DOCKET NO. CV14- 6047417 S	:	SUPERIOR COURT
KATHLEEN FREESE, ADMINISTR.	:	JUDICIAL DISTRICT OF FAIRFIELD
V.	:	AT BRIDGEPORT
DEPARTMENT OF SOCIAL SERVICES	:	JUNE 1, 2015

MEMORANDUM OF DECISION

The plaintiff, Kathleen Freese, claims that the defendant, Department of Social Services ("Department") erred in finding her deceased mother, Noreen McCusker, ineligible for Medicaid. She files this appeal as Noreen's next of Friend and putative administratrix. There is no dispute that the plaintiff began her appeal on October 29, 2014 as next friend and putative administratrix of Assistance Unit. (Noreen McCusker) and that plaintiff was appointed administratrix of her estate on December 11, 2014, more than one month after the commencement of her appeal.

Plaintiff claims that substituting her as plaintiff, decedent adminstratrix will cure any defect in her standing because the law allows such substitution in an action brought in the wrong plaintiff's name and bases her argument on *Kortner v. Mantise*, 312 Conn. 1 (2014). Her argument does not pass muster. In *Kortner*, while a civil action was pending, the ward died and the plaintiff was appointed and substituted in that capacity as conservator.

On cross appeal to the Appellate Court, the defendant claimed that the plaintiff lacked standing to bring the suit because her conservatorship did not authorize her to sue on her ward's behalf. Responding, the plaintiff argued that the version of Gen. Stat. § 45a-655 under which she was appointed authorized conservators to sue on their wards' behalf and that, therefore, she had standing to maintain her action. Transferring the appeal to itself, the Supreme Court held that, even assuming that the plaintiff lacked standing to bring the action, any defect was cured when she was substituted as administratrix of the ward's estate. Noting that the objectives of standing are ordinarily met when a complainant makes a colorable claim of direct injury that he has suffered or is likely to suffer and that Gen. Stat. § 52-109 permits substitution when the trial court finds that an action was mistakenly commenced in the wrong plaintiff s name, the Court reasoned that, because the ward, whose right the action sought to vindicate, had a colorable claim of injury and thus had standing to bring the action so that she could have been substituted for the plaintiff during her life, the substitution of the plaintiff, as administratrix of the ward's estate, cured any jurisdictional defect caused by the plaintiffs standing. *Id.,* at 10, 12, 14. Cautioning that this conclusion does not mean that any person appointed an administrator becomes a proper party to any claim, however, the Court held that §51-09-requires that the substitution of an administrator of an estate be necessary to determine the real matter in dispute. *Id.,* at 14.

Kortner thus dealt with a case in which an allegedly wrong plaintiff sought, in a fiduciary capacity, to vindicate the right of her disabled ward who was alive when the plaintiff commenced

the action but died while the case was pending. It teaches that substitution is permissible in such a case only if the decedent had a colorable claim of injury during his life that is a real matter in dispute in the case such that the decedent had standing to bring the action himself and to be substituted under § 52-109 for the original plaintiff.

The decedent whose right she seeks to vindicate lacks standing to invoke the Court's subject matter jurisdiction because having predeceased the action, the decedent and real plaintiff in interest has neither a vindicable right nor a colorable claim of injury that the action implicates.

To have standing to sue, a plaintiff must exist legally, meaning that the plaintiff must be a person in law or a legal entity with legal capacity to sue. *Isaac v. Mount Sinai Hospital,* 3 Conn. App. 598, 600 (1985) *cent. denied,* 196 Conn. 807. A suit initiated by a plaintiff without legal existence is a nullity and does not vest the court with subject matter jurisdiction over the controversy. Nor can that jurisdictional defect be cured by amendment. *Isaac*, supra, 600, 602.

