

\*\*\*\*\*

The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

\*\*\*\*\*

HAYDUSKY'S APPEAL FROM PROBATE\*  
(AC 44507)

Alvord, Clark and DiPentima, Js.

*Syllabus*

Pursuant to statute (§ 45a-186 (b)), “[a]ny person aggrieved by an order, denial or decree of a Probate Court may appeal therefrom to the Superior Court. An appeal . . . shall be filed on or before the thirtieth day after the date on which the Probate Court sent the order, denial or decree . . . by mail . . . .”

The plaintiff appealed to the Superior Court from the Probate Court’s order overruling her objection to the retention of D Co., a law firm, by the administrator of the estate of her mother. The plaintiff alleged in her objection that a conflict of interest existed because she previously had consulted with D Co., seeking its representation in the matter. On September 27, 2019, the Probate Court overruled the objection, and, on October 16, 2019, the plaintiff filed an application for reconsideration, which the Probate Court denied on November 21, 2019. On December 16, 2019, the plaintiff appealed to the Superior Court, asserting that she was appealing from both the Probate Court’s order overruling her objection and its order denying her application for reconsideration. The Superior Court granted the defendants’ motion to dismiss the appeal, concluding, inter alia, that it lacked subject matter jurisdiction because the appeal from the order overruling her objection was not filed with the thirty day time period set forth in § 45a-186 (b). From the judgment rendered thereon, the plaintiff appealed to this court. *Held* that the Superior Court properly determined that it lacked subject matter jurisdiction over the plaintiff’s appeal from the Probate Court’s order overruling her objection to the retention of D Co. by the administrator of the estate: although the plaintiff claimed she was appealing from the Probate Court’s denial of her application for reconsideration, none of the plaintiff’s allegations challenged the Probate Court’s findings with respect to the four statutory grounds (§ 45a-128 (b)) applicable to an application for reconsideration, rather, the plaintiff’s allegations were limited to the order overruling her objection to D Co.’s representation of the estate and, accordingly, although the plaintiff’s appeal from the order denying her application for reconsideration would have been timely had she challenged the merits of the Probate Court’s denial of her application, this court concluded that, on appeal to the Superior Court, the plaintiff solely challenged the Probate Court’s order overruling her objection; moreover, the Superior Court properly dismissed the plaintiff’s appeal from the Probate Court’s order overruling her objection for lack of subject matter jurisdiction because, contrary to her claim, the thirty day appeal period pursuant to § 45a-186 (b) was not tolled by her application for reconsideration, and, thus, the plaintiff failed to timely appeal from the Probate Court’s order overruling her objection.

Argued April 26—officially released July 4, 2023

*Procedural History*

Appeal from the decision of the Probate Court for the district of Milford-Orange overruling the plaintiff’s objection to the retention of a certain law firm by the administrator of the estate of the plaintiff’s mother, brought to the Superior Court in the judicial district of Ansonia-Milford, where the court, *Tyma, J.*, granted the defendants’ motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

*Marianne Haydusky*, self-represented, the appellant (plaintiff).

*John-Henry M. Steele*, for the appellees (defendants).

*Opinion*

ALVORD, J. The self-represented plaintiff, Marianne Haydusky, appeals from the judgment of the Superior Court granting the defendants<sup>1</sup> motion to dismiss, for lack of subject matter jurisdiction, her appeal from an order of the Probate Court.<sup>2</sup> We affirm the judgment of the Superior Court.

The following procedural history is relevant to our resolution of this appeal. The parties have engaged in extensive litigation before the Probate Court, the Superior Court, and our appellate courts on an array of issues concerning the admission to probate of the will of the decedent, Audrey L. Hayducky, and the distribution of her estate.<sup>3</sup> See *Haydusky's Appeal from Probate*, 201 Conn. App. 746, 242 A.3d 531 (2020), cert. denied, 336 Conn. 915, 245 A.3d 424 (2021); *Garces v. Haydusky*, Superior Court, judicial district of New Haven, Docket No. CV-20-6012595-S (June 1, 2022), appeal dismissed, Connecticut Appellate Court, Docket No. AC 45031 (November 15, 2022), cert. denied, 346 Conn. 918, 290 A.3d 800 (2023).

