No. ED113824
(consolidated with **ED113933** and **ED114232**)

MISSOURI COURT OF APPEALS
EASTERN DISTRICT

R.A., a minor, by and through his Next Friends and Natural Parents, S.A. and B.A.,

Plaintiff–Respondent,

v.

Mercy Hospitals East Communities d/b/a Mercy Hospital St. Louis, Mercy Clinic East Communities d/b/a Mercy Clinic Mercy OB/GYN, and Dr. Daniel McNeive,

Defendants-Appellants.

Appeal from the Circuit Court of St. Louis County
Case No. 21SL-CC03944
Hon. Ellen H. Ribaudo

APPELLANTS' BRIEF

SANDBERG PHOENIX
& von GONTARD P.C.

Kurt S. Odenwald, #27996
Stefanie G. Brody, #70897
701 Market St., Suite 600
St. Louis, MO, 63101
Phone: (314) 231-3332
Fax: (314) 241-7604
kodenwald@sandbergphoenix.com
sbrody@sandbergphoenix.com

Timothy S. Sansone, #47876
120 S. Central Ave., Suite 1600
St. Louis, MO, 63105
Phone: (314) 725-9100
tsansone@sandbergphoenix.com

ARMSTRONG TEASDALE LLP

Paul Brusati, #67975
Abby Twenter, #69397
7700 Forsyth Blvd., Suite 1800
St. Louis, MO, 63105
Phone: (314) 621-5070
Fax: (314) 621-5065
pbrusati@atllp.com
atwenter@atllp.com

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Table of Contents

Table of Authorities 6

Jurisdictional Statement 9

Statement of Facts 12

The Purported Settlement 13

Enforcement of the Purported Settlement in Lieu of the Judgment on the Verdict 14

Post-Judgment Proceedings 17

Points Relied On 21

Argument

1. **<u>Point One</u>:** The trial court erred in entering the **July 8 Order** granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Mo. Civ. P. Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion 26

    1.1 Preservation Statement 26

    1.2 Standard of Review 27

    1.3 Argument: The trial court's post-Second Amended Judgment orders and judgments were void for lack of jurisdiction or authority under Rules 75.01 and 81.05 28

2. **<u>Point Two</u>:** The trial court erred in entering the **July 15 Order and Decree** granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion 36

2.1 Preservation Statement 36

2.2 Standard of Review...37

2.3 Argument: The trial court's post-Second Amended Judgment orders and judgments were void for lack of jurisdiction or authority under Rules 75.01 and 81.05 37

3. Point Three: The trial court erred in entering the **September Order** granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion 40

3.1 Preservation Statement 40

3.2 Standard of Review...41

3.3 Argument: The trial court's post-Second Amended Judgment orders and judgments were void for lack of jurisdiction or authority under Rules 75.01 and 81.05 41

4. Point Four: The trial court erred in entering the **October Judgment** granting Respondent's motion to enforce the purported settlement

agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion 44

4.1 Preservation Statement 44

4.2 Standard of Review 45

4.3 Argument: The trial court's post-Second Amended Judgment orders and judgments were void for lack of jurisdiction or authority under Rules 75.01 and 81.05 45

5. **Point Five:** The trial court erred in granting Respondent's motion to enforce settlement at the high of $18 million because the judgment—in particular, the October Judgment amending the September Order amending the July 15 Order and Decree incorporating the July 8 Order granting Respondent's motion—was not supported by substantial evidence in that Respondent did not adduce clear and convincing evidence that the parties had a meeting of the minds as to the purported high/low settlement agreement through the four-line text message sent during jury deliberations 48

5.1 Preservation Statement 48

5.2 Standard of Review 49

5.3 Argument: The record lacks evidence proving the existence of a settlement by clear, convincing, and satisfactory evidence 50

5.3.1 Timing evidence does not support a meeting of the minds 51

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

5.3.2 The text message was not sufficiently definite 54

5.3.3 The text message did not evidence a complete agreement 57

5.3.4 Conclusion.. 6

6. **Point Six**: In the alternative, the trial court erred in entering the October Judgment granting Respondent's motion to amend to award post-judgment interest and amending the July 15 Order and Decree *because* the trial court erroneously declared the law by concluding that post-judgment interest was available in this action *in that* § 538.300 exempts medical malpractice actions against healthcare providers from the post-judgment interest provisions of § 408.040, and the underlying action, as identified in the trial court's own July 15 Order and Decree, is "a medical malpractice action arising out of injuries suffered by R.A., a minor, during his labor and delivery." 62

6.1 Preservation Statement.. 62

6.2 Standard of Review 62

6.3 Argument: Section 538.300 exempts this settlement judgment from an award of post-judgment interest.. 62

Conclusion.. 65

Certificate of Compliance and Service 67

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Table of Authorities

Cases

200 W Armour Blvd., LLC v. Judson, WD 87282, 2026 WL 806383 (Mo. App. W.D. Mar. 24, 2026) 27, 29

Am. Family Mut. Ins. Co. v. Hart, 41 S.W.3d 504 (Mo. App. W.D. 2000) 63–64

Burton v. Klacoleconeweissus, 455 S.W.3d 9 (Mo. App. E.D. 2014) 30, 33, 38, 42, 46

Cole v. Kansas City S. Ry. Co., 713 S.W.3d 180 (Mo. banc 2025) .... 21–24, 27, 29, 31, ... 34–35, 37–38, 41–42, 45–46

Cone v. Kolesiak, 571 S.W.3d 644 (Mo. App. W.D. 2019) 32, 28, 42, 46

DeWalt v. Davidson Surface Air, 449 S.W.3d 401 (Mo. App. E.D. 2014) 34

Dieser v. St. Anthony's Med. Ctr., 498 S.W.3d 419 (Mo. banc 2016) 63–64

Dill v. Poindexter Tile Co., 451 S.W.2d 365 (Mo. App. 1970) 59

Eaton v. Mallinckrodt, Inc., 224 S.W.3d 596 (Mo. banc 2007) 50, 53

Grant v. Sears, 379 S.W.3d 905 (Mo. App. W.D. 2012) 25, 50

Hussmann Corp. v. UQM Elecs., Inc., 172 S.W.3d 918 (Mo. App. E.D. 2005) 34

In re Marriage of Lueken, 267 S.W.3d 800 (Mo. App. E.D. 2008) 56

J.C.W. ex rel. Webb v. Wyciskalla, 275 S.W.3d 249 (Mo. banc 2009) 10

J.H. v. Brown, 331 S.W.3d 692 (Mo. App. W.D. 2011) 56, 60

Kenney v. Vansittert, 277 S.W.3d 713 (Mo. App. W.D. 2008) 49-50, 53

Matthes v. Wynkoop, 435 S.W.3d 100 (Mo. App. W.D. 2014) 32

McCormick v. Centerpoint Med. Ctr. of Indep., LLC, 534 S.W.3d 273 (Mo. App. W.D. 2017) 63

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Pirtle v. Cook, 956 S.W.2d 235 (Mo. banc 1997) 28

Puga v. Nephrite Fund I, LLC, 697 S.W.3d 783 (Mo. App. W.D. 2024) 50

Reppy v. Winters, 351 S.W.3d 717 (Mo. App. W.D. 2011) 50, 60

Ruiz v. Bar Plan Mut. Ins. Co., 590 S.W.3d 333 (Mo. App. E.D. 2019) 59

Sansone Law, LLC v. J&M Sec., LLC, 589 S.W.3d 74 (Mo. App. E.D. 2019) .... 25, ... 49–50, 60, 62

State ex rel. AJKJ, Inc. v. Hellmann, 574 S.W.3d 239 (Mo. banc 2019)........21–24, 27–28

State ex rel. Eddy v. Rolf, 145 S.W.3d 429 (Mo. App. W.D. 2004)...............32, 38, 42, 46

State v. Oerly, 446 S.W.3d 304 (Mo. App. W.D. 2014) 27

Stickler v. McGinnis, 649 S.W.3d 38 (Mo. App. W.D. 2022) 25, 49–50, 52

Taylor v. United Parcel Serv., Inc., 854 S.W.2d 390 (Mo. banc 1993)..........32, 38, 42, 46

Tuttle v. Muenks, 21 S.W.3d 6 (Mo. App. W.D. 2000)... 56

Watts v. Lester E. Cox Med. Ctrs., 376 S.W.3d 633 (Mo. banc 2012) 62

Weiss v. Weiss, 720 S.W.3d 106 (Mo. App. E.D. 2025) 29, 31, 34, 37, 41, 45

Wiss v. Spitzmiller, 425 S.W.3d 157 (Mo. App. S.D. 2014) 30, 34

Constitutional Provisions

MO. CONST. art. V, § 3 10

Statutes

§ 408.040, RSMo (20156)... 25, 62–63

§ 538.205, RSMo (Cum. Supp. 2020)... 15, 63

§ 538.210, RSMo (Cum. Supp. 2020) 9, 12, 15, 63

§ 538.220, RSMo (2016) 12, 15, 17, 31

Not an Official Court Document

§ 538.300, RSMo (2016) 25, 72.0162–64

Rules

Mo. Civ. P. Rule 72.01 .... 17, 29–32, 38, 42, 46

Mo. Civ. P. Rule 73.01 .... 30, 38, 42, 46

Mo. Civ. P. Rule 74.01 37

Mo. Civ. P. Rule 74.06 .... 9, 19–20, 26, 30, 36, 40, 44

Mo. Civ. P. Rule 75.01 .... 10, 11, 21–24, 26, 28–29, 31–32, 34, 36–42, 44–46

Mo. Civ. P. Rule 78.01 .... 17, 21–24, 26, 30–32, 36, 38, 40, 42, 44, 46

Mo. Civ. P. Rule 78.04 .... 21–24, 26, 30–32, 36, 38, 40, 42, 44, 46

Mo. Civ. P. Rule 81.05 .... 10–11, 17, 21–24, 26, 28–31, 34, 36–42, 44–46

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Jurisdictional Statement

Plaintiff R.A., a minor, by and through his Next Friends and Natural Parents, S.A. and B.A. ("Respondent"), filed a medical negligence action in the Circuit Court of St. Louis County against Defendants Mercy Hospitals East Communities d/b/a Mercy Hospital St. Louis ("Mercy Hospitals"), Mercy Clinic East Communities d/b/a/ Mercy Clinic Mercy OB/GYN ("Mercy Clinic"), and Dr. Daniel McNeive ("Dr. McNeive") (collectively, "Appellants"). (LF D19:1–15). Respondent also challenged the constitutionality of several statutory provisions impacting medical negligence claims, including the cap on noneconomic damages in § 538.210, RSMo (Cum. Supp. 2020).[1] (*Id.* at 15–18).

This consolidated appeal is taken from orders and judgments enforcing a purported settlement agreement ***after*** a jury verdict judgment was entered. *See* **ED113824** (appealing from the July 8 and July 15, 2025 Orders and Decree enforcing settlement and approving minor settlement); **ED113933** (appealing from the September 17, 2025 Order denying Appellants' motion for Mo. Civ. P. Rule 74.06(b)(4)[2] relief and dismissing Respondent's tort claims without prejudice based on the July 8 and July 15 Orders and Decree); **ED114232** (appealing from the October 14, 2025 Order and Decree amending the July 15, 2025 Order and Decree Approving Minor Settlement to include post-judgment interest and denying Appellants' motion to stay compliance with the purported settlement). (Legal File ("LF") D113, D128, D143, D158; Appellants' Appendix ("App. App'x") 16, 20, 25, 26). Appellants timely filed their Notices of Appeal from those orders and judgments on August

[1] All statutory references are to RSMo (2016), unless otherwise noted.
[2] All Rule references are to Mo. R. Civ. P. (2025), unless otherwise noted.

