IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. _____

Court of Appeals No. 729497-I

JEANNE HAWKINS and JULIE WILSON,
Respondents,

v.

EMPRES HEALTHCARE MANAGEMENT, LLC f/k/a EVERGREEN HEALTHCARE MANAGEMENT, LLC; and EVERGREEN AT TALBOT ROAD, LLC d/b/a TALBOT CENTER FOR REHABILITATION AND HEALTHCARE,
Petitioners

Appeal relating to King County Superior Court
Honorable Chad Allred, Judge

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONERS

Petitioners are EmpRes Healthcare Management, LLC, and Evergreen at Talbot Road, L.L.C., the defendants in the trial court.

II. COURT OF APPEALS DECISION

Petitioners seek review of the published opinion terminating review by the Court of Appeals, Division I, of March 28, 2016, in *Jeanne Hawkins, et al. v. EmpRes Healthcare Management, LLC, et al.* (a copy of which is attached as Appendix A), as well as its Order Denying Motion for Reconsideration and Amending Opinion, dated June 8, 2016 (a copy of which is attached as Appendix B).

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals exceed its constitutional and statutory authority in reversing the trial court's judgment of dismissal of plaintiffs' claim for rescission while simultaneously declining to reach or rule upon any of the legal challenges to that claim?

2. Did the Court of Appeals err in reversing the dismissal of plaintiffs' claim for rescission of a settlement agreement where plaintiffs had not pled their ability and willingness to tender back the funds, in violation of long-standing Washington law?

3. Did the Court of Appeals err in authorizing a new form of recovery not previously recognized in Washington, namely, allowing a plaintiff to affirm a prior settlement but nevertheless pursue a second lawsuit for additional damages for the same injuries, based on a theory that the plaintiff had settled "too cheaply" in reliance on allegedly-false statements made by defense counsel within the adversarial process of the first lawsuit, despite the fact that the settlement agreement contained a release and a "no reliance" clause?

IV. STATEMENT OF THE CASE

A. Plaintiffs' First Lawsuit against Defendants

For three weeks in July 2007, plaintiff resided at defendants' nursing facility, where she alleges she sustained a toxic reaction from a medication error. Upon plaintiff's transfer out to the hospital, her daughter requested and obtained a copy of the medical chart from the facility, which she then turned over to her attorney. CP 3-4.

In September 2008, plaintiffs sued defendants for personal injuries related to that incident. CP 60. During discovery, in response to an RFP asking for plaintiff's medical chart, defense counsel[1] responded that plaintiffs had already been provided with a

[1] Defendants were represented by a different law firm in the first lawsuit.

complete chart copy from the facility, and so did not produce a copy of it.[2] CP 5. In the months that followed, plaintiffs' counsel opted to not conduct any further discovery or investigation, such as by taking depositions or by interviewing third parties or treating physicians.

At mediation in July 2010, plaintiffs settled all claims against defendants for $237,500. CP 17-22. The agreement contained two notable provisions. *First*, plaintiffs released defendants "from all claims and causes of action, which may ever be asserted by the undersigned, her executors, administrators, successors, assigns or others, whether such claims or causes of action are presently known or unknown, which in any way arise out of the facts stated in the [underlying Complaint], or which in any way involve the diagnoses, care and treatment of Jeanne Hawkins during her stay at [defendants' facility]." *Id.*

Second, it contained a "no reliance" clause, *i.e.*, plaintiffs "warrant[ed]" that "this release is executed without reliance upon any statement or representation by the Parties Released or their

[2] If this statement by defense counsel was incorrect, defense counsel had no knowledge of it, as plaintiff's counsel had similarly declined to produce a copy of the chart in his possession to defense counsel despite having received an RFP requesting it. Of course, as this Petition for Review arises out of a CR 12(b)(6) motion, plaintiffs' allegations are accepted as true, even where disputed by defendants.

representatives concerning the nature and extent of the injuries, and/or damages, and/or legal liability therefor." *Id.*

B. Plaintiffs' Second Lawsuit against Defendants

Subsequent to this settlement, in a different lawsuit plaintiffs filed against a third party, plaintiffs' counsel obtained a new copy of the chart through a subpoena and found that it (allegedly) contained some new or different records from the copy of the chart that the daughter had obtained from the facility back in July 2007, right after plaintiff's discharge to the hospital. CP 5-6.

Based on this discovery—along with the allegation that defense counsel had supplied incorrect information in the above-noted RFP response in the first lawsuit—plaintiffs sued defendants for the second time in September 2014. CP 1-15. This second lawsuit sought the same damages for the same injuries as in the first lawsuit, namely, plaintiffs' physical injuries relating to a toxic reaction from a medication error while she resided in defendants' facility. *See id.*

Based on claims of fraud and misrepresentation, plaintiffs' second lawsuit requested two alternative types of relief. First, plaintiffs sought to rescind the settlement agreement and re-open the original personal injury lawsuit to be litigated. Second, and alternatively, plaintiffs sought to affirm the settlement agreement but

then sue for additional damages on the theory that defendants had fraudulently induced her to settle her claims for $237,500 as opposed to some higher amount.[3] *Id.*

C. Proceedings in the Trial Court

Defendants moved to dismiss all claims under CR 12(b)(6). Defendants first moved against plaintiffs' rescission claim, for two reasons: (i) plaintiffs failed to state mandatory allegations on their ability and willingness to restore the parties to their original condition (*i.e.*, repaying the settlement funds), and/or (ii) plaintiffs could not prove the requisite fraud element of "reliance" under *Kwiatkowski v. Drews*, 142 Wn. App. 463, 176 P.3d 510 (2008) because the allegedly-fraudulent representations were made by an adverse party within the context of an adversarial relationship. CP 43-56.

Defendants next moved to dismiss plaintiffs' alternative claim for damages because it was barred, as a matter of law, by the release and/or the "no reliance" clause in the settlement agreement.[4] *Id.*

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[3] Plaintiffs' complaint also stated a third form of recovery (declaratory judgment), but given that the Court of Appeals affirmed the dismissal of that claim, it will not be discussed in this Petition.

[4] Because this alternative claim for damages would *affirm* the underlying settlement agreement, it necessarily follows these contractual clauses would be enforceable and applied to this claim.

The trial court (Hon. Chad Allred) granted the motion in its entirety. The trial court's written opinion focused on the scope of the release in the settlement agreement, and it did not expressly discuss any of defendants' legal challenges to the rescission claim. See Appendix C or CP 112-13. (*N.B.:* Defendants have never argued below that plaintiffs' rescission claim is barred by the release; such an argument is nonsensical as the release, if rescinded, has no legal effect.) Plaintiffs had arguably abandoned their rescission claim by that point in time.[5] In any event, the trial court entered a final judgment of dismissal with prejudice as to *all* of plaintiffs' claims. *Id.*

D. Outcome in the Court of Appeals

In reversing and remanding the trial court's judgment of dismissal, the Court of Appeals indicated that plaintiffs could pursue claims for *both* rescission and damages below. App. A at 8 & 20.

