

HHD-FA-23-6175367-S

:

SUPERIOR COURT

JESSICA RANSOM

:

JUDICIAL DISTRICT OF HARTFORD

V.

:

AT HARTFORD

STEVEN CONTRERAS

:

MAY 13, 2024

FILED
MAY 13 2024
HARTFORD J.D.

MEMORANDUM OF DECISION RE MOTION TO DISMISS

The petitioner has filed a petition for adjudication of parentage, claiming to be a de facto parent of the minor child, A.C., pursuant to the CPA, C.G.S. Sections 46-490 and 491. She alleges that she is “[a person] who seek[s] to be adjudicated a parent” under the Connecticut Parentage Act (CPA). Amended petition, paragraph 1. She seeks parentage of the minor child A.C., whose biological parent is the respondent, Steven Contreras.

On April 22, 2024, the respondent filed a motion to dismiss for lack of subject matter jurisdiction along with a memorandum in support of the motion (#126, 127). On April 30, 2024 the petitioner filed an objection to the motion to dismiss and memorandum of law (#129) and subsequently, on May 2, 2024, filed an amended objection to the motion to dismiss and memorandum of law (#131). On May 3, 2024 the court heard oral argument regarding the motion to dismiss and amended objection.

DISCUSSION AND FINDINGS

“[A] motion to dismiss pursuant to Practice Book Section 10-30(a)(1) is the appropriate Procedure for challenging subject matter jurisdiction.” *Machado v. Taylor*, 326 Conn. 396, 401, 163 A.3d 558 (2017). “[B]ecause the issue of standing implicates subject matter jurisdiction, it may be a proper basis for granting a motion to dismiss.” *Electrical Contractors, Inc. v. Dept. of Education*, 303 Conn. 402, 413, 35 A.3d 188 (2012). “If...the plaintiff’s standing does not adequately appear from all materials of record, the complaint must be dismissed.” (Footnote omitted; internal quotation marks omitted.) *Burton v. Dominion Nuclear Connecticut, Inc.*, 300

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Conn. 542, 550, 23 A.3d 1176 (2011).

“Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it...A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it...Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action...It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged.” (Internal quotation marks omitted.) *Hepburn v. Brill*, 348 Conn. 827, 838-39 (2024), quoting *Amodio v. Amodio*, 247 Conn. 724, 727-728 (1999).

In the recent *Hepburn* matter, the court considered and distinguished subject matter jurisdiction from statutory authority as it related to Connecticut General Statutes Section 46b-59. This statute allows courts to grant visitation to grandparents and other third parties. In *Hepburn*, the trial court dismissed a petition for third party visitation due to the failure to allege facts that would comply with *Roth v. Weston*, 259 Conn. 202 (2002), which required a claim and showing that imminent harm to the child would occur if visitation were not granted. The Supreme Court reversed, concluding that any such pleading failure was not a question of subject matter jurisdiction, but rather statutory authority, and thus not an appropriate basis for dismissal. The court reasoned that because the constitutionality of General Statute Section 46b-59 (which was amended in 2012 to codify the *Roth* standard) was not being challenged and was thus presumed constitutional, any failure to meet the pleading requirements did not implicate the trial court’s jurisdiction. The court found that the legislature’s amendment in 2012 which added the harm standard to the statute “created a new statute that carries with it a strong presumption of constitutionality.” (Internal quotation marks omitted.) *Id.*, 843-44. Therefore, [w]ith no challenge to the constitutionality” of the statute, “it no longer require[d] a judicial gloss to function within the bounds of the constitution,” and the harm standard no longer implicated a court’s subject matter jurisdiction. *Id.*, 844. Thus, having found the statute presumptively constitutional, the harm standard no longer pertained to standing, but instead to statutory authority. The court emphasized the difference between statutory authority and subject matter jurisdiction, stating that “[the court’s] authority to act pursuant to a statute is different from its subject matter

jurisdiction. The power of the court to hear and determine, which is implicit in jurisdiction, is not to be confused with the way in which that power must be exercised in order to comply with the terms of the statute." (Internal quotation marks omitted.) *Id.*, 844-45. The respondent in this matter does not challenge the constitutionality of the CPA. Therefore, the Supreme Court's application of the harm standard in *Roth* is inapplicable to the case at bar.

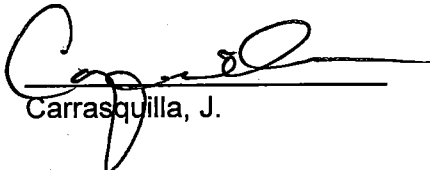
Standing to bring a proceeding to adjudicate parentage under the CPA is governed by Connecticut General Statutes Section 46b-458, which provides in relevant part, that such an action "may be maintained by... (4) a person who seeks to be adjudicated a parent under the provisions of [the CPA]..." Consequently, under this statute, any "person who seeks to be adjudicated a parent" pursuant to the CPA possesses standing to bring and maintain a proceeding to adjudicate parentage. *Tschummi v. Fegan*, Superior Court, J.D. of Tolland, Docket No. FA-22-6024006-S (March 6, 2024, Caron, J.) The respondent claims, in this motion, that a party must satisfy the pleading requirements set forth in *Roth* to have standing to bring a claim pursuant to the CPA. The petitioner relies on *Hepburn* and claims that the *Roth* standard is inapplicable. In the present matter, the petitioner identifies herself in the amended petition as a "[person] who seek[s] to be adjudicated a parent under the provisions of the [CPA]". Amended petition, Paragraph 1. Accordingly, she has alleged sufficient facts to confer standing and to maintain her claim for de facto parentage pursuant to the CPA, Section 46b-458(4).

The petitioner has standing to maintain her claim for de facto parentage pursuant to the CPA, Connecticut General Statutes Sections 46-490 et seq. The allegations of the petition implicate statutory authority to act rather than subject matter jurisdiction.

WHEREFORE, the respondent's motion to dismiss is DENIED.

SO ORDERED

BY THE COURT,


Carrasquilla, J.