| TTD-CV-23-6027535-S | : | SUPERIOR COURT |
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| MARQUEA MURRELL | : | J.D. OF TOLLAND |
| VS. | : | AT ROCKVILLE |
| JEMAR SMITH | : | MAY 8, 2024 |

**MEMORANDUM OF DECISION RE: PROBATE APPEAL**

The plaintiff, Marquea Murrell, appeals two decrees issued by the Greater Windsor Probate Court regarding the administration of the estate of her father, Mark Murrell, who passed away in 2023.

The first decree dated June 22, 2023, was issued following a hearing conducted on June 19, 2023, regarding a motion filed by the defendant, Jemar Smith, alleging that he is the biological son of the decedent and requesting the Probate Court to reconsider and set aside a prior ex parte decree appointing the plaintiff as fiduciary of the decedent's estate based on several factors, including the fact that the plaintiff's application failed to identify Smith as an heir.

The June 23, 2023, decree indicates that following the hearing, the Probate Court reconsidered and revoked its original decree appointing the plaintiff as fiduciary of the estate and instead appointed Attorney Peter M. Berry as Temporary Administrator. According to the decree: "Mr. Smith has presented evidence that he is the biological son of the decedent and an heir to the decedent's estate" and that "[d]ue to Ms. Murrell's failure to list and notify additional heirs on her initial petition to this Court, and based on the strained relationship between the parties, the Court finds that it is necessary to appoint a third-party fiduciary to administer this estate." The decree also indicates that: "The Court shall hold a hearing on both Ms. Murrell's and Mr. Smith's petitions to administrate the estate in due course."

On July 11, 2023, the Probate Court conducted a hearing regarding both petitions and on July 17, 2023, issued a second decree approving the defendant's

received 5/8/2024

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application and dismissing the plaintiff's application with prejudice. The Probate Court also appointed Attorney Berry full administrator of the estate.

On July 19, 2023, the plaintiff filed her appeal and on April 23, 2024, this court conducted a full evidentiary hearing at which both parties were represented by counsel. At the hearing, both parties were afforded a full opportunity to present testimony and evidence regarding their relationship with the decedent and with each other.

In addition to hearing testimony and evidence from both parties, the court reviewed all of the evidence considered by the Probate Court, including, inter alia, an Affirmation of Paternity signed by the defendant's mother, Rochelle Smith (Jones), an Affirmation of Paternity signed by the decedent identifying himself, incorrectly, as both father and son; a Superior Court order finding the decedent in arrears to Jones for child support payments; and a funeral benefits claim form the plaintiff and defendant submitted to the Veteran's Administration (VA) identifying themselves as the "daughter" and "son" of the decedent. The court also heard testimony from Jones who testified credibly that she was impregnated by the decedent when she was sixteen years old and that she did not have sexual intercourse with any other person for several years.

Although the plaintiff testified that portions of the VA form and several other of the documents introduced into evidence were "forged," the court finds no credible evidence to support that contention and instead credits the testimony of the defendant that the VA form accurately reflects what the plaintiff and the defendant voluntarily submitted jointly.

In *O'Sullivan* v. *Haught*, 348 Conn. 625, 309 A.3d 1194 (2024), our Supreme Court explained that an appeal from a Probate Court to the Superior Court: "is not an ordinary civil action. . . . 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. . . .

In ruling on a probate appeal, the Superior Court exercises the powers, not of a constitutional court of general or [common-law] jurisdiction, but of a Probate Court." Id., 637-38. "Although the Superior Court may not consider events transpiring after the Probate Court hearing . . . it may receive evidence that could have been offered in the Probate Court, whether or not it actually was offered." Id., 638.

"Under § 45a-186, if a record, including a transcript, of the testimony was made before the Probate Court pursuant to [General Statutes] §§ 51-72 and 51-73, the Superior Court shall review the decree of the Probate Court using an abuse of discretion standard . . . When no record was made of the probate proceedings, however, the Superior Court [is] required to undertake a de novo review of the Probate Court's decision. . . . In conducting a trial de novo in an appeal from a Probate Court decree, the Superior Court must arrive at an independent determination, without regard to the result reached by the [P]robate [C]ourt . . . That is, the trial court decides a de novo probate appeal as an original proposition unfettered by, and ignoring, the result reached in the [P]robate [C]ourt." (Internal citations omitted; internal quotation marks omitted.) Id., 638-39.