However, the court in its written opinion purported to only reach and decide *one* issue presented on appeal: whether plaintiffs'

[5] *See, e.g.* CP 92 (plaintiffs arguing in response to motion to dismiss that "[t]his is not a case for rescission of a valid contract"); Tr. 29:5-15 (in response to court's inquiry as to whether plaintiffs were seeking rescission, plaintiffs' counsel gave ambiguous response, including that "I did not address rescission" and "so you don't go to the rescission rules").

claims were barred by the release (finding they were not). *Id.* at 16. But, as noted, defendants have *never* contended that plaintiffs' claim for *rescission* was barred by the release.

As for defendants' actual challenges to the rescission claim, the Court of Appeals purported to not reach those issues:

- On plaintiffs' failure to plead an ability and willingness to restore the *status quo*, the court found the issue "not before us" because the issue had not been discussed in the trial court's opinion. *Id.* at 8.

- On plaintiffs' failure to adequately plead "reliance" to support a fraud claim, the court also declined to reach this issue, stating: "Although the parties' briefs debate [plaintiffs'] right to rely, Talbot [i.e., defendants] conceded at oral argument that that issue is not properly before this court." *Id.* at 16-17.

On this last point, however, defendants had *never* made such a concession. Defendants accordingly filed for reconsideration, and the court agreed to amend its opinion to strike the phrase "Talbot conceded at oral argument that", which left the sentence reading as follows: "Although the parties' debate [plaintiff's] right to rely, that issue is not properly before this court." No explanation was given by

the Court of Appeals as to why it did not view this issue to be properly before it. *See* Appendix B.

V. ARGUMENT

Petitioners respectfully ask this Court to accept review on one or more of the following issues pursuant to RAP 13.4:

ISSUE #1: DID THE COURT OF APPEALS EXCEED ITS AUTHORITY IN REVERSING A PORTION OF A JUDGMENT DESPITE PURPORTING TO NOT REACH THAT ISSUE?

The Court of Appeals' authority is limited by the Washington Constitution and statutory law: "In the determination of causes all decisions of the court shall be given in writing and the grounds of the decisions shall be stated." RCW 2.06.040; *see also* Wash. Const., Art. IV, §30 ("The jurisdiction of the court of appeals shall be as provided by statute or by rule authorized by statute.").

Relatedly, a "trial court's correct ruling will not be disturbed on appeal merely because it was based on an incorrect or insufficient reason." *State v. S.S.*, 67 Wn. App. 800, 812, 840 P.2d 891 (1992) (internal quotation omitted). Thus, when the Court of Appeals disturbs or reverses a judgment of the trial court, Washington's constitution and statutory law require it to state the grounds for its decision in writing.

Here, the trial court's final judgment included a dismissal of plaintiffs' claim for rescission. *See* Appendix C or CP 112-13 ("It is ORDERED that Defendants' motion to dismiss is granted and Plaintiffs' Petition is dismissed with prejudice"). Despite being entitled "Order Granting Defendants' Motion to Dismiss", this document plainly operated as a final judgment under CR 54(a)(1) and RAP 2.2(a)(1). *See id.* (noting "Clerk's Action Required"); *accord State ex rel. Lynch v. Pettijohn*, 34 Wn.2d 437, 446-47, 209 P.2d 320 (1949) (noting that a document labeled as an "opinion" operates as a final "judgment" when the court intended it as such and all parties regarded it as such).

Accordingly, the trial court's Order was the "final determination of the rights of the parties in the action" (CR 54(a)(1)) and was final as to all issues presented and decided in the lawsuit, and as to all other matters and issues that properly belonged to the subject matter of the action and might have been brought forward in the action. *See Currier v. Perry*, 181 Wash. 565, 44 P.2d 184 (1935).

Thus, the trial court's judgment *necessarily decided* and *dismissed* the plaintiffs' claim for rescission. The fact that the trial court's opinion did not discuss its reasoning on rescission is irrelevant given that the trial court is under no obligation on a CR 12(b)(6)

motion to set forth findings of fact or conclusions of law. CR 52(a)(5)(B) (so stating).

In reversing and remanding the trial court, the Court of Appeals indicated that plaintiffs' rescission claim can be pursued below. *See* App. A at 8 & 20. But, as discussed above in Part IV.D, the Court of Appeals reached this conclusion while simultaneously holding that it was not reaching *either* of defendants' legal challenges to rescission.

Consequently, the Court of Appeals has issued a *sub silentio* reversal of a trial court's judgment, *i.e.,* reversing the dismissal of the rescission claim without stating *any* grounds for that decision. Such action improperly exceeded the court's authority and violated RCW 2.06.040 and Article IV, §30 of the Washington Constitution.

Indeed, if the Court of Appeals was correct in stating that the issue of the "availability of rescission…is not before us" (App. A at 8), then it was obliged *to leave in place* and not disturb on appeal the trial court's dismissal of that claim. But the Court of Appeals here did just the opposite, to the unfair detriment of defendants.

Review is appropriate and justified on this issue pursuant to RAP 13.4(b)(3) (significant question of law under the Constitution of the State of Washington) and RAP 13.4(b)(4) (issue of substantial

public interest). This issue goes to a fundamental question of the authority and powers of Washington's appellate courts, and this Petition is defendants' only available avenue to obtain relief.

ISSUE #2: **DID THE COURT OF APPEALS ERR IN REVERSING THE DISMISSAL OF RESCISSION GIVEN PLAINTIFFS' FAILURE TO COMPLY WITH WASHINGTON LAW IN PLEADING THEIR ABILITY TO RESTORE THE STATUS QUO?**

Putting aside the problem of the Court of Appeals' failure to state its grounds in reversing the dismissal of plaintiffs' claim for rescission, the reversal itself is in violation of long-standing precedent from this Court holding that a plaintiff seeking rescission must plead it's ability and willingness to restore the parties to their original condition. *See generally Cain v. Norman*, 140 Wash. 31, 36-37, 248 P. 71 (1926) (noting in a suit for rescission, "the plaintiff [must] make his offer to restore or to do equity in his bill of complaint, and shows therein that he has substantially preserved the status quo on his part so as to be able to fulfill his offer") (internal quotation omitted); *Tyner v. Stults*, 102 Wash. 168, 170, 172 P. 850 (1918) (same); *see also Lucas v. Andros*, 185 Wash. 383, 55 P.2d 330 (1936) (noting that the party defrauded must restore, or offer to restore, the consideration which he has received under the contract).

