

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Doyet A. Early, III, Barnwell County Circuit Court Judge
Case No. 2016-CP-06-00045

Appellate Case No. 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,

Respondents.

APPELLANT'S REPLY BRIEF

F. Truett Nettles, II (S.C. Bar #4195)
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, South Carolina 29405
(843) 577-5460
Attorney for Appellant

RECEIVED

JUL 03 2018

SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities.....ii

Arguments

1. THE BARNWELL COUNTY COURT OF COMMON PLEAS HAS JURISDICTION TO DETERMINE WHICH PERSONS WILL INHERIT PROPERTY FROM THE LATE BARBARA B. STILL.....1

2. THE CIRCUIT COURT IMPROPERLY DISMISSED WITH PREJUDICE THE APPELLANT’S CHALLENGE TO THE WILL.....2

Conclusion.....3

TABLE OF AUTHORITIES

Statutes

S.C. Code Ann. § 62-1-302	1
S.C. Code Ann. § 62-3-804	1

Rules

Rule 82, SCRPC	3
----------------------	---

ARGUMENTS

I. THE BARNWELL COUNTY COURT OF COMMON PLEAS HAS JURISDICTION TO DETERMINE WHICH PERSONS WILL INHERIT PROPERTY FROM THE LATE BARBARA B. STILL.

In her Initial Brief, the Respondent cites S.C. Code Ann. § 62-1-302(a)(1), S.C. Probate Code for the argument that only a probate court can adjudicate the contest of wills. However, the Respondent completely disregards the language at the end of that statute statutory section that begins with the word “except.” The legislature has explicitly and clearly stated that the circuit court 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.” S.C. Code Ann. § 62-1-302(a)(1) (emphasis added). In order to determine which persons will inherit real property from the late Barbara B. Still, it is necessary to resolve this real estate matter. This exception includes partition and quiet title. However, that is not exclusive. The Court of Common Pleas has jurisdiction to resolve all of the real estate questions in this lawsuit.

The Respondent has argued that the Appellant’s Summons and Complaint which was filed in the Barnwell County Court of Common Pleas is not a “claim” and the Appellant cannot avail himself of the alternative procedure set forth in S.C. Code § 62-3-804(3) (2014). However, the real property involved in this dispute is not about “specific assets alleged to be included in the estate.” The properties in which the Appellant seeks to determine ownership are not presently included in the Estate of Barbara B. Still. The alternative procedure says that a person making a claim or a challenge can file a “complaint in any court where the personal representative may be subject to jurisdiction...” S.C. Code Ann. § 62-3-804(3) (2014). The Appellant asserts that certain

real property must be included in the Estate of Barbara B. Still which is the subject of the Appellant's pending challenge to certain deeds. The Appellant asserted all of these claims in the action filed in the Barnwell County Court of Common Pleas.

The Respondent also argues that the Appellant's cause of action regarding the validity of the Will of the decedent Barbara B. Still was not a partition or quiet title action. Many "quiet title" actions require the Court to determine intestate heirs in a series of intestate decedents. However, the ultimate result of any quiet title action is to determine who the owners of the property are in fact, at law or in equity. The Appellant's entire case will have the judicial effect of a quiet title action. Beginning on Page 6 of the Respondent's Brief, the Respondent argues that the current pending challenge to allegedly fraudulent deeds of the decedent doesn't really matter. The Appellant strongly disagrees. The Appellant cannot obtain the relief sought in his Complaint unless a Court determines two things: Whether the deeds with "right of survivorship" were valid or not and whether the Will filed in the Probate Estate was fraudulently procured. The Appellant cannot obtain the relief he seeks by a Court ruling on just one of those questions. All of the Appellant's claims were timely filed in the Barnwell County Court of Common Pleas.

II. THE CIRCUIT COURT IMPROPERLY DISMISSED WITH PREJUDICE THE APPELLANT'S CHALLENGE TO THE WILL.

The written Motion for Summary Judgment filed by the Respondent in the Court below did not include a challenge to jurisdiction of the circuit court. When that issue was raised by legal counsel for the Respondent at the first hearing, the original attorney for the Appellant, Mr. James Edward Bradley, suggested that if jurisdiction was an issue, the Court could simply remand that case to the Probate Court. (Brief of Appellant at p. 4,

May 31, 2018). At that point in this litigation, the lower court retained jurisdiction of all of the claims asserted by the Appellant. The Respondents then made a Motion to Reconsider. The Appellant objected to that Motion. In the second Hearing on the Motion for Summary Judgment, the lower court reversed itself and dismissed the Appellant's claims regarding validity of the Will being probated in Barnwell County. The Appellant then filed his own Motion to Reconsider challenging the ruling and the remedy employed by the lower court. The Appellant's suggestion of a remand rather than dismissal has been raised consistently in this matter. By dismissing the Appellant's cause of action regarding the Will entered more than a year after the death of the decedent, Barbara B. Still, the order of the lower court effectively dismisses the Appellant's claims with prejudice.

