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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ON PETITION FOR WRIT OF CERTIORARI TO 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, ... Petitioner,

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.

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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.

Appellate Case No. 2018-000500

Appeal From Barnwell County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2021-UP-399
Heard November 10, 2020 – Filed November 10, 2021

AFFIRMED

Forrest Truett Nettles, II, of Rosen Hagood, LLC, of
Charleston, for Appellant.

Richard B. Ness, Alison Dennis Hood, and Richard
Aaron Ness, all of Ness & Jett, LLC, of Bamberg, for
Respondent.

PER CURIAM: Henry David Still, V (Son) appeals the circuit court's dismissal
of his action to contest his mother's will, arguing (1) section 62-1-302(a) of the

South Carolina Code (Supp. 2020) provides an exception to the probate court's exclusive jurisdiction, such that the circuit court could adjudicate his claims and (2) Rule 82, SCRCP, required the circuit court to transfer the case to the probate court, rather than dismiss it. We affirm.

Facts and Procedural History

On September 17, 2015, Barbara B. Still (Mother) died; Henry David Still, IV (Father) subsequently filed her will in the probate court on September 30, 2015. On January 6, 2016, Father filed an application for informal probate of Mother's estate.

On February 3, 2016, Son filed an action in circuit court against Father and Mother's estate to invalidate five deeds Mother purportedly executed in August 2015 and to invalidate Mother's "fraudulent will" probated by Father (the Original Case). On March 24, 2016, Father answered, denying the allegations of the complaint and asserting Rule 12(b)(6), SCRCP, as an affirmative defense.

In August 2016, Father died, and Barbara Wrenn Vaughn (Granddaughter) was appointed personal representative of both Father's and Mother's estates. Granddaughter was subsequently substituted for Father in this action.

On June 5, 2017, Granddaughter moved for summary judgment in the Original Case, which the circuit court denied. On August 4, 2017, Granddaughter filed a motion to reconsider and raised the issue of subject matter jurisdiction.

On July 11, 2017, Son filed a petition for formal probate of Mother's estate. On July 13, 2017, Son filed a petition and complaint in probate court against Cynthia Boots and Granddaughter for formal probate of a missing will, alleging Mother executed a prior valid will contradicting the "fraudulent" will Father filed in the informal probate of Mother's estate. The probate court removed this case to circuit court (the Removed Case). On September 22, 2017, Granddaughter moved for summary judgment in the Removed Case, asserting it was untimely under section 62-3-108(A)(2)(c) of the South Carolina Code (Supp. 2020).¹

¹ "Notwithstanding any other provision of this section: . . . (c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within eight months from informal probate or one year from the decedent's death, whichever is later." § 62-3-108(A)(2)(c).

On November 6, 2017, the circuit court held a hearing on the motion to reconsider its denial of summary judgment in the Original Case and Granddaughter's motion for summary judgment in the Removed Case. Son conceded, "I agree with the Court. You know, it might be a clean way to resolve all this, just dismiss [the Removed Case] and let's go forward on [the Original Case], the 2016 case which, was timely filed." The circuit court stated, "All right. I will grant the summary judgment as to [the Removed Case]. I will now hear your motion to reconsider my denial of summary judgment on [the Original Case]." By Form 4 order filed November 6, 2017, the circuit court granted Granddaughter's summary judgment motion in the Removed Case, finding "the claim was not timely filed."

By order filed December 6, 2017, the circuit court granted summary judgment to Granddaughter on Son's will contest action (the Original Case), finding the circuit court lacked subject matter jurisdiction to hear the matter. On December 12, 2017, Son moved to reconsider. The circuit court denied Son's motion by order dated February 22, 2018.

Standard of Review

"Whether a court has subject matter jurisdiction is a question of law we review de novo." *Deborah Dereede Living Tr. dated Dec. 18, 2013 v. Karp*, 427 S.C. 336, 346, 831 S.E.2d 435, 441 (Ct. App. 2019).

I. Jurisdiction

Son's appellate counsel argues section 62-1-302(a) provides an exception to the probate court's exclusive jurisdiction and thus, the circuit court had subject matter jurisdiction to adjudicate Son's Original Case. Son further contends section 62-3-804(3) of the South Carolina Code (Supp. 2020), governing the presentation of claims for payment against an estate, allowed him to file the will contest in circuit court. We disagree.

"Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" *Gantt v. Selph*, 423 S.C. 333, 337, 814 S.E.2d 523, 525 (2018) (quoting *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994)). "The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." S.C. Const. art. V, § 1. "The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases

in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law." S.C. Const. art. V, § 11.

The probate court is not a constitutional court; thus, its subject matter jurisdiction is defined by statute. *Judy v. Judy*, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011). The Probate Code provides:

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 or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, 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

S.C. Code Ann. § 62-1-302(a)(1) (Supp. 2020) (emphasis added). However, some matters may be removed to the circuit court:

(d) Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo:

(1) formal proceedings for the probate of wills and for the appointment of general personal representatives;

(2) construction of wills;

(3) actions to try title concerning property in which the estate of a decedent or protected person asserts an interest;

(4) matters involving the internal or external affairs of trusts as provided in Section 62-7-201, excluding matters involving the establishment of a "special needs trust" as described in Article 7;

(5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value; and

(6) actions concerning gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63.

(e) The removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.

(f) Notwithstanding the exclusive jurisdiction of the probate court over the matters set forth in subsections (a) through (c), if an action described in subsection (d) is removed to the circuit court by motion of a party, or by the probate court on its own motion, the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that the removal of such related matter or matters would be in the best interest of the estate or in the interest of judicial economy. For any matter removed by the probate court to the circuit court pursuant to this subsection, the circuit court shall proceed upon the matter de novo.

S.C. Code Ann. § 62-1-302(d)-(f) (Supp. 2020). A Reporter's comment to this section explains:

This section clearly states the subject matter jurisdiction of the probate court. It should be noted that the probate court has "exclusive original jurisdiction" over the matters enumerated in this section. This means, when read with the other Code provisions (such as subsection (c) of this section and Section 62-3-105), that matters within the original jurisdiction of the probate court must be brought in that court, subject to certain provisions made for removal to the circuit court by the probate court or on motion of any party.

§ 62-1-302 cmt.

Here, Son's second cause of action in the Original Case was an action to contest Mother's will. Son alleged Father probated "a fraudulent will," Father destroyed or hid Mother's true will in which she left her entire estate to Son, and Father "created either by undue influence, lack of capacity, or forgery a second will leaving [Mother's] entire estate to [Father]." Son sought an order invalidating the informally probated will. Although a will contest action may be removed to circuit court under certain circumstances, the Probate Code requires that a will contest action be initiated in the probate court. § 62-1-302(a)(1) (stating that the probate court has exclusive original jurisdiction over an action to contest a will); § 62-1-302(f) (providing for removal from probate court to circuit court of certain matters notwithstanding the exclusive jurisdiction of the probate court). Therefore, the circuit court lacked subject matter jurisdiction over the will contest action in the Original Case because it was not initially filed in the probate court.

Section 62-3-804(3) does not change this result as a will contest is not a claim against an estate. *See* § 62-3-804 (describing the procedures for bringing claims against an estate); S.C. Code Ann. § 62-1-201(4) (Supp. 2020) (defining the term "claims" "in respect to estates of decedents and protected persons, [to include] liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.").

II. Dismissal

Son argues Rule 82, SCRCP, required the circuit court to transfer the case to the probate court, rather than dismiss it. We disagree.

Rule 82(b), SCRCP, allows the circuit court to transfer a case if it is filed in the wrong county or court. *See* Rule 82(b), SCRCP ("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."). However, the circuit court in this case did not have the authority to transfer the case to probate court because it lacked subject matter jurisdiction to act in the will contest action. *See* 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."); *S.C. Dep't of Soc. Servs. v. Tran*, 418 S.C. 308, 314, 792 S.E.2d 254, 257 (Ct. App. 2016) ("A court without subject matter jurisdiction does not have authority to act.").

Conclusion

Based on the foregoing, the circuit court's order is

AFFIRMED.

LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.

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IV,

Respondents.

APPELLANT'S PETITION AND MEMORANDUM FOR REHEARING

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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.¹

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), SCRPC. 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.

¹ 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)². 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

² 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]

November 22, 2021
Charleston, South Carolina

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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**

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The South Carolina Court of Appeals

Henry David Still, V, Appellant,

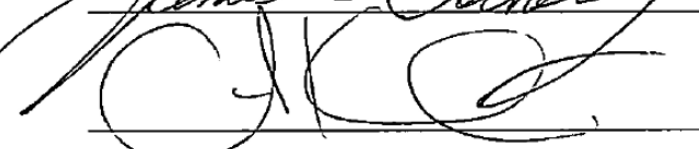
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Estate of Barbara B. Still, and personal representative of
the Estate of Henry David Still, IV, Respondent.

Appellate Case No. 2018-000500

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:
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Alison Dennis Hood, Esquire

FILED
Dec 16 2021

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Respondents.

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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,

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

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August 15, 2018

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Appellate Case No. 2018-000500

Henry David Still, V,

Appellant,

v.

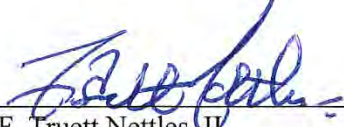
Barbara Wrenn Vaughn, Personal Representative
of the Estate of Barbara B. Still, and Personal
Representative of the Estate of Henry David Still,
IV,

Respondents.

CERTIFICATE OF COUNSEL

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

Respectfully submitted,



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August 15 2018
North Charleston, South Carolina

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

RECEIVED

Appellate Case Number: 2018-000500

AUG 20 2018

SC Court of Appeals

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

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: The will contest is not a creditor claim.

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

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

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).

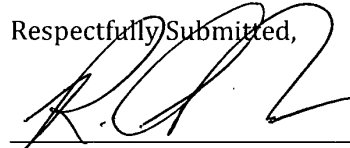
The lower court did not err in failing to toll the probate court statute of limitation. Appellant is time-barred from bringing a will contest in the “right court,” here probate court, and is not otherwise entitled to a tolling of the statute of limitation under Rule 82(b), SCRCP. In fact, Rule 82(a), 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.

Bamberg, S.C.
August 20, 2018

Respectfully Submitted,



Richard B. Ness
Alison Dennis Hood
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Attorneys for Respondent

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

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

Appellate Case Number: 2018-000500

RECEIVED

AUG 20 2018

SC Court of Appeals

Henry David Still, V, Appellant,

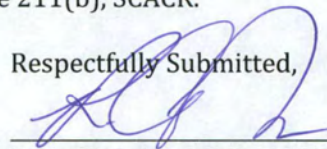
v.

Barbara Wrenn Vaughn, personal representative of the Estate of Barbara B. Still, and
personal representative of the Estate of Henry David Still, IV, Respondent

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,



Richard B. Ness: SCBAR #4191
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Attorneys for Respondent

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,

v.

Appellant,

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 FINAL REPLY BRIEF

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Attorney for Appellant

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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 quite 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



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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

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.

CERTIFICATE OF COUNSEL

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

Respectfully submitted,



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August 15 2018
North Charleston, South Carolina

IN 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

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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.

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Barnwell
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 16 CP-06-00045Henry David Still, VVaughn, Barbara Wrenz, et al

PLAINTIFF(S)

DEFENDANT(S)

Attorney for : ☐ Plaintiff ☐ Defendant
or

Submitted by: _____

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(c), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : The motion for Summary Judgment is denied.
There are genuine issues of material fact.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 25th day of July, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 25th day of July, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

James Edward Bradley
PO Box 5709
West Columbia, SC 29171
ATTORNEY(S) FOR THE PLAINTIFF(S)

Richard B. Ness
PO Box 909
Bamberg, SC 29
ATTORNEY(S) FOR THE DEFENDANT(S)
[Signature]
CLERK OF COURT

Court Reporter: Cheri Young

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP0600262**

Henry David Still V

**Barbara Wrenn Vaughn, et
al**

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: The Motion for Summary Judgment is granted. The claim was not timely filed.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

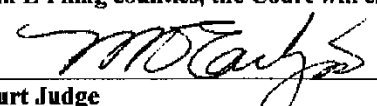
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2136
Judge Code

11/6/2017
Date

For Clerk of Court Office Use Only

This judgment was entered on **November 6, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Forrest Truett Nettles II 4000 Faber Place Dr., Ste. 450
North Charleston, SC 29405

Richard B. Ness PO Box 909 Bamberg, SC 29003
Adam Christopher Ness PO Box 909 Bamberg, SC 29003
Richard Aaron Ness PO Box 909 Bamberg, SC 29003

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter *Brenda Sigwald*

Rhonda Dale McElveen

Rhonda Dale McElveen - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BARNWELL	)	SECOND JUDICIAL CIRCUIT
	)	
Henry David Still, V,	)	Case No.: 2016-CP-06-00045
	)	
PLAINTIFF,	)	
	)	
v.	)	ORDER
	)	
Barbara Wrenn Vaughn, Personal	)	
Representative of the Estate of Barbara B.	)	
Still, and Personal Representative of the	)	
Estate of Henry David Still, IV,	)	
	)	
DEFENDANTS.	)	

This matter came before the Court on November 6, 2017, in Barnwell County, upon Defendants' Motion for Reconsideration of an Order, dated July 25, 2017, denying Defendants' Motion for Summary Judgment. Richard B. Ness, Esquire and R. Aaron Ness, Esquire appeared on behalf of the Defendants. F. Truett Nettles, II, Esquire appeared on behalf of Plaintiff. For the reasons stated herein, the Court grants summary judgment to Defendants as to the issue of subject matter jurisdiction of a will contest and finds subject matter jurisdiction was not properly before this Court. The Court denies summary judgment and the request for reconsideration, on the action to set aside a deed, as all parties stipulated on the record that the matter was properly before this Court.

FACTS

Barbara B. Still died testate on September 17, 2015. Her 2013 will was informally admitted to probate on January 6, 2016, in the Barnwell County Probate Court. On February 3, 2016, Plaintiff filed this lawsuit, in circuit court, seeking to contest Barbara Still's 2013 will and overturn numerous deeds executed by Barbara Still in 2015. On June 5, 2017, Defendants filed a

motion for Summary Judgment, and a hearing was held on July 25, 2017, in which this Court issued an Order denying Defendants' motion for Summary Judgment. During that hearing, Defendants properly raised the issue of subject matter jurisdiction, arguing this Court did not have jurisdiction to adjudicate a will contest or an action to set aside deeds. The Court ruled from the bench that subject matter jurisdiction was proper, and a Form 4 Order was filed on July 25, 2017. Defendants filed a Motion for Reconsideration on or before August 4, 2017, which is now before the Court.

DISCUSSION

Subject matter jurisdiction may be raised at any time, even for the first time on appeal, by a party or by the court. *Ex parte Cannon*, 385 S.C. 643, 654, 685 S.E.2d 814, 820 (Ct. App. 2009). The South Carolina Constitution provides that the Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts and shall have such appellate jurisdiction as provided by law." S.C. Const. Art. V, § 11.

"The extent of the probate court's 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, provides:

"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 or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, 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" (emphasis added).

S.C. Code § 62-1-302(a)(1). The jurisdiction of the probate court extends to subject matter related to estates of decedents. *In the Matter of Howard*, 315 S.C. 356, 364, 434 S.E.2d 254 (1993). As a matter of judicial economy, the probate court should have the power to make decisions necessary to the administration of an estate. *Neely v. Thomasson*, 365 S.C. 345, 351, 618 S.E.2d 884 (2005).

The Court finds Plaintiff is in error by relying upon the last sentence of S.C. Code § 62-1-302(a)(1), “. . . 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”, to argue that his case falls within the jurisdiction of the circuit court. The circuit court, under this exception, 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. Barbara Still has no unknown heirs, and the dispute in this case is neither one to determine heirs and successors nor to quiet title. *See: Petition for Formal Testacy and Appointment in related litigation at 2017-CP-06-00262, formerly 2016-ES-06-00004; See: Summons and Complaint (2016-CP-06-00045).*

Plaintiff's complaint is utterly void of any language requesting that heirs and successors be determined, or that title be quieted, causing this case to properly fall within the exception under S.C. Code § 62-1-302(a)(1). *See: Summons and Complaint (2016-CP-06-00045).* This is an action to contest a will, and an action to have deeds set aside. Plaintiff is not the sole heir of Barbara Still's estate as he lists himself and his sister, Cynthia Still Boots, as “intestate heirs” on a probate petition, as well as listing devisees. *See: Petition for Formal Testacy and Appointment in related litigation at 2017-CP-06-00262, formerly 2016-ES-06-00004.* Therefore, no heirs, intestate or otherwise, need to be determined.