On July 17, 2019, the plaintiff filed with the Probate Court an objection to the retention of the law firm Dey Smith Steele, LLC (firm), by Garces on behalf of the estate of Audrey L. Hayducky (estate). In her objection, the plaintiff alleged that a conflict of interest existed in that she previously had consulted with the firm seeking their “represent[ation] . . . in this matter.” (Emphasis omitted.) She further claimed that she “had multiple telephone conferences and in person meetings with this firm”; that she “shared with Attorney [Winthrop] Smith, who then brought in Attorney John-Henry M. Steele for further consultation (the attorney who signed the retainer agreement with Attorney Garces), private, confidential facts of the case which would create a conflict that would give the defendants an unfair and seemingly unethical advantage in this case”; and that the “firm’s attorneys [had] already interviewed [her] key witness in this case.” (Emphasis omitted.)

On August 20, 2019, the Probate Court held a hearing on the plaintiff’s objection. On September 27, 2019, the Probate Court issued an order overruling the objection. In support of its decision, the court stated that “[n]o other party objects to the firm . . . representing the estate in the appeal. Having heard argument and testimony by parties and counsel, the court finds no conflict of interest.” Pursuant to the Probate Court Rules of Procedure; see Probate Court Rules § 8.2;<sup>4</sup> the clerk of the Milford-Orange Probate Court certified that a copy of the order overruling the plaintiff’s objection was mailed to all of the required parties, including the plaintiff, on September 30, 2019.

On October 16, 2019, the plaintiff filed an application for reconsideration of the Probate Court’s order over-

ruling her objection. Therein, the plaintiff argued, *inter alia*, that she was “denied her right to a fair trial,” “the judge has given the defendants a completely unfair advantage in the case,” she “was denied her legal right to admit her evidence, evidence which would have unequivocally proven her case,” and “[t]he order represents a prejudicial decision by the judge . . . [and] shows a clear and obvious bias on the part of the judge.” (Emphasis omitted.) Additionally, the plaintiff asserted that she “also reiterates all of her arguments contained in her original objection,” *i.e.*, in support of her contention that a conflict of interest exists. Several of the defendants objected to the plaintiff’s application for reconsideration.<sup>5</sup>

The Probate Court held a hearing on the plaintiff’s application for reconsideration on November 21, 2019. Later that same day, the Probate Court issued an order denying the plaintiff’s application. In its order, the Probate Court set forth the applicable law governing its authority to reconsider, modify, or revoke a Probate Court order pursuant to General Statutes § 45a-128. Additionally, the Probate Court noted that the plaintiff’s application for reconsideration was timely filed.

In its order denying the plaintiff’s application for reconsideration, the Probate Court stated that, pursuant to § 45a-128 (b), “the court finds that there is no authority to reconsider the subject decree.” The Probate Court elaborated on its finding by addressing each of the four statutory considerations as follows: “First, the court may reconsider a decree ‘if all parties in interest consent to reconsideration, modification or revocation . . . .’ General Statutes § 45a-128 (b) (1). Other than the movant herself, all parties object to reconsideration and, therefore, there is no requisite consent to the motion. Second, the court may reconsider a decree ‘for failure to provide legal notice to a party entitled to notice under law . . . .’ General Statutes § 45a-128 (b) (2). Not only did the movant not allege that there was such a failure of legal notice, the court finds that all parties entitled to notice of that earlier proceeding were in fact provided such notice. Third, there is no assertion [of] nor does the decree on its face set forth any scrivener’s or clerical error. General Statutes § 45a-128 (b) (3). Accordingly, there is no authority to reconsider on this basis provided in the statute. And finally, the fourth basis by which the court may reconsider this decree is ‘upon discovery or identification of parties in interest unknown to the court at the time of the order or decree.’ General Statutes § 45a-128 (b) (4). There is no assertion that new parties to the matter have been identified or discovered nor does the court find that such is the case here. The court finds that all the heirs, all counsel of record and all persons entitled to notice have been identified and were provided notice as required.

