.* at 771. Simply put, the wife claimed that the conservator lacked authority to file an annulment action because the order "did not specifically vest her with the authority" to do so. *Id.* This Court acknowledged that "the list of rights transferred to the Conservator [did] not expressly include the right to file suit, or, more specifically, the right to bring an annulment action," but it did give the conservator the authority to "do any other act of legal significance which the [trial court], at any time in the future, might deem necessary or advisable." *Id.* We concluded that this "catch-all" provision would include the filing and maintaining of an

annulment action as an "act of legal significance," and the trial court clearly believed it was "necessary [and] advisable" by allowing the conservator to proceed with the petition. *Id.*

We likewise interpret the probate court's order of appointment in this case as authorizing the action taken by the conservator. She entered into a Consent Agreement agreeing not to name Dr. Rayder as a defendant in her re-filed complaint in exchange for his agreement to withdraw his motion for discretionary costs. "[S]ettlement agreements are contracts between the parties[.]" *Perkins v. Metro. Gov't of Nashville*, 380 S.W.3d 73, 80 (Tenn. 2012). The order of appointment vested Ms. Hamilton with the power to "dispose of property, execute instruments, . . . enter into contractual relationships, . . . and pursue legal causes of actions on behalf of [Ms. McGill]," including "the power to collect, receive, and manage the monies, property, and effects of the Ward[.]" And, as Methodist aptly notes on appeal, Tennessee courts have found in other contexts that the authority to settle was encompassed by other powers. *See, e.g*, *S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ*., 58 S.W.3d 706, 717 (Tenn. 2001) (recognizing "the general rule of law is that the power to contract necessarily includes the power to settle disputes arising under that contract"); *Butler v. Gen. Motors Acceptance Corp*., 313 S.W.2d 260, 261 (Tenn. 1958) (explaining that "either the conditional vendor or vendee can prosecute an action for injury to the property by a third party; and [] the right of the conditional vendee to sue authorizes him to compromise and settle") (quotation omitted); *Jackson v. Dobbs*, 290 S.W. 402, 403 (Tenn. 1926) ("Upon principle it would seem that the right to prosecute such an action would, ordinarily, authorize the widow to make a bona fide settlement, by way of compromise."); *State on Rel. of Paduch v. Washington Cnty., Tennessee*, No. 03A01-9311-CH-00397, 1994 WL 421083, at *9-10 (Tenn. Ct. App. Aug. 12, 1994) (alternatively holding that a city and county had authority to compromise and settle a debt where their charters granted them the right to sue and this Court recognized "cases of other jurisdictions which have held that the power to compromise and settle litigation in which a municipal corporation is involved emanates from the capacity of the municipality to sue and be sued"). Considering the language used in the probate court's order of appointment, we conclude that it authorized Ms. Hamilton to enter into the Consent Agreement at issue.

We now examine the effect of Tennessee Code Annotated section 34-1-121(b), as Ms. Hamilton maintains that conservators do not have authority to settle lawsuits or extinguish a claim of a ward without probate court approval.[5] We note that "[c]ourt

[5] In Methodist's brief on appeal as appellee, it summarized the conservator's position that "the Legislature did not intend for the right to settle a lawsuit [to] be transferrable to a conservator." In the conservator's reply brief, she contended that this was "a complete misstatement" of her position regarding the controlling statutes and whether the power to settle can be transferred to a conservator. She states, "Plaintiff's position is that a Probate Court may grant a conservator the power to settle claims under Tenn. Code Ann. § 34-3-107 if it is specifically and expressly delineated in the order of appointment[.]" This concession is difficult to square with the conservator's other arguments. For instance, the conservator continues to rely on the probate court's Advisory Opinion that "Conservators do not have authority to settle

approval of a settlement is generally not required," although there are situations where it is required by statute. *Env't Abatement, Inc. v. Astrum R.E. Corp.*, 27 S.W.3d 530, 539 n.9 (Tenn. Ct. App. 2000). At the time of the proceedings in the trial court, Tennessee Code Annotated section 34-1-121 provided, in pertinent part:

