Rel: September 29, 2023

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2022-0672

Regina Daily and The Daily Catch, Inc., d/b/a Gulf Shores Seafood

v.

Greg Esser, individually; in his capacity as trustee of the Wallene R. Esser Living Trust; and in his capacity as administrator ad litem of the Estate of Wallene R. Esser, deceased

Appeal from Baldwin Circuit Court (CV-17-901017)

SC-2022-0673

Greg Esser, individually; in his capacity as trustee of the Wallene R. Esser Living Trust; and in his capacity as administrator ad litem of the Estate of Wallene R. Esser, deceased

v.

Regina Daily and The Daily Catch, Inc., d/b/a Gulf Shores Seafood

Appeal from Baldwin Circuit Court (CV-17-901017)

SC-2022-0992

Ex parte Patrick Daily; Regina Daily; White Sands, Inc., d/b/a Remax of Orange Beach; The Daily Catch, Inc., d/b/a Gulf Shores Seafood; and Blue Palms, LLC

PETITION FOR WRIT OF MANDAMUS

(In re: Greg Esser, individually; in his capacity as trustee of the Wallene R. Esser Living Trust; and in his capacity as administrator ad litem of the Estate of Wallene R. Esser, deceased

v.

MENDHEIM, Justice.[1]

These consolidated appellate proceedings consist of an appeal filed by Regina Daily ("Regina") and The Daily Catch, Inc., d/b/a Gulf Shores Seafood ("The Daily Catch") (case number SC-2022-0672); a cross-appeal filed by Greg Esser ("Greg") (case number SC-2022-0673); and a petition for a writ of mandamus filed by Patrick Daily ("Patrick"), Regina, The Daily Catch, White Sands, Inc., d/b/a Remax of Orange Beach ("White Sands"), and Blue Palms, LLC (case number SC-2022-0992). The appeal, the cross-appeal, and the mandamus petition all involve the same underlying action commenced in the Baldwin Circuit Court ("the circuit court") by Greg -- in his individual capacity, in his capacity as the trustee of the Wallene R. Esser Living Trust ("the trust"), and in his capacity as an administrator ad litem of the estate of Wallene R. Esser, deceased ("the estate") -- against Patrick, Regina, The Daily Catch, White Sands,

[1]These consolidated appellate proceedings were assigned to another Justice on this Court; they were reassigned to Justice Mendheim on May 23, 2023.

and Blue Palms. Following a bench trial, the circuit court entered a judgment awarding damages in favor of Greg and against Regina and The Daily Catch; the circuit court denied Greg's claims as to all the other defendants. Regina and The Daily Catch filed their appeal, and Greg filed his cross-appeal. Later, Patrick, Regina, The Daily Catch, White Sands, and Blue Palms filed a petition for a writ of mandamus. We affirm the circuit court's judgment in case numbers SC-2022-0672 and SC-2022-0673, and we grant the mandamus petition filed in case number SC-2022-0992.

I. Facts and Procedural History

On October 15, 1999, Wallene Esser ("Wallene"), the mother of Greg and Regina, executed her will ("the will"), the instrument creating the "Wallene R. Esser Living Trust" ("the trust"), a bill of sale transferring all of her personal property to the trust, and a general durable power of attorney designating Regina as her attorney-in-fact and agent; Regina also signed the power of attorney. Wallene lived in South Dakota at the time she executed those documents.

The will is a "pour-over" will, stating that "[a]ll of my property of whatever nature and kind, wherever situated, shall be distributed to

[the] trust"; the will makes no other devises. The will further appoints Regina as the personal representative of Wallene's estate. The trust is a living trust and, during her lifetime (Wallene is now deceased), Wallene was the sole trustee with "the express and total power to control and direct payments, add or remove trust property, and amend or revoke th[e] trust." The trust was initially funded with $10, and the trust instrument includes a provision stating that "[a]dditional property interests of all kinds may be transferred to my trust by me or by any other person in any manner." The trust instrument requires that, upon Wallene's death, "[t]he remaining trust property shall be divided into as many shares as shall be necessary to create one equal share for each of my then living children"; Greg and Regina were acknowledged in the trust instrument as Wallene's then living children. The trust instrument further specifies that, upon Wallene's death, Greg and Regina would be cotrustees of the trust.

In January 2001, Patrick and Regina, who are married, incorporated The Daily Catch, a retail business that sells seafood. Patrick and Regina have been the directors and sole shareholders of The Daily Catch since its incorporation.

On December 18, 2002, Wallene purchased a house in Fairhope ("the Fairhope house"); Patrick, a licensed real-estate agent, was Wallene's real-estate agent in that transaction.

On March 17, 2004, Patrick entered into an agreement with Ocean Shores, Inc., in which he agreed to purchase the franchise rights to Remax of Orange Beach for $700,000; the contract required that Patrick pay $250,000 as a down payment and that the balance be amortized over 10 years at a 6.5% interest rate, but it also required a balloon payment for the balance 36 months from the date of the purchase. On April 6, 2004, Patrick paid Ocean Shores $250,000 for the franchise rights to Remax of Orange Beach. In April 2004, Patrick and Regina incorporated White Sands; it appears that White Sands now owns the franchise rights to Remax of Orange Beach. Patrick and Regina have been the directors and sole shareholders of White Sands since its incorporation. Also in April 2004, Patrick formed Blue Palms. Blue Palms owns real estate and a building that it leases to White Sands, out of which White Sands operates the Remax franchise. Blue Palms borrowed $1,218,000 from First National Bank of Baldwin County to finance the purchase of the real estate and building that it leases to White Sands.

In September 2004, the building and the equipment used to operate the retail seafood business of The Daily Catch was substantially damaged by Hurricane Ivan. On March 9, 2005, Patrick and Regina, in their roles as directors of The Daily Catch, executed a promissory note for a disaster-relief loan from the United States Small Business Administration ("the SBA") in the principal sum of $350,000 ("the SBA loan"). On February 28, 2005, a disbursement of $10,000 was made under the SBA loan to The Daily Catch. On June 30, 2005, a second disbursement of $240,000 was made under the SBA loan to The Daily Catch. No other disbursements were made under the SBA loan because "the draw time on the loan ran out" before the entirety of the work to restore The Daily Catch's retail location could be completed.

On August 26, 2005, Wallene executed a preconstruction sales contract, agreeing to purchase from Slack Alost Development Services of Alabama, L.L.C. ("Slack Alost"), a unit ("the condominium unit") in a condominium to be constructed in Gulf Shores for the purchase amount of $600,000. The contract required Wallene to pay Slack Alost $10,000 upon execution of the contract and to provide a letter of credit in the amount of $120,000 within 15 days. White Sands served as an agent of

both Slack Alost and Wallene in the preconstruction sale of the condominium unit; Regina agreed that White Sands "was going to get a $36,000 commission from this closing." According to Regina's testimony, Wallene was unable to secure a letter of credit. As a result, on December 1, 2005, Patrick paid White Sands $120,000 on behalf of Wallene. On December 3, 2005, Wallene executed a check in the amount of $120,000 to Patrick.

In a notation made by Renate Sterrett, Wallene's financial advisor, based on a conversation Sterrett had with Wallene on May 24, 2002, years before Wallene's purchase of the condominium unit, Sterrett indicated that Patrick "is trying to push [Wallene] into buying $350K [condominium unit] in Mobile." Sterrett's note indicates that Wallene "is uncomfortable with [the purchase of the condominium unit]" and that Wallene and Sterrett "agreed it's not a good time to cash out funds to buy a [condominium unit] just to turn around and sell it for a profit." Sterrett's note indicates that Wallene had asked Sterrett if she "would call [Patrick] and tell him that we decided it didn't fit her portfolio, she doesn't feel she can stand up to his pressuring tactics." Patrick's trial testimony indicates that he had no conversation with Sterrett in 2002.

At some point thereafter, Patrick did discuss with Sterrett Wallene's purchase of the condominium unit and, according to Patrick, Sterrett did not say that it was "not financially smart for [Wallene] to buy the condominium [unit]." Patrick testified that he did not pressure Wallene to purchase the condominium unit.

On October 19, 2005, Wallene bought a house in Gulf Shores ("the Gulf Shores house"); Patrick was Wallene's real-estate agent in that transaction. On November 18, 2005, Wallene sold the Fairhope house; Patrick was Wallene's real-estate agent in that transaction as well.

Regina testified that, in May 2006, she borrowed $80,000 from Wallene. Regina borrowed the $80,000 from Wallene to complete the restoration project of The Daily Catch's retail location that had been damaged as a result of Hurricane Ivan. Regina testified that, in order to loan the $80,000 to Regina, Wallene had borrowed $80,000 from an established line of credit secured by a mortgage against a house Wallene owned in South Dakota. Regina testified that she had repaid the $80,000 loan by making direct payments to Wallene and by making various payments on Wallene's behalf for medical and other living expenses over a period of years. Regina created a handwritten document, which was

admitted into evidence, to prove that she had repaid the $80,000 loan; that document indicates that she had paid to Wallene or made various payments on Wallene's behalf totaling $137,069.54.

On January 19, 2007, Wallene received notice from Slack Alost that construction of the condominium had been completed and that the closing on the preconstruction sales contract for the condominium unit needed to be scheduled. On March 14, 2007, Wallene submitted an application for a loan, secured by a residential mortgage, in the amount of $480,000 to finance the remaining purchase price of the condominium unit. A truth-in-lending disclosure statement dated March 23, 2007, indicates that, if Wallene borrowed the $480,000 necessary to close on the preconstruction sales contract for the condominium unit, the monthly payment on the loan would be $2,650. Regina testified that, at Wallene's direction, she had signed Wallene's name to the truth-in-lending disclosure statement. On April 27, 2007, Slack Alost and Wallene closed on the preconstruction sales contract, transferring ownership of the condominium unit to Wallene. On the same day, Wallene executed a mortgage on the condominium unit to ABN AMRO Mortgage Group, Inc., which later merged with Citimortgage, Inc.

On March 13, 2009, Regina used Wallene's American Express credit card to make a $3,052 payment on the SBA loan. Regina testified that she also had used Wallene's U.S. Bank credit card to make payments on the SBA loan totaling $15,000. Regina acknowledged during her trial testimony that, although Wallene had approved of Regina's using the American Express credit card and the U.S. Bank credit card to make payments on the SBA loan, she "owe[s] that money back." Regina also testified that, with Wallene's permission, she had used Wallene's U.S. Bank credit card to pay for various other expenses, including a trip to Las Vegas, Nevada.

On October 26, 2010, Wallene, who was apparently delinquent on the loan secured by the mortgage on the condominium unit held by Citimortgage, submitted to Citimortgage a "Workable Solutions Financial Statement" in order to supply Citimortgage with "financial information so that [Citimortgage] may evaluate [Wallene's] situation and determine what, if any, options [she has] to resolve the mortgage delinquency and avoid foreclosure." Regina testified that Wallene had asked Regina to fill out the form on her behalf "so we could stop them doing foreclosure because we were trying to short sell it for her."

Foreclosure was not avoided, and, on October 29, 2010, Citimortgage purchased the condominium unit at auction for $217,123.50; the foreclosure deed was executed that same day.

Sterrett became Wallene's financial advisor in 1998 when Sterrett purchased Roanoke Financial, a financial-planning business of whom Wallene was a client. Included on a document entitled "Net Worth Statement" compiled by Sterrett setting forth Wallene's net worth ("Wallene's net-worth statement") is an asset entitled "GEE -- CD" with an "assumed rate of return" of 6% and a "market value" of $221,991. A separate document indicates that the "GEE -- CD" was opened on April 3, 2005. Sterrett's video-deposition testimony, which was admitted at trial, indicates that the "GEE -- CD" asset was actually a loan made by Wallene to Regina. In support of that assertion, Sterrett testified that her "office would have typed up a promissory note" reflecting the terms of the alleged loan to Regina, would have sent that promissory note to Wallene, and would have advised Wallene to get Regina to sign the promissory note. Sterrett's deposition testimony further indicates that it was her "understanding … that [Wallene] got [the alleged promissory note] signed …." The promissory note, however, does not appear in the record.

Regina answered the following question in the affirmative at trial: "Is it your testimony under oath, under penalty of perjury, that that GEE loan is unrelated to you, your companies, or your family?" Wallene's net-worth statement also indicates that she had an asset entitled "PD -- CD" with an "assumed rate of return" of 4% and a "market value" of $199,904. Sterrett's video-deposition testimony indicates that the "PD -- CD" asset was actually a loan made by Wallene to Patrick. In support of that assertion, Sterrett testified that her "office would have typed up a promissory note" reflecting the terms of the alleged loan to Patrick, would have sent that promissory note to Wallene, and would have advised Wallene to get Patrick to sign the promissory note. Sterrett's deposition testimony further indicates that it was her "understanding … that [Wallene] got [the alleged promissory note] signed …." The promissory note, however, does not appear in the record. At trial, Greg's attorney asked Patrick whether Wallene's asset "PD -- CD" was "related to you or money that you borrowed from [Wallene]"; Patrick responded by stating that he did not recall ever borrowing any money from Wallene and that he did not receive the "PD -- CD" loan from Wallene. Patrick indicated

during his trial testimony that neither he, nor Regina, nor any entity they control received the alleged loans from Wallene.