The decedent's estate cannot maintain such suit. Being neither a natural nor an artificial person but merely a name for the decedent's assets and liabilities, the decedent's estate is not a legal entity. *Isaac*, supra, 3 Conn. App. 600: Thus lacking a legal existence, the decedent's estate can neither sue nor be sued. *Isaac*, supra, 600.

Nor can the decedent's heirs maintain the suit as heirs. "[O]ne party has no standing to raise another's rights." *Sadloski v. Manchester*, 235 Conn. 637, 643 (1995); *Megin v. New Milford*, 125 Conn. App. 35, 37 (2010). Being a nullity and incapable of vesting the court with

subject matter jurisdiction over any controversy, a suit initiated by a decedent or his heir, or by another on their behalf, cannot be an action within the meaning of § 52-109, that section contemplating a legally cognizable right of action. Further, substitution under § 52-109 cannot retroactively validate such a suit. *Isaac,* supra, 601- 602 *1. To assert such a right of action, the executor or administrator must bring his own action as executor or administrator. He cannot bootstrap litigation of the right to an invalid action.

Substitution in the circumstances here is particularly inappropriate because it would mean that a party may avoid compliance with § 52-599(a) by invoking § 52-109. Nothing in *Kortner* warrants such a construction. Under *Kortner,* an executor or administrator may be substituted for a decedent as the plaintiff in an action only if the decedent's colorable claim of injury forms a real matter in dispute in the action such that the decedent was a proper party to bring the action and could have been substituted for the original plaintiff. Lacking any such claim in this appeal, the decedent here was not a proper party to bring the appeal.

"The Plaintiffs claim to the contrary notwithstanding, the remedial nature of § 52-109 does not justify construing the section to allow substitution of the decedent's administratrix as plaintiff in this case. First, as the decedent lacked standing to bring the appeal, substitution would not cure the jurisdictional defect resulting from the Plaintiffs noncompliance with § 52-599(a) in bringing it. Second, though the Plaintiff rightly notes that remedial statutes like § 52 109 were intended to soften the harsh consequences of the common law, the rule that a person's rights of action pass

to his executor or administrator at his death and that only his executor or administrator has standing to sue on those rights derives from § 52-599.

Because the legislature is presumed to intend to create a harmonious body of law, Courts must read statutes relating to the same subject matter together, giving each effect in its proper sphere of operation. *Brown & Brown, Inc. v. Blumenthal,* 297 Conn. 710, 734 (2010). Statutes relating to the same subject matter must be read together, specific terms covering the given subject matter prevailing over general language of the same, or another statute, which might otherwise prove controlling. *Coregis Ins. Co. v. Fleet Nat. Bank,* 68 Conn. App. 716, 720 (2002).

§ 52-109 permits substitution only when a trial Court determines that an action was commenced in the name of the wrong plaintiff through mistake, meaning through an honest conviction, entertained in good faith and not resulting from the plaintiffs own negligence, that he is the proper person to bring the action. *Kortner,* supra, at 12.

The Plaintiffs contention that substitution will not prejudice the Defendant is unavailing. Under Gen. Stat. §4-183©, persons aggrieved by decisions of administrative agencies like the Defendant have forty-five days to appeal to the Superior Court. As the Supreme Court has observed, Statutes fixing such brief appeal periods secure in the public interest a speedy determination of the issues in a contested case and permit such agencies to proceed expeditiously in the matter as soon as the appeal period expires if no affected party appeals. *Carbone v. Zoning Bd. of Appeals of the City of Hartford,* 126 Conn. 602, 607 (1940).

To hold that an appeal brought by an unauthorized plaintiff is an "action" under § 52-109 would undermine that system by extending the effective period for appealing the decisions of administrative agencies from the forty-five days specified in § 4-189(c) to an indefinite period.

The Plaintiff's claim that substitution is proper because she represented the decedent, in her capacity as attorney-in-fact, at the administrative phase of this case is without merit. The court is bound by §52-599. The Court dismisses the Plaintiffs' complaint for lack of subject matter jurisdiction.

OWENS, J.T.R.