2020 DEVELOPMENTS IN CONNECTICUT ESTATE AND PROBATE LAW

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This Article provides a summary of recent developments affecting Connecticut estate planning and probate practice. As there were no significant legislative developments in 2020, this article will focus on 2020 case law relevant to the field.

A. *Wills and Trusts*

1. Powers of Appointment

In *Benjamin v. Corasaniti*,[1] the superior court ruled that a decedent could validly exercise a testamentary power of appointment in favor of a previously unfunded trust.

The decedent was the beneficiary of two trusts, one of which was governed by Connecticut law.[2] He held a testamentary power of appointment over the trust corpus.[3] Prior to his death, he established a charitable trust and thereafter executed a will exercising his power of appointment in favor of the charitable trust.[4] The charitable trust was not otherwise funded during the decedent's life.[5]

After the decedent's death, the defendants successfully

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*** Of the Hartford Bar. The authors wish to thank the editors of this publication for their helpful review of this article. This article contains the opinions of the authors and may not reflect the position of any organization or entity with which they are affiliated. In addition, in cases where an author considered it inappropriate to comment on a specific issue, such as where that author was involved in a matter discussed herein, another author assumed complete responsibility for drafting the relevant portion of this article. Readers should be aware that cases discussed in this article may have been appealed and the results discussed herein may have been modified or reversed.

1 No. UWYCV186045572, 2020 WL 3058149 (Conn. Super. Ct. May 1, 2020).

2 *Id.* at *1. The other trust was governed by Illinois law. *Id.* Although the court reached similar holdings with respect to both Illinois and Connecticut law, this article only discusses the court's application of Connecticut law.

3 *Id.* at *2.

4 *Id.* at *2.

5 *Id.*

petitioned the probate court to validate the exercise of the power of appointment in favor of the charitable trust notwithstanding the fact that the trust had not been funded during the decedent's life.[6] The plaintiffs appealed that decision to the superior court, which affirmed the probate court ruling.[7] As of this writing, the matter is on further appeal before the Connecticut Supreme Court.[8]

In affirming the probate court, the superior court rejected three major arguments put forth by the defendants.

First, the court held that the charitable trust was valid even though not funded prior to the decedent's death.[9] In reaching this result, the court conceded that Connecticut law specifies that a trust must have trust property in order to be valid.[10] Nevertheless, the court reasoned that "[m]odern practice has evolved," to validate unfunded trusts in many circumstances, a position endorsed by the Restatement (Third) of Trusts.[11] The court thus found the charitable trust valid.

Second, the court held that Connecticut's version of The Uniform Testamentary Additions to Trusts Act (UTATA), codified at General Statutes Section 45a-260, validates the exercise of a power of appointment in favor of an unfunded trust.[12] While the plaintiffs contended that the text of UTATA provides only that a decedent may validly "devise or bequeath" property to an unfunded trust, and does not explicitly address the exercise of a power of appointment, the court rejected this "narrow reading of the statute."[13] In reaching this result, the court seemed particularly influenced by its review of the 1960 "legislative history" from the UTATA Drafting Committee, finding that the drafters of the uniform act explicitly envisioned that it would cover exercises of powers

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6 *Id*. at *3.
7 *Id*.
8 *Benjamin v. Corasaniti*, No. SC 20491 (argued Apr. 1, 2021).
9 *Benjamin*, 2020 WL 3058149 at *6.
10 *Id*. citing Palozie v. Palozie, 283 Conn. 538, 545, 927 A.2d 903 (2007).
11 *Id*. (citing Restatement (Third) of Trusts § 19 (2003)).
12 *Id*. at *6.
13 *Id*. at *7.

of appointment.[14] Citing prior Supreme Court precedent, the court interpreted Connecticut's version of UTATA in a manner consistent with the intent of the drafters of UTATA.[15]

Third, the court held that Connecticut's recently enacted version of the Uniform Trust Code also applied to validate the exercise of the power of appointment.[16] In this regard, the court ruled that General Statutes Section 45a-499v explicitly provides that a "trust may be created by … (3) the exercise of a power of appointment…," and that General Statutes Section 45a-487t provides for this provision to operate retroactively.[17]

2. Definition of "Per Stirpes"

In *Schwerin v. Ratcliffe*,[18] the Supreme Court considered how to compute the shares of trust property payable to the grantor's "issue then living, per stirpes" under Connecticut law. The court held that the phrase required an initial division of the property into shares for each of the grantor's children, even though none of them would be alive at the time of distribution.

