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

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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

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RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURT ERR IN FINDING THE PROBATE COURT HAS EXCLUSIVE, ORIGINAL JURISDICTION TO HEAR A WILL CONTEST DURING THE PENDANCY OF AN ESTATE?

2. DID THE LOWER COURT ERR IN FAILING TO TRANSFER THE CASE TO PROBATE COURT OUTSIDE THE STATUTE OF LIMITATIONS WHEN APPELLANT FAILED TO MOVE FOR RELIEF UNDER RULE 82(b), SCRCP?

3. DID THE LOWER COURT ERR IN FAILING TO TOLL THE PROBATE COURT STATUTE OF LIMITATIONS WHEN APPELLANT TIMELY FILED HIS WILL CONTEST IN THE WRONG COURT AND IS OTHERWISE TIME-BARRED FROM RE-FILING THE WILL CONTEST IN THE PROPER JURISDICTION?

STATEMENT OF THE CASE

Barbara B. Still (decedent) died testate on September 17, 2015. Her Will is dated May 8, 2013. The Will leaves all decedent's real property to Henry D. Still, IV (husband). R. p. 101. Husband died testate on August 19, 2016. His Will leaves his real property to his daughter and granddaughter, Barbara Wrenn Vaughn (personal representative of the Estates of both decedent and husband), Respondent herein. Husband's will "intentionally" excludes his son, Appellant herein.

Appellant filed his original action in circuit court on February 3, 2016. This action was filed within one year from the date of decedent's death. R. p. 20—29. In the circuit court action, Appellant alleged two causes of action: 1) to cancel and set aside deeds signed by decedent; and 2) to contest decedent's 2013 will. Seventeen (17) months later, Appellant filed a separate action in Probate Court on July 11, 2017, with one cause of action, a will contest. R. p. 39—41. Thus, for a brief period of time, the cause of action to contest the will was pending in both probate court and circuit court.

The probate court will contest was eventually transferred to the circuit court, where it was summarily dismissed, as untimely, having been filed more than one year after the date of death of decedent. *See §62-3-108(A)(2)(c), S.C. Code of Laws.* R. p. 3. Only the circuit court action remained.

In circuit court, Respondent filed a motion for summary judgment as to the will contest. R. p. 30—31. At the hearing on that motion, Respondent amended his motion for summary judgment to include a challenge to the subject matter jurisdiction of the circuit court to hear a will contest. R. p. 94, line 20—p. 95, line

21). While the Court initially rejected this argument, the Court later dismissed the will contest on December 6, 2017. R. pp. 1, 3, 5—13. Simply put, the Court granted dismissal on the grounds that the circuit court lacks jurisdiction to hear a will contest, as the probate court has original, exclusive jurisdiction to hear such a claim.

From this Order, Appellant appeals.

STANDARD OF REVIEW

"The question of subject matter jurisdiction is a question of law for the court." *Capital City Ins. Co. v. BP Staff, Inc.,* 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). This Court is free to decide questions of law with no particular deference to the circuit court. *Catawba Indian Tribe of S. C. v. State of South Carolina,* 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

ARGUMENT

I. The Probate Court Has Exclusive Original Jurisdiction to Hear the Underlying Will Contest.

"A court's subject matter jurisdiction is determined by whether it has the authority to hear a case in question." *Dove v. Gold Kist, Inc.,* 314 S.C. 235, 442 S.E.2d 598 (1994), cited affirmatively in *Allison v. W. L. Gore & Associates,* 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). "The extent of our probate's court 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 confers exclusive original jurisdiction to the probate court over all subject matter related to estates of decedents." *Anderson v. Anderson,* 299 S.C. 110, 115 382 S.E.2d 897, 900 (1989); *§62-1-302, S.C. Code of Laws.*

Section 62-1-302(a)(1) states:

> "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...has an interest, and determination of heirs and successors of decedents..., 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."

