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.

FINAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. MAY THE COURT OF COMMON PLEAS ADJUDICATE A CASE INVOLVING BOTH THE TITLE TO CERTAIN REAL PROPERTY AND SUBSEQUENT DEVISE THEREOF?

2. IF THE COURT OF COMMON PLEAS DOES NOT HAVE JURISDICTION TO ADJUDICATE THE CHALLENGE TO A DECEDENT'S LAST WILL AND TESTAMENT, SHOULD THAT CASE BE DISMISSED WITH PREJUDICE OR TRANSFERRED TO THE PROBATE COURT?

STATEMENT OF THE CASE

Barbara B. Still, the Appellant's mother, died on September 17, 2015. The Probate Estate of Barbara B. Still was opened in January 2016 with the Barnwell County Probate Court, Case No. 2016-ES-06-00004. The surviving spouse and the Appellant's father, Henry David Still, IV, was appointed Personal Representative of the Estate. Later that year, while this case was pending, the Personal Representative died. Barbara Wrenn Vaughn, niece of the Appellant, and granddaughter of Barbara B. Still and Henry David Still, IV, was appointment Personal Representative of both estates.

One month after the Probate Estate of Barbara B. Still was opened, the Appellant filed a civil action in the Barnwell County Court of Common Pleas against the Estate of Barbara B. Still and against Henry David Still, IV, personal representative of that estate and father of the Appellant. (R. pp. 22-25) In that lawsuit, the Appellant set forth two (2) causes of action. The first alleged fraudulent or forged deeds of property owned by the decedent Barbara B. Still and the second challenged the validity and propriety of the purported Will of Barbara B. Still which had been filed with the Probate Court. The Appellant and the Respondents conducted initial written discovery, but there were no depositions of parties or witnesses. Mediation between the parties was conducted on June 6, 2017. The parties were unable to reach an agreement during mediation as to the Appellant's two primary claims.

The Respondents filed a Motion for Summary Judgment in this case on June 5, 2017. (R. pp. 30-31) That motion was based on nine (9) grounds, eight (8) of which alleged that the Appellant could not "adduce facts" to substantiate certain allegations in the Complaint and the Appellant had not yet produced a copy of an alternative Will. In opposition to the Motion for Summary Judgment, the Appellant filed three (3) Affidavits: Affidavit of the Appellant, Affidavit of Eugene B. Fickling, Jr and Affidavit of Gloria J. Fickling. Those affidavits attested to the fact that the deceased Barbara B. Still had executed a Will leaving her separate Bodiford family property to the Appellant. The Affidavits also asserted that the signature of the deceased on the Deeds in question were not authentic. On the day prior to a hearing on their Motion for Summary Judgment, the Respondents submitted to the Court a memorandum of law supporting their Motion for Summary Judgment. At that time, neither party had mentioned or raised the issue of jurisdiction of the Court of Common Pleas.

During the hearing on the Respondent's Motion for Summary Judgement held July 25, 2017 in the Beaufort County Court of Common Pleas, the Respondents first orally raised the issue of jurisdiction of the Court of Common Pleas regarding the challenge to a Last Will and Testament. After some discussion between legal counsel for the parties and the Judge, the Court ruled that it did have jurisdiction over all matters in this case and there were genuine issues of material fact to be determined. The Court denied the Respondent's Motion for Summary Judgment by Order dated July 25, 2017. (R. pp. 1-2)

The Respondents filed a Motion for Reconsideration on the denial of their Motion for Summary Judgment on August 4, 2014. (R. pp. 47-48) In that motion for reconsideration, the Respondents set forth their challenge to the jurisdiction of the Court of Common Pleas in this case. Prior to a hearing on that motion for reconsideration, the Appellant filed an Objection to

Reconsideration on November 2, 2017. A hearing on the Motion for Reconsideration was held on November 6, 2017. The Respondents filed a Reply Memorandum regarding reconsideration the next day, November 7, 2017. That reply memorandum further discussed the issue of jurisdiction. By Order of the Court dated December 6, 2017, the presiding Judge changed his mind on the jurisdiction. The Court ruled that the Appellant's second cause of action seeking a formal proceeding for the probate of the Will be dismissed. The Appellant's first cause of action challenging certain deeds of property owned by the deceased Barbara B. Still remains pending in the Barnwell County Court of Common Pleas.