At issue were two trusts established over fifty years ago.[19] Both trusts will terminate upon the death of the last to survive of specified issue of the grantor, only three of whom are still alive.[20] The plaintiffs brought a declaratory judgment action in the superior court, arguing that since the grantor's three children are deceased, the phrase "issue then living, per stirpes" should be interpreted to require an initial division into shares for each of the grantors' six grandchildren. The defendants countered that the initial division should be made at the level of the children, notwithstanding the fact

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[14] *Id*. at *8 (quoting Proceedings in Committee of Whole Testamentary Additions to Trust Act, August 25, 1960) (the chair stated that the act "cover[s] the exercise of a power of appointment by will…").

[15] *Id*. at *8 (citing *Yale Univ. v. Blumenthal*, 225 Conn. 32, 38 (1993) (noting that states should interpret uniform acts in accordance with the drafters' stated intent)).

[16] *Id*. at *10.

[17] *Id*. at *10 (citing CONN. GEN. STAT. §§ 45a-499v, 45a-487t).

[18] 335 Conn. 300 (2020).

[19] *Id*. at 303-05.

[20] *Id*. at 304-06.

that all of them are deceased.[21] The trial court agreed with the defendants and granted their motion for summary judgment.[22] An appeal ensued, and the Supreme Court affirmed.[23]

In reviewing the case, the Supreme Court noted that prior case law established that when making a per stirpital division in Connecticut, "the initial division is to be made into as many shares as there are members of the first generation…."[24] The Court noted that this approach is consistent with Connecticut's intestacy laws,[25] and embraced by both the Restatement (Second) of Property[26] and the Uniform Trust Code.[27]

The Court further held that the grantor's use of the words "then living" did not affect this general rule. The court reasoned that the words "then living" merely identified who would take the trust property upon termination and not the method of computing their shares.[28] While finding no Connecticut appellate authority on point, the Court found support for this position in a Massachusetts Appeals Court case construing a similar phrase.[29]

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[21] *Id*. at 307.

[22] *Id*. at 307-08.

[23] The Supreme Court assumed jurisdiction over the appeal pursuant to General Statutes § 51-199(c), which provides in relevant part that "[t]he Supreme Court may transfer to itself a cause in the Appellate Court." *Id*. at 304, n 3.

[24] *Id*. at 313 (quoting *Warren v. First New Haven Nat'l Bank*, 150 Conn. 120, 124-25 (1962)).

[25] *Id*. at 316-17 (citing CONN. GEN. STAT. § 45a-438) (providing that property distributable to descendants "shall be distributed equally, according to its value at the time of distribution, among the children, including children born after the death of the decedent … and the legal representatives of any of them who may be dead….").

[26] *Id*. at 313 (citing 3 Restatement (Second), Property, Donative Transfers § 28.2, p. 254 (1988) ("the initial division into shares will be on the basis of the number of class members, whether alive or deceased, in the first generation below the designated person.")).

[27] *Id*. at 317-18 (quoting Unif. Probate Code § 2-709 (c) (amended 1993); 8 U.L.A. 316 (2013) ("If a governing instrument calls for property to be distributed 'per stirpes,' the property is divided into as many equal shares as there are (i) surviving children of the designated ancestor and (ii) deceased children who left surviving descendants. Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.").

[28] *Id*. at 318.