> § 34-1-121. Powers of courts
> . . . .
> (b) In any action, claim, or suit in which a minor or person with a disability is a party or in any case of personal injury to a minor or person with a disability caused by the alleged wrongful act of another, the court in which the action, claim, or suit is pending, or the court supervising the fiduciary relationship if a fiduciary has been appointed, *has the power* to approve and confirm a compromise of the matters in controversy on behalf of the minor or person with a disability. If the court deems the compromise to be in the best interest of the minor or person with a disability, any order or decree approving and confirming the compromise shall be binding on the minor or person with a disability.

Tenn. Code Ann. § 34-1-121(b) (emphasis added). Relying on this statute, Ms. Hamilton suggests that every proposed settlement on behalf of a minor *or* a disabled person must be approved by a court. We note, however, as did the circuit court, that a separate statute specifically addresses settlements involving minors. *See* Tenn. Code Ann. § 29-34-105 (entitled "Settlements on behalf of minors"). Although Ms. Hamilton argues on appeal that the circuit court's decision created "a legally unprecedented distinction" between disabled persons and minors, that distinction was made by the legislature in the relevant statutes.

This Court interpreted and applied Tennessee Code Annotated section 34-1-121(b) in a case involving a disabled person in *Goodman ex rel. Goodman v. Home Away From Home, Inc.*, No. E2006-02064-COA-R3-CV, 2008 WL 2811312 (Tenn. Ct. App. July 22, 2008). In that case, two children sued on behalf of their incapacitated mother after she was seriously injured in a fire at an assisted living facility. *Id.* at *1. Another daughter, who had power of attorney, executed an agreement releasing the defendants from all claims for a mere $5,000. *Id.* at *2. The original plaintiffs filed a "Motion to Resend [sic] and/or Set Aside Release and Compromise of all Claims and Covenant Not to Sue," alleging that it was fraudulently obtained. *Id.* The trial court held that "pursuant to Tenn. Code Ann. § 34-1-121 and applicable case law, the Court had to approve any settlement on behalf of a disabled person subject to a fiduciary relationship." *Id.* at *3. Thus, the trial court voided the release. *Id.* On appeal, the defendant argued that the trial court erred in holding that

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lawsuits or to extinguish a claim of a ward independently of the Court." In any event, however, it is necessary to consider the impact of the controlling statutes on the facts of this case in order to determine the conservator's authority to execute the Consent Agreement.

the release was invalid under the statute. *Id.* This Court agreed. We explained:

> The Court relied upon Tenn. Code Ann. § 34-1-121, and stated that the Court had to approve any settlement entered into on behalf of a disabled person. This code section, however, gives a court *the power* to approve a settlement, but *does not mandate that the court must approve all settlements*.

Id. at *4 (emphasis added).[6]

The *Goodman* case was decided fifteen years ago, and the legislature has not taken any action since it was decided to express disapproval of its construction. As the Tennessee Supreme Court has explained,

> The legislature is presumed to know the interpretation which courts make of its enactments; the fact that the legislature has not expressed disapproval of a judicial construction of a statute is persuasive evidence of legislative adoption of the judicial construction, especially where the law is amended in other particulars, or where the statute is reenacted without change in the part construed.