The Court also finds Plaintiff is in error by arguing that a creditor's claim statute has applicability to this case. *See*: S.C. Code § 62-3-804(3). This statute provides,

"In lieu of the procedure provided in subsections (1) and (2), and subject to subsection (6), a claimant may commence a legal proceeding against the personal representative, by the filing of a summons and petition for allowance of claim or complaint in any court where the personal representative may be subjected to jurisdiction, *seeking payment of his claim by the estate*, and serving the same upon the personal representative. The commencement of the legal proceeding under this subsection must occur within the time limit for presenting the claim as set forth in Section 62-3-803. If the legal proceeding is not commenced in the probate court, the claimant must file a written statement of the claim with the probate court in which the decedent's estate is under administration providing substantially the same information as the statement in subsection (1), along with a statement that a legal proceeding to enforce the claim has commenced, and identifying the court where the proceeding is pending. Thereafter, the probate court shall not permit the closing of the decedent's estate until the legal proceeding has ended" (emphasis added).

S.C. Code § 62-3-804(3). In relying upon this statute, Plaintiff is contending this case was properly filed against the personal representative in circuit court. The fallacy in this argument is that Plaintiff has not plead or indicated that he is seeking payment of a claim by the estate, he has not filed any notices of creditor's claims, and he is not a creditor seeking money. *See: Summons and Complaint (2016-CP-06-00045)*. Plaintiff does not seek an "amount" nor does he seek a "payment" (see S.C. Code § 62-3-804(1)(a) and (3)). He seeks for deeds to be set aside and for a determination of whether a "will" is fraudulent, destroyed, hidden, created by undue influence or lack of capacity, and for the Court to invalidate the will. None of the issues regarding the will are properly in the circuit court.

Furthermore, Plaintiff is not bringing creditor's "claims." "Claims" under the probate code, is specifically defined:

"Claims in respect to estates of decedents and protected persons, includes *liabilities of the decedent* or protected person whether arising in contract, in tort, or otherwise, *and liabilities of the estate which arise at or after the death of the decedent* or after the appointment of a conservator, including funeral expenses

and expenses of administration. *The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate*" (emphasis added).

S.C. Code § 62-1-201(4). The first sentence restricts the definition of "claims" to liabilities of the estate or decedent, such as funeral expenses or administration expenses. Plaintiff has never plead or given notice that either estate is monetarily indebted to him. The last sentence of this definition is also imperative as the term "claims" does not include demands or disputes regarding title of a decedent, as argued by Plaintiff in its memorandums. The filing of a case against an estate(s) does not equate to Plaintiff bringing "claims" as defined within the probate code.

This is not a case seeking payment of money. This is an action to contest a will and to have deeds set aside. Plaintiff's arguments under the creditors' claims statute are incorrect, and Plaintiff is in error by applying them to this case. Plaintiff's will contest should have originally been filed in the probate court, and this Court does not have original exclusive jurisdiction to hear a will contest.

CONCLUSION

The Court has considered the arguments of all attorneys, the submitted memoranda of law, the case law and statutes of South Carolina. The Court hereby reconsiders its prior Order and grants summary judgment to Defendants as to the issue of subject matter jurisdiction of a will contest and finds Plaintiff's will contest was not properly before this Court. Summary Judgment is denied on the action to set aside deeds. **AND IT IS SO ORDERED!**

The Honorable Doyet A. Early, III
Circuit Court Judge, Second Circuit

_____, South Carolina

_____, 2017



Barnwell Common Pleas

Case Caption: Henry David Still V VS Henry David Still IV Estate , defendant, et al
Case Number: 2016CP0600045
Type: Order/Summary Judgment

So Ordered

s/D.A. Early III 2136

Electronically signed on 2017-12-05 12:09:41 page 7 of 7

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-06-00045

Henry David Still, V,

Barbara Wrenn Vaughn, Personal
Representative of the Estate of Barbara
B. Still, and Personal Representative of
the Estate of Henry David Still, IV,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:
F. Truett Nettles, Esq.
Finkel Law Firm LLC
4000 Faber Place Drive
Suite 450
North Charleston, SC 29405

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 43(k), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The Court respectfully denies the Plaintiff's Motion to Reconsider.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

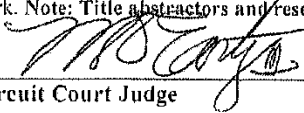
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2136
Judge Code

02/21/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on the 22nd day of February, 20 18 and a copy mailed first class or placed in the appropriate attorney's box on this 23rd day of February, 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

Forrest Truett Nettles, II
4000 Faber Place Dr. Suite 450
North Charleston, SC 29405
ATTORNEY(S) FOR THE PLAINTIFF(S)

Richard B. Ness
PO Box 909
Bamberg, SC 29003
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF: BARNWELL

IN THE MATTER OF:
BARBARA BODIFORD STILL
(Decedent)

Filed For Record

JAN 06 2016

Barnwell County
Probate Court

THE PROBATE COURT

CASE NUMBER: 2016 ES 06 00004

***COMPLETE THIS SECTION ONLY IF FILING PETITION
FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

*
vs. Petitioner(s)
*
Respondent(s)

APPLICATION FOR INFORMAL

(check any that apply)

- ☒ PROBATE OF WILL
☒ APPOINTMENT

*PETITION FOR FORMAL

- ☐ TESTACY
☐ APPOINTMENT

Applicant/Petitioner: Henry David Still, IV

Address: 346 Reynolds Street Blackville, SC 29817

Telephone: (843) 384-7965 cell

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. If this is a formal filing, please explain on page 3 attach pleadings pursuant to SC Rules of Civil Procedure.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC), AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

2. Decedent Information:

Full Legal Name

(including all known names): BARBARA BODIFORD STILL

Date of Birth: OCTOBER 4, 1 940

Date of Death: SEPTEMBER 17, 2015

Age at date of death: 74

3. Venue for this proceeding is proper in this County because:

- ☒ Decedent was domiciled in this County at date of death:
Address: 346 REYNOLDS STREET BLACKVILLE, SC 29817 County BARNWELL State: South Carolina.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this County at date of death at:
Address: County State: South Carolina
☐ Decedent has a right to take legal action in this County because:

If the above address is the address of a nursing home, prison, or other residential facility, please give the last address of the Decedent prior to entering a facility:

FORM #300ES (1/2014)

62-2-604, 62-3-102, 62-3-203, 62-3-301, 62-3-302, 62-3-303, 62-3-306, 62-3-311, 62-3-401, 62-3-402, 62-3-404, 62-3-409, 62-3-414, 62-3-601, 62-3-602, 62-3-704, 62-3-804, 44-23-1090, 44-23-1120

Page 1 of 6

014

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Henry David Still, IV		346 Reynolds Street Blackville, SC 29817	spouse

(use additional sheet if necessary)

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will):

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Cynthia Still Boots		346 Reynolds Street Blackville, SC 29817	daughter
Henry D. Still, V		346 Reynolds Street Blackville, SC 29817	son

(use additional sheet if necessary)

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by the Court for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this State or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM 111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The Decedent died with probate personal property having an approximate value of \$TBD and/or probate real estate having an approximate value of \$TBD. (Note: A complete inventory of probate assets with fair market values to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- ☐ The original is attached.
☒ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☐ The Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: May 8, 2013
Codicil(s): _____

3. Does Decedent's Will refer to a Memorandum (list disposing of tangible personal property)?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "Interested witness" (devisee, spouse of a devisee, or issue of a devisee)?

☒ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

- ☐ named as Primary Personal Representative in Will
- ☐ named as Alternate Personal Representative in Will
- ☐ nominee of Primary Personal Representative in Will
- ☐ nominee of Alternate Personal Representative in Will
- ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- ☐ other devisee of Decedent (describe): _____ or nominee of said devisee
- ☐ surviving spouse of Decedent or nominee of said spouse
- ☐ other heir of Decedent (describe): _____ or nominee of said heir
- ☐ creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- ☐ other (describe): _____

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 16th day
of Jan. 20 16
Lathy E. Strommen
Notary Public for South Carolina
My Commission Expires: 6/13/2022

Signature of Applicant/Petitioner: [Signature]
Print Full Name: Henry David Still, IV
Address: 346 Reynolds Street
Blackville, SC 29817
Telephone (work): _____
(Home): _____
(Cell): _____
Email: _____
Relationship to Decedent/Estate: spouse

SWORN to before me this _____ day
of _____ 20 _____

Notary Public for South Carolina
My Commission Expires: _____

Signature of Co-Applicant/Co-Petitioner: _____
Print Full Name: _____
Address: _____
Telephone (work): _____
(Home): _____
(Cell): _____
Email: _____
Relationship to Decedent/Estate: _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed May 8, 2013

be informally ☒ GRANTED ☐ DENIED.

Executed this 6th day of January, 2016 ^{MSD}

Myma S. Dill

Myma S. Dill, Probate Court Judge

☐ For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

- ☐ Fiduciary Bond in the amount of \$ _____
☒ Bond not required for Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other: _____

Notice to Creditors

- ☒ Required
☐ Not Required

Executed this 6th day of January, 2016 ^{MSD}

Myma S. Dill

, Probate Court Judge

☐ For formal appointment of Personal Representative, see separate order executed _____.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: 
Print Full Name: Henry David Still, IV
Address: 346 Reynolds Street
Blackville, SC 29817
Telephone (Work):
(Home):
(Cell):
Email:

Signature:
Print Full Name:
Address:
Telephone (Work):
(Home):
(Cell):
Email:

Attorney:
Address:
Telephone:
Email:

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

Henry David Still, V.

Plaintiff(s)

vs.

Henry David Still, IV, and the Estate of Barbara B. Still

Defendant(s)

Submitted By: James Edward Bradley

Address: P.O. Box 5709

West Columbia, SC 29171

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 06 - 00045

SC Bar #: 66130

Telephone #: 803-796-9160

Fax #: 803-791-8410

Other:

E-mail: ward@mttlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/ Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☒ Other (499) <i>involuntary</i> |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstatement License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SC DOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature:

Date: February 2, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (12/2015)

Page 1 of 2

020

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)
Henry David Still, V,)
)
Plaintiff,)
)
vs.)
)
Henry David Still, IV, and the Estate of)
Barbara B. Still,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS

C/A No. **2016-CP-06-00045**

SUMMONS
(Declaratory Judgment Action)
(Non-Jury)

2016-LP-06-00010

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office located at 1700 Sunset Boulevard, Post Office Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

MOORE TAYLOR LAW FIRM, P.A.

By: 
James Edward Bradley, SC Bar # 66130
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Attorney for Plaintiff

West Columbia, South Carolina

February 2, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

IN THE COURT OF COMMON PLEAS

Henry David Still, V,)
Plaintiff,)

C/A No. 2016-CP-06-00045

vs.)

COMPLAINT
(Declaratory Judgment Action)
(Non-Jury)

Henry David Still, IV, and the Estate of)
Barbara B. Still,)
Defendants.)

The Plaintiff Henry David Still, V, complains of the Defendants as follows:

FOR A FIRST CAUSE OF ACTION

1. Henry David Still, V, is a resident of Barnwell County.
2. Henry David Still, IV, is a resident of Barnwell County.
3. Barbara B. Still is deceased, and her estate is probated in Barnwell County where she was a resident at the time of her death.
4. Henry David Still, V, is the son of Henry David Still, IV, and Barbara B. Still.
5. Barbara B. Still passed away on September 17, 2015.
6. On August 21, 2015, Henry David Still, IV, recorded five deeds purporting to transfer property held in Barbara B. Still's name to joint tenancy with rights of survivorship in the name of Henry David Still, IV, and Barbara B. Still.
7. These deeds are attached as Exhibits A, B, C, D, and E to this Complaint.
8. These deeds purport to transfer property identified briefly with tax map identification numbers as follows:

121-00-00-003
121-00-00-002
123-03-14-003
121-00-00-001
119-00-00-016
119-00-00-021
104-00-00-004
122-00-00-026
122-03-04-054
122-02-03-014
104-05-02-030
104-05-03-006

9. These deeds bear deed numbers as follows:

201500001438
201500001436
201500001439
201500001440
201500001437

10. At the time these deeds were purported to be executed, Barbara B. Still was not in a requisite state of mind to transfer property and would not have transferred the property as set forth in these deeds had she been in a right state of mind.

11. At the time these deeds purport to be executed, Barbara B. Still was suffering terminal liver disease accompanied by strong medicines including narcotics and other medicines. She also suffered disease processes all of which affected her ability to understand her actions, her surroundings, and the objects of her bounty.

12. These five deeds appear to be forgeries of Barbara B. Still's signature in that they do not accord with the manner in which she normally signed her name.

13. The signatures themselves in the deeds are inconsistent.

14. At the time these deeds were purported to be transferred, Henry David Still, IV, exercised undue influence over Barbara B. Still by way of threats and intimidation.

15. Henry David Still, V, hereby seeks an order of this Court finding that these deeds are invalid on the basis of forgery, undue influence, the lack of capacity, or other reason.

16. Pursuant to the South Carolina Declaratory Judgments Act, Henry David Still, V, seeks his attorney's fees and costs as well.

FOR A SECOND CAUSE OF ACTION

17. Each and every allegation as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

18. Henry David Still, V, upon information and belief believes that a fraudulent will has been probated by Henry David Still, IV.

19. Upon information and belief Barbara B. Still had a previous will naming Henry David Still, V, as a beneficiary of her estate.

20. Also upon information and belief Henry David Still, IV, has either destroyed this will or hidden it and created either by undue influence, lack of capacity, or forgery a second will leaving Barbara B. Still's entire estate to Henry David Still, IV.

21. Henry David Still, V, asks for an order invalidating the will put forward by Henry David Still, IV, and either entering a finding for the distribution of Barbara B. Still's estate pursuant to her proper and rightful will which makes Henry David Still, V, a beneficiary of her estate or pursuant to the South Carolina intestacy statutes.

WHEREFORE, Henry David Still, V, having complained of the Defendants asks that Court find transfers referenced in this Complaint invalid on the basis of undue influence, lack of capacity, forgery, or other reason and that the Court by order transfer these properties into the Estate of Barbara B. Still.

MOORE TAYLOR LAW FIRM, P.A.

By: 

James Edward Bradley, SC Bar # 66130
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Attorney for Plaintiff

West Columbia, South Carolina

February 2, 2016

mlc

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

Henry David Still, V,)
)
Plaintiff,)
)
vs.)
)
Henry David Still, IV, and the Estate)
of Barbara B. Still,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

ANSWER OF DEFENDANTS,
HENRY DAVID STILL, IV, AND THE
ESTATE OF BARBARA B. STILL

Case No.: 2016-CP-06-00045

FILED
2016-07-20 PM 1:40

TO: JAMES EDWARD BRADLEY, ATTORNEY FOR PLAINTIFF

The defendants hereby answer the Complaint of the plaintiff as follows:

1. The defendants admit Paragraphs 1, 2, 3, 4, and 5.
2. As to Paragraph 6, these defendants admit only so much of the allegation as it alleges that certain Deeds were recorded on August 21, 2015, transferring property from Barbara B. Still's name to a joint tenancy, with right of survivorship, in the names of Henry David Still, IV, and Barbara B. Still. The balance of the said paragraph, upon lack of sufficient information upon which to form a belief, is therefore denied.
3. As to Paragraph 7, these defendants admit only so much of Paragraph 7 as there are certain Deeds attached as Exhibits to the Complaint in this action, but lack sufficient information upon which to form a belief as to the balance of the allegation, and, therefore, denies the same.
4. As to Paragraphs 8 and 9, these defendants crave reference to any Deeds of record that were filed in the office of the Clerk of Court for Barnwell County transferring property from Barbara B. Still to Henry D. Still, IV, and Barbara B. Still, as joint tenants, with right of survivorship, and not as tenants in common, and, therefore, denies the balance of said paragraph, except what is set forth on

public record.

5. Paragraph 10 is denied.

6. As to Paragraph 11, these defendants would admit only such much of Paragraph 11 as it alleges that Barbara B. Still was suffering from terminal liver disease, but would deny the balance of said paragraph.

7. Paragraphs 12 and 13 are denied, and these defendants would further crave reference to the actual Deeds of record as being properly executed and recorded documents.

8. Paragraphs 14, 15, and 16 are denied.

9. As to Paragraph 17, each and every allegation of the Answer previously set forth is hereby repeated as if set forth herein again verbatim.

10. Paragraphs 18, 19, 20, and 21 are denied.

FOR A SECOND DEFENSE
SCRCP 12(b)(6)

11. That each and every response set forth above is repeated herein as if set forth verbatim.

12. The Complaint fails to set forth facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

13. That each and every response set forth above is repeated herein as if set forth verbatim.

14. The plaintiff lacks legal standing to assert such claims in this action as raised by the Complaint.

FOR A FOURTH DEFENSE

15. That each and every response set forth above is repeated herein as if set forth verbatim.

16. The matter cannot be adjudicated and relief granted because all necessary parties are not within the named lawsuit; and, such party is an indispensable party.

WHEREFORE, Henry David Still, IV, and the Estate of Barbara B. Still, by and through her Personal Representative, Henry David Still, IV, have fully answered the Complaint and request the Court to deny the relief requested, dismiss the Complaint, and for such other and further relief as the Court may deem just and proper.