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

21, 2025, September 26, 2025, and December 15, 2025, respectively. (LF D135, D144, D177).[3]

This appeal does not present an issue within the Supreme Court of Missouri's exclusive jurisdiction. *See* MO. CONST. art. V, § 3. (App. App'x 30). Additionally, Respondent's constitutional challenge is not at issue in this appeal, which is taken from orders and a judgment enforcing settlement rather than from the judgment applying the challenged statutory cap. St. Louis County is within this Court's territorial jurisdiction. Therefore, pursuant to Article V, § 3 of the Missouri Constitution, this Court has appellate jurisdiction to address the consolidated appeal from orders and judgments that Appellants maintain were void after the trial court's jurisdiction or authority was divested under Rules 75.01 and 81.05. (App. App'x 48–49, 53–56).

Resolving this appeal does not require this Court to address the merits of the final judgment issued pursuant to the jury verdict. That judgment is the subject of appeal ED114055, which has been stayed pending resolution of this consolidated appeal by this Court's November 11, 2025, Order. Appellants further note that resolving this appeal does not require this Court to decide whether a trial court's loss of control over judgments after thirty days pursuant to Rule 75.01 constitutes either a divestment of jurisdiction or the lack of statutory or rule-based authority under *J.C.W. ex rel. Webb v. Wyciskalla,* 275 S.W.3d 249 (Mo. banc 2009). Appellate jurisdiction is proper here regardless of whether the trial

[3] Appellants also timely filed a Notice of Appeal from the Second Amended Judgment in ED114055, which is stayed pending resolution of this consolidated appeal by this Court's November 11, 2025, Order.

court lacked jurisdiction or authority to continue exercising control over the case more than thirty days after final judgment. *See* Rules 75.01 and 81.05. (App. App'x 48–49, 53–56).

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Statement of Facts

A jury decided Respondent's medical negligence action in March 2025. (LF D46). The jury found Appellants liable for injuries sustained during Respondent's labor and delivery and awarded Respondent compensatory and punitive damages that were subject to statutory damages caps. (LF D46 Judgment, D69 First Amended Judgment, D97 Second Amended Judgment; App. App'x 4, 7, 11). Specifically, the jury awarded $600,000 in past economic damages, $500,000 in past noneconomic damages, $7 million in future economic damages and $20 million in future noneconomic damages for a total of $28.1 million in compensatory damages. (LF D46; App. App'x 4). The jury found Mercy Hospitals 25% at fault and Mercy Clinic and Dr. McNeive 75% at fault. (*Id.*) The jury assessed $20 million in punitive damages against Mercy Clinic and Dr. McNeive. (*Id.*). Thus, altogether, the jury awarded Respondent $48.1 million in damages.

The trial court entered judgment on the jury verdict on April 9, 2025 (LF D46; App. App'x 4), and later amended the judgment to (1) impose the noneconomic damages statutory cap for "catastrophic injuries" found in § 538.210.2(2), reducing the noneconomic damages award to $828,529[4] and (2) schedule periodic payments for future economic damages pursuant to § 538.220. (LF D69; App. App'x 7). On June 3, 2025, the trial court again amended the judgment at Respondent's request to correct the interest calculation on the future periodic payments ("**Second Amended Judgment**"). (LF D97;

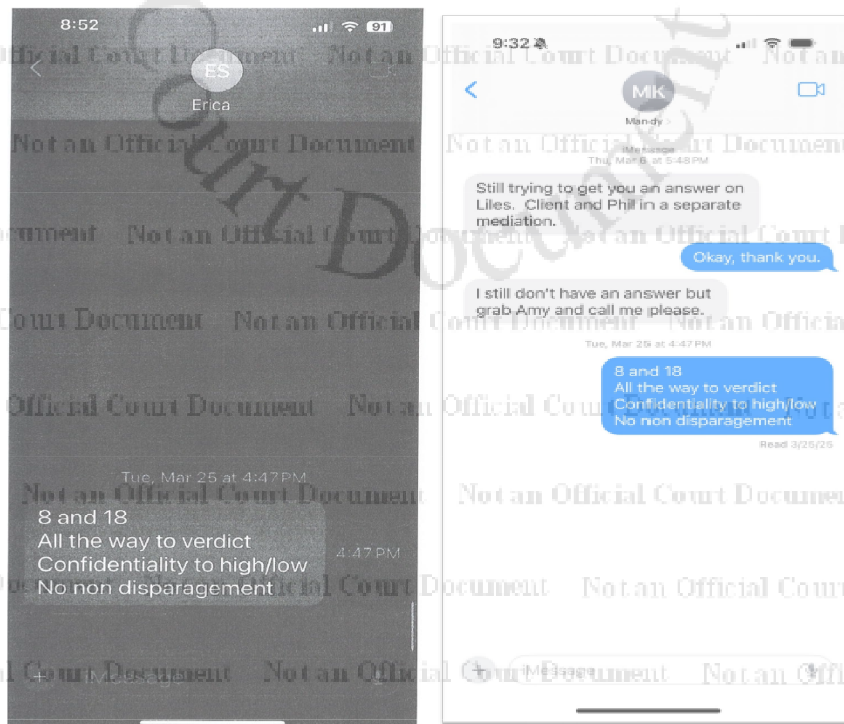
[4] For a case tried in 2025, the applicable noneconomic damages cap for "catastrophic injury" was $828,529. § 538.210.10, RSMo (Cum. Supp. 2020) (providing how to calculate the annual increase from the 2005 limit) (App. App'x 35).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

App. App'x 11). The substantive merits of the Second Amended Judgment are not at issue in this consolidated appeal.[5] At issue instead is the validity of the trial court's subsequent orders and judgments on the purported settlement entered more than thirty days after June 3, 2025.

The Purported Settlement

On March 25, 2025, during jury deliberations, the parties engaged in settlement negotiations. The parties believed they had negotiated a high/low settlement agreement, where Respondent was guaranteed a minimum (or "low") of $8 million and Appellants' liability was capped at a maximum (or "high") of $18 million. (Tr. 2707:8–14). The agreement was memorialized in the following text message exchanged by counsel:



(LF D102:8, D75).

[5] *See* ED114055.

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

After the verdict, the trial court declined to enforce a settlement because the parties did not agree on the terms. (Tr. 2718:8–10). Respondent argued the "high" was intended to be based on the total unadjusted verdict amount, whereas Appellants maintained the "high" was intended to be based on the total recoverable verdict given applicable statutory limits. (Tr. 2712:11–2713:1, 2718:19–25, 2719:4–25).

Enforcement of the Purported Settlement in Lieu of the Judgment on the Verdict

After trial but before the trial court entered judgment on the verdict, the parties filed cross-motions to enforce their respective versions of the settlement agreement. (LF D34, D44). Respondent's motion, filed on March 28, 2025, requested that the trial court enforce a settlement because the parties purportedly had reached a meeting of the minds, including an offer and acceptance of material terms and conditions. (LF D34 ¶ 2). Respondent's motion did not specify how the high/low agreement should be interpreted. (*Id.*). Later, in their motion filed on April 2, 2025, Appellants asked the trial court to enforce the high/low settlement based on the recoverable jury verdict amount accounting for Missouri's statutory noneconomic damages cap and excluding punitive damages. (LF D44 ¶¶ 1–3, 10). Appellants maintained that, to the extent any settlement was reached between the parties, the settlement amount was $8,446,529, which fell between the low of $8 million and the high of $18 million. But to the extent the Court found that Respondent believed the high/low was based on his interpretation of the terms, Appellants alternatively asked the trial court to deny all settlement enforcement motions because the parties had not reached a meeting of the minds as to the material terms of a settlement agreement. (*Id.* at ¶ 10).

The trial court entered a judgment pursuant to the jury verdict on April 9, 2025 ("**Judgment**"). (LF D46; App. App'x 4). The Judgment made no mention of settlement. (*Id.*)

On the same day, the trial court issued an order setting the parties' opposing motions to enforce settlement for a hearing. (LF D47). Relatedly, the trial court entered a protective order regarding communications relevant to the purported settlement. (LF D49). Appellants filed their memorandum supporting their motion regarding the purported settlement. (LF D52).

Appellants moved to amend the Judgment to reflect application of the statutory noneconomic damages cap for catastrophic personal injury pursuant to §§ 538.210 and 538.205(1)(e), RSMo (Cum. Supp. 2020), as well as to allow for periodic future payments under § 538.220, which Respondent opposed. (LF D55, D61; App. App'x 33–39). The trial court held a hearing on May 5, 2025, and took Appellants' motion to amend under advisement. (LF D70, Tr. 2754:8–9). The trial court noted on the record that entry of the April 9 Judgment started a thirty-day amendment period under the rules. (Tr. 2756:19–20).

After that hearing, on May 6, 2025, the trial court entered the "**Final Amended Judgment,**" which applied the statutory cap to the damages award. (LF D69; App. App'x 7). The Final Amended Judgment made no mention of settlement. (*Id.*) Respondent moved to amend the Final Amended Judgment to correct the schedule for future periodic payments. (LF D71).

Subsequently, on May 15, 2025, Respondent filed his memorandum supporting his motion to enforce settlement. (LF D73). Respondent asked the trial court to enforce his

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

interpretation of the high/low settlement, which based the "high" on $48.1 million—the total unadjusted jury verdict—and resulted in an $18 million settlement. (*Id.* at 3, 24–25). Respondent also petitioned for approval of minor settlement as required for settlements involving minors. (LF D80).

On May 20 and 22, 2025, the trial court held an evidentiary hearing on the parties' cross-motions to enforce settlement. (LF D1:79–80; Tr. 2764–3039). Appellants' counsel, Respondent's counsel, and Appellants' excess insurer's claims consultant testified about their understanding of the purported high/low agreement and the course of negotiations throughout litigation. Respondent primarily relied on the four-line text message depicted above to support his motion. (LF D102:8, D75). Additional details of the relevant testimony will be set forth in the argument section. At the close of the hearing, the trial court took the motions under submission.

On June 3, 2025, the trial court entered the "**Second Amended Judgment**" at Respondent's request to correct the interest calculation on the future periodic payments. (LF D97; App. App'x 11). Consistent with the jury verdict, the Second Amended Judgment ordered Mercy Hospitals to pay 25% and Mercy Clinic and Dr. McNeive to pay 75% of the total compensatory damages award, the amount of which reflected the statutory cap. (*Id.*) The Second Amended Judgment also ordered Mercy Clinic and Dr. McNeive to pay the $20 million punitive damages award. The Second Amended Judgment made no mention of settlement. (*Id.*)

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Post-Judgment Proceedings

More than thirty days after the trial court entered the Second Amended Judgment, the trial court entered additional orders and judgments.

Although Appellants timely filed authorized post-judgment motions thirty days later (on July 3, 2025), these motions did not seek settlement enforcement relief. (LF D117, D121). The post-judgment motions filed by Appellants sought judgment notwithstanding the verdict under Rule 72.01 on the punitive damages award or, alternatively, a new trial on punitive damages under Rule 78, and to further amend the payment schedule to allow for payment of all future economic damages in periodic payments under § 538.220. (LF D117, D121; App. App'x 38, 41, 50). The trial court did not rule on these motions, which were deemed denied ninety days later on October 1, 2025, by operation of Rule 81.05(a)(2)(A). (*See, e.g.*, LF D130 ¶ 3, D132:19; App. App'x 55).