Plaintiffs' counter-authority on this issue below was *Nimey v. Nimey*, 182 Wash. 194, 45 P.2d 949 (1935), but *Nimey* is distinguishable and in fact supports defendants' motion. The Court in *Nimey* first acknowledged the general rule that a plaintiff cannot "attack" a settlement agreement obtained through fraud without first tendering back the amounts paid in settlement. *Id.* at 200. It then recognized a narrow exception to that rule where the settlement relates to the distribution of assets in a trust or estate and the claimant's undisputed share was at least equal to the amount previously paid in settlement. As the court put it, plaintiff was not obligated to return assets of the estate which "in any event [she] would be entitled to retain." *Id.*

The present case is not analogous to the *Nimey* exception: plaintiffs here could rescind the settlement and go on to lose the trial on the merits, recovering nothing. It is therefore controlled by the general rule of *Cain* and *Tyner*, and plaintiff's rescission claim must remain dismissed.

"When the Court of Appeals fails to follow directly controlling authority by this court, it errs." *1000 Virginia Ltd. P'ship v. Vertecs*, 158 Wn.2d 566, 578, 146 P.3d 423 (2006). Review is appropriate and justified on this issue under RAP 13.4(b)(1) (in conflict with a

decision of the Supreme Court) and RAP 13.4(b)(4) (issue of substantial public interest).

ISSUE #3: **DID THE COURT OF APPEALS ERR IN ALLOWING A PLAINTIFF TO AFFIRM A SETTLEMENT BUT FILE A SECOND LAWSUIT FOR DAMAGES ON THE SAME INJURIES, BASED ON A THEORY THAT THE PLAINTIFF SETTLED "TOO CHEAPLY" BECAUSE IT RELIED ON DEFENSE COUNSEL'S INCORRECT DISCOVERY STATEMENTS IN THE FIRST LAWSUIT, DESPITE THE FACT THAT THE SETTLEMENT AGREEMENT CONTAINED A RELEASE AND A "NO RELIANCE" CLAUSE?**

Petitioner's final issue presents a significant issue of first impression that "involves an issue of substantial public interest" under RAP 13.4(b)(4), thereby justifying review and a more comprehensive analysis by this Court.

In allowing plaintiffs to pursue a second lawsuit for damages against the *same* defendants for the *same* injuries while allowing plaintiffs to affirm and keep the proceeds from the settlement, the Court of Appeals' opinion threatens to upend the finality of all settlements in the State of Washington. *See Rosen v. Ascentry Techs., Inc.*, 143 Wn. App. 364, 372, 177 P.3d 765 (2008) ("the Washington Supreme Court has recognized that CR 2A and RCW 2.44.010 'give certainty and finality to settlements and compromises….'") (quoting *Eddleman v. McGhan*, 45 Wn.2d 430, 432, 275 P.2d 729 (1954)).

Indeed, as a result of the opinion below, many plaintiffs may now try to get "second bites of the apple" on settled cases by alleging that opposing counsel made false or inaccurate statements within the pleadings or during discovery in the settled lawsuit, with no risk of losing the settlement benefit that had been negotiated and voluntarily accepted by the plaintiffs.

Such a claim will have far-reaching and problematic impacts on the litigation and settlement of claims, and it has not before been recognized in Washington. There are many good arguments that it should not be allowed. "Courts in other jurisdictions are divided over the question of whether a plaintiff must rescind and tender any amounts received in settlement before pursuing a damage claim for fraudulent inducement of the settlement agreement." *See Bogy v. Ford Motor Co.*, 538 F.3d 352, 355 & n.9 (5th Cir. 2008) (collecting cases). There are innumerable problems with such claims; for example, how can a jury calculate damages on a theory that a plaintiff settled "too cheaply" at mediation, when the settlement outcome is entirely dependent on what the defendant was willing to pay?

A further question is whether such claims can be asserted in the face of terms in a standard settlement agreement—including a

release and a "no reliance" clause—that the plaintiff has necessarily *affirmed* in suing for damages as opposed to rescission?

These questions will be comprehensively briefed if this Petition is accepted:

1) *Effect of the Release*:

"A release is a contract and its construction is governed by contract principles subject to judicial interpretation in light of the language used." *Nationwide Mut. Fire Ins. Co. v. Watson*, 120 Wn.2d 178, 187, 840 P.2d 851 (1992). Here, the question is whether standard contractual terms that released defendants and their attorneys from future claims arising from the underlying lawsuit and/or the plaintiff's treatment and injuries[6] encompassed potential claims against defendants for inaccurate statements made about the medical chart[7] during discovery in the underlying litigation and *prior* to plaintiff agreeing to enter into a voluntary settlement.

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[6] The agreement here includes releases from (a) any claims which "in any way involved the diagnosis, care and treatment" of plaintiff; (b) any claims "which in any way arise out of the facts arise out of the facts stated [in the underlying complaint]," and (c) any claims "arising out of or in any way connected with incidents, injuries or damages" alleged in the underlying complaint or arising out of plaintiff's "diagnosis, care and treatment". CP 17-18, 21.

[7] The medical chart necessarily pertains to and is a part of plaintiffs' "diagnosis, care and treatment".

On this issue, the Court of Appeals identified three out-of-jurisdiction cases that had tackled a similar question but reached differing results: *Matsuura v. Alston & Bird*, 166 F.3d 1006 (9th Cir. 1999) (applying Delaware law) (allowing claim to proceed despite release); *Kobatake v. E.I. DuPont De Nemours & Co.*, 162 F.3d 619 (11th Cir. 1998) (applying Georgia law) (dismissing claim given release); and *Dresden v. Detroit Macomb Hospital Corp.*, 218 Mich. App. 292, 553 N.W.2d 387 (1996) (applying Michigan law) (dismissing claim given release). App. A at 9. The Court of Appeals thus elected to follow Delaware law on this issue rather than Georgia or Michigan law. The trial court below took a different approach. Petitioners ask this Court to review this important issue of first impression.

2) Effect of "no reliance" clause:

Petitioners further assert that plaintiffs' claims for damages are barred because plaintiffs expressly warranted in the settlement that they were *not* relying on any representations by defendants and their attorneys, *regardless* of whether those representations were true or false. CP 7-8. Under *Kwiatkowski v. Drews*, 142 Wn. App. 463, 176 P.3d 510 (2008), plaintiffs are therefore unable to pursue their damages claims as a matter of law.