[29] *Id*. at 319 (citing *Bank of New England, N.A. v. McKennan*, 19 Mass. App. 686, review denied, 395 Mass. 1102 (1985)).

3. Will Execution

In *In Re Harris*,[30] the superior court admitted a will to probate even though the witnesses had signed the self-proving affidavit rather than the will itself.

In reaching this result, the court relied extensively upon the Supreme Court's 1991 opinion in *Gardner v. Balboni*,[31] in which the Court admitted to probate a will even though the testator had signed the self-proving affidavit rather than the will itself.[32] A linchpin of the *Gardner* court's opinion had been that our probate statues require only that the testator "subscribe" their will, a term the court defined to require a signature anywhere "underneath" the will rather than at the end of its text.[33] A signature made below the intervening language of the self-proving affidavit thus meets this requirement.[34] The court in this case extended the logic of *Gardner* to the situation where the witnesses, rather than the testator, were the ones who signed the affidavit rather than the will.[35]

In reaching its decision, the court held that the witnesses' signatures complied with the formal statutory requirements for a will execution. The court thus did not consider the extent to which a curative doctrine such as harmless error might be operative to excuse a defective will execution.[36]

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[30] No. HHBCV186042174, 2020 WL 1230815 (Conn. Super. Ct. Feb. 13, 2020).

[31] 218 Conn 220 (1991).

[32] *In re Harris,* 2020 WL 1230815 at *2.

[33] *Id.* at *3 (citing *Gardner*, 218 Conn. at 228).

[34] *Id.* at *2.

[35] *Id.* at *3.

[36] The doctrine of harmless error, or substantial compliance, provides that a will executed in a manner that fails to comply with statutory formalities may nevertheless be admitted to probate if the proponent proves by clear and convincing evidence that the testator intended the document to be a will. For a discussion of the doctrine, see *Litevich v. Prob. Court, Dist. of W. Haven*, No. NNHCV126031579S, 2013 WL 2945055, at *19-20 (Conn. Super. Ct. May 17, 2013), discussed in Jeffrey A. Cooper & John R. Ivimey, *2013 Developments in Connecticut Estate and Probate Law*, 88 Conn. B.J. 51, 57-59 (2014). For an argument in favor of adopting the doctrine in Connecticut, see Jeffrey A. Dorman, *Stop Frustrating the Testator's Intent: Why the Connecticut Legislature Should Adopt the Harmless Error Rule*, 30 Quinnipiac Prob. L.J. 36 (2016). For an example of the doctrine applied to facts similar to those in the current case, see *Matter of Will of Ranney*, 124 N.J. 1 (1991) (holding that witness' signatures on a self-proving affidavit did not comply with statutory requirements but could be excused as harmless error).

4. Malpractice

In *Wisniewski v. Palermino*,[37] the superior court considered whether the intended beneficiaries of a decedent's estate had standing to bring a professional negligence and contract claim against the decedent's estate planning attorney.

The decedent's attorney prepared a Will that left an investment account in five equal shares to his three grandchildren and two other beneficiaries.[38] Upon the decedent's death, the investment account passed to only one of the beneficiaries pursuant to a beneficiary designation on file for the account.[39] The plaintiffs, who were several of the beneficiaries named in the Will, alleged that the attorney advised the decedent that nothing else needed to be done to accomplish the distribution of the investment account to the beneficiaries under the Will.[40]

The defendant, the attorney and his law firm, moved to dismiss the claims on the grounds that the plaintiffs lacked standing because they were not in privity to the decedent's relationship with his attorney.[41] The court reviewed several Connecticut cases regarding third-party liability for an attorney's malpractice and noted that the courts have been reluctant to expand third-party liability. Specifically in this regard, the Court cited *Leavenworth v. Mathes*, in which the Connecticut Appellate Court held that third-party liability for testamentary dispositions is limited to "errors in the drafting and execution of the wills."[42] The Court accordingly dismissed the negligence claim on the grounds that it did not relate to a drafting or execution error.[43]

