

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BARNWELL)

SECOND JUDICIAL CIRCUIT

Case No.: 2016-CP-06-00045

Henry David Still, V,)

PLAINTIFF,)

v.)

ORDER

Barbara Wrenn Vaughn, Personal)
Representative of the Estate of Barbara B.)
Still, and Personal Representative of the)
Estate of Henry David Still, IV,)

DEFENDANTS.)

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SC Court of Appeals

This matter came before the Court on November 6, 2017, in Barnwell County, upon Defendants' Motion for Reconsideration of an Order, dated July 25, 2017, denying Defendants' Motion for Summary Judgment. Richard B. Ness, Esquire and R. Aaron Ness, Esquire appeared on behalf of the Defendants. F. Truett Nettles, II, Esquire appeared on behalf of Plaintiff. For the reasons stated herein, the Court grants summary judgment to Defendants as to the issue of subject matter jurisdiction of a will contest and finds subject matter jurisdiction was not properly before this Court. The Court denies summary judgment and the request for reconsideration, on the action to set aside a deed, as all parties stipulated on the record that the matter was properly before this Court.

FACTS

Barbara B. Still died testate on September 17, 2015. Her 2013 will was informally admitted to probate on January 6, 2016, in the Barnwell County Probate Court. On February 3, 2016, Plaintiff filed this lawsuit, in circuit court, seeking to contest Barbara Still's 2013 will and overturn numerous deeds executed by Barbara Still in 2015. On June 5, 2017, Defendants filed a

motion for Summary Judgment, and a hearing was held on July 25, 2017, in which this Court issued an Order denying Defendants' motion for Summary Judgment. During that hearing, Defendants properly raised the issue of subject matter jurisdiction, arguing this Court did not have jurisdiction to adjudicate a will contest or an action to set aside deeds. The Court ruled from the bench that subject matter jurisdiction was proper, and a Form 4 Order was filed on July 25, 2017. Defendants filed a Motion for Reconsideration on or before August 4, 2017, which is now before the Court.

DISCUSSION

Subject matter jurisdiction may be raised at any time, even for the first time on appeal, by a party or by the court. *Ex parte Cannon*, 385 S.C. 643, 654, 685 S.E.2d 814, 820 (Ct. App. 2009). The South Carolina Constitution provides that the Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts and shall have such appellate jurisdiction as provided by law." S.C. Const. Art. V, § 11.

"The extent of the probate court's jurisdiction is defined by our legislature." *Judy v. Judy*, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011). The South Carolina Probate Code, provides:

"To the full extent permitted by the Constitution, and except as otherwise specifically provided, *the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills*, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction *to determine heirs and successors* as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court" (emphasis added).

S.C. Code § 62-1-302(a)(1). The jurisdiction of the probate court extends to subject matter related to estates of decedents. *In the Matter of Howard*, 315 S.C. 356, 364, 434 S.E.2d 254 (1993). As a matter of judicial economy, the probate court should have the power to make decisions necessary to the administration of an estate. *Neely v. Thomasson*, 365 S.C. 345, 351, 618 S.E.2d 884 (2005).

The Court finds Plaintiff is in error by relying upon the last sentence of S.C. Code § 62-1-302(a)(1), “. . . except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court”, to argue that his case falls within the jurisdiction of the circuit court. The circuit court, under this exception, only has jurisdiction to resolve real estate matters if heirs and successors in fact need to be determined. This is not an action to determine heirs and successors. Barbara Still has no unknown heirs, and the dispute in this case is neither one to determine heirs and successors nor to quiet title. *See: Petition for Formal Testacy and Appointment in related litigation at 2017-CP-06-00262, formerly 2016-ES-06-00004; See: Summons and Complaint (2016-CP-06-00045).*

Plaintiff's complaint is utterly void of any language requesting that heirs and successors be determined, or that title be quieted, causing this case to properly fall within the exception under S.C. Code § 62-1-302(a)(1). *See: Summons and Complaint (2016-CP-06-00045).* This is an action to contest a will, and an action to have deeds set aside. Plaintiff is not the sole heir of Barbara Still's estate as he lists himself and his sister, Cynthia Still Boots, as “intestate heirs” on a probate petition, as well as listing devisees. *See: Petition for Formal Testacy and Appointment in related litigation at 2017-CP-06-00262, formerly 2016-ES-06-00004.* Therefore, no heirs, intestate or otherwise, need to be determined.