Wallene also had an annuity account with GenWorth Life and Annuity ("GenWorth"). On December 12, 2014, a "fixed annuity withdrawal authorization" form was submitted to GenWorth, authorizing the withdrawal of $50,000 from Wallene's account with GenWorth. Regina testified that she had filled out and submitted the form to GenWorth at Wallene's direction. Regina's testimony indicates that the $50,000 withdrawn from Wallene's account with GenWorth was transferred to Wallene's checking account.

Greg offered into evidence numerous checks that were drawn from Wallene's personal checking account during her lifetime, from November 2012 to February 2015. The checks admitted into evidence were made out to various individuals and entities, including Patrick, Regina, Austin Daily ("Austin"), who is Patrick and Regina's son, and The Daily Catch. Regina offered an explanation for most, if not all, of the checks drawn on Wallene's personal checking account. Regina testified that she had written all the checks at Wallene's instruction and with her approval.

Wallene died on September 9, 2015. In April or May 2016, Austin moved into the Gulf Shores house. According to Regina's testimony at trial, Austin pays the $1,500 monthly mortgage payment on the Gulf Shores house; he does not pay any rent beyond making the mortgage payment. Title to the Gulf Shores house has not been transferred to the trust.

On October 20, 2015, upon Regina's motion, the estate was probated in the Pennington County, South Dakota, Circuit Court ("the South Dakota court"). The South Dakota court appointed Regina as the personal representative of the estate. On December 14, 2016, Greg filed in the South Dakota court a motion requesting that Regina be removed as the personal representative of the estate and that Greg be appointed the personal representative. In that motion, Greg stated that he should be appointed as the personal representative of the estate because he

> "believes that the estate has a cause of action against [Regina] in her individual capacity for certain pre-death actions, and it is not reasonable to believe that [Regina], [the] personal representative of the estate, will properly inquire into whether a cause of action exists and if so that she will bring a cause of action against herself."

On August 31, 2017, Greg, in his individual capacity, commenced in the circuit court the present action against Patrick, Regina, and

several fictitiously named defendants. The case was assigned circuit-court case number CV-17-901017. Generally, Greg alleged that "[t]he trust has been harmed and depleted by the acts and omissions of the defendants." Greg asserted claims of breach of fiduciary duty and unjust enrichment, requesting money damages and declaratory relief.

On November 10, 2017, Patrick and Regina filed a "motion to compel [Greg] to substitute real party in interest." Patrick and Regina argued that the claims asserted by Greg "request relief belonging to [Wallene] personally, if she were still living, and therefore … those claims must fall to the estate." Accordingly, Patrick and Regina asserted in their motion that "the estate is the only proper party which could prosecute the claims alleged in [Greg's] complaint" and requested, pursuant to Rule 17, Ala. R. Civ. P., that the circuit court enter an order "compelling [Greg] to cause the estate to be substituted as the real party plaintiff in interest in this matter …." On the same day, Patrick and Regina also filed a motion for a more definite statement, arguing that Greg's claims were too vague and requesting that the circuit court enter an order requiring Greg to amend his complaint.

On December 6, 2017, Greg filed a response to Patrick and Regina's motion requesting that the circuit court require Greg to substitute the estate as the real party in interest. Greg argued that he "is a 'real party in interest' … by virtue of the fact that he is co-trustee of the Trust created by the Last Will and Testament of [Wallene], a beneficiary of the Trust, and the substantive law gives trustees and beneficiaries legal rights when they have been harmed." Greg also presented the following argument in his December 6, 2017, response:

> "Moreover, [Greg] offers the court with a practical solution which moots the procedural objections raised by the [Dailys]. The [Dailys] want the court to find that only the personal representative of the estate may bring the claims because defendant Regina Daily is the personal representative of the estate. Obviously, defendant Regina Daily, as the personal representative, would not sue herself and her husband. It is in these situations that the law commands that the trial court appoint an administrator ad litem. The relevant statute provides:
>
> > "'When, in any proceeding in any court, the estate of a deceased person must be represented, and there is no executor or administrator of such estate, or he is interested adversely thereto, it shall be the duty of the court to appoint an administrator ad litem of such estate for the particular proceeding, without bond, whenever the facts rendering such appointment necessary shall appear in the record of such case or shall be made known to the court by affidavit of any person interested therein.'

> "Ala. Code § 43-2-250 (1975); see also Loving v. Wilson, 494 So. 2d 68 (Ala. 1986)."

On December 12, 2017, Greg filed a motion seeking to join the estate as a plaintiff in the underlying lawsuit "conditioned on the court appointing [Greg] as the administrator ad litem of the estate with authority to prosecute the claims in the complaint on behalf of the estate." In so arguing, Greg cited § 43-2-250, Ala. Code 1975, which provides:

> "When, in any proceeding in any court, the estate of a deceased person must be represented, and there is no executor or administrator of such estate, or he is interested adversely thereto, it shall be the duty of the court to appoint an administrator ad litem of such estate for the particular proceeding, without bond, whenever the facts rendering such appointment necessary shall appear in the record of such case or shall be made known to the court by the affidavit of any person interested therein."

Greg argued that Regina, the personal representative of the estate, "has an obvious conflict of interest asserting claims against herself and [Patrick]." On December 15, 2017, Patrick and Regina filed a response in opposition to Greg's request to be appointed as an administrator ad litem of the estate. Patrick and Regina argued that "[t]he claims asserted by [Greg], if true, would belong to … Wallene …, and now her

estate to the[] extent they survive." They argued that, because the estate was being probated in South Dakota with litigation ongoing, the circuit court "does not have jurisdiction to make rulings regarding the estate," which would include, Patrick and Regina argued, appointing Greg as an administrator ad litem of the estate.

On December 19, 2017, the circuit court granted Patrick and Regina's motion for a more definite statement.

On January 8, 2018, Greg amended his complaint. On January 23, 2018, Patrick and Regina filed an answer. On January 31, 2018, Patrick and Regina filed a counterclaim against Greg for the reimbursement of attorney fees and costs associated with defending the action commenced against them.

On July 26, 2018, Patrick and Regina filed a motion for a judgment on the pleadings. Patrick and Regina argued that Greg's breach-of-fiduciary-duty and unjust-enrichment claims, which had not been filed and were not pending in the circuit court at the time of Wallene's death, had been "extinguished and abated pursuant to § 6-5-464[, Ala. Code 1975]." Patrick and Regina also argued that Greg was not entitled to the declaratory relief he sought "because declaratory judgment actions are

not proper to resolve tort claims, the equitable relief requested has abated and was extinguished by the death of Wallene …, and there is no justiciable controversy."

On September 6, 2018, Greg filed a second amended complaint. In his second amended complaint, Greg asserted his claims against Patrick and Regina in his individual capacity and in his capacity as cotrustee of the trust. Greg also asserted claims alleging breach of fiduciary duty, conversion, breach of contract, unjust enrichment, "constructive trust," and "violations" of various South Dakota statutes, again requesting money damages and declaratory relief. On the same day, Greg also filed a "notice of application of foreign law," stating that he, "pursuant to Rule 44.1[, Ala. R. Civ. P.], … gives the Court and Defendants Patrick and Regina Daily notice of the application of the laws of South Dakota so that all of [Greg's] claims asserting damages to … Wallene … survived the death of [Wallene]. See S.D. [Codified Laws §] 15-4-1." As indicated by the following language in his notice, Greg's stated purpose for seeking application of South Dakota law was to avoid operation of Alabama's survival statute, § 6-5-462, Ala. Code 1975:

> "The laws of South Dakota and Alabama conflict in regards to claims that survive the death of a damaged party. Under

> South Dakota law, '[a]ll causes of action shall survive and be brought, notwithstanding the death of the person entitled or liable to the same. Any such action may be brought by or against the personal representative or successors in interest of the deceased.' S.D. [Codified Laws §] 15-4-1. Whereas, under Alabama law, arguably only contract and equitable causes of action survive the death of the damaged party. Ala. Code [1975, §] 6-5-462. The choice-of-law issue impacts whether the tort claims survived the death of [Wallene]. Cf. Bienash v. Moller, 721 N.W.2d 431 (S.D. 2006) (beneficiary successfully brought claims for breach of fiduciary duty, fraud, conversion, and deceit after death of his first cousin) with Ex parte Watters, 212 So. 3d. 174, 182-83 (Ala. 2016) (discussing § 6-5-462). Clearly, under South Dakota law, the tort claims in the Second Amended Complaint survived the death of [Wallene]."

On October 4, 2018, Patrick and Regina filed a motion to dismiss the complaint "to the extent [Greg] brings this action in his capacity as a co-trustee" of the trust. Patrick and Regina argued that Greg needed Regina's approval, as cotrustee of the trust, to commence an action on behalf of the trust; the motion states that Regina "does not concur or join in the bringing of this action." Greg filed a response in opposition to their motion.

Also on October 4, 2018, Patrick and Regina filed a "motion to strike notice of application of foreign law or in the alternative, for a more definite statement and to produce all relevant foreign authorities." Patrick and Regina argued that Greg's Rule 44.1, Ala. R. Civ. P., notice

was untimely. On October 11, 2018, Greg filed a response in opposition to Patrick and Regina's motion to strike.

On October 23, 2018, the circuit court entered three orders. First, the circuit court entered an order granting Patrick and Regina's motion to strike Greg's notice of application of foreign law and ordered Greg to file an amended complaint. Second, the circuit court entered an order denying Patrick and Regina's motion to dismiss Greg's complaint. Third, the circuit court entered an order granting Patrick and Regina's motion to compel Greg to add the estate as a party.

On November 6, 2018, Greg filed his third amended complaint naming the estate as a party. Greg also amended his complaint to assert the following claims: "breach of fiduciary duty under South Dakota law," "conversion under South Dakota law," "breach of contract under South Dakota law," "unjust enrichment under South Dakota law," "constructive trust under South Dakota law," "violations of S.D. [Codified Laws] § 22-46-1 et[] seq.," and "violations of S.D. [Codified Laws] § 55-1-1 et[] seq.," and he requested the entry of a "declaratory judgment under Alabama law" providing the following:

> "a. The Defendants … caused damages to the Estate, the [trust], and [Greg] as a result of wrongful acts and omissions;

> "b. The Defendants … shall immediately transfer money and assets to the Estate and/or the [trust] which was previously taken from [Wallene] through undue influence, breach of fiduciary duties, breach of contracts, conversion of money, and abuse of a confidential relationship;
>
> "c. To the extent the Defendants … do not immediately transfer said money and assets to the Estate and/or the [trust], enter a judgment against Defendants … for an amount deemed appropriate by the Court;
>
> "d. Remove Defendant Regina Daily as a co-trustee of the [trust];
>
> "e. Order the Defendants to pay all damages caused by their wrongful acts and omissions, including reimbursing [Greg] for attorney's fees and costs incurred in pursuit of this action; and
>
> "f. Any other relief the Court finds necessary and just."

On the same day, Greg also filed his "second notice of application of foreign law." Greg's second notice of application of foreign law raised the same issues as those raised in his first notice of application of foreign law filed on September 6, 2018.

On March 20, 2019, Greg filed his fourth (and final) amended complaint. In that amended complaint, Greg, individually and in his capacity as cotrustee of the trust, and the estate asserted the same claims asserted in the third amended complaint against Patrick, Regina, White

Sands, Blue Palms, and The Daily Catch (collectively referred to as "the defendants"). On May 30, 2019, the defendants filed answers to the fourth amended complaint.

On July 23, 2019, the circuit court entered an order granting Greg's December 12, 2017, motion seeking to join the estate as a plaintiff "conditioned on the court appointing [Greg] as the administrator ad litem of the estate with authority to prosecute the claims in the complaint on behalf of the estate." The circuit court's order specifically states that Greg "is hereby appointed as administrator ad litem in this case."

On August 26, 2019, Patrick and Regina filed a petition for a writ of mandamus with the Court of Civil Appeals, requesting that a writ issue directing the circuit court to vacate its July 23, 2019, order appointing Greg as an administrator ad litem of the estate. Among other things, Patrick and Regina argued that, because the administrator ad litem of the estate was pending in the South Dakota court, only the South Dakota court had jurisdiction to appoint an administrator ad litem for the estate and that the circuit court, therefore, lacked subject-matter jurisdiction to appoint Greg as an administrator ad litem of the estate. That petition was transferred to this Court; we ordered Greg to file an

answer to Patrick and Regina's petition, along with a brief in support of the answer.

On October 29, 2019, while the mandamus petition was still pending in this Court, the defendants filed a motion in the circuit court requesting "a determination that the substantive law applicable to this case will be the law of the State of Alabama …." On November 6, 2019, the circuit court entered an order setting the defendants' motion for a hearing to occur on November 19, 2019.

On November 12, 2019, the defendants filed a motion for a summary judgment. The defendants asserted the following arguments:

> "There are no genuine issues of material fact and the Defendants are entitled to judgment as a matter of law because [Greg] lacks standing or authority to pursue this action on behalf of the Estate, [the trust], or himself personally. Even if he has authority to pursue this action the claims under South Dakota law fail, and the only remaining claim for Declaratory Judgment fails because (1) it is not the proper method for pursuing tort claims and (2) all underlying tort claims abated at Wallene Esser's death. Furthermore, all claims asserted are tort claims and all abate and were extinguished by Wallene Esser's death under Alabama law, whether or not [Greg] would be entitled to pursue this matter under South Dakota law because the abatement statute is 'procedural in nature.' Finally, all claims asserted are barred by the applicable statute of limitations and any contract action alleged is barred by the applicable statute of frauds."