In contrast, the Court denied the motion to dismiss with respect to the contract claim. The Court found that the plaintiffs had sufficiently pleaded that they were intended third-

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[37] No. HD4HHDCV196115653S, 2020 WL 6781738 (Conn. Super Ct. Oct. 19, 2020).
[38] *Id.* at *1.
[39] *Id.*
[40] *Id.*
[41] *Id.* at *2.
[42] *Id.* at *3 (citing *Leavenworth v. Mathes*, 38 Conn. App. 476, 480 (1995)).
[43] *Id.*

party beneficiaries of the contract between attorney and client and that they were damaged when the Will was not drafted as requested.[44]

B. *Estate and Trust Administration*

1. Domicile

In *Francois v. Poole*,[45] the United States District Court for the District of Connecticut found that a decedent remained domiciled in the probate court district in which he had previously maintained his primary home even though he resided in another state at the time the action was filed.

This case involved a husband and wife who were in the process of getting a divorce.[46] The plaintiff, the husband, sued his soon-to-be ex-wife in federal court, alleging state law claims by invoking diversity jurisdiction.[47] The wife argued that diversity jurisdiction was lacking because she and her husband were both domiciled in Connecticut.[48] The plaintiff countered that he was domiciled in New York where he lived at the time that he filed the action.

In arguing that he was a domiciliary of New York, the plaintiff conceded that he had resided in Connecticut for approximately ten years during his marriage to his wife.[49] However, during a serious illness, the defendant was appointed as plaintiff's conservator and made the decision to relocate the plaintiff to New York to live with his parents.[50] The plaintiff had remained living in New York for about two years at the time of the dispute.[51] He was registered to vote in New York and had a New York driver's license.[52]

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[44] *Id.*

[45] No. 3:20-CV-770 (JHC), 2020 WL 6701371 (D. Conn. 2020).

[46] *Id.* at *1.

[47] *Id. See* 28 U.S.C.A. § 1332 (West) (providing in relevant part that "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between… citizens of different States.").

[48] *Id.*

[49] *Id.* at *3.

[50] *Id.* at *2.

[51] *Id.*

[52] *Id.*

The court's analysis focused on the question of domicile, as distinct from mere residence. To change domicile, one must relocate with the "intention to remain."[53] Accordingly, the question before the court was whether the plaintiff could demonstrate by clear and convincing evidence "the required intent to give up the old and take up the new domicile."[54] The court reviewed the evidence presented, including testimony from various prior court proceedings in which the plaintiff stated that he had been moved to New York against his will and requested that he be allowed to return to Connecticut.[55] The court held that this testimony illustrated that the plaintiff did not intend to remain in New York and thus the plaintiff remained domiciled in Connecticut notwithstanding his residency in New York.[56]

This case serves as a reminder of the key distinction between residency and domicile. Questions of domicile are fact-specific determinations that involve consideration of a variety of factors, including an individual's subjective intent when moving from one residence to another.

C. *Probate Litigation*

1. Standing

In *Mason v. Mason*,[57] the superior court considered whether an estate's beneficiaries, rather than the executor, had standing to bring suit on behalf of the estate. The Court held that the beneficiaries in this case did have standing to sue on behalf of the estate because the executor faced a potential conflict of interest that prevented him from bringing this lawsuit.[58]

The case concerned the distribution of the plaintiffs' father's estate.[59] They alleged that the defendant, their step-

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[53] *Id.* (citing *Linardos v. Fortuna*, 157 F.3d 945, 948 (2d Cir. 1998)).
[54] *Id.* at *3 (quoting *Palazzo ex rel. Delmage*, 232 F.3d 38, 42 (2d Cir. 2000)).
[55] *Id.* at *4.
[56] *Id.*
[57] No. FSTCV195021013, 2020 WL 1656214 (Conn. Super. Ct. Mar. 2, 2020).
[58] *Id.* at *3-4.
[59] *Id.* at *1.

