Circuit Court for Howard County
Case No. 13-C-17-111552-OT

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 561

September Term, 2021

GRADY MANAGEMENT, INC., ET AL.,

v.

REDIET BIRRU

Wells, CJ,
Reed,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Reed, J.

Filed: October 28, 2022

This case, before this Court once again, has its origins in a personal injury action tried before a jury in the Circuit Court for Howard County in 2018. The jury found Grady Management, Inc. and Autumn Crest, LLC, appellants, liable for injuries to appellees, two minor children, B.M. and S.M. (collectively "children").[1] The issues presented in this appeal involve a motion to enforce those judgments and an accompanying motion to shorten time filed by the children. On March 23, 2021, the circuit court granted the motion to shorten time, ordered appellants to respond to the motion to enforce the judgments on or before March 29, 2021, and set a hearing on the motion to enforce the judgments for April 20, 2021. Appellants noted an interlocutory appeal from the court's order and filed a "Notice of Stay Pending Appeal" in the circuit court.

At the April 20, 2021 hearing, the circuit court denied appellants' request to stay the proceedings pending the appeal. The court ordered post-judgment interest at the legal rate, accruing from November 13, 2018, and appointed a trustee to hold, review, and approve the distribution of the judgment proceeds for the children. Within ten days of that order, appellants filed a motion to reconsider, which the court denied on May 24, 2021. Appellants noted a timely appeal from the decisions of the circuit court. On the same day that the circuit court denied appellants' motion to reconsider, this Court entered an order dismissing as moot appellants' interlocutory appeal from the circuit court's grant of the motion to shorten time.

[1] The minor children are proceeding in this appeal, as they did below, through their mother and next friend, Rediet Birru, whom we shall refer to as Ms. B. In the record, the children are sometimes referred to by other names, but we shall not use them here.

QUESTIONS PRESENTED

Appellants present the following four questions for our consideration:

> I. Did the Circuit Court err in issuing an injunction pursuant to a non-Rule compliant Motion to Shorten Time (in reality a non-properly served Motion for Ancillary Relief, with no proof of service), filed in violation of Md. Rules 1-204, 1-351 and 2-311, without providing any time or opportunity for Defendants to oppose same?
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> II. Did the Circuit Court err in setting and conducting a hearing upon, and then and [sic] adjudicating, an issue directly impacting the issues on a then pending appeal (and/or should those rulings be reversed)?
>
> III. Did the Circuit Court err in *sua sponte* terminating two separate actions petitioning the Court to appoint proper Trustees and Conservators, with no notice, opportunity to oppose, hearing, or other due process, in violation of the Rules governing such Petitions, with a hearing just two weeks away, and which eradicated Defendants' and their insurer's rights to seek protection of their reversionary interests (as the awards at issue were solely for future medical expenses and thus subject to Md. Cts. & Jud. Proc. 11-109)?
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> IV. Did the Circuit Court err ordering Defendants to pay interest upon "judgments" improperly entered in favor of children only, when no trustee, guardian or conservator had been secured by Plaintiff [Ms. B.] or her counsel for years, when no proper request for payment had been made, when Plaintiff thwarted Defendants' efforts to pay, and when the payment requests was [sic] tainted by an improper direct communication to a represented entity?

For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

After a trial in 2018, a jury returned a verdict in favor of the minor children who, from May 2014 to August 2016, lived at Autumn Crest Apartments with their mother, Ms. B. Appellants own and operate Autumn Crest Apartments. The children and their mother alleged that they were exposed to mold and mold spores. The jury awarded $100,000 in future medical expenses to B.M. and $20,000 in future medical expenses to S.M. It did not

award non-economic damages to the children. The jury returned a verdict in favor of appellants and against the children's mother on the ground that she was contributorily negligent. Following the verdict, the children were awarded $53,659.10 in attorney's fees and expenses arising from appellants' discovery violations. We affirmed those judgments in an unreported opinion, *Grady Mgmt., Inc. v. Birru*, No. 3162, Sept. Term 2018 (filed August 28, 2020).

The issues presented in the instant appeal began when the children, through their mother and next friend,[2] filed a motion to enforce the judgments with post-judgment interest as to both the jury's award of damages and the award of attorney's fees and expenses. They argued that appellants "refused altogether to voluntarily pay the judgment amounts according to payment instructions provided" by their attorney and "refused to acknowledge interest required by law." The children asserted that appellants sought, without any legal standing, to file petitions for guardianship of the minors' property even though appellants were not "interested persons." The children asked the circuit court to order appellants to "cease attempts to appoint a guardian [for the minor children] as lacking standing to do so[.]"

Contemporaneous with their motion to enforce the judgments with post-judgment interest, the children filed a motion to shorten the time for appellants to file their response.

[2] A "next friend," or "prochein ami," is "one who brings suit on behalf of a minor or disabled person because the minor or disabled person lacks capacity to sue in his or her own right, or . . . one who defends a suit against a minor or disabled person lacking the capacity to defend." *Brown v. Daniel Realty Co.*, 409 Md. 565, 589 (2009) (quoting *Fox v. Wills*, 390 Md. 620, 625–26 (2006)).

