

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BARNWELL COUNTY  
Court of Common Pleas

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

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Appellate Case No. 2018-000500

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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.

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**APPELLANT'S FINAL REPLY BRIEF**

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## 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. 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.

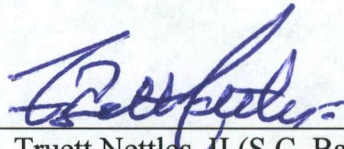
### **CONCLUSION**

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,

August 15, 2018

A handwritten signature in blue ink, appearing to read "F. Truett Nettles, II", written over a horizontal line.

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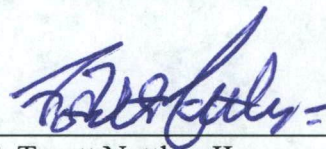
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CERTIFICATE OF COUNSEL

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

Respectfully submitted,



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