mother, had misappropriated estate assets.[60] The defendant moved to dismiss the complaint, arguing that only the executor of the estate had standing to bring a claim on behalf of the estate.[61] The plaintiffs countered that they had standing to bring the claims because the executor had an attorney-client relationship with the defendant and thus was unable or unwilling to bring suit against her.[62]

The court began its analysis by making clear that under ordinary circumstances the executor is the proper person to bring suit on behalf of an estate.[63] As an exception to that general rule, the beneficiaries can bring suit on behalf of an estate if the fiduciary "has failed or refused to act."[64] The court found the exception was met in this case because the fiduciary was an attorney who had represented both the estate and the defendant.[65] That conflict of interest prevented the fiduciary from zealously pursuing the estate's potential claim against the defendant. As a result, the plaintiff beneficiaries had standing to pursue that claim directly.

2. Jurisdiction

In *In Re Buckingham*,[66] the Appellate Court held that the superior court lacks jurisdiction to reconsider a probate court decree, even if the appellant alleges fraud.

The case concerns a will admitted to probate without objection.[67] Long after expiration of the statutory period for filing an appeal, the plaintiffs sought to challenge the will's validity, effectively asking the probate court to reconsider its decree admitting the will.[68] The probate court held that it lacked statutory authority to do so and dismissed the ac-

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[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.* at *3 (citing *Geremia v. Geremia*, 159 Conn. App. 751, 781, (2015)).
[64] *Id.* (quoting *Geremia*, 159 Conn. App. at 784).
[65] *Id.*
[66] 197 Conn. App. 373 (2020).
[67] *Id.* at 375.
[68] *Id.* at 375. General Statues § 45a-186 provides that appeals in most types of probate matters, including the case at bar, "shall be filed on or before the thirtieth day after the date on which the Probate Court sent the order, denial or decree." In certain enumerated matters the deadline is 45 days rather than 30. *Id.*

tion.[69] The plaintiffs timely appealed that ruling to the superior court, alleging in part that the will's admission to probate had been the product of unspecified fraud.[70] The superior court dismissed the action and a further appeal ensued.[71]

On appeal, the plaintiff's alleged that the superior court had jurisdiction to hear the appeal pursuant to General Statutes Section 45a-24, which gives the court jurisdiction to hear matters involving fraud "without any applicable statutory time limitation."[72] The Appellate Court disagreed, holding that General Statutes Section 45a-24 is unavailable in the context of a direct appeal.[73] The court reasoned that when hearing an appeal from probate, the superior court sits as a court of probate and has only the powers of a probate court.[74] Since a probate court generally has no authority to reconsider or reverse its prior decrees, a superior court sitting as a probate court similarly lacks jurisdiction to reconsider a probate decree absent specific statutory authorization.[75] Section 45a-186 does provide such authorization in the case of a timely-filed appeal.[76] In contrast, Section 45a-24, the provision relied upon by the plaintiffs, authorizes a superior court to exercise its general equitable jurisdiction to hear a *collateral* attack in the case of fraud, not an untimely *direct appeal*.[77] As a result, the plaintiffs could have either filed a

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[69] *Id.* at 376.

[70] *Id.*

[71] *Id.*

[72] *Id.* General Statutes § 45a-24 provides in relevant part as follows: "All orders, judgments and decrees of courts of probate, rendered after notice and from which no appeal is taken, shall be conclusive and shall be entitled to full faith, credit and validity and shall not be subject to collateral attack, except for fraud." *Id.* at n1.

[73] *Id.* at 383.

[74] *Id.*

[75] *Id.* at 378-79 (citing *Delehanty v. Pitkin*, 76 Conn. 412, 417 (1904)). In addition, General Statutes § 45a-128 provides that a probate court may reconsider and modify or revoke an order or decree in four limited circumstances: "(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." CONN. GEN. STAT. § 45a-128.

[76] *In re Buckingham*, 197 Conn. App. at 384.