Notably, *Kwiatkowski* reached its conclusion on two independent grounds:

(1) It was unreasonable (as a matter of law) for plaintiff to claim reliance on an adverse party's representations in entering into settlement when plaintiff "specifically agreed in…the settlement agreement that he did not rely on any representations by any other party when negotiating" it; and

(2) It was unreasonable (as a matter of law) for plaintiff to rely on the "Banks' performance of their fiduciary duties [in filing complete and accurate documents with the court in the underlying case] when whether the Banks breached their fiduciary duties was the very issue being resolved in the adversarial relationship." *See id.* at 480-82.

Each of these grounds applies to and controls the present case.[8] Below, the Court of Appeals avoided determining whether *Kwiatkowski* barred plaintiffs' case by finding the issue "not properly before the court" even though that argument was contained in the

[8] By way of further example, plaintiffs now claim that defendants breached their duty to maintain a complete and accurate chart under WAC 388-97, but plaintiffs' first complaint similarly alleged a cause of action based on a failure to comply with WAC 388-97. CP 67. Thus, defendants' representations regarding the chart went to the "very issue being resolved in the adversarial relationship" in the first case.

record and the parties' briefs extensively debated the issue. App A. at 16-17. But no explanation[9] was given by the Court of Appeals as to why it was not "properly" before the court, and the issue was in fact properly before the court, especially considering that the appellate court can "affirm on any basis supported by the record even if the trial court did not consider the argument." *King County v. Seawest Inv. Assocs.*, 141 Wn. App. 304, 310, 170 P.3d 53 (2007). Petitioner therefore asks this Court to consider and rule on these issues.

Lastly, in requesting that the trial court's dismissal be reinstated, it is important to note that Petitioners are not diminishing or trying to avoid the seriousness of the allegation of a discovery violation or an inaccurate attorney certification. Petitioners do not admit that such misconduct took place below, but assuming for the sake of argument that it did, plaintiffs had the ability to conduct further discovery (and potentially elicit damaging or contradictory testimony, thereby improving their position at trial) or to request sanctions. Moreover, if plaintiffs did not learn about the misconduct

[9] As discussed above in Part IV.D, the Court of Appeals initially avoided deciding whether this case is controlled by *Kwiatkowski* by saying that defense counsel conceded at oral argument that this issue was not before the court. But that was an incorrect statement of fact (no such concession had been made), and so the court deleted it following defendants' motion for reconsideration. App. B.

until after the end of trial, then plaintiffs could have moved for a new trial under CR 59 or moved to vacate the judgment under CR 60.

But here, plaintiffs and their counsel made the voluntary and final decision to settle their case for $237,500. This was a negotiated compromise: had plaintiffs opted to press on and take the case to trial, plaintiffs might have recovered more, or they might have recovered less, or even $0 in the event of a defense verdict. Washington law respects the finality of settlements. Thus, although a plaintiff can seek to rescind or unwind a settlement agreement and restore the parties to their original condition (with a consequent refund of the settlement money and a vacating of the stipulated judgment of dismissal under CR 60), plaintiffs here have no legitimate basis to file a second lawsuit seeking additional damages for the same injuries already resolved by a settled case.

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VI. CONCLUSION

Based on the foregoing, Petitioners request that their Petition for Review be accepted in its entirety.

Dated this 6th day of July, 2016.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JEANNE HAWKINS and JULIE WILSON, Appellants, v. EMPRES HEALTHCARE MANAGEMENT, LLC (f/k/a EVERGREEN HEALTHCARE MANAGEMENT LLC); and EVERGREEN AT TALBOT ROAD, LLC d/b/a TALBOT CENTER FOR REHABILITATION AND HEALTHCARE, Respondents.	)	No. 72949-7-I DIVISION ONE PUBLISHED OPINION FILED: March 28, 2016

LEACH, J. — Jeanne Hawkins and Julie Wilson (collectively "Hawkins") appeal the trial court's dismissal of their claims for fraud and misrepresentation based on the defendants' alleged alteration of Hawkins's medical records. The trial court ruled that an earlier settlement agreement Hawkins signed ("the Release") barred her claims. The trial court also found that res judicata barred Hawkins's claim for declaratory relief. Because the Release does not address claims for fraudulent inducement, it does not bar those claims. We therefore reverse the trial court and remand for further proceedings. And because

Hawkins has not argued that other relief is inadequate, we affirm the trial court's dismissal of her claim for declaratory relief.

FACTS

Substantive Facts[1]

In mid-June 2007, Hawkins had surgery at Valley Medical Center. On July 9, 2007, Valley diagnosed her with a bacterial infection and discharged her directly to the Talbot Center. Her physician at Valley, Dr. Hori, prescribed two antibiotics, Gentamycin and Vancomycin, to treat her infection. On July 13, 2007, Hawkins's lab work at Talbot read, "Vancomycin trough critically high at 18.7. Called MD." On July 14, her lab work again showed abnormal results. These lab reports indicated that Hawkins was receiving an overdose of antibiotics. Talbot nonetheless continued to administer Gentamycin and Vancomycin. After experiencing a burning sensation in her throat, a dry cough, and an inability to breathe, Hawkins asked to be taken to the hospital. Hawkins's attending physician at Talbot Center, Dr. Chen, approved her transfer back to Valley.

Talbot provided Hawkins's daughter, Julie Wilson, with a copy of Hawkins's records. Talbot staff maintained all medical charts and patient care

[1] In reviewing a CR 12(b)(6) dismissal, we take the facts as the plaintiff stated them in the complaint. Trujillo v. Nw. Tr. Servs., Inc., 183 Wn.2d 820, 830, 355 P.3d 1100 (2015).

records for Dr. Chen's patients, and Dr. Chen did not maintain any separate charts or notes.

At Valley, emergency room physicians diagnosed Hawkins "with acute renal failure due to gentamicin and/or vancomycin nephrotoxicity and acute tubulonecrosis"—in short, kidney failure from an antibiotics overdose. For the next year and a half, Hawkins needed treatment for symptoms this overdose caused. She is permanently impaired.

Procedural Facts

Hawkins first sued Talbot in 2008. In that lawsuit ("underlying suit"), Hawkins alleged that Talbot administered the antibiotics for longer than Dr. Hori prescribed or recommended. She stated Dr. Chen did not respond to the alarming July 14 lab report. She further alleged that Dr. Chen again received alarming lab results on July 23, 2007, and simply responded in writing, "O.K." She claimed that Talbot's negligent conduct caused her injuries. She made claims of general negligence and violations of federal and state statutory standards of care. She also alleged that Talbot breached its duty of informed consent, was liable under the doctrines of corporate negligence and respondeat superior, and violated the Consumer Protection Act, chapter 19.86 RCW. Hawkins did not allege any failure to keep accurate records, falsification of medical records, dishonesty, fraud, or misrepresentation.