The court granted the motion to shorten time and set a hearing for April 20, 2021. In the order granting the motion to shorten time, the circuit court wrote, among other things, that, prior to the hearing, appellants "shall not transfer funds or make checks payable to any person not a party to this case, except to voluntarily pay as instructed by Plaintiffs' counsel in order to satisfy the judgments with post-judgment interest." Appellants noted an interlocutory appeal from that order arguing that the court's instruction constituted an injunction. Appellants also filed a "Notice of Stay Pending Appeal" in the circuit court.

At the hearing on April 20, 2021, appellants reiterated their claim that the order granting the motion to shorten time was, in effect, an injunction that "essentially adjoins us from paying the very judgment that they're seeking to enforce here." They argued that the proceedings in the circuit court should be stayed pending a decision on their appeal. Counsel for the children argued that despite the pending appeal, the circuit court was not deprived of jurisdiction because the issue was a matter of collection and enforcement of a judgment.

In a written order that followed the hearing, the court addressed appellants' request for a stay as follows:

> [Appellants'] counsel argued that the Court could not go forward due to its interlocutory appeal. The Court found this to be a meritless argument likely made to further delay this matter. Even if [appellants] disregarded the time limit imposed by the Court in its order shortening time, they had ample time prior to this hearing (25 days after the Order to Shorten Time) in which to file a response to the motion before the Court and to put the Court and [the children] on notice of [appellants'] positions and arguments. In large part [appellants] have failed to do so. There is no prejudice to [appellants] in going forward with the merits of the motion.

In a footnote, the circuit court noted that "[t]he admonition against paying the judgment amount to third parties merely recited [appellants'] obligation under the law."

The circuit court found that because the clerk of the court had not docketed the award of attorney's fees and expenses as a judgment, no post judgment interest would "be added to that amount." The court determined that no payment on the judgments had been made by appellants and that the children were entitled to post-judgment interest from November 13, 2018, the date the judgments were entered, until the date of payment. The court calculated the per diem rates as $27.40 for the judgment in favor of B.M. and $5.48 for the judgment in favor of S.M.

The court recognized that appellants' counsel had filed guardianship actions pertaining to the children and that they "filed two actions for conservatorship of the [children] which are pending." For ease of reference, we shall refer to those actions as the Fiduciary cases. [3] After finding that "[i]t is inappropriate, and a conflict of interest, for [appellants'] counsel to attempt to advance the [children's] interests[,]" the court determined that it would "appoint a neutral trustee to hold the funds for the minor children, and to see that the funds are properly applied to future medicals related to their medical needs related to the subject of the lawsuit." The court stated that appellants "need not concern themselves with the appointment of the trustee or how [childrens'] counsel are

[3] We take judicial notice of appellants' filing of the guardianship actions, which were dismissed, and their later filing of two petitions seeking "reversionary" conservatorships in "In the Matter of [B.M.]," Case # C-13-FM-21-000347, and "In the Matter of [S.M.]," Case # C-13-FM-21-000348.

compensated." The court appointed Beth Rogers, Esquire, as trustee for both children and ordered that the trustee "review and approve the distribution of judgment proceeds for [the children]" and "hold the net proceeds in accounts for the benefit of [the children], to be applied only to medical expenses incurred by them arising out of the subject matter of this case[.]" The court also ordered that the appointment of the trustee rendered moot the Fiduciary cases and noted that those cases would be dismissed.

After the children's motion to enforce the judgments was granted and the trustee was appointed, the Fiduciary cases were dismissed by orders entered in those cases. Thereafter, by order filed on May 24, 2021, we dismissed as moot appellants' interlocutory appeal from the order granting the motion to shorten time. *See Autumn Crest LLC, et al. v. Rediet Birru, et al.,* No. 115, September Term 2021.

We shall include additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Appellants contend that the circuit court erred in issuing an injunction in the order granting the motion to shorten time. For the reasons set forth below, we find no error in the court's decision to grant the motion to shorten time and that the issue of the alleged injunction is not properly before us.

A. Motion to Shorten Time

Motions to shorten time are governed by Maryland Rule 1-204(a), which provides:

> (a) **Generally.** When these rules or an order of court require or allow an act to be done at or within a specified time, the court, on motion of any party and for cause shown, may (1) shorten the period remaining, ... The court may not shorten or extend the time for filing a motion for judgment notwithstanding the verdict, a motion for new trial, a motion to alter or amend a judgment, a motion addressed to the revisory power of the court, a petition for judicial review, a notice of appeal, an application for leave to appeal, or an action to reject a health claims award or assessment of costs under Rule 15-403, or for taking any other action where expressly prohibited by rule or statute.

The decision to grant a motion to shorten or extend time under this Rule rests within the circuit court's discretion. *See Maryland Green Party v. State Bd. of Elections*, 165 Md. App. 113, 142 (2005). A court abuses its discretion when its decision "'is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Smith v. State*, 232 Md. App. 583, 599 (2017) (quoting *Norwood v. State*, 222 Md. App. 620, 643 (2015)). An abuse of discretion also occurs when "no reasonable person would take the view adopted by the [trial] court or when the court acts without reference to any guiding rules or principles." *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (internal quotations and citation omitted).

