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**Jan 13 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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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

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Appellate Case No. 2018-000500

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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, ..... Respondent.

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**PETITION FOR A WRIT OF CERTIORARI**

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Pursuant to Rule 242, SCACR, Petitioner Henry David Still, V (hereafter “Petitioner”) petitions this Honorable Court requesting an order granting Certiorari to review the decisions of the Court of Appeals issued in this action on November 10, 2021, copies of which are attached hereto and incorporated herein.

### **CERTIFICATE OF COUNSEL**

Counsel for Petitioner certifies that the Petition for Rehearing was made and ruled on by the Court of Appeals on December 16, 2021.

### **QUESTION PRESENTED**

Did the Court of Appeals err by finding that a misfiled case must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(h)(3) SCRCPP despite the apparent mandate of Rule 82(b) SCRCPP, which directs a trial court to transfer a misfiled case to the proper court instead of a dismissal?

### **INTRODUCTION**

Whether a trial court must dismiss a case filed in the wrong court for lack of subject matter jurisdiction when the court can transfer the case to the proper court is a matter of first impression in the courts of this state. Compare Rule 12(h)(3), SCRCPP which directs a trial court to dismiss a case when it lacks subject matter jurisdiction) with Rule 82(b), SCRCPP, which states that a trial court should not dismiss an action when it can transfer it to the proper court. There is no case law addressing the interaction between Rule 12(h)(3) and Rule 82(b). Rule 242(b)(1) SCACR allows for Supreme Court review “[w]here there are novel questions of law.” The presence of a novel question of law is significant because the Supreme Court is free to decide novel questions without deference to the decision of the lower court. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 134, 638 S.E.2d 650, 656 (2006).

The Court of Appeals' Order, if upheld, means that Rule 12(h)(3) supersedes Rule 82(b), and has the effect of stripping a portion of Rule 82(b) of any meaning.<sup>1</sup> It also means that a trial judge is not required to abide by two Rules of Civil Procedure, even when it is possible to do so. In view of the exceptional importance of the Rules of Civil Procedure and their impact on the court process, Petitioner respectfully requests this Court to issue a writ of certiorari to review the decision of the Court of Appeals in accordance with 242 SCACR.

### **STATEMENT OF THE CASE**

#### **I. BRIEF FACTUAL OVERVIEW**

Barbara B. Still, the Petitioner'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 Petitioner'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 Petitioner, 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 Petitioner 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 Petitioner. (R. pp. 22-25). In that lawsuit, the Petitioner 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.

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<sup>1</sup> By its own terms, section (b) applies two separate types of actions: (1) actions brought "in the wrong county"; and (2) actions brought "in the wrong court." Petitioner's action was filed in the proper county, and therefore falls in the second category, actions brought in the wrong court. In this case, Petitioner contends that Rule 82 required the trial court to transfer the case to the probate court, which is merely on a different floor of the same building.

## **II. PROCEDURAL OVERVIEW**

The Respondent filed a Motion for Summary Judgment in this case on June 5, 2017. (R. pp. 30-31). The issue of jurisdiction was not raised until the hearing on the Respondent's Motion for Summary Judgment held on July 25, 2017. The Court denied the Respondent's Motion for Summary Judgment by Order dated July 25, 2017. (R. pp. 1-2). The Respondent then 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 Respondent 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 Petitioner filed an Objection to Reconsideration on November 2, 2017. A hearing on the Motion for Reconsideration was held on November 6, 2017. The Respondent 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 Petitioner's second cause of action seeking a formal proceeding for the probate of the Will be dismissed. The Petitioner'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 Petitioner moved for reconsideration of the Court's second Order. (R. pp. 60-62). Petitioner raised the argument 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 Petitioner's request for reconsideration was denied by Order dated February 22, 2018. (R. pp. 12-13). The Petitioner filed his Notice of Appeal on March 20, 2018. Petitioner's appeal was denied by the Court of Appeals on November 10, 2021, which affirmed the Circuit

Court's dismissal of the action.<sup>2</sup> Petitioner filed a Petition for Rehearing on November 22, 2021. The Petition for Rehearing was denied on December 16, 2021.

### **ARGUMENT**

The Court of Appeal's Order affirming the lower court's grant of summary judgment based on lack of subject matter jurisdiction was based on the flawed premise that Rule 82(b) 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. In effect, the Court of Appeal's Order strips the relevant portion of Rule 82(b) of any meaning and contradicts the very purpose of this section as stated in the Note to the Rule. See Note, Rule 82(b) ("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 J. Flanagan, South Carolina Civil Procedure, Chapter 82, p. 599 (2010). This Petition therefore addresses the sole issue of whether the clear directive in Rule 82(b) required the trial court to transfer the case to the proper court instead of dismissing it.

**I. The Court of Appeals erred by failing to find, or even 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, despite its clear and unambiguous phrasing. See Maxwell v. Genez, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) ("If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary, and the stated meaning should be enforced."). Rule 82(b), by its clear terms, applies to cases that have been brought in the wrong county and this rule also

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<sup>2</sup> On December 6, 2017, the circuit court judge entered a Form 4 Order granting Respondent's Motion for Summary Judgment based on a finding that the circuit court lacked subject matter jurisdiction. 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 the Court of Appeals treated the trial court's order as one for dismissal. See Ct. App. Order, p. 1.

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.”<sup>3</sup> 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.

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). 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 Petitioner 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. Instead, the trial court’s dismissal, if upheld, will have the exact opposite effect intended by the drafters of Rule 82 because Petitioner can no longer file an action in the proper court (Probate Court).

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<sup>3</sup> The trial court’s order dismissing the case.

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; see also U.S. v. Butler, 297 U.S.1, 65 (1936) (“These words cannot be meaningless, else they would not have been used.”). Rule 82 and Rule 12, SCRCPC should be construed *in pari materia* so that both statutes have meaning, purpose, and effect.<sup>4</sup> The rules of statutory construction 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).

Other jurisdictions hold that, 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

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<sup>4</sup> Moreover, because Rule 12(h)(3) is a general rule that applies in all cases where a court lacks jurisdiction, Rule 82(b) must prevail as it is a more specific and therefore is closer to addressing the very issue here. See, e.g., Morton v. Mancari, 417 U.S. 535, 550-551 (1974) (“Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.”)

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: (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.

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 to the proper court. 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 Petitioner petitions for a Writ of Certiorari to the Court of Appeals because the Order from the Court of Appeals affirming the trial court’s decision presents a novel question of law and conflicts with a rule drafted by this Supreme Court. 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 Petitioner’s case to the proper court.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

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**PROOF OF SERVICE**

I do hereby certify that on January 13, 2022, I have served all counsel in this action with a  
copy of the documents herein below specified via email:

Documents: **PETITIONER’S PETITION FOR WRIT OF CERTIORARI & APPENDIX**

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