“If a decree has been issued after proper notice, it

may not thereafter be set aside or modified by the Probate Court except upon express statutory authority.” In addition, the Probate Court stated that “[t]he [plaintiff’s] concerns here go directly to the substance of the court’s decree. The proper vehicle by which a party may assert error by the court is to appeal the decree as provided by General Statutes § 45a-186.”<sup>6</sup> Pursuant to § 8.2 of the Probate Court Rules, the clerk certified that a copy of the Probate Court’s order denying the plaintiff’s application for reconsideration was mailed to all the required parties, including the plaintiff, on November 21, 2019. See footnote 4 of this opinion.

On December 16, 2019, the plaintiff filed a complaint in the Superior Court in which she asserted that she was appealing from the Probate Court’s order overruling her objection, dated September 27, 2019, and its order denying her application for reconsideration, dated November 21, 2019. In her complaint, the plaintiff asserted that she “reiterates all of her arguments contained in her original objection dated July 17, 2019 . . . and . . . in [her] [application] for reconsideration dated October 16, 2019 . . . .” (Citations omitted.) The plaintiff specifically challenged the Probate Court’s finding, in support of its order overruling her objection, that “[n]o other party objects to the firm . . . representing the estate in the appeal,” and asserted that “the judge’s logic here is without merit, reason or thought” because “[e]very other party in the case stands to be the very lucky beneficiaries of the conflict of interest which exists by the hiring of this firm.” Additionally, she asserted that the Probate Court failed to admit the plaintiff’s evidence at the hearing, to consider the evidence, to hear the testimony of the key witness in the matter, and to weigh the facts properly. Moreover, the plaintiff asserted that the Probate Court erred in making “a clearly prejudicial decision based on an obvious bias against the plaintiff” and “based on perjury . . . .” In conclusion, she asserted that “the Probate Court decision to overrule the objection of the plaintiff to the retaining of the firm . . . to represent the estate in the pending appellate appeal/motion to remove the law firm . . . from this case as a serious conflict of interest exists and the court’s decision to deny the [application] for reconsideration by [the plaintiff] is erroneous and is hereby appealed.”

On February 5, 2020, the defendants filed a motion to dismiss the plaintiff’s appeal and a memorandum in support thereof. They argued, inter alia, that the Superior Court lacked subject matter jurisdiction over the plaintiff’s appeal because (1) the plaintiff’s appeal from the Probate Court’s order overruling the plaintiff’s objection was untimely and (2) the plaintiff’s appeal from the denial of her application for reconsideration does not present any justiciable issues. In support of their contention that the appeal from the order overruling the plaintiff’s objection was untimely, they noted

that the order was mailed to the plaintiff on September 30, 2019, and, pursuant to § 45a-186 (b), the plaintiff “had until October 30, 2019, to appeal this decision. . . . Yet, the instant appeal was not taken until December, 2019 . . . .” (Citation omitted.) In support of their contention that the plaintiff’s appeal from the Probate Court’s denial of the plaintiff’s application for reconsideration is not justiciable, they argued, inter alia, that, “on appeal, the plaintiff’s complaint fails to allege any facts which, if true, would permit this court to reverse the Probate Court’s ruling. . . . As a result, there is no actual controversy here with respect to the [application] to reconsider.”

On March 3, 2020, the plaintiff filed an objection to the defendants’ motion to dismiss her appeal and a memorandum in support thereof. In her objection, she asserted, inter alia, that the appeal was not untimely because “[t]he decision of the Probate Court is dated November 21, 2019 . . . . The current appeal was filed on December 10, 2019, within thirty days and was filed pursuant to the instruction of the probate judge in her decision (dated November 21, 2019).” Additionally, she argued that pursuant to § 45a-128 (a), “the [application] for reconsideration ‘shall be made or filed before any appeal’ . . . [and, here] the [application] for reconsideration was filed before any appeal.”