On December 12, 2017, the Appellant moved for reconsideration of the Court's second Order. The Appellant argued that this case involved a question of title to real property and a ruling on the validity of a Will was necessary to resolve that matter. The Appellant also argued that dismissal of his cause of action contesting a Will should not have been dismissed and should, rather, have been transferred to the Barnwell County Probate Court pursuant to Rule 82(b) of the South Carolina Rules of Civil Procedure. The Appellant's request for reconsideration was denied by Order dated February 22, 2018. (R. pp. 12-13).

The Appellant filed his Notice of Appeal dated March 20, 2018 and a copy was served upon legal counsel for the Respondents on that same day.

STANDARD OF REVIEW

In this Appeal, the Appellant has challenged the trial courts construction and application of the South Carolina Probate Code and the Courts failure to comply with Rule 82 of the South Carolina Rules of Civil Procedure. These rulings by the lower court are based upon law, without the necessity of any findings of fact. The interpretation of a statute or the interpretation and application of a Rule of Civil Procedure are a question of law for the Court. See In Re Campbell,

379 S.C. 593, 666 S.E2d 908 (2008); citing Vaughan v. McLeod Regional Med. Ctr., 372 S.C. 505, 509, 642 S.E.2d 744, 746 (2007) and Dreher v Dreher, 370 S.C. 75, 79, 634 S.E.2d 646, 648 (2006). An appellate court may decide questions of law with no particular deference to the trial court. Verenes v. Alvanos, 387 S.C. 11, 690 S.E.2d 771 (2010). The Court of Appeals may decide this Appeal based on its own interpretation, construction and application of statutes and procedural rules.

ARGUMENTS

I. THERE ARE MANY EXCEPTIONS TO THE JURISDICTION OF A PROBATE COURT AND THE COURT OF COMMON PLEAS, IN THIS CASE, HAD JURISDICTION TO ADJUDICATE ALL OF THE DISPUTES BETWEEN THE APPELLANT AND THE RESPONDENTS.

As stated above, the Motion for Summary Judgment by the Respondents filed June 5, 2017 (R. pp. 30-31) stated nine (9) grounds. Eight (8) of the grounds were assertions that the Appellant could not "adduce facts" to support some of the allegations in the Appellant's Complaint. The Respondents also pointed out that the Appellant had yet to produce an alternative Will of the late Barbara B. Still. The Respondents first raised the issue of jurisdiction of the Court of Common Pleas orally in the initial hearing on their Motion for Summary Judgment dated July 25, 2017. (R. p. 75, line 23 – p. 76, line 21) During a lengthy discussion between the bench and legal counsel for the parties, the Appellant's attorney Mr. Bradley suggested that if there was some concern about jurisdiction, "why don't we just remand this case to the Probate Court..." (R. p. 77, lines 10-13) The Respondents objected to a remand to Probate Court and demanded that the Will contest be dismissed. (R. p. 77, lines 14-16) The Court responded, we believe correctly, that if the matter were to be remanded to the Probate Court it would ultimately be referred from the Probate Court back to the Court of Common Pleas. (R. p. 77, lines 19-22) At the time, the Appellants had filed a Summons and Complaint in the Probate

Court addressing the issue of the validity of the Will. (R. pp. 39-41). The Court stated at the close of the hearing that it had complete jurisdiction and that there were genuine issues of matter fact that needed to be litigated. Since the Probate Court had sent to the Common Pleas the action filed by the Appellant in Probate Court the Court said they would consolidate everything in the Court of Common Pleas. (R. p. 82, lines 12-17)

On August 4, 2017, the Respondents filed a Motion for Reconsideration of the denial of summary judgment. (R. pp. 47-48). In that second bite of the apple, the Respondents focused exclusively on the question of jurisdiction. The Appellant objected again. A hearing on that motion to reconsider was conducted on November 6, 2017. In this second round of hearings, the trial court reversed itself. The trial court stated that it did not have jurisdiction under the Probate Code, S.C. Code Ann. § 62-1-302(a)(1), which provides "...except that the Circuit Court also had 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." The Court further stated, we believe erroneously, that the "Circuit Court 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." (R. pp. 5-11). Of course, who the heirs and successors will be in this case depends on which Will is found to be the last true Will and Testament. The trial court went further to conclude that S.C. Code Ann. § 62-3-804(3) does not provide the Court of Common Pleas with jurisdiction to hear the matter. The trial court made a distinction between "claims" and an action to contest the validity of a Will, because the Appellant was not seeking "payment of money." (R. pp. 5-11).