Respondent also filed a post-judgment motion on July 3, 2025, asking the trial court to replace the Second Amended Judgment with a judgment granting Respondent's still-pending settlement enforcement motion. (LF D127).

The trial court subsequently entered orders and judgments granting Respondent's settlement enforcement motion. (LF D113, D128, D143, D158; App. App'x 16, 20, 25, 26).

First, on July 8, 2025, the trial court entered an order ("**July 8 Order**") ruling on the parties' cross-motions for settlement. (LF D113; App. App'x 16). The July 8 Order enforced Respondent's interpretation of the settlement at $18 million. (*Id.*).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Appellants opposed Respondent's petition to approve minor settlement, noting that the Second Amended Judgment had become final on July 3, 2025 (except within the context of any ruling on Appellants' authorized after-trial motions unrelated to settlement), and thus the trial court lacked authority to alter or vacate the Second Amended Judgment on the grounds alleged in Respondent's motion to enforce settlement. (LF D129). Appellants also filed an alternative reconsideration motion. (LF D130).

On July 15, 2025, the trial court held an evidentiary hearing on Respondent's petition to approve minor settlement. (LF D128; App. App'x 20). The trial court granted Respondent's petition over Appellants' objection and denied Appellants' motion for reconsideration of the July 8 Order. (Tr. 3049:4–8). After the hearing, the trial court entered an Order and Decree Approving Minor Settlement ("**July 15 Order and Decree**"). (LF D128; App. App'x 20). In its July 15 Order and Decree, the trial court incorporated the July 8 Order adopting Respondent's interpretation of the high/low settlement agreement and vacated the Second Amended Judgment and all other judgments, stating: "This Order and Decree Approving Minor Settlement resolves all claims against all parties and thus, the Court finds the judgments and amended judgments entered on April 9, 2025 [Judgment], May 6, 2025 [Final Amended Judgment], and June 3, 2025 [Second Amended Judgment] are hereby vacated." (*Id.* at 4).[6]

[6] Appellants filed writs of prohibition in this Court and in the Supreme Court of Missouri on July 21, 2025, and August 25, 2025, respectively, which were denied. *See* ED113706, SC101205.

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Both parties moved to amend the July 15 Order and Decree. (LF D131, D132). Respondent sought to amend the July 15 Order and Decree to allow for post-judgment interest. (LF D131). Without conceding the trial court had jurisdiction or authority to enter the July 15 Order and Decree, Appellants sought to vacate said order and decree on the grounds that granting Respondent's motion to enforce settlement was not supported by clear and convincing evidence, was against the weight of the evidence, erroneously declared and applied the law regarding settlement enforcement, enforced a settlement beyond the defense's negotiation authority, and failed to resolve factual controversies. (LF D132 ¶¶ 2, 77). Appellants alternatively sought relief from the judgment as being void under Rule 74.06(b)(4). (LF D134 ¶ 1). After a hearing on September 17, 2025, the trial court entered its order ("**September Order**") denying Appellants' motions to amend the July 15 Order and Decree and for relief from judgment under Rule 74.06. (Tr. 3098:25–3099:6; LF D143; App. App'x 25). The trial court "under its inherent authority" also dismissed without prejudice Respondent's underlying tort claims in his Second Amended Petition based on the settlement findings in the July 8 Order and July 15 Order and Decree. (LF D143; App. App'x 25).

Following that September Order, the trial court entered its Order and Judgment Amending the July 15, 2025 Order and Decree Approving Minor Settlement to Include Post-Judgment Interest ("**October Judgment**") at Respondent's motion and over Appellant's objection. (LF D158; App. App'x 26). In the October Judgment, the trial court also denied Appellants' unopposed motion to stay compliance with the purported settlement. (*Id.* at 4). On November 13, 2025, Appellants filed post-judgment motions to

amend the October Judgment and for relief from the judgment under Rule 74.06(b)(4), which the trial court denied on December 4, 2025, after a hearing. (LF D1:89, D180; Supplemental Legal File ("Supp. LF") D1–D3). This consolidated appeal follows.

To better visualize the chronology, Appellants provide the following table:

Date	Days Since Last Judgment	Trial Court Orders & Judgments
March 11-25, 2025		Jury Trial
March 28, 2025		*Cross motions to enforce settlement*
April 9, 2025		Judgment
May 6, 2025	(27 days)	Final Amended Judgment
June 3, 2025	(28 days)	Second Amended Judgment
July 3, 2025		*Respondent's motion to replace Second Amended Judgment with Settlement Judgment*
July 8, 2025	(35 days)	Order
July 15, 2025	(42 days)	Order & Decree Approving Minor Settlement
September 17, 2025	(64 days)	September Order
October 14, 2025	(27 days)	October Judgment

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

<u>**Points Relied On**</u>

<u>**Point One**</u>**:** The trial court erred in entering the **July 8 Order** granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion.

AJKJ, Inc. v. Hellmann, 574 S.W.3d 239 (Mo. banc 2019)

Cole v. Kansas City S. Ry. Co., 713 S.W.3d 180 (Mo. banc 2025)

Mo. R. Civ. P. 75.01

Mo. R. Civ. P. 81.05

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Point Two: The trial court erred in entering the **July 15 Order and Decree** granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion.

AJKJ, Inc. v. Hellmann, 574 S.W.3d 239 (Mo. banc 2019)

Cole v. Kansas City S. Ry. Co., 713 S.W.3d 180 (Mo. banc 2025)

Mo. R. Civ. P. 75.01

Mo. R. Civ. P. 81.05

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Point Three: The trial court erred in entering the **September Order** granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion.

AJKJ, Inc. v. Hellmann, 574 S.W.3d 239 (Mo. banc 2019)

Cole v. Kansas City S. Ry. Co., 713 S.W.3d 180 (Mo. banc 2025)

Mo. R. Civ. P. 75.01

Mo. R. Civ. P. 81.05

<u>Point Four</u>: The trial court erred in entering the **October Judgment** granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion.

AJKJ, Inc. v. Hellmann, 574 S.W.3d 239 (Mo. banc 2019)

Cole v. Kansas City S. Ry. Co., 713 S.W.3d 180 (Mo. banc 2025)

Mo. R. Civ. P. 75.01

Mo. R. Civ. P. 81.05

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Point Five: The trial court erred in granting Respondent's motion to enforce settlement at the high of $18 million *because* the judgment—in particular, the October Judgment amending the September Order amending the July 15 Order and Decree incorporating the July 8 Order granting Respondent's motion—was not supported by substantial evidence *in that* Respondent did not adduce clear and convincing evidence that the parties had a meeting of the minds as to the purported high/low settlement agreement through the four-line text message sent during jury deliberations.

Sansone Law, LLC v. J&M Sec., LLC, 589 S.W.3d 74 (Mo. App. E.D. 2019)

Stickler v. McGinnis, 649 S.W.3d 38 (Mo. App. W.D. 2022)

Grant v. Sears, 379 S.W.3d 905 (Mo. App. W.D. 2012)

Point Six: In the alternative, the trial court erred in entering the October Judgment granting Respondent's motion to amend to award post-judgment interest and amending the July 15 Order and Decree *because* the trial court erroneously declared the law by concluding that post-judgment interest was available in this action *in that* § 538.300 exempts medical malpractice actions against healthcare providers from the post-judgment interest provisions of § 408.040, and the underlying action, as identified in the trial court's own July 15 Order and Decree, is "a medical malpractice action arising out of injuries suffered by R.A., a minor, during his labor and delivery."

§ 538.300

Dieser v. St. Anthony's Med. Ctr., 498 S.W.3d 419 (Mo. banc 2016)

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Argument

Point One: The trial court erred in entering the July 8 Order granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion.

1.1 Preservation Statement

Appellants preserved their argument that the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment and enforce the purported settlement, in that Appellants challenged the pertinent orders and judgments on that ground at every stage of litigation.

Initially, six days after the July 8 Order, Appellants argued in their opposition to Respondent's motion to approve settlement that the trial court lacked authority to approve Respondent's proposed settlement because the July 8 Order exceeded the scope of the trial court's jurisdiction. (LF D129:1–6). Appellants rested on that position at the hearing on July 15, 2025, while alternatively seeking reconsideration. (Tr. 3042:24–3043:15). Appellants again preserved the argument in their response to the July 15 Order and Decree in their motion to amend and in their Rule 74.06(b)(4) motion for relief from the void judgment. (LF D132 ¶ 1, D134 ¶¶ 1–34, Tr. 3098:25–3099:2). Appellants further renewed those grounds in motions to amend the October Judgment and for relief from that judgment under Rule 74.06(b)(4) filed on November 13, 2025. (*See* LF D1:89, D180; Supplemental Legal File ("Supp. LF") D1–D2; Tr. 3105:24–3106:3).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Appellants further preserved their arguments by timely filing multiple notices of appeal after each order and judgment on August 21, 2025 (from the July 8 Order and July 15 Order and Decree), September 26, 2025 (from the September Order), and December 15, 2025 (from the October Judgment). (LF D135, D144, D177).

1.2 Standard of Review

Whether a circuit court has jurisdiction or authority[7] over a case at the time it enters a judgment is a question of law subject to *de novo* review. *Cole v. Kansas City S. Ry. Co.*, 713 S.W.3d 180, 193 (Mo. banc 2025) (internal citation omitted).

Not an Official Court Document

[7] Missouri courts have repeatedly characterized this loss of authority to exercise further control over a final judgment as jurisdictional. *See, e.g.*, *Cole*, 713 S.W.3d at 193–94 (holding a circuit court "lost jurisdiction" to amend its final judgment to award post-judgment relief after disposing of timely authorized after-trial motions); *State ex rel. AJKJ, Inc. v. Hellmann*, 574 S.W.3d 239, 242 (Mo. banc 2019) (noting that a motion to intervene, which is not an authorized after-trial motion, "did not extend the circuit court's jurisdiction to rule on the motion beyond 30 days after the court entered judgment"); *200 W Armour Blvd., LLC v. Judson*, WD 87282, 2026 WL 806383, at *3 (Mo. App. W.D. Mar. 24, 2026).

Notwithstanding this precedent, increasing care has been taken since *Webb* to distinguish jurisdiction (subject matter or personal) from authority pursuant to a statute or rule. *See e.g.*, *State v. Oerly*, 446 S.W.3d 304, 308 (Mo. App. W.D. 2014) (internal citations omitted) (noting in post-*Webb* decisions that "statutes or rules which restrict the circuit court's power to act in particular cases, or which limit the remedies the court may award in particular cases, do not restrict the trial court's subject-matter jurisdiction, but merely the court's authority to act"). Both before and after *Webb*, no Missouri court has treated a circuit court's divestment of control over a case after final judgment as anything other than jurisdictional.

Critically, this Court need not reach this academic issue to resolve this appeal, inasmuch as the challenged orders and judgments are void under the procedural rules regardless of whether the trial court lost "jurisdiction" or "authority" after the judgment became final.

1.3 Argument: The trial court's post-Second Amended Judgment orders and judgments were void for lack of jurisdiction or authority under Rules 75.01 and 81.05.