[77] *Id.* at 383 (citing *VanBuskirk v. Knierim*, 169 Conn. 382, 388 (1975)).

timely direct appeal or brought a separate complaint alleging fraud in the superior court. Since they did neither, the court lacked jurisdiction to hear their appeal.[78]

3. Pleadings

In *Cuseo v. Westport-Weston Probate Court*,[79] the superior court considered the effect of several procedural defects in the filing of a probate appeal. The court applied strict procedural requirements, finding that relatively minor procedural violations each warranted dismissal of the appeal.

At issue was an appeal from probate. The defendant moved to dismiss the appeal as untimely because it was filed more than 30 days after the mailing of the order appealed from.[80] The defendant also alleged numerous procedural defects in the appeal.[81] The superior court found the appeal untimely and dismissed on that ground.[82] Nevertheless, the court went on to review the alleged procedural defects and found that each of them provided further basis for dismissal of the appeal.[83]

The court addressed four procedural defects. First, the summons failed to state the court to which it was returnable, thus violating Practice Book 8-1.[84] Second, the plaintiff used a general civil summons, form JD-CV-1, thus also violating Practice Book 8-1, which provides that such form is not to be used in probate appeals.[85] Third, the plaintiff failed to timely

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[78] *Id*. at 384. While clarifying the applicability of the relevant statutes, the Court's opinion may not represent the final disposition of this case. The plaintiffs seemingly could file a new action in the superior court pursuant to General Statutes § 45a-24.

[79] No. FSTCV185019043S, 2020 WL 927643 (Conn. Super. Ct. Jan. 9, 2020).

[80] *Id*. at *3. In reaching this result, the court ruled that the 30-day appeals period began to run on the date the probate court certified that it had mailed its decree, even though the plaintiffs alleged that the postmark on the envelope showed it had not been mailed until two days thereafter.

[81] *Id*. at *3.

[82] *Id*. at *3-4.

[83] *Id*. at *4.

[84] *Id*. Connecticut Practice Book § 8-1 provides that, "Process in civil actions shall be a writ of summons or attachment, describing the parties, *the court to which it is returnable and the time and place of appearance." Id*. at *3 (emphasis added).

[85] *Id*. at *4. Connecticut Practice Book § 8-1 (c) provides that, "Form JD-FM-3, JD-HM-32, and JD-CV-1 shall not be used in the following actions and proceedings . . . (3) Probate appeals." *Id*. at *3.

file reasons of appeal as required by Practice Book 10-76.[86] Fourth, the plaintiff had service on the probate court filed by hand delivery, thus violating General Statutes Section 45a-186(d), which requires service by mail.[87] The court conceded that its attributing legal significance to this distinction "would appear to place form over substance," yet held it could not "overlook the plaintiff's failure to conform" to a clear statutory requirement.[88]

Those filing probate appeals should be aware of this opinion and be wary of the extent to which it requires the strictest compliance with the details of appellate procedure.

4. Tolling of Statute of Limitations

In *Tunick v. Tunick*,[89] the Appellate Court considered whether the continuous course of conduct doctrine applied to toll the statute of limitations in a case involving claims made by a trust beneficiary against former trustees and the bookkeeper for the trust.

The former trustees and bookkeeper argued that the claims against them should be dismissed because they were barred under the relevant statute of limitations for torts, as provided in General Statutes Section 52-577.[90] The plaintiff countered by making several arguments, including that the statute of limitations was tolled pursuant to the "continu-

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[86] *Id.* at *4. Connecticut Practice Book § 10-76 provides that, "Unless otherwise ordered, *in all appeals from probate the appellant shall file reasons of appeal, which upon motion shall be made reasonably specific, within ten days after the return day*; and pleadings shall thereafter follow in analogy to civil actions." *Id.* at *3 (emphasis added). *Cf. Beckett v. Every*, No. HHDCV186095422S, 2020 WL 922175, at *4 (Conn. Super. Ct. Jan. 29, 2020) (suggesting that since the complaint in a probate appeal makes clear the basis for appeal, failure to file a separate reasons of appeal "is merely a technical superfluity.").