During discovery, Hawkins requested a complete copy of Hawkins's medical records and charts. Talbot did not provide records. Instead, it responded that it had provided Hawkins with all her medical records when it provided her daughter with a copy. Throughout the underlying suit, Hawkins relied on Talbot's representation that those medical records were complete and accurate.

Hawkins and Talbot settled on July 29, 2010. The Release states that Hawkins releases future claims against Talbot.[2] The Release contains a no-reliance clause warranting that Hawkins did not rely on any representation by Talbot "concerning the nature and extent of the injuries, and/or damages, and/or legal liability therefor." In negotiating and accepting the settlement, Hawkins considered the comparative negligence of Talbot and that of Dr. Chen as described in the records Talbot gave Wilson. Those records showed that Dr.

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[2] The Release reads, in relevant part:

> [Hawkins releases Talbot] from all claims and causes of action, . . . whether such claims or causes of action are presently known or unknown, which in any way arise out of the facts stated in the Amended Complaint . . ., or which in any way involve the diagnoses, care and treatment of Jeanne Hawkins during her stay at Talbot Center for Rehabilitation and Healthcare from July 9, 2007 to July 30, 2007.
>
> This release is intended to cover any and all future injuries, damages or losses not known to the parties to this agreement, but which may later develop, or be discovered in connection with the above referenced diagnoses, care and treatment, or failure to diagnose or treat.

(Emphasis added.)

Chen failed to monitor her test results properly and discontinue her antibiotics. Before settlement, Talbot asserted as a defense that its staff simply followed Dr. Chen's orders.

After settling with Talbot, Hawkins sued Dr. Chen. During discovery in that suit, Dr. Chen requested and received copies of Hawkins's medical records from Talbot. During mediation in November 2011, the parties discovered that the medical records Talbot gave Dr. Chen differed from the records it gave Wilson in August 2007. The authentic records included a lab report dated July 23, 2007, reporting "HIGH" creatinine. This report was identical to the one Wilson had, except for a handwritten note and a facsimile machine date stamp. The report given to Dr. Chen had a handwritten note directing Talbot to stop administering the antibiotics, to "push fluids," and to recheck Hawkins's blood levels after three days. Dr. Chen denied making the "O.K. John Chen" note contained on the report Talbot supplied to Hawkins. He stated he did not know how or why it was made. A forensic document examiner examined the reports and concluded that the "O.K. John Chen" notes "were mechanically or electronically cut from a [common] source document and pasted onto the intended documents."

Hawkins asked Talbot for a new mediation. Talbot refused this request, calling the discrepancies in the records "'innocent and immaterial.'" Hawkins then filed this lawsuit, claiming fraud and misrepresentation based on falsified

medical records. She asked the court to rescind the Release and vacate the order of dismissal. Alternatively, she asked for a declaratory judgment saying the Release did not apply to independent causes of action based on the falsified records, including breach of some of the same federal and state laws cited in the underlying suit.

Talbot asked the trial court to dismiss Hawkins's complaint under CR 12(b)(6). It claimed that the Release barred all the claims made by Hawkins. Alternatively, Talbot claimed that Hawkins had failed to plead the fraud and misrepresentation claims sufficiently. Talbot also contended that Hawkins could not seek rescission because she had not returned the settlement money paid to her. Talbot asserted that res judicata barred Hawkins's declaratory judgment claim.

The trial court dismissed the lawsuit. It decided that the Release barred Hawkins's claims and that res judicata barred Hawkins's declaratory judgment action. The court also called it "questionable whether, as a matter of law, [Hawkins] had the right to rely on the alleged falsifications and misrepresentations." The trial court did not address Talbot's argument based on Hawkins's retention of the settlement money. Hawkins appeals.

STANDARD OF REVIEW

This court reviews a CR 12(b)(6) dismissal de novo.[3] This rule allows a court to dismiss a lawsuit only when it appears beyond doubt that the claimant can prove no set of facts, consistent with the complaint, which would justify recovery.[4] A trial court should grant a CR 12(b)(6) dismissal "'sparingly and with care'" in the unusual case where plaintiffs' allegations show an insuperable bar to relief on the face of the complaint.[5] In reviewing a dismissal for failure to state a claim, this court assumes all facts alleged in the complaint are true.[6]

"We review a trial court's order enforcing a settlement agreement de novo if 'the evidence before the trial court consisted entirely of affidavits and the proceeding is similar to a summary judgment proceeding.'"[7] Finally, we review a trial court's dismissal of a request for declaratory relief for abuse of discretion.[8]

ANALYSIS

We address two issues decided by the trial court. Does the Release bar Hawkins's claims in this lawsuit? Does res judicata bar Hawkins's request for

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[3] Trujillo, 183 Wn.2d at 830.

[4] Trujillo, 183 Wn.2d at 830.

[5] Southwick v. Seattle Police Officer John Doe No. 1, 145 Wn. App. 292, 296, 186 P.3d 1089 (2008) (internal quotation marks omitted) (quoting Tenore v. AT&T Wireless Servs., 136 Wn.2d 322, 330, 962 P.2d 104 (1998)).

[6] Trujillo, 183 Wn.2d at 830.

[7] Kwiatkowski v. Drews, 142 Wn. App. 463, 479, 176 P.3d 510 (2008) (quoting Brinkerhoff v. Campbell, 99 Wn. App. 692, 696, 994 P.2d 911 (2000)).

[8] Grandmaster Sheng-Yen Lu v. King County, 110 Wn. App. 92, 99, 38 P.3d 1040 (2002).

declaratory judgment? We also consider two other issues. As a preliminary matter, we first resolve the defendants' claim that Hawkins has not preserved her rescission claims. Because it likely will arise on remand, we also discuss Hawkins's right to rely on the alleged fraud and misrepresentation.

Preservation of Rescission Claim

The trial court did not decide if Hawkins could rescind the Release without first returning the settlement monies. Yet Talbot claims that Hawkins abandoned her rescission claim by failing to assign error to its dismissal or argue in support of it on appeal. We disagree.

Hawkins asked for rescission in her complaint and assigned error to the trial court's order of dismissal. The order makes no separate ruling on the rescission claim. Instead, this order resolves two issues. It states that the Release bars Hawkins's claims and that res judicata also bars her declaratory judgment claim. Hawkins addressed both of these issues at length in her opening brief. Because the trial court did not decide that part of Talbot's motion directed specifically to the availability of rescission, that issue is not before us. Hawkins had no obligation to address it on appeal and has not abandoned any claim.

Applicability of the Release

The trial court dismissed this case because it decided that the Release bars Hawkins's fraudulent inducement claims. Hawkins contends the trial court misread the Release, erroneously applying it to bar her suit. We agree.