Subject matter jurisdiction of the Probate Court in South Carolina is found in the Probate Code, S.C. Code Ann. § 62-1-302(a). The first sentence of this statute states that the Probate

Court has exclusive jurisdiction over all subject matter related to estates of decedents, "including the contest of wills..." However, the very first sentence of the statute provides clearly that the jurisdiction of the Probate Court is exclusive "except as otherwise specifically provided..." S.C. Code Ann. § 62-1-302(a). Further, subsection (a)(1) of this very same statute states "except that the circuit court also has jurisdiction to determine heirs and successors as *necessary to resolve real estate matter, including partition, quiet title and other actions pending in the circuit court.*" The lower court must not ignore the last words "other actions pending in the circuit court." CFRE v. Greenville Cnty., 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). In this case, the Respondents filed an earlier Will of the decedent in the probate case. The Appellant has alleged that there is a later Will which devises certain real property to himself. In addressing this issue, the Court will "determine heirs and successors as necessary to resolve real estate matters..." S.C. Code Ann. § 62-1-302(a)(1).

The jurisdiction of the Court of Common Pleas also includes "other actions pending in the Circuit Court." The Appellant's challenge to certain deeds allegedly executed by the deceased Barbara B. Still one month before her death are pending in the Circuit Court. In this case, both the challenge to the Will and the allegations of fraudulent deeds must be resolved to determine which of Barbara B. Still's descendants will inherit the real property. Requiring lower courts to conduct two separate trials, with the same witnesses and most of the same factual issues, would be an unnecessary waste of judicial resources. Ultimately, the Court of Common Pleas has to answer questions as to who owns a piece of real estate. That is exactly the questions presented in a "quiet title" action. The Appellant believes that the civil action he filed in the Barnwell County Court of Common Pleas is to determine heirs and successors and to quiet title and these related matters should be adjudicated in one court that has jurisdiction to resolve all

facts and issues.

Jurisdiction in the Court of Common Pleas can also be found in a subsequent section of the Probate Code:

> In lieu, of the procedure provided in sections (1) and (2), and subject to sub-section (6) a claimant may commence a legal proceeding against the personal representative by filing a summons and petition for allowance of claim or complaint in any court where the personal representative may be subject to jurisdiction, seeking payment of his claim by the estate and serving the same upon the personal representative.
> S.C. Code § 62-3-804(3) (2014)

In this case, the Plaintiff initially designated the Defendant to be the Estate of Barbara B. Still and her late husband, Henry David Still, IV, as Personal Representative and individual Defendant who was properly served. It is undisputed that the late Mr. Still, individually and as personal representative of his wife's estate, was a resident of Barnwell County, South Carolina. This statutory sub-section provides a court with jurisdiction "in lieu of" the normal procedure for claims in a probate matter. As stated above, the very first sentence in S.C. Code Ann. § 62-1-302(a) has the phrase, "except as otherwise specifically provided." This S.C. Code Ann. § 62-3-804(a)(3) provision is such a specific provision in the Probate Code. As stated above, the trial court ruled that the Appellant was not a "claimant" because he was not seeking monetary relief.

Prior to the first hearing on the Respondent's Motion for Summary Judgment, the Appellant filed a Petition and Complaint in the Probate Court to challenge the Will of Barbara B. Still. (R. pp. 39-40). The Appellant is informed that the Probate Court promptly sent the matter to the Court of Common Pleas.

The record in this case establishes that the Appellant filed this action in the Court of Common Pleas within the 30 day period provided in the Probate Code, S.C. Code Ann. § 62-3-804(b)(5). In the end, the Appellant should be afforded some opportunity to have his claims for a

fraudulent Will and fraudulent deeds adjudicated in some forum. The Probate Code provides that all of those matters may be determined in the Court of Common Pleas.

II. THE TRIAL COURT IMPOSED THE DRASTIC REMEDY OF DISMISSAL WITH PREJUDICE OF THE APPELLANT'S WILL CHALLENGE RATHER THAN FOLLOWING THE CLEAR AND UNAMBIGUOUS LANGUAGE OF RULE 82 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE AND TRANSFER THE CASE TO THE BARNWELL COUNTY PROBATE COURT.