[87] *Cuseo*, 2020 WL 927643 at *4. General Statutes § 45a-186(d) provides that, "Not later than fifteen days after a person files an appeal under this section, the person who filed the appeal shall file or cause to be filed with the clerk of the Superior Court a document containing (1) the name, address and signature of the person making service, and (2) a statement of the date and manner in which a copy of the complaint was served on each interested party *and mailed to the Probate Court that rendered the order, denial or decree appealed from." Id.* at *3 (emphasis added).

[88] *Id.* at *4.

[89] 201 Conn. App. 512 (2020).

[90] *Id.* at 519.

ous course of conduct doctrine."[91] The trial court rejected the plaintiff's arguments and granted the motions for summary judgment filed by the former trustees and the bookkeeper.[92]

In reaching its result, the Appellate Court reviewed the three-prong test for application of the continuous course of conduct doctrine. The doctrine applies when (1) the defendant committed an initial wrong upon the plaintiff; (2) the defendant owed a continuing duty to the plaintiff; and (3) the defendant continually breached that duty.[93]

When applying this test to the bookkeeper who assisted the former trustees, the Appellate Court held that the test had not been met because the bookkeeper did not owe a duty directly to the plaintiff.[94]

With respect to the former trustees, the Court reasoned differently. The Court found that the trustees did owe duties toward the beneficiaries and those duties did not end at the moment the trustees were removed from office.[95] Rather, the trustees had a continuing fiduciary duty to the plaintiff "for some period of time beyond the date of removal."[96] While the Court did not precisely define the duration of this obligation, it reviewed numerous authorities which suggest that the duties of a trustee continue at least until the affairs of the trustee have been fully wound-up and their final account filed.[97] Notwithstanding this continuing duty, the Court found that there was no continuing *breach* of duty after the trustees were removed by the probate court, and thus the third prong of the test had not been met.[98] The Court reasoned that the initial injury alleged by the plaintiff, a failure of the trustees to properly account for certain assets, was an act of malfeasance now barred by the applicable statute of limitations rather than "a continuous series of events that

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91 *Id.*
92 *Id.* at 520.
93 *Id.* at 535 (citing *Martinelli v. Fusi*, 290 Conn. 347, 357 (2009)).
94 *Id.*
95 *Id.* at 541.
96 *Id.* at 541.
97 *Id.* at 538-41.
98 *Id.* at 549.

give rise to a cumulative injury."[99] As a result, the Appellate Court upheld the trial court's ruling that the continuous course of conduct doctrine did not apply.[100]

5. Timeliness of Appeal

In *Cuseo v. Lerner*,[101] the superior court held that the filing of a motion for reconsideration does not extend the 30-day statutory deadline for filing of a probate appeal.

At issue was a dispute over the defendants' legal fees charged to an estate.[102] After the plaintiff had unsuccessfully objected to those fees in probate court, he filed a motion for reconsideration.[103] The probate court denied the motion for reconsideration, holding that the case did not fall within the limited circumstances in which a probate court matter may be reconsidered.[104] The plaintiff then appealed to the superior court.[105] The defendant moved to dismiss the appeal as untimely because it was filed more than 30 days after the probate court's initial ruling approving the legal fees.[106]

The court granted the motion to dismiss in part.[107] The court held that the defendant's filing of a motion for reconsideration did not extend the 30-day statutory deadline for appealing the probate court's decision in the underlying dispute.[108] Since the plaintiff's appeal was filed more than 30 days after the mailing of that decision, the court lacked ju-

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[99] *Id.* at 548.

[100] *Id.* at 549.

[101] No. FSTCV195021329S, 2020 WL 1656176 (Conn. Super. Ct. Feb. 21, 2020).

[102] *Id.* at *1.