The Respondent did not raise the issue of jurisdiction in the Court of Common Pleas until a year after the Probate Estate of Barbara B. Still was opened in Barnwell County, South Carolina. While a trial court may address the issue of jurisdiction at any time, Rule 82 of the South Carolina Rules of Civil Procedure is provided specifically to avoid such an unjust result as this. The lower court could simply have dismissed the claim in the Court of Common Pleas and transferred that claim to the Barnwell County Probate Court. Such a ruling would have, in fact, been a dismissal "without prejudice." The Appellant timely took exception to the dismissal of his claims by the lower court.

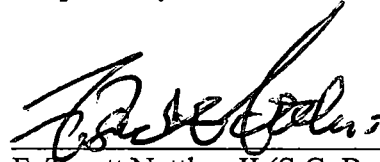
CONCLUSION

The Appellant's original attorney made a legal decision to file all of the Appellant's claims in the Barnwell County Court of Common Pleas. Even if that legal decision was incorrect, the fair and equitable thing to do in this case, to provide the

Appellant with an adequate opportunity to adjudicate his claims, would be to reverse the lower court on it's ruling about jurisdiction or, in the alternative, order that the challenge to the Will be transferred to the Barnwell County Court of Commons Pleas.

Respectfully submitted,

July 02, 2018



F. Truett Nettles, II (S.C. Bar #4195)
4000 Faber Place Drive, Suite 450
North Charleston, South Carolina 29405
(843) 577-5460
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Doyet A. Early, III, Barnwell County Circuit Court Judge
Case No. 2016-CP-06-00045

Appellate Case No. 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,

Respondents.

PROOF OF SERVICE

I hereby certify that on this, the 2nd day of July, 2018, a copy of the *Appellant's Reply Brief and Appellant's Response to Motion to Strike Matter from Record* was served upon the Respondents by mailing a copy of the same with sufficient first class postage affixed thereto and addressed as follows:

R. Aaron Ness, Esq.
Ness & Jett, LLC
P. O. Box 909
Bamberg, SC 29003



Brittany Walker
Litigation Paralegal
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, South Carolina 29405

RECEIVED
JUL 03 2018
SC Court of Appeals



F. TRUETT NETTLES, II, ESQUIRE
TNETTLES@FINKELLLAW.COM

REPLY TO:
CHARLESTON LITIGATION

July 2, 2018

Sent Via UPS Overnight

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Henry David Still, V vs. Barbara Wrenn Vaughn, Personal Representation of the Estate of Barbara B. Still, and Personal Representation of the Estate of Henry David Still, IV*
Appellate Case No. 2018-000500

Dear Ms. Kitchings:

Enclosed for filing, please find the following documents:

- (1) *Appellant's Reply Brief*;;
- (2) *Appellant's Response to Motion to Strike Matter from Record*; and
- (3) the accompanying *Proof of Service*.

I have included the original one additional copy of each and a prepaid, self-addressed envelope so that filed copies may be returned to our office. By copy of this correspondence, including enclosures, all interested Parties are being served with same.

If you have any questions or concerns, please contact me at your convenience.

With personal and professional regards, I am

Sincerely,

F. Truett Nettles, II

FTN/bsw

cc: Aaron Ness, Attorney for Respondents

RECEIVED
JUL 03 2018
SC Court of Appeals

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax: (803) 252-0786

CHARLESTON
Litigation, Real Estate & REO
4000 Faber Place Drive, Suite 450
Post Office Box 41489 (29423)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 577-5135

CHARLESTON
Foreclosure
4000 Faber Place Drive, Suite 450
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.

2. Fold the printed label at the solid line below. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

3. GETTING YOUR SHIPMENT TO UPS
Customers with a Daily Pickup
Your driver will pickup your shipment(s) as usual.

Customers without a Daily Pickup

Take your package to any location of The UPS Store®, UPS Access Point™(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.
Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
Hand the package to any UPS driver in your area.

UPS Access Point™
THE UPS STORE
1643 SAVANNAH HWY
CHARLESTON, SC 29407

UPS Access Point™
RANIA MART
6915 STALL RD
CHARLESTON, SC 29406

UPS Access Point™
THE UPS STORE
3642 SAVANNAH HWY
JOHNS ISLAND, SC 29455

FOLD HERE

MALENA DINWOODIE CHARLESTON-FINKEL LAW FIRM 4000 FABER PLACE DR NORTH CHARLESTON SC 29405		0.0 LBS LTR	1 OF 1
SHIP TO: HONORABLE JENNY ABBOTT KITCHINGS SOUTH CAROLINA COURT OF APPEALS 1220 SENATE STREET COLUMBIA SC 29201-3769			
	SC 292 9-01 		
	UPS NEXT DAY AIR		
TRACKING #: 1Z Y82 F84 01 9899 7096		1	
			
BILLING: P/P			
Case Number: 83650.52440			
<small>CS 20.0.42. WNTIE100 99.0A 04/2018</small>			

RECEIVED
JUL 03 2018
SC Court of Appeals