

**RECEIVED**

**Nov 22 2021**

**SC Court of Appeals**

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 PETITION AND MEMORANDUM FOR REHEARING**

---

F. Truett Nettles, II (S.C. Bar #4195)  
Rosen Hagood, LLC  
P.O. Box 893  
Charleston, SC 29402  
(843) 577-6726  
Attorney for Appellant

Richard B. Ness (S.C. Bar #4191)  
Alison Dennis Hood (S.C. Bar #77128)  
Richard Aaron Ness (S.C. Bar #102331)  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
(803) 245-5175  
Attorneys for Respondent

The Appellant/Petitioner (Appellant hereinafter) files this Petition for Rehearing pursuant to Rule 221, SCACR, with respect to this Court’s Order filed November 10, 2021, affirming the Circuit Court’s dismissal of the action.<sup>1</sup>

**ARGUMENT AND CITATION OF AUTHORITIES**

This Court’s Order affirming the lower court’s grant of summary judgment was based, in part, on the premise that Rule 82 of the South Carolina Rules of Civil Procedure does not authorize a trial court to transfer a case to another court if the court does not have subject matter jurisdiction. Without diminishing or abandoning the arguments set forth in Appellant’s prior Memoranda, Appellant limits its Petition for Rehearing to the issue of whether Rule 82 should have prevented the lower court from dismissing the case, and further that it required the trial court to transfer the case to the proper court.

**I. The Court of Appeals failed to consider that Rule 12(h)(3) can be applied without ignoring the mandate of Rule 82(b) which requires transfer of the case to the proper court instead of dismissing the case.**

This decision of the Court of Appeals ignores certain words and phrases contained in Rule 82(b), SCRCPP. The rule applies to cases that have been brought in the wrong county and this rule also applies to cases which have been brought in the wrong court. In such cases, “the court shall not dismiss the action but shall transfer it to any proper county “or court in which it could have been brought.” While the Court’s Order referred to Rule 12(h)(3) for the general principle that a trial court must dismiss an action when it does not have jurisdiction of the subject matter, it did not attempt to harmonize Rule 12(h)(3) with another South Carolina Rule of Civil Procedure, Rule 82(b). These Rules can and should be interpreted harmoniously.

---

<sup>1</sup> On December 6, 2017, the circuit court judge entered a Form 4 Order granting Respondent’s Motion for Summary Judgment. If the circuit court did not have subject matter jurisdiction, the court could not grant summary judgment to Respondent. Baird v. Charleston Cty., 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). It appears this court is treating the trial court’s order as one for dismissal. See Ct. App. Order, p. 1.

Pursuant to Rule 82(b), a trial court has the power to transfer an action to the appropriate court when it does not have subject matter jurisdiction. See J. Flanagan, South Carolina Civil Procedure, Chapter 82, p. 599 (2010); Rule 82, SCRCP, cmt (“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.”); see also, Pee Dee Health Care, P.A. v. Thompson, No. 2013-UP-311, 2013 WL 8538755, at \*1 (S.C. Ct. App. July 3, 2013) (citing Rule 82(b) and explaining that a trial court is only required to transfer the case to the proper court when it is timely filed)<sup>2</sup>. If there were no other court in South Carolina, or in Barnwell County, which had subject matter jurisdiction, then a dismissal pursuant to Rule 12(h)(3) would be the end of the analysis. However, when a plaintiff, like the Appellant here, files a case in the wrong court, Rule 82(b) requires the trial court to refrain from dismissing the case, and instead, transfer it to any proper county or court in which it could have been brought. The transfer of a case under Rule 82(b) would have ended the case in Common Pleas in compliance with Rule 12(h)(3). The trial judge was required to comply with both rules.

If a trial court only has authority to transfer a case to another court when it has subject matter jurisdiction, then the language that requires a trial court to transfer the case to another *court* is completely meaningless. The Court should not construe a statute which renders portions of it meaningless. Florence County Democratic Party v. Florence County Republican Party 398 S.C. 124, 727 S.E.2d 418 (2012). Commentators agree: “It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be construed so that if it can be prevented, no clause, sentence, or word is superfluous, surplusage, nugatory, void, meaningless, or insignificant.” 82 C.J.S. Statutes § 386. Rule 82 and Rule 12, SCRCP should be construed *in pari materia* so that both statutes have meaning, purpose, and effect. The rules of statutory construction

---

<sup>2</sup> As explained in Section III below, Appellant’s initial filing in Common Pleas was timely.

apply when interpreting the meaning of the South Carolina Rules of Civil Procedure. Ex parte Wilson, 367 SC7, 15,625 S.E. 2d 205, 209 (2005).

