

DOCKET NO. DBD-CV-23-6048128-S

LAURIE F. HEPBURN, EXECUTRIX OF  
THE ESTATE OF HALLIE FARRELL HEPBURN

V.

CHANDLER R. BRILL

OFFICE OF THE CLERK  
SUPERIOR COURT

HEPBURN - b P 12: 54

JUDICIAL DISTRICT  
DANBURY  
STATE OF CONNECTICUT

SUPERIOR COURT

J. D. OF DANBURY

AT DANBURY

MAY 6, 2024

**MEMORANDUM OF DECISION**

**RE: PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM**

The plaintiff, Laurie F. Hepburn, Executrix of the Estate of Hallie Farrel Hepburn, has filed a motion to dismiss the counterclaim of the defendant, Chandler R. Brill, relative to the actions of the Probate Court for Northern Fairfield County, District PD45 (Probate Case No. 22-0136). The plaintiff alleges that the defendant's counterclaim (Docket Entry No. 103) is actually an attempt to appeal the Probate Court's title decree dated December 27, 2023 (*Maxham, J.*) and is not a claim arising under the subject matter of the appeal brought by the plaintiff. Specifically, the Probate Court's October 12, 2023 order (*Maxham, J.*) from which the plaintiff appeals found that the proceeds of the sale of certain real property should have poured into the estate of Hallie Farrell Hepburn. See Docket Entry No. 100.31. The plaintiff alleges the October 12, 2023 order improperly found the proceeds of sale of the property were to pour into the estate of Hallie Farrell Hepburn and should instead have been ordered to pour into a revocable trust established by the late Patricia Farrell Hepburn, Hallie Farrell Hepburn's mother. Patricia Farrell Hepburn was also the trustee of the trust. Laurie Farrell Hepburn became successor trustee of the trust upon her mother's passing on September 7, 2021. Hallie Farrell Hepburn passed away two days later leaving Laurie Farrell Hepburn as the executrix of the estate of Hallie Farrell Hepburn. The estate contained a testamentary trust. Both the revocable and testamentary trusts had the defendant's daughter, Liv (Brill) Helena Hepburn, as a beneficiary of the trust. The terms of each trust differed

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on the timing of any distributions due the beneficiary. The defendant contends that the proceeds of the sale of real property should be put into the testamentary trust as opposed to the revocable trust consistent with the Probate Court's order of October 12, 2023.

After the commencement of the plaintiff's appeal, the Probate Court (*Maxham, J.*) issued an order on November 22, 2023 stating that it had reconsidered its October 12, 2023 ruling regarding the disposition of the proceeds and concluded that the order had been issued prematurely. Thereafter, on December 27, 2023 the Probate Court (*Maxham, J.*) entered an order that "the court determines by clear and convincing evidence that [Patricia Farrell Hepburn] intended that, upon the death of [Hallie Farrell Hepburn], the proceeds of the sale of the Property are to pass to her granddaughter [Liv (Brill) Helena Hepburn] and to be held in the [revocable] Trust for her benefit." It specifically found that the proceeds of the sale were not assets of the decedent's estate of Hallie Farrell Hepburn.

The defendant has objected to the plaintiff's motion to dismiss and has appended to the objection each of the Probate Court rulings referenced. See Docket Entries No. 106 and No. 108. The overall basis of the defendant's argument is that the Probate Court's December 27, 2023 ruling, effectively reversing its October 12, 2023 ruling, is improper and should not be permitted to stand. Oral argument was held on the matter on April 29, 2024.

#### DISCUSSION

Much of the background to this matter was addressed in the ruling on the motion to dismiss in *Brill v. Hepburn*, Superior Court, judicial district of Danbury, Docket No. CV-23-5019995-S. See Docket Entry No. 102 in that matter. Here, as it was there, the standard for addressing a motion to dismiss is as follows: "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.” (Emphasis omitted; internal quotation marks omitted.) *Gurliacci v. Mayer*, 218 Conn. 531, 544, 590 A.2d 914 (1991). “A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” *Upson v. State*, 190 Conn. 622, 624, 461 A.2d 991 (1983). “A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter . . . .” Practice Book § 10-30. Further, when raised as an issue, “[t]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.” *Fink v. Golenbock*, 238 Conn. 183, 199 n.13, 680 A.2d 1243 (1996).

“[I]n ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” (Internal quotation marks omitted.) *Lawrence Brunoli, Inc. v. Branford*, 247 Conn. 407, 410-11, 722 A.2d 271 (1999). “The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone. . . . Where . . . the motion is accompanied by supporting affidavits containing undisputed facts, the court may look to their content for determination of the jurisdictional issue and need not conclusively presume the validity of the allegations of the complaint.” (Citation omitted; footnote omitted; internal quotation marks omitted.) *Barde v. Board of Trustees*, 207 Conn. 59, 62, 539 A.2d 1000 (1988); *Shay v. Rossi*, 253 Conn. 134, 140, 749 A.2d 1147 (2000), overruled in part on other grounds by *Miller v. Egan*, 265 Conn. 301, 828 A.2d 549 (2003). In this instance it is the defendant’s counterclaim that is in issue and therefore the defendant has the burden of proving subject matter jurisdiction.