The trial court lacked jurisdiction or authority to vacate the Second Amended Judgment and grant Respondent's motion to enforce settlement in the July 8 Order under Rules 75.01 and 81.05(a)(1). (LF D97, D113; App. App'x 11, 16, 48–49, 53–56.) Accordingly, the July 8 Order and all subsequent orders and judgments purporting to enforce a settlement (namely, the July 15 Order and Decree, September Order, and October Judgment) are void and constitute reversible error. *See State ex rel. AJKJ, Inc. v. Hellmann*, 574 S.W.3d 239, 242 (Mo. banc 2019). (LF D113, D128, D143, D158; App. App'x 16, 20, 25, 26).

"[T]he trial court retains control over judgments during the thirty-day period after entry of judgment and, may . . . vacate, reopen, correct, amend, or modify its judgment within that time." Rule 75.01.[8] "A judgment becomes final at the expiration of thirty days after its entry if no timely authorized after-trial motion is filed." Rule 81.05(a)(1). "Rule 75.01 represents the modern embodiment of this common law power and contains the rules that govern its exercise." *Pirtle v. Cook*, 956 S.W.2d 235, 240 (Mo. banc 1997). "Because a court's power to change its judgment threatens the finality of the judgment and, consequently, slows the litigation process, the period in which the trial court can make such a change is limited to only thirty days." *Id.* "Except as authorized by law, a [trial] court

[8] After entry of the Second Amended Judgment and before expiration of the thirty-day period, the amended Rule 75.01 went into effect on July 1, 2025. The amended Rule 75.01 contained no changes relevant to this appeal. (App. App'x 45–46).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

loses jurisdiction over a case when a judgment becomes final." *Hellmann*, 574 S.W.3d at 242 (internal quotation omitted). Following divestiture, "any attempt by the [trial] court to continue to exhibit authority over the case, whether by amending the judgment or entering subsequent judgments, is void." *Cole*, 713 S.W.3d at 194 (quoting *Hellmann*, 574 S.W.3d at 242); *200 W Armour Blvd., LLC v. Judson*, WD 87282, 2026 WL 806383, at *3 (Mo. App. W.D. Mar. 24, 2026) (*citing Hellmann*, 574 S.W.3d at 242).

"Once the thirty-day period in Rule 75.01 expires, a [trial] court's authority to grant relief is ***constrained by and limited to the grounds raised in a timely filed, authorized after-trial motion***." *Cole*, 713 S.W.3d at 193 (emphasis added); *Weiss v. Weiss*, 720 S.W.3d 106, 112 (Mo. App. E.D. 2025) (citing *Hellmann*, 574 S.W.3d at 242 n.3). "When a party files a timely authorized after-trial motion, the [trial] court retains jurisdiction to rule on such a motion for 90 days after the motion is filed, after which the judgment becomes final and the court loses jurisdiction to amend the judgment." *Cole*, 713 S.W.3d at 193 (citing Rule 81.05(a)(2)(A)).

Non-authorized after-trial motions do not extend the trial court's jurisdiction beyond Rule 75.01's thirty-day period. *Hellmann*, 574 S.W.3d at 242–43 (holding a motion to intervene was not an authorized after-trial motion and thus the trial court's jurisdiction was confined to Rule 75.01's thirty-day window by Rule 81.05). Missouri has recognized only six authorized after-trial motions:

(1) Motion to dismiss without prejudice after the introduction of evidence at trial, pursuant to Rule 67.01;
(2) Motion for directed verdict under Rule 72.01(a);
(3) Motion for judgment notwithstanding the verdict under Rule 72.01(b);

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

(4) Motion to amend the judgment pursuant to Rule 78.04 (formerly Rule 73.01(a)(5));
(5) Motion for relief from a judgment or order pursuant to Rule 74.06(a) and (b); and
(6) Motion for new trial under Rule 78.04.

Burton v. Klaus, 455 S.W.3d 9, 12 (Mo. App. E.D. 2014) (internal citation omitted); *see also Hellmann*, 574 S.W.3d at 242. (App. App'x 41–47, 50–52). Only these six motions, if timely filed, may extend the trial court's jurisdiction. A motion that is not one of these six motions does not toll the thirty-day limit. *Hellmann*, 574 S.W.3d at 242.

Notably, the Supreme Court recently amended Rule 81.05[9] to add specific language defining an authorized after-trial motion consistent with these authorities cited by Appellants: "[t]he phrase 'authorized after-trial motion' as used in this Rule 81.05(a) shall mean a motion seeking relief authorized by Rules 72.01(b), 73.01(d),[10] or 78." (quoting Rule 81.05(a)(4), as amended, effective July 1, 2026). And the parties "cannot waive, or confer by agreement, authority to the trial court to consider a motion outside its jurisdiction." *Wiss v. Spitzmiller*, 425 S.W.3d 157, 161–62 (Mo. App. S.D. 2014) (internal citation omitted).

On June 3, 2025, the trial court entered the Second Amended Judgment on the jury's verdict. (LF D97; App. App'x 11). The Second Amended Judgment became final thirty days later on July 3, 2025, after which the trial court lost authority to amend or vacate the

[9] After entry of the Second Amended Judgment and before expiration of the thirty-day period, an interim amended Rule 81.05 (2025) went into effect on July 1, 2025, which contained no changes relevant to this appeal. (App. App'x 55).
[10] A Rule 73.01(d) motion is a motion for new trial or motion to amend the judgment in a bench-tried case. (App. App'x 43).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

judgment except for the limited purpose of ruling on any timely, authorized after-trial motions. *See* Rule 75.01; *Cole*, 713 S.W.3d at 193; *Weiss*, 720 S.W.3d at 112 (citing *Hellmann*, 574 S.W.3d at 242 n.3).

Here, the only timely authorized after-trial motions were filed by Appellants, and these motions did not raise the issue of the enforceability of the purported settlement agreement. (LF D117, D121). Specifically, Appellants filed a Rule 72.01 motion for judgment notwithstanding the verdict on punitive damages or, alternatively, a Rule 78 motion for new trial on punitive damages, as well as a Rule 78.04 motion to further amend the Second Amended Judgment's payment schedule to allow for periodic payments of all future economic damages under § 538.220. (LF D117, D121). The trial court's jurisdiction was limited to the grounds raised in those sole post-trial motions, and thus, its jurisdiction did not extend to allow it to decide the issue of enforceability of the purported settlement agreement. *See Cole*, 713 S.W.3d at 193 (noting a trial court's control over a judgment after Rule 75.01's thirty-day period is "constrained by and limited to the grounds raised in a timely filed, authorized after-trial motion").

In contrast, Respondent's "Motion to Enter a Third Amended Judgment to Replace the June 3, 2025 Second Amended Judgment," filed on July 3, 2025, was ***not*** among the six authorized after-trial motions recognized under Missouri law and therefore did not extend the trial court's authority to rule on said motion under Rule 81.05(a)(2).[11] (LF D127). *See Hellmann*, 574 S.W.3d at 242. Respondent's post-trial motion only asked the

[11] Nor would Respondent's motion constitute an authorized post-trial motion under the amended Rule 81.05 (2026). (App. App'x 57).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

trial court to vacate the Second Amended Judgment and to substitute a new judgment consistent with the terms in Respondent's motion to enforce settlement. (LF D127). But "[a] motion to set aside or vacate a judgment is not an authorized after-trial motion that extends the trial court's jurisdiction because it is not a motion for which the rules expressly provide." *State ex rel. Eddy v. Rolf*, 145 S.W.3d 429, 433 (Mo. App. W.D. 2004) (citing *Taylor v. United Parcel Serv., Inc.*, 854 S.W.2d 390, 392 n.1 (Mo. banc 1993)); *Cone v. Kolesiak*, 571 S.W.3d 644, 648 n.7 (Mo. App. W.D. 2019) (quoting *Taylor*, 854 S.W.2d at 392 n.1) (same). The trial court had no authority to consider Respondent's motion, nor should this Court grant Respondent relief that was not sought in his post-judgment motion, which did not mention Rule 78 or request to "amend" the Second Amended Judgment. *See Moody v. Dynamic Fitness Mgmt., Ltd.*, 707 S.W.3d 610, 616–17 (Mo. banc 2025) (declining to treat a party's Rule 78 motion for new trial as a motion for judgment notwithstanding the verdict under Rule 72.01 because doing so "would require the Court to disregard [the party's] motion title, rule reference, and specific request for relief and become an advocate for [the party], which this Court will not do").

To the extent the trial court considered Respondent's pre-judgment March 28, 2025, motion to enforce settlement as a premature post-judgment motion under Rule 78.04, that motion likewise was not an authorized after-trial motion extending the trial court's authority to vacate the Second Amended Judgment after expiration of Rule 75.01's thirty-day period. (LF D34). Instead, that motion to enforce added "to the underlying case a collateral action seeking specific performance of the agreement." *Matthes v. Wynkoop*, 435 S.W.3d 100, 106 (Mo. App. W.D. 2014) (internal quotation omitted).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

To prevail on the settlement enforcement motion, Respondent bore the burden of proving the existence of a settlement agreement by clear, convincing, and satisfactory evidence, either at an evidentiary hearing or through written submissions, independent of the jury trial on liability and damages. *See id.* Indeed, Respondent's July 3 motion referenced the May 2025 evidentiary hearing held by the trial court on the cross-motions to enforce settlement and asked the trial court "to replace the Second Amended Judgment, which is entered on the jury's verdict, with a Third Amended Judgment that enforces the settlement of $18,000,000.00 and orders specific performance directing [Appellants] to pay the settlement funds to [Respondent]." (LF D127 ¶ 12). In making this request, Respondent asked the trial court to consider new evidence and make factual findings outside the record that supported the Second Amended Judgment (rather than enter a separate judgment in a separate collateral action). As explained above, Missouri law in 2025 recognized only six types of authorized after-trial motions that could extend a trial court's jurisdiction beyond the thirty-day deadline after entry of final judgment. *See Burton*, 455 S.W.3d at 12. A motion seeking collateral relief based on a purported settlement agreement is not one of them. *See Hellmann*, 574 S.W.3d at 242.[12]

Because neither Respondent's July 3 post-trial motion nor his March 28 pre-judgment motion seeking to enforce the purported settlement agreement were authorized after-trial motions contemplated by the procedural rules, neither motion extended the trial court's authority to grant the requested relief to vacate the Second Amended Judgment and

[12] Nor would Respondent's pre-judgment settlement enforcement motion constitute an authorized post-trial motion under the amended Rule 81.05 (2026). (App. App'x 57).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

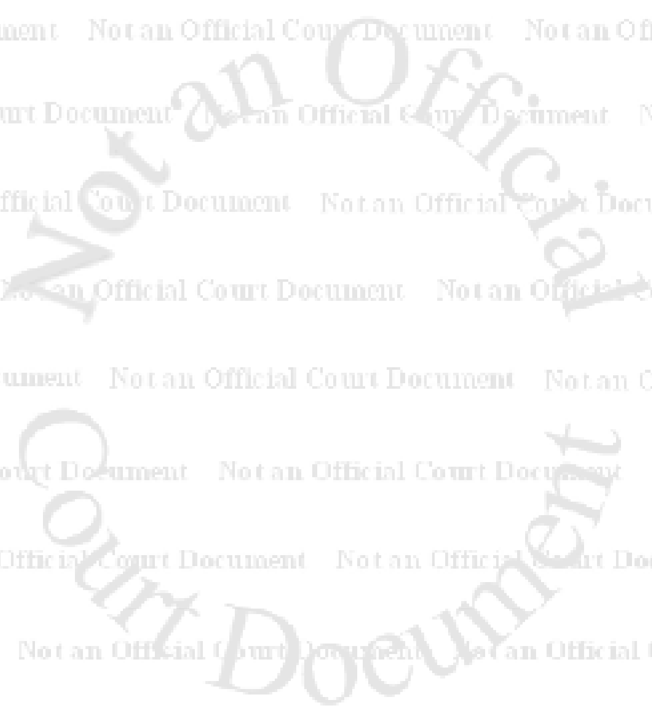
Not an Official Court Document

enter the July 8 Order. *See id.* Once the trial court entered a judgment on the jury verdict, the mandatory timing requirements of Rule 75.01 started running. The trial court was thereafter required to resolve the settlement motions within the thirty-day window provided by Rule 75.01 ***absent any timely authorized after-trial motions putting a settlement issue properly before it***.

