

87085

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge  
Case Number: 2016-CP-06-00045

**RECEIVED**  
JUN 22 2018  
SC Court of Appeals

---

Appellate Case Number: 2018-000500

---

Henry David Still, V, Appellant,

v.

Barbara Wrenn Vaughn, personal representative of the Estate of Barbara B. Still, and  
personal representative of the Estate of Henry David Still, IV, Respondent.

---

MOTION TO STRIKE MATTER FROM RECORD ON APPEAL

---

Richard B. Ness  
Alison Dennis Hood  
R. Aaron Ness  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
Phone: (803) 245-5178  
Fax: (803) 245-5384  
Attorneys for Respondent

YOU WILL PLEASE TAKE NOTICE, RESPONDENT, Barbara Wrenn Vaughn, personal representative of the Estate of Barbara B. Still, and personal representative of the Estate of Henry David Still, IV, by and through her undersigned attorneys, will move the Court for an Order striking portions of the Record on Appeal, as designated by Appellant, pursuant to Rule 210 (c), SCACR, as the designated matter is irrelevant to the appeal.

Particularly, Respondent requests the following matter be stricken from the Record on Appeal:

1. Affidavit of Gloria Fickling
2. Affidavit of Eugene B. Fickling
3. Pages 19—33 of the July 25, 2017 Transcript of Hearing

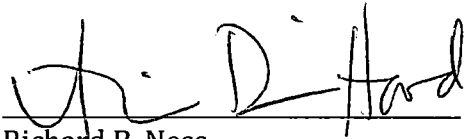
This motion is based upon the laws of the State of South Carolina and Rule 12(b)(1), SCRCP. The Order from which Appellant appeals is premised entirely on the lack of subject matter jurisdiction. There were no questions of fact before the lower court. Therefore, the factual disputes raised within the above-referenced affidavits were not considered by the lower court, as they are immaterial to the question of subject matter jurisdiction. Further, the above-referenced transcript pages concern argument on the factual issues raised at the summary judgment hearing and do not contain any argument or discussion concerning the questions of subject matter jurisdiction.

“If a party files a Rule 56 motion for summary judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the motion as if it were a Rule 12(b)(1) motion to dismiss.” *See Posey v. Proper Mold & Engineering, Inc.*, 378

S.C. 210, 661 S.E.2d 395 (Ct. App. 2008). Here, the trial court correctly considered the motion as if it were a Rule 12(b)(1), SCRPC motion. While the motion for summary judgment did raise factual issues, those were not considered by the trial court in its order dismissing the will contest for want of subject matter jurisdiction.

The above-referenced affidavits and transcript pages should be excluded from the Record on Appeal.

Respectfully Submitted,



Richard B. Ness  
Alison Dennis Hood  
R. Aaron Ness  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
Phone: (803) 245-5178  
Fax: (803) 245-5384  
Attorneys for Respondent

Bamberg, S.C.  
June 29 2018

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge  
Case Number: 2016-CP-06-00045

---

Appellate Case Number: 2018-000500

---

Henry David Still, V, Appellant,

v.

Barbara Wrenn Vaughn, personal representative of the Estate of Barbara B. Still, and  
personal representative of the Estate of Henry David Still, IV, Respondent

---

CERTIFICATE OF SERVICE

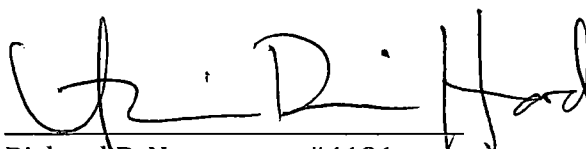
---

I certify that I served a copy of Respondent's Initial Brief, Respondent's Designation of Matter to be Included within the Record on Appeal, and Respondent's Motion to Strike Matter From the Record on Appeal on Appellant, by mailing same to the following address, postage prepaid, U.S. Mail:

F. Truett Nettles  
Attorney at Law  
4000 Faber Place Dr., Suite 450  
N. Charleston, SC 29405

Bamberg, SC

June 22, 2018



Richard B. Ness: SCBAR #4191  
Alison Dennis Hood: SCBAR #77128  
R. Aaron Ness: SCBAR #102331  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
Phone: (803) 245-5178  
Fax: (803) 245-5384

RECEIVED  
JUN 22 2018  
SC Court of Appeals