On January 4, 2021, the Superior Court held a hearing on the defendants’ motion to dismiss. The defendants’ counsel reiterated their arguments, as set forth in their memorandum in support of their motion to dismiss, that the Superior Court lacked subject matter jurisdiction. Additionally, the court asked the defendants’ counsel whether the application for reconsideration tolled the time period for filing the appeal, to which he responded, “[n]o, there is no statutory basis for it.” In support of her argument, the plaintiff reiterated, inter alia, that she “followed the exact instruction of the probate judge in her decision, which was dated November 21. So, the application for reconsideration was filed before the appeal, the appeal being the next step in the legal process.” Following the parties’ arguments, the court stated that it was “going to take the papers on this and read everything, and then . . . make a decision.”

Later that same day, the Superior Court issued a written order granting the defendants’ motion to dismiss. The Superior Court stated: “The plaintiff filed this appeal from probate from an order of the Probate Court . . . overruling her objection to the law firm[’s] . . . representation of the estate . . . . The order appealed from was mailed to the parties on September 27, 2019. In accordance with . . . § 45a-186 [b], the plaintiff was required to file a complaint appealing the order not later than thirty days after the mailing of the order. General Statutes § 45a-186 [b]. ‘A party appealing to the Superior Court from the Probate Court is required to

commence the appeal by filing it with the Superior Court clerk within thirty days of the order, denial or decree of the Probate Court. Failure to do so deprives the Superior Court of subject matter jurisdiction and renders such an untimely appeal subject to dismissal.’ *Corneroli v. D’Amico*, 116 Conn. App. 59, 67, 975 A.2d 107, cert. denied, 293 Conn. 928, 980 A.2d 909 (2009). The plaintiff filed an [application] for reconsideration of the Probate Court’s September 27, 2019 order, which [application] was denied by the Probate Court. The order denying the reconsideration [application] was mailed on November 21, 2019. The [application] for reconsideration, however, does not extend or otherwise toll the appeal period. *Scofield v. Scofield*, Superior Court, judicial district of Fairfield, Docket No. CV-19-5041126-S (October 11, 2019); *Bandonee v. State*, Superior Court, judicial district of New Haven, Docket No. CV-16-5037067-S (November 17, 2016) (63 Conn. L. Rptr. 400). The complaint was filed on December 16, 2019, well beyond the thirty day time period. Therefore, the court lacks subject matter jurisdiction to hear the present appeal. Because the court lacks subject matter jurisdiction, the court need not, and cannot, consider the defendants’ additional claim that the appeal should be dismissed for a lack of a justiciable issue.” This appeal followed.

On appeal, the plaintiff claims that the Superior Court improperly determined that it lacked subject matter jurisdiction over her appeal from the Probate Court’s order. We first set forth the applicable standard of review and relevant legal principles. “Our Supreme Court has long held that because [a] determination regarding a trial court’s subject matter jurisdiction is a question of law, our review is plenary. . . . Moreover, [i]t is a fundamental rule that a court may raise and review the issue of subject matter jurisdiction at any time. . . . Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . . The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal. . . .

“[W]e are . . . mindful of the familiar principle that a court [that] exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation. . . . Our courts of probate have a limited jurisdiction and can exercise only such powers as are conferred on them by statute. . . . They have jurisdiction only when the facts exist on which the legislature has conditioned the exercise of their power. . . . The Superior Court, in turn, in passing on an appeal, acts as a court of probate



with the same powers and subject to the same limitations. . . . It is also well established that [t]he right to appeal from a decree of the Probate Court is purely statutory and the rights fixed by statute for taking and prosecuting the appeal must be met. . . . Thus, only [w]hen the right to appeal . . . exists and the right has been duly exercised in the manner prescribed by law [does] the Superior Court [have] full jurisdiction over [it] . . . . Failure to comply with the relevant time limit set forth in . . . § 45a-186 [b] deprives the Superior Court of subject matter jurisdiction and renders such an untimely appeal subject to dismissal.” (Internal quotation marks omitted.) *Rider v. Rider*, 210 Conn. App. 278, 285–86, 270 A.3d 206 (2022).