For the reasons stated, the court concludes that sufficient credible evidence exists to confirm the Probate Court's conclusion that the defendant "is the biological son of the decedent and an heir to the decedent's estate."

Both parties acknowledge that the Probate Court has authority to resolve the parentage issue pursuant to General Statutes § 46b-454 (a) (2), which states: "petitions to determine parentage after the death of the child *or the person whose parentage is to be determined* shall be filed in the Probate Court. . . ." § 46b-454 (a) (2). See also General Statutes § 46b-571 (h): "Notwithstanding the provisions of this section, after

the death of the alleged genetic parent of a child born to an unmarried birth parent, a party deemed by the Probate Court to have a sufficient interest may file a claim for parentage on behalf of such alleged genetic parent with the Probate Court for the district in which either the alleged genetic parent resided or the party filing the claim resides. If a claim for parentage is filed pursuant to this subsection, the Probate Court shall schedule a hearing on such claim, send notice of the hearing to all parties involved and proceed accordingly." § 46b-571 (h). The parties differ, however, regarding the criteria the Probate Court may consider in making its parentage determination.

The plaintiff contends that the only appropriate criteria for the court to consider are those set forth in the presumption of parentage statute, General Statutes § 46b-488 (a) (3), which states that a person is presumed to be a parent of a child if the person: "resided in the same household with the child and openly held out the child as the person's own child from the time the child was born or adopted and for a period of at least two years thereafter, including any period of temporary absence." General Statutes § 46b-488 (a) (3) (b) further provides that: "The parentage of a presumed parent under subdivision (3) of subsection (a) of this section shall be established by a *court adjudication* or *signing of a valid acknowledgment of parentage*." (Emphasis added.)

It is the plaintiff's view that the defendant cannot satisfy the first criteria because the uncontested testimony demonstrates that the decedent never resided in the defendant's household. The plaintiff further asserts that the defendant cannot satisfy the other criteria because the acknowledgement of parentage signed by the decedent is invalid because it fails to properly identify the defendant as the decedent's child and instead identifies the decedent as both father and child. Finally, the plaintiff contends that there is no "court adjudication" that the decedent was the defendant's father.

The defendant contends that the court may take a wider variety of factors into consideration when making a parentage determination, including the testimony of Jones regarding the facts and circumstance surrounding her impregnation by the decedent; evidence regarding the support enforcement actions that culminated in a court order directing the decedent to make child support payments to Jones on behalf of the defendant; photographic evidence depicting the interactions between the parties; and evidence suggesting that the plaintiff and the defendant jointly submitted evidence to the VA under penalty of perjury that they were the daughter and son of the decedent.

The court concludes that the defendant's view of the Probate Court's authority is too narrow, and that although a rebuttable presumption of parentage may be created by satisfying one or more of the criteria set forth in General Statutes 46b-488 (a) (3), the court may also take other factors into consideration. The court further concludes that based on the totality of the evidence presented, there was a sufficient basis for the Probate Court to conclude that the defendant is the decedent's biological son and that even if all other evidence were disregarded, the August 23, 1999, withholding order for support identifying the decedent as "obligor" vis-à-vis the defendant is sufficient to create a rebuttable presumption of parentage pursuant to General Statutes 46b-488 (a) (3) (b), which presumption the plaintiff failed to overcome or rebut.

Having carefully considered the plaintiff's appeal, including all documentary evidence submitted in support of the appeal; and having carefully considered the defendant's answer, together with all of the documentary evidence introduced into evidence, including the testimony of Jones and the withholding order; and having conducted a full day proceeding at which both parties had a full opportunity to present

their respective positions; the court concludes that there was and is sufficient evidence to conclude that the decedent is the defendant's biological father.

For all the forgoing reasons, the plaintiff's appeal is hereby denied and the decrees issued by the Probate Court are hereby affirmed.

BY THE COURT

MATTHEW DALLAS GORDON, J.