We interpret settlement agreements under contract principles "'in light of the language used and the circumstances surrounding their making.'"[9] Generally, a court may void a release that was procured by fraud, misrepresentation, or overreaching or that arose from a mutual mistake.[10] Here, Talbot claims the Release language bars any claim based on any alleged fraud or misrepresentation by it that procured the settlement.

Few Washington cases have interpreted releases in this context. As a result, Talbot relies primarily on two cases from other jurisdictions, Dresden v. Detroit Macomb Hospital Corp.[11] and Kobatake v. E.I. DuPont De Nemours & Co.[12] We find Matsuura v. Alston & Bird[13] more persuasive.

In Dresden, the decedent went to the hospital complaining of chest pain.[14] The hospital discharged her after a doctor interpreted her chest X ray as

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[9] Sherrod v. Kidd, 138 Wn. App. 73, 75, 155 P.3d 976 (2007) (quoting Stottlemyre v. Reed, 35 Wn. App. 169, 171, 665 P.2d 1383 (1983)).

[10] Del Rosario v. Del Rosario, 152 Wn.2d 375, 378, 97 P.3d 11 (2004).

[11] 218 Mich. App. 292, 553 N.W.2d 387 (1996).

[12] 162 F.3d 619 (11th Cir. 1998) (applying Georgia law).

[13] 166 F.3d 1006 (9th Cir. 1999) (applying Delaware law).

[14] Dresden, 218 Mich. App. at 294.

normal.[15] She died three days later, and her estate filed a medical malpractice lawsuit.[16] When the estate requested a copy of the chest X ray, the hospital responded that it could not find it after a diligent search.[17] The estate settled this lawsuit and signed a release without ever receiving a copy of the X ray.[18] Later, the estate became aware that a doctor may have destroyed the X ray in the belief that another doctor had misread it.[19] The estate filed a new lawsuit.[20] The trial court dismissed the new lawsuit on summary judgment.[21]

The Michigan Court of Appeals affirmed, deciding two issues relevant to this case. The court rejected the estate's claim that its release was not fairly and knowingly made because the estate knew the X ray was missing when it settled the case and signed the release.[22] The court rejected the estate's claim that the scope of the release did not include fraud claims, holding that language that released all defendants "from liability for 'any and all' causes of action that could have been based upon, or could have arisen out of, the medical care rendered to Dresden or in any manner related to Dresden" barred Dresden's fraud claims. The court reasoned that this broad language released defendants from "liability

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[15] Dresden, 218 Mich. App. at 294.
[16] Dresden, 218 Mich. App. at 294.
[17] Dresden, 218 Mich. App. at 294.
[18] Dresden, 218 Mich. App. at 294.
[19] Dresden, 218 Mich. App. at 294.
[20] Dresden, 218 Mich. App. at 294-95.
[21] Dresden, 218 Mich. App. at 295.
[22] Dresden, 218 Mich. App. at 296.

for any and all matters and things alleged or that could have been alleged against the defendants in the lawsuit."[23]

In Kobatake, the Eleventh Circuit, applying Georgia law, found that general releases prohibited the plaintiff nursery owners from re-suing DuPont for damages its products caused. The parties had settled after trial. Their settlement released the defendants from "any and all liability, claims, demands, damages or rights of action . . . of any kind or character," "whether known or unknown," "arising from the beginning of time to the present," "including . . . any and all claims arising from . . . or in any way related to" plaintiffs' use of the product.[24] In their second lawsuit, this time for fraud, the plaintiffs alleged that after settlement they learned the defendants schemed to destroy harmful evidence and offered perjured testimony while defending the first lawsuit.[25] The court held the broad language of the settlement precluded these fraud claims.[26]

The court recognized that Georgia, like Washington, allows a party to rescind a release obtained through fraud. But the court held that plaintiffs could not pursue this remedy because they neither offered to return nor actually returned the settlement money.[27]

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[23] Dresden, 218 Mich. App. at 298.
[24] Kobatake, 162 F.3d at 623.
[25] Kobatake, 162 F.3d at 623.
[26] Kobatake, 162 F.3d at 625-26.
[27] Kobatake, 162 F.3d at 626-27.

In contrast to Dresden and Kobatake, the Ninth Circuit has noted its unease with "conclud[ing] that a person is deemed to have released a claim of which he has no knowledge, when the ignorance of such a claim is attributable to fraudulent conduct by the released party."[28] Like the Kobatake plaintiffs, the plaintiffs in Matsuura owned nurseries, were injured by the defendants' fungicide, and settled their claims, then sued the defendants for fraudulently inducing the settlements.[29] But the Ninth Circuit, applying Delaware law, held that the general releases did not bar the plaintiffs' suit for fraud for three reasons.[30]

First, Delaware law precluded the broad reading of the release asserted by the defendants. When general language in a release follows specific recitals, those recitals restrict the general language.[31] The releases began with a recital that plaintiffs intended to end "'claims related to [their] purchase and/or use of Benlate . . . and all claims incident thereto.'" The court reasoned that these claims included only those "likely to arise or naturally arising from the [underlying] product liability claims or the litigation, which in common understanding would not

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[28] Living Designs, Inc. v. E.I. DuPont de Nemours & Co., 431 F.3d 353, 371 (9th Cir. 2005) (quoting E.I. DuPont de Nemours & Co. v. Fla. Evergreen Foliage, 744 A.2d 457, 461 (Del. 1999)).

[29] Matsuura, 166 F.3d at 1007-08.

[30] Matsuura, 166 F.3d at 1009.

[31] Matsuura, 166 F.3d at 1010.

encompass claims for fraud."[32] The court rejected the defendants' literal interpretation of the "related to" language:

> Of course, a claim that the settlement agreements were fraudulently induced is "related" to the Matsuuras' use of Benlate and to the underlying litigation in the sense that one would not have occurred but for the other, but applying the phrase literally is "a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else."[33]

The Ninth Circuit held that the general language of the release did not encompass the plaintiffs' fraud claims.[34]

Second, the court predicted that the Delaware Court would likely "impose a clear statement requirement for release of fraudulent inducement claims."[35] After noting that Delaware requires a contract clause relieving a party from future negligence to be "'crystal clear and unequivocal,'" the court found a release for fraudulent inducement analogous.[36]

Third, the court noted Delaware courts' reluctance to enforce unintended releases of fraud claims.[37] It explained that "[i]f a release of 'any and all claims' were held to bar this fraud action, DuPont, the alleged perpetrator of the fraud,

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[32] Matsuura, 166 F.3d at 1010 (first alteration in original).

[33] Matsuura, 166 F.3d at 1010 (quoting Cal. Div. of Labor Standards Enf't v. Dillingham Constr., N.A., 519 U.S. 316, 335, 117 S. Ct. 832, 136 L. Ed. 2d 791 (1997) (Scalia, J., concurring)).

