Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-014

JANUARY TERM, 2021

In re Guardianship of A.S. (David Searles*)	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Probate Division
	}	
	}	DOCKET NO. 275-7-03 Rdpr
		Probate Judge: Karl C. Anderson

In the above-entitled cause, the Clerk will enter:

Guardian appeals the order of the probate division denying his request to join the State of Vermont as a party to this guardianship proceeding. We affirm.

This is guardian's third appeal to this Court. See In re Guardianship of A.S., 2012 VT 70, 192 Vt. 631 (mem.); In re Guardianship of A.S., No. 2017-256, 2018 WL 3485501 (Vt. July 16, 2018) (unpub. mem.), vermontjudiciary.org/sites/default/files/documents/eo17-256.pdf [https://perma.cc/Q4UN-WSML]. The following facts, which are described in greater detail in our earlier decisions, are relevant to this appeal. A.S., the person under guardianship, is guardian's daughter. A.S. qualified for special education services in primary and secondary school because of a developmental disability. In 2003, when A.S. turned eighteen, the probate court established an involuntary guardianship appointing her parents as guardians. At that time, individuals with certain diagnoses were not statutorily eligible to enter voluntary guardianships. In 2010, a statutory amendment removed the language that prevented persons with mental disabilities from obtaining a voluntary guardianship. A.S. subsequently petitioned to change her involuntary guardianship to a voluntary guardianship. The probate court granted the voluntary guardianship petition in January 2011. Guardianship of A.S., 2012 VT 70, ¶¶ 2-3.

In June 2019, guardian filed an application asking the probate court to direct the State of Vermont to show cause why it should not be formally designated as a party to the guardianship proceeding. Guardian argued that the State—acting through the Legislature, the Agency of Human Services, and the court—acted improperly in 2003 in determining that A.S. was incapable of managing her personal and financial affairs without the supervision of a guardian, and that the conversion of the involuntary guardianship to a voluntary guardianship in 2011 did not undo the 2003 incapacity determination or remedy the resulting damage to A.S.'s reputation. Guardian argued that "the [S]tate through its court is now obligated to issue an order which revokes the 2003 incompetency determination and even more importantly, which adopts findings of fact and conclusions of law in [A.S.]'s best interests to fully explain why it was that in 2003 [A.S.] improperly came to officially be determined incompetent when she should not have been."

Guardian sought a "formal admission by the [S]tate through its court of its negligence and illegal disability discrimination."

In August 2019, the probate court denied guardian's request, stating that it lacked subject matter jurisdiction to grant the sought-after relief. The court stated that although it had jurisdiction over the administration of guardianships, guardian's claim appeared to be against the State and possibly the court itself, and the probate court was not the appropriate venue for such a claim. After seeking reconsideration, which the court denied, guardian appealed to the civil division, which dismissed the appeal on the ground that it involved a pure question of law that had to be appealed to this Court.

In December 2019, guardian filed an amended motion for an order to show cause in which he repeated his previous arguments and further claimed that the probate court had jurisdiction to issue the requested order under 4 V.S.A. §§ 35(6) and 219, Vermont Rule of Probate Procedure 60(b), and the court's inherent authority to determine questions collateral to matters expressly within its jurisdiction. Guardian also claimed that the State had violated its fiduciary obligations to A.S. as well as the Americans with Disabilities Act (ADA) and the Health Insurance Portability and Accountability Act (HIPAA) in issuing the 2003 incapacity determination. Guardian claimed that the 2003 determination was an ongoing ADA violation for which A.S. had the right to recover nominal damages. Guardian again asked the court to order the State to show cause why it should not be added as a party to answer A.S.'s claims for declaratory relief and damages. The court denied the motion for the same reasons stated in its earlier orders.

Guardian subsequently filed this appeal. In February 2020, at guardian's request, we suspended the appeal and remanded the matter so that guardian could file an amended request for relief in the probate court, which he indicated could obviate the need for an appeal.