On November 15, 2019, Greg filed a response to the defendants' October 29, 2019, motion requesting that the circuit court apply Alabama law in this case. On November 19, 2019, the circuit court conducted the scheduled hearing on the defendants' motion. Apparently, a question arose at the hearing as to whether the circuit court could apply the laws of South Dakota to certain of Greg's claims and the laws of Alabama to other of Greg's claims. On November 22, 2019, Greg filed a "brief in response to the [circuit] court's question about whether the court can apply South Dakota's law to certain claims and Alabama law's [sic] to other claims," arguing that the circuit court was free to apply South Dakota law to certain of Greg's claims and Alabama law to other of Greg's claims. On the same day, the defendants filed a similar brief in response to the circuit court's question, arguing "that the substantive law of Alabama applies to [all the] matters before the court in this case …."

On December 4, 2019, Greg filed a motion requesting that the circuit court enter sanctions against the defendants "for intentionally altering material evidence." As part of the discovery in this case, the defendants had produced checks that were written on Wallene's checking account while she was alive. Greg discovered, however, that the checks

submitted into evidence had been altered. Specifically, concerning eight checks submitted into evidence, either the payee's name on the checks or the information in the "memo" line of the checks had been altered. Five of the checks had been made out to The Daily Catch, but the check actually submitted into evidence had been altered to list a payee other than The Daily Catch to make it look as if the checks had been used for medical expenses for Wallene. The amount of the eight altered checks at issue totaled $10,420. The checks were relevant to whether Regina had repaid the $80,000 that she had borrowed from Wallene in May 2006. Greg alleged that the defendants "intentionally altered checks to give [Greg] and the [circuit] court the false impression that the defendants were using some of Wallene['s] … money to pay for healthcare costs when, in fact, they were depositing [Wallene's] money in their business account." Greg requested that the circuit court sanction the defendants by striking several of the affirmative defenses raised by the defendants "and/or … award attorneys' fees and costs at the conclusion of the case." Greg later supplemented the motion.

On December 13, 2019, Greg filed a response to the defendants' summary-judgment motion. Greg later supplemented his response.

On May 22, 2020, this Court denied, without an opinion, the petition for a writ of mandamus filed by Patrick and Regina. See Ex parte Daily (No. 1180956, May 22, 2020), 331 So. 3d 1136 (Ala. 2020) (table).

On September 3, 2020, the defendants filed a response to Greg's motion for sanctions. In their response, the defendants admitted that Regina had, in fact, altered the checks that had been submitted into evidence. On September 23, 2020, Greg filed a reply to the defendants' response.

Regina and The Daily Catch state in their brief before this Court that the circuit court heard oral arguments from the parties concerning the defendants' October 29, 2019, motion requesting that Alabama law apply in this case. The defendants apparently submitted to the circuit court a proposed order stating that Alabama law applies in this case, but that proposed order does not appear in the record. On November 4, 2020, Greg filed an objection to the circuit court's adoption of the defendants' proposed order. On November 9, 2020, the defendants filed a response to Greg's objection, which they later supplemented. On November 10, 2020, Greg filed a reply to the defendants' response. On December 4, 2020, the

circuit court entered an order stating "that Alabama law shall control in this case in its entirety."

On December 10, 2020, the circuit court entered an order granting, in part, Greg's motion for sanctions. In relevant part, the circuit court's order states that Regina "is hereby removed as co-trustee of the … trust." Accordingly, Greg is the only remaining trustee of the trust.

On February 25, 2021, the circuit court entered an order denying the defendants' summary-judgment motion. The case proceeded to a bench trial, which commenced on July 15, 2021, and concluded on February 22, 2022.

On September 29, 2021, at the close of Greg's case, the defendants, in open court, orally requested that the circuit court enter a "directed verdict" in their favor; the defendants filed a written "motion for a directed verdict" the next day, on September 30, 2021.[2] In their written "motion for a directed verdict," the defendants asserted the following arguments, which were also asserted in open court: (1) White Sands, Blue Palms, and The Daily Catch "are entitled to directed verdict because

[2]What was once referred to as a motion for a directed verdict is now referred to as a motion for a judgment as a matter of law. See Rule 50, Ala. R. Civ. P.

[Greg] has not produced substantial evidence of any wrongdoing on behalf of those entities"; (2) "Defendants are entitled to directed verdict as to all counts asserted under 'South Dakota Law' "; (3) "Defendants are entitled to judgment as a matter of law because [Greg] has no authority or standing to pursue this action on behalf of the [trust], the estate, or in his individual capacity"; (4) "[Greg's] claim for Declaratory Judgment fails because Declaratory-Judgment actions are not proper to resolve tort claims, the equitable relief requested has abated and was extinguished by the death of Wallene Esser, and there is no justiciable controversy"; (5) "Had they been asserted under Alabama Law, [Greg's] tort claims abated and were extinguished by the death of Wallene Esser"; (6) "[Greg's] claims are barred by the applicable statutes of limitations"; (7) "[Greg's] claim in Count III for 'Breach of contract Under South Dakota Law' is barred by the Statute of Frauds"; and (8) "Constructive trust is not a cause of action, it is a remedy and will not support [Greg's] pursuit of this matter because the supporting claims fail as a matter of law." After the defendants submitted their oral request for a "directed verdict" to the circuit court, the circuit-court judge, on September 29,

2021, made the following comments to the parties in open court concerning the defendants' motion:

> "But at this point in time, the only thing I am prepared to grant Judgment as a Matter of Law is as to the claims of the [condominium unit] and the commission that was received by [Patrick's] real estate commission. I'm not going to award any damages related to the condo[minium unit] or the commission. I don't see anything that indicates that [Wallene] didn't know what she was doing, was not aware that -- you know, didn't intend to purchase this condo[minium unit]. It was just a bad investment, I mean, for her. She wanted the condo[minium unit]. I mean, she told Ms. Sterrett that. The testimony is clear as to the condo[minium unit]. So as to the claims related to [the] condo[minium unit] and the commission on the purchase of [the] condo[minium unit], I'm not -- I'm going to grant Judgment as a Matter of law as to those issues.
>
> "I'll reserve ruling on the rest of them until I see your formal filed motion and have an opportunity to review it, together with your response thereto.
>
> "Now, how much time, assuming I don't grant it, it is probably not likely, I'm not saying for sure. I haven't considered your motion and his response yet in full, but I'm going to tell you it's probably not likely. There's probably going to be some remaining claims."

On October 15, 2021, Greg filed a response to the defendants' "motion for a directed verdict." On October 19, 2021, the circuit court entered an order appearing to deny, in its entirety, the defendants' "motion for a directed verdict," despite the comments made by the circuit-court judge

during the bench trial indicating that the circuit court was inclined to grant the defendants' motion as to any claims pertaining to the condominium unit. On February 3, 2022, the defendants filed a motion requesting that the circuit court clarify its order denying the defendants' "motion for a directed verdict" based on the comments that the circuit-court judge had made in open court on September 29, 2021. On February 8, 2022, Greg filed a response in opposition to the defendants' motion for clarification. On February 22, 2022, the bench trial recommenced and the circuit court considered arguments from the parties concerning the defendants' motion for clarification of the circuit court's October 19, 2021, order denying the defendants' "motion for a directed verdict" in its entirety. The circuit-court judge stated:

> "Well, and there again, I guess I should have been more specific on my ruling on the motion for directed verdict as far as the written order. You know, the [condominium unit], I was not satisfied that, you know, there was action taken on that beyond what Ms. Wallene Esser chose to do.
>
> "I was satisfied that as to the condo[minium unit], I didn't see anything that she didn't -- evidence that would substantiate that, you know, anything happened with the condo[minium unit] other than what she intended. And, therefore, that was how I intended to direct the directed verdict, yes, as to that. As to all other claims, it was denied. That was my intention. I denied your written motion because it brought in other things, though, is my recollection.

> "….
>
> "… And so my intent was to deny it as to all of those things, except for the condo[minium unit]. As far as I'm concerned, the issues on the condo[minium unit], [Wallene] -- you know, I'm satisfied from the evidence, I didn't see anything that was outside of [Wallene's] decision-making ….
>
> "So with that, the other matters are still on the table, though."

On February 23, 2022, the circuit court entered the following order: "Motion to clarify the [circuit] court's order on directed verdict filed by … Patrick and … Regina is hereby other [sic] as clarified on the record."

Also of note during the bench trial is the fact that the parties reached an agreement concerning the Gulf Shores house. On February 22, 2022, the circuit-court judge and the parties' trial attorneys had the following discussion:

> "[Greg's trial counsel:] Before I get to that closing remark, there's one issue that I want to put on the record and that deals with the Gulf Shores house that, you know, it's been [Greg's] position that that house belongs to the trust. And there's some correspondence between myself and [defendants' trial counsel] in the last couple of weeks that I'd like to put into the record, if I may. I think it's three separate letters.
>
> "And I think we have an agreement -- I think [defendants' trial counsel] is willing to open up an ancillary estate here in Baldwin County to effectuate the transfer of that house to the trust. And that's been our position all along,

that that was the intent of the estate planning documents signed by [Wallene].

"THE COURT: [Defendants' trial counsel,] does that sound like an accurate statement?

"[The defendants' trial counsel:] Well, I think I would object to the admission of any documents because it -- at least insofar as rebuttal is concerned.

"THE COURT: Is there an agreement to open up an ancillary estate and transfer the house to the estate in this matter?

"[Greg's trial counsel:] To the trust, you mean.

"THE COURT: To the trust. Excuse me, to the trust in this matter. I apologize.

"[The defendants' trial counsel:] I'll put it this way: I have drafted a petition to open the ancillary estate. I've provided a draft to [Greg's trial counsel]. I've provided a consent for his client to sign in order to effectuate that. And I have requested exemplified documents that are required from the Court presiding over the estate in South Dakota. In my experience, that's the customary process for doing that. And as soon as I receive those exemplified documents and [Greg's] consent, I will cause that petition for an ancillary estate to be opened. And then, presumably, I would convey the real estate that lies in Alabama to the beneficiary of the estate, which is this trust.

"I assume that there will be no claim of creditors or lawsuits filed that would tie it up in any way. But that would be the intention, would either be to convey the real estate or to liquidate the real estate, convey the cash, whatever needs to be done in terms of doing the business of the estate.

"THE COURT: Was that your understanding of -- I'm going to use the term again 'agreement' that your client is amenable to?

"Either you have an agreement, gentlemen, or you don't. And I will just rule outright as to who gets the house. If you have an agreement, which it sounds like you do, but neither one of you will say that's the agreement. So either you have an agreement or you don't have an agreement.

"[The defendants' trial counsel:] Judge, I just don't want to represent that I can do things that I'm unable to do.

"THE COURT: I understand. But you just said -- I want to ask you this question. Are your clients amenable to opening an ancillary estate with the Gulf Shores house being the asset, I guess, the sole asset of the estate and proceeding through normal channels, with the intention being that either the liquidated funds from the house, if it must be liquidated to pay outstanding debts, and/or the title to the house, whichever is appropriate at that time, being transferred ultimately to [Wallene's] estate in South Dakota?

"[Greg's trial counsel:] No, sir, the trust.

"THE COURT: The trust in South Dakota -- I keep saying the estate. The trust in South Dakota. Is that your clients' intention?

"[The defendants' trial counsel:] Yes, sir.

"THE COURT: Okay. Is [Greg] amenable to that?

"[Greg's trial counsel:] Yes.

"Our position is that the Gulf Shores house belongs in the name of the trust. If the ancillary estate that they're

> proposing opening up here is the proper procedure to get that done, then we are of course okay with that.
>
> "THE COURT: Well, if that's y'all's agreement, then I will adopt that as the order of the court. And I'll let you fight over the language that goes in the final order.
>
> "So that takes care of the Gulf Shores house."

Subsequently, toward the end of the trial proceedings, the following discussion occurred:

> "[THE COURT:] Okay. Folks, as I said, I've got a lot of stuff to read back over. I will take all of these matters under submission and try to get y'all a somewhat coherent ruling.
>
> "I will ask the parties to go ahead and -- the attorneys, to prepare some language as to the agreement on the Gulf Shores house that y'all both feel would be appropriate to have contained in the final judgment order by reference, since y'all have worked that out, just so I cover that.
>
> "This is what the parties have agreed to, since we put it on the record, and that will cover that portion of the disputed issue with the Gulf Shores house, as far as where it should be. Since y'all have an agreement in place to deal with that, I'm going to let y'all put that -- some language together and forward that to [the court] and I will encompass that into my final judgment, just noting that this was done by agreement. And then as to all other matters, here's the judgment of the Court.
>
> "Does that work for everybody?
>
> "[Greg's trial counsel:] We can do that. I'm sure we can do that."

On April 5, 2022, pursuant to the agreement reached by the parties, Regina filed in the Baldwin Probate Court ("the probate court") a "petition to open ancillary estate for ancillary letters testamentary and to admit will to probate by consent"; Greg filed a consent to that petition. In her petition, Regina stated that Wallene had owned the Gulf Shores house at the time of her death and that she "is hereby requesting [the probate court] open an ancillary estate so as to dispose of and/or manage said real property." On April 22, 2022, the probate court entered a decree admitting Wallene's will to probate and granting Regina "ancillary letters testamentary" in order to administer Wallene's ancillary estate.