We next set forth the statutory framework governing appeals of Probate Court orders. Section 45a-186 (b) provides in relevant part: “Any person aggrieved by any order, denial or decree of a Probate Court may appeal therefrom to the Superior Court. . . . Except as provided in sections 45a-187 and 45a-188, an appeal from an order, denial or decree in any other matter shall be filed on or before the thirtieth day after the date on which the Probate Court sent the order, denial or decree. The appeal period shall be calculated from the date on which the court sent the order, denial or decree by mail or the date on which the court transmitted the order, denial or decree by electronic service, whichever is later.”

Finally, § 45a-128 (b), which governs motions for reconsideration, modification and revocation in probate matters, provides in relevant part that “any order or decree . . . made by a court of probate may, in the discretion of the court, be reconsidered and modified or revoked by the court . . . on the written application of any interested person. Such application shall be made or filed within one hundred twenty days after the date of such order or decree and before any appeal is allowed or after withdrawal of all appeals. . . .”

The following brief summary of the timing of the filings preceding this appeal is helpful to resolving the plaintiff’s claim. On September 30, 2019, the Probate Court’s order overruling the plaintiff’s objection to the firm representing the estate was mailed to the relevant parties. On October 16, 2019, the plaintiff filed an application for reconsideration of the Probate Court’s order overruling her objection. On November 21, 2019, the Probate Court issued and mailed its order in which it denied the plaintiff’s application for reconsideration. On December 16, 2019, the plaintiff filed a complaint with the Superior Court, in which she asserted that she was appealing from *both* the Probate Court’s order overruling her objection *and* its order denying her application for reconsideration.

On appeal before this court, the plaintiff argues, *inter alia*, that “[a] single appeal was taken from two probate

decrees, as the plaintiff[s] complaint dated December 10, 2019, states . . . . The trial court erred when the judge misinterpreted/misapplied the law and failed to rule regarding the Probate Court decree on the plaintiff[s] [application] for reconsideration, which was, in fact, timely filed and part of the same Superior Court appeal.” (Citation omitted.) She further argues that “[t]he appeal of the Probate Court’s order overruling the plaintiff’s objection to the firm in question representing the estate was *not* untimely. . . . The final ‘order,’ the ‘denial,’ the ‘decree’ of the Probate Court regarding this matter was mailed on November 21, 2019. The Superior Court appeal was filed on December 10, 2019, within the thirty days allowed. . . . Since the final decision . . . was not yet made by the Probate Court, [she] could not have appealed sooner . . . .” (Citations omitted; emphasis in original.)

We first examine the allegations contained within the plaintiff’s complaint to the Superior Court because the determination of whether she appealed from the Probate Court’s order overruling her objection or from the Probate Court’s order denying her application for reconsideration guides our resolution of her claim on appeal. Pursuant to § 45a-128 (b), a Probate Court may reconsider, modify, or revoke any order or decree on four statutory grounds: “(1) For any reason, if all parties in interest consent to reconsideration, modification or revocation, or (2) for failure to provide legal notice to a party entitled to notice under law, or (3) to correct a scrivener’s or clerical error, or (4) upon discovery or identification of parties in interest unknown to the court at the time of the order or decree.” In its order denying the plaintiff’s application for reconsideration, the Probate Court expressly addressed each of the four grounds and concluded “that there is no authority to reconsider the subject decree.” Specifically, the Probate Court stated: “Other than the movant herself, all parties object to reconsideration and therefore, there is no requisite consent to the motion. . . . Not only did the movant not allege that there was such a failure of legal notice, the court finds that all parties entitled to notice of that earlier proceeding were in fact provided such notice. . . . [T]here is no assertion nor does the decree on its face set forth any scrivener’s or clerical error. . . . There is no assertion that new parties to the matter have been identified or discovered nor does the court find that such is the case here. The court finds that all the heirs, all counsel of record and all persons entitled to notice have been identified and were provided notice as required.” (Citations omitted.)