NESS & JETT, LLC



Richard B. Ness
P. O. Box 909
Bamberg, SC 29003
(803) 245-5178
Attorney for Defendants

Bamberg, SC

March 24, 2016

CERTIFICATE OF SERVICE

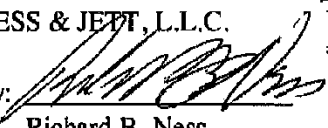
I, the undersigned of the law offices of Ness & Jett, L.L.C, attorneys for Defendants, Henry David Still, IV, and the Estate of Barbara B. Still, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleadings: Answer of Defendants, Henry David Still, IV, and the Estate of Barbara B. Still

Counsel Served:

James E. Bradley
Attorney at Law
P. O. Box 5709
West Columbia, SC 29171

NESS & JETT, L.L.C.

By: 

Richard B. Ness
P.O. Box 909
Bamberg, S.C. 29003
(803) 245-5178
Attorney for Defendants

Bamberg, South Carolina

March 24, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BARNWELL	)	SECOND JUDICIAL CIRCUIT
	)	
Henry David Still, V,	)	C/A #: 2016-CP-06-00045
	)	
PLAINTIFF,	)	
	)	
v.	)	NOTICE OF MOTION AND MOTION
	)	FOR SUMMARY JUDGMENT
	)	
Barbara Wrenn Vaughn, Personal	)	
Representative of the Estate of Barbara B.	)	
Still, and Personal Representative of the	)	
Estate of Henry David Still, IV,	)	
	)	
DEFENDANTS.	)	

TO: JAMES EDWARD BRADLEY, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE, the defendants, Barbara Wrenn Vaughn, as Personal Representative of the Estate of Barbara B. Still, and Personal Representative of the Estate of Henry David Still, IV, hereby move the Court for an Order granting it summary judgment in this action, pursuant to SCRCP 56, on the ground there is no genuine issue of material fact which would preclude judgment for these Defendants, and these Defendants are entitled to judgment as a matter of law, and on the further following grounds:

1. Plaintiff cannot adduce facts sufficient to constitute a cause of action and, therefore, all causes of action as alleged by Plaintiff must fail as a matter of law;
2. Plaintiff cannot adduce facts to substantiate his allegations of Barbara B. Still lacking the requisite state of mind to transfer property.
3. Plaintiff cannot adduce facts to substantiate his allegations of Barbara B. Still not understanding her actions, surroundings, and objects of bounty due to medications she was taking.

4. Plaintiff cannot adduce facts to substantiate his allegations of Barbara B. Still's signature being forged on said deeds referenced in the Complaint.
5. Plaintiff cannot adduce facts to substantiate his allegations of Henry David Still, IV unduly influencing Barbara B. Still by way of threats and intimidation.
6. Plaintiff cannot adduce facts to substantiate his allegations of Henry David Still, IV fraudulently probating any will.
7. Plaintiff cannot and has not produced an original will, a copy of an original will, or any other previous will naming Henry David Still, V as the beneficiary of her estate.
8. Plaintiff cannot adduce facts to substantiate his allegations of Henry David Still, IV destroying or hiding said will referenced in Paragraph 7.
9. Plaintiff cannot adduce facts to substantiate his allegations of Henry David Still, IV creating either by undue influence, lack of capacity, or forgery a will leaving Barbara B. Still's entire estate to Henry David Still, IV.

This Motion is supported by the Affidavits of Kent C. Kirkland, K. Clint Kirkland, Jr., Angela R. Rapp, Crystal N. Thomas, and Amber S. Williams, forthcoming memorandum of law, and the case law and statutes of the State of South Carolina.

Respectfully submitted,

NESS & JETT, LLC

By: s/ Richard B. Ness
 Richard B. Ness, #4191
 R. Aaron Ness, #102331
 PO Box 909
 Bamberg, SC 29003
 (Tel) 803-245-5178
 (Fax) 803-245-5384
 RBNSecretary@gmail.com

STATE OF SOUTH CAROLINA
COUNTY OF: BARNWELL
IN THE MATTER OF:
BARBARA BODIFORD STILL
(Decedent)

IN THE PROBATE COURT

CASE NUMBER: 2016-ES-06-00004

***COMPLETE THIS SECTION ONLY IF FILING PETITION
FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

*HENRY DAVID STILL, V,
Petitioner(s)
vs.

*BARBARA WRENN VAUGHN AND CYNTHIA
STILL BOOTS,
Respondent(s)

APPLICATION FOR INFORMAL
☐ PROBATE OF WILL
☐ APPOINTMENT

(check any that apply)

*PETITION FOR FORMAL
☒ TESTACY
☒ APPOINTMENT

If this is a formal filing, please explain on page 3 or attach pleadings pursuant to *SC Rules of Civil Procedure*.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE
A SUMMONS (FORM SCCA 401PC), AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE
PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Applicant/Petitioner(s): Henry David Still, V

Address: 725 Coleman Blvd., Apt. 219, Box 188, Mount Pleasant, SC 29464

Telephone (Work): _____

(Home): _____

(Cell): 843-816-2683

Email: hdstillv@gmail.com

Relationship to Decedent: Son

2. Decedent Information:

Full Legal Name
(including all known names): Barbara Bodiford Still

Date of Birth: October 4, 1940

Date of Death: September 17, 2015

Age at Date of Death: 74 years

3. Venue for this proceeding is proper in this County because:

☒ Decedent was domiciled in this County at date of death:

Address: 346 REYNOLDS STREET, BLACKVILLE, SC 29817 County: BARNWELL State: South Carolina.

☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this County
at date of death at:

Address: _____ County: _____ State: South Carolina

☐ Decedent has a right to take legal action in this County because:

If the above address is the address of a nursing home, prison, or other residential facility, please give the last address

FORM #300ES (04/2017)

Page 1 of 6

62-2-504, 62-3-102, 62-3-203, 62-3-301, 62-3-302, 62-3-303, 62-3-308, 62-3-311, 62-3-401, 62-3-402,
62-3-404, 62-3-409, 62-3-414, 62-3-601, 62-3-602, 62-3-704, 62-3-804, 44-23-1090, 44-23-1120

of the Decedent prior to entering a facility:

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Henry David Still, IV	Deceased	346 Reynolds Street, Blackville, SC 29817	Spouse
Henry David Still, V	+21	725 Coleman Blvd., Apt. 219, Box 188, Mount Pleasant, SC 29464	Son
Barbara Wrenn Vaughn	+21	300 Harriett Street, Hampton, SC 29924	Granddaughter
Cynthia Still Boots	+21	346 Reynolds Street, Blackville, SC 29817	Daughter

☐ See attached for additional devisees (check if applicable).

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Henry David Still, V	+21	725 Coleman Blvd., Apt. 219, Box 188, Mount Pleasant, SC 29464	Son
Cynthia Still Boots	+21	346 Reynolds Street, Blackville, SC 29817	Daughter

☐ See attached for additional intestate heirs (check if applicable).

4(c). Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by a Court for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

☐ NO ☒ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM #111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10-10-17 10:10:17 AM 10-10-17 10:10:17 AM 10-10-17 10:10:17 AM

10. Have more than ten (10) years passed since the Decedent's death?
☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
- 11(a). Did the Decedent own probate real estate?
☐ NO ☒ YES If yes, an approximate value of \$1,000,000 (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)
- 11(b). Did the Decedent own probate personal property?
☐ NO ☒ YES If yes, an approximate value of \$400,000 (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)
12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s)?
☒ YES If yes, then proceed to Section II.
☐ NO If no, then proceed to Section III.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- ☐ The original is attached.
☐ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☒ The original of the Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached. (for formal proceeding, explain below or attach supplemental pleadings)

2. The execution date of the Will was: July or August 2015
Codicil(s): _____

3. Is there a memorandum that disposes of tangible personal property pursuant to 62-2-512?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?

☒ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

I (8). Henry David Still, IV, was appointed but died during pendency of probate. Barbara Wrenn Vaughn was appointed May 10, 2017. Ms. Vaughn's address: 300 Harriett Street, Hampton, SC 29924.

II (1). Will left specific property to Henry David Still, V, including: Reynolds Street House, Nixes Lake Property, and Lott Place on Jones Bridge Road

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:
 - ☐ named as Primary Personal Representative in Will
 - ☐ named as Alternate Personal Representative in Will
 - ☐ nominee of Primary Personal Representative in Will
 - ☐ nominee of Alternate Personal Representative in Will
 - ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
 - ☒ other devisee of Decedent (describe): Son or nominee of said devisee
 - ☐ surviving spouse of Decedent or nominee of said spouse
 - ☐ other heir of Decedent (describe): _____ or nominee of said heir
 - ☐ creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
 - ☐ other (describe): _____
3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 11th day
of July, 2017
Day A. Hight
Notary Public for South Carolina
My Commission Expires: 5/22/2018

Signature of
Applicant/Petitioner: Thy Pond Hill

SWORN to before me this _____ day
of _____, 20____

Signature of Co-
Applicant/Co-Petitioner: _____

Notary Public for South Carolina
My Commission Expires: _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed _____ and

- ☐ Codicil executed _____ and
☐ Memorandum

be informally ☐ GRANTED ☐ DENIED.

Executed this _____ day of _____, 2_____.

_____, Probate Court Judge

-
- ☐ For formal probate of Will, see separate order executed _____.
-

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

Bond

- ☐ Fiduciary Bond in the amount of \$_____
☐ Bond not required for Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other:_____

Notice to Creditors

- ☐ Required
☐ Not Required

Executed this _____ day of _____, 2_____.

_____, Probate Court Judge

-
- ☐ For formal appointment of Personal Representative, see separate order executed _____
-

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: 
Print Name: Henry David Still, V
Address: 725 Coleman Blvd., Apt. 219, Box 188, Mount Pleasant, SC 29464

Telephone (Work): _____
(Home): _____
(Cell): 843-816-2683
Email: hdstillv@gmail.com

Signature: _____
Print Name: _____
Address: _____

Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

*Attorney: James Edward Bradley
Address: Moore Taylor Law Firm, P.A.
P.O. Box 5709, West Columbia, SC 29171
Telephone: 803-796-9160
Email: ward@mttlaw.com

*By completing this information, attorney is designated as attorney of record for assisting Personal Representative until proper withdrawal.

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

In the Matter of:

Barbara Bodiford Still (Decedent)

Henry David Still, V,

vs. JUL 13 2017
Petitioner,

Barbara Wrenn Vaughn and
Cynthia Still Boots,

Respondents.

IN THE PROBATE COURT

Case No. 2016-ES-06-00004

**PETITION AND COMPLAINT
FOR FORMAL PROBATE
REGARDING MISSING WILL**

(Jury Trial Requested)

The Petitioner or Complainant alleges as follows:

1. The Petitioner is the son of Barbara Bodiford Still.
2. The Petitioner submits this Complaint and Petition for a formal probate of a missing will of Barbara Bodiford Still.
3. The Petitioner asks to be appointed the personal representative of her estate.
4. The Petitioner requests a judicial order after notice and a hearing.
5. The Petitioner requests an order regarding the lost will of Barbara Bodiford Still indicating that her estate be distributed as set forth in her lost will or that that the lost will be found to revoke the prior 2013 will such that her estate be deemed to be intestate.
6. Barbara Bodiford Still is Petitioner's mother and the decedent in this matter. Her age at death was 74 years. Her date of death was September 17, 2015. She lived in Barnwell County in South Carolina at the time of her death. At her death, her husband was Henry David Still, IV, residing at 346 Reynolds Street, Blackville, SC 29817. Her daughter was Cynthia Still Boots residing at 346 Reynolds Street, Blackville, SC 29817, and her son was Henry David Still,

V, residing at 725 Coleman Blvd., Apt. 219, Box 188, Mount Pleasant, SC 29464. Less than 10 years have passed since the date of Barbara Bodiford Still's death.

7. The will alleged in these pleadings was validly executed.

8. After an exercise of reasonable diligence, I am unaware of any instrument revoking the will, and the will which is the subject of this application is Barbara Bodiford Still's last will.

9. The original of the last will of Barbara Bodiford Still is not in my possession or in the possession of the Court.

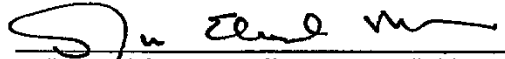
10. To the best of my knowledge, the will is lost or otherwise unavailable. The will indicates that Henry David Still, V, is to inherit his grandmother's house on Reynolds Road, his great grandfather's farm called the Lott Place consisting of approximately 600 acres at Jones Bridge Road, and the river property consisting of approximately 30 acres on the Edisto River. The will also indicates that the remainder of Barbara Bodiford Still's estate is to be inherited by Henry David Still, IV, and held for the benefit of Barbara Wrenn Vaughn and Cynthia Still Boots.

11. Henry David Still, V, requests a finding by the Probate Court entering the lost will as the last will of Barbara Bodiford Still, finding that deeds executed and recorded purporting to convey property from Barbara Bodiford Still to Henry David Still, IV, be found improper, and conveying the property as set forth in the lost will of Barbara Bodiford Still.

12. Henry David Still, V, asks for a jury trial on these issues.

WHEREFORE, Henry David Still, V, having complained of the actions listed in this pleading asks for a jury trial on the issues above with a resolution in his favor.

MOORE TAYLOR LAW FIRM, P.A.

By: 
James Edward Bradley, SC Bar # 66130
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ward@mttlaw.com
Attorney for Plaintiff/Petitioner

West Columbia, South Carolina

July 11, 2017

STATE OF SOUTH CAROLINA	)	REMOVED FROM THE PROBATE COURT
	)	TO THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	
	)	Case No.: 2017-CP-06-00262
	)	Case No.: 2016-ES-06-00004
In the Matter of:	)	
Barbara Bodiford Still (Decedent)	)	
	)	
Henry David Still, V,	)	
	)	ANSWER
PETITIONER,	)	
	)	
v.	)	
	)	
Barbara Wrenn Vaughn and Cynthia Still	)	
Boots,	)	
	)	
RESPONDENTS.	)	

The Respondents, Barbara Wrenn Vaughn and Cynthia Still Boots, hereby reserve their right to be heard on a Motion, pursuant to SCRCF Rule 12(b)(6), for dismissal for failure to state a claim for which relief can be granted. The Respondents, Barbara Wrenn Vaughn and Cynthia Still Boots, by and through their undersigned attorneys, hereby respond as follows to the petition and complaint in this action:

FOR A FIRST DEFENSE

(Responding specifically to the allegations of the Complaint – Each paragraph not admitted, denied, or explained is denied)

1. Respondents admit Paragraph 1 of the Complaint.
2. Paragraph 2 of the Complaint is not an allegation for which a response is required.
However, to the extent a response is needed, this paragraph is denied.
3. Paragraph 3 of the Complaint is not an allegation for which a response is required.
However, to the extent a response is needed, Respondents object to Petitioner's request to be appointed personal representative of the Estate of Barbara Bodiford Still and submit to

the Court that a personal representative, Barbara Wrenn Vaughn, has already been appointed by the court to serve as personal representative, without objection from Petitioner.

4. Paragraph 4 of the Complaint is not an allegation for which a response is required. However, to the extent a response is needed, this paragraph is denied.
5. Paragraph 5 of the Complaint is not an allegation for which a response is required. However, to the extent a response is needed, Respondents submit to the Court that neither an original will nor a copy of an original will has been found which would revoke, in full or in part, the 2013 will that is currently on file with the Court. Respondents would respectfully request the Court issue no Order based on the will that Petitioner alleges exists, and Respondents demand strict proof of the existence of a will post-dating the 2013 will that is currently on file with the Court.
6. Respondents admit Paragraph 6 of the Complaint.
7. Respondents deny Paragraph 7 of the Complaint and strict proof is demanded thereof.
8. Paragraph 8 of the Complaint is not an allegation for which a response is required. However, to the extent a response is needed, this allegation is denied and Respondents demand strict proof of the existence of a will post-dating the 2013 will that is currently on file with the Court.
9. Paragraph 9 of the Complaint is not an allegation for which a response is required. However, to the extent a response is needed, this allegation is denied and Respondents demand strict proof of the existence of a will post-dating the 2013 will that is currently on file with the Court.

10. Respondents deny Paragraph 10 of the Complaint and demand strict proof of the existence of a will post-dating the 2013 will that is currently on file with the Court.
11. Respondents deny Paragraph 11 and demand strict proof of the existence of a will post-dating the 2013 will that is currently on file with the Court. Respondents further object to Petitioner's request to have the Court probate a will of which neither an original nor a copy has been found.
12. Paragraph 12 of the Complaint is not an allegation for which a response is required. However, to the extent a response is needed, Respondents consent to Petitioner's request for a jury trial.

FOR A SECOND DEFENSE

(S.C. Code § 62-3-108(A)(2)(c) – Statute of Limitations)
(S.C. Code § 62-3-803(a)(1) and (c)(2) – Statute of Limitations)

13. Respondents repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
14. Respondents assert that Petitioner's Formal Petition and Complaint in this action was not commenced within the later of eight (8) months from informal probate or one (1) year from the date of death of Barbara B. Still, and the Petitioner's Formal Petition and Complaint should be dismissed against Respondents pursuant to S.C. Code § 62-3-108(A)(2)(c) and S.C. Code § 62-3-803(a)(1) and (c)(2).