Importantly, the rules governing the trial court's control over a judgment prevail over any public policy of encouraging settlement. *See DeWalt v. Davidson Surface Air*, 449 S.W.3d 401, 405 (Mo. App. E.D. 2014) (noting a trial court cannot rely entirely on the policy of encouraging settlement over making the necessary findings of fact and conclusions of law); *see also Wiss*, 425 S.W.3d at 161–62 (internal citation omitted) (noting parties cannot consent to the trial court's consideration of a motion outside its authority). Here, more than thirty days after the trial court entered the Second Amended Judgment, the trial court entered the July 8 Order vacating the Second Amended Judgment and enforcing settlement. In so doing, the trial court erroneously exercised control over the judgment despite having been divested of jurisdiction or authority under Rules 75.01 and 81.05(a)(1). *See Cole*, 713 S.W.3d at 193–94; *Weiss*, 720 S.W.3d at 112 (citing *Hellmann*, 574 S.W.3d at 242). Missouri law is clear: Because the trial court's authority over the case had lapsed, the July 8 Order was void. *See Cole*, 713 S.W.3d at 194 (quoting *Hellmann*, 574 S.W.3d at 242). As such, any subsequent orders and judgments were equally void. *See id.* A judgment that is void for lack of jurisdiction is a legal nullity that cannot be enforced. *See Hussmann Corp. v. UQM Elecs., Inc.*, 172 S.W.3d 918, 920 (Mo. App. E.D. 2005).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Point One presents this Court with trial court error that can be corrected on remand by setting aside the void orders and judgments and directing the trial court to reinstate the Second Amended Judgment. *See Cole*, 713 S.W.3d at 196–97. This Court should reverse and remand accordingly.



Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Point Two: The trial court erred in entering the July 15 Order and Decree granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion.

2.1 Preservation Statement

After the July 8 Order, Appellants argued in their July 14 opposition to Respondent's motion to approve settlement that the trial court lacked authority to approve the purported settlement because the July 8 Order exceeded the scope of the trial court's jurisdiction. (LF D129:1–6). Appellants rested on that position at the hearing on July 15, 2025, while alternatively seeking reconsideration. (Tr. 3042:24-3043:15). Appellants preserved their argument in response to the July 15 Order and Decree in their motion to amend and in their Rule 74.06(b)(4) motion for relief from the void judgment. (LF D132 ¶ 1, D134 ¶¶ 1–34). Appellants renewed those grounds in motions to amend the October Judgment and for relief from that judgment under Rule 74.06(b)(4) filed on November 13, 2025. (*See* LF D1:89, D180; Supp. LF D1–D2). Appellants further preserved their challenges by timely filing multiple notices of appeal after each order and judgment on August 21, 2025 (from the July 8 Order and July 15 Order and Decree), September 26, 2025 (from the September Order), and December 15, 2025 (from the October Judgment). (LF D135, D144, D177).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

2.2 Standard of Review

Whether a circuit court has jurisdiction or authority over a case at the time it enters a judgment is a question of law subject to *de novo* review. *Cole*, 713 S.W.3d at 193 (internal citation omitted).

2.3 Argument: The trial court's post-Second Amended Judgment orders and judgments were void for lack of jurisdiction or authority under Rules 75.01 and 81.05.

Under Rules 75.01 and 81.05, the trial court lacked jurisdiction or authority to enter the July 15 Order and Decree vacating the Second Amended Judgment and incorporating the July 8 Order's grant of Respondent's motion to enforce settlement. *See Hellmann*, 574 S.W.3d at 242. (App. App'x 48–49, 53–56).

Point One challenged the trial court's July 8 Order, which was the first void order in a series of void orders and judgments. Point Two focuses upon the first void **judgment**, which was the July 15 Order and Decree. *See* Rule 74.01 ("A judgment is entered when a writing signed by the judge and denominated 'judgment' or 'decree' is filed."). (LF D128; App. App'x 20).

As explained in Point One, Rules 75.01 and 81.05 together establish that a trial court has control over judgments for thirty days, after which a trial court retains control for an additional ninety days ***solely*** to rule on grounds raised in a timely filed, authorized after-trial motion. *Cole*, 713 S.W.3d at 193; *Weiss*, 720 S.W.3d at 111–12 (citing *Hellmann*, 574 S.W.3d at 242 n.3). As argued in Point One, Respondent's July 3 "Motion to Enter a Third Amended Judgment to Replace the June 3, 2025 Second Amended Judgment"—which sought to vacate the Second Amended Judgment and substitute a new judgment enforcing

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

settlement based on Respondent's March 28 motion to enforce settlement—was not one of Missouri's six recognized authorized after-trial motions, and therefore did not extend the trial court's authority beyond Rule 75.01's thirty-day window through the mechanism of Rule 81.05(a)(2). (LF D127; App. App'x 41–47, 50–52). *See Hellmann*, 574 S.W.3d at 242; *Burton*, 455 S.W.3d at 12; *Cone*, 571 S.W.3d at 648 n.7 (quoting *Taylor,* 854 S.W.2d at 392 n.1) (noting "a motion to set aside or vacate a judgment is not an authorized after-trial motion that extends the trial court's jurisdiction"); *Eddy*, 145 S.W.3d at 433 (citing *Taylor*, 854 S.W.2d at 392 n.1) (same).[13]

For the same reason, Respondent's March 28 pre-judgment motion to enforce settlement, even if treated as a premature post-judgment motion under Rule 78.04, was not an authorized after-trial motion extending the trial court's authority beyond thirty days. (LF D34). *See Hellmann*, 574 S.W.3d at 242; *Burton*, 455 S.W.3d at 12; *Cone*, 571 S.W.3d at 648 n.7 (quoting *Taylor,* 854 S.W.2d at 392 n.1). Notably, ***Appellants' authorized after-trial motions did not address the purported settlement*** and thus did not extend the trial court's authority to entertain Respondent's request to enforce settlement. *See Cole*, 713 S.W.3d at 193 (noting a trial court's control over a judgment after Rule 75.01's thirty-day period is "constrained by and limited to the grounds raised in a timely filed, authorized after-trial motion").

[13] Nor would Respondent's July 3 motion be an authorized after-trial motion under the amended Rule 81.05(a)(4) (effective July 1, 2026), which defines an authorized after-trial motion as "a motion seeking relief authorized by Rules 72.01(b), 73.01(d), or 78." (App. App'x 57).

Accordingly, the trial court's July 15 Order and Decree was void because it was entered—not pursuant to any authorized after-trial motion filed by Respondent—more than thirty days after the Second Amended Judgment. *See* Rules 75.01, 81.05(a)(1); *Hellmann*, 574 S.W.3d at 242 (internal quotation omitted) ("Following divestiture, any attempt by the trial court to continue to exhibit authority over the case, whether by amending the judgment or entering subsequent judgments, is void."). As such, the void judgment is unenforceable and should be vacated in favor of reinstating the Second Amended Judgment. The Court should reverse and remand accordingly.

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

<u>Point Three</u>: The trial court erred in entering the September Order granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion.

3.1 Preservation Statement

After the July 8 Order, Appellants argued in their July 14 opposition to Respondent's motion to approve settlement that the trial court lacked authority to approve Respondent's proposed settlement because the July 8 Order exceeded the scope of the trial court's jurisdiction. (LF D129:1–6). Appellants rested on that position at the hearing on July 15, 2025, while alternatively seeking reconsideration. (Tr. 3042:24–3043:15). Appellants preserved their argument in response to the July 15 Order and Decree in their motion to amend and in their Rule 74.06(b)(4) motion for relief from the void judgment. (LF D132 ¶ 1, D134 ¶¶ 1–34). Appellants renewed those grounds in motions to amend the October Judgment and for relief from that judgment under Rule 74.06(b)(4) filed on November 13, 2025. (*See* LF D1:89, D180; Supp. LF D1–D2). Appellants further preserved their challenges by timely filing multiple notices of appeal after each order and judgment on August 21, 2025 (from the July 8 Order and July 15 Order and Decree), September 26, 2025 (from the September Order), and December 15, 2025 (from the October Judgment). (LF D135, D144, D177).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

3.2 Standard of Review

Whether a circuit court has jurisdiction or authority over a case at the time it enters a judgment is a question of law subject to *de novo* review. *Cole*, 713 S.W.3d at 193 (internal citation omitted).

3.3 Argument: The trial court's post-Second Amended Judgment orders and judgments were void for lack of jurisdiction or authority under Rules 75.01 and 81.05.

Point Three focuses on the trial court's void September Order. (LF 143; App. App'x 25). Under Rules 75.01 and 81.05, the trial court lacked jurisdiction or authority to enter the September Order vacating the Second Amended Judgment and incorporating the July 8 Order's grant of Respondent's motion to enforce settlement. *See Hellmann*, 574 S.W.3d at 242. (App. App'x 48–49, 53–56).

As explained above, Rules 75.01 and 81.05 together establish that a trial court has control over judgments for thirty days, after which a trial court retains control for an additional ninety days ***solely*** to rule on grounds raised in a timely filed, authorized after-trial motion. *Cole*, 713 S.W.3d at 193; *Weiss*, 720 S.W.3d at 111–12 (citing *Hellmann*, 574 S.W.3d at 242 n.3). As argued above, Respondent's July 3 "Motion to Enter a Third Amended Judgment to Replace the June 3, 2025 Second Amended Judgment"—which sought to vacate the Second Amended Judgment and substitute a new judgment enforcing a purported settlement based on Respondent's March 28 motion to enforce settlement—was not one of Missouri's six recognized authorized after-trial motions, and therefore did not extend the trial court's authority beyond Rule 75.01's thirty-day window through the mechanism of Rule 81.05(a)(2). (LF D127; App. App'x 41–47, 50–52). *See Hellmann*, 574

S.W.3d at 242; *Burton*, 455 S.W.3d at 12; *Cone*, 571 S.W.3d at 648 n.7 (quoting *Taylor,* 854 S.W.2d at 392 n.1) (noting "a motion to set aside or vacate a judgment is not an authorized after-trial motion that extends the trial court's jurisdiction"); *Eddy*, 145 S.W.3d at 433 (citing *Taylor*, 854 S.W.2d at 392 n.1) (same).[14]

Likewise, Respondent's March 28 pre-judgment motion to enforce settlement, even if treated as a premature post-judgment motion under Rule 78.04, was not an authorized after-trial motion extending the trial court's authority beyond thirty days. (LF D34). *See Hellmann*, 574 S.W.3d at 242; *Burton*, 455 S.W.3d at 12; *Cone*, 571 S.W.3d at 648 n.7 (quoting *Taylor,* 854 S.W.2d at 392 n.1). Importantly, Appellants' authorized after-trial motions ***did not address the purported settlement*** and thus ***did not extend the trial court's authority*** to entertain Respondent's request to enforce settlement. *See Cole*, 713 S.W.3d at 193 (noting a trial court's control over a judgment after Rule 75.01's thirty-day period is "constrained by and limited to the grounds raised in a timely filed, authorized after-trial motion").