On May 10, 2022, the circuit court entered the following order on the merits of Greg's claims:

> "The Court having conducted a bench trial in this matter finds that the Plaintiff, Greg Esser, is entitled to judgment against Defendants Regina Daily and The Daily Catch … in the amount of $250,000.00 plus costs of court. This judgment is joint and several as to both.
>
> "As to [Greg's] claims against all other named Defendants, said claims are denied.
>
> "The court will hear argument on [Greg's] claims for attorney fees on May 31, 2022, at 9:00 AM, at the Fairhope Courthouse."

On June 2, 2022, Greg filed a brief in support of his "claim for attorneys' fees, expert fees, and costs."

On June 16, 2022, Regina and The Daily Catch appealed. On June 29, 2022, Greg cross-appealed. On July 21, 2022, this Court entered an order consolidating the appeal and the cross-appeal.

On August 5, 2022, Greg filed in the circuit court a "motion to show cause and motion to enforce settlement," requesting that the circuit court enter an order, consistent with the parties' agreement as announced in open court on February 22, 2022, requiring Regina "to immediately convey [the Gulf Shores house] from the estate to [Greg] in his capacity as sole trustee of the [trust]." Greg asserted in his motion that Regina "has had months to convey the Gulf Shores house to the [trust] per the agreement. To date, the property has not been conveyed to the [trust]."

On August 9, 2022, the defendants filed in the circuit court a claim for attorneys' fees and costs. The defendants argued that, as the prevailing party on several of Greg's claims against them, they are entitled to an award of attorneys' fees and costs pursuant to Rule 54(d), Ala. R. Civ. P. On August 16, 2022, Regina filed a motion requesting that any attorneys' fees she paid in defending the claims against her in her

capacity as cotrustee of the trust (before her removal as cotrustee of the trust on December 10, 2020, by order of the circuit court) be taxed against the corpus of the trust.

On August 23, 2022, Greg filed in the circuit court a petition to remove the administration of the ancillary estate from the probate court to the circuit court. Greg filed the removal petition in circuit-court case number CV-17-901017, which is the same case that the parties had already appealed to this Court. On September 1, 2022, the defendants filed a response to Greg's removal petition, arguing that circuit-court case number CV-17-901017 "is over" because, they said, the circuit court had "rendered final judgment in this matter on the 10th day of May 2022, reserving only the issue of attorney's fees." The defendants argued that the circuit court no longer has jurisdiction over circuit-court case number CV-17-901017 and that, to properly remove the administration of the ancillary estate from the probate court, Greg must initiate a new circuit-court case and pay a filing fee.

On October 6, 2022, the circuit court entered an order in circuit-court case number CV-17-901017 stating, in pertinent part:

> "1. The court's order dated May 10, 2022 … was not a final order because the parties dispute if Wallene R. Esser's

> house in Gulf Shores, Alabama should be conveyed to the Wallene R. Esser Living Trust … or should be sold due to a mortgage. When the court entered the subject order on May 10, 2022, the court was under the impression that the parties had settled the issue regarding the Gulf Shores house.
>
> "2. The court GRANTS [Greg's] Verified Petition to Remove Ancillary Estate Pending in Probate Court to the court. The Clerk is directed to consolidate In re: Estate of Wallene Esser, No. 40651, Probate Court of Baldwin County, Alabama with Esser v. Patrick and Regina Daily et al., No. CV-2017-901017, Circuit Court of Baldwin County, Alabama.
>
> "3. The Court will adjudicate the issue regarding the Gulf Shores house and the remaining motions pending before the Court in a separate order."

On November 17, 2022, the defendants filed in this Court a petition for a writ of mandamus requiring the circuit court to vacate its October 6, 2022, order "due to lack of subject matter jurisdiction as this matter was concluded by final order dated May 10, 2022, and no post-judgment motions were filed within thirty days."

On December 5, 2022, this Court entered an order requiring Greg to file with this Court an answer, supported by a brief, to the defendants' mandamus petition. This Court further ordered that all proceedings in the circuit court be stayed until further order of this Court.

II. Standards of Review

As explained below, we must first address the defendants' mandamus petition. We set forth the following applicable standard of review in Ex parte Stewart, 985 So. 2d 404, 407 (Ala. 2007):

> "'This Court's standard of review applicable to a petition for a writ of mandamus is well settled:
>
> > "'"'Mandamus is an extraordinary remedy and requires a showing that there is "(1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."'"'
>
> "Ex parte Medical Assurance Co., 862 So. 2d 645, 649 (Ala. 2003) (quoting Ex parte Inverness Constr. Co., 775 So. 2d 153, 156 (Ala. 2000)). The question of subject-matter jurisdiction is reviewable by a petition for a writ of mandamus. Ex parte Flint Constr. Co., 775 So. 2d 805 (Ala. 2000)."

Concerning Regina and The Daily Catch's appeal, we apply the following standard of review:

> "'"[W]hen a trial court hears ore tenus testimony, its findings on disputed facts are presumed correct and its judgment based on those findings will not be reversed unless the judgment is palpably erroneous or manifestly unjust." Philpot v. State, 843 So. 2d 122, 125 (Ala. 2002). "'The presumption of correctness, however, is rebuttable and may be overcome where there is insufficient evidence presented to the trial court to sustain its judgment.'" Waltman v. Rowell, 913 So. 2d 1083, 1086 (Ala. 2005) (quoting Dennis v. Dobbs,

> 474 So. 2d 77, 79 (Ala. 1985)). "Additionally, the ore tenus rule does not extend to cloak with a presumption of correctness a trial judge's conclusions of law or the incorrect application of law to the facts." Id.'"

State v. $223,405.86, 203 So. 3d 816, 822 (Ala. 2016) (quoting Fadalla v. Fadalla, 929 So. 2d 429, 433 (Ala. 2005)).

Concerning Greg's cross-appeal, which challenges only the circuit court's order on his motion for sanctions, we apply the following standard of review:

> "The choice of discovery sanctions is within the trial court's discretion and will not be disturbed on appeal absent gross abuse of discretion, Johnson v. Langley, 495 So. 2d 1061 (Ala. 1986); Deaton, Inc. v. Burroughs, 456 So. 2d 771 (Ala. 1984); Weatherly v. Baptist Medical Center, 392 So. 2d 832 (Ala. 1981), and then only upon a showing that such abuse of discretion resulted in substantial harm to appellant. Edward Leasing Corp. v. Uhlig & Associates, Inc., 785 F.2d 877 (11th Cir. 1986)."

Iverson v. Xpert Tune, Inc., 553 So. 2d 82, 87 (Ala. 1989).

III. Discussion

Pending before this Court is an appeal filed by Regina and The Daily Catch (case number SC-2022-0672), a cross-appeal filed by Greg (case number SC-2022-0673), and a petition for a writ of mandamus filed by the defendants (case number SC-2022-0992). The appeal concerns the circuit court's May 10, 2022, order on the merits of Greg's claims, and the

cross-appeal concerns the circuit court's December 10, 2020, order addressing Greg's motion for sanctions, which is an order entered as part of the underlying case. The mandamus petition, however, presents the issue whether the May 10, 2022, order is a final judgment of the circuit court. Because our resolution of the issue raised in the mandamus petition could affect whether this Court has jurisdiction over the appeal and the cross-appeal, we must begin our analysis of these consolidated appellate proceedings with a discussion of whether the circuit court's May 10, 2022, order is a final judgment. If the May 10, 2022, order is a final judgment, we may consider the arguments raised by the parties in the appeal and the cross-appeal; if not, then we must dismiss the appeal and the cross-appeal as having been taken from nonfinal orders. See Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 363 (Ala. 2004) ("A nonfinal judgment will not support an appeal. Whitehurst v. Peak, 819 So. 2d 611, 615 (Ala. 2001).").

A. Case Number SC-2022-0992 -- The Defendants' Mandamus Petition

In their mandamus petition, the defendants argue that the circuit court's October 6, 2022, order should be vacated on the basis that the circuit court lost subject-matter jurisdiction over the underlying case

once it entered its May 10, 2022, order disposing, the defendants argue, of all of the claims pending in the circuit court. The point of contention between the parties is whether the May 10, 2022, order is a final judgment in this case. Greg argues that the May 10, 2022, order is not a final judgment because it does not adjudicate all the claims pending before the circuit court. Specifically, Greg argues that the circuit court's May 10, 2022, order does not dispose of his claims pertaining to the Gulf Shores house. The defendants, on the other hand, argue that it was not necessary for the May 10, 2022, order to address Greg's claims pertaining to the Gulf Shores house because the parties had already entered into a settlement agreement as to the disposition of the Gulf Shores house and there was nothing further for the circuit court to adjudicate concerning the Gulf Shores house at the time it entered its May 10, 2022, order. The defendants are correct.

It is clear that the parties entered into a settlement agreement regarding the disposition of Greg's claims pertaining to the Gulf Shores house. The parties agreed in open court that Regina would petition the probate court to open an ancillary estate consisting solely of the Gulf Shores house with the intention to either transfer title of the Gulf Shores

house to the trust or to sell the Gulf Shores house, if any outstanding debts related to the Gulf Shores house existed, and transfer the proceeds of the sale to the trust. Upon both parties agreeing to those terms, the circuit-court judge stated that, "if that's y'all's agreement, then I will adopt that as the order of the court." The circuit-court judge further stated that "[t]his is what the parties have agreed to, since we put it on the record, and that will cover that portion of the disputed issue with the Gulf Shores house, as far as where it should be." Clearly, based on the settlement agreement entered into by the parties in open court, the circuit court considered the adjudication of Greg's claims pertaining to the Gulf Shores house to have been settled by the parties. There was discussion of potentially including language in the final judgment noting the agreement of the parties concerning Greg's claims pertaining to the Gulf Shores house, but no such language was ultimately included in the May 10, 2022, order of the circuit court.

The circuit court may have ultimately deemed it unnecessary to include such language in its May 10, 2022, order because, on April 14, 2022, Regina filed in the probate court a "petition to open ancillary estate for ancillary letters testamentary and to admit will to probate by

consent." Greg expressly consented to the course of action taken by Regina. Regina's petition states that Wallene "owned certain real property located in Baldwin County … at the time of her death, and your petitioner is hereby requesting this court open an ancillary estate so as to dispose of and/or manage said real property."

Accordingly, before the entry of the circuit court's May 10, 2022, order, the parties entered into an agreement in open court during trial; the circuit court acknowledged the agreement and ensured that the parties did actually agree to the settlement of Greg's claims concerning the Gulf Shores house; and Regina, pursuant to that agreement and with Greg's consent, acted upon it and petitioned the probate court to open the ancillary estate, which consisted of the Gulf Shores house, for the purpose of transferring the Gulf Shores house (or the proceeds from its sale) to the trust. On April 22, 2022, the probate court admitted Wallene's will to probate and opened the ancillary estate; the disposition of the Gulf Shores house then came within the jurisdiction of the probate court.

Subsequently, on May 10, 2022, the circuit court entered the following order:

> "The Court having conducted a bench trial in this matter finds that the Plaintiff, Greg Esser, is entitled to judgment

> against Defendants Regina Daily and the Daily Catch … in the amount of $250,000.00 plus costs of court. This judgment is joint and several as to both.
>
> "As to [Greg's] claims against all other named Defendants, said claims are denied.
>
> "The court will hear argument on [Greg's] claims for attorney fees on May 31, 2022, at 9:00 AM, at the Fairhope Courthouse."

That order constitutes a final judgment in the case before the circuit court, and there is nothing left for the circuit court to adjudicate. The parties complied with the agreement announced in open court, and, as discussed infra, the disposition of the Gulf Shores house remains within the jurisdiction of the probate court. As a result, the appeal and the cross-appeal are properly before this Court, and this Court may consider the merits of the appeal and the cross-appeal. See Faith Props., LLC v. First Commercial Bank, 988 So. 2d 485, 490-91 (Ala. 2008) ("'"A judgment that conclusively determines all of the issues before the court and ascertains and declares the rights of the parties involved is a final judgment."' [Pratt Cap., Inc. v.] Boyett, 840 So. 2d [138,] 144 [(Ala. 2002)] (quoting Nichols v. Ingram Plumbing, 710 So. 2d 454, 455 (Ala. Civ. App. 1998)). 'A judgment that declares the rights of the parties and settles the equities is final even though the trial court envisions further proceedings to

effectuate the judgment.' Wyers v. Keenon, 762 So. 2d 353, 355 (Ala. 1999). Otherwise stated, a judgment that is 'definitive of the cause in the court below, leaving nothing further to be done, save [its enforcement],' is a final judgment. Ex parte Gilmer, 64 Ala. 234, 235 (1879)."). As we explain in the discussion that follows, the circuit court no longer has anything pending before it (other than a request for attorneys' fees) and has lost jurisdiction of circuit-court case number CV-17-901017.[3]

Greg's August 5, 2022, filing in the circuit court of his "motion to show cause and motion to enforce settlement" does nothing to affect the finality of the May 10, 2022, order. In fact, that motion confirms that the parties had settled any claim pertaining to the disposition of the Gulf Shores house. For instance, Greg specifically noted in the motion that the parties had reached "a settlement agreement … in open court during the trial …." In that motion, Greg requested that the circuit court order

[3]It is inconsequential that the circuit court later stated that its May 10, 2022, order is not a final judgment (the circuit court stated in its October 6, 2022, order that its May 10, 2022, order "was not a final order because the parties dispute if [the Gulf Shores house] should be conveyed to the [trust] … or should be sold due to a mortgage."). See Smith v. Fruehauf Corp., 580 So. 2d 570, 572 (Ala. 1991) ("The rule in this State is that an order that disposes of all pending issues as to all parties, so that by the general rules of procedure it is final and appealable, will not be made nonfinal by the trial court's calling it nonfinal.").