Appellant filed his Complaint in the Court of Common Pleas on February 3, 2016. R. pp. 21—25. Therein, Appellant asserts two causes of action, one for the cancellation of certain deeds executed by decedent during life under the Declaratory Judgment Act, and a second to contest the 2013 will of decedent. Ibid. The parties concede the first cause of action is properly in the circuit court. (There has not yet been a ruling on the deed challenge. It remains to be tried.) Appellant asserts that the second cause of action is something other than a will contest, contrary to the plain reading of the pleadings. In Paragraph 21 of the Complaint, Appellant requests a Circuit Court judge issue an order "invalidating the will put forth by Henry David Still, IV." Ibid. Appellant argues that this is the relief traditionally sought in a creditor claim or quiet title action. A plain reading of the Complaint reveals that this is, without question, a will contest. Will contests fall squarely within the exclusive, original, jurisdiction of the Probate Court. *See §62-1-302(a)(1), S.C. Code of Laws.*

A: <u>The will contest is not a creditor claim.</u>

This is not a creditor claim. "Claims" under the Probate Code include liabilities of the decedent arising out of contract, tort or otherwise and liabilities of the estate, including funeral expenses and expenses related to administration.

"Claims" specifically excludes disputes regarding title of a decedent to specific assets alleged to be included in the estate. *See §62-1-201(4), S.C. Probate Code; see also Matter of Howard,* 315 S.C. 356, 364, 434 S.E.2d 254, 259 (1993). As decedent died owing absolutely nothing to Appellant, Appellant is hard-pressed to now construe his will contest as a creditor claim.[1] Appellant has no pending claim against decedent and no ownership claim as to any estate property, real or personal. Appellant is simply not a creditor of the Estate, and has not filed any creditor claim against the Estate.

B. The will contest is not a partition or quiet title action.

This is not an action for partition or quiet title. Appellant claims his will contest (which he also construes, incorrectly, as a creditor claim) should be included within the final clause in §62-1-302(a)(1), S.C. Code of Laws, granting concurrent jurisdiction in circuit court for determining heirs and successors as necessary to resolve partition actions, quiet title actions, and other similar actions that are properly brought in circuit court. Often, in actions to quiet title or partition real property, it becomes necessary to determine heirs or beneficiaries of individuals who have died, testate or otherwise, for whom an estate was not opened or properly administered.[2] Section 62-1-302(a)(1), S.C. Code of Laws, permits the circuit court

[1] It should be noted, Appellant has not filed a creditor claim in the probate estate. Appellant has not alleged in probate court or circuit court any amounts owed to him or debt to be paid by the Estate. If Appellant is a creditor, Appellant has totally disregarded the requirements of §62-3-804, S.C. Code of Laws.
[2] However, quiet title and partition actions do not necessarily require a determination of heirs or devisees. In that case, §15-61-50, S.C. Code of Laws vests jurisdiction in the circuit court. *See Byrd v. McDonald,* 417 S.C. 474, 480, 790 S.E.2d

to so determine heirs and beneficiaries in a quiet title or partition context without resort to the probate court.

The action to void deeds, brought against a then-living defendant who took title as a result of an *inter vivos* conveyance, respecting only non-probate real property, is entirely proper in circuit court. The will contest, however, does not fit within the claimed exception. *See Brown v. Butler,* 347 S.C. 259, 554 S.E.2d 431 (Ct. App. 2001).

In this case, the estate of decedent is open in Barnwell County Probate Court. The action to void deeds, taken alone, does not require a determination of heirs and successors. Either the deeds are valid or they are not. If they are determined to be void by the circuit court, ownership of the real property will not be in question. The determination of the heirs and successors of decedent, pursuant to §62-1-302(a)(1), S.C. Code of Laws, has taken place in an open Estate in Barnwell County Probate Court, where the recorded will of decedent is determinative, and the intestate heirs of decedent (while irrelevant to this action) are in fact well known to all parties. There is no pending partition or quiet title action in circuit court that requires such determination. The exception does not apply.