[34] Matsuura, 166 F.3d at 1010.

[35] Matsuura, 166 F.3d at 1010.

[36] Matsuura, 166 F.3d at 1010-11 (quoting State v. Interstate Amiesite Corp., 297 A.2d 41, 44 (Del. 1972)).

[37] Matsuura, 166 F.3d at 1011.

would have successfully silenced its victims by fraudulently inducing them blindly to agree in advance not to complain."[38] The court observed that the releases before it did not mention fraudulent inducement of the releases themselves. It concluded that a Delaware court would interpret a release to bar a fraud claim, "if ever, only if the parties clearly and affirmatively expressed their intent to do so."[39]

Finally, the court stated that enforcing the releases would undermine the policy of encouraging voluntary settlement of claims: "if litigants cannot assume the disclosures and representations of the opposing party are made in good faith, they will be reluctant to settle. Assurance of an adversary's good faith is particularly critical when parties are attempting to resolve a dispute amicably."[40] We agree.

For reasons similar to those the court found persuasive in Matsuura, we conclude that the Release here does not bar Hawkins's fraudulent inducement claim. In Washington, special recitals accompanying a release of "all claims" limit the scope of the release.[41] Unlike the release in Kobatake, the Release does not say it is a general release: instead of covering every claim that could have existed between the parties, it states that it releases claims that "arise out

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[38] Matsuura, 166 F.3d at 1011.
[39] Matsuura, 166 F.3d at 1011.
[40] Matsuura, 166 F.3d at 1012.
[41] Fradkin v. Northshore Util. Dist., 96 Wn. App. 118, 128, 977 P.2d 1265 (1999).

of" the facts in Hawkins's underlying complaint or "involve" her diagnoses, care, and treatment at Talbot Center in July 2007.

"In common understanding," Hawkins's fraud claim does not fit into any of these three categories.[42] The fraudulent alteration of medical records does not "arise out of" an antibiotics overdose or the medical negligence that caused it. Nor does it "involve" the patient's diagnoses, care, or treatment in any meaningful sense. To the extent the Release is ambiguous, applying "arise out of" and "involve" to simply mean "related to," as Talbot suggested in oral arguments, is "doomed to failure" because "'everything is related to everything else.'"[43]

Also, the parties have not "clearly and affirmatively expressed their intent" to release Talbot from the alleged fraudulent inducement.[44] "'At a minimum, if one party is to be held to release a claim for fraud in the execution of the release itself, the release should include a specific statement of exculpatory language referencing the fraud.'"[45] Ordinarily, one party should be able to rely on the accuracy and completeness of the opposing party's records produced by that party. We find Talbot's claim to the contrary disturbing because it strikes at the heart of the integrity of a process intended to facilitate both fair evaluation of

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[42] See Matsuura, 166 F.3d at 1010.

[43] Matsuura, 166 F.3d at 1010 (quoting Dillingham Constr., 519 U.S. at 335) (Scalia, J., concurring)).

[44] See Matsuura, 166 F.3d at 1011.

[45] Living Designs, 431 F.3d at 371 (quoting Fla. Evergreen, 744 A.2d at 461).

cases for settlement and fair trials. "Assurance of an adversary's good faith is particularly critical when parties are attempting to resolve a dispute amicably."[46]

The no-reliance clause makes no reference to inducing fraud.[47] It does not bar Hawkins's claims of fraudulent inducement.

Assuming the truth of the facts stated in the complaint, Talbot altered medical records to shift responsibility for negligent treatment onto a third party, Dr. Chen. Talbot falsely asserted, in a discovery response signed by counsel, that it previously provided plaintiffs with accurate and complete records. And it convinced the trial court to dismiss the plaintiffs' suit for fraud by enforcing a settlement agreement that defendants' very fraud induced the plaintiffs to sign. Because the Release is not so broad that it covers fraudulent inducement of the Release itself and because the no-reliance clause does not expressly cover fraudulent inducement, the Release does not bar Hawkins's fraud claims.

Hawkins's Right To Rely on Talbot's Representations

The trial court did not rule on Hawkins's right to rely on Talbot's representations. It instead noted that Hawkins's right to rely was "questionable," citing Kwiatkowski v. Drews.[48] Although the parties' briefs debate Hawkins's right to rely, Talbot conceded at oral argument that that issue is not properly before

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[46] Matsuura, 166 F.3d at 1012.

[47] As noted above, whether the false medical records "concern[ ] . . . legal liability" for Hawkins's injuries is ambiguous. See Matsuura, 166 F.3d at 1010.

[48] 142 Wn. App. 463, 479-82, 176 P.3d 510 (2008).

this court. However, we note the following to guide the trial court on remand. To state a claim for fraud or intentional misrepresentation, a plaintiff must plead nine elements.[49] Two are at issue here: the plaintiff's right to rely on the truth of the defendant's representation and the plaintiff's reasonable reliance on that representation. Normally, reasonable reliance presents a question of fact. But where the court finds that no rational person could find the plaintiff reasonably relied on the defendant's representation, the trial court can decide that question as a matter of law.[50]

A no-reliance clause may negate a plaintiff's right to rely as a matter of law.[51] But, as noted above, if a plaintiff can state a claim for rescission, then the terms of the settlement agreement do not apply. In that case, the agreement's no-reliance clause cannot prevent the plaintiff from pleading fraud. And even where the settlement agreement applies, whether the court should enforce a no-reliance clause depends on the clause's specificity and the parties' circumstances. In Kwiatkowski, the agreement included a no-reliance clause specifying that Kwiatkowski had an opportunity to investigate his claims, made an independent decision to settle, and assumed the risk that the facts were different

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[49] Stiley v. Block, 130 Wn.2d 486, 505, 925 P.2d 194 (1996).

[50] Cornerstone Equip. Leasing, Inc. v. MacLeod, 159 Wn. App. 899, 905, 247 P.3d 790 (2011).

[51] Kwiatkowski, 142 Wn. App. at 481.

than he understood them to be and new evidence could arise.[52] Federal courts applying Washington law have likewise relied on the safeguards afforded parties signing no-reliance clauses in holding that those no-reliance clauses barred the parties' fraud claims.[53]

A party may also lack reasonable reliance as a matter of law where the alleged misrepresentations go to "the very issue being resolved in the adversarial relationship" that led to the settlement.[54] For example, in Kwiatkowski, Kwiatkowski's underlying suit had alleged that the banks breached their fiduciary duty to him through misrepresentation and fraud, among other acts.[55] The mere fact that the parties had an adversarial relationship did not bar the plaintiff's reasonable reliance. Instead, Division Two found determinative that the

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[52] Kwiatkowski, 142 Wn. App. at 473.