Regina, as the personal representative of the ancillary estate, to transfer title of the Gulf Shores house to the trust. However, at that time, the ancillary estate consisting of the Gulf Shores house was pending before the probate court; the circuit court did not have jurisdiction over the ancillary estate. See Minor v. Thomasson, 236 Ala. 247, 248, 182 So. 16, 17 (1938) ("[T]he administration is still pending in the Probate Court, and it is not permissible for two courts to entertain and exercise jurisdiction over the same subject matter at the same time, though they be courts of concurrent jurisdiction."). Further, the circuit court had lost its jurisdiction to enforce the settlement agreement between the parties because the May 10, 2022, order, which we have determined is a final judgment, had been appealed to this Court; this Court now has jurisdiction over the underlying case in which Greg filed his motion to enforce the settlement agreement. Cf. Lem Harris Rainwater Fam. Tr. v. Rainwater, [Ms. 1210106, Sept. 30, 2022] ___ So. 3d ___, ___ (Ala. 2022) ("A settlement agreement is a contract. Billy Barnes Enters., Inc. v. Williams, 982 So. 2d 494, 498 (Ala. 2007); Jones v. Bullington, 401 So. 2d 740, 741 (Ala. 1981). Normally, a breach of a contract is a basis for a distinct legal claim in a lawsuit. However, when a settlement agreement

resolving underlying legal claims is entered into mid-litigation and the underlying action is not dismissed, the mechanism for seeking relief based on a breach of that agreement is a motion to enforce the agreement. See Kappa Sigma Fraternity v. Price-Williams, 40 So. 3d 683, 690 n.3 (Ala. 2009) (explaining, in case involving enforcement of a settlement agreement within the underlying action, that 'a proceeding to enforce a settlement is in the nature of an action on a contract'); 15B Am. Jur. 2d Compromise and Settlement § 41 (2021) ('[W]here the parties agree to settle a pending lawsuit but, before judgment is rendered on the agreement, one party withdraws consent, ... the party seeking to uphold the agreement may file a motion for enforcement in the underlying action, rather than institute a new action on the contract of settlement.'); Fidelity & Guar. Ins. Co. v. Star Equip. Corp., 541 F.3d 1, 5 (1st Cir. 2008) ('Where ... the settlement collapses before the original suit is dismissed, the party seeking to enforce the agreement may file a motion with the trial court.')." (Emphasis added.)).

On August 23, 2022, Greg filed in the circuit court a petition to remove the administration of the ancillary estate from the probate court to the circuit court. Of course, generally speaking, pursuant to

§ 12-11-41, Ala. Code 1975, Greg has the right to petition to remove the administration of the ancillary estate to the circuit court, and the circuit court has subject-matter jurisdiction over such petitions. However, Greg filed the petition in the underlying action, circuit court case-number CV-17-901017, requesting that the circuit court make the administration of the ancillary estate a part of that case. The circuit court then entered the October 6, 2022, order, purporting to grant Greg's removal petition and to remove the ancillary estate from the probate court and make it a part of circuit-court case number CV-17-901017. The circuit court did not have jurisdiction to enter an order in circuit-court case number CV-17-901017, however, because the final judgment in that case had been appealed and the case is now within the jurisdiction of this Court. Accordingly, the circuit court's October 6, 2022, order purporting to remove the administration of the ancillary estate and include it in circuit-court case number CV-17-901017, which is pending before this Court, was a nullity; the circuit court did not have jurisdiction to enter an order in that case. See Dyas v. Stringfellow, 333 So. 3d 128, 132 (Ala. 2021) (relying upon Horton v. Horton, 822 So. 2d 431 (Ala. Civ. App. 2001), in determining that a trial court did not have jurisdiction to enter an order

in an underlying action after a notice of appeal had been filed; such an order entered after the notice of appeal had been filed was a nullity).

In summary, the circuit court's May 10, 2022, order is a final, appealable judgment. The merits of the appeal and cross-appeal are properly before us. The circuit court's October 6, 2022, order, entered after the notices of appeal had been filed, purporting to remove the administration of the ancillary estate from the probate court to circuit-court case number CV-17-901017 is a nullity because the circuit court no longer had jurisdiction over the case. See Harden v. Laney, 118 So. 3d 186, 187 (Ala. 2013) ("The timely filing of a notice of appeal invokes the jurisdiction of an appellate court and divests the trial court of jurisdiction to act except in matters entirely collateral to the appeal."). Accordingly, we grant the defendants' mandamus petition because the circuit court's October 6, 2022, order purporting to remove the administration of the ancillary estate from the probate court to circuit-court case number CV-17-901017 is a nullity, and we issue the writ instructing the circuit court to vacate the October 6, 2022, order.

B. Case Numbers SC-2022-0672 and SC-2022-0673 --

Regina and The Daily Catch's Appeal and Greg's Cross-Appeal

Having determined that the circuit court's May 10, 2022, order is final, we now turn to the merits of Regina and The Daily Catch's appeal and Greg's cross-appeal. In their appeal, Regina and The Daily Catch argue that the circuit court erred by entering a judgment against them in the amount of $250,000. In Greg's cross-appeal, he argues that the circuit court erred by denying in part his motion for sanctions against the defendants. We will consider the appeal first.

Regina and The Daily Catch properly note that Greg asserted his claims in the circuit court in his individual capacity, in his capacity as trustee of the trust, and in his capacity as administrator ad litem of the estate. The circuit court's May 10, 2022, order makes no specific findings of fact, gives no reasons for the circuit court's judgment, and does not specify upon which claim or claims it ruled in favor of Greg and against Regina and The Daily Catch. Accordingly, to demonstrate reversible error on appeal, Regina and The Daily Catch must demonstrate that Greg could not have prevailed on any of the claims asserted in the complaint. See New Props., L.L.C. v. Stewart, 905 So. 2d 797, 802 (Ala.

2004) (following a bench trial on a plaintiff's claims of breach of contract and fraud, the trial court entered a general judgment in favor of the plaintiff and awarded $250,000 in damages; on appeal, the defendants presented arguments concerning the plaintiff's breach-of-contract claim, but failed to preserve for appellate review any arguments pertaining to the plaintiff's fraud claim; this Court affirmed the trial court's judgment because the unchallenged fraud claim could have supported the trial court's damages award). We further note that,

> "[w]hen a trial court gives no reasons in its judgment, '"this Court will assume that it made whatever findings would be necessary to support [that] judgment."' Bagley v. Mazda Motor Corp., 864 So. 2d 301, 313 (Ala. 2003) (quoting Richard Brown Auction & Real Estate, Inc. v. Brown, 583 So. 2d 1313, 1316 (Ala. 1991)); see also A.G. Edwards & Sons, Inc. v. Syvrud, 597 So. 2d 197, 200 (Ala. 1992) ('We may assume findings of fact necessary to support a trial court's judgment ....'); and Smith v. Citicorp Person-to-Person Fin. Ctrs., Inc., 477 So. 2d 308, 309 (Ala. 1985) (holding that when the trial court makes no formal findings of fact, an appellate court will assume it made those findings that will justify its judgment)."

New Props., 905 So. 2d at 802. Moreover, because the circuit court's judgment did not contain specific findings of fact and because Regina and The Daily Catch did not file a postjudgment motion raising to the circuit court an argument relating to the sufficiency or the weight of the evidence, Regina and The Daily Catch have not preserved for appellate

review any arguments pertaining to the sufficiency or the weight of the evidence supporting the judgment. Id. at 801-02 ("[W]e hold that, in a nonjury case in which the trial court makes no specific findings of fact, a party must move for a new trial or otherwise properly raise before the trial court the question relating to the sufficiency or weight of the evidence in order to preserve that question for appellate review. See Rule 52(b), Ala. R. Civ. P. …").

With these principles in mind, we turn to Regina and The Daily Catch's arguments. We first address their argument that "Greg had no standing to pursue this action on behalf of the [trust], the estate, or in his individual capacity." Regina and The Daily Catch's brief at 52. We start here because the concept of standing is one that implicates a court's subject-matter jurisdiction. See State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1028 (Ala. 1999) ("When a party without standing purports to commence an action, the trial court acquires no subject-matter jurisdiction."). Of course, in recent years, this Court has regularly explained that numerous arguments that purport to be "standing" arguments are actually arguments that relate to other doctrines that do not implicate the subject-matter jurisdiction of a trial court. For

instance, in Gardens at Glenlakes Property Owners Ass'n v. Baldwin County Sewer Service, LLC, 225 So. 3d 47, 51-53 (Ala. 2016), a plurality of this Court stated:

> "Whatever the merits of BCSS's argument that the Associations may not enforce claims of the individual owners or that the 1991 agreement does not apply to the Golf Club, it is clear that these are not issues of 'standing.'
>
> "The concept of standing implicates a court's subject-matter jurisdiction. See State v. Property at 2018 Rainbow Drive, 740 So. 2d 1025, 1028 (Ala. 1999) ('When a party without standing purports to commence an action, the trial court acquires no subject-matter jurisdiction.'). As Justice Lyons wrote in Hamm v. Norfolk Southern Ry., 52 So. 3d 484, 499 (Ala. 2010) (Lyons, J., concurring specially): 'Imprecision in labeling a party's inability to proceed as a standing problem unnecessarily expands the universe of cases lacking in subject-matter jurisdiction.' In Wyeth, Inc. v. Blue Cross & Blue Shield of Alabama, 42 So. 3d 1216 (Ala. 2010), this Court noted:
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> > "'[O]ur courts too often have fallen into the trap of treating as an issue of "standing" that which is merely a failure to state a cognizable cause of action or legal theory, or a failure to satisfy the injury element of a cause of action. ...
> >
> > "'....
> >
> > "'... The courts of this State exist for the very purpose of performing such tasks as sorting out what constitutes a cognizable cause of action, what are the elements of a cause of action, and whether the allegations of a given complaint meet those elements. Such tasks lie at the core of the judicial

> function. See generally, e.g., Art. VI, § 139(a), Ala. Const. 1901 (vesting "the judicial power of the state" in this Court and lower courts of the State); Art. VI, § 142, Ala. Const. 1901 (providing that the circuit courts of this State "shall exercise general jurisdiction in all cases except as may otherwise be provided by law") ....'

"42 So. 3d at 1219-21 ....

"Recently, in Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31 (Ala. 2013), this Court again examined the concept of standing and cautioned that the concept is generally relevant only in public-law cases. 159 So. 3d at 44-45. In BAC we quoted Professor Hoffman:

> "'"[T]he word 'standing' unnecessarily invoked in the proposition can be erroneously equated with 'real party in interest' or 'failure to state a claim.' This simple, though doctrinally unjustified, extension could swallow up Rule 12(b)(6), Rule 17[, Ala. R. Civ. P.,] and the whole law of amendments."'

"159 So. 3d at 46 (quoting Hoffman, The Malignant Mystique of 'Standing,' 73 Ala. Law. 360, 362 (2012)).

"In this case, the question whether the Associations may properly assert the claims of their individual members is, in fact, a real-party-in-interest inquiry. This question is distinct from the question of standing: It does not implicate the subject-matter jurisdiction of the trial court, and the trial court can address the issue, if properly raised, by applying Rule 17(a), Ala. R. Civ. P. See Property at 2018 Rainbow Drive, 740 So. 2d at 1027 ('"'[T]he real party in interest principle is a means to identify the person who possesses the right sought to be enforced.'"' (quoting Dennis v. Magic City Dodge, Inc., 524 So. 2d 616, 618 (Ala. 1988), quoting in turn

> 6 C. Wright & A. Miller, Federal Practice & Procedure § 1542 (1971))). Likewise, if, as BCSS argues, the 1991 agreement does not govern sewer rates charged to the Golf Club, then the Golf Club simply will not be entitled to relief under that contract. As we concluded in BAC:
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> > "'If in the end the facts do not support the plaintiffs, or the law does not do so, so be it -- but this does not mean the plaintiffs cannot come into court and allege, and attempt to prove, otherwise. If they fail in this endeavor, it is not that they have a 'standing' problem; it is, as Judge Pittman recognized in Sturdivant [v. BAC Home Loans Servicing, LP, 159 So. 3d 15 (Ala. Civ. App. 2011),] that they have a "cause of action" problem, or more precisely in these cases, a "failure to prove one's cause of action" problem. The trial court has subject-matter jurisdiction to "hear" such "problems" -- and the cases in which they arise.'
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> "159 So. 3d at 46. The Associations and the Golf Club in this case may have a 'cause of action' problem; they may have a 'real-party-in-interest' problem -- we do not, of course, mean to suggest an answer. There is, however, no 'standing' problem."

(Second emphasis added; footnote omitted.)