FOR A THIRD DEFENSE

(SCRCP Rule 12(b)(6) – Failure to State a Cause of Action)

15. Respondents repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.

16. Respondents assert that Petitioner's Complaint has failed to state facts sufficient to constitute a cause of action against Respondents, and the Petitioner's Complaint should be dismissed against Respondents pursuant to SCRPC Rule 12(b)(6).

FOR A FOURTH DEFENSE

(S.C. Code § 62-3-203 – Priority for Appointment)

(S.C. Code § 62-3-107(4) – Proceeding for Appointment Concluded by an Order of Appointment)

17. Respondents repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
18. Barbara Wrenn Vaughn has priority for appointment under S.C. Code § 62-3-203(a)(1), as she was nominated by the Last Will and Testament of Barbara B. Still to serve as the personal representative.
19. According to S.C. Code § 62-3-107(4), a proceeding for appointment of a Personal Representative for the Estate of Barbara B. Still has been adjudicated and concluded by an Order signed on May 10, 2017, appointing Barbara Wrenn Vaughn as Personal Representative of the Estate of Barbara B. Still.
20. Respondents assert that Henry David Still, V does not have priority over Barbara Wrenn Vaughn according to S.C. Code § 62-3-203(a)(3), as he was not nominated by the Last Will and Testament of Barbara B. Still to serve as a personal representative.

FOR A FIFTH DEFENSE

**(S.C. Code § 62-3-203(b) – Failure to Object to Appointment by Formal Petition)
(Waiver and Estoppel)**

21. Respondents repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
22. Respondents assert that Henry David Still, V has only petitioned the Probate Court of Barnwell County to appoint him as personal representative, and Henry D. Still, V has

never made an objection through a formal proceeding, within the proper timeframe(s) or otherwise, under S.C. Code § 62-3-203(b) as to the appointment of Barbara Wrenn Vaughn as personal representative.

23. Respondents further assert that Petitioner has waived any chance to object to the appointment of Barbara Wrenn Vaughn as personal representative.

FOR A SIXTH DEFENSE
(S.C. Code § 62-3-402(b) – Determination of Heirs)

24. Respondents repeat(s) and reassert(s) the matters set forth above, as fully as if repeated verbatim.
25. Respondents assert that Petitioner has failed to comply with S.C. Code § 62-3-402(b) by requesting a judicial finding and order to determine the heirs of the decedent.

WHEREFORE, having fully answered Petitioner's Complaint, Respondents request the Court inquire into these matters and dismiss Petitioner's Complaint with prejudice and with costs, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

NESS & JETT, LLC

August 3, 2017

By: /s/ Richard B. Ness
Richard B. Ness, #4191
R. Aaron Ness, #102331
P.O. Box 909
Bamberg, SC 29003
(Tel) 803-245-5178
(Fax) 803-245-5384
ATTORNEYS FOR RESPONDENTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BARNWELL	)	SECOND JUDICIAL CIRCUIT
	)	
Henry David Still, V,	)	C/A #: 2016-CP-06-00045
	)	
PLAINTIFF,	)	
	)	
v.	)	NOTICE OF MOTION AND MOTION
	)	FOR RECONSIDERATION OF ORDER
	)	DENYING SUMMARY JUDGMENT
Barbara Wrenn Vaughn, Personal	)	
Representative of the Estate of Barbara B.	)	
Still, and Personal Representative of the	)	
Estate of Henry David Still, IV,	)	
	)	
DEFENDANTS.	)	

TO: JAMES EDWARD BRADLEY, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE, the defendants, Barbara Wrenn Vaughn, as Personal Representative for the Estate of Barbara B. Still, and Personal Representative for the Estate of Henry David Still, IV, pursuant to Rule 59(e) SCRPC, hereby move the Court to reconsider its Order, issued July 25, 2017, and served on counsel, July 26, 2017.

This motion is based on issue(s) properly raised to the Court at the summary judgment hearing on July 25, 2017, and a supplemental memorandum of law, which will be submitted to the Court at a later date.

Respectfully submitted,

NESS & JETT, LLC

By: s/ Richard B. Ness
 Richard B. Ness, #4191
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 Bamberg, SC 29003

August 4, 2017

(Tel) 803-245-5178
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BARNWELL	)	SECOND JUDICIAL CIRCUIT
	)	
	)	Case No.: 2016-CP-06-00045
Henry David Still, V,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	MEMORANDUM OF LAW IN
	)	SUPPORT OF DEFENDANTS' MOTION
	)	FOR RECONSIDERATION OF ORDER
	)	DENYING SUMMARY JUDGMENT
Barbara Wrenn Vaughn, Personal	)	
Representative of the Estate of Barbara B.	)	
Still, and Personal Representative of the	)	
Estate of Henry David Still, IV,	)	
	)	
DEFENDANTS.	)	

Defendants, by and through their undersigned counsel, hereby submit this Memorandum of Law in Support of Defendants' Motion for Reconsideration of Order Denying Summary Judgment pursuant to South Carolina Rules of Civil Procedure Rule 59(e).

INTRODUCTION

Barbara B. Still died testate on September 17, 2015. Her Will was informally admitted to probate on January 6, 2016. On February 3, 2016, Plaintiff filed this lawsuit seeking to contest Barbara Still's 2013 Will and overturn numerous deeds executed by Barbara Still in 2015. On June 5, 2017, Defendants filed their motion for Summary Judgment, and a hearing was held on July 25, 2017 at the Barnwell County Courthouse.

On July 25, 2017, The Honorable Doyet A. Early, III issued his Order denying Defendants' motion for Summary Judgment. During the hearing, Defendants properly raised the issue of subject matter jurisdiction to the Court, arguing the circuit court did not have the authority to hear this case. The Court ruled from the bench that subject matter jurisdiction was

proper and proceeded with the other issues before the Court on Defendants' summary judgment hearing.

ARGUMENTS

I. THE CIRCUIT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER THIS LAWSUIT BECAUSE THE PROBATE COURT HAS EXCLUSIVE ORIGINAL JURISDICTION OVER ALL SUBJECT MATTER RELATED THE ESTATE OF A DECEDENT AND THE ESTATE OF BARBARA B. STILL IS A DEFENDANT.

Subject matter jurisdiction may be raised at any time, even for the first time on appeal, by a party or by the court. *Ex parte Cannon*, 385 S.C. 643, 654, 685 S.E.2d 814, 820 (Ct. App. 2009). The South Carolina Constitution provides that the Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, *except those cases in which exclusive jurisdiction shall be given to inferior courts* (emphasis added), and shall have such appellate jurisdiction as provided by law." S.C. Const. Art. V, § 11.

Relative to the probate court and its jurisdiction, "The extent of the probate court's 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, enacted by our legislature, provides:

"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 or protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, 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.*" (emphasis added)

S.C. Code § 62-1-302(a)(1).

South Carolina's jurisprudence states that the jurisdiction of the probate court extends to subject matter related to estates of decedents. *In the Matter of Howard*, 315 S.C. 356, 364, 434 S.E.2d 254 (1993). Furthermore, as a matter of judicial economy, the probate court should have the power to make decisions necessary to the administration of an estate. *Neely v. Thomasson*, 365 S.C. 345, 351, 618 S.E.2d 884 (2005).

South Carolina appellate courts have considered the issue of probate court jurisdiction before. In *Judy v. Judy*, the South Carolina Supreme Court held the probate court had jurisdiction and was authorized to rule on an action for 'waste' because the probate code contains broad language stating, "all subject matter related to estates of decedents." *Judy v. Judy*, 393 S.C. 160, 169, 712 S.E.2d 408 (2011). In that case, the heir of an estate filed a lawsuit against another heir, seeking to recover for damages to a fishing pond. *Id.* at 164-65. The court said, "given the broad wording of the above-outlined code sections, particularly the phrase "all subject matter related to estates of decedents," we find the probate court was statutorily authorized to rule on the waste action." *Id.* at 169.

In another case, *Brown v. Butler*, the South Carolina Court of Appeals held that an action to set aside a deed was a circuit court matter because the plaintiff did not sue the decedent or his estate, and, instead, only sued the grantee of the property who was still alive. *Brown v. Butler*, 347 S.C. 259, 262-63, 554 S.E.2d 431 (2001). In that case, Carl Brown conveyed property to his sister, Julie Butler. *Id.* at 261. After Carl Brown died, his estranged wife and children filed an action in circuit court against Julie Butler, only, seeking to aside the deed. *Id.* The Master-in-Equity ordered the deed to be set aside, and Julie Butler argued the circuit court did not have subject matter jurisdiction. *Id.* at 262.

The court of appeals affirmed the circuit court and held: “The action here, however, is not against Carl. It is against Butler. It is neither an action to contest or construe a will, to determine heirs and successors of a decedent, nor to determine the estate of a protected person. Rather, the action is one to set aside a deed, and it is brought against one who is very much alive and litigating.” *Id.* at 262-63. The court stated in footnote 4 that “Vera did not name Carl’s estate as a party . . .” *Id.* at Fn. 4.

In our case, from the beginning, Plaintiff filed this lawsuit in the circuit court to contest a will and to set aside deeds. This was incorrect and Plaintiff chose the incorrect forum to bring his lawsuit over both of these matters. Plaintiff should have filed both of these actions in the probate court. According to the South Carolina Constitution, the circuit court fails to have jurisdiction when exclusive jurisdiction over a subject matter is given to an inferior court.

As to the will contest part of this action filed by Plaintiff, the probate code provides that probate courts have exclusive original jurisdiction over all subject matter related to the estates of decedents, and this includes will contests. The circuit court cannot have jurisdiction over a will contest because the probate code gives exclusive original jurisdiction to the probate court. Plaintiff should have filed its will contest in the probate court in February 2016 when it decided to contest Barbara Still’s 2013 Will, five (5) months after her death. Instead, Plaintiff chose the incorrect forum, the circuit court, to contest the 2013 Will. Plaintiff’s will contest should be dismissed for lack of subject matter jurisdiction.

As to the 2015 deeds that Plaintiff is seeking to have set aside, this action should have originally been filed in the probate court as well. Again, probate courts have exclusive original jurisdiction over all subject matter related to the estates of decedents, and this includes the determination of property in which the estate of a decedent or protected person has an interest.

At the time this lawsuit was filed, Barbara Still had been deceased for approximately five (5) months. The validity of the deeds that she executed is 'subject matter related to the estate of a decedent.' Whether the deeds are valid or invalid has a direct connection to the current ownership of the property. If the deeds were declared invalid at a later point, the property would still be an asset of Barbara Still's estate. The Estate of Barbara Still has an enormous interest in determining the ownership and title of the property that was conveyed in the 2015 deeds.

Our case is not too dissimilar from the *Brown* case, in which the court said an action to set aside a deed is reserved for circuit court because the plaintiff did not sue a decedent or his estate. However, in that case, the court stated the lawsuit was not brought against the deceased, and it was brought against "one who is very much alive and litigating." See: *Brown*, 347 S.C. at 262-63. This is major distinguishing fact. In our case, Plaintiff Henry D. Still, V filed his lawsuit against the Estate of Barbara B. Still. Plaintiff named Barbara Still's estate, which had been opened, as a party to this lawsuit, and Barbara Still was, without question, not alive at the time this lawsuit was filed.

The probate court has sole jurisdiction and is statutorily authorized to rule on this issue because Plaintiff sued the estate of Barbara Still and because the deeds are subject matter related to her estate. Plaintiff's action to have the 2015 deeds set aside should be dismissed for lack of subject matter jurisdiction.

CONCLUSION

For the reasons stated above, the circuit court does not have subject matter jurisdiction to entertain an action to contest a will or an action to set aside deeds against the estate. The probate court has exclusive original jurisdiction over both of these issues. Defendants respectfully request the Court grants its Motion for Summary Judgment.

Respectfully submitted,

NESS & JETT, LLC

By: /s/ Richard B. Ness
Richard B. Ness, #4191
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PO Box 909
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RBNSecretary@gmail.com
ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	REMOVED FROM THE PROBATE COURT
	)	TO THE COURT OF COMMON PLEAS
COUNTY OF BARNWELL	)	
	)	Case No.: 2017-CP-06-00262
	)	
In the Matter of:	)	
Barbara Bodiford Still (Decedent)	)	
	)	
Henry David Still, V,	)	
	)	NOTICE OF MOTION AND
	)	MOTION FOR SUMMARY JUDGMENT
PETITIONER,	)	
	)	
v.	)	
	)	
Barbara Wrenn Vaughn and Cynthia Still	)	
Boots,	)	
	)	
RESPONDENTS.	)	

TO: TRUETT NETTLES, II, ATTORNEY FOR PETITIONER:

YOU WILL PLEASE TAKE NOTICE, the defendants, Barbara Wrenn Vaughn and Cynthia Still Boots, hereby move the Court for an Order granting it summary judgment in this action, pursuant to SCRCP 56, on the ground there is no genuine issue of material fact which would preclude judgment for Defendants, and Defendants are entitled to judgment as a matter of law, on the following ground(s):

1. S.C. Code § 62-3-108(A)(2)(c)

This motion is supported by the statutes and case law of South Carolina, and the forthcoming memorandum of law.

Respectfully submitted,

NESS & JETT, LLC

By: /s/ Richard B. Ness
 Richard B. Ness, #4191
 R. Aaron Ness, #102331
 Adam C. Ness, #100707

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ATTORNEYS FOR RESPONDENTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BARNWELL	)	SECOND JUDICIAL CIRCUIT
	)	
	)	Case No.: 2016-CP-06-00045
Henry David Still, V,	)	
	)	
PLAINTIFF,	)	
	)	REPLY MEMORANDUM TO PLAINTIFF'S
v.	)	OBJECTION TO RECONSIDERATION
	)	OF ORDER DENYING
Barbara Wrenn Vaughn, Personal	)	SUMMARY JUDGMENT
Representative of the Estate of Barbara B.	)	
Still, and Personal Representative of the	)	
Estate of Henry David Still, IV,	)	
	)	
DEFENDANTS.	)	

Defendants, by and through their undersigned counsel, hereby submit this Reply Memorandum to Plaintiff's Amended Objection to Reconsideration of Order Denying Summary Judgment.

ARGUMENTS

I. PLAINTIFF IS IN ERROR BY ARGUING THAT HE IS THE SOLE HEIR OF BARBARA STILL, THAT THIS IS AN ACTION TO QUIET TITLE, AND THAT THIS IS AN ACTION TO DETERMINE HEIRS AND SUCCESSORS.

Section 62-1-302(a)(1) of the South Carolina Probate Code states, "... except that the circuit court also has jurisdiction to *determine heirs and successors* (emphasis added) as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court." S.C. Code § 62-1-302(a)(1). The keywords under this statute are emphasized above, and the circuit court only has jurisdiction if heirs and successors need to be determined.

Plaintiff is not the sole heir of Barbara Still's estate, and his own probate court filings refute his argument. Plaintiff has filed probate documents stating that he is not the sole heir of

Barbara B. Still. In the related litigation (2017-CP-06-00262, formerly 2016-ES-06-00004), Plaintiff lists himself and his sister, Cynthia Still Boots, as “intestate heirs.” *See: Petition for Formal Testacy and Appointment.*

Plaintiff is also incorrect that this is an action to determine heirs and successors. Barbara Still has no unknown heirs, and the dispute in this case is not to determine heirs and successors. It is a will contest and an action to set aside deeds, and the pleadings reflect the same. *See Summons and Complaint (2016-CP-06-00045).* There is no language in Plaintiff’s summons and complaint (or the related litigation) that would even give an indication that heirs and successors need to be determined or that this is a quiet title action, and Plaintiff has never requested for heirs and successors be determined or that title to the property be quieted.

Plaintiff’s arguments in his memorandum are an attempt to blur the division between a will contest and a quiet title action in order to pigeonhole his case with the jurisdiction of the circuit court under section 62-1-302(a)(1).

II. PLAINTIFF IS IN ERROR BY ARGUING THAT JURISDICTION EXTENDS TO THE PLAINTIFF UNDER SECTION 62-3-804(3) BECAUSE THIS STATUTE FALLS UNDER THE CREDITORS’ CLAIMS STATUTES, AND PLAINTIFF IS NOT A CREDITOR, HE IS NOT BRINGING A CREDITOR’S “CLAIM,” AND HE IS NOT SEEKING PAYMENT OF A CLAIM BY THE ESTATE.

“Claims” under the South Carolina Probate Code is a legal term of art and is not synonymous with the causes of action brought by Plaintiff. Simply because Plaintiff has brought a case against the estates and the personal representative, does not mean that he has brought a “Claim” as defined within the probate code. A “Claim,” under the probate code, is defined as:

“ . . . liabilities of the decedent . . . whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent The term does not include . . . demands or disputes regarding title of a decedent . . . to specific assets alleged to be included in the estate.”