If a Plaintiff files a lawsuit in the wrong county or in the wrong court, Rule 82 of the South Carolina Rules of Civil Procedure directs the Court to transfer that case to the proper County or proper Court:

> When an action is brought in the wrong county or in the wrong court, the court shall not dismiss the action but shall transfer it to any proper county or court in which it could have been brought.
> S.C. R. Civ. P. 82(b)

The Appellant filed his lawsuit in the Barnwell County Court of Common Pleas within one (1) month of the date the Estate of Barbara B. Still was opened in the Probate Court. The Court below issued an Order dismissing the Appellant's challenge to the Will on December 6, 2017. By dismissing the claim of the Appellant rather than transferring it to the Probate Court, the Court below has essentially dismissed the Appellant's Will challenge with prejudice. S.C. Code. Ann. § 62-3-108(a)(2)(c) and § 62-3-803(a) requires parties to file Will contest or other claims within one (1) year after the decedents death. When the Court below finally ruled on the issue of jurisdiction, the Appellant did not have a forum where he could institute a new judicial proceeding.

At the third and final hearing in the lower court below, the Respondents argued and the trial court was apparently persuaded that the Appellant's Will challenge should be dismissed. (R. pp.12- 13). Rule 82(b) of the South Carolina Rules of Civil Procedure uses the word "or" two times in that same rule. S.C. R. Civ. P. 82(b). If the Appellant brought his action in the wrong

court, the trial court should transfer the claim to a "court in which it could have been brought." Use of the word "or" is a disjunctive particle that sets out an alternative. It generally means one or the other of two alternatives. Brewer v Brewer, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963); cited in K & A Acquisitions v. Pointe, 383 S.C. 563, 682 S.E.2d 252 (2009); See also Michau v. Georgetown Cnty., 396 S.C. 589, 595, 723 S.E.2d 805, 808 (2012). If the Appellant's original attorney filed the Will challenge in the wrong court, the Court below should have transferred that claim to the Barnwell County Probate Court (located in the same building) "in which it could have been brought."

Rule 82(b) of the South Carolina Rules of Civil Procedure is in the nature of a remedial statute. "A statute remedial in nature should be liberally construed in order to accomplish the object sought." Auto Owners Ins. v. Rollison, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008). According to the Notes appended to Rule 82 of the South Carolina Rules of Civil Procedure, Rule 82(b) is similar of that adopted by many states: "Rule 82(b) is similar to that adopted by many states to avoid having an action dismissed only to be commenced again in the proper jurisdiction." The prejudice to the Appellant in this case is much greater because the trial court did not dismiss the Will challenge until many months after the 'noclaim' statute had expired. When a statute is being interpreted by a court, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given affect" CFRE, *supra* at p. 74. The Respondents and the lower court construed Rule 82(b) to totally disregard the alternatives – actions brought in the wrong county or in the wrong court and transfer of such a case to any proper county or court in which it could have been brought. The word "or" should not be disregarded or rendered surplusage or superfluous. *Id.* at 881

When the word "shall" is used in a statute, a rule or a contract, it is generally considered

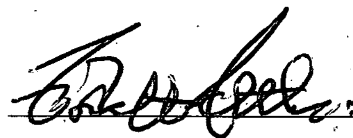
to be an imperative or mandatory provision. Rule 82(b) states very clearly "the Court shall not dismiss the action…" In this case, the Court below has done the exact opposite of what is required by Rule 82(b) of the South Carolina Rules of Civil Procedure. A tortured and arbitrary interpretation of a procedural rule should not deprive the Appellant of an opportunity to have his claims addressed on the merits.

CONCLUSION

The Appellant prays that this Court reverse the Court below and remand the Will contest cause of action to the Court of Common Pleas for a trial on the merits or, in the alternative, remand the Will challenge to the Barnwell County Probate Court.

Respectfully submitted,

August 15, 2018



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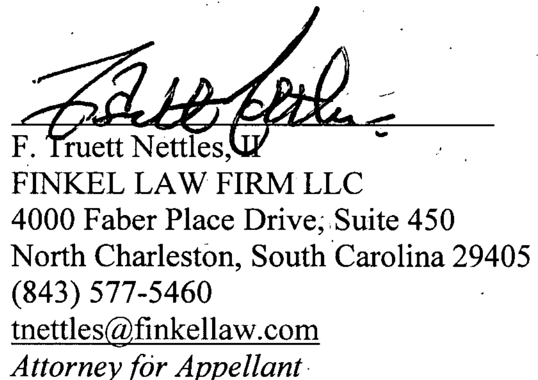
CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



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