Regina and The Daily Catch raise several "standing" arguments. First, they argue that Greg, in his individual capacity, lacks "standing" to pursue the claims asserted in the complaint because, they argue, "Greg does not allege any act or omission was visited upon him personally" and only the personal representative of Wallene's estate has "standing" to

pursue any claims that Wallene may have had during her lifetime that were not abated at the time of her death. Regina and The Daily Catch's brief at 52. Essentially, they are arguing that the personal representative of Wallene's estate, and not Greg in his individual capacity, is the proper party to bring the claims asserted in the complaint. That argument, in fact, raises a real-party-in-interest inquiry under Rule 17(a), Ala. R. Civ. P. See Property at 2018 Rainbow Drive, 740 So. 2d at 1027 ("'"[T]he real party in interest principle is a means to identify the person who possesses the right sought to be enforced."'" (quoting Dennis v. Magic City Dodge, Inc., 524 So. 2d 616, 618 (Ala. 1988), quoting in turn 6 C. Wright & A. Miller, Federal Practice & Procedure § 1542 (1971))).[4] Regina and The Daily Catch's argument does not demonstrate that the circuit court lacked subject-matter jurisdiction over the claims that Greg brought in his individual capacity.

[4]We note that Regina and The Daily Catch cite Chism v. Eldridge (In re Eldridge), 348 B.R. 834 (Bankr. N.D. Ala. 2006), which discusses Alabama precedent, in support of their argument that Greg lacked "standing" to file claims in his individual capacity. That case, however, was decided before this Court's recent efforts to be more precise in defining which issues actually implicate the doctrine of standing, and thereby the subject-matter jurisdiction of the trial courts, and those that do not. Eldridge does not support Regina and The Daily Catch's "standing" argument.

Second, Regina and The Daily Catch argue that Greg did not have "standing" to assert claims in his capacity as trustee of the trust. This is so, they argue, because Greg, who was a cotrustee of the trust along with Regina at the time he filed the complaint, did not have Regina's consent to file the lawsuit in the name of the trust. They cite Birmingham Trust National Bank v. Henley, 371 So. 2d 883 (Ala. 1979), in support of their argument, but that case does not stand for the proposition that a trial court lacks subject-matter jurisdiction over a case commenced by a cotrustee without the consent of any other cotrustee. It may be error for a cotrustee to act individually in filing a lawsuit on behalf of a trust, but Regina and The Daily Catch have not cited authority indicating that such unilateral action by a cotrustee prohibits a trial court from obtaining subject-matter jurisdiction over such a case.[5] Their argument does not

[5]We note that in Kershaw v. Kershaw, 848 So. 2d 942, 955-57 (Ala. 2002), this Court discussed as an issue of "standing" whether a cotrustee/coexecutor had the authority to act alone in commencing an action on behalf of certain trusts and an estate. However, it is clear from a reading of that decision that the issue actually presented was not one of subject-matter jurisdiction but, rather, an issue related to Rule 19, Ala. R. Civ. P., and the joinder of necessary parties -- mainly, the other cotrustees/coexecutors in that case. See also Stone v. Jones, 530 So. 2d 232, 235 (Ala. 1988) ("Our decision should not be interpreted, however, to suggest that all avenues of recourse are foreclosed to a co-executor who wishes to file an action on behalf of the estate without the consent of the

demonstrate that the circuit court lacked subject-matter jurisdiction over the claims that Greg brought in his capacity as cotrustee of the trust.[6]

Third, Regina and The Daily Catch argue that Greg did not have "standing" to assert claims in his capacity as administrator ad litem of the estate. However, even though this argument appears under the "standing" section of their brief and they generally argue that Greg does not have "standing" to assert claims in his capacity as administrator ad litem of the estate, Regina and The Daily Catch specifically argue that the circuit court lacked subject-matter jurisdiction to appoint Greg as an

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other co-executor(s). … [A] co-executor who wishes to file a suit on behalf of the estate, but is unable to convince the other co-executor(s) to join in the suit, might petition the court to either compel the joinder of the co-executor pursuant to Rule 19, Ala. R. Civ. P., or to dismiss the co-executor from his or her duties through a judgment of severance and allow the lone co-executor to proceed."). Kershaw is another example of a case in which this Court used the term "standing" in too broad of a sense and does not support the conclusion that the circuit court lacked subject-matter jurisdiction over Greg's claims asserted in his capacity as cotrustee of the trust.

[6]Further, we note that the circuit court, as part of its sanctions against Regina, removed Regina as a cotrustee of the trust. At that point, Regina's consent to the commencement of the underlying action, which we have determined has no bearing on the circuit court's subject-matter jurisdiction, was irrelevant. As the case proceeded, Greg, as the sole trustee of the trust, had sole authority to make all the decisions concerning the administration of the trust.

administrator ad litem. This argument is not aimed at the circuit court's subject-matter jurisdiction over the claims asserted by Greg in his capacity as administrator ad litem of the estate but, actually, attacks the circuit court's July 23, 2019, order appointing Greg "as administrator ad litem in this case." Regina and The Daily Catch argue that the circuit court "invaded the authority of [the South Dakota] court" by appointing Greg as an administrator ad litem of the estate, the administration of which is pending in South Dakota, and that the circuit court lacked subject-matter jurisdiction to do so. They are incorrect.[7]

The circuit court appointed Greg as an administrator ad litem under § 43-2-250, Ala. Code 1975; Regina and The Daily Catch make no mention of § 43-2-250 in their brief. Section 43-2-250 provides:

> "When, in any proceeding in any court, the estate of a deceased person must be represented, and there is no executor or administrator of such estate, or he is interested adversely thereto, it shall be the duty of the court to appoint an

[7]As explained above, that very issue was presented to this Court in the mandamus petition filed by Patrick and Regina on August 26, 2019. In their petition, Patrick and Regina requested that a writ issue directing the circuit court to vacate its July 23, 2019, order appointing Greg as an administrator ad litem of the estate on the basis that the circuit court had lacked subject-matter jurisdiction to appoint Greg as an administrator ad litem of the estate. We denied Patrick and Regina's mandamus petition without an opinion. See Ex parte Daily (No. 1180956, May 22, 2020), 331 So. 3d 1136 (Ala. 2020) (table).

> administrator ad litem of such estate for the particular proceeding, without bond, whenever the facts rendering such appointment necessary shall appear in the record of such case or shall be made known to the court by the affidavit of any person interested therein."

In Nelson v. Estate of Frederick, 855 So. 2d 1043, 1048 (Ala. 2003), this Court stated that § 43-2-250 "allows both probate courts and circuit courts to appoint an administrator ad litem if facts requiring the appointment of one are established. Franks v. Norfolk Southern Ry., 679 So. 2d 214, 218 (Ala. 1996)." The case upon which Nelson relies, Franks v. Norfolk Southern Ry., 679 So. 2d 214, 218 (Ala. 1996), more thoroughly explains, as follows:

> "The language of § 43-2-250[, Ala. Code 1975,] indicates that the legislature intended that any court, including the probate court, has the authority to appoint an administrator ad litem if the facts requiring one are established. Although the legislature has expressly granted exclusive jurisdiction to the circuit court in some specific areas, § 43-2-250 does not indicate that circuit courts are to have exclusive jurisdiction over the appointment of an administrator ad litem for the purpose of allowing a wrongful death case. Thus, we think the legislature intended for this statute to confer jurisdiction upon both probate courts and circuit courts over the appointment of administrators ad litem."

(Emphasis added.)[8]

[8]Regina and The Daily Catch cite § 12-13-1(b)(3), Ala. Code 1975, which provides that "[t]he probate court shall have original and general

Greg initially commenced this action in his individual capacity and then later amended the complaint to assert the claims against the defendants in his capacity as cotrustee of the trust. Upon Patrick and Regina's motion, the estate was then added as a plaintiff. Essentially, Patrick and Regina successfully argued in the circuit court that "the estate ... must be represented" in the underlying action. See § 43-2-250. Greg then filed a motion requesting that he be appointed administrator ad litem of the estate for purposes of this case on the basis that Regina, who had been appointed personal representative of the estate, had a conflict of interest, which the circuit court granted under § 43-2-250. The circuit court clearly had subject-matter jurisdiction to appoint an administrator ad litem in the present case. See Baldwin Mut. Ins. Co. v. McCain, 260 So. 3d 801, 809 (Ala. 2018) (comparing the exercise of subject-matter jurisdiction and the existence of subject-matter

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jurisdiction over the following matters: ... All controversies in relation to the right of executorship or of administration." They seem to suggest that this statute indicates that probate courts have exclusive jurisdiction to appoint an administrator ad litem. However, the above-quoted authority clearly indicates that both probate courts and circuit courts have jurisdiction to appoint an administrator ad litem. In fact, this Court in Franks even discussed § 12-13-1 in concluding as it did. See Franks, 679 So. 2d at 217. Regina and The Daily Catch's argument is not convincing.

jurisdiction and stating that the existence of subject-matter jurisdiction "is an issue of whether the court actually has any power over the type of case at issue, i.e., subject-matter jurisdiction"). That is, the circuit court had the power to appoint an administrator ad litem under § 43-2-250. See Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006) ("Subject-matter jurisdiction concerns a court's power to decide certain types of cases. Woolf v. McGaugh, 175 Ala. 299, 303, 57 So. 754, 755 (1911) ('"By jurisdiction over the subject-matter is meant the nature of the cause of action and of the relief sought."' (quoting Cooper v. Reynolds, 77 U.S. (10 Wall.) 308, 316, 19 L. Ed. 931 (1870))). That power is derived from the Alabama Constitution and the Alabama Code. See United States v. Cotton, 535 U.S. 625, 630-31, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002) (subject-matter jurisdiction refers to a court's 'statutory or constitutional power' to adjudicate a case)."). Accordingly, the circuit court had subject-matter jurisdiction to appoint Greg as an administrator ad litem under § 43-2-250.

Regarding the circuit court's appointment of Greg as administrator ad litem of the estate, Regina and The Daily Catch argue that, even if the circuit court did have subject-matter jurisdiction to appoint Greg as an

administrator ad litem, "the decision would still belong to the court in South Dakota." Regina and The Daily Catch's brief at 57. They cite Dorrough v. McKee, 264 Ala. 663, 669, 89 So. 2d 77, 82 (1956), for the following proposition: "'The general rule is that when two courts have concurrent jurisdiction, the court which first takes cognizance in a case has the right to retain it to the exclusion of the other.'" Id. at 58 (emphasis omitted). They note that the estate is being administered in the South Dakota court and that Greg had petitioned the South Dakota court to be named personal representative of the estate before he commenced the underlying action in the circuit court and petitioned the circuit court to be named administrator ad litem of the estate. Regina and The Daily Catch conclude that the South Dakota court alone had the right to exercise jurisdiction to decide whether Greg can be appointed an administrator ad litem.

Notably, Regina and The Daily Catch are clearly making an abatement argument but do not cite § 6-5-440, Ala. Code 1975, or provide any discussion thereof, in their brief. Section 6-5-440 is Alabama's abatement statute and provides:

> "No plaintiff is entitled to prosecute two actions in the courts of this state at the same time for the same cause and

> against the same party. In such a case, the defendant may require the plaintiff to elect which he will prosecute, if commenced simultaneously, and the pendency of the former is a good defense to the latter if commenced at different times."

Section 6-5-440 provides that a plaintiff cannot prosecute two actions "for the same cause and against the same party" in the courts of this state at the same time. First, there are not two actions in the courts of this state. One action is in the South Dakota court, and one is in the circuit court. Further, the actions do not involve the same cause of action. In the South Dakota court, Greg sought to have Regina removed as the personal representative and to be named the personal representative under South Dakota law; in the circuit court, Greg sought to be named an administrator ad litem and to prosecute various causes of action that he has not asserted in the South Dakota court. Accordingly, it is clear from the plain language of § 6-5-440 that, given the facts of this case, that statute does not abate this case. Because Regina and The Daily Catch have not provided any explanation regarding why § 6-5-440 should abate this case, we need not consider their argument further. See White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008) ("Rule 28(a)(10)[, Ala. R. App. P.,] requires that arguments in briefs

contain discussions of facts and relevant legal authorities that support the party's position. If they do not, the arguments are waived. Moore v. Prudential Residential Servs. Ltd. P'ship, 849 So. 2d 914, 923 (Ala. 2002); Arrington v. Mathis, 929 So. 2d 468, 470 n.2 (Ala. Civ. App. 2005); Hamm v. State, 913 So. 2d 460, 486 (Ala. Crim. App. 2002). 'This is so, because "'it is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument.'"' Jimmy Day Plumbing & Heating, Inc. v. Smith, 964 So. 2d 1, 9 (Ala. 2007) (quoting Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003), quoting in turn Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994)).").

Regina and The Daily Catch also argue that Greg is "not properly qualified" "to pursue this matter on behalf of the estate." Regina and The Daily Catch's brief at 58. They argue that Greg has failed to comply with various statutes pertaining to administrators. See Ala. Code 1975, §§ 43-2-22(a) ("Nor shall any nonresident of the state be appointed as administrator unless he is at the time executor or administrator of the same estate in some other state or territory or jurisdiction, duly qualified

under the laws of that jurisdiction." (emphasis added)); 43-2-211 (providing that a foreign "executor or administrator ... may maintain civil actions" under certain circumstances" (emphasis added)); and 43-2-213 (providing that, "[b]efore a judgment is rendered in a civil action brought by such foreign executor or administrator, he or she must demonstrate compliance with § 43-2-211" (emphasis added)). None of those statutes mention or apply to administrators ad litem.