S.C. Code § 62-1-201(4).

The definition of a "Claim" includes liabilities of an estate under contract and tort, for money. The fallacy in Plaintiff's argument is that he is not seeking money, he has never indicated or plead that he is seeking money, and he is not a creditor. Additionally, a "Claim" as defined does not include "demands or disputes regarding title of a decedent." Plaintiff is in error by arguing under the Creditors' Claims statutes, and the correct statute for subject-matter jurisdiction remains section 62-1-302(a)(1).

CONCLUSION

For the reasons stated above, Plaintiff is in error. Defendants respectfully request the Court grants its Motion for Summary judgment based the memorandums submitted.

Respectfully submitted,

NESS & JETT, LLC

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 RBNSecretary@gmail.com
 ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL	)	
	)	CASE NO.: 2016-CP-06-00045
Henry David Still, V	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	PLAINTIFF'S MOTION FOR
	)	RECONSIDERATION
Barbara Wrenn Vaughn, Personal	)	
Representative of the Estate of Barbara B.	)	
Still, and Personal Representative of the	)	
Estate of Henry David Still, IV,	)	
	)	
Defendants.	)	
	)	

By order filed December 6, 2017, this Court dismissed the Plaintiff's second cause of action challenging the 2013 Will of the late Barbara B. Still. By that same Order, the Court retained jurisdiction on the Plaintiff's first cause of action to determine the validity of certain *inter vivos* deeds of the late Barbara B. Still. The Plaintiff believes that his challenge to the 2013 Will being probated must be heard by this Court of Common Pleas. Even if this cause of action challenging the Will of the decedent is found to be exclusively within the jurisdiction within the probate court, the proper remedy for this Court of Common Pleas is to transfer that cause of action to the Probate Court.

In the decision filed December 6, 2017, the Court quoted the South Carolina Probate Code § 62-1-302(a)(1). The Court concluded that the Plaintiff's second cause of action was not one to determine heirs and successors nor was it one to "quiet title." The Court and both parties, however, did agree and stipulate that the Plaintiff's first cause of action concerning the validity of deeds was within the jurisdiction of this Court. If the Plaintiff prevails in his challenge to the 2013 Will of the decedent, he will be a "successor" in interest to the decedent Barbara B. Still.

Determining which Will of the decedent, if either, is valid, will determine who the successors in interest to the decedent will be.

All portions of the South Carolina Probate Code, particularly § 62-1-302, must be construed *in pari materia*. While the Court did construe paragraph (a)(1) of this statute, the Court did not address paragraph (d) of that same statute.

(d) Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, **must be removed** to the circuit court and in these cases the circuit court shall proceed upon the matter de novo:

(1) formal proceeding for the probate of wills and for the appointment of general personal representatives; (emphasis added.)

S.C. Code § 62-1-302 (d)(1)

A formal proceeding for the probate of a will is defined in S.C. Code § 62-3-402(a): "...the petition also must state the contents of the will, and indicate that it is lost, destroyed or otherwise unavailable." The Plaintiff's second cause of action makes those very allegations. In essence, the Plaintiff's second cause of action is a petition for formal probate of the Will of the late Barbara B. Still. If the Plaintiff had filed the second cause of action in Probate Court, rather than the Court of Common Pleas, the matter would be automatically and mandatorily transferred to the Court of Common Pleas. This Court anticipated that the scenario during the first hearing on the Defendant's Motion for Summary Judgment (see transcript page 14, lines 19-22, attached as exhibit A). This matter is required by the South Carolina Probate Code to be determined by the circuit court S.C. Code § 62-1-302(d), cited above.

If this Court is correct in its conclusion that the Will contest and determination of successors to the decedent remains in the exclusive jurisdiction of the Probate Court, the proper remedy is not dismissal of the Plaintiff's second cause of action. Rule 82(b) of the South

Carolina Rules of Civil Procedure provides that “When an action is brought in the wrong county or in 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.” The Plaintiff filed both of his actions in the Barnwell County Court of Common Pleas just a few weeks after the Estate of Barbara B. Still was commenced into Probate Court. If this Court determines that the Plaintiff’s second cause of action should have been filed in Probate Court, the proper remedy is to transfer that cause of action to the Probate Court, not to dismiss the action with prejudice.

Therefore, the Plaintiff prays that this Court exercise the jurisdiction of this Circuit Court concerning the formal probate of the Will of the late Barbara B. Still or, in the alternative transfer the Plaintiff’s second cause of action to the Barnwell County Probate Court.

Respectfully submitted,

Dated: December 12, 2017.
North Charleston, South Carolina

/s/ F. Truett Nettles, II
F. Truett Nettles, II, Esq.
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TNettles@FinkelLaw.com
Attorney for Plaintiff

1 don't have jurisdiction, then it'll all go down to the
2 probate court and she's going to probably remand it back
3 up here.

4 MR. BRADLEY: Judge, I can short -- this is the first
5 time I've heard this position. It wasn't in their memo.
6 It wasn't in their memorandum, but --

7 THE COURT: Well, you know, you can raise
8 jurisdiction any time you want to. So you may be getting
9 what you want in an indirect way.

10 MR. BRADLEY: That's fine. If -- what I would just
11 suggest and we'll consent to it, why don't we just remand
12 this case to the probate court or send it to the probate
13 court to be consolidated with what's already there?

14 MR. NESS: I don't think it can be remanded, Your
15 Honor, if it wasn't filed there to begin with. It would
16 need to be dismissed out of this court.

17 I've got the statute and a copy for you if you'd like
18 to look at it.

19 THE COURT: Well, if I remand it or dismiss it or
20 whatever, you've still got the same action pending down in
21 probate court and if you want to amend down in probate
22 court, she's probably going to bump it back up here.

23 MR. BRADLEY: And this-only problem is, Judge, we
24 have a lis pendens. This is a strange case because it has
25 deeds with the wills. We need the deed part to go to keep



1 STATE OF SOUTH CAROLINA

2 COUNTY OF BARNWELL

CIRCUIT COURT
2016-CP-06-00045

3
4 HENRY DAVID STILL, V,
Plaintiff,

5 -vs-

TRANSCRIPT OF RECORD

6 BARBARA WRENN VAUGHN,
7 personal representative of
the ESTATE of BARBARA B. STILL,
8 and personal representative of the
ESTATE OF HENRY DAVID STILL, IV,
9 Defendant.

10
11 Heard on Tuesday, July 25, 2017

12 Barnwell, South Carolina

13
14 BEFORE:

15 THE HONORABLE DOYET A. EARLY, III

16
17 APPEARANCES:

Counsel on Behalf of the Plaintiff:
18 James Edward Bradley, Esq.

19
Counsel on Behalf of the Defendant:
20 Richard B. Ness, Esq.
21 Richard Aaron Ness, Esq.

22 Cheri L. Young, RPR
23 Circuit Court Reporter
P O Box 5232
24 Aiken, SC 29804-5232
25

1 ON TUESDAY, JULY 25, 2017 AT 10:10 A.M.:

2 THE COURT: The last case I have is the Still family
3 case.

4 Mr. Bradley, tell me the -- what you are seeking in
5 circuit court? As I read a lot of the filings, it appears
6 that you are -- is it simply an injunction to keep
7 Mr. Sonny Still who's now deceased, now substituted party
8 of the estate, to preclude or keep them or enjoin them
9 from the closing of any real estate or assets until your
10 will contest is concluded, or is there a will contest in
11 the probate court?

12 MR. BRADLEY: Yes. The answer to the last question
13 is yes. We filed a will contest in the probate court.

14 THE COURT: And are you -- of course, this -- some of
15 this property was transferred before Ms. Barbara died,
16 correct? Allegedly. But you've also -- you're also
17 challenging the late -- the last will that was filed?

18 MR. BRADLEY: Yes, Your Honor.

19 THE COURT: So what are you asking the circuit court
20 to do?

21 MR. BRADLEY: That's a good question. We filed this
22 action to set aside deeds that were conveyed from Barbara
23 Bodiford Still to Sonny Still a month before her death.
24 They were not --

25 THE COURT: The action to set aside the deed.

1 MR. BRADLEY: That was the first part of it. The
2 second part was to contest the will. We've also filed an
3 action to contest the will in probate court. We've filed
4 them together just as a precaution. Sonny Still was still
5 alive at that time, and that's the way we set it up
6 initially.

7 THE COURT: So obviously you're not going to hear the
8 will contest in both courts. They're either going to be
9 done in probate court or he or she's going to send it up
10 here to this court.

11 MR. BRADLEY: Exactly. And we filed one in probate
12 court. So that has to come up through here. I agree. I
13 think procedurally the way it should go is the one from
14 probate court should either be heard there or removed to
15 circuit court and then the, the deed contest has to be
16 heard in circuit court. So it makes sense for everything
17 to be heard at once.

18 THE COURT: Was there a request to enjoin the estate
19 from selling any of the property that went to Mr. Still?
20 Then obviously would go to his estate, I assume?

21 MR. BRADLEY: We did not file a motion for
22 injunction. We filed a lis pendens with the action.

23 THE COURT: Well, that will hold up everything.

24 MR. BRADLEY: If anyone buys it subject to that lis
25 pendens that's their problem in the end. So we didn't --

1 THE COURT: Well, I was thinking about that this
2 morning. I was wondering if there was a lis pendens filed
3 because that would pretty much put a cloud on the title
4 until all of this was resolved.

5 MR. BRADLEY: Yes, Your Honor. That's exactly what
6 we did. So that's the posture of it. To me it makes
7 sense to at some point bring the probate case up to
8 circuit court and try everything at once. But the way
9 everything happened with people dying serially and us
10 filing a motion originally, that's not the way it's
11 postured right now.

12 THE COURT: Now, you have filed a motion to continue
13 to let Judge Lee hear it, but I -- sort of like a veiled
14 motion to recuse me?

15 MR. BRADLEY: Yes, sir. And I, and I -- I --

16 THE COURT: Don't be embarrassed that you did it.

17 MR. BRADLEY: Right. No --

18 THE COURT: That's fine.

19 MR. BRADLEY: -- no, I've never done that before and
20 I don't like to do it but Mr. Still felt very strongly
21 about it and I didn't feel that I had a choice. And so --

22 THE COURT: Well, you don't have a choice.

23 MR. BRADLEY: Right.

24 THE COURT: Well, let's talk about it. It's alleged
25 in the affidavit and motion that I knew Sonny Still. I

1 think I knew Ms. Barbara. I'm sure I met her over the
2 years. I've been in Bamberg since 1974.

3 MR. BRADLEY: Yes, sir.

4 THE COURT: I can't recall -- and I practiced law for
5 30 years. I've been on the bench for 14.

6 MR. BRADLEY: Yes, sir.

7 THE COURT: I don't recall ever having done any work
8 for Mr. Still, legal work. I may have. I don't know. I
9 don't recall him ever doing any appraisals for me. I may
10 have. I don't -- I just can't remember.

11 MR. BRADLEY: Yes, sir.

12 THE COURT: And I practiced general practice for 30
13 years and obviously we closed a lot of estates and maybe,
14 maybe I needed an appraisal, maybe in a domestic
15 relationship, I don't know. If I did I just can't
16 remember.

17 MR. BRADLEY: Yes, sir.

18 THE COURT: We live in a small community.

19 MR. BRADLEY: Yes, sir.

20 THE COURT: Since I've been on the bench for 14 years
21 I've had to, fortunately or unfortunately, hear cases that
22 involve former clients, former acquaintances and
23 acquaintances. I just -- you can't avoid it.

24 MR. BRADLEY: Yes, sir. I understand that. I grew
25 up in South Carolina.

1 THE COURT: And the juries, I knew half the jurors.
2 I used to know 90 percent of them but now --

3 MR. BRADLEY: My family is from Lancaster which is a
4 little bit like Barnwell in that way, so I understand
5 that.

6 THE COURT: So I can't recall the last time I saw
7 Mr. Still or Mrs. Still. I can't recall seeing them in a
8 social setting. I just can't recall. I don't think I've
9 ever had them in my home. I don't know. I just knew them
10 like I know everybody else in the community.

11 MR. BRADLEY: Yes, sir.

12 THE COURT: Pete Brooker, gosh knows, he's a friend
13 to everybody that's ever met him. He's a great guy.
14 90-some odd years old, still goes to work everyday. I'm
15 sure over the years I may have did {sic} a real estate
16 transaction for Mr. Brooker or something along the way but
17 I can't recall. I haven't seen Mr. Brooker in, gosh knows
18 how long, maybe at a funeral or something.

19 But I've had no real contact with him for many, many,
20 many years. I don't know of anybody in Bamberg County
21 that's ever met Mr. Brooker that can't say that he's an
22 outstanding man and everybody likes him including the
23 Still family, I'm sure.

24 I practiced law for a number of years with Richard
25 Ness. He was my law partner. We don't have anything

1 together now. All of my relationships with him that are
2 professional have been severed and I have had over the
3 last 13 or 14 years, gosh knows how many cases that he's
4 had before me. And he's won some, he's lost some. And I
5 treat him just like I do any other lawyer.

6 So unless you can give me some specific reason other
7 than a general gut feeling that your client may have. I
8 don't like to send cases to other, to other judges. Tell
9 me what you want to tell me.

10 MR. BRADLEY: Thank you, Your Honor.

11 And I think the bases that we have is laid out in Hal
12 Still's affidavit, just that based on his memory and his
13 growing up in the community that his father knew you.

14 THE COURT: I'm sure he did.

15 MR. BRADLEY: And would go to work for you and at
16 some point Pete Brooker did as well. And that made him
17 uncomfortable as well as the previous relationship with
18 Mr. Ness and for that reason asked that you step aside
19 from this one and let Judge Lee hear it next month.

20 And those are the facts that we have.

21 THE COURT: Well, unless you can show me something
22 specifically other than just a general feeling, I pledge
23 to you and any other litigant that ever comes before me
24 100 percent impartiality and I do things by the law.

25 MR. BRADLEY: Thank you, Your Honor. I understand

1 your ruling.

2 THE COURT: Thank you.

3 MR. BRADLEY: I appreciate you taking it into
4 consideration.

5 THE COURT: Mr. Ness, we have a motion for summary
6 judgment.

7 MR. AARON NESS: Yes, sir, Your Honor. Good
8 morning.

9 Madam Court Reporter, my name's Aaron Ness. I'm one
10 of the attorneys on this case.

11 Your Honor, Barbara Still and Mr. Sonny Still were
12 married for about 57 years, almost 57 years. And I'll do
13 my best to recite the facts so chronologically you can
14 understand what was going on. In May of 2013 Ms. Barbara
15 Still executed a will at Kent and Clint Kirkland's office
16 where she gave all of her property to Mr. Sonny Still in
17 fee simple.

18 THE COURT: 2013; is that right?

19 MR. AARON NESS: Yes, sir. May of 2013.

20 Fast forward about two years and three months to
21 August of 2015. Mrs. Still went back to Kent and Clint
22 Kirkland's office and executed some deeds where
23 Mrs. Barbara went ahead and gave the property to her and
24 Mr. Sonny as joint tenants with right of survivorship.
25 About a month after that Mrs. Barbara Still passed away.

1 THE COURT: Sometime in September of 2016?
2 MR. AARON NESS: September of '15 she passed away.
3 So a month after the 2015 deed.
4 THE COURT: All right.
5 MR. AARON NESS: Skip forward to January of 2016.
6 Mr. Sonny Still informally probates her --
7 THE COURT: January when?
8 MR. AARON NESS: 2016. So about five months later.
9 THE COURT: Hold on. Maybe I need my glasses. May
10 2013 is the will, alleged will.
11 MR. AARON NESS: Yes, sir.
12 THE COURT: August of 2015.
13 MR. AARON NESS: '15.
14 THE COURT: '15.
15 MR. AARON NESS: Were the deeds.
16 THE COURT: Deeds.
17 MR. AARON NESS: A month later.
18 THE COURT: September of 2015,
19 MR. AARON NESS: She passes away.
20 THE COURT: Sir?
21 MR. AARON NESS: She passed away.
22 THE COURT: And then January?
23 MR. AARON NESS: January Mr. Sonny Still then
24 informally probates her will.
25 THE COURT: 2016?

1 MR. AARON NESS: Correct. And then in February of
2 '16, one month after that, Mr. Hal Still then commenced
3 this lawsuit seeking to contest this 2013 will as well as
4 set aside the deeds. He also alleges that there was a
5 deed -- a will done in June of 2015.

6 THE COURT: That's correct. I saw that in his
7 pleadings.

8 MR. AARON NESS: Which would have been a month before
9 she executed the deeds.

10 Six months after Mr. Hal Still filed this case
11 Mr. Sonny Still then died.

12 THE COURT: That would be in August of '16?

13 MR. AARON NESS: August of '16. And then over the
14 past few months we've finally gotten the Still's grand
15 daughter, Ms. Bane Vaughn, appointed as the personal
16 representative in both estates. So this case is now Henry
17 D. Still the Fifth, Mr. Hal Still versus the Estate of
18 Barbara Still and Sonny Still.