Although in her complaint to the Superior Court the plaintiff asserted that she was appealing from the Probate Court’s denial of her application for reconsideration, none of the plaintiff’s allegations challenged any of the Probate Court’s findings in regard to the four statutory grounds under § 45a-128 (b). The record

before the Superior Court was devoid of any allegation or evidence that (1) all parties consented to reconsideration, (2) there was a failure to provide legal notice to a party entitled to such notice, (3) there was a scrivener's or clerical error in the Probate Court's order overruling her objection, or (4) the plaintiff had identified or discovered any new parties in interest who were previously unknown. See General Statutes § 45a-128 (b). Rather, the allegations of the plaintiff's complaint were limited to the Probate Court's order overruling her objection to the law firm representing the estate. The plaintiff repeatedly asserted that a "conflict of interest exists," which gives "the defendants a totally unfair advantage in the case and [puts] the plaintiff in a very unfair position of disadvantage." Moreover, the plaintiff's argument that the Probate Court "refused to consider, accept, admit any of the plaintiff[s] multiple pieces of evidence, even though at *both* hearings the plaintiff attempted to argue that [she] had evidence which proved her claims," similarly was limited to evidence in support of her objection to the firm representing the estate. (Emphasis in original.) Accordingly, although we agree with the plaintiff that her appeal from the Probate Court's order denying her application for reconsideration would have been timely had she challenged the merits of the court's denial of her motion,<sup>7</sup> we conclude that, on appeal to the Superior Court, the plaintiff solely challenged the Probate Court's order overruling her objection and did not challenge its order denying her application for reconsideration. See, e.g., *Rider v. Rider*, supra, 210 Conn. App. 283 n.10 (on basis of careful review of record, court concluded that plaintiff appealed only from Probate Court's original order and not from denial of motion for revocation); see also *Silverstein v. Laschever*, 113 Conn. App. 404, 414, 970 A.2d 123 (2009) ("[a]n appeal [brings] before the Superior Court for review only the order appealed from" (internal quotation marks omitted)).

We now address whether the Superior Court had subject matter jurisdiction over the plaintiff's appeal from the Probate Court's order overruling her objection. The plaintiff argues that her appeal from the Probate Court's order overruling her objection was filed timely because, pursuant to § 45a-128, an "[application] for reconsideration 'shall be made or filed before any appeal.' Which, in this case, it was. . . . The [application] for reconsideration was filed before any appeal . . . . The appeal being the *next* step in the legal process." (Citations omitted; emphasis in original.) The defendants respond, inter alia, that the Superior Court properly dismissed the plaintiff's appeal from the Probate Court's order overruling her objection for lack of subject matter jurisdiction because the thirty day appeal period was not tolled by her application for reconsideration. We agree with the defendants.

The plaintiff's argument is premised on a misconception of the statutory scheme governing appeals in probate cases. "[T]he right to appeal from a decree of the Probate Court is purely statutory and the rights fixed by statute for taking and prosecuting the appeal must be met." (Internal quotation marks omitted.) *In re Probate Appeal of Knott*, 190 Conn. App. 56, 61, 209 A.3d 690 (2019). As previously set forth, pursuant to § 45a-186 (b), "[a]ny person aggrieved by an order, denial or decree of a Probate Court may appeal therefrom to the Superior Court. An appeal . . . shall be filed on or before the thirtieth day after the date on which the Probate Court sent the order, denial or decree . . . by mail . . . ." It is undisputed that, on September 30, 2019, the Probate Court mailed its order overruling the plaintiff's objection to the firm representing the estate. Pursuant to § 45a-186 (b), the plaintiff was required to file an appeal from the Probate Court's order overruling her objection on or before October 30, 2019. She did not do so. Accordingly, her "[f]ailure to do so [deprived] the Superior Court of subject matter jurisdiction and [rendered] such an untimely appeal subject to dismissal." *Corneroli v. D'Amico*, supra, 116 Conn. App. 67.