The plain wording of the Rule makes clear that the circuit court was authorized to shorten the time for appellants to respond to the motion to enforce the judgments. The motion to shorten time was filed on March 18, 2021. Appellees made clear in their motion that they had not received payment on the judgments or post-judgment interest, that appellants "declined to acknowledge post-judgment interest," and that there was a dispute regarding the person to whom the payments should be made. The court granted the motion to shorten time on March 23, 2021, and ordered appellants to respond within six days, on

or before March 29, 2021. (Docket entry 3/23/21) On March 29, 2021, appellants filed a "Notice of Stay Pending Appeal/Response per and Objection to Order of Shortened Time to Oppose 'Motion to Enforce Judgment' and Request for Hearing (Upon Remand)." Although appellants had six days to file their response, we note that the hearing on the motion to enforce the judgments was not scheduled to occur until April 20, 2021, thereby affording appellants ample time to supplement their response if necessary. On this record, we find no abuse of discretion in the circuit court's decision to grant the motion to shorten the time.[4]

B. Alleged Injunction

As we have already stated, the order granting the motion to shorten time contained a clause instructing appellants that pending the April 20, 2021 hearing, they were not to "transfer funds or make checks payable to any person not a party to this case, except to voluntarily pay as instructed by [the children's] counsel in order to satisfy the judgments with post-judgment interest." In their interlocutory appeal to this Court, *Autumn Crest LLC, et al. v. Rediet Birru, et al.*, No. 115, September Term 2021, appellants maintained that the clause constituted an injunction. By order dated May 24, 2021, we dismissed that appeal as moot. Appellants continue to challenge the alleged injunction here.

Appellants argue that there was no claim of irreparable harm to give rise to injunctive relief, that the injunction failed to recognize Ms. B.'s obligation to pay the children's medical expenses until they turn eighteen years old, and that the court failed to

[4] Appellants' reliance on Maryland Rule 1-204(b) is misplaced as the underlying case did not involve an *ex parte* order.

appoint an "interim next friend or trustee, but instead all but order[ed] [appellants] to pay the money to the operating account of counsel for Ms. [B.]!" Appellants also maintain that the court granted a motion for ancillary relief "under the guise of" a motion to shorten the time to respond.

Generally, an issue is moot if "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide." *Powell v. Md. Dep't of Health*, 455 Md. 520, 539-40 (2017) (quoting *Mercy Hosp. Inc. v. Jackson*, 306 Md. 556, 561 (1986)). The operative effect of the clause at issue terminated on April 20th, the day of the hearing. At that time, the order limiting the transfer of funds became moot. For that reason, we entered the order dated May 24, 2021, dismissing the appeal pursuant to Maryland Rule 8-602(c)(8) as moot.

Our decision in the prior appeal remains the law of the case. "The law of the case doctrine operates to bar litigants from raising arguments on questions that have been decided previously or could have been decided in that case." *Dabbs v. Anne Arundel County*, 458 Md. 331, 345 n.15 (2018). When applied to prior appellate decisions, the law of the case doctrine "'serves the dual function of enforcing the mandate and precluding multiple appeals to review the same error.'" *Tu v. State*, 336 Md. 406, 416 (1994) (quoting 1B J.W. Moore, J.D. Lucas & T.S. Currier, *Moore's Federal Practice*, ¶ 0.401, at I-2 to I-3 (2d ed. 1993) (footnotes omitted)). "[W]ithout it 'any party to a suit could institute as many successive appeals as the fiction of his imagination could produce new reasons to assign as to why his side of the case should prevail, and the litigation would never terminate.'" *Dabbs*, 458 Md. at 345 n.15 (quoting *Fidelity-Baltimore Nat'l Bank & Trust*

Co. v. John Hancock Mut. Life Ins. Co., 217 Md. 367, 372 (1958)). Accordingly, our prior determination that the issue was moot remains the law of the case and, as a result, that issue is not properly before us.[5]

C. Protection of the Reversionary Interest

Appellants contend that the circuit court erred in conducting a hearing on appellees' motion to enforce the judgments while appellants' interlocutory appeal from the ruling on the motion to shorten time was pending. They argue that the trial court could not entertain appellees' motion because there were issues affecting the subject matter and justiciability of the appeal, specifically the alleged injunction that they maintained thwarted their ability to pay the judgments and interest.