19 THE COURT: Let me ask you a question. Who are the
20 children of Barbara and Sonny Still?

21 MR. AARON NESS: The children would have been Cindy
22 Still Boots and Hal Still. And they also raised their
23 grand daughter who was in Ms. Barbara's will and
24 Mr. Sonny's will.

25 THE COURT: Okay.

1 MR. NESS: For all intents and purposes they treated
2 her as a daughter.

3 THE COURT: Now after Mr. Sonny Still died y'all
4 substituted the grand daughter for the PR?

5 MR. NESS: Yes, sir.

6 THE COURT: And we are where we are today?

7 MR. NESS: Right. Yes, sir.

8 THE COURT: And as of today there's an action in my
9 court, this court, and likewise a similar action to set
10 aside the will in probate court?

11 MR. NESS: Yes, sir. And I'd like to speak on both
12 of those. This action in circuit court, I'm submitting to
13 the Court, was absolutely a will contest. On paragraph 18
14 of the complaint it says: Henry David Still, the Fifth --

15 THE COURT: Hold on one second, please.

16 I'm looking at a summons and complaint dated February
17 2, 2016, and --

18 MR. NESS: Paragraph 18 is where I'm looking.

19 THE COURT: -- and interestingly filed the next day,
20 February 3, 2016. So it must have got here in the mail.
21 All right. Which paragraph?

22 MR. NESS: 18.

23 THE COURT: Is that an amended summons and
24 complaint?

25 MR. NESS: No, sir. Not that I'm aware of.

1 THE COURT: All right. And this is a complaint for
2 declaratory judgment?

3 MR. NESS: Yes, sir.

4 THE COURT: And it's pretty much the facts as you've
5 just set out, a little more specific. And now go to
6 paragraph 18?

7 MR. NESS: Yes, sir. Page 3.

8 THE COURT: Well --

9 MR. NESS: And also 21.

10 THE COURT: Well, 18 and 21 are -- that's for the
11 second cause of action asking -- alleging that the
12 fraudulent will has been produced in an order invalidating
13 the will, will contest.

14 MR. NESS: Yes, sir, the 2013 will.

15 THE COURT: But also paragraph 15 seeks an order of
16 this Court finding that the deeds that we've just talked
17 about are invalid on the basis of forgery, undue influence
18 or lack of capacity or other reason. So it's not only the
19 contest on the will but it's seeking to set aside the
20 deeds.

21 MR. NESS: Yes, sir.

22 THE COURT: All right.

23 MR. NESS: And where I'm trying to get this, Judge
24 Early, is this circuit court case was filed February of
25 2016. The formal petition in probate court wasn't filed

1 until two to three weeks ago in 2017.

2 So we're submitting to the Court today that the
3 circuit court does not have subject matter jurisdiction to
4 hear this circuit court case. I've got the statute right
5 here, 62-1-302, and it says: The probate court has
6 exclusive original jurisdiction over all subject matter
7 related to the estates of decedents including the contest
8 of wills. And then, keep on going, it says: The
9 determination of property in which the estate of a
10 decedent or a protected person has an interest.

11 This is absolutely a will contest and Mrs. Barbara
12 Still's estate has an interest in the property of the 2015
13 deed and whether or not it went to Mr. Sonny Still or if
14 Ms. Barbara Still still owns the property. And --

15 THE COURT: So you're raising subject matter
16 jurisdiction which can be raised at any time saying that I
17 don't have jurisdiction to hear it.

18 MR. NESS: Yes, sir. We're saying that they should
19 have filed this case originally in Barnwell County Probate
20 Court, because the probate court is the only court that
21 has exclusive original jurisdiction.

22 THE COURT: Well, haven't they filed something in
23 probate court?

24 MR. NESS: They did, but that's a separate action.

25 THE COURT: Well, what's going to happen if I say I

1 don't have jurisdiction, then it'll all go down to the
2 probate court and she's going to probably remand it back
3 up here.

4 MR. BRADLEY: Judge, I can short -- this is the first
5 time I've heard this position. It wasn't in their memo.
6 It wasn't in their memorandum, but --

7 THE COURT: Well, you know, you can raise
8 jurisdiction any time you want to. So you may be getting
9 what you want in an indirect way.

10 MR. BRADLEY: That's fine. If -- what I would just
11 suggest and we'll consent to it, why don't we just remand
12 this case to the probate court or send it to the probate
13 court to be consolidated with what's already there?

14 MR. NESS: I don't think it can be remanded, Your
15 Honor, if it wasn't filed there to begin with. It would
16 need to be dismissed out of this court.

17 I've got the statute and a copy for you if you'd like
18 to look at it.

19 THE COURT: Well, if I remand it or dismiss it or
20 whatever, you've still got the same action pending down in
21 probate court and if you want to amend down in probate
22 court, she's probably going to bump it back up here.

23 MR. BRADLEY: And this-only problem is, Judge, we
24 have a lis pendens. This is a strange case because it has
25 deeds with the wills. We need the deed part to go to keep

1 the lis pendens in place as we go forward. So that's why
2 we don't want the case dismissed from circuit court. If
3 we can just, I don't know, remand it, assign it, however
4 the Court wants to word it, to probate court and we keep
5 everything in one place. We can argue about it all at one
6 time.

7 THE COURT: Well, I can take it under advisement,
8 give you time to file a lis pendens in probate court.

9 MR. BRADLEY: We can do that, too.

10 THE COURT: And then that way you don't have any
11 problem with it.

12 THE CLERK: It's already been filed in our office to
13 transfer the case to here.

14 MR. NESS: And, Your Honor, we would oppose any
15 motion for consolidation of these cases because these are
16 two --

17 THE COURT: Hold on a second. Hold on a second.

18 MR. BRADLEY: So it's already here?

19 THE CLERK: It is.

20 MR. BRADLEY: Okay. Well, there we go. We can
21 consolidate them.

22 MR. NESS: These are two separate actions filed at
23 two separate times. This was a -- filed in circuit court
24 originally and the circuit court does not have subject
25 matter jurisdiction over the will contest or determining

1 the property of an estate.

2 THE COURT: I understand that, but there's an action
3 basically paralleling this in the probate court that the
4 probate judge has now transferred to this court which this
5 court now has jurisdiction at least of the one that was
6 transferred up here. And the first thing they're going to
7 do on this side is amend the complaint to make sure it
8 includes the deeds and the wills and everything else, I
9 would assume.

10 All right, gentlemen. Where does that leave us?

11 MR. BRADLEY: Why don't we just consolidate the cases
12 and move forward together? That should take care of all
13 the jurisdictional problems.

14 MR. NESS: We would oppose that, Your Honor.

15 THE COURT: What difference -- what -- and the end
16 result is going to be if I grant your motion to dismiss
17 for lack of jurisdiction, then he's back up here on the
18 one that he filed in probate court, transferred by the
19 probate judge. And does it include the same issues that
20 this case includes?

21 MR. BRADLEY: We're all fighting about the same
22 thing, Judge. It's all about the land and the deeds and
23 the wills.

24 THE COURT: Hand me your statute.

25 MR. NESS: (Document handed to the Court.)

1 THE COURT: The circuit court also has jurisdiction
2 to determine petition to quiet title and other actions
3 pending in the circuit court, so.

4 MR. NESS: I think that pertains to when they're
5 trying to determine heirs or successors which isn't the
6 case in this case that was filed.

7 THE COURT: All right. Anything else you want to
8 tell me?

9 MR. NESS: Well, Your Honor, if I need to proceed
10 further past this subject matter jurisdiction I can.

11 THE COURT: Well --

12 MR. NESS: Our affidavits and Mr. Still's affidavits.

13 THE COURT: Any argument on the jurisdiction?

14 MR. BRADLEY: I think the Court has jurisdiction
15 under the statute. It says the court, circuit court
16 does. The most efficient way to get to justice which is
17 what the rules are supposed to create, this is just to
18 consolidate the two cases so we can have all of this
19 argued at one time. This is really just a procedural
20 question in which case the Court has jurisdiction and the
21 two cases can be consolidated and we can get to the merits
22 of what happens in this matter.

23 MR. NESS: Your Honor, I don't think the circuit
24 court could consolidate them if they didn't have
25 jurisdiction to begin with.

1 MR. BRADLEY: It's clear at this point the circuit
2 court has jurisdiction over this dispute because the
3 probate court just sent the case that was filed in probate
4 court up here.

5 THE COURT: That's correct.

6 MR. BRADLEY: So you've got jurisdiction to hear the
7 dispute. I guess what they're arguing is, under their
8 argument you didn't originally have jurisdiction back when
9 this was filed so this whole case got thrown out and we
10 got to restart over everything else.

11 What we would just say is there's no question you
12 have jurisdiction because there's no question you can
13 remove it from probate court and --

14 THE COURT: I can remove it? You can remove it. I
15 don't know that I can remove it. You can remove it, you
16 being the both of you, or the statute allows the judge,
17 the probate judge on her own volition to remove it. She's
18 done that so at this point I've got complete jurisdiction
19 on everything that's going on, on Still Five versus Still
20 Four on the estate.

21 MR. BRADLEY: I think so, Judge. I don't think
22 there's any question you have jurisdiction over the
23 dispute. I'm not sure why we're arguing this case. It
24 all goes together. It's the same disputes, the same
25 parties. There's no other --

1 earth. That's who I would suggest, Judge Cooper, at the
2 appropriate time.

3 UNIDENTIFIED MAN: I'll agree to that.

4 MR. RICHARD NESS: And we can take some depositions
5 before we get there, Your Honor?

6 THE COURT: Sure.

7 MR. RICHARD NESS: I don't have any objection to
8 that. I wasn't poised to try to settle the case.

9 THE COURT: I would strongly urge him. He's the judge
10 they sent the school board case to, the big school
11 litigation that's been long resolved. All right.

12 I'm just going to do a form order finding that there
13 are genuine issues of material fact. Obviously I'm going
14 to do a form order. Now it's come out of the probate
15 court up to here consolidating everything which is
16 basically the same. And y'all get together and do the
17 scheduling order for me.

18 I am available if y'all get bogged down in something,
19 just call me. Pick up the phone and have a conference
20 call with me, see if we can work it out. And, I'm going
21 to manage this case. And if it gets down to it's not
22 resolved and you want to renew your motion to let some
23 other judge try it, I'll be more than amenable to listen
24 to it again but I can't be -- I don't think I'm being
25 unfair for that.

In the Court
Of Common Pleas

Docket No. 2016CP0600045

VS.

Barbara Wrenn Vaughn,
Personal Representative of
the Estate of Barbara B.
Still, and Personal
Representative of the
Estate of David Still, IV,
Defendants.

Docket No. 2017GP0600262

Henry David Still V
Plaintiffs

VS.

Barbara Wrenn Vaughn and
Cynthia Still Boots,
Defendants

Transcript of Record

November 6, 2017
Barnwell, South Carolina

B E F O R E:

The Honorable Doyet A. Early III, Judge.

A P P E A R A N C E S:

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Adam Christopher Ness, Esquire
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Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 SUMMARY JUDGEMENT MOTION

2 THE COURT: All right. I denied summary judgment
3 earlier. There's a motion to reconsider that. And there's
4 a motion for summary judgment.

5 MR. NESS: That's our motion, Judge.

6 THE COURT: That y'all have filed.

7 MR. NESS: Yes, sir. We've got a motion for
8 reconsideration, which is based on summary -- which is
9 based on subject matter jurisdiction and then we've got the
10 new summary judgment in the 2017 captioned case.

11 THE COURT: That's the one with the statute?

12 MR. NESS: Yes, sir, that's statute of limitations
13 argument.

14 THE COURT: Mr. Nettles, are you prepared to argue
15 both of them today?

16 MR. NETTLES: Yes, sir.

17 THE COURT: All right. Well, what's the easiest
18 way to do them.

19 MR. NESS: Judge Early, I think the easiest way to
20 do this would be to start with the summary judgment motion
21 on the statute of limitations.

22 THE COURT: On the new one?

23 MR. NESS: Yes, sir. So, Judge Early, this is --

24 THE COURT: Hold on one second.

25 MR. NESS: Okay.

1 THE COURT: Basically, your argument is he was too
2 late in filing the claim. His argument is that when he
3 filed the lawsuit in the circuit court that cured any time
4 problem and gave this Court jurisdiction. That's sort of a
5 nut shell of where we are?

6 MR. NETTLES: Yes, sir. The first lawsuit was
7 filed less than a month after the death of the mother and
8 it raised two complaints, one about the validity of the
9 will and the other one about the deeds to various pieces of
10 property in the estate.

11 THE COURT: All right. But that's sort of where
12 y'all's positions are?

13 MR. NETTLES: Yes, sir.

14 MR. NESS: Yes, sir.

15 THE COURT: All right. Mr. Ness.

16 MR. NESS: So, Judge Early about this second case,
17 the 2017 case --

18 THE COURT: The second case is 262 or 45?

19 MR. NESS: Yes, sir, 262.

20 THE COURT: All right.

21 MR. NESS: That case was filed in July of 2017.
22 The deadline for filing a will contest of an inform probate
23 of the will was ten months earlier than that on September
24 27th, 2016. This is a will contest. They are trying to
25 probate a lost will now and have her 2013 will revoked, but

1 they did not do it within the time limit that the probate
2 code allows. Again, they were 10 months outside of the
3 statute of limitations on that. And there's plenty of --
4 there is ample case law on that. There's the Beason case
5 where Judge Few held that an 8 month statute of limitations
6 barred their action. There's the Jackson versus Cannon
7 case that I cited in my brief where Justice Ness held that
8 in an action brought 18 months after it was informally
9 admitted to probate was time barred. And then there's also
10 the Wooten case from the 50's and it was a different
11 statute of limitations then, but it was the same idea that
12 the time period had lapsed between the date of probate and
13 the filing of the petition.

14 Now, the plaintiffs in the case are arguing that a
15 statute -- that they already cured the statute of
16 limitations by filing this first case. However -- and
17 they're trying to apply it by 62-3-804. However, all of
18 those statutes and especially 804, all of those are under
19 the creditor's claim statutes of the probate code. Mr. Hal
20 Still is not a creditor. He's not bringing a creditor's
21 claim and claimant is just a term of art under the probate
22 code. It's actually defined. Hal is not seeking money
23 damages on this. He's not seeking money or anything like
24 that. He is seeking to contest the will and to have an
25 action to set aside deeds.

1 And the reason I -- we tried to blow this up and
2 the reason we gave you a copy of this is to show that while
3 these cases certainly are related in some ways, the two
4 cases are not the same cases. They don't even have the
5 same defendants. And the first case was filed against Van
6 Vaughn as personal representative of the two estates and in
7 the second case it was filed against Van Vaughn,
8 individually and her mother Cynthia Still Boots. So the
9 first case is against two estates and the second case is
10 against two beneficiaries.

11 They -- this pleading in the second case contain no
12 language about forgery or undue influence or lack of
13 capacity and the first case did. The second case contains
14 no language about lack of capacity or fraud or undue
15 influence as to the will and the first case did. And this
16 action is styled as an action in probate, a lost or missing
17 will claiming it was executed after the 2013 will and the
18 missing or lost will in the first case, they pled that it
19 existed before the 2013 will.

20 So these are two different cases and it's not
21 simply a notice or a statement to the circuit court to give
22 notice of another claim pending. This is a lost will. It
23 is a testacy proceeding and they were 10 months outside of
24 the statute of limitation.

25 THE COURT: So what happens if I granted your

1 motion, that case would go away and we would still have the
2 45 case.

3 MR. NESS: Potentially, Judge. We want that kicked
4 out on a reconsideration motion on that one as well. But
5 the statute of limitations could tie into that case as
6 well. But that's the basis of our argument that the
7 plaintiff's briefs in the case, they cite creditors claims
8 statutes and this is not a creditors claim issue. And
9 those statutes are not applicable to this case.

10 In a creditor's claim you have to file a notice of
11 creditor's claim and you have to give an amount claimed and
12 none of that is anywhere in the pleadings of either case.
13 They are not claiming money damages in this case. It's a
14 will contest and an action to set aside deeds and in the
15 second case it's just them trying to probate a lost will to
16 revoke a previous will.

17 THE COURT: All right.

18 MR. NESS: You want me to speak as to the other
19 one.

20 THE COURT: Let's do them one at the time.

21 MR. NETTLES: Thank you, Your Honor. I think the
22 definition of claims is much greater. I did not bring a
23 copy of that section of the code because I didn't know that
24 was part of the argument. Counsel has given me a copy of
25 62-1-201 defining words to the --

1 THE COURT: 62 dash what?

2 MR. NETTLES: 1-201 is definitions in the probate
3 code. And it says it's a claim in respect to the estate of
4 a decedent and it's a liability of the decedent or the
5 estate or whatever arising out of a contract, tort or
6 otherwise.