Despite the foregoing undisputed timeline, the plaintiff argues that the language in § 45a-128 (b), governing the deadline for filing an application for reconsideration of a Probate Court's order, excuses her failure to timely appeal from the Probate Court's order overruling her objection.<sup>8</sup> Although the plaintiff filed her application for reconsideration on October 16, 2019, prior to the "thirtieth day" after the Probate Court mailed its order overruling her objection; see General Statutes § 45a-186 (b); an application for reconsideration pursuant to § 45a-128 "does not toll the appeal period for the underlying decision." *Rider v. Rider*, supra, 210 Conn. App. 288. This court previously has stated: "The statutory scheme that governs appeals in probate cases provides the sole circumstance that tolls the appeal period. General Statutes § 45a-186c provides that the appeal period is tolled when an application for a waiver of costs is filed. Our legislature clearly addressed tolling the appeal period and did not include the filing of a motion pursuant to § 45a-128 as an action that tolls the appeal period. . . ."

"In addition, § 45a-128, which governs motions for reconsideration . . . in probate matters, addresses the appeal procedure for such motions and does not provide that such motions toll the appeal period with respect to the underlying decision. . . . We find persuasive that the legislature expressly addressed appellate procedure in § 45a-128 and did not provide that such a motion would toll the appeal period for the underlying court action. See General Statutes § 45a-128 (c); cf. *Ierardi v. Commission on Human Rights & Opportunities*, 15 Conn. App. 569, 575–76, 546 A.2d 870

(appeal period in administrative case tolled because governing statute provided that [a] request for reconsideration postpones the running of the appeal period . . . until the decision thereon), cert. denied, 209 Conn. 813, 550 A.2d 1082 (1988).” (Citations omitted; footnote omitted; internal quotation marks omitted.) *Rider v. Rider*, supra, 210 Conn. App. 287–88. Because the plaintiff failed to appeal from the Probate Court’s order overruling her objection within the thirty day statutory appeal period, and because her filing of an application for reconsideration did not toll the appeal period, we conclude that the Superior Court properly determined that it lacked subject matter jurisdiction over the appeal.

The judgment is affirmed.

In this opinion the other judges concurred.

\* In the Superior Court, the case was captioned *Marianne Haydusky v. Estate of Audrey L. Hayducky*. The caption of the case that appears here conforms to the convention our appellate courts use for appeals from probate. See, e.g., *Garrett’s Appeal from Probate*, 237 Conn. 233, 676 A.2d 394 (1996); *Haydusky’s Appeal from Probate*, 201 Conn. App. 746, 242 A.3d 531 (2020), cert. denied, 336 Conn. 915, 245 A.3d 424 (2021).

<sup>1</sup> The following individuals were served with the appeal to the Superior Court: Daisy P. Garces, as administrator of the estate of Audrey L. Hayducky; Joanne Hayducky; the Probate Court for the district of Milford-Orange, via court clerk Christina Bianchi; Attorney Winthrop S. Smith; Audrey M. Stella; Karen Primavera; Reyne Maturo; and Attorney Ann McCarthy.

The Probate Court, Bianchi, Maturo, and McCarthy were nonappearing defendants before the Superior Court. Joanne Hayducky, Stella, and Primavera are not participating in this appeal. Accordingly, we refer in this opinion to Garces, as administrator of the estate of Audrey L. Hayducky, and Attorney Smith collectively as the defendants.

<sup>2</sup> The plaintiff’s appellate brief also raises myriad other claims. Because we conclude that the Superior Court properly determined that it lacked subject matter jurisdiction over the plaintiff’s appeal, we need not consider these claims.

<sup>3</sup> Although the plaintiff spells her last name slightly differently from the decedent’s, she is the daughter of the decedent. See *Garces v. Haydusky*, supra, Superior Court, Docket No. CV-20-6012595-S.

<sup>4</sup> Section 8.1 of the Probate Court Rules provides in relevant part: “Unless otherwise provided by law or these rules, the court shall . . . (2) give notice of each hearing or conference in the manner provided in sections 8.2 through 8.9.”