Accordingly, the trial court's September Order was void, having been entered more than thirty days after the Second Amended Judgment and not pursuant to any authorized after-trial motion filed by Respondent. *See* Rules 75.01, 81.05(a)(1); *Hellmann*, 574 S.W.3d at 242) (internal quotation omitted) ("Following divestiture, any attempt by the trial court to continue to exhibit authority over the case, whether by amending the judgment

[14] Nor would Respondent's July 3 motion be an authorized after-trial motion under the amended Rule 81.05(a)(4) (effective July 1, 2026), which defines an authorized after-trial motion as "a motion seeking relief authorized by Rules 72.01(b), 73.01(d), or 78." (App. App'x 57).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

or entering subsequent judgments, is void.”). The void September Order is unenforceable and should be vacated in favor of reinstating the Second Amended Judgment. The Court should reverse and remand accordingly.

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

<u>Point Four</u>: The trial court erred in entering the October Judgment granting Respondent's motion to enforce the purported settlement agreement *because* the trial court lacked jurisdiction or authority to vacate the Second Amended Judgment after thirty days under Rules 75.01 and 81.05 as no authorized post-judgment motion extended the thirty-day period during which the trial court had authority to amend its judgment based on such motion under Rule 78.04 *in that* Appellants' authorized Rule 72 and Rule 78 post-judgment motions did not seek settlement relief, and Respondent's post-judgment motion asking the trial court to grant its motion to enforce settlement was not an authorized post-judgment motion.

4.1 Preservation Statement

After the July 8 Order, Appellants argued in their July 14 opposition to Respondent's motion to approve settlement that the trial court lacked authority to approve Respondent's proposed settlement because the July 8 Order exceeded the scope of the trial court's jurisdiction. (LF D129:1–6). Appellants rested on that position at the hearing on July 15, 2025, while alternatively seeking reconsideration. (Tr. 3042:24–3043:15). Appellants preserved their jurisdictional/authority argument in response to the July 15 Order and Decree in their motion to amend and in their Rule 74.06(b)(4) motion for relief from the void judgment. (LF D132 ¶ 1, D134 ¶¶ 1–34). Appellants renewed those grounds in motions to amend the October Judgment and for relief from that judgment under Rule 74.06(b)(4) filed on November 13, 2025. (*See* LF D1:89, D180; Supp. LF D1–D2; Tr. 3105:24–3106:3). Appellants continued to preserve their arguments by timely filing multiple notices of appeal after each order and judgment on August 21, 2025 (from the July 8 Order and July 15 Order and Decree), September 26, 2025 (from the September Order), and December 15, 2025 (from the October Judgment). (LF D135, D144, D177).

4.2 Standard of Review

Whether a circuit court has jurisdiction or authority over a case at the time it enters a judgment is a question of law subject to *de novo* review. *Cole*, 713 S.W.3d at 193 (internal citation omitted).

4.3 Argument: The trial court's post-Second Amended Judgment orders and judgments were void for lack of jurisdiction or authority under Rules 75.01 and 81.05.

Point Four appeals from the latest void judgment of the trial court, which was the October Judgment. (LF D158; App. App'x 26). Under Rules 75.01 and 81.05, the trial court lacked jurisdiction or authority to enter the October Judgment vacating the Second Amended Judgment and incorporating the July 8 Order's grant of Respondent's motion to enforce settlement. *See Hellmann*, 574 S.W.3d at 242. (App. App'x 48–49, 53–56).

As explained above, Rules 75.01 and 81.05 together establish that a trial court has control over judgments for thirty days, after which a trial court retains control for an additional ninety days ***solely*** to rule on grounds raised in a timely filed, authorized after-trial motion. *Cole*, 713 S.W.3d at 193; *Weiss*, 720 S.W.3d at 112 (citing *Hellmann*, 574 S.W.3d at 242 n.3). As argued above, Respondent's July 3 "Motion to Enter a Third Amended Judgment to Replace the June 3, 2025 Second Amended Judgment"—which sought to vacate the Second Amended Judgment and substitute a new judgment enforcing settlement based on Respondent's March 28 motion to enforce settlement—was not one of Missouri's six recognized authorized after-trial motions, and therefore did not extend the trial court's authority beyond Rule 75.01's thirty-day window through the mechanism of Rule 81.05(a)(2). (LF D127; App. App'x 41–47, 50–52). *See Hellmann*, 574 S.W.3d at

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

242; *Burton*, 455 S.W.3d at 12; *Cone*, 571 S.W.3d at 648 n.7 (quoting *Taylor,* 854 S.W.2d at 392 n.1) (noting "a motion to set aside or vacate a judgment is not an authorized after-trial motion that extends the trial court's jurisdiction"); *Eddy*, 145 S.W.3d at 433 (citing *Taylor*, 854 S.W.2d at 392 n.1) (same).[15]

Similarly, Respondent's March 28 pre-judgment motion to enforce settlement, even if treated as a premature post-judgment motion under Rule 78.04, was not an authorized after-trial motion extending the trial court's authority beyond thirty days. (LF D34). *See Hellmann*, 574 S.W.3d at 242; *Burton*, 455 S.W.3d at 12; *Cone*, 571 S.W.3d at 648 n.7 (quoting *Taylor,* 854 S.W.2d at 392 n.1). Significantly, Appellants' authorized after-trial motions ***did not address the purported settlement*** and thus ***did not extend*** the trial court's authority to entertain Respondent's request to enforce settlement. *See Cole*, 713 S.W.3d at 193 (noting a trial court's control over a judgment after Rule 75.01's thirty-day period is "constrained by and limited to the grounds raised in a timely filed, authorized after-trial motion").

Accordingly, the trial court's October Judgment is a void judgment because it was entered more than thirty days after the Second Amended Judgment and was not pursuant to any authorized after-trial motion filed by Respondent. *See* Rules 75.01, 81.05(a)(1); *Hellmann*, 574 S.W.3d at 242) (internal quotation omitted) ("Following divestiture, any attempt by the trial court to continue to exhibit authority over the case, whether by

[15] Nor would Respondent's July 3 motion be an authorized after-trial motion under the amended Rule 81.05(a)(4) (effective July 1, 2026), which defines an authorized after-trial motion as "a motion seeking relief authorized by Rules 72.01(b), 73.01(d), or 78." (App. App'x 57).

amending the judgment or entering subsequent judgments, is void.”). The void October Judgment is unenforceable and must be vacated in favor of reinstating the Second Amended Judgment. The Court should reverse and remand accordingly.

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

<u>Point Five</u>: The trial court erred in granting Respondent's motion to enforce settlement at the high of $18 million *because* the judgment—in particular, the October Judgment amending the September Order amending the July 15 Order and Decree incorporating the July 8 Order granting Respondent's motion—was not supported by substantial evidence *in that* Respondent did not adduce clear and convincing evidence that the parties had a meeting of the minds as to the purported high/low settlement agreement through the four-line text message sent during jury deliberations.

5.1 Preservation Statement

Appellants preserved this point by timely challenging the trial court's orders and judgments enforcing a settlement and arguing a lack of substantial evidence that Respondent proved a settlement agreement by clear and convincing evidence, while arguing in the alternative that all those orders and judgments were void as discussed in the preceding Points Relied On.

Specifically, Appellants asserted their interpretation of the high/low agreement on the record as reflected in the trial transcript. (Tr. 2715:20–2716:22, 2718:19–2719:25). In post-trial briefing, Appellants argued no settlement should be enforced because there was no meeting of the minds between the parties. (LF D44 ¶ 10(d), D52:15). After the entry of trial court's July 8 Order, Appellants opposed approving settlement on multiple grounds, including that there was no substantial evidence supporting the grant of Respondent's settlement enforcement motion, the trial court's finding of a settlement agreement was unsupported by clear and convincing evidence for lack of meeting of the minds, and lack of settlement authority. (LF D129:7–15). Appellants also sought reconsideration of the July 8 Order on the same grounds. (LF D130).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

After the trial court issued its July 15 Order and Decree, Appellants again argued the lack of clear and convincing evidence of settlement. (LF D132 ¶¶ 5–31). Appellants renewed those grounds in a motion to amend the October Judgment (timely filed on November 13, 2025), which the trial court denied at a hearing on December 4, 2025. (LF D1:89, D180; Supp. LF D1–D2; Tr. 3105:24–3106:3).

Furthermore, Appellants preserved their challenge by timely filing multiple notices of appeal after each order and judgment on August 21, 2025 (from the July 8 Order and July 15 Order and Decree), September 26, 2025 (from the September Order), and December 15, 2025 (from the October Judgment). (LF D135, D144, D177).

5.2 Standard of Review

"When reviewing a trial court's judgment enforcing a settlement, [the reviewing court] will affirm unless the judgment is against the weight of the evidence, there is no substantial evidence to support it, or the court erroneously applied or declared the law." *Sansone Law, LLC v. J&M Sec., LLC*, 589 S.W.3d 74, 85 (Mo. App. E.D. 2019) (internal citation omitted) (reversing a trial court's grant of a motion to enforce settlement). Enforcement is discretionary because a motion to enforce settlement adds a collateral action for specific performance, which is an equitable remedy. *Kenney v. Vansittert*, 277 S.W.3d 713, 720 (Mo. App. W.D. 2008) (internal citation omitted).

In assessing whether there was a meeting of the minds as to a settlement agreement, courts defer to the factual findings, "but . . . make an independent evaluation of the conclusions of law the trial court draws from its factual findings." *Stickler v. McGinnis*,

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

649 S.W.3d 38, 43–44 (Mo. App. W.D. 2022) (affirming a trial court's denial of a motion to enforce settlement when there was no meeting of the minds).

5.3 Argument: The record lacks evidence proving the existence of a settlement by clear, convincing, and satisfactory evidence.

The record on appeal shows a lack of substantial evidence supporting the trial court's July 8 Order and subsequent orders and judgments (the July 15 Order and Decree, September Order, and October Judgment) granting Respondent's settlement enforcement motion. *See Sansone Law*, 589 S.W.3d at 85. (LF D113, D128, D143, D158; App. App'x 16, 20, 25, 26).

Because a settlement agreement is governed by general principles of contract law, "[t]he creation of a valid settlement agreement requires a meeting of the minds and a mutual assent to the essential terms of the agreement." *Id.* at 86 (internal quotation omitted); *Puga v. Nephrite Fund I, LLC*, 697 S.W.3d 783, 791 (Mo. App. W.D. 2024) (internal quotation omitted) (affirming a trial court's denial of a motion to enforce settlement); *Stickler*, 649 S.W.3d at 43–44 (internal citations omitted) (same). As the party seeking to enforce a purported settlement agreement, Respondent had the burden to prove the existence of a settlement by "clear, convincing, and satisfactory evidence." *Kenney*, 277 S.W.3d at 720 (citing *Eaton v. Mallinckrodt, Inc.,* 224 S.W.3d 596, 599 (Mo. banc 2007)). "Evidence is clear and convincing if it instantly tilt[s] the scales in the affirmative when weighed against the evidence in opposition, [such that] the fact finder's mind is left with an abiding conviction that the evidence is true." *Grant v. Sears*, 379 S.W.3d 905, 915 (Mo. App. W.D. 2012) (quoting *Reppy v. Winters*, 351 S.W.3d 717, 721 (Mo. App. W.D. 2011)) (both cases

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM
Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

reversing grants of motions to enforce settlement). Respondent failed to meet that burden here.