After noting their interlocutory appeal from the circuit court's order granting the motion to shorten time, appellants filed a "Notice of Stay" in the circuit court. They set forth a series of arguments, including that they would "fully oppose" the motion to enforce the judgment "following resolution of the appeal," but failed specifically to request a stay of proceedings in the circuit court pending the appeal. Included with their Notice of Stay was a request for "a hearing (upon remand) of all issues/remaining issues regarding and/or arising from the Motion to Shorten and/or Motion to Enforce." Nevertheless, at the start of

[5] It is only in rare instances that a reviewing court will address the merits of a moot case. *Suter v. Stuckey*, 402 Md. 211, 220 (2007) ("Under certain circumstances, however, this Court has found it appropriate to address the merits of a moot case . . . If a case implicates a matter of important public policy and is likely to recur but evade review, this court may consider the merits of a moot case.") (citations omitted). This is not a case that implicates a matter of important public policy. Nor is it likely to recur but evade review.

the April 20th hearing, appellants clearly requested a stay and argued that the circuit court did not have jurisdiction to consider the motion to enforce the judgments because of the pending appeal. Appellees countered that the circuit court retained jurisdiction over matters of enforcement and collection such as those raised in the motion to enforce the judgments. The court agreed. The court rejected appellants' argument that the hearing could not go forward due to the pending interlocutory appeal, stating that appellant's argument was "meritless" and "likely made to further delay this matter." The court went on to grant the motion to enforce the judgments, order post-judgment interest, and appoint a trustee. The court also noted that, in light of the appointment of the trustee, both of the Fiduciary cases would be dismissed as moot.

Appellants ask us to reverse the circuit court's ruling, requesting that this Court "return the action to the point as it existed before the injunction was issued, instruct the [circuit court] that it may not restrain [appellants'] attempts to satisfy the judgment (nor stop [appellants] from pursing their attempt to secure proper Trustee and Conservator to protect their reversionary interests), and further instruct the [circuit court] that it may [sic] rule upon any 'Motion to Enforce Judgment' until proper judgments are entered in favor of an appropriate next friend for the minors, and after [appellants] are given a full and fair opportunity to oppose same."

Appellants also contend that the circuit court erred in dismissing the Fiduciary cases "which eradicated" their, and their insurer's, "rights to seek protection of their reversionary interests (as the awards at issue were solely for future medical expenses and thus subject to" § 11-109 of the Courts and Judicial Proceedings Article of the Maryland Code ("CJ").

Appellants argue that they were denied a hearing, as provided for by Md. Rule 10-304(a), and discovery as provided for by Rule 10-103. In addition, appellants assert that "the *sua sponte*" dismissal of the Fiduciary cases violated their due process rights. According to appellants, a guardianship or conservatorship was necessary to prevent harm to their reversionary interests in the judgment proceeds.

For the following reasons, we disagree.

1. Reversionary Interest

Underlying appellants' arguments on appeal is their assertion that they and their insurers have a reversionary interest in the judgment proceeds awarded to the minor children for future medical care. Appellants argued below, as they do here, that "the verdict was expressly for future medical care[;]" that Ms. B. "remains legally obligated to pay the medical expenses" of her children until they reach the "age of majority[;]"[6] that the children "have the right to use the funds, for medical expenses claimed to be related to the injuries at issue, once they reach [eighteen] and become responsible for same[;]" that the "money awarded was not for the children to use, and definitely not for [Ms. B.] to access without

[6] After the verdicts were rendered, appellants filed a motion for judgment notwithstanding the verdict. They argued, in part, that as a result of the jury's finding of contributory negligence on the part of Ms. B., they were entitled to judgment in their favor "for that portion of the future medical expense award until" the children reached the age of majority. They asserted that if the judgment was allowed to stand, partial judgment should be entered in their favor. Alternatively, appellants sought "remittitur in an amount which would accomplish the same goal." Appellees countered that because Ms. B. "stipulated, waived, and assigned her rights to pre-majority medical expenses to her children," there was "no reason to engage in the exercise Defendants have requested of reducing the medical expenses." The circuit court denied appellants' motion for judgment notwithstanding the verdict.

some [c]ourt protection or intervention, prior to the age of majority[;]" that pursuant to CJ § 11-109, appellants have a reversionary interest in the judgment proceeds that are not ultimately used by the children after their eighteenth birthdays for medical treatment relating to the injuries that were the subject of the underlying trial; and, that without a trust, their "reversionary interests will be at risk of depletion, if not complete usurpation[.]"

Similar arguments were included in appellants' motion to reconsider and vacate the April 21, 2021 order of the circuit court, in which they asserted that the issue of [the children's] attorneys' fees should be handled by a conservator or trustee, and that either the conservator, trustee, or the court should ensure that the settlement proceeds are "not unfairly diminished by an unreasonable fee." Appellants expressed their desire for the court or the trustee "to ensure that the total amount of the funds provided for post-age [eighteen] medical expenses, which may ultimately revert to [appellants] and/or their insurer are not improperly manipulated and/or dissipated." (Footnote omitted). Further, they claimed that depositing "the funds in a reversionary medical trust will provide for an efficient and final resolution, ensure that the funds are only used for alleged 'mold' related medical expenses, and implement the reversionary protections provided therein, without risk of [Ms. B.] or those acting on her behalf avoiding her obligation to pay for the medical expenses until the age of majority, accessing the funds after age of majority (the award was for alleged life-team [sic] treatment needs), and/or otherwise depleting the fund for any purpose other than alleged 'mold' related treatment." The circuit court denied appellants' motion to reconsider and vacate.