[53] See Insitu, Inc. v. Kent, 2009 WL 2160690, at *4 (E.D. Wash.) (court order) (analogizing to Kwiatkowski because "two sophisticated parties, each represented by counsel, were involved in an inherently adversarial settlement agreement," and noting party had 21 days to consider signing the release and 7 days to revoke it after he signed and carefully scrutinized the language); Claxton v. Pitney Bowes, 2013 WL 1290806, at *4 (E.D. Wash.) (court order) (noting the plaintiff "acknowledged that she read the Agreement, had ten days to consider whether to sign, had a reasonable opportunity to consult with an attorney if she chose, and signed the Agreement voluntarily").

Because the federal courts allow parties to cite unpublished federal opinions and orders issued on or after January 1, 2007, parties may cite those opinions in Washington courts, as well. FED. R. APP. P. 32.1; GR 14.1(b).

[54] Kwiatkowski, 142 Wn. App. at 480.

[55] Kwiatkowski, 142 Wn. App. at 479-80.

underlying suit involved the same issues being resolved in the suit before it: fraud, misrepresentation, or breach of fiduciary duties.[56]

Declaratory Relief

Finally, Hawkins asserts that the trial court erred in dismissing her fifth cause of action on the basis of res judicata. That cause of action requests a declaration that Hawkins may again bring the claims in her underlying suit despite the settlement.

This court may affirm on any basis the record supports.[57] Declaratory relief is a rare, exceptional remedy.[58] A court does not provide this remedy when it can provide an adequate alternative remedy.[59] The party seeking declaratory relief must show the absence of the alternative remedy.[60]

Hawkins's fifth cause of action asks for a declaration that she be allowed to renew her claims for negligence and related causes of action. She raised, litigated, and settled those claims with the Release. Thus, to bring those claims again, Hawkins must obtain a rescission of the Release. The declaratory judgment she asks for would have this exact effect; it is simply rescission under

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[56] Kwiatkowski, 142 Wn. App. at 479-80.
[57] King County v. Seawest Inv. Assocs., 141 Wn. App. 304, 310, 170 P.3d 53 (2007).
[58] Grandmaster Sheng-Yen Lu, 110 Wn. App. at 106.
[59] Stafne v. Snohomish County, 174 Wn.2d 24, 39, 271 P.3d 868 (2012).
[60] Nakata v. Blue Bird, Inc., 146 Wn. App. 267, 279, 191 P.3d 900 (2008).

another name. Rescission provides an adequate alternative remedy for Hawkins. The trial court did not err in dismissing Hawkins's fifth cause of action.

CONCLUSION

Because the trial court erred in finding that the Release bars Hawkins's fraud claims and did not decide if Hawkins waived a claim for rescission, we reverse and remand for further proceedings. But because Hawkins has an adequate alternative remedy in rescission, we affirm the dismissal of her claim for declaratory relief.

Leach, J.

WE CONCUR:

Spearman, C.J.

Ahrens, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JEANNE HAWKINS and JULIE WILSON, Appellants, v. EMPRES HEALTHCARE MANAGEMENT, LLC (f/k/a EVERGREEN HEALTHCARE MANAGEMENT LLC); and EVERGREEN AT TALBOT ROAD, LLC d/b/a TALBOT CENTER FOR REHABILITATION AND HEALTHCARE, Respondents.	)	No. 72949-7-I ORDER DENYING MOTION FOR RECONSIDERATION AND AMENDING OPINION

The respondents filed a motion for reconsideration of this court's opinion filed March 28, 2016. The panel has determined that the motion should be denied but the opinion amended to modify the last sentence at page 16 of the opinion, which continues to page 17. Therefore, it is hereby

ORDERED that respondents' motion for reconsideration is denied. The opinion of this court in this case filed March 28, 2016, is hereby modified as follows:

The following words from the last sentence appearing on page 16 of the opinion, "Talbot conceded at oral argument that," are deleted, and this sentence shall state, "Although the parties' briefs debate Hawkins's right to rely, that issue is not properly before this court."

The remainder of the opinion shall remain the same.

DATED this 8th day of June, 2016.

Leach, J.

Spearman, J.

Gary, J.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

JEANNE HAWKINS, et al., Plaintiffs, vs. EMPRES HEALTHCARE MANAGEMENT, LLC, et al., Defendant.	No. 14-2-26963-3 KNT **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS** [Clerk's Action Required]

Plaintiffs initiated this case with a Petition for Order to Rescind Settlement Agreement (sub no.1). Defendants moved to dismiss the Petition under CR 12(b)(6). At oral argument, Plaintiffs agreed to proceed under CR 12(b)(6) (as opposed to requesting a CR 56 hearing). The Court carefully considered counsel's oral argument as well as all papers filed in support of and opposition to the motion.

In their Petition, Plaintiffs assert that Defendants falsified medical records, which fraudulently induced Plaintiffs to enter the parties' July 2010 Final Release and Settlement Agreement ("Release"). But the Release's broad language releases even Plaintiffs' claims based on pre-Release records falsification—e.g., all claims "arising out of or *in any way connected with* the incidents, injuries or damages

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mentioned above,"[1] including claims "presently known or *unknown*" and "damages or losses *not known* to the parties to this agreement"[2]). The Release bars Plaintiffs' claims. Plaintiffs' fifth claim, for declaratory judgment, is also barred by the doctrine of res judicata.

Even if the Release did not bar the records-falsification claims—i.e., because the scope of the release was narrower—it is questionable whether, as a matter of law, Plaintiff had the right to rely on the alleged falsifications and misrepresentations.[3]

It is ORDERED that Defendants' motion to dismiss is granted and Plaintiffs' Petition is dismissed with prejudice.

December 19, 2014

Judge Chad Allred
King County Superior Court

[1] Sub no. 1 Ex. 1 at 4 (emphasis added).
[2] Sub no. 1 Ex. 1 at 1 (emphasis added).
[3] *See Kwiatkowski v. Drews*, 142 Wn. App. 463, ¶¶ 30-35, *review denied*, 164 Wn.2d 1005 (2008).

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Case Number:	14-2-26963-3
Case Title:	HAWKINS ET ANO VS EMPRES HEALTHCARE MGMT ET ANO
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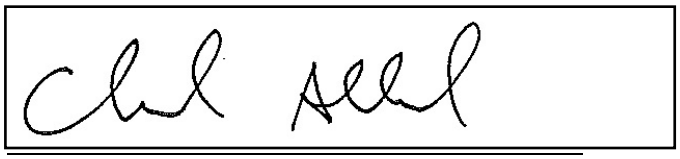

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2016, I caused to be served a copy of the **PETITION FOR REVIEW** on the following persons(s) in the manner indicated below at the following address(es):

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