

AT STAMFORD
123 HOYT STREET
STAMFORD, CT 06905

DOCKET NO: FST CV 23-6061360 S

: CONNECTICUT SUPERIOR COURT

MAZUREK, ANDRZEJ

2024 MAY 29 A 9:24

: JUDICIAL DISTRICT OF

V.

: STAMFORD-NORWALK

PRESTO, CHARLES

: AT STAMFORD

: MAY 29, 2024

MEMORANDUM OF DECISION

Defendant Charles Presto ("Charles") has moved to dismiss this action to quiet title to certain real property located at 10 Carleton Street in Greenwich (the "Property") on the ground that plaintiff Andrzej Mazurek ("Mazurek"), as Executor of the Estate of Robert C. Presto ("Robert"), lacks standing because Robert had no interest in the Property to pass to his estate.

Standards for Deciding a Motion to Dismiss

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . ." *Weiner v. Clinton*, 100 Conn. App. 753, 756-57 (2007), quoting *Filippi v. Sullivan*, 273 Conn. 1, 8, 866 A.2d 599 (2005).

"Depending on the record before it, a . . . court ruling on a motion to dismiss for lack of subject matter jurisdiction . . . may decide that motion on the basis of: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed

facts. ... Different rules and procedures will apply, depending on the state of the record at the time the motion is filed.” *Fay v. Merrill*, 336 Conn. 432, 445 (2020) (citation omitted).

“In ruling on a motion to dismiss for lack of subject matter jurisdiction, the trial court ‘must consider the allegations of the complaint in their most favorable light . . . including those facts necessarily implied from the allegations. . . .’ A trial court considering a motion to dismiss may, however, ‘encounter different situations, depending on the status of the record in the case. . . .’ [I]f the complaint is supplemented by undisputed facts . . . the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. . . . Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]. . . . Conversely, ‘where a jurisdictional determination is dependent on the resolution of a critical factual dispute, it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing to establish jurisdictional facts. . . . Likewise, if the question of jurisdiction is intertwined with the merits of the case, a court cannot resolve the jurisdictional question without a hearing to evaluate those merits. . . . An evidentiary hearing is necessary because a court cannot make a critical factual [jurisdictional] finding based on memoranda and documents submitted by the parties. . . . The trial court ‘may [also] in its discretion choose to postpone resolution of the jurisdictional question until the parties complete further discovery or, if necessary, a full trial on the merits has occurred.’” *Giannoni v. Commissioner of Transportation*, 322 Conn. 344, 349-50 (2016) (citations omitted).

In *Godbout v. Attanasio*, 199 Conn.App. 88, 95-97 (2020), the Appellate Court discussed the record on which a court may decide a motion to dismiss if the allegations in the complaint are supplemented by additional evidence:

“In contrast, if the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss ... other types of undisputed evidence ... and/or public records of which judicial notice may be taken ... the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. ...

Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]. ... If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits ... or other evidence, the trial court may dismiss the action without further proceedings. ... If, however, the defendant submits either no proof to rebut the plaintiff's jurisdictional allegations ... or only evidence that fails to call those allegations into question ... the plaintiff need not supply counteraffidavits or other evidence to support the complaint but may rest on the jurisdictional allegations therein. ...

‘Finally, where a jurisdictional determination is dependent on the resolution of a critical factual dispute, it cannot be decided on a motion to dismiss in the absence of an evidentiary hearing to establish jurisdictional facts. ... In that situation, [a]n evidentiary hearing is necessary because a court cannot make a critical factual [jurisdictional] finding.

based on memoranda and documents submitted by the parties.”” Id. quoting *Cuozzo v. Orange*, 315 Conn. 606, 615–17 (2015).

In *Young v. Hartford Hospital*, 196 Conn.App. 207, 211 (2020), the Appellate Court reiterated that plaintiff has the burden of proof to support jurisdiction:

“When a motion to dismiss for lack of personal jurisdiction raises a factual question which is not determinable from the face of the record, the burden of proof is on the plaintiff to present evidence which will establish jurisdiction.... In order to sustain the plaintiff’s burden, due process requires that a trial-like hearing be held, in which she has an opportunity to present evidence and to cross-examine adverse witnesses” (Citations omitted; internal quotation marks omitted.) Id. quoting *Kenny v. Banks*, 289 Conn. 529, 533, 958 A.2d 750 (2008).