The Court also finds Plaintiff is in error by arguing that a creditor's claim statute has applicability to this case. *See*: S.C. Code § 62-3-804(3). This statute provides,

“In lieu of the procedure provided in subsections (1) and (2), and subject to subsection (6), a claimant may commence a legal proceeding against the personal representative, by the filing of a summons and petition for allowance of claim or complaint in any court where the personal representative may be subjected to jurisdiction, *seeking payment of his claim by the estate*, and serving the same upon the personal representative. The commencement of the legal proceeding under this subsection must occur within the time limit for presenting the claim as set forth in Section 62-3-803. If the legal proceeding is not commenced in the probate court, the claimant must file a written statement of the claim with the probate court in which the decedent's estate is under administration providing substantially the same information as the statement in subsection (1), along with a statement that a legal proceeding to enforce the claim has commenced, and identifying the court where the proceeding is pending. Thereafter, the probate court shall not permit the closing of the decedent's estate until the legal proceeding has ended” (emphasis added).

S.C. Code § 62-3-804(3). In relying upon this statute, Plaintiff is contending this case was properly filed against the personal representative in circuit court. The fallacy in this argument is that Plaintiff has not plead or indicated that he is seeking payment of a claim by the estate, he has not filed any notices of creditor's claims, and he is not a creditor seeking money. *See: Summons and Complaint (2016-CP-06-00045)*. Plaintiff does not seek an “amount” nor does he seek a “payment” (see S.C. Code § 62-3-804(1)(a) and (3)). He seeks for deeds to be set aside and for a determination of whether a “will” is fraudulent, destroyed, hidden, created by undue influence or lack of capacity, and for the Court to invalidate the will. None of the issues regarding the will are properly in the circuit court.

Furthermore, Plaintiff is not bringing creditor's “claims.” “Claims” under the probate code, is specifically defined:

“Claims in respect to estates of decedents and protected persons, includes *liabilities of the decedent* or protected person whether arising in contract, in tort, or otherwise, *and liabilities of the estate which arise at or after the death of the decedent* or after the appointment of a conservator, including funeral expenses

and expenses of administration. *The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate*" (emphasis added).

S.C. Code § 62-1-201(4). The first sentence restricts the definition of "claims" to liabilities of the estate or decedent, such as funeral expenses or administration expenses. Plaintiff has never plead or given notice that either estate is monetarily indebted to him. The last sentence of this definition is also imperative as the term "claims" does not include demands or disputes regarding title of a decedent, as argued by Plaintiff in its memorandums. The filing of a case against an estate(s) does not equate to Plaintiff bringing "claims" as defined within the probate code.

This is not a case seeking payment of money. This is an action to contest a will and to have deeds set aside. Plaintiff's arguments under the creditors' claims statute are incorrect, and Plaintiff is in error by applying them to this case. Plaintiff's will contest should have originally been filed in the probate court, and this Court does not have original exclusive jurisdiction to hear a will contest.

CONCLUSION

The Court has considered the arguments of all attorneys, the submitted memoranda of law, the case law and statutes of South Carolina. The Court hereby reconsiders its prior Order and grants summary judgment to Defendants as to the issue of subject matter jurisdiction of a will contest and finds Plaintiff's will contest was not properly before this Court. Summary Judgment is denied on the action to set aside deeds. **AND IT IS SO ORDERED!**

The Honorable Doyet A. Early, III
Circuit Court Judge, Second Circuit

_____, South Carolina

_____, 2017



Barnwell Common Pleas

Case Caption: Henry David Still V VS Henry David Still IV Estate , defendant, et al
Case Number: 2016CP0600045
Type: Order/Summary Judgment

So Ordered

s/D.A. Early III 2136