Acknowledging that the defendant is a self-represented party and that he has not formally filed an appearance in this matter as the parent, guardian or next friend of the minor, the court has nonetheless afforded him the full consideration of the counterclaim as written. “It is our

established policy to allow great latitude to a litigant who, either by choice or necessity, represents himself in legal proceedings, so far as such latitude is consistent with the just rights of any adverse party. . . . This does not, however, mean that we will entirely disregard the established rules of procedure, adherence to which is necessary so that the parties may know their rights and the real issues in controversy may be presented and determined.” (Citations omitted; internal quotation marks omitted.) *Cersosimo v. Cersosimo*, 188 Conn. 385, 393, 449 A.2d 1026 (1982).

The court has read the counterclaim broadly and most favorably to the defendant as the pleader. In doing so the court must be guided by the text of the allegations both actual and implied and read them substantively rather than technically or narrowly. Accounting for all those factors, the court finds that though designated as a counterclaim, the defendant’s pleading constitutes an appeal from the Probate Court’s order of December 27, 2023. He does not dispute the court’s order of October 12, 2023 which forms the basis of the plaintiff’s appeal. In fact, the defendant argues that the October 12, 2023 order was correct. Therefore, the defendant’s pleading does not take issue with that order and cannot form the basis of a judicial contest regarding its terms. In effect, the defendant’s counterclaim is actually an attempt to appeal the December 27, 2023 decree and is not a claim arising under the subject matter of the plaintiff’s present appeal which is the October 12, 2023 order.

Also, when entertaining an appeal from an order or decree of a Probate Court, the Superior Court takes the place of and sits as the court of probate. *Satti v. Rago*, 186 Conn. 360, 365, 441 A.2d 615 (1982). “The function of the Superior Court in appeals from a Probate Court is to take jurisdiction of the order or decree appealed from and to try that issue de novo.” *Kerin v. Stangle*, 209 Conn. 260, 264, 550 A.2d 1069 (1988). Appeals from the Probate Court are controlled by General Statutes § 45a-186, which states in relevant part: “(b) Any person aggrieved by any order,

denial or decree of a Probate Court may appeal therefrom to the Superior Court. . . .” In order to take an appeal, a party must be aggrieved by the actions of the court. “The fundamental test for establishing classical aggrievement is well settled: [F]irst, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision . . . . Second, the party claiming aggrievement also must demonstrate that its asserted interest has been specially and injuriously affected in a way that is cognizable by law.” (Citations omitted; internal quotation marks omitted.) *Crone v. Gill*, 250 Conn. 476, 480, 736 A.2d 131 (1999). “To qualify as an aggrieved person, the plaintiff must have a pecuniary interest in the subject matter of the decree or order, and that pecuniary interest must be adversely affected by the decree or order from which the appeal is taken. . . . If the plaintiff is not an aggrieved party, the appeal is void. . . . [A] mere conclusory claim that the plaintiff is aggrieved is insufficient.” (Citations omitted.) *Lenge v. Goldfarb*, 169 Conn. 218, 221, 363 A.2d 110 (1975).

In this instance, the defendant’s pleading does not establish aggrievement with respect to the October 12, 2023 order as the defendant in fact supports that order. If the defendant wished to file an appeal of the Probate Court’s December 27, 2023 order, the defendant would have had to have alleged aggrievement and filed a timely appeal of that order on behalf of the minor Liv (Brill) Helena Hepburn as parent, guardian, or next friend or through counsel for her. Further, the defendant has failed to identify or establish what pecuniary interest he had in the matter. The defendant has filed an appearance as to himself only and has failed to establish that he is an aggrieved party in this matter. *Fink v. Golenbock*, *supra*, 238 Conn. 199 n.13.

The court also notes that the December 27, 2023 order of the Probate Court returning the proceeds of the sale of the property to the revocable trust renders the plaintiff’s appeal moot. As

such there is no longer a justiciable matter before the court with respect to the plaintiff's allegations.

CONCLUSION

As the court stated in the *Brill v. Hepburn* matter, it understands the defendant is genuinely concerned for his minor child, Liv (Brill) Helena Hepburn, stemming from what he perceives as potentially nefarious conduct with respect to other members of his extended family. But, as before, this court is limited to the issues before it which are the defendant's standing and legal aggrievement. Given the state of the pleadings, the court finds that it does not have jurisdiction over this matter as the defendant's pleading constitutes an appeal and he is not classically aggrieved as defined by our law. The motion to dismiss the counterclaim is granted.



Shaban, J.

Decision entered in accordance with the foregoing on 5/6/24. ATH. + self-represented party notified on 5/6/24. H. V. ... P.C.C. H. V. 5/26/24.