**II. As the Comment to Rule 82 states, many states have adopted similar rules to avoid having an action dismissed only to be commenced again in the proper jurisdiction.**

Where there is an express grant of authority to do so, a trial court has the power to transfer a case to the proper court even when it lacks subject matter jurisdiction. Banowsky v. Guy Backstrom, DC, 193 Wash. 2d 724, 735, 445 P.3d 543, 549 (2019); Milcrofton Util. Dist. of Williamson Cty. v. Non Potable Well Water, Inc., No. M201801431COAR3CV, 2019 WL 2083329, at \*6 (Tenn. Ct. App. May 10, 2019) (“Finally, even where a court lacks jurisdiction, if there is a court that has jurisdiction, Tennessee law allows for the transfer of the case to the appropriate court.”). In Banowsky, the Supreme Court of Washington was faced with a rule that, like our Rule 82, directed a court to transfer a case to another court when it did not have jurisdiction of the subject matter. 193 Wash. 2d at 736; 445 P.3d. at 550. The Washington court noted that Rule 12(h)(3) directs a court to dismiss the action for lack of subject matter jurisdiction, creating an apparent conflict between the rules. Id. The court determined that the transfer rule “provided the district court with the power to transfer a case and, according to its plain terms, required the district court to transfer this case.” 193 Wash. 2d at 735; 445 P.3d. at 549. The decision was supported by two reasons, both applicable here: (1) the transfer rule was enacted after Rule 12(h)(3); and (2) transferring the case to the proper court “is more consistent with the principles underlying the rules ... to secure the just, speedy, and inexpensive determination of every action.” 193 Wash. 2d at 737; 445 P.3d. at 550.

**III. The Court of Appeals’ Order failed to recognize that the trial court’s dismissal of the case, which not only directly contradicts the mandate of Rule 82, acted as a dismissal with prejudice since Appellant can no longer file an action in the proper court.**

If the trial court’s dismissal is upheld, Appellant will suffer a severely unjust result as he

can no longer file an action in the proper court (Probate Court). Such a result appears inapposite to the precise purpose of Rule 82. There appears to be no greater purpose for the enactment of Rule 82 than here, where a party will be barred from pursuing his case because the trial court dismissed, rather than transferred his case.

Respondent never raised the issue of jurisdiction in the written Motion for Summary Judgment. During the life of the case at the trial level, Appellant consistently suggested that the trial court send the case to probate court rather than dismiss the case, but the trial court failed to do so despite the explicit mandate of Rule 82. Respondent did not raise the issue until oral argument when the time period for filing a case in the proper court expired. See S.C. Code Ann. § 62-3-108(a)(2)(c); § 62-3-803(a). Now, because the trial judge did not follow Rule 82, the trial court's order acted as an adjudication on the merits contrary to established law that a subject matter jurisdiction dismissal cannot be an adjudication on the merits. Baird v. Charleston Cty., 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

### **CONCLUSION**

For these reasons, the Appellant petitions for rehearing and reconsideration of this Court's order dismissing the Appellant's appeal. Rule 82(b) requires a trial court to transfer a case to the proper court even when it lacks subject matter jurisdiction of the action. The trial judge was therefore required to transfer Appellant's case to the proper court.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

*s/ F. Truett Nettles*

\_\_\_\_\_  
F. Truett Nettles, II (S.C. Bar #4195)

Rosen Hagood, LLC

P.O. Box 893

Charleston, SC 29402

(843) 577-6726

[tnettles@rosenhagood.com](mailto:tnettles@rosenhagood.com)

Attorney for Appellant

November 22, 2021  
Charleston, South Carolina

OTHER COUNSEL OF RECORD:

Richard B. Ness (S.C. Bar #4191)

Alison Dennis Hood (S.C. Bar #77128)

Richard Aaron Ness (S.C. Bar #102331)

Ness & Jett, LLC

P.O. Box 909

Bamberg, SC 29003

(803) 245-5175

Attorneys for Respondent

**RECEIVED**  
**Nov 22 2021**  
**SC Court of Appeals**

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 do hereby certify that on November 22, 2021, I have served all counsel in this action with  
a copy of the documents herein below specified via email:

Documents: **APPELLANT'S PETITION AND MEMORANDUM FOR REHEARING**

Counsel Served:

Richard B. Ness (S.C. Bar #4191)  
Alison Dennis Hood (S.C. Bar #77128)  
Richard Aaron Ness (S.C. Bar #102331)  
Ness & Jett, LLC  
P.O. Box 909  
Bamberg, SC 29003  
(803) 245-5175  
Attorneys for Respondent

s/ Ensley Mahoney

Ensley Mahoney

Paralegal

Rosen Hagood, LLC

151 Meeting Street, Suite 400

Charleston, SC 29401

(843) 577-6726