The record before us does not support appellants' contention that they have a reversionary interest in the judgment proceeds of the minor children. Moreover, as we discuss in more detail, *infra*, there is no evidence that appellants requested a remittitur or that the judgments were ordered to be paid in the form of annuities, other financial instruments, or by periodic payments to protect any interest of appellants. Rather, the judgments entered in the Tort case were lump sum judgments in favor of each minor child for future medical expenses.

Payment of future economic damages is addressed in CJ § 11-109(c), which provides:

> (c)(1) The court or the health claims arbitration panel may order that all or part of the future economic damages portion of the award be paid in the form of annuities or other appropriate financial instruments, or that it be paid in periodic or other payments consistent with the needs of the plaintiff, funded in full by the defendant or the defendant's insurer and equal when paid to the amount of the future economic damages award.
>
> (2) In the event that the court or panel shall order that the award for future economic damages be paid in a form other than a lump sum, the court or panel shall order that the defendant or the defendant's insurer provide adequate security for the payment of all future economic damages.
>
> (3) The court or panel may appoint a conservator under this subsection for the plaintiff, upon such terms as the court or panel may impose, who shall have the full and final authority to resolve any dispute between the plaintiff and the defendant or the defendant's insurer regarding the need or cost of expenses for the plaintiff's medical, surgical, custodial, or other care or treatment.

Although CJ § 11-109(c)(1) authorizes a court to order that all or part of an award for future economic damages to "be paid in periodic or other payments consistent with the needs of the plaintiff," no such order was entered in this case. The verdict sheet and the

docket entries indicate that the judgments for both B.M. and S.M. were to be made as lump sum payments. There is absolutely no evidence to suggest that appellants retained a reversionary interest in the judgment proceeds.

2. Guardianship and Conservatorship

In addition to the lack of a reversionary interest in the judgment proceeds, appellants also lacked standing to seek a guardianship or conservatorship. As a preliminary matter, we note that appellants' reliance on Title 10 of the Maryland Rules is misplaced. The Committee Note to Md. Rule 10-101 makes clear that the rules in Title 10 do not apply to "a trustee of a recovery by a minor in tort (Code, Estates and Trusts Article, § 13-401 *et seq.*)[.]" As the underlying case involved a recovery in tort by two minor children, Title 13, subtitle 4 of the Estates and Trust Article of the Maryland Code provided the applicable procedure for the payment to a trustee on behalf of the minors.

Section 13-403 of the Estates and Trusts Article ("ET") provides:

> (a) Unless a court appoints a guardian of the property of a minor under subsection (c) of this section, if a minor or any other person in whose name a claim in tort is made or judgment in tort obtained on behalf of a minor recovers a net sum of $5,000 or more, the person responsible for the payment of money shall make payment by check made to the order of (name of trustee), trustee under Title 13 of the Estates and Trusts Article, Annotated Code of Maryland, for (name of minor) minor.
>
> (b) No other act is necessary to constitute the person named a trustee.

The term "net sum" is defined as the "net amount due the minor or to any person acting for the minor after the deduction of the fee of the attorney and expenses[.]" ET § 13-401(c). The "person responsible for the payment of money" is defined as "[t]he attorney,

if the minor or any person acting for the minor is represented by an attorney[.]" ET § 13-401(d).

Provisions for the appointment of a guardian of the property of a minor are included in ET § 13-403(c), which provides:

> (c)(1) In accordance with the procedures for the appointment of a guardian under Subtitle 2 of this title, the court may appoint a guardian of the property of a minor on whose behalf a recovery in tort is sought or has been obtained if the court determines that the appointment would be in the minor's best interest.
>
> (2) The petition for guardianship may be made by an interested person or a trustee under this subtitle.

An "interested person" is defined as:

> (k)(1) "Interested person" means the guardian, the heirs of the minor or disabled person, any governmental agency paying benefits to the minor or disabled person, or any person or agency eligible to serve as guardian of the disabled person under § 13-707 of this title.
>
> (2) If an interested person is also a minor or a disabled person, "interested person" also includes a judicially appointed guardian, committee, conservator, or trustee for that person, or, if none, the parent or other person having assumed responsibility for that person.

ET § 13-101(k).

A plain reading of those provisions makes clear that appellants, who were the tortfeasors, and who did not retain a reversionary interest in the judgment proceeds, had no standing to advance the interests of the minor children pursuant to ET § 13-401 *et seq*., and had no role to play in the appointment of a trustee other than to pay the judgment. Further, they did not qualify as interested persons and did not have standing to request a guardianship.

Nor did appellants have standing to petition for a conservatorship because CJ § 11-109 does not provide an independent action for the appointment of a conservator. Rather, it applies to those cases in which a court or health claims arbitration panel orders that all or part of an award for future economic damages "be paid in the form of annuities or other appropriate financial instruments, or that it be paid in periodic or other payments consistent with the needs of the plaintiff[.]" CJ § 11-109(c)(1). The statute provides that the court "shall order that the defendant or the defendant's insurer provide adequate security for the payment of all future economic damages" when the award for future economic damages is "in a form other than a lump sum[.]" CJ § 11-109(c)(2).