Guardian filed a petition claiming that the involuntary guardianship was never formally terminated in 2011 because the probate court did not make findings and conclusions in support of termination. Guardian argued that the court therefore should reopen A.S.'s 2010 application to convert the involuntary guardianship to a voluntary guardianship, designate the State as a party to the proceeding, and issue findings of fact and conclusions of law detailing the errors committed by the State in 2003. In a subsequent filing, guardian asked the court to grant an injunction directing the Legislature to amend 14 V.S.A. § 3152 to make clear that persons under voluntary guardianships are not "incapacitated" as that term is commonly understood.

In response, the probate court issued an order in May 2020 stating that it had searched the file, which had been transferred between courts several times, and was unable to locate the document establishing the voluntary guardianship in 2011. However, it listened to the audio recording of the January 2011 hearing and found that the court had granted the petition for voluntary guardianship and terminated the involuntary guardianship on the record. At the hearing, the court indicated that it had the 2003 evaluation as well as a new evaluation of A.S. A.S. then testified that her parents helped her with her finances and day-to-day living and that she wanted them to continue to do so as her guardians. She testified that she understood that this was a voluntary guardianship and that she could terminate it by contacting the court to appoint a new guardian, or no guardian. The court found that A.S. understood the nature of the guardianship and

how to terminate it and had chosen her parents as guardians. The court then granted the petition for voluntary guardianship and terminated the involuntary guardianship at the same time.

The probate court concluded based on the above record that the lack of a written order did not make the court's January 2011 decision void or warrant reopening the proceeding, given that guardian had never previously challenged the validity of the voluntary guardianship or argued that the conversion from involuntary to voluntary guardianship was ineffective due to the lack of written findings. It determined there was no need to issue new findings or conclusions regarding the involuntary guardianship because the January 2011 order was valid. It therefore denied guardian's requests to reopen the voluntary guardianship proceeding and to add the State as a party. Guardian moved for reconsideration, which the court denied.

On appeal, guardian claims that the probate court erred in concluding that it lacked subject matter jurisdiction over A.S.'s claim against the State. This is a pure question of law that we review without deference to the probate court. State v. Sommer, 2011 VT 59, ¶ 5, 190 Vt. 236 ("Whether a court has subject matter jurisdiction is a question of law, and we review questions of law de novo.").

We first consider and reject two threshold arguments raised by guardian. One is that the probate court's decision must be reversed because the court denied guardian's request on the basis that the State was protected by sovereign immunity against A.S.'s claims, which guardian asserts is improper. This argument lacks merit. The court's decision does not explicitly or implicitly rely upon sovereign immunity and we therefore need not consider whether it applies to the type of claims guardian seeks to bring against the State.

Guardian's second preliminary argument is that the probate court lacked authority to decide whether it had subject matter jurisdiction over A.S.'s claims against the State because it had not yet joined the State as a party. Guardian is incorrect. Whether a court has subject matter jurisdiction over a dispute is a pure question of law, and "it is axiomatic that an adjudicative body always has the power to determine whether it has subject matter jurisdiction over the dispute before it." Stoll v. Burlington Elec. Dep't, 2009 VT 61, ¶ 7 n.1, 186 Vt. 127. The probate court was not required to join the State before it could decide whether it had jurisdiction to grant the relief sought by guardian. It could decide that question at any time.

Turning to guardian's main argument, we conclude that the probate court correctly ruled that it lacked subject matter jurisdiction over A.S.'s claims against the State. "A court of probate has a special and limited jurisdiction created, and restricted, by statute." In re Proctor, 140 Vt. 6, 8 (1981). "A probate court may act only when clearly bestowed with the power to act; nothing is to be presumed in favor of its jurisdiction." Id. The probate court has jurisdiction of "the appointment of guardians, and of the powers, duties, and rights of guardians and wards." 4 V.S.A. § 35(6). The court's specific authority with respect to guardianships is set forth in the guardianship statutes. See 14 V.S.A. §§ 2602-3098. In a voluntary guardianship proceeding such as this one, the court is authorized to create, revoke, or terminate a guardianship. 14 V.S.A. § 2671(f)-(i). Guardian is seeking to do none of these things. Rather, guardian's successive applications indicate that he, on A.S.'s behalf, is seeking declaratory and possibly monetary relief from the State for alleged violations of its fiduciary obligation to A.S., as well as the ADA and HIPAA, during the