At the close of trial, when the parties initially reported to the trial court their latest attempt to settle the case during jury deliberations, the record shows the parties profoundly disagreed on the terms of the purported high/low settlement. (Tr. 2707:8–14). Respondent asserted the unadjusted verdict of $48.1 million triggered the "high" of $18 million, while Appellants asserted the "high trigger" of the high/low agreement was based on the recoverable verdict amount and excluding punitive damages, which was closer to $8.4 million. (*Id.*) The trial court declined to enforce a settlement at that time and suggested it would only consider the issue pursuant to a motion supported by evidence. (Tr. 2718:8–15, Tr. 2733:21–24). The parties filed their respective motions arguing their competing interpretations of the purported settlement, and the trial court held an evidentiary hearing. (LF D1:79–80, D34, D44). The record establishes that neither Respondent's motion to enforce settlement nor the hearing conducted by the trial court on the motion justified reversing course and granting it.

The critical piece of evidence relied on by Respondent to prove a settlement agreement was the text message sent by Respondent's counsel to Appellants' counsel while the jury was deliberating. The text message in its entirety stated as follows:

> 8 and 18
> All the way to verdict
> Confidentiality to high/low
> No non disparagement

(LF D102:8, D75, Tr. 2711:6–9, 2714:10–12). Although both parties initially believed they had reached a high/low settlement based on the text message, their subjective belief proved to be objectively false. (Tr. 2707:8–14; LF D113 ¶ 6). *See Grant*, 379 S.W.3d at 916 (internal quotation omitted) ("In determining whether a meeting of minds has occurred, [we look to] the objective manifestations of the parties."); *see also Stickler*, 649 S.W.3d at 44 (internal quotation omitted) ("A court determines a meeting of the minds 'by looking to the intention of the parties as expressed or manifested in their words or acts.'").

5.3.1 Timing evidence does not support a meeting of the minds.

First, the timing of the parties' communications underscores the absence of any meeting of the minds, because the parties continued to seek clarification about the high/low agreement's terms ***after*** the exchange of the sparsely worded text that Respondent contends confirmed a completed agreement. Specifically, the record shows the text was sent by Respondent's counsel at 4:47 p.m. but, at that same minute, the claims consultant for MedPro (the excess insurance carrier for Appellants), Mr. Crawford, was texting with questions about the proposed high/low: "Does jury give a puni[tive] number, or do they know more testimony needed regarding puni[tive] phase?" (Tr. 2773:5–9). Eleven minutes after Respondent argues the agreement was final, Mr. Crawford texted: "High-low for compensatory only, extinguishes puni[tive] exposure. Please make that clear. Thanks." (Tr. 2773:14–18). Had the parties had a clear meeting of the minds at 4:47 p.m. when counsel for Respondent sent the text, there would have been no need to seek later clarification.

Similarly, after the punitive damages verdict was announced and the dispute over a settlement agreement became apparent, defense counsel, Mr. Willman, called

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Respondent's counsel at 7:39 p.m. and told her he had to speak with "one more person" to secure a settlement offer beyond $8.4 million. (Tr. 3008:20–3009:3). Respondent's counsel testified she understood the "one more person" was an authority-granting individual from the insurance company, whose authority was required for any settlement offer approaching $18 million. (Tr. 3009:12–3010:8). Logically, if Mr. Willman lacked that authority at 7:39 p.m., he could not have had that authority three hours earlier at 4:47 p.m. when the text message was sent.

Missouri courts have held that "[a] mutual agreement is reached when 'the minds of the contracting parties [ ] meet upon and assent to the same thing in the same sense at the same time.'" *Grant*, 379 S.W.3d at 916 (internal citation omitted). The evidence regarding timing here undermines any finding that there was a meeting of the minds on the same thing in the same sense at the same time. *See id.* Further, "[a] meeting of the minds occurs when there is a definite offer and an ***unequivocal acceptance***." *Id.* (internal quotation omitted). The record contains no substantial evidence—much less clear and convincing evidence—of Appellants' unequivocal acceptance at the time Respondent's counsel sent the text message. *See id.* Further, the testimony from Respondent's own counsel about Mr. Willman's phone call confirms that Appellants' counsel lacked authority to agree to a settlement agreement as purported by Respondent. Lack of authority is a well-established defense to a motion to enforce settlement, which Appellants timely raised as another ground to deny Respondent's motion. *See Eaton*, 224 S.W.3d at 600; *Kenney*, 277 S.W.3d at 721.

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

5.3.2 The text message was not sufficiently definite.

Second, contrary to Respondent's argument before the trial court, the phrase "all the way to verdict" lacks sufficient definiteness to demonstrate a meeting of the minds between the parties as to the "trigger" for the high/low settlement amount.

Notably, in his motion and at the evidentiary hearing, in arguing his interpretation of the settlement agreement, Respondent's counsel ***added bolded language*** to the text message signaling how the trial court should interpret it, including "**Trigger**: All the way to verdict." (LF D80:7, Tr. 3000:14–3001:11). But adding explanatory language to clarify certain terms reinforces that the terms at issue were **not** clear or complete to begin with. *See Grant*, 379 S.W.3d at 916 (internal quotation omitted) ("As a general common law principle, in order for an acceptance to be effective, it 'must be positive and unambiguous.'"). Critically, the word "trigger" was never used during negotiations. Appellants' counsel testified that had she seen a version of a settlement agreement with the bold word "trigger," as Respondent inserted, that term would have changed her understanding of the terms. (Tr. 2905:10–2906:7).

The evidence in the record readily shows the parties had fundamentally different understandings as to the meaning of the phrase "[a]ll the way to verdict." Appellants' counsel understood that the term "all the way to verdict" reflected an agreement for the jury to deliberate to a verdict on liability and compensatory damages and then for the parties to make their punitive damages arguments, after which the jury would deliberate to a verdict on punitive damages, "irrespective of having the agreement in place" before the verdicts were read. (Tr. 2848:5–9). Appellants' counsel testified her understanding was

that Respondent's counsel proposed this term so the full verdict amount (including both compensatory and punitive damages) could be read aloud and later circulated in the press for marketing purposes. (Tr. 2927:6–2928:13). Appellants' counsel's actions reflected this understanding when she did not announce a settlement to the Court before or during the punitive damages deliberation, given that the parties were not yet "all the way to verdict." (Tr. 2946:1–6). The reasonableness of Appellants' counsels' understanding is further supported by the wording of the phrase "all the way to verdict," which importantly does not say "based on the verdict" or otherwise indicate that the high/low would be triggered by the full verdict amount. Furthermore, Appellants' counsel's interpretation that the $18 million high factored in the statutory caps was reasonable and consistent with Respondent's efforts through evidence and closing argument to seek over $25 million in uncapped future economic damages. (Tr. 1570:7–23, 2604:8–13, 2605:23–25, 2607:5–9.)

The reasonableness of Appellants' counsel' interpretation is also supported by Mr. Crawford's testimony at the evidentiary hearing. Mr. Crawford estimated the compensatory damage award would range between $6.5 and $25 million. (Tr. 2794:2–22.) His understanding of Missouri's noneconomic damages statutory cap informed his case value estimation. (Tr. 2794:23–2495:7.) Mr. Crawford believed Respondent's high/low counterdemand "reasonably aligned" with Respondent's estimation of the high end of the recoverable damages range. (Tr. 2800:5–8.) Further, Mr. Crawford had prior experience negotiating high/low settlement agreements and had never interpreted the "high" to be triggered by jury awards exceeding the recoverable damages range. (Tr. 2800:9–21.)

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

In contrast, Respondent's counsel understood that "all the way to verdict" meant that the unadjusted verdict amount would trigger the high/low. (Tr. 2973:10–15). Respondent's counsel further testified: "that's why we phrased 'all the way to verdict,' not meaning, you know, we stop after compensatory." (*Id.*) However, what Respondent's counsel subjectively believed "all the way to verdict" meant is not determinative; the Court must assess the plain meaning of the words (without any explanatory bolded additions like the word 'trigger') to decide whether there was ambiguity or "mirror-image" acceptance. *See J.H. v. Brown*, 331 S.W.3d 692, 699 (Mo. App. W.D. 2011) (internal quotation omitted) (alteration in original) ("A [settlement] contract does not exist without a definite offer and a 'mirror-image' acceptance."). The fact that the trial court took evidence regarding the parties' intended meaning of "all the way to the verdict" confirms the ambiguity of the language used in the text message, because a court must determine intent from the plain language and may only consider extrinsic evidence when the agreement's language is ambiguous. *See Tuttle v. Muenks*, 21 S.W.3d 6, 9 (Mo. App. W.D. 2000) (interpreting a settlement release agreement). In assessing ambiguity, "[t]he test is whether the disputed language, in the context of the entire agreement, ***is reasonably susceptible of more than one construction*** giving the words their plain and ordinary meaning as understood by a reasonable, average person." *In re Marriage of Lueken*, 267 S.W.3d 800, 803 (Mo. App. E.D. 2008) (internal citation omitted; emphasis added). As stated above, Appellants' interpretation of the phrase "all the way to verdict" as simply meaning that the jury would deliberate "all the way to verdict" is a reasonable one. Thus, at most, there were two competing reasonable interpretations of the text, and no meeting of the minds.

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Importantly, the trial court made minimal factual findings in its July 8 Order granting Respondent's motion to enforce settlement, concluding that the phrase "all the way to verdict"—not to judgment—was salient, as the parties could have used the word "judgment" instead. (LF D113 ¶¶ 8–9; App. App'x 16). But the evidentiary hearing testimony makes clear there was no confusion between "verdict" and "judgment"; rather, the question was whether the word "verdict" was (a) intended to identify the "trigger" for the high/low (as claimed by Respondent); or (b) meant the parties would allow the jury to deliberate all the way to a verdict even though the parties had reached a settlement agreement. Because "all the way to verdict" was reasonably susceptible to more than one meaning, the text message did not completely memorialize a settlement agreement. *See Lueken*, 267 S.W.3d at 803.

5.3.3 The text message did not evidence a complete agreement.

Next, even viewing the text message favorably to Respondent's interpretation, the text message lacks all the material terms required to constitute a complete agreement. Notably, the text message is silent as to punitive damages and applicable statutory caps—subjects that were repeatedly discussed during the course of settlement negotiations before March 25, 2025. (Tr. 2868:23–2871:10). *See Grant*, 379 S.W.3d at 916–17 (rejecting "silence" as agreement to terms of a settlement agreement). The trial court heard witness testimony that the four-line text message did not constitute the complete agreement. Mr. Crawford testified the text was "not complete in its description of the terms," and defense counsel Ms. Kamykowski testified that "the agreement had already been agreed to orally .

. . 8 and 18 would resolve all claims" but the text was not a complete agreement. (Tr. 2906:24–2907:3).

In addition to adopting Respondent's interpretation of the phrase "all the way to verdict," the trial court found that the text message reflected additional terms agreed to by the parties, including that there would be confidentiality as to the high/low amounts, and that there would be a non-disparagement provision. (LF D113 ¶¶ 8–9; App. App'x 16). But fatal to any argument that the four-line, fifteen-word text message included all the material terms to effectuate a settlement of a multi-million dollar medical malpractice claim is the fact that the text message conspicuously omitted other key terms that both parties had previously acknowledged were essential to a complete settlement agreement: application of statutory caps, recoverable compensatory damages, net verdict versus net judgment, released parties, and punitive damages.

Indeed, when the trial court entered its July 15 Order and Decree enforcing the settlement, it acknowledged that the settlement was not "finalized." (LF D128; App. App'x 20). The trial court stated that "all parties shall execute all necessary addendums and any other paperwork required to finalize the settlement[.]" *Id.* The trial court further read additional terms into the text message that were not included in it and were not otherwise discussed by the parties. For example, the July 15 Order and Decree directed Appellants to pay specific amounts to certain parties associated with Respondent "within fourteen (14) days of this Order and Decree." *Id.* The trial court later awarded post-judgment interest, which was not a term included in the text message or otherwise discussed by the parties. (LF D158; App. App'x 26).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Regarding punitive damages, the parties did not dispute that the discussed high/low settlement would have no money paid on any award of punitive damages. (Tr. 2712:5–8, 2882:20–24, 2907:22–24). Despite the parties' general agreement that punitive damages were not included in a settlement agreement, there is no evidence suggesting the parties had a meeting of the minds as to whether any award of punitive damages would impact the high/low. (Tr. 2773:14–18).

Regarding statutory caps, even if the trial court credited testimony from both parties' counsel that statutory caps were not discussed in connection with the high/low in the text message, that absence alone demonstrates that the parties had not reached a complete agreement. Whether the statutory caps should be applied in this case was hotly contested by the parties since the case's inception. (LF D2, Tr. 2921:19–2922:1). In his first petition filed in 2021, Respondent challenged the constitutionality of the statutory caps and maintained his position throughout litigation and negotiations, showing through words and actions he knew statutory caps were relevant and applicable to the jury's verdict. (LF D2). Thus, Respondent's failure to confirm that the high/low was based on an amount that excluded any statutory adjustment is illogical and undermines any argument that the four-line text encompassed all the material terms to establish a complete agreement.

Moreover, the trial court noted the parties were sophisticated, and sophisticated parties in medical malpractice cases certainly know and consider the applicable statutory caps when engaging in settlement negotiations. (LF D113 ¶ 8; App. App'x 16.) *See Ruiz v. Bar Plan Mut. Ins. Co.*, 590 S.W.3d 333, 347 (Mo. App. E.D. 2019) (presuming knowledge of the law by an objectively reasonable attorney); *Dill v. Poindexter Tile Co.*,

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

451 S.W.2d 365, 374 (Mo. App. 1970) ("[C]ontracting parties are presumed to know the law and have it in mind when drafting their agreements."). This makes logical sense. As defense counsel testified, the settlement value of a case is referenced in terms of the likely recoverable amount through negotiations in the case, as there would be no other way to advise health provider clients as to their potential risk exposure on a Missouri medical malpractice claim. (Tr. 2871:3-10).

Additionally, evidence regarding the relevance of the statutory caps to the case value and Respondent's knowledge thereof was presented in the form of a prior settlement offer from Appellants to Respondent dated February 7, 2025. (LF D53). In conveying a settlement offer to respondent, Appellants "reiterated" that the statutory caps applied:

> Non-economic damages cap: This case is subject to a cap on Plaintiff's past and future non-economic damages claims. That cap for this trial in 2025 is $828,529. Regardless of the award included on the verdict form by the jury for the non-economic damages, the Court is mandated to apply the statutory cap before entering a final judgment in Plaintiff's favor.

(LF D53). The letter further emphasized "all offers, conditions, and/or terms included herein are **material terms** as to any final settlement reached by the parties and must be included in any final settlement release agreement finalized by the parties in this case." *Id.*

As yet further indication that the text message did not show a complete agreement, post-judgment interest appeared nowhere in the four-line text message and was only awarded later in the October Judgment. (LF 158; App. App'x 26). The parties never discussed post-judgment interest during settlement negotiations. The July 15 Order and Decree omitted it. (LF 128; App. App'x 20). Yet months later, the trial court amended its own order to add this material financial term, to which no witness testified the parties ever

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

agreed. If the text message were a complete, enforceable settlement, the trial court would have had no reason to include post-judgment interest as a material term months later.

"Although it [is] not necessary for the parties to have reduced their agreement to writing, it [i]s necessary, in order to find an enforceable settlement agreement, that the parties had agreed on the essential terms." *J.H.*, 331 S.W.3d at 699. Missouri courts have reversed a trial court's grant of a motion to enforce settlement when the purported acceptance varied materially from the offer. *See Reppy*, 351 S.W.3d at 721–22; *see also Sansone Law*, 589 S.W.3d at 88 (holding the trial court erred in enforcing settlement where essential terms of "mutual walk-away and a cutout provision" were not sufficiently definite); *Grant*, 379 S.W.3d at 917–18 (holding the trial court erred in finding silence regarding additional terms amounted to consent and therefore movant failed to prove meeting of minds by clear and convincing evidence). The written settlement offer indicates that Appellants' understanding of any final settlement agreement between the parties would factor in the applicable statutory caps, and thus, any acceptance by Appellants would be based on that understanding.

5.3.4 Conclusion

Here, the record contains neither substantial evidence, nor clear and convincing evidence, that the parties had a meeting of the minds on all essential terms. *See Grant*, 379 S.W.3d at 917. As a result, the trial court's grant of Respondent's motion to enforce settlement was reversible error. *See id.* This Court should grant Point Five and reverse and remand the October Judgment for the trial court to reinstate the Second Amended Judgment. (LF D97, D158; App. App'x 11, 26).

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

<u>Point Six</u>: In the alternative, the trial court erred in entering the October Judgment granting Respondent's motion to amend to award post-judgment interest and amending the July 15 Order and Decree *because* the trial court erroneously declared the law by concluding that post-judgment interest was available in this action *in that* § 538.300 exempts medical malpractice actions against healthcare providers from the post-judgment interest provisions of § 408.040, and the underlying action, as identified in the trial court's own July 15 Order and Decree, is "a medical malpractice action arising out of injuries suffered by R.A., a minor, during his labor and delivery."

6.1 Preservation Statement

Appellants preserved this alternative point (that assumes *arguendo* the existence of a valid settlement agreement) by timely challenging Respondent's motion for post-judgment interest on the settlement judgment on the grounds that the medical malpractice action was exempted from post-judgment interest under § 538.300. (LF Doc. 142). Appellants renewed those grounds in a timely-filed motion to amend the October Judgment (LF 158; App. App'x 26) to strike post-judgment interest. (LF D1:89; D180; Supp. LF D3; Tr. 3105:24–3106:3).

6.2 Standard of Review

This Court reviews a judgment enforcing a settlement for whether the judgment is against the weight of the evidence, lacks supporting substantial evidence, or erroneously applies or declares the law. *Sansone Law*, 589 S.W.3d at 85 (internal citation omitted). Statutory interpretation is reviewed de novo. *See Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633, 637 (Mo. banc 2012).

6.3 Argument: Section 538.300 exempts this settlement judgment from an award of post-judgment interest.

Section 538.300 specifically exempts medical malpractice cases from application of § 408.040, which governs post-judgment interest. (App. App'x 31, 40). The trial

court's July 15 Order and Decree approving minor settlement explicitly identified the judgment as being on "a medical malpractice action arising out of injuries suffered by R.A., a minor, during his labor and delivery on May 4, 2020," which is governed by § 538.210, such that § 538.300 explicitly excludes post-judgment interest. (LF 128; App App'x 20). Section 538.300 provides: "The provisions of section 260.552, sections 537.068 and 537.117, and 537.760 to 537.765, and subsections 2 and 3 of section 408.040 shall not apply to actions under sections 538.205 to 538.230." § 538.300. (App. App'x 40). Respondent's action plainly arises out of medical negligence. The trial court's subsequent October Judgment adding post-judgment interest thus erroneously declared the law by failing to apply § 538.300's post-judgment interest exception for medical malpractice actions. *See id.*; *Dieser v. St. Anthony's Med. Ctr.*, 498 S.W.3d 419, 428 (Mo. banc 2016) (noting "section 538.300 simply provides that subsections 2 and 3 of the post-judgment interest statute do not apply in medical negligence actions against health care providers).

Further, the trial court's entry of an order and judgment approving minor settlement did not transform this case into a non-medical negligence action. *Cf. Am. Family Mut. Ins. Co. v. Hart*, 41 S.W.3d 504, 510–11 (Mo. App. W.D. 2000) (noting a settlement agreement does not itself give rise to any later award of interest and holding that a trial court's confirmation of a consent judgment that was for a sum certain and silent as to prejudgment interest preluded an award of prejudgment interest). The nature of an action is determined by the gravamen of the complaint—not by subsequent conduct of the parties to that action. *Cf. McCormick v. Centerpoint Med. Ctr. of Indep., LLC*, 534

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

S.W.3d 273, 277 (Mo. App. W.D. 2017) (noting the true nature of a medical malpractice action cannot be reframed as one of contract or fraud for purposes of the statute of limitations). Assuming *arguendo* there was a viable settlement agreement, Respondent could not retroactively seek to award interest that was not contemplated by that agreement. *See Am. Family Mut. Ins.*, 41 S.W.3d at 510–11. Indeed, as Point Five explains, the four-line text message Respondent treats as a settlement agreement omitted several material terms. Post-judgment interest is another missing term.

Because post-judgment interest does not apply to medical negligence claims against health care providers pursuant to § 538.300, the trial court erroneously declared the law by awarding post-judgment interest on Respondent's medical negligence action. *See Dieser*, 498 S.W.3d at 428. Therefore, were this Court to find a valid and enforceable high/low settlement agreement, the Court should reverse the October Judgment and remand for the trial court to strike the award of post-judgment interest.

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Not an Official Court Document

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Conclusion

Appellants respectfully request that the Court reverse the trial court's judgment enforcing settlement and remand for reinstatement of the Second Amended Judgment pursuant to the jury verdict.

Once the Second Amended Judgment is reinstated, Appellants ask that the currently stayed appeal challenging the substance of the Second Amended Judgment (ED114055) proceed in this Court.

In the alternative, Appellants request this Court reverse and remand the October Judgment with directions for the trial court to strike the award of post-judgment interest.

Respectfully submitted,

By: */s/ Kurt S. Odenwald*

Kurt S. Odenwald, #27996
Stefanie Brody, #70897
SANDBERG PHOENIX & von GONTARD P.C.
701 Market St., Suite 600 St. Louis, MO 63101
(314) 231-3332
kodenwald@sandbergphoenix.com
sbrody@sandbergphoenix.com

Paul Brusati, #67975
Abby Twenter, #69397
ARMSTRONG TEASDALE LLP
7700 Forsyth Blvd., Suite 1800
St. Louis, MO 63105
(314) 621-5070
pbrusati@atllp.com
atwenter@atllp.com

Attorneys for Appellants

Timothy C. Sansone, #47876
SANDBERG PHOENIX & von GONTARD P.C.
120 S. Central Ave., Suite 1600
Clayton, MO 63105
(314) 725-9100
tsansone@sandbergphoenix.com

Electronically Filed - EASTERN DISTRICT CT OF APPEALS - April 03, 2026 - 03:58 PM

Certificate of Service and Compliance

This brief includes the information required by Rule 55.03 and complies with Rule 84.06. The font is 13-point Times New Roman and has line spacing of 2.0, consistent with Rule 84.06(a)(4)–(5). Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 13,661 words, excluding the cover, certificates, signature block, and appendix.

This brief was served on counsel of record by filing it electronically with the Clerk of the Court on April 3, 2026, using the Missouri Courts website.

/s/ Kurt S. Odenwald

Not an Official Court Document