In *Goldberg v. Boone*, 167 Md. App. 410, *rev'd on other grounds*, 396 Md. 94 (2006), we recognized, in dicta, that "the appointment of a conservator constitutes a statutorily authorized remittitur." 167 Md. App. at 443. In that case, the plaintiff, Boone, was awarded damages in a medical malpractice action against his treating physician. *Id.* at 414-15. The physician filed two post-trial motions including a motion for judgment notwithstanding the verdict (JNOV), or, in the alternative, for new trial and a motion for new trial concerning Boone's future medical damages and for appointment of a conservator. *Id.* at 416.

In his motion for new trial requesting the appointment of a conservator, the physician sought a conservatorship under CJ § 11-109(c) in order "to make periodic payments consistent with the future medical needs of" Boone. *Id.* at 440. The physician explained the basis for his request as follows:

> It makes ample sense for the Court to appoint a conservator to administer payments to the Plaintiff in this case. The conservatorship will safeguard the $355,000 to ensure that the Plaintiff actually receives the funds necessary for future medical treatment. The conservator under this subsection for the Plaintiff will also have the full or final authority to resolve any dispute between the Plaintiff and the Defendants regarding the need or cost of expenses for the Plaintiff's medical, custodial or other care or treatment. Md. C.J.P. § 11-109(c)(3). Moreover, a conservator would also ensure that the jury award will be properly utilized for the Plaintiff's medical care rather than any non-medical related expense. If the Plaintiff actually chooses to treat with specialists and hires a live-in aide, the conservator would properly make those payments. If the Plaintiff chooses not to treat or hire an aide, that amount will remain in the fund set up by the Court. In the event that the Plaintiff dies before his life expectancy, the unpaid balance of the jury award for future medical damages shall revert to the Defendant or their insurer. *See* Md. C.J.P. § 11-109(d).

Id. at 440.

Boone opposed the request to appoint a conservator on the ground that it was neither factually nor legally justified, would impose a "'managed care nightmare'" on him, and would provide "a wholly undeserved windfall" to the physician and the physician's insurance company if he was to die before the $355,000 judgment was used up. *Id.* at 441.

Although both motions were denied by the trial court, on appeal, we ordered a new trial on the issue of damages and offered "comments" in the hope they would be of assistance to the court and counsel. *Id.* at 438-39. Those comments included our recognition that the appointment of a conservator constitutes a statutorily authorized remittitur. We stated:

> The General Assembly has provided that "a party filing a motion for a new trial may object to the damages as excessive on the ground that the claimant has been or will be paid, reimbursed, or indemnified to the extent and subject to the limits stated in § 3-2A-05(h) of this subtitle," [addressing modifications or corrections or health claims arbitration awards] and that if such an objection has been filed, "[t]he court shall hold a hearing and receive

> evidence on the objection." Maryland Code, Courts and Judicial Proceedings § 3-2A-06(f). This statute creates exceptions to the rules that when a judgment is entered on a jury verdict that awarded money damages to the plaintiff, although the court has discretion to control the methods by which that judgment is satisfied, (1) the plaintiff is entitled by law to be paid interest on the uncollected portion of the judgment, and (2) the plaintiff's estate is entitled to whatever portion of the judgment, and interest thereon, remain uncollected as of the date of the plaintiff's death. For these reasons, the appointment of a conservator constitutes a statutorily authorized remittitur.

Id. at 442-43.

After recognizing that the decision to appoint a conservator rests in the sound discretion of the circuit court and that an evidentiary hearing is not a condition precedent to ruling on a motion to appoint a conservator, we noted:

> According to [the physician], the motion for appointment of a conservator cannot be denied until the circuit court has made factual findings on the availability of collateral sources, as well as on "[Boone's] life expectancy and his likelihood of survival to require that care." We are persuaded that the court cannot appoint a conservator without making factual findings sufficient to permit appellate review of the *de facto* remittitur that is the operative effect of an appointment. On the other hand, when – as is the situation in the case at bar – the jury has awarded the 'present value' of the plaintiff's future expenses, the court may exercise its sound discretion to deny the motion for a conservator without announcing an on-the-record response to every reason advanced in support of the motion.

Id. at 443.

It is well established that issues of remittitur are raised through the filing of a motion for new trial. *Davis v. Bd. of Educ. for Prince George's County*, 222 Md. App. 246, 275-76 (2015)(remittitur cannot be granted in the absence of a motion for new trial). In *Battista v. Savings Bank of Baltimore*, 67 Md. App. 257 (1986), we considered a claim by a bank that the jury verdict was excessive. 67 Md. App. at 273. The bank filed a motion for JNOV,

but did not file a motion for new trial. *Id.* We held that the bank was precluded from arguing that the verdict was excessive. *Id.* We explained:

> A motion for [JNOV] is not the way to get at excessive damages; that is the office of a motion for a new trial which can be denied conditioned on the plaintiff's acceptance of a *remittitur*. *Cheek v. J.B.G. Properties, Inc.*, 28 Md. App. 29, 43, 344 A.2d 180 (1975)([JNOV] cannot be used to amend, reduce, or alter jury's verdict). That *Cheek* is still good law is demonstrated by Rule 2-532(e) which provides that when a jury verdict has been returned, and when a motion for [JNOV] is not joined with a motion for new trial, the court may deny or grant the motion for judgment. If it does the latter, it may only 'set aside any judgment entered and direct the entry of a new judgment.'