2003 proceedings.[*] While it is true that the probate court has jurisdiction over questions that "arise[] collaterally as a necessary incident to the determination of other matters within the probate jurisdiction," In re Estate of Allen, 129 Vt. 107, 110 (1970), these claims fall well outside of the proceedings inherent to the voluntary guardianship.

Guardian contends that the probate court had authority to grant his requested relief under 14 V.S.A. § 3077(b), which permits the probate court to "terminate or modify [an involuntary] guardianship, appoint a successor guardian, or restrict the powers of a guardian, consistent with the court's findings and conclusions of law." 14 V.S.A. § 3077(b). Guardian argues that because the court did not make written findings and conclusions in January 2011 when it terminated the involuntary guardianship, the court should have granted his motion to reopen that proceeding and join the State as a party for the purpose of making findings and conclusions about what occurred in 2003.

Guardian does not challenge the probate court's finding that it terminated the involuntary guardianship on the record during the January 2011 hearing. However, he appears to argue that because the court did not reduce that determination to a written judgment, the judgment was ineffective, and the matter is still open. See V.R.P.P. 58 (stating that judgment is effective only when entered in accordance with V.R.P.P. 79(a)). As we have explained in cases regarding the analogous civil rule, the purpose of Rule 58 is to clarify the date of judgment for purposes of appeal or post-judgment motions. In re Town Highway No. 20, 2012 VT 17, ¶ 74, 191 Vt. 231. Where, as here, the precise date of judgment is not at issue, and guardian—the only party to this appeal—does not dispute that the court in fact disposed of the involuntary guardianship at the January 2011 hearing, the apparent failure to comply with Rule 58 does not mean that guardian had an unlimited amount of time to contest the lack of written findings. Id. ¶ 76 (holding court's failure to enter judgment on separate document as required by V.R.C.P. 58 did not permit party to move for reconsideration more than six years later).

Furthermore, the trial court did not abuse its discretion in declining to reopen the 2011 decision terminating the involuntary guardianship under Probate Rule 60(b). See Guardianship of A.S., 2012 VT 70, ¶ 10; Lyddy v. Lyddy, 173 Vt. 493, 497 (2001) (mem.) ("A trial court's decision on a Rule 60(b) motion is committed to the sound discretion of the court and will stand on review unless the record indicates that such discretion was abused."). Rule 60(b) permits the court to relieve a party or the party's legal representative from a final judgment for any of six enumerated reasons, some of which are subject to a one-year time limit. Guardian does not contend that the 2011 judgment is void, such that A.S. remains under involuntary guardianship, or that it has been satisfied, released, or discharged. V.R.P.P. 60(b)(4)-(5). To the extent that guardian seeks relief on the basis of mistake, newly discovered evidence, or fraud, his motion is untimely. See V.R.P.P. 60(b)(1)-(3). To the extent that guardian seeks relief under the catch-all provision in Rule 60(b)(6), the probate court acted within its discretion in denying his motion. Section 3077(b) does not provide a basis for the probate court to join the State as a party to answer civil claims. And as noted above, although the probate court was unable to locate written findings and conclusions of law explaining its decision to terminate the involuntary guardianship, guardian does not dispute

[*] On appeal, guardian states that A.S. is not seeking monetary relief. Even if A.S. seeks declaratory relief only, this does not alter our conclusion that the probate court lacks jurisdiction over her claims.

the fact that the involuntary guardianship was terminated and replaced with a voluntary guardianship. He has acted consistently with this understanding since 2011. The court therefore acted within its discretion in denying guardian's petition to reopen the 2011 proceeding nearly ten years later for the purpose of revisiting the events of 2003.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice