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OPINION OF THE CONNECTICUT PROBATE COURT

IN THE MATTER OF JANET M. BROWNELL

PROBATE COURT, TOBACCO VALLEY DISTRICT

MARCH 27, 2018

EDITOR'S SUMMARY & HEADNOTES

Decedent died intestate, holding sole title to real property in Bloomfield, Connecticut. Petitioner executed a timely irrevocable disclaimer of his entire distributive share of Decedent's Estate. The State, acting through the Department of Administrative Services, claimed a lien against Petitioner's share of the Estate for reimbursement for incarceration and public assistance costs. The Court found that while Petitioner's Disclaimer was validly executed, the State did provide adequate notice of the lien against the Estate. As a result, Petitioner's Disclaimer was invalid, and the State can be reimbursed for Petitioner's incarceration and public assistance costs through Petitioner's inheritance from the Decedent's Estate.

1. Disclaimers: Delivery

Pursuant to Conn. Gen. Stat. § 45a-579(d)(1)(A), a disclaimer must be delivered to the fiduciary not later than the date which is nine months after the later of several stated events including the decedent's date of death.

2. Disclaimers: Generally

Pursuant to Conn. Gen. Stat. Ch. 802(g), a disclaimer must be validly executed, timely delivered, express clear intent and description, and properly recorded.

3. Disclaimers: Disclaiming Heir

Pursuant to Conn. Gen. Stat. § 45a-579(a), an heir can disclaim whole or part of any interest passing by intestacy by delivering a written disclaimer.

4. Disclaimers: Procedure

Pursuant to Conn. Gen. Stat. § 45a-579(c), the disclaimer shall (1) describe the interest disclaimed, (2) be executed by the disclaimant in a manner provided for the execution of deeds of real property, and (3) declare the disclaimer and the extent thereof.

5. Disclaimers: Requirements

Pursuant to Conn. Gen. Stat. § 45a-579(d)(4), a disclaimer must be recorded on the land records where the real property is located within the nine-month period. If the disclaimer and receipt of delivery by the holder of the real property title is filed with the probate court within the nine-month period, such action is conclusive evidence of a timely disclaimer.

6. Claims Against Estate: Liens

Pursuant to Conn. Gen. Stat. § 17b-94(b), the probate court shall accept an assignment of inheritance by the beneficiary to the state or a lien notice by the state if such assignment or lien notice is filed by the Commission of Administrative Services with the court, prior to the distribution of such inheritance. To the extent of such inheritance not already distributed, the court shall order distribution in accordance with such assignment or lien notice.

7. Claims Against Estate: Liens

Pursuant to Conn. Gen. Stat. § 18-85b(b), the probate court shall accept a lien notice against an estate inheritance filed by the Commissioner of Correction.

8. Disclaimers: Relate Back

Pursuant to Conn. Gen. Stat. § 45a-579(e)(5), a disclaimer shall relate back, for all purposes, to the date of death of the deceased owner or of the donee of the power of appointment.

9. Medicaid: Generally

Pursuant to Conn. Gen. Stat. § 17b-2, Medicaid assistance is administered by the State.

2019]

IN THE MATTER OF JANET M. BROWNELL

127

10. Medicaid: Resource Limitations

Pursuant to Conn. Gen. Stat. § 17b-85, a recipient of Title XIX Medicaid assistance shall not sell, assign, transfer, encumber, or otherwise dispose of any property without the consent of the commissioner.

11. Statutory Interpretation: Generally

There is a presumption that the Legislature, in enacting a law, does so with regard to existing relevant statutes so as to make one consistent body of law. If two statutes appear to be repugnant, they are to be construed, if reasonably possible, so that both are operative.

12. Claims Against Estate: Liens

Conn. Gen. Stat. § 45a-579(e)(5) is inoperative as to state liens claiming reimbursement pursuant to sections 17b-94(b) and 18-85b(b). Conn. Gen. Stat. §§ 17b-94(b) and 17b-85 were not intended by the Legislature to be an exclusive list of programs subject to a priority state lien for the reimbursement of expenses.

13. Disclaimers: Irrevocability

Pursuant to Conn. Gen. Stat. § 45a-578(c), a disclaimer which complies with the requirements of said sections detailing execution, description, timeliness, delivery, and receipt, is irrevocable.

14. Disclaimers: Validity

When a statute precludes a disclaimer from being effective, the disclaimer is deemed “invalid.”

Opinion**Background**

Janet M. Brownell (“Decedent”) died intestate on August 2, 2017. She was domiciled in Bloomfield, Connecticut, where she held sole fee title to real property known as 122 Wintonbury Avenue, Bloomfield. Decedent’s heirs at law, her two children, Patricia A. Pichette (“Administratrix”), who was appointed Administratrix of the Estate on October 16, 2017, and William J. Leonard, Jr. (“Leonard”).

[1] Leonard executed an irrevocable disclaimer (“Disclaimer”) of his entire distributive share of Decedent’s Estate (“Estate”) on January 31, 2018. He filed same with the Probate Court on February 2, 2018, and recorded a duplicate original on the Bloomfield Land Records on February 5, 2018. All the foregoing dates are within nine months of the date of death, August 2, 2017, as required by Connecticut General Statutes section 45a-579(d)(1)(A).

At the Court hearing on February 22, 2018, all witnesses were sworn in under oath, and the Disclaimer was admitted as Exhibit B. The Court also admitted Exhibits A and C: state incarceration expenses and public assistance records for Leonard, respectively. The State claimed liens for reimbursement in the amounts of \$118,281.00 (incarceration) and \$11,528.29 (public assistance). The State, acting through the Department of Administrative Services (“DAS”), forwarded a letter to the Court, dated October 26, 2017, claiming a lien against Leonard’s distributive share of the Estate. DAS also sent two letters with an attached Proof of Claim, one to Administratrix and the other to the Court. Both letters were dated February 8, 2018, and claimed liens against the distributive share of Estate assets to Leonard for both indebtedness, herein referenced. Neither letter specified the calculation details of the State’s claim. The letters did include the amounts due, the general statutory authority for making state claims for reimbursement, and the party against whom the lien was being asserted. Robin Dawkins-Khan, an employee of DAS, testified that the State’s protocol is to send out general notice of its claimed lien, stating the amounts, general statutory authority, and the party against whom the lien is asserted. She testified that due to confidentiality, more specific information must be requested by the subject party, the fiduciary, or the court.

In his testimony, Leonard neither denied his incarceration for the periods identified by the State, nor offered testimony refuting the alleged public assistance afforded to his former wife for the welfare of his then minor children. On behalf of DAS, Ms. Dawkins-Khan testified that the reimbursement for public assistance was not associated with any child support arrangements. Instead, it was for public assistance unrelated to any prior court orders against Leonard for child or spousal support.

Issues and Findings

- A. Issue One: Was the Disclaimer properly executed, timely delivered and recorded, and sufficiently clear as to the interest being disclaimed?

[2][3][4][5] The Court finds that Leonard’s Disclaimer was validly executed, timely delivered, expressed clear intent and description, and was recorded on the Bloomfield Land Records in accordance with Connecticut General Statutes Chapter 802(g). Connecticut General Statutes section 45a-579(a) allows an heir to disclaim in whole or in part any interest passing by intestacy by delivering a written disclaimer. Conn. Gen. Stat. § 45-579(a) (2018). Connecticut General Statutes section 45a-579(c) requires that “[t]he disclaimer shall (1) describe the interest disclaimed, (2) be executed by the disclaimant in a manner provided for the execution of deeds of real property . . . , and (3) declare the disclaimer and the extent thereof.” Conn. Gen. Stat. § 45a-579(c). Connecticut General Statutes section 45a-579(d)(1), in part, requires that a disclaimer be delivered to the fiduciary not later than the date which is nine months after the later of several stated events, which in this instance, was Decedent’s

2019]

IN THE MATTER OF JANET M. BROWNELL

129

date of death. *See* Conn. Gen. Stat. § 45a-579(d)(1)(A). The statute further requires that if an interest in real property is disclaimed, a copy of such disclaimer must be recorded on the land records where the real property is located within the nine-month period. *See* Conn. Gen. Stat. § 45a-579(d)(4). While not required, Connecticut General Statutes section 45a-579(d)(4) provides that if the disclaimer and receipt of delivery by the holder of the real property title is filed with the probate court within the nine-month period, such action “shall constitute conclusive evidence of timely disclaimer.” *Id.*

Based upon the testimony of Leonard and Administratrix, court records, and the Disclaimer, the Court finds that the Disclaimer was properly executed, witnessed and acknowledged, and that it was delivered to the Administratrix and filed on the Bloomfield Land Records within the mandated nine-month period. The Disclaimer sufficiently stated the extent of the disclaimer, which was Leonard’s entire distributive share as an heir of the Estate.

The Disclaimer, with receipt of delivery to Administratrix, was also filed with the Court on February 2, 2018, within nine months of Decedent’s death, thereby constituting conclusive evidence of a “timely disclaimer.” *See id.*

B. Issue Two: Did the State’s notice of lien for claimed reimbursement of expenses against the distributive share of William J. Leonard, Jr. provide proper notice under Connecticut General Statutes sections 17b-94(b) and 18-85b(b)?

At the hearing and in his brief, the attorney for the Estate (“Counsel”) questioned the adequacy of the form of notice used by DAS to inform the Court, the parties, and the Estate of any claimed lien for expense reimbursement. No statute or law was offered to prove the DAS notice was inadequate. Ms. Dawkins-Khan testified that the letters sent to the Court, subject parties, and Estate were adequate and complied with the statute. She also explained DAS protocols for providing more detailed information, records, and reimbursement calculations. Exhibits A and C provided at the hearing contained greater detail for both alleged state claims.

[6] Connecticut General Statutes section 17b-94(b) (state assistance programs) describes the requirement of a “lien notice” as follows:

[t]he Court of Probate shall accept any such assignment executed by the beneficiary or parent or any such lien notice if such assignment or lien notice is filed by the Commissioner of Administrative Services with the court prior to the distribution of such inheritance, and to the extent of such inheritance not already distributed, the court shall order distribution in accordance with such assignment or lien

notice.

Conn. Gen. Stat. § 17b-94(b) (2018).

[7] Connecticut General Statutes section 18-85b(b) (incarceration expenses) has a similar provision, subject to a twenty-year time limitation, which requires that the probate court accept such “lien notice” filed by the commissioner or the commissioner’s designee. *See* Conn. Gen. Stat. § 18-85b(b) (2018).

The Court finds that in both instances, the State satisfied its statutory obligation of providing notice of its alleged lien for reimbursement against the distributive share of Leonard from the Estate. Nothing prevented the Estate and subject party from requesting more detailed information and calculations from the State.

- C. Issue Three: Does the Disclaimer relate back to Decedent’s date of death, eliminating any inheritance and barring the State from claiming a lien against the distributive share of the disclaimant heir for reimbursement of expenses as they relate to Connecticut General Statutes sections 17b-94(b) (various state assistance programs) and 18-856(b) (costs of incarceration)?

[8] Connecticut General Statutes section 45a-579(e)(5) states “[a] disclaimer shall relate back for all purposes to the date of death of the deceased owner or of the donee of the power of appointment.” Conn. Gen. Stat. § 45a-579(e)(5). Counsel claims that Leonard’s Disclaimer relates back to Decedent’s death on August 2, 2017. The effect is to treat Leonard as if he never acquired any interest in the real property contained in Decedent’s Estate. Accordingly, the State could not have acquired a lien interest against Leonard’s distributive share of the Estate. Counsel cites *Aceto v. Chaconis*, 40 Conn. L. Rptr. 675 (Conn. Super. Ct. 2006) in support of this legal premise.

Counsel further contends that pursuant to Connecticut General Statutes section 17b-85, beneficiaries of the enumerated public assistance programs are prohibited from selling, assigning, transferring, encumbering, or otherwise disposing of any property subject to the state reimbursement without the consent of the Commissioner of the Department of Social Services. *See* Conn. Gen. Stat. § 17b-85 (2018). However, since Connecticut General Statutes section 17b-85 expressly omits any mention of incarceration, Counsel argues that a former inmate may sell, assign, transfer, encumber, or otherwise dispose of any property without the consent of the Commissioner of Social Services. *See id.* Therefore, Counsel argues that even if the Disclaimer is ineffective to bar state reimbursements for general assistance programs set forth in Connecticut General Statutes sections 17b-85 and 17b-94(b), the Disclaimer remains valid and effective to prevent a lien to reimburse the State for incarceration costs.

2019]

IN THE MATTER OF JANET M. BROWNELL

131

Although the case of *Aceto* is instructive in describing the legal requirements of a disclaimer, it does not address the issue of state claims as a bar to a disclaimer. *See Aceto*, 40 Conn. L. Rptr. at 676. Instead *Aceto* involves claims between private parties. *Id.* at 675.

[9][10] Both issues, however, were addressed by our Supreme Court in *State v. Murtha*, 179 Conn. 463 (1980). In *Murtha*, the defendant received Title XIX assistance under the federal Social Security Act. *Murtha*, 179 Conn. at 463. In Connecticut, Medicaid assistance is administered by the State. *See* Conn. Gen. Stat. § 17b-2 (2018). Connecticut General Statutes section 17b-85 states that a recipient of Title XIX assistance shall not “sell, assign, transfer, encumber or otherwise dispose of any property without the consent of the commissioner.” Conn. Gen. Stat. § 17b-85. In *Murtha*, the defendant maintained that then section 45-302 (currently embodied in section 45a-579(e)(5)), which allowed a disclaimer to relate back to decedent’s date of death, should be given effect to bar the State’s right to reimbursement. *Murtha*, 179 Conn. at 466. The defendant further argued that the Legislature made no exceptions to the “relate back” provision of section 45-302 for Title XIX assistance, and that the “relate back” general assistance exceptions specifically enumerated were inapplicable to recoupment of Medicaid assistance. *Id.*

[11] The Connecticut Supreme Court in *Murtha* arrived at a different conclusion. The court stated “[t]here is a presumption that the [L]egislature, in enacting a law, does so with regard to existing relevant statutes so as to make one consistent body of law.” *Id.* The court further stated “[i]f two statutes appear to be repugnant, they are to be construed, if reasonably possible, so that both are operative.” *Id.* at 467. Based upon these two well-established principles of statutory construction, the court held that Connecticut General Statutes section 45-302, allowing a disclaimer to relate back to decedent’s date of death, “must be considered as operative only when there is no bar to the disclaimer.” *Id.* at 497.

In a subsequent case, *Dep’t of Income Maint. v. Watts*, 211 Conn. 323 (1989), the law set forth in *Murtha* was reaffirmed by our Supreme Court. The court stated,

[w]e held in *Murtha*, as we do in the present case, that the language of the disclaimer statute ‘must be considered as operative only when there is no bar to the disclaimer such as exists in § 17-82j.’ Such a construction gives effect to both statutes because it first determines, pursuant to § 17-82j, whether a valid disclaimer exists, and second, pursuant to § 45-300(e), it specifies the consequences of such a disclaimer, if it is valid. ‘The propriety of this construction of the two statutes is underscored by the enactment of § 45-303 which lists a number of actions by a beneficiary [that] would serve to bar a right to disclaim. There is no intimation in § 45-303 that the actions described [therein] form an exclusive list of

circumstances barring a disclaimer.’ Accordingly, we conclude that § 17-82j provides a bar to disclaimers that is separate and distinct from those found in § 45-303.

Watts, 211 Conn. at 329 (internal citations omitted).

[12] In accordance with the holdings in *Murtha* and *Watts*, this Court makes the following findings: (1) Connecticut General Statutes section 45a-579(e)(5) (incorporating language of former section 45-302) is inoperative as to state liens claiming reimbursement pursuant to both sections 17b-94(b) and 18-85b(b); and (2) Connecticut General Statutes sections 17b-94(b) and 17b-85 were not intended by the Legislature to be an exclusive list of programs subject to a priority state lien for the reimbursement of expenses. As such, Leonard’s Disclaimer is invalid and ineffective, and does not bar the State from asserting a lien for reimbursement pursuant to Connecticut General Statutes sections 17b-94(b) and 18-85b(b).

- D. Issue 4: Can a Disclaimant rescind an otherwise properly executed, delivered, and recorded disclaimer? If not, does the Disclaimant lose his or her right to an inheritance in excess of the State’s statutory claims against the distributive share of the Disclaimant’s inheritance?

[13] Connecticut General Statutes section 45a-578(c) states, “[a] disclaimer which complies with the requirements of said sections is irrevocable.” Conn. Gen. Stat. § 45a-578(c) (2018). As noted above, Leonard’s Disclaimer was found by this Court to comply with the statutory provisions of execution, description, timeliness, delivery, and receipt. Leonard stated in his Disclaimer that it was “irrevocable.”

[14] The holdings in *Murtha* and *Watts* suggest that when a statute precludes a disclaimer from being effective, the disclaimer is deemed “invalid.” In *Murtha*, the court stated, “[n]onetheless, in light of our previous conclusion that [the defendant’s] disclaimer is invalid,” the State was able to reassess eligibility for assistance under Title XIX and State guidelines. *Murtha*, 179 Conn. at 470. The court in *Watts* also held that the court must first determine “whether a valid disclaimer exists” before looking at the “consequences of such a disclaimer.” *Watts*, 211 Conn. at 329.

Conclusion

It is ORDERED AND DECREED that:

Accordingly, the Court makes the finding that because of the statutory bar to Leonard’s Disclaimer, as provided in Connecticut General Statutes sections 17b-94(b) and 18-85b(b), the Disclaimer executed by Leonard was invalid and, therefore, does not prevent Leonard from inheriting Estate assets in excess of the State’s allowed reimbursement.

2019]

IN THE MATTER OF JANET M. BROWNELL

133

Reimbursements pursued by the State pursuant to Connecticut General Statutes sections 17b-94 and 18-85b(b), against Leonard's distributive share of the Estate shall be bound by the common language contained in both Connecticut General Statutes sections 17b-94 and 18-85b(b) circumscribing the lien amount to actual costs/expenses—or fifty percent of the assets of the Estate payable to such person—whichever is less. The distributive share of any Estate assets to Leonard, in excess of what the State is entitled to recoup, may be distributed to Leonard.

Dated at Windsor Locks, Connecticut, this 27th day of March, 2018.

/s/

David A. Baram, Judge