7 I had not spoken with the plaintiffs original
8 attorney until after I submitted my brief on this, but I --
9 I understand he filed this action in probate court in 2017
10 which was well past the 8 month or one year deadline.
11 There's no debate about it. But he said he -- tells me he
12 did it out of an abundance of caution because when you file
13 an action in common pleas in lieu of filing it in probate
14 court, this statute requires that if the proceedings are
15 not commenced in the probate court the claimant has to file
16 a statement of the claim and it's all set out there. If I
17 had been doing the case, instead of filing a petition
18 naming Barbara Wrenn Vaughn and Cynthia Still Boots as
19 defendant, I would have just had it against the estate and
20 just sent out a few notice things to the probate court.
21 However --

22 THE COURT: Well, what happens if he's correct and
23 the second case goes away? How are you prejudiced? What
24 are you not going to be able to --

25 MR. NETTLES: Nothing, Your Honor. I've discussed

1 this with my client. I said if we lose this one, we still
2 have our original case which was filed one month after the
3 first estate was opened up. The only thing that's happened
4 in that case is the husband, Sonny Still died when he was
5 the PR of his wife's estate and we've changed it from him
6 personally to, now we have two estates instead of an
7 estate.

8 THE COURT: And I denied summary judgment in that
9 case --

10 MR. NETTLES: Yes, sir.

11 THE COURT: So it's going forward unless I
12 reconsider it and this second case goes away, it's got it
13 cleaned up and you're going -- basically you're going to
14 have the same arguments in that first case.

15 MR. NETTLES: On the other hand, if -- if you just
16 -- you mentioned at the last hearing, Your Honor, I read
17 the transcript, you thought it might be appropriate to
18 consolidate. That would accomplish the same thing --

19 THE COURT: Well --

20 MR. NETTLES: However, I agree with the Court if
21 our original lawsuit that was filed pursuant to 62-3-804(3)
22 in the Court of Common Pleas in lieu of filing a claim in
23 probate court then all of our claims are alive in that
24 original lawsuit and I'm not going to take up too much of
25 the Court's time.

1 THE COURT: Well, y'all filed that original one, if
2 I'm remembering correctly, in probate court and the probate
3 court sent it up.

4 MR. NESS: No.

5 THE COURT: That's not the one that's sent up here.

6 MR. NESS: The original, the second case was --

7 MR. NETTLES: Yes, the one we're talking about now,
8 262 --

9 THE COURT: Was the one sent up here by the probate
10 court?

11 MR. NETTLES: Yes, sir. And that was right the
12 same week you had your hearing and Ward Bradley said, he
13 thought maybe out of an abundance of caution I'll file this
14 in probate court and they can send it up.

15 THE CLERK: Well, he already did.

16 THE COURT: Well, how did 16-45 get up here?

17 MR. NETTLES: It was filed here. But I agree with
18 the Court. You know, it might be a clean way to resolve
19 all this, just dismiss 262 and let's go forward on 045, the
20 2016 case, which was timely filed.

21 MR. NESS: But, Judge, we have subject matter
22 jurisdiction already as to --

23 THE COURT: As to --

24 MR. NESS: As to the 2016 case.

25 THE COURT: Before we get there.

1 All right. I will grant the summary judgment as to
2 262. I will now hear you on your motion to reconsider my
3 denial of summary judgment on 45.

4 Okay.

5 MR. NESS: Yes, sir.

6 THE COURT: Hang on a second.

7 THE CLERK: Fill out a form four, sir?

8 THE COURT: A form four, yes, we can since I'm --
9 it's granted. But I may need more than that --

10 MR. NETTLES: I don't mind the Court saying on a
11 form saying claim not timely filed and that's been granted
12 because the 262 was like 15 months after the estate.

13 THE COURT: All right. Do a form order, claim not
14 timely filed, motion of summary judgment granted.

15 THE CLERK: Yes, sir.

16 **MOTION FOR RECONSIDERATION**

17 THE COURT: All right. Now, this is your motion to
18 reconsider the order wherein I denied motion for summary
19 judgment earlier, Mr. Ness.

20 MR. NESS: Yes, sir, Judge. Judge Early, our
21 argument on this will be on the 62-1-302, which is the --

22 THE COURT: Which is the jurisdictional statute.

23 MR. NESS: Yes, sir, that's under jurisdiction and
24 then I'm under (A) and (A)1 essentially.

25 But moving forward, Judge, we've got -- they've got

1 two causes of action in this case. The first cause of
2 action was a deed issue, to set aside the deed; and then
3 the second cause of action was the will contest. So moving
4 forward, we will actually -- we'll agree that the deed
5 issue is probably within the circuit court, but the will
6 contest, second cause of action is what our summary -- or
7 our motion for reconsideration is --

8 THE COURT: Well, why is it not proper up here?

9 MR. NESS: Well, the probate code says under (A)
10 and (A)1, Probate court has exclusive, original
11 jurisdiction over all subject matter related to the estates
12 of decedents, including the contest of the wills.

13 And this is a will contest. They have been
14 contesting Ms. Barbara Still's 2013 will. The plaintiffs
15 in this case have highlighted in their brief the last part
16 of that paragraph where it says except that the circuit
17 court also has jurisdiction to determine heirs and
18 successors as necessary to resolve real estate matters
19 between partition, quiet title and actions pending in
20 circuit court. And the issue with that is, we're not
21 determining heirs or successors in this case.

22 THE COURT: What about the other actions and --
23 other actions?

24 MR. NESS: Again, determining heirs and successors
25 would apply to that. This isn't a quiet title action.

1 We're not trying to determine the heirs. Barbara Still's
2 heirs are known in this case. She had two children and
3 then she got Vanny Vaughn who is a granddaughter. So
4 again, that's the basis of our argument is that we're not
5 determining heirs, we've got known heirs in this case.
6 This isn't a quiet title action as the plaintiffs put in
7 their brief and Hal Still is not the sole heir in this
8 case. He's one of them -- he could be an heir, but he has
9 other family members that are living.

10 And so that's why we think that the will contest
11 part of this first case is again not within the
12 jurisdiction of the circuit court.

13 THE COURT: And the deed part is.

14 MR. NESS: And the deed part --

15 THE COURT: The deed contest --

16 MR. NESS: The deed contest can move forward.

17 But the probate -- excuse me the will contest
18 should have been filed originally in probate court and then
19 it could have been removed up just like the second case was
20 was, but it's not -- it's not properly filed in this court
21 and that's how we started. I mean the probate court has
22 exclusive jurisdiction. I think I cited in my brief where
23 the circuit court has jurisdiction unless otherwise
24 provided and it is otherwise provided in this statute
25 62-1-302.

1 THE COURT: Mr. Nettles?

2 MR. NETTLES: Thank you, Your Honor. 62-1-320(A)1
3 does have the phrase: Except the circuit court has
4 jurisdiction to determine heirs and successors as necessary
5 to resolve real estate matters, including partition, quiet
6 title and other actions. Well, it's not just partitions
7 and quiet title, it's necessary to resolve heirs and
8 successors as necessary to resolve real estate matters.
9 The plaintiff purports that there was a will drawn after
10 the will that's being probated right now in probate court,
11 but that will has not been located. And part -- one of the
12 things we want to do in this case is do some discovery to
13 find out if we can find the will, if other people saw it,
14 or where it might be, and that sort of thing.

15 So a -- what the plaintiff has done in this case
16 has filed both claims in the Court of Common Pleas, a
17 matter of less than four weeks after the mother's estate
18 was opened and he named his father, who was living at the
19 time and the estate of his mother and he had two claims.
20 There's a missing will and there is this question about
21 these deeds being improper. And I think that is a claim --
22 it says, you know, we just read the definition, the word
23 claim in the probate court is expansive. I mean if it's a
24 cause of action, basically, you can file it in the Court of
25 Common Pleas and that's what we did.

1 So I don't think the probate court has exclusive
2 jurisdiction over a will contest. I think a plaintiff has
3 the option of bringing that kind of claim in the Court of
4 Common Pleas and it's mentioned in both sections 1-302 and
5 section 3-804 of the probate code.

6 So the plaintiff raised this action, he filed it in
7 the Court of Common Pleas and they both revolve around this
8 property of the estate and who is going to inherit this
9 property and was -- were these alleged deeds where the
10 property went out of her fee simple ownership three weeks
11 before she died. There's a big debate about the validity
12 of those will -- I mean of those deeds. So I think it's
13 all one big ball of wax. I think the Court has to have
14 jurisdiction of everything to resolve this.

15 And that was why I was so soft on 262 because I
16 think our case, which was originally filed just weeks after
17 the mother died and it raises these issues. The probate
18 code allows the plaintiff to file those claims in the Court
19 of Common Pleas and both of the sections that we've
20 discussed today, 1-302 and 3-804 specifically say that the
21 Court of Common Pleas would have this kind of jurisdiction.
22 So that's what we would like to do.

23 MR. NESS: Well, Judge Early, we don't mind
24 litigating this issue in this case, this -- the will
25 contest that we have an issue with.

1 Again, determining heirs and successors is not an
2 issue in this case. We're -- at no point in time will with
3 we be determining heirs and successors. And this isn't --
4 they have not pled this to be a real estate matter.
5 They've pled this to be a will contest and an action to set
6 aside deeds and to argue under the creditors claim statute
7 to try to, you know, to have jurisdiction under the
8 creditor's claim statutes is incorrect. The creditors
9 claim statute did not apply to Mr. Hal Still. He has --
10 he's not -- the estates are not indebted to Hal Still for
11 money and that's what a claim is defined as in the probate
12 code.

13 THE COURT: All right. Thank you. I'll take -- I
14 ruled on the first one, which I've already ruled. The
15 second one, I'll take under advisement. I'll ask that
16 y'all get me proposed order within two weeks.

17 MR. NESS: Yes, sir, thank you.

18 MR. NETTLES: Thank you, Your Honor.

19 * * * * * END OF TRANSCRIPT * * * * *
20
21
22
23
24
25

1 State of South Carolina }

2 County of Aiken }

Certificate of Reporter

3
4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of Common Pleas in and for
12 the State of South Carolina on the 6th day of November
13 2017.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 4th day of May, 2018.

18
19
20
21
22 Brenda J. Sigwald

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020

Filed For Record

SEP 30 2015

Barnwell County
Probate Court

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

LAST WILL AND TESTAMENT

I, Barbara B. Still, Seventy Two (72) years of age, residing at 346 Reynolds Street, Blackville, County of Barnwell, State of South Carolina, being of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence of any person, declare this to be my last will and testament, and I revoke and cancel all previous wills and codicils made by me.

Clause One

Marital Status: Spouse's Name

I am married and my husband's name is Henry D. Still, IV.

Clause Two

Funeral and Burial: Disposition of Body

I direct that my funeral and burial be conducted as my Personal Representative shall decide. The entire cost thereof shall be paid out of my estate.

Clause Three

Bequests and Devises of Real Property

3.1 I give, bequeath, and devise all my real estate in which I have an interest or die seized and possessed to my beloved husband, Henry D. Still, IV, to have and to hold, absolutely and forever. In the event my spouse shall predecease me, I give, bequeath, and devise to beloved daughter, Cynthia Boots, my beloved son, Henry D. Still, V, and my beloved granddaughter, Barbara Wrenn Vaughn, share and share alike, all of my real properties, wherever located, and all rights and interest which I may be entitled to devise and bequeath in fee simple forever. Should Cynthia Boots, Henry D. Still, V, or Barbara Wrenn Vaughn predecease me, the heirs of any deceased shall take by representation and share only in the portion that the deceased would have received had he or she survived me.

Clause Four

Bequests and Devises of Personal Property

BBS

I give, bequeath, and devise all of my tangible personal property owned by me at the time of my death, including but not limited to, any articles of household use or personal use or adornment, household furniture and furnishings, jewelry, silverware, china, glassware, works of art, antiques, guns, hunting and fishing equipment, boats, trailers, motorcycles and vehicles as follows:

4.1 I may leave written memoranda signed by me disposing of certain items of my tangible personal property. Any such items of personal property shall pass according to the terms of such written memoranda in existence at the time of my death. If such memoranda are found not to be legally binding, I request that my Personal Representative and my beneficiaries abide by such memoranda as a final expression of my wishes. If no such written memoranda are found or identified within thirty (30) days of my death, it shall be presumed that none exists. Any items given and devised pursuant to any memoranda shall pass according to clause 4.2 hereof and not pursuant to any anti-lapse statute.

4.2 In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of my personal property, I give, bequeath and devise the rest of such to my beloved husband, Henry D. Still, IV, if he survives me by thirty (30) days, in fee simple forever.

4.3 If my spouse, Henry D. Still, V should not survive me, I give, bequeath, and devise to Barbara Wrenn Vaughn, all of my personal property. Should Barbara Wrenn Vaughn predecease me, then Cynthia Boots, Henry D. Still, V, Spencer Still shall take by representation and share only in the portion that the deceased would have received had he or she survived me.

Clause Five

Debts and Expenses

I direct that all my just debts, including the expenses of my last illness and funeral, shall be paid out of my estate by my Personal Representative.

Clause Six

BBS

Disinheritance

I have, except as otherwise provided in this will, intentionally and with full knowledge, omitted to provide for my heirs who may be living at the time of my death, including any person or persons who may, after the date of this will, become my heir or heirs by reason of marriage or otherwise.

Clause Seven

Advancements

All advancements I have made, or may subsequently make, to any of my children shall be in addition to, and not in satisfaction of, any legacies or other benefit given them by my will.

Clause Eight

Simultaneous Death

In the event the death of any of my children and myself should occur simultaneously, or in a common accident, or under circumstances that make it difficult to determine who died first, or in the event any of my children dies within a period of thirty (30) days after the date of my death, it shall be presumed that I survived that child and my estate shall be disposed of in accordance with such a presumption.

Clause Nine

Personal Representative

9.1 I nominate and appoint my beloved husband, Henry D. Still, IV, as the Personal Representative of my estate, to serve without bond.

9.2 If my beloved husband, Henry D. Still, IV, does not survive me, or if he does not qualify or is unwilling to act as the Personal Representative, I nominate and appoint my beloved granddaughter, Barbara Wrenn Vaughn, as the Personal Representative of my estate, to serve without bond.

9.3 By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property,

BBS

real or personal, at any time held under any provision of this my Will: to allot, allocate between principle and income, assign, borrow, buy, care for, collect, compromise claims, execute disclaimers, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant, and exercise options with respect to take possession of, pledge, receive, release, repair, sell, sue for, to make distribution in cash or in kind or partly in each without regard to the income tax basis of such asset, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

9.4 Notwithstanding the above provisions, if any child(ren) is younger than twenty nine (29) years of age at the time of my death, I direct that child(ren)'s share of my property shall vest in that child(ren), and I hereby nominate, constitute, and appoint Barbara Wrenn Vaughn to act as Trustee for that child(ren). Should Barbara Wrenn Vaughn not survive me, or if she does not qualify or is unwilling to act as the Trustee, I nominate and appoint William Bodiford. My Trustee shall retain possession of all property, real, personal, and mixed, until distribution of the trust as provided herein. When that child(ren) is no longer under age twenty nine years (29) old, my Trustee shall distribute the existing principal and interest to that child(ren).

Clause Ten

Severability of Provisions

If any provision of this Last Will and Testament shall be unenforceable, the remaining provisions shall nevertheless be carried into effect.

I, Barbara Bodiford Still, the Testator, sign my name to this instrument this 8th day of May, 2013 and being duly sworn, do hereby declare to the undersigned

BBB

authority that I sign and execute this instrument as my Last Will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Barbara Bodiford Still
Barbara Bodiford Still

We, Kent C. Kirkland, Amber S. Williams and Angela R. Rapp, the witnesses, sign our names to this instrument being first duly sworn, and do hereby declare to the undersigned authority that the Testator, Barbara Bodiford Still, signs and executes this instrument as her Last Will and that she signs it willingly, and that each of us, in the presence and hearing of the Testator hereby signs this Will as witness to the Testator's signing and that to the best of our knowledge the Testator is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Angela R. Rapp of Blackville, SC
Witness

[Signature] of Barnwell, SC
Witness

Amber S. Williams of Barnwell, SC
Witness

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

Personally appearing before me the undersigned Witness, who being first duly sworn, deposes and states that s/he saw the within named Testator, Barbara Bodiford Still, sign this instrument as her Last Will and Testament and that s/he with the other witnesses whose signatures appear above witnessed the execution thereof.

Angela R. Rapp

SWORN to before me this 8th
day of May, 2013

[Signature]
Notary Public for SC
My Commission Expires 9/15/14

BB

Brittany Walker

From: Aaron Ness <raaronness@gmail.com>
Sent: Friday, February 2, 2018 2:45 PM
To: Early, Doyet A. Law Clerk (Martha S. Dennis)
Cc: Truett Nettles; Richard B. Ness
Subject: Still v. Still (2016-CP-06-00045 - Barnwell County)
Attachments: SCRCF Rule 12.pdf; Hammer v. Hammer, 399 S.C. 100 (2012) .pdf

Dear Hannah:

Please allow this email and its attachments to supplement Defendants' arguments on whether this case should be transferred to the Probate Court or dismissed from the Circuit Court for lack of subject matter jurisdiction.