Appellant is attempting to stretch §62-1-302(a)(1), S.C. Code of Laws to cloak his will contest, improperly filed in circuit court, with subject matter jurisdiction. This is essential for Appellant, as the time to file a will contest in probate court has expired. In fact, Appellant has already filed an untimely will contest in the probate

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200, 203 (Ct. App. 2016) (holding a closed estate is evidence that the determination of heirs is within the jurisdiction of the circuit court, and not probate court, in a partition case with questions of intestate succession).

court, and that action was dismissed. R. p. 3. A favorable decision regarding the validity of the deeds in circuit court will not ultimately be beneficial for Appellant, who is specifically excluded under the will of husband. Appellant's failure to file his will contest in probate court within the appropriate statute of limitations is therefore a fatal misstep. Section 62-1-302(a)(1), S.C. Code of Laws, cannot be distorted to permit a will contest in circuit court. To do so would be to permit an exception that swallows the rule and ignores the authority granted to the probate court by the legislature. The Probate Code is clear. A will contest must be brought first in probate court.[3]

"The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." *Anderson v. Anderson,* 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). The circuit court did not err in finding the Probate Court has exclusive, original jurisdiction to hear a will contest during the pendency of an open estate. A literal reading of the Probate Code compels this conclusion. *See S.C. Dept. of Social Services v. Boulware,* 422 S.C. 1, 6, 809 S.E.2d 223, 226 (2018)(holding "courts are bound to give effect to the expressed intent of the legislature."); *Citizens for Lee County, Inc., v. Lee County,* 308 S.C. 23, 26, 416 S.E.2d 641, 644 (1992)("When such terms are clear and unambiguous, there is no room for

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[3] After having filed in Probate Court, Appellant may have removed the case to circuit court under §62-1-302(f), S.C. Code of Laws, to consolidate with the action challenging the *inter vivos* deeds.

construction and courts are required to apply them according to their literal meaning.")

II. The Circuit Court Properly Dismissed the Will Contest.

By Order dated December 6, 2017, the circuit court dismissed Appellant's will contest, while preserving the action to void certain deeds. R. pp. 5—13. Appellant asserts the claim should have been transferred to the Barnwell County Probate Court instead of dismissed, invoking Rule 82(b), SCRCP. Appellant is not entitled to this relief.

A: Appellant failed to move the Court for relief under Rule 82(b), SCRCP.

Appellant raised Rule 82(b), SCRCP for the first time in his brief on a motion for reconsideration of the Order finding the circuit court lacked subject matter jurisdiction to hear the will contest. Respondent asserts that Rule 82, SCRCP is a rule regarding venue, and only applies when an action has been filed within the wrong county. Appellant argues that the phrase, "the wrong court" means that Rule 82(b), SCRCP, operates to permit transfer from circuit court to probate court. Respondent finds no authority to assert this assertion. Assuming Appellant is correct in this respect, arguendo, Rule 82(b), SCRCP provides no relief to Appellant in this case.

First, Appellant never moved the lower court for relief under Rule 82(b), SCRCP. Appellant fails to cite any precedent, binding or foreign, where Rule 82(b), SCRCP or its precursor, S.C. Code 1942 Civ. Proc. §147, was applied in the absence of

a motion for transfer from the wrong court to the correct court. Lacking subject matter jurisdiction to consider the claim, the wrong court, here the circuit court, is vested with jurisdiction only to consider the motion for transfer. *See Geiser Manuf'g Co., v. Sanders,* 26 S.C. 70, 1 S.E.2d 159 (1887); *Lillard v. Searson,* 170 S.C. 304, 304, 170 S.E. 449, 450 (1933)(holding the "proper course of action...was for the [party] to have moved to have the case transferred"); and *Coogler v. California Ins. Co. of San Francisco, Cal., v. London Assur. of London, England,* 192 S.C. 54, 5 S.E.2d 459 (1939)("The general rule undoubtedly is that the moving party should be confined to the relief asked for in his motion..."). *See also, for example, Jerolaman v. Van Buren,* 512 So.2d 1138, (Fla. 1st Dist. Ct. App., 1987); *Forrest General Hospital v. Upton,* 240 So.3d 410 (S. Ct. Miss., 2018); and *CICS Employment Services, Inc., v. Newport Newspapers, Inc.,* 291 Or. App. 316 (Or. App., 2018).