This Court has specifically recognized that administrators and administrators ad litem have different roles under Alabama law. In Affinity Hospital, L.L.C. v. Williford, 21 So. 3d 712, 716 (Ala. 2009), this Court, in discussing § 43-2-250, stated the following concerning the role of an administrator ad litem:

> "Before the enactment of [§ 43-2-250], 'an administrator ad litem was unknown to our law and the appointment of such an administrator was void.' Ex parte Riley, 247 Ala. 242, 250, 23 So. 2d 592, 599 (1945). Generally, an administrator ad litem is a fiduciary charged with acting in the best interests of the successors to an estate. An administrator and an administrator ad litem serve in different fiduciary capacities and are separate and distinct parties. The appointment of an administrator ad litem may precede the appointment of an administrator, and the two may subsist together. The administrator ad litem is appointed for a special and limited purpose and is solely responsible to the estate for that portion of its affairs entrusted to him or her by the court.

> See 31 Am. Jur. 2d Executors and Administrators § 1050 (2002)."

(Footnote omitted.) See also Golden Gate Nat'l Senior Care, LLC v. Roser, 94 So. 3d 365, 370 (Ala. 2012) (Bolin, J., concurring specially) ("[T]he need for an administrator ad litem occurs when there is already an existing civil proceeding ('in any proceeding in any court') that is in need of someone to substitute for a deceased party, who either has no personal representative or has one who is conflicted.").

The statutes cited by Regina and The Daily Catch pertain to administrators and do not support their argument that Greg, an administrator ad litem, has no authority to pursue the underlying action on behalf of the estate. Accordingly, their argument does not demonstrate that Greg is not properly qualified to assert claims in his capacity as administrator ad litem of the estate.

Regina and The Daily Catch have failed to demonstrate that Greg lacked "standing" and, thus, that the circuit court lacked subject-matter jurisdiction over any aspect of the underlying case. Having addressed their arguments pertaining to the subject-matter jurisdiction of the circuit court, we now turn to their arguments pertaining to the merits of the circuit court's May 10, 2022, order.

Regina and The Daily Catch argue that the circuit court "erred by granting relief 'under South Dakota law' …." Regina and The Daily Catch's brief at 35. The premise of their argument, obviously, is that the circuit court's award of damages to Greg is based on South Dakota law. As noted above, the circuit court entered a general judgment awarding damages in favor of Greg and against Regina and The Daily Catch; there is no indication regarding which claim or claims the circuit court based its judgment upon. It appears that Regina and The Daily Catch have based their premise that the circuit court ruled in Greg's favor on the basis of South Dakota law solely on Greg's assertion of the following claims "under South Dakota law": "breach of fiduciary duty under South Dakota law," "conversion under South Dakota law," "breach of contract under South Dakota law," "unjust enrichment under South Dakota law," "constructive trust under South Dakota law," "violations of S.D. [Codified Laws] § 22-46-1 et[] seq.," and "violations of S.D. [Codified Laws] § 55-1-1 et[] seq." They argue, however, that South Dakota law cannot be the basis of the circuit court's judgment because the circuit court, on December 4, 2020, determined that "Alabama law shall control in this

case in its entirety."[9] Based on the circuit court's December 4, 2020, order determining that Alabama law would apply "in this case in its entirety," Regina and The Daily Catch conclude that "there was no path for relief under" the claims Greg asserted under South Dakota law. Regina and The Daily Catch's brief at 37. They state that, after the circuit court determined that Alabama law applies in this case, "the only claim that should have remained for consideration" was Greg's request for a "declaratory judgment under Alabama law." Id. at 38. In other words, they interpret the circuit court's determination that Alabama law applies in this case to mean that Greg's tort claims had to be dismissed because, in his complaint, he labeled them as being asserted "under South Dakota law."

The only authority cited in support of their argument is Ex parte U.S. Bank National Ass'n, 148 So. 3d 1060 (Ala. 2014). They offer no real analysis of that rather complex case, however; they simply state that Ex parte U.S. Bank "is instructive" and argue that, "when asserting

[9]Greg has not appealed this particular holding of the circuit court. In fact, he expressly states that, "although [he] believes it was error," he "has not briefed in his cross-appeal that the circuit court erred by entering [its December 4, 2020,] order." Greg's brief at 7 n.5.

inapplicable law that does not control, it is the trial court's duty to dismiss the case." Regina and The Daily Catch's brief at 36. Their interpretation of Ex parte U.S. Bank is oversimplistic and mischaracterizes its holding.

In Ex parte U.S. Bank, a Delaware corporation with headquarters in Alabama and offices in Seattle, Washington, acted as an underwriter for securities offered for sale by a Washington business entity, which were purchased by a purchaser in Washington. Subsequently, the purchaser commenced an action against the underwriter in federal district court in Washington under the Washington State Securities Act. The federal district court ultimately entered a judgment in favor of the underwriter.

Thereafter, the underwriter sued the purchaser in an Alabama trial court, alleging, under Alabama law, malicious prosecution arising out of the lawsuit prosecuted by the purchaser in Washington. The purchaser filed a motion to dismiss, arguing that Washington, not Alabama, law should apply and that, under Washington law, the underwriter's malicious-prosecution action was due to be dismissed. The trial court denied the purchaser's motion to dismiss, and the purchaser filed a

mandamus petition with this Court. In order to analyze the trial court's order denying the motion to dismiss, this Court had to determine whether Alabama's or Washington's substantive law applied to the underwriter's malicious-prosecution claim. This Court determined that Washington's law applied and, after analyzing the underwriter's malicious-prosecution claim under Washington law, granted the purchaser's mandamus petition and ordered the trial court to dismiss the case.

Ex parte U.S. Bank does not support Regina and The Daily Catch's argument that, because the circuit court in this case determined that Alabama law applies, Greg's tort claims had to be dismissed as a matter of law. Rather, in Ex parte U.S. Bank, it was determined that a claim that was asserted under Alabama law should have been asserted under Washington law and that, when Washington law was applied and the claim analyzed on its merits, the claim was due to be dismissed. Regina and The Daily Catch have not explained why Ex parte U.S. Bank requires this Court to conclude that the claims asserted by Greg "under South Dakota law" must be dismissed simply because the circuit court determined that Alabama law applies. Numerous of Greg's claims are claims recognized under Alabama law, and it is well established in

Alabama that "[t]he character of a pleading … is determined from its essential substance, and not from its descriptive name or title." State v. Pettis, 275 Ala. 450, 451, 156 So. 2d 137, 137-38 (1963). See also, e.g., Ex parte Alfa Mut. Gen. Ins. Co., 684 So. 2d 1281, 1282 (Ala. 1996) ("The 'character of a pleading is determined and interpreted from its essential substance, and not from its descriptive name or title.' Union Springs Telephone Co. v. Green, 285 Ala. 114, 117, 229 So. 2d 503, 505 (1969)."); Southern Sash Sales & Supply Co. v. Wiley, 631 So. 2d 968, 971 (Ala. 1994) ("This Court has always looked to substance over form."). Nothing in the substance of the claims asserted by Greg is unique to South Dakota; Greg asserted common-law tort claims and a breach-of-contract claim. Alabama law recognizes each of the claims asserted by Greg, and it is entirely plausible that, despite Greg's labeling of the claims as being "under South Dakota law," the circuit court applied substantive Alabama law in analyzing Greg's claims.

In short, Regina and The Daily Catch have not established the premise upon which their argument is based: that the circuit court's judgment in favor of Greg is based on South Dakota law contrary to the circuit court's December 4, 2020, order. The only authority they cite in

support of their argument, Ex parte U.S. Bank, does not help their cause; they have cited no relevant authority to support their argument. Without establishing that premise, their argument fails and does not convince us that the circuit court committed reversible error.

Next, Regina and The Daily Catch argue that all of Greg's claims except for his request for a declaratory judgment "abated and were extinguished by the death of Wallene Esser." Regina and The Daily Catch's brief at 42. They argue that Greg's claims (other than his request for a declaratory judgment) are claims that sound in tort and are claims that belonged to Wallene personally. It is undisputed that, at the time of Wallene's death, no action had been commenced asserting the various tort claims at issue in this case. As a result, they argue, those tort claims did not survive Wallene's death and are barred by Alabama's survival statute, § 6-5-462, Ala. Code 1975, which provides:

> "In all proceedings not of an equitable nature, all claims upon which an action has been filed and all claims upon which no action has been filed on a contract, express or implied, and all personal claims upon which an action has been filed, except for injuries to the reputation, survive in favor of and against personal representatives; and all personal claims

> upon which no action has been filed survive against the personal representative of a deceased tort-feasor."[10]

See also Malcolm v. King, 686 So. 2d 231, 236 (Ala. 1996) ("The general rule is that under Ala. Code 1975, § 6-5-462, an unfiled tort claim does not survive the death of the person with the claim.").

As is evident from the plain language of § 6-5-462, that statute treats the survival of unfiled tort claims differently from contract claims. See Brooks v. Hill, 717 So. 2d 759, 763 (Ala. 1998) ("Under the Alabama survival statute, § 6-5-462, Ala. Code 1975, an unfiled claim sounding in tort will not survive the death of the person with the claim, Malcolm v. King, 686 So. 2d 231 (Ala. 1996); Georgia Cas. & Sur. Co. v. White, 582 So. 2d 487 (Ala. 1991). A claim on a contract, on the other hand, survives in favor of a decedent's personal representative, regardless of whether the decedent had filed an action before his death, McCulley v. SouthTrust Bank of Baldwin County, 575 So. 2d 1106 (Ala. 1991); Benefield v. Aquaslide 'N' Dive Corp., 406 So. 2d 873 (Ala. 1981)."); see also, e.g.,

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[10]Regina and The Daily Catch actually cite § 6-5-464, Ala. Code 1975, which pertains to "claims equitable in nature"; they do not cite § 6-5-462. However, they cite cases relying upon and interpreting § 6-5-462, and, thus, they have adequately raised the applicability of § 6-5-462 as an argument on appeal.

Nationwide Mut. Ins. Co. v. Wood, 121 So. 3d 982, 984-87 (Ala. 2013) (analyzing whether an asserted claim sounded in tort, and thus was barred by § 6-5-462, or sounded in contract, and thus survived in favor of the decedent's personal representative). Therefore, to apply § 6-5-462 correctly, it is necessary to determine the nature of the claims that have been asserted in the complaint. See Sampson v. HeartWise Health Sys. Corp., [Ms. SC-2022-0847, May 26, 2023] ___ So. 3d ___, ___ (Ala. 2023) (analyzing the nature of a claim to determine if it sounded in tort for purposes of application of § 6-5-462).

In this case, Greg asserted each of the claims in the complaint in three separate and distinct capacities: (1) individually, (2) as trustee of the trust, and (3) as administrator ad litem of the estate. In those three separate and distinct capacities, Greg asserted the following claims: (1) breach of fiduciary duty; (2) conversion; (3) breach of express and implied contract; (4) unjust enrichment; (5) "constructive trust"; (6) "violations of S.D. [Codified Laws] § 22-46-1 et[] seq."; (7) "violations of S.D. [Codified Laws] § 55-1-1 et[] seq."; and (8) a request for a declaratory judgment. The complaint also contains extensive factual allegations upon which the claims are based, all of which are extensively

summarized above. To be sure, most of the facts asserted in the complaint occurred during Wallene's life. However, the complaint also alleges a couple of things that occurred after Wallene's death: that, although Regina "has a duty as the current executrix of the estate to transfer assets to the [trust]," she "has breached this duty by not collecting monies and property owed to the [trust]" and that "[t]he [Gulf Shores house] belongs to the [trust]."

The complaint plainly asserts that the defendants breached express and/or implied contracts by borrowing money from Wallene and failing to repay her. Greg included in the complaint numerous allegations indicating that the defendants had borrowed money from Wallene on several occasions and had failed to repay those loans. Greg's breach-of-contract claim asserts the following:

> "… [Wallene] and the Defendants entered into express and implied contracts in which [Wallene] agreed to loan money to the Defendants and provide monetary support to the Defendants.
>
> "… The Defendants have breached the contracts by refusing to repay the loans and debts, causing damages to [Wallene], the estate, the [trust], and [Greg]."

Such a claim clearly sounds in contract and is not barred by § 6-5-642.[11] The plain language of § 6-5-462 indicates that such a claim survives: "In all proceedings not of an equitable nature, … all claims upon which no action has been filed on a contract, express or implied, … survive in favor of and against personal representatives …." Accordingly, at least, Greg's breach-of-contract claim survived and could have served as the basis of the circuit court's judgment in favor of Greg and against Regina and The Daily Catch. Having concluded that Greg's breach-of-contract claim was not barred, we need not further analyze whether the other claims were barred by § 6-5-462 in order to affirm the circuit court's May 10, 2022, order, because, to demonstrate that the circuit court

[11]Regina and The Daily Catch, citing Reed v. Stempien, 475 So. 2d 841 (Ala. 1985), argue that "[a] cause of action asserted on implied contract is a tort." Regina and The Daily Catch's brief at 48. Reed does not, however, stand for such a broad proposition. In Reed, this Court noted the well-established principle that "'"[t]he breach of an implied agreement to provide due and reasonable care is a tort claim only and will not support an action sounding in contract …."'" 475 So. 2d at 842 (quoting Brown v. Schultz, 457 So. 2d 388, 391 (Ala. 1984), quoting in turn Eason v. Middleton, 398 So. 2d 245, 248 (Ala. 1981) (Jones, J., concurring in the result)) (emphasis added). Here, Regina and The Daily Catch have not pointed this Court to anything in the complaint indicating that the alleged implied contract was one requiring the defendants "to provide reasonable care." Instead, the implied contract concerned an obligation to repay a loan.

committed reversible error in entering its judgment in favor of Greg, Regina and The Daily Catch must prove that none of Greg's claims could have served as the basis for the circuit court's judgment. See New Properties, supra.