I have highlighted and attached SCRCF Rule 12(h)(3), and I have also highlighted and attached Hammer v. Hammer, 399 S.C. 100 (2012). Defendants believe this rule is dispositive to the issue that this case should be dismissed from the Circuit Court.

I have CC'd Plaintiff's counsel to this email as well. Thank you for your attention to this matter.

Sincerely,

--

R. Aaron Ness

Associate Attorney at Ness & Jett, LLC

Work 803-245-5178

Fax 803-245-5384

Physical Address: 2878 Main Hwy., Bamberg, SC 29003

Mailing Address: PO Box 909, Bamberg, SC 29003

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Code of Laws of South Carolina 1976 Annotated
South Carolina Rules of Civil Procedure
III. Pleadings and Motions

Rule 12, SCRPC

RULE 12. DEFENSES AND OBJECTIONS--WHEN AND
HOW PRESENTED--BY PLEADING OR MOTION--
MOTION FOR JUDGMENT ON PLEADINGS

Currentness

(a) When Presented. A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 30 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement, and a responsive pleading, if necessary, shall be served within 15 days after notice of the court's action on a motion to strike.

(b) How Presented. Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the

same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(8) in subdivision (b) of this rule, whether made in a pleading or by motion, motions for judgment on the pleadings under subdivision (c) of this rule, and motions for summary judgment under Rule 56, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 15 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading

RULE 12. DEFENSES AND OBJECTIONS--WHEN AND HOW..., SC R RCP Rule 12

any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or that another action is pending between the same parties for the same claim is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a cause of action upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) 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.

Credits

[Amended effective May 1, 1986; July 1, 1995.]

Notes of Decisions (125)

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Rules Civ. Proc., Rule 12, SC R RCP Rule 12

Current with amendments received through December 1, 2017.

RULE 12. DEFENSES AND OBJECTIONS--WHEN AND HOW..., SC R RCP Rule 12

End of Document

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Howard HAMMER, Appellant,
v.
Shirley HAMMER, a/k/a Shirley
Grace Hightower, Respondent.

Heard May 9, 2012.

Rehearing Denied Aug. 23, 2012.

Background: Ex-husband brought declaratory judgment action against ex-wife, asserting settlement agreement that included terms involving the parties' former marital home and ex-husband's retirement accounts, was void ab initio as violating public policy, and also asserted causes of action for breach of contract, breach of contract accompanied by fraudulent intent, conversion, and breach of covenant of good faith and fair dealing. The Circuit Court, Richland County, L. Casey Manning, J., dismissed plaintiff's complaint for lack of subject matter jurisdiction, and plaintiff appealed.

[1] Circuit Court was not precluded from dismissing ex-husband's complaint on the basis that ex-wife failed to make a separate and distinct motion to dismiss, and part of ex-wife's motion to dismiss was based on a sealed family court record;

[3] the Family Court had exclusive jurisdiction over settlement agreement pursuant to statutory provision that granted jurisdiction over all contracts relating to property involved in a divorce proceeding and over the construction and enforcement of those contracts, as well as statutory provision that granted exclusive jurisdiction to the Family Court to hear marital litigation, and to hear and determine any questions of support, custody, and separation; and

Affirmed.

[1] Courts

Hammer v. Hammer, 399 S.C. 100 (2012)
730 S.E.2d 874

106I(A) In General
106k37 Waiver of Objections
106k37(2) Time of making objection
Subject matter jurisdiction
can be raised at any time
and by any means. Rules
Civ.Proc., Rule 12(h)(3).

Cases that cite this headnote

[5] Divorce

Construction and
Operation

134 Divorce
134V Spousal Support, Allowances,
and Disposition of Property
134V(E) Settlement Agreements and
Stipulations
134k916 Construction and Operation
134k917 In general
Settlement agreement, and
family court order that
incorporated the agreement,
expressly vested the family
court with jurisdiction to
enforce the agreement.

Cases that cite this headnote

[6] Divorce

Construction and
Operation

134 Divorce
134V Spousal Support, Allowances,
and Disposition of Property
134V(E) Settlement Agreements and
Stipulations
134k916 Construction and Operation
134k917 In general
Family court had exclusive
jurisdiction over divorce
settlement agreement
pursuant to statutory

provision that granted
jurisdiction over all contracts
relating to property involved
in a divorce proceeding
and over the construction
and enforcement of those
contracts, as well as
statutory provision that
granted exclusive jurisdiction
to the family court to hear
marital litigation, and to hear
and determine any questions
of support, custody, and
separation. Code 1976, §§
20-3-690, 63-3-530(A)(2, 25,
30).

Cases that cite this headnote

[7] Divorce

Effect of merger or
incorporation

134 Divorce
134V Spousal Support, Allowances,
and Disposition of Property
134V(E) Settlement Agreements and
Stipulations
134k934 Merger or Incorporation
in Judgment of Divorce or Legal
Separation
134k940 Effect of merger or
incorporation

The Declaratory Judgment
Act provisions that provided
courts of record the power
to declare rights, status,
and other legal relations,
and to construe contract
provisions, did not grant the
circuit court the authority
to hear ex-husband's case
with regard to a divorce

settlement agreement that had been incorporated into a family court divorce decree, regardless of whether or not the family court record was sealed; the agreement was part of the parties' earlier divorce proceeding, over which the family court had exclusive jurisdiction, and by merging the agreement into the family court order, the family court transformed it from a contract between the parties into a decree of the court. Code 1976, §§ 15-53-20, 15-53-30, 15-53-90, 20-3-690.

Cases that cite this headnote

Attorneys and Law Firms

****875** Susan Batten Lipscomb, of Lipscomb Law Firm, P.A., of Columbia, for Appellant.

Stephanie Nichole Weissenstein and Desa Allen Ballard, of Ballard, Watson, & Weissenstein, of West Columbia, for Respondent.

Opinion

LOCKEMY, J.

***103** In this appeal, Howard Hammer (Appellant) argues the circuit court erred in dismissing his complaint for

lack of subject matter jurisdiction. Appellant sought a declaratory judgment and other relief in connection with a contract with Shirley Hammer (Respondent). Appellant contends: (1) Respondent failed to file a proper motion to dismiss pursuant to Rule 7(b), SCRPC; (2) the contract clearly demonstrated the parties' intent that the family court not have exclusive jurisdiction over the contract; and (3) sections 20-3-690 and 63-3-530 of the South Carolina Code do not provide for exclusive family court jurisdiction in the present case. We affirm.

FACTS/PROCEDURAL BACKGROUND

Appellant and Respondent were married on August 4, 1998 and had two children. On September 2, 2005, Respondent filed a complaint seeking an order of separate maintenance and support, custody, equitable distribution of property, and other relief. Subsequently, on December 6, 2007, Respondent filed a second amended complaint seeking a divorce and other relief. The family court litigation was settled in two phases. First, the divorce and property settlements were agreed to and incorporated into the family court's May 12, 2008 order. The May 2008 order adopted a settlement agreement (May 2008 contract) which included terms involving the parties' former marital home and Appellant's retirement accounts. The May 2008 contract included a final clause stating, "[t]his agreement is a binding contract

and is enforceable as such under law.” In its May 2008 order, the family court stated it retained “jurisdiction to issue any orders necessary to effectuate the terms of the [May 2008 contract].” Second, in June 2009, the parties settled issues relating to child custody and visitation. On August 19, 2009, the family court entered an order approving the settlement agreement and ending the action. The family court also expressly re-affirmed the May 2008 order.

Appellant challenged the May 2008 contract, the 2009 settlement agreement, and the family court orders on four occasions. First, on May 4, 2009, Appellant sought to **876 amend, modify, void, and set aside the May 2008 order and requested a new trial pursuant to Rule 60(b), SCRPC. The family court *104 dismissed Appellant's motion with prejudice. Second, Appellant filed a motion to withdraw, rescind, and repudiate his consent to the June 2009 settlement agreement. The motion was denied by the family court on January 27, 2010. Third, on September 4, 2009, Appellant filed a motion to reconsider, amend, alter, modify, and/or for a new trial and stay of the following family court orders: (1) order for transfer of individual retirement account; (2) order sealing record; (3) order approving settlement agreement; and (4) order (ending action). The family court denied Appellant's motion.

On November 9, 2009, Appellant filed an amended complaint in the circuit court seeking a declaratory judgment and other relief in connection with the May 2008 contract. Appellant asserted the May 2008 contract was void *ab initio* as violating public policy because a key term of the contract was a payment of funds by Appellant to Respondent in exchange for her agreement to drop certain criminal charges against Appellant. Appellant also asserted causes of action for breach of contract, breach of contract accompanied by fraudulent intent, conversion, and breach of covenant of good faith and fair dealing.

In her first amended answer, motion to dismiss, and counterclaims, Respondent asserted three defenses: (1) lack of subject matter jurisdiction; (2) failure to state facts sufficient to constitute a cause of action; and (3) *res judicata*. Respondent's counterclaims included slander of title, tortious interference with an existing contractual relationship, intentional infliction of emotional distress, abuse of process, invasion of privacy, wrongful intrusion as to contracts to sell and purchase, and malicious prosecution. A hearing was held before the circuit court on March 2, 2010. In an April 14, 2010 order, the circuit court dismissed Appellant's complaint for lack of subject matter jurisdiction. The circuit court held its decision did not end the action as to Respondent's counterclaims.

Subsequently, the circuit court denied Appellant's motion to reconsider. This appeal followed.

STANDARD OF REVIEW

[1] [2] This is an appeal from the grant of a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCP. "The question of subject matter jurisdiction *105 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). "We are free to decide questions of law with no deference to the [circuit] court." *Id.*

LAW/ANALYSIS

Motion to Dismiss

[3] Appellant argues the circuit court erred in granting Respondent's motion to dismiss because Respondent failed to file a proper motion pursuant to Rule 7(b), SCRCP.¹ Appellant also contends the circuit court erred in relying on the sealed family court record. We disagree.

¹ Appellant incorrectly refers to Rule 7(b), SCRCP as Rule 7(e), SCRCP in his brief.

Pursuant to Rule 7(b)(1), SCRCP

An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court

with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

Appellant argues Respondent failed to make a separate and distinct motion to dismiss and "merely entered a denial of Appellant's allegation that the circuit court had subject matter jurisdiction." Appellant further contends the findings of the circuit court were based solely on statements of Respondent's counsel and on Respondent's memorandum of law, which referenced the sealed family court record. Appellant maintains portions of the sealed record contained in Respondent's memorandum were improperly included in the circuit court's findings of fact.

Respondent argues subject matter jurisdiction can be raised at any time. Respondent **877 contends Appellant was on notice that lack of subject matter jurisdiction was asserted in the answer and had adequate notice of the March 2010 circuit court hearing. Respondent also argues the sealing order expressly provided the parties could access and use the sealed record in the domestic litigation. Respondent

maintains Appellant *106 “opened the door” to the sealed record by “attacking the family court order with his declaratory judgment action,” and the circuit court properly determined it lacked subject matter jurisdiction.

[4] We agree with Respondent. Subject matter jurisdiction can be raised at any time and by any means. Rule 12(h) (3), SCRCP provides, “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the case.” Here, Respondent specifically asserted in her answer, motion to dismiss and counterclaims that the circuit court lacked subject matter jurisdiction and asked the court to dismiss Appellant's complaint. This pleading gave Appellant notice that Respondent was moving to dismiss his complaint for lack of subject matter jurisdiction. Furthermore, Respondent served and filed a memorandum in support of her motion to dismiss on February 24, 2010 and Appellant had notice of the March 2, 2010 circuit court hearing to hear the motion.

Additionally, the sealing order expressly provides that the parties and the court may access and use the sealed file in the “litigation between [Appellant and Respondent].” Here, the parties to the litigation are the same and the subject matter of the case, the May 2008 contract, was executed in partial settlement

of the family court litigation and made an order of the family court. Because Appellant's complaint was a continuation of the marital dispute, the circuit court properly referenced the family court record. Accordingly, we find the circuit court did not err in dismissing Appellant's complaint.

Intent of the Parties

[5] Appellant argues the circuit court erred in dismissing his complaint because the May 2008 contract clearly set forth the parties' intent that the family court did not have exclusive jurisdiction over the contract. We disagree.

In *Moseley v. Mosier*, 279 S.C. 348, 353, 306 S.E.2d 624, 627 (1983), our supreme court held that once a settlement agreement is approved by the family court, it may be enforced by the court's contempt powers unless the settlement agreement expressly denies the court continuing jurisdiction. Here, the May 2008 contract and the May 2008 order expressly vest the family court with jurisdiction to enforce the contract. The *107 family court's May 2008 order plainly states, “[t]his Court retains jurisdiction to issue any orders necessary to effectuate the terms of the [May 2008 contract].” Moreover, the May 2008 contract provides that “[w]hen this settlement is approved it shall be enforceable through the contempt powers of the [f]amily [c]ourt.” Accordingly, we find the May 2008 contract does not evidence

intent by the parties that the family court not have jurisdiction over the contract. Furthermore, under *Moseley*, the family court has continuing subject matter jurisdiction over the claims raised in Appellant's amended complaint.

§ 20-3-690 and § 63-3-530

[6] Appellant argues the circuit court erred in finding the family court had exclusive subject matter jurisdiction pursuant to sections 20-3-690 and 63-3-530 of the South Carolina Code. We disagree.

Pursuant to section 20-3-690 of the South Carolina Code (Supp.2011), "[t]he family courts of this State have subject matter jurisdiction over all contracts relating to property which is involved in a proceeding under this article and over the construction and enforcement of those contracts." Section 63-3-530 provides

(A) The family court has exclusive jurisdiction:

...

(2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees,

if requested by either party in the pleadings;

...

****878** (25) to modify or vacate any order issued by the court;

...

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury; however, the court may not issue an ***108** order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such a prohibition;

S.C.Code Ann. § 63-3-530(A)(2)(25) (30) (2010).

[7] Appellant argues the circuit court has the authority to hear the present case pursuant to sections 15-53-20, 15-53-30, and 15-53-90 of the Declaratory Judgment Act. Section 15-53-20 provides "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations...." S.C.Code Ann. § 15-53-20 (2005). Section 15-53-30 provides

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

S.C.Code Ann. § 15-53-30 (2005).
Pursuant to section 15-53-90,

When a proceeding under this chapter involves the determination of an issue of fact such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. All existing rights to

jury trials are hereby preserved.

S.C.Code Ann. § 15-53-90 (2005). Appellant contends, in light of the sealed family court record, there is no admissible evidence in the record from which the circuit court could determine any fact other than Appellant's allegations and Respondent's admission that a contract was entered into between the parties. Appellant argues, applying sections 15-53-20, 15-53-30, and 15-53-90, it is clear the circuit court had the power to declare the rights and status of the May 2008 contract, and had the power to hear and determine the question of the validity of the contract.

Respondent argues the circuit court properly relied on sections 20-3-690 and 63-3-530 in dismissing Appellant's complaint. *109 Respondent contends South Carolina law expressly grants the family court subject matter jurisdiction over the construction and enforcement of the May 2008 contract and over all of the marital litigation between the parties.

We agree with Respondent. The May 2008 contract was part of the parties' divorce proceeding. Pursuant to section 20-3-690, the family court has exclusive jurisdiction over contracts relating to property in a divorce proceeding. S.C.Code Ann. § 20-3-690 (Supp.2011). Moreover, by merging the May 2008 contract into the

family court's order, the family court transformed it from a contract between the parties into a decree of the court. See *Emery v. Smith*, 361 S.C. 207, 214, 603 S.E.2d 598, 601 (Ct.App.2004) (holding that merging an agreement into an order transforms it from a contract between the parties into a decree of the court). In *Emery*, this court held that “[s]ince *Moseley*, our courts ‘assume that any settlement in a divorce decree is intended to be judicially decreed unless there is some explicit, clear and plain provision in the court approved separation agreement or the decree.’ ” *Id.* (quoting *Moseley*, 279 S.C. at 353, 306 S.E.2d at 627). “With the court's approval, the terms become a part of the decree and are binding on the parties and the court.” *Id.* (quoting *Moseley* at 353, 306 S.E.2d at 627). As part of the family court order, the agreement “is fully subject to the family court's authority to interpret and enforce its own decrees.” *Id.* at 214, 603 S.E.2d at 601–02 (citing e.g.,

Terry v. Lee, 308 S.C. 459, 419 S.E.2d 213 (1992) (stating that the family court has exclusive jurisdiction to determine the rights of the parties under an agreement incorporated into a family court decree)). Accordingly, the circuit court did not err in finding it lacked **879 subject matter jurisdiction to hear Appellant's complaint.

CONCLUSION

Based on the foregoing, we affirm the circuit court's dismissal of Appellant's complaint for lack of subject matter jurisdiction.

AFFIRMED.

THOMAS, J. and CURETON, A.J.,
concur.

All Citations

399 S.C. 100, 730 S.E.2d 874

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

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.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the Parties
and not any other material.

Respectfully submitted,



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July 26 2018
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