As Appellant failed to move for relief under Rule 82(b), SCRCP, the circuit court, lacking subject matter jurisdiction, is not required or entitled to grant a transfer into the probate court.

B: Lacking in subject matter jurisdiction, dismissal without prejudice is the sole remedy available to the circuit court.

Under Rule 12(h)(3), SCRCP, "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." This rule does not require a Rule 82(b), SCRCP analysis prior to the compulsory dismissal. Appellant cites no authority to support his position. Rather, when a court finds it lacks subject matter jurisdiction, dismissal is the appropriate and required remedy. *See Rule 12(b)(1), and Rule 41(b), SCRCP; see*

also Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989)("As the lower court lacked jurisdiction over the subject matter of this portion of the action, this portion of the action should be dismissed without prejudice.").

The lower court did not err in failing to transfer the will contest cause of action to probate court.

III. Rule 82(b), SCRCP Cannot be Used to Overcome the Applicable Statute of Limitation under the Probate Code.

Appellant filed his second will contest in the Barnwell County Probate Court on July 11, 2017. R. pp. 32—38. The action was dismissed, after removal to the circuit court, under §62-3-108(A)(2)(c), S.C. Code of Laws. The dismissal was granted, as the action was filed outside the applicable statute of limitation. Appellant now claims the circuit court, here the "wrong court" under Rule 82(b), SCRCP, should have transferred the case to the probate court, rather than dismiss the action. Appellant overlooks the fact that the exact same cause of action had already been dismissed as untimely, and Appellant forgets that he too conceded that the will contest filed in probate court was untimely. R. p. 93, lines 17—20.

Appellant cites no authority to support his argument that Rule 82(b), SCRCP operates to toll the applicable statute of limitation. Rather, our courts seem to suggest that filing in the wrong jurisdiction does not automatically toll the statute of limitations in the appropriate forum. *See Mayer v. M. S. Bailey & Son,* 347 S.C. 353, 555 S.E.2d 406 (Ct. App. 2001). As the probate court has exclusive original jurisdiction over the will contest, Appellant is not permitted to overcome the statute of limitation by seeking shelter under Rule 82(b), SCRCP, even if Appellant had

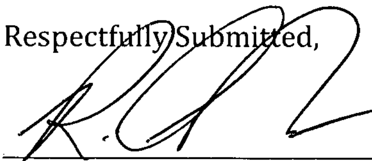
moved the court for such relief. Having already filed the will contest in probate court, untimely, and having the claim dismissed, the statute of limitation, §62-3-108(A)(2)(c), S.C. Code of Laws, is now a total bar to the will contest as the probate court, the appropriate forum, is no longer available to Appellant. *See Judy v. Judy,* 393 S.C. 160, 742 S.E.2d 408 (2011).

The lower court did not err in failing to toll the probate court statute of limitation. Appellant is time-barred from bringing a will contest in the "right court," here probate court, and is not otherwise entitled to a tolling of the statute of limitation under Rule 82(b), SCRCP. In fact, Rule 82(a), SCRCP, specifically prohibits Rule 82, SCRCP from being construed to extend the jurisdiction of the probate court. *See Rule 82(a), SCRCP.*

CONCLUSION

Respondent requests that the Court consider the matters herein and issue its Order AFFIRMING the Order of the trial court dismissing, without prejudice,[4] the will contest for want of subject matter jurisdiction.

Respectfully Submitted,



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[4] Under Rule 41(b), SCRCP, the dismissal for lack of subject matter jurisdiction is not an adjudication on the merits.

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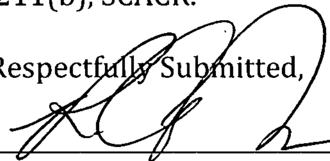
Certificate of Counsel
Rule 211(b), SCACR

The undersigned, as attorney for Respondent, hereby certifies that

RESPONDENT'S FINAL BRIEF complies with Rule 211(b), SCACR.

Respectfully Submitted,



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