The Court held an evidentiary hearing at which both sides introduced evidence.

The Executor Has Standing to Maintain This Quiet Title Action.

Charles was appointed executor of the estate of William Presto (“William”) when William’s will (the “Will”) was admitted to probate on March 31, 1998. Article IV of the Will provided as follows relating to the Property: “If such real property has not been sold prior to the death or my said wife, TEODOZJA PRESTO., then upon her death, I give and bequeath such real property to my said son, ROBERT C. PRESTO, if he is then living or If he is then deceased, to my Issue, then living, *per stirpes*.” In 2021 Charles, as executor of William’s estate, deeded the Property to himself as William’s issue by executor deed.

In 2008 Judge Hopper, the Probate Judge who was then presiding over administration of William’s estate, had issued a certificate of devise to the Property to

Robert William's interest in the Property subject to a life estate to William's surviving spouse, which certificate was recorded in the land records.

Robert died on September 5, 2016, and his son, and beneficiary, Mazurek was appointed executor of Robert's estate. Charles argued that Robert only had a contingent interest in the Property that required he outlive William's widow, who is still living, so the interest passed to him under the Will. Mazurek has alleged he has been unable to sell the Property as Robert's executor because of Charles' competing title and so brought this action to quiet title.

"It is well established that [a] party must have standing to assert a claim in order for the court to have subject matter jurisdiction over the claim. . . . Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . [T]he court has a duty to dismiss, even on its own initiative, any appeal that it lacks jurisdiction to hear. . . . Where a party is found to lack standing, the court is consequently without subject matter jurisdiction to determine the cause. . . .' *Warren v. Cuseo Family, LLC*, 165 Conn. App. 230, 235 (2016) (citations omitted). 'The issue of standing implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss. . . . [I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. . . . It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged.' *Citimortgage, Inc. v. Tanasi*, 176 Conn. App. 829, 837 (2017) (citations omitted).

'[S]tanding is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented.' . . . 'Two broad yet distinct categories of aggrievement exist, classical and statutory. . . . Classical aggrievement requires a two-part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest that all members of the community share. . . . Second, the party must also show that the [party's] decision has specially and injuriously affected that specific personal or legal interest. . . . Aggrievement does not demand certainty, only

the possibility of an adverse effect on a legally protected interest. . . . Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation.’ *Canty v. Otto*, 304 Conn. 546, 556 (2012) (citations omitted). See also *Jackson v. Drury*, 191 Conn.App. 587, 598 (2019).

Plaintiff has the burden of proving his standing to seek the relief requested. See *State Marshal*, 198 Conn.App. at 398, 419; *Browning v. Van Brunt, DuBiago & Co., LLC*, 330 Conn. 447, 460 (2018) (party seeking exercise of jurisdiction in its favor bears burden to allege facts demonstrating that it is proper party to invoke judicial resolution of dispute). ‘... [T]he great weight of appellate authority in this state that requires a plaintiff pursuing a declaratory judgment action to allege an injury resulting from the challenged conduct.’” *Netter v. Fitzgerald*, 2021 WL 1530238 *4 (Conn.Super. 2021) (Krumeich, J.T.R.).

An executor of an estate has standing to quiet title to real property, although title passes on death to the estate beneficiaries, when the property is needed for the administration of the estate, or the fiduciary seeks to enforce a right that belonged to the decedent and the competing claim interferes with the fiduciary’s ability to devise title to the estate beneficiary. See e.g., *Johnson v. Evans*, 2015 WL 1283217 *7-8 (Conn.Super. 2015) (Wilson, J.) (citing C.G.S. § 52–599).

Mazurek, as executor,¹ has a colorable claim to assert an interest in the Property adverse to that of Charles, sufficient to confer standing to maintain this action to quiet title to the Property. The motion to dismiss is denied.

DECISION ENTERED IN
ACCORDANCE WITH THE
FEE SCHEDULE ON 5/14/24.
JD NO SENT 5/29/24
COPIES TO ALL SELF-REP. PARTIES
Thy. Krumeich

436948

Krumeich, J.T.R.

¹ As beneficiary of Robert’s estate Mazurek would also have a claim but he is not party to this action in his individual capacity.