Id.

In the instant case, appellants did not file motions for new trial or remittitur seeking to control the manner in which the judgments were satisfied. Instead, in their petitions for the appointment of a conservator, appellants stated that the trial judge was aware of a jury note "expressly indicating that the award be placed in trust to protect the minors." Appellants also noted that the judgments were entered "in favor of each minor only, and not in favor" of their mother and next friend, Ms. B. Appellants did not have standing to petition for a conservatorship because CJ § 11-109 does not provide an independent action for the appointment of a conservator and because the award in the instant case was in the form of a lump sum. Even if they had standing, appellants would fare no better. In order to obtain the appointment of a conservator under CJ § 11-109, a motion for new trial or remittitur should have been filed within ten days of the entry of the judgment. Because no such motion was filed, appellants' petitions for the appointment of a conservator filed in the Fiduciary cases were untimely.

3. Consideration of Motion to Enforce Judgment While Appeal was Pending

Appellants' contention that the circuit court erred in conducting the hearing on appellees' motion to enforce the judgments while the interlocutory appeal was pending is without merit. In *Kent Island LLC v. DiNapoli*, 430 Md. 348 (2013), the Court of Appeals stated that "in the absence of a stay, trial courts retain fundamental jurisdiction over a matter despite the pendency of an appeal." *Kent Island LLC*, 430 Md. at 360-61. Thus, a trial court "may continue ordinarily to entertain proceedings during the pendency of an appeal, so long as the court does not exercise its jurisdiction in a manner affecting the subject matter or justiciability of the appeal." *Id.* at 361 (citing *County Comm'rs v. Carroll Craft Retail, Inc.*, 384 Md. 23, 45 (2004)).

Here, the only issue in the pending appeal was the statement in the circuit court's order granting the motion to shorten time regarding payment of the judgment prior to the hearing, which appellants alleged constituted an injunction. While there are provisions of Maryland law permitting an interlocutory appeal from the grant of an injunction, there are no provisions permitting an immediate appeal from an interlocutory order granting a motion to shorten time. *See* CJ §§ 12-301 and 12-303. At the April 20th hearing, counsel for appellants acknowledged that the "appeal was taken from the order essentially granting an injunction preventing us from paying that judgment[.]" Counsel further explained that "at the end of the order, it essentially adjoins us from paying the very judgment that they're

seeking to enforce here." There was no stay of proceedings ordered by either this Court or the circuit court.[7]

By its own terms, and not any action by the circuit court at the hearing, the alleged injunction came to an end on April 20, 2021. At the hearing, the circuit court considered appellants arguments as to why the hearing should be stayed and concluded that the issue appealed had become moot because the operative effect of the order had terminated. The court concluded that it retained fundamental jurisdiction to consider the motion to enforce the judgment. We find no error with that decision. There were no issues determined at the April 20th hearing that affected the alleged injunction, which was the subject matter of the appeal. Nor did any issue determined at the hearing affect the justiciability of the appeal, because it had become moot by the passage of time, not any decision of the circuit court.

4. Dismissal of the Fiduciary Cases

Appellants' contention that the circuit court erred in dismissing the Fiduciary cases is not properly before us. Although the circuit court's April 21, 2021 order in the instant case provided that the Fiduciary cases would be dismissed, the orders actually dismissing those cases were entered on April 22, 2021. Thereafter, appellants filed motions for reconsideration, which were denied, and they noted appeals to this court, which are currently pending. *See In re: S.M. and In re: B.M.*, Consolidated Cases, Nos. 560 and 634, September Term 2021. The instant case and the Fiduciary cases have not been

[7] Appellants could have sought a stay of all proceedings to enforce the judgments pending appeal by following the procedure set forth in Md. Rule 8-424, but they did not.

consolidated. Accordingly, no challenge to the dismissal of the Fiduciary cases is properly before us in this case.

IV.

Appellants challenge the decision of the circuit court to award post-judgment interest. In its written order entered on April 21, 2021, the circuit court found that no evidence had been presented, or representation made to the court, that appellants had made a valid tender of the judgment amounts that was rejected or ignored by the judgment creditors or their counsel. The court determined that post-judgment interest accrued from November 13, 2018, the date the judgment was entered, until the date of payment. It calculated the per diem interest rate as $27.40 for the judgment entered on behalf of B.M. and $5.48 for the judgment entered on behalf of S.M.[8] Appellants argue that the judgments were improperly entered in favor of the children, that no trustee, guardian, or conservator had been secured by the children's mother or counsel, that "no proper request for payment had been made," that appellees had "thwarted" appellants' efforts to pay the judgment, and that "payment requests" were "tainted by an improper direct communication to a represented entity."[9] We are not persuaded.

[8] The "legal rate of interest on a judgment shall be at the rate of [ten] percent per annum on the amount of judgment." CJ § 11-107. *See also* Md. Rule 2-604(b) ("A money judgment shall bear interest at the rate prescribed by law from the date of entry.").

[9] Appellants' assertion regarding "tainted" payment requests refers to a letter sent by appellees' counsel directly to Erie Insurance Exchange, one of appellants' insurers, following the denial of appellants' writ of certiorari by the Court of Appeals. In the letter, counsel for appellees advised that the appeals were complete, that [thirty three] days had elapsed from the denial of appellants' writ of certiorari, and that the judgments in favor of

The purpose of post-judgment interest is to compensate the judgment creditor for the loss of the monies due and owing to him or her by the judgment debtor from the time the judgment is entered until it is paid. *Med. Mut. Liab. Ins. Soc'y of Maryland v. Davis*, 389 Md. 95, 99-100 n. 3 (2005) (quoting *Med. Mut. Liab. Ins. Soc'y of Maryland v. Davis*, 365 Md. 477, 484 (2001)). "'[W]hen determining the date of entry of judgment for the purposes of calculating post-judgment interest, [reviewing courts] must evaluate the circumstances on a case-by-case basis.'" *Cochran v. Griffith Energy Service, Inc.*, 191 Md. App. 625, 638 (2010) (quoting *Mona v. Mona Electric Group, Inc.*, 176 Md. App. 672, 730 (2007)).

When the date of the entry of judgment is not at issue, an award of post-judgment interest begins to run on a money judgment from the date of the entry of that judgment, at the rate of ten percent per annum, as prescribed by CJ § 11-107. *See* CJ § 11-107; Md. Rule 2-604(b); *Cochran*, 191 Md. App. at 638; *Med. Mutual Liability Ins. Society v. Davis*, 389 Md. 95, 109 (2005). Post-judgment interest continues to accrue until the judgment is satisfied by payment. *Med. Mutual Liability Ins. Society*, 389 Md. at 109 (and cases cited therein). The accrual of post-judgment interest might be stopped by the valid tender of payment of the judgment. *Cochran*, 191 Md. App. at 648 ("an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or

the minor children were final. Counsel included a chart showing the post-judgment interest for each judgment and the award of attorney's fees. Counsel requested that the check to satisfy the judgment with interest be "payable to" his law firm "as attorney for" Ms. B., "parent and next friend" of each child. Counsel also attached a W-9 form for his law firm.

obligation would be immediately satisfied.'") (quoting *Platsis v. Diafokeris*, 68 Md. App. 257, 262 (1986) (in turn quoting *Chesapeake Bay Distrib. Co. v. Buck Distrib. Co., Inc.*, 60 Md. App. 210, 214 (1984)).

There is no evidence in the record before us to show that appellants made a valid tender of the judgment amounts. Indeed, appellants do not argue that they made a valid tender of the judgment amounts, but instead assert that counsel for appellees thwarted and deprived them from tendering payment by failing to provide payment information, failing to secure a trustee, and sending a request for payment to one of appellees' insurers.

As we have already stated, appellants did not have a reversionary interest in the judgments and did not have standing to seek the appointment of a guardian or a conservator. Nor did they have any role to play in the appointment of a trustee. No provision of Title 13 of the Estates and Trusts Article grants tortfeasors, such as appellants, a role in the appointment of a trustee or guardian or in formulating instructions for the payment of a judgment. Despite their complaints about appellees' counsel, appellants—who had judgments entered against them—never tendered payment.

Appellants also assert that Ms. B. attempted to "reap an unfair benefit by using the acquiescence rule as a shield to evade payment during the pendency of" the initial appeal from the judgments. We disagree. The acquiescence rule stems from the principle that "the right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal." *Cochran*, 191 Md. App. at 639-40 (internal quotation marks and citations omitted). The acquiescence rule does not apply where there is no cross-

appeal and the appellant seeks only an increase in an undisputed minimum. *Dietz v. Dietz*, 351 Md.683, 695 (1998).

In the instant case, after the entry of judgment in the trial court, appellants appealed the award of sanctions for discovery misconduct. Appellees filed a cross-appeal from the denial of their motion for new trial. Appellees sought a new trial on the issue of damages, including non-economic damages and future medical expenses. Appellees might have had an argument under the acquiescence rule that, during the pendency of the appeal, acceptance of payment of the judgment would have been inconsistent with their position that they were entitled to a new trial as to all damages. That is mere speculation and not before us, however, because there is no evidence that while the appeal was pending appellants tendered payment of the judgments. *Cochran*, 191 Md. App. at 646-47.

For those reasons, we find no error in the circuit court's decision to award post-judgment interest from the date the judgments were entered until the date they are paid. Appellants' task was, and remains, to pay the judgments with post-judgment interest.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.