[103] *Id.*

[104] *Id.* Pursuant to General Statutes § 45a-128, a probate court may reconsider and modify or revoke an order or decree in four limited circumstances: "(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." CONN. GEN. STAT. § 45a-128.

[105] *Cuseo*, 2020 WL 1656176 at *1.

[106] *Id.* General Statutes § 45a-186(b) provides that appeals in most types of probate matters, including the fee dispute at issue, "shall be filed on or before the thirtieth day after the date on which the Probate Court sent the order, denial or decree." In certain enumerated matters the deadline is 45 days rather than 30. *Id.*

[107] *Id.* at *3-4.

[108] *Id.* at *4.

risdiction to hear that appeal.[109]

Even though the court lacked jurisdiction to hear an appeal of the underlying fee dispute, the plaintiff had timely appealed the probate court's denial of his motion for reconsideration. Accordingly, the court did have jurisdiction to review the propriety of that denial.[110]

6. Unauthorized Practice of Law

In *Cook v. Purtill*,[111] the Appellate Court held that a trustee who is not an attorney cannot represent the trust in litigation.

The case centered on the proper interpretation of General Statutes Section 51-88, which provides that a non-attorney seeking to appear in court can do so solely when "representing one's own cause," and not when acting "in a representative capacity."[112] The Court held that a trustee seeking to pursue litigation would be doing so in a representative capacity and thus the plaintiff was precluded from doing so because he was not a licensed attorney.[113]

7. Legal Fees

In *Lamberton v. Lamberton*,[114] the Appellate Court held that an executor who is nominated in a will but not yet appointed by a probate court has standing to seek reimbursement of legal fees incurred in defending a will contest.

The case concerned a protracted will contest.[115] The defendant, the nominated executor under the decedent's will, successfully petitioned the probate court pursuant to Gener-

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[109] *Id.*

[110] *Id. See also Rider v. Rider*, No. CV186090440S, 2020 WL 854675 (Conn. Super. Ct. Jan. 29, 2020) (affirming a probate court's denial of a motion to reconsider filed pursuant to General Statutes § 45a-128).

[111] 195 Conn. App. 828 (2020).

[112] *Id.* at 831 (quoting *Gorelick v. Montanaro*, 119 Conn. App. 785, 793 (2010)). General Statutes § 51-88(d) provides in relevant part that "[t]he provisions of this section [prohibiting the unauthorized practice of law] shall not be construed as prohibiting… any person from practicing law or pleading at the bar of any court of this state in his or her own cause." CONN. GEN. STAT. § 51-88.

[113] *Cook*, 195 Conn. App. at 831.

[114] 197 Conn App. 240 (2020).

[115] *Id.* at 242-43.

al Statutes Section 45a-294 for reimbursement of legal fees incurred and an allowance against future expenses.[116] The plaintiffs, who objected to admission of the will, appealed the probate court's ruling to the superior court, arguing that reimbursement under General Statutes Section 45a-294 is available only to duly-appointed executors.[117] The superior court affirmed and a further appeal ensued.[118]

On review, the Appellate Court affirmed. Since the term "executor" is not defined in General Statutes Section 45a-294, the Court needed to rely on other principles of statutory construction.[119] In this effort, the Court found most compelling the fact that the language of Section 45a-294 provides that an executor may seek reimbursement for fees spent defending a will "whether or not the will is admitted to probate."[120] The Court reasoned that if only a duly-appointed executor counted as an "executor" for purposes of Section 45a-294, then it would be impossible for a nominated executor to claim reimbursement if the will were not admitted to probate.[121] Because the plaintiff's interpretation of the statute would thus "render the critical portion of the statute – 'whether or not the will is admitted to probate' – meaningless," the Court affirmed the ruling in favor of the defendant.[122]

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116 *Id.* at 243.
117 *Id.*
118 *Id.*
119 *Id.* at 246.
120 *Id.* at 248.
121 *Id.*
122 *Id.*