Section 8.2 (a) of the Probate Court Rules provides in relevant part: “The court shall give notice under section 8.1 to each: (1) party; (2) attorney of record; (3) fiduciary for a party . . . and (4) other person required by law.”

Section 8.10 (a) of the Probate Court Rules provides in relevant part: “The court shall send a copy of each decree to each person entitled to notice under section 8.2, free of charge, by transmitting: (1) a digital image of the decree to each registered filer . . . .” Moreover, § 8.10 (d) provides that “[t]he court shall certify the date the decree was sent and the persons to whom the decree was sent. The court shall send the certification together with the decree.”

<sup>5</sup> The record reflects that Garces, Joanne Hayducky, Primavera, and Stella objected to the plaintiff’s application for reconsideration. See footnote 1 of this opinion.

<sup>6</sup> Although § 45a-186 was the subject of technical amendments in 2021 and 2022; see Public Acts 2021, No. 21-40, §§ 42, 43; Public Acts 2021, No. 21-100, § 9; Public Acts 2022, No. 22-112, § 2; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

<sup>7</sup> It is undisputed that, on September 30, 2019, the Probate Court mailed its order overruling the plaintiff’s objection to the firm representing the estate. The plaintiff filed an application for reconsideration of the Probate Court’s order overruling her objection on October 16, 2019, which was timely

because it was filed within 120 days of the Probate Court's order overruling her objection. See General Statutes § 45a-128 (b) (“[A]ny order or decree other than a decree authorizing the sale of real estate made by a court of probate may, in the discretion of the court, be reconsidered and modified or revoked by the court . . . on the written application of any interested person. Such application shall be made or filed within one hundred twenty days after the date of such order or decree and before any appeal is allowed or after withdrawal of all appeals.”).

It is also undisputed that, on November 21, 2019, the Probate Court mailed its order denying the plaintiff's application for reconsideration. On December 16, 2019, the plaintiff filed a complaint with the Probate Court, which was a timely appeal from the Probate Court's denial of her application for reconsideration because it was filed within thirty days of the mailing of that order. See General Statutes § 45a-186 (b) (“Any person aggrieved by an order, denial or decree of a Probate Court may appeal therefrom to the Superior Court. An appeal . . . shall be filed on or before the thirtieth day after the date on which the Probate Court sent the order, denial or decree. The appeal period shall be calculated from the date on which the court sent the order, denial or decree by mail . . .”).

<sup>8</sup> Specifically, the plaintiff points out that, under § 45a-128 (b), an application for reconsideration must be filed “within one hundred twenty days after the date of such order or decree *and before any appeal is allowed* or after withdrawal of all appeals.” (Emphasis added.) The requirement that an application for reconsideration be filed before an appeal is “allowed,” however, appears to be a vestige of the prior statutory scheme requiring a party to seek permission from a Probate Court before pursuing an appeal in the Superior Court. The legislature eliminated that requirement in 2007. See Public Acts 2007, No. 07-116, § 33 (P.A. 07-116) (amending § 45a-186 and repealing General Statutes §§ 45a-191 and 45a-192); *Comeroli v. D'Amico*, supra, 116 Conn. App. 65 (“The significant changes to this statute, brought about by [the] passage of P.A. 07-116, coupled with the simultaneous repeal of §§ 45a-191 and 45a-192, the only statutes that referred to the previous practice of filing a motion for permission to appeal with the Probate Court, reveal a clear legislative intention to consolidate and even to simplify and to clarify the probate appeal process. In amending the statute, the legislature eliminated any previous requirement that an aggrieved party file a motion for permission to file an appeal with the Probate Court to commence his appeal.”). We need not decide the continuing vitality or application of that language in this appeal, however, because that language pertains only to the deadline for filing an application for reconsideration under the prior statutory scheme requiring a party to seek permission from a Probate Court before commencing an appeal in the Superior Court. That language has no bearing on the question before us, which is whether the filing of such an application tolls or otherwise extends the deadline for filing an appeal under § 45a-186 (b).

---