Hardy v. Tournament Players Club at Southwind, Inc., 513 S.W.3d 427, 444-46 (Tenn. 2017) (quoting *Hamby v. McDaniel*, 559 S.W.2d 774, 776 (Tenn. 1977)). Here, Tennessee Code Annotated section 34-1-121 was amended in other respects last year. *See* 2022 Tenn. Pub. Acts, ch. 917. However, the pertinent language in subsection (b) applicable to disabled persons was not changed. *See id.* Where subsection (b) formerly referred to cases involving "a minor or person with a disability," the legislature removed the language regarding minors, such that subsection (b) now refers only to cases involving persons with a disability. *Id.* § 2. The amended statute contains a new subsection (c), which provides, "A tort claim settlement involving a minor does not require court approval except as required by § 29-34-105(a)." *Id.* at § 3.[7] In summary, then, section 34-1-121(b) continues

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[6] The trial court in *Goodman* also found that the daughter who signed the release breached her fiduciary duty by settling a potential "multi-million dollar claim" for a mere $5,000, and the conduct of the defendants was intentional and designed to extinguish the claim for injuries. *Id.* at *3. On appeal, we explained that "the proper analysis in this case would have been whether reasonable person(s) in defendants' position would have been placed on notice that the settlement with [the daughter] was irregular, and knew or should have known that it was not in Ms. Goodman's best interests." *Id.* at *5. Thus, this Court remanded for further proof as to the validity of the release. *Id.*

[7] Section 29-34-105, entitled "Settlements on behalf of minors," now provides, in pertinent part:

> (a)(1) In any tort claim settlement involving a minor, the court shall conduct a hearing at which the minor and legal guardian are present if the tort claim settlement:
> (A) Is a settlement of ten thousand dollars ($10,000) or more;
> (B) Is a structured settlement; or
> (C) Involves a minor who is not represented by an attorney licensed to practice in this state.

to apply to cases involving disabled persons, and the legislature did not alter its language interpreted fifteen years ago in *Goodman*. "The doctrine of legislative inaction presumes that, had the legislature disagreed with a prior judicial construction of a statute, it would have amended the statute accordingly." *Hardy*, 513 S.W.3d at 444.

In accordance with this Court's decision in *Goodman*, we conclude that Tennessee Code Annotated section 34-1-121(b) "gives a court the power to approve a settlement, but does not mandate that the court must approve all settlements." *Goodman*, 2008 WL 2811312, at *4. Thus, we reject the conservator's position that approval by the probate court was mandatory and that the Consent Agreement was void without it. *See State ex rel. Town of Arlington v. Shelby Cnty. Election Comm'n*, 352 S.W.2d 809, 811 (Tenn. 1961) (concluding that a constitutional provision was "not mandatory but permissive only" where it conferred the "power" to take an action). As in *Goodman*, the release was not void for lack of court approval.

Having concluded that the circuit court's decision is supported by the language of the probate court's order and the relevant statutes, we now turn to the conservator's final argument, regarding whether the circuit court should have granted the motion to alter or amend and changed its ruling based on the "Advisory Opinion" issued by the probate court. "A trial court's decision on a motion to alter or amend is reviewed under an abuse of discretion standard[.]" *Harmon v. Hickman Cmty. Healthcare Servs., Inc*., 594 S.W.3d 297, 298 (Tenn. 2020). The circuit court concluded that it was "capable" of interpreting the probate court's order and applying the relevant law. We further note that the probate court's "Advisory Opinion" emphasized at the outset that it was only intended to provide guidance *to the conservator* to the extent that he requested it and was in need of direction or instruction, and the court was not attempting to "address the proper resolve of any of the issues before [the circuit] [c]ourt." The circuit court declined to follow the reasoning expressed in the probate court's "Advisory Opinion," in which it construed Tennessee Code Annotated section 34-1-121(b) as mandatory, noting that the probate court relied heavily on statutes and caselaw applicable to minor settlements and never mentioned the *Goodman* case. We discern no reversible error in that decision.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the circuit court and remand for further proceedings. Costs of this appeal are taxed to the appellant, Dianne Hamilton, Conservator on behalf of Cassie McGill, for which execution may issue if necessary.

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(2) Notwithstanding subdivision (a)(1), the court may, in its discretion, conduct the hearing in chambers or by remote communication and may excuse the minor from attending the hearing.

(b) A tort claim settlement does not otherwise require court approval merely because it involves a minor.

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CARMA DENNIS MCGEE, JUDGE