Lastly, Regina and The Daily Catch argue that Greg's claims are barred by the applicable statutes of limitations. Having previously concluded that Greg's breach-of-contract claim was not barred by § 6-5-462, we begin our statute-of-limitations analysis by examining whether Greg's breach-of-contract claim is barred by the applicable statute of limitations. In AC, Inc. v. Baker, 622 So. 2d 331, 333 (Ala. 1993), this Court stated that

> "[t]he statute of limitations for a claim based on a contract is six years. Ala. Code 1975, § 6-2-34(9). This six-year period begins to run when the contract is breached. Stephens v. Creel, 429 So. 2d 278, 280 (Ala. 1983); Lipscomb v. Tucker, 294 Ala. 246, 258, 314 So. 2d 840, 850 (1975)."[12]

Further,

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[12]Citing Reed v. Stempien, 475 So. 2d 841 (Ala. 1985), Regina and The Daily Catch allege that the statute of limitations applicable to a claim of breach of an implied contract is two years. Regina and The Daily Catch's brief at 62. However, as discussed in note 11, the claim at issue in Reed sounded in tort, and, thus, a two-year statute of limitations applied. The breach-of-contract claim at issue in this case sounds in contract, and, thus, the six-year statute of limitations applies.

> "[w]hen a claim accrues, for statute-of-limitations purposes, is a question of law if the facts are undisputed and the evidence warrants but one conclusion. See LeBlang Motors, Ltd. v. Subaru of America, Inc., 148 F.3d 680 (7th Cir. 1998); JN Exploration & Production v. Western Gas Resources, Inc., 153 F.3d 906 (8th Cir. 1998); DXS, Inc. v. Siemens Medical Systems, Inc., 100 F.3d 462 (6th Cir. 1996). However, when a disputed issue of fact is raised, the determination of the date of accrual of a cause of action for statute-of-limitations purposes is a question of fact to be submitted to and decided by a jury. Id."

Kindred v. Burlington Northern R.R., 742 So. 2d 155, 157 (Ala. 1999) (emphasis added).

The facts surrounding Greg's breach-of-contract claim are disputed in this case. The parties agree that the alleged loans that are the subject of Greg's claim were made in 2004, 2005, and 2006, but there is much controversy as to when the alleged agreements associated with those loans were breached. The parties have presented extensive evidence of various payments between Wallene and the defendants, payments between the defendants and third parties, and the purpose for those various payments. The facts are disputed as to which of the numerous payments made by the defendants to Wallene or on her behalf should be attributed to the repayment of the alleged loans. Further, Greg alleges and asserts facts indicating that Regina sought to hide various financial

matters from him, and Regina even admitted to altering evidence to hide the fact that she wrote checks from Wallene's account to some of the other defendants. Considering all of this, there are certainly disputed questions of fact concerning when Greg's cause of action accrued, when the at-issue contracts were breached, and whether the applicable statute of limitations should be tolled under § 6-2-3, Ala. Code 1975, as Greg argues it should.

As noted above, when a trial court gives no reasons in its judgment, this Court will assume that it made whatever findings would be necessary to support that judgment. New Props., 905 So. 2d at 802. Therefore, we must assume that, in entering its May 10, 2022, order in favor of Greg, the circuit court made the factual conclusions necessary to support its judgment, which would include resolving the disputed questions of fact pertaining to the statute-of-limitations issue raised by Regina and The Daily Catch. On appeal, Regina and The Daily Catch's statute-of-limitations argument is, in essence, a sufficiency-of-the-evidence argument. See New Joy Young Rest., Inc. v. State Dep't of Revenue, 667 So. 2d 1384, 1388 (Ala. Civ. App. 1995) (stating that, in determining whether § 6-2-3 applied to toll a statute of limitations,

"'[f]raud is deemed to have been discovered when it ought to have been discovered. Facts which provoke inquiry in the mind of a man of reasonable prudence, and which, if followed up, would have led to a discovery of the fraud, constitute sufficient evidence of discovery.' Johnson v. Shenandoah Life Ins. Co., 291 Ala. 389, 397, 281 So. 2d 636, 643 (1973) (quoted with approval in Rumford v. Valley Pest Control, Inc., 629 So. 2d 623, 628 (Ala. 1993); Ryan v. Charles Townsend Ford, Inc., 409 So. 2d 784, 786 (Ala. 1981))." (Emphasis added.)). However, Regina and The Daily Catch, by not filing a postjudgment motion, waived any argument related to the sufficiency of the evidence. New Props., 905 So. 2d at 801-02 ("[W]e hold that, in a nonjury case in which the trial court makes no specific findings of fact, a party must move for a new trial or otherwise properly raise before the trial court the question relating to the sufficiency or weight of the evidence in order to preserve that question for appellate review. See Rule 52(b), Ala. R. Civ. P. ..."). Accordingly, Regina and The Daily Catch have failed to preserve for appellate review any argument pertaining to the sufficiency of the evidence of the circuit court's ruling on the statute-of-limitations issue. They cannot now challenge on appeal the factual conclusions we must assume the circuit

court made pertaining to the statute-of-limitations issue. As a result, they cannot demonstrate that the circuit court erred in determining that Greg's breach-of-contract claim is not barred by the applicable statute of limitations; they have not preserved that argument for appellate review.

Regina and The Daily Catch have raised no other arguments concerning Greg's breach-of-contract claim, and the arguments that they have raised do not demonstrate that, assuming the circuit court entered its judgment in favor of Greg based on his breach-of-contract claim, such a judgment was in error. We need not provide further analysis of whether the rest of Greg's claims were barred by the applicable statutes of limitations because, whether they are barred or not, the breach-of-contract claim could have served as the basis of the circuit court's May 10, 2022, order. Accordingly, because its May 10, 2022, order could have been based on the breach-of-contract claim, we must affirm that final judgment. See New Props., supra.

Having addressed the arguments raised by Regina and The Daily Catch in their appeal, we now turn to Greg's cross-appeal of the circuit court's December 10, 2020, order granting in part and denying in part his motion for sanctions against Regina. Greg's only argument is that "[t]he

circuit court erred by only removing [Regina] as the co-trustee of the [trust] in response to Greg's motions for sanctions," which requested that the circuit court also strike various of the defendants' asserted affirmative defenses. Greg's brief at 60. Greg generally argues that "[t]he circuit court should have struck [Regina's] answers/defenses to the amended complaint …." Id. at 64. Greg does not, however, make any specific arguments as to which of the "answers/defenses" the circuit court should have struck or as to how striking Regina's "answers/defenses" would have affected the outcome of the case. Regardless, given that Regina and The Daily Catch have not demonstrated that the circuit court's May 10, 2022, order in favor of Greg should be reversed, Greg's argument pertaining to the circuit court's failure to strike affirmative defenses appears to be inconsequential. Further, the circuit court had the discretion to choose which sanctions to impose, and such a decision

> "will not be disturbed on appeal absent gross abuse of discretion, Johnson v. Langley, 495 So. 2d 1061 (Ala. 1986); Deaton, Inc. v. Burroughs, 456 So. 2d 771 (Ala. 1984); Weatherly v. Baptist Medical Center, 392 So. 2d 832 (Ala. 1981), and then only upon a showing that such abuse of discretion resulted in substantial harm to appellant. Edward Leasing Corp. v. Uhlig & Associates, Inc., 785 F.2d 877 (11th Cir. 1986)."

Iverson, 553 So. 2d at 87. Greg has not even argued, much less demonstrated, that the circuit court grossly abused its discretion in choosing to sanction Regina by removing her as cotrustee of the trust, rather than by striking her "answers/defenses." Greg's argument does not demonstrate that the circuit court committed reversible error; thus, we affirm the circuit court's order entering sanctions against Regina.

IV. Conclusion

Based on the foregoing, we grant the mandamus petition filed by the defendants in case number SC-2022-0992 and direct the circuit court to vacate the October 6, 2022, order purporting to remove the administration of the ancillary estate from the probate court to circuit-court case number CV-17-901017; that judgment is void for a lack of subject-matter jurisdiction. We also affirm the circuit court's December 6, 2020, order entering sanctions against Regina, which is the subject of case number SC-2022-0673, and the circuit court's May 10, 2022, order entering a final judgment in this case, which is the subject of case number SC-2022-0672.

SC-2022-0672 -- AFFIRMED.

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

Cook, J., concurs in part and concurs in the result, with opinion.

SC-2022-0673 -- AFFIRMED.

Parker, C.J., and Shaw, Bryan, Sellers, Stewart, Mitchell, and Cook, JJ., concur.

SC-2022-0992 -- PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Shaw, Sellers, Stewart, Mitchell, and Cook, JJ., concur.

Bryan, J., concurs in the result.

COOK, Justice (concurring in part and concurring in the result in case no. SC-2022-0672).

These appellate proceedings present difficult procedural and legal questions that I believe are thoroughly addressed and resolved by the main opinion. However, as explained below, in case no. SC-2022-0672, I concur in part and concur in the result for two reasons.

First, as noted in the main opinion, Regina Daily ("Regina") and The Daily Catch, Inc., d/b/a Gulf Shores Seafood ("The Daily Catch"), question whether the Baldwin Circuit Court ("the circuit court") had jurisdiction to appoint Greg Esser ("Greg") as an administrator ad litem in the present case. They note that, even if the circuit court did have such jurisdiction, Wallene R. Esser's estate was probated in the Pennington County, South Dakota, Circuit Court ("the South Dakota court"), Greg petitioned the South Dakota court to be named personal representative of the estate before he commenced the underlying action in the circuit court, and Greg petitioned the circuit court to be named administrator ad litem of the estate. Thus, under these circumstances, Regina and The Daily Catch assert that it was the South Dakota court -- not the circuit

court -- alone that had the right to exercise jurisdiction to decide whether Greg could be appointed as an administrator ad litem.

As the main opinion notes, the elements necessary to satisfy Alabama's abatement statute, see § 6-5-440, Ala. Code 1975, are not discussed by Regina and The Daily Catch. Even if they were, as explained in the main opinion, this case does not involve two actions in the courts of this state. One action is in the South Dakota court, and one is in the circuit court. Thus, as the main opinion correctly concludes, the elements necessary to satisfy Alabama's abatement statute are not present here, and we need not consider further whether the existence of the probate action in the South Dakota court would bar the action in the circuit court or the appointment of Greg as administrator ad litem.

However, I question whether the main opinion's resolution of this issue could be misinterpreted as holding that a court in the position of the circuit court would always have jurisdiction under similar facts. As I understand it, """[w]hen one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res."'" Drinkard v. Perry, [Ms. SC-2022-0700, Dec. 2, 2022] ____ So. 3d ____, ____ (Ala. 2022) (quoting Allen v. Estate of Juddine, 60 So. 3d 852,

857 (Ala. 2010) (Bolin, J., concurring specially), quoting in turn Marshall v. Marshall, 547 U.S. 293, 311 (2006)). I have been unable to locate any specific Alabama caselaw on the question whether a foreign court's exercise of in rem jurisdiction over an estate would prevent an Alabama court from appointing an administrator ad litem for the limited purpose of pursuing claims on behalf of the estate or whether such an argument is waivable by the administrator/executor of the existing estate.

Second, as noted in the main opinion, Regina and The Daily Catch argue that Greg's claims are barred by various applicable statutes of limitations. In addressing this argument, the main opinion first examines whether Greg's breach-of-contract claim is barred by the applicable statute of limitations. In doing so, the main opinion points to the various disputed questions of fact that exist related to statute-of-limitations issue and notes that, although the circuit court gave no reasons in its judgment in support of its implicit determination that Greg's breach-of-contract claim was not barred by the statute of limitations, this Court will assume that the circuit court made whatever findings would be necessary to support that judgment, including

resolving the disputed questions of fact pertaining to the statute-of-limitations issue raised by the defendants.

According to the main opinion, Regina and The Daily Catch's argument as to this issue is, in essence, a sufficiency-of-the-evidence argument that should have been preserved through the filing of a postjudgment motion. Relying on this Court's prior decision in New Properties, L.L.C. v. Stewart, 905 So. 2d 797, 801-02 (Ala. 2004), in which we held that, "in a nonjury case in which the trial court makes no specific findings of fact, a party must move for a new trial or otherwise properly raise before the trial court the question relating to the sufficiency or weight of the evidence in order to preserve that question for appellate review," the main opinion concludes that Regina and The Daily Catch have waived this argument because no such motion was filed below. I agree. I do not believe that any additional analysis of the statute-of-limitations issue is necessary. Accordingly, for the reasons expressed in this writing, I concur in part and concur in the result in case no. SC-2022-0672.