

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Doyet A. Early, III, Circuit Court Judge
Case Number: 2016-CP-06-00045

Appellate Case Number: 2018-000500

Henry David Still, V, Appellant,

v.

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

RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI

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On November 10, 2021, the Court of Appeals issued its opinion in this matter, finding in favor of Respondent on all matters on appeal. Petitioner’s request for a rehearing by the lower court was denied December 16, 2021. Petitioner, Appellant below, filed his Petition for a Writ of Certiorari, pursuant to Rule 242, SCACR, January 13, 2022. For the reasons described herein, Respondent opposes this motion.

BACKGROUND INFORMATION

The factual history in this case is clearly articulated in the ruling of the lower court. See App. 2—3. Respondent incorporates that summary herein.

STANDARD OF REVIEW

Rule 242(b), SCACR states, in relevant part: “A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court’s discretion or power to grant review in general, indicate the character of reasons which will be considered: (1) Where there are novel questions of law; (2) Where there is a dissent in the decision of the Court of Appeals; (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.”¹

Pursuant to the Rule 242, SCACR framework, this case does not warrant further review. First, this case presents no novel question of law, but rather affirms well-settled principles of the South Carolina Probate Code and the South Carolina Rules of Civil Procedure. Second, the Court of Appeals issued a singular, unpublished, opinion

¹ Rule 242(b)(4) and (5), concerning constitutional and federal questions, are not at issue in this case.

following the hearing of this matter, and summarily rejected Petitioner's Petition for Rehearing. App. 16. Finally, the Court of Appeals decision is entirely consistent with prior South Carolina jurisprudence, both statutory and common law.

Under Rule 242, SCACR, these factors are certainly not controlling, however, they do indicate that the issues presented in this case simply do not merit additional inquiry. Respondent respectfully requests that the Court issue its Order denying the Petition for Writ of Certiorari, and remand this case back to the lower court, for resolution of the Probate Estate.

LEGAL ARGUMENT

Petitioner asserts that there is a novel question of law, concerning a conflict between Rule 12(h)(3), SCRCPP (regarding subject matter jurisdiction), and Rule 82(b), SCRCPP (regarding territorial jurisdiction or venue), raised by the facts of this case. However, as described by the lower court, this case concerns only a question of subject matter jurisdiction, not venue, and there is no such conflict in this case.

Rule 82(a), SCRCPP, states: "These rules shall not be construed to extend or limit the jurisdiction of any court of this State or, except as provided in Rule 82(b), the venue of any action." A plain reading of this rule clearly provides that a litigant cannot use the Rules of Civil Procedure to expand jurisdiction. Rule 82(b), SCRCPP is expressly limited to questions of venue. Entitled "Venue of Action," this rule states: "When an action is brought in the wrong county or 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." Rule 82(b), SCRCPP. As the lower court properly apprehended, Petitioner seeks to use Rule

82(b), SCRCP, concerning territorial jurisdiction, not to correct an error in venue, but to expand subject matter jurisdiction in the Circuit Court to encompass matters properly and statutorily raised only in the Probate Court. *See S.C. Code Ann.* §62-1-302(a)(1)(Supp.2020).

In support of this contention, Petitioner cites *Banowsky v. Guy Backstrom, DC*, 193 Wash. 2d 724, 445 P.3d 543 (2019), a Washington state case construing a Washington state rule, Rule 14A(b), CRLJ, concerning a jurisdictional limitation on an amount in controversy. That rule states: “When any party in good faith asserts a claim in an amount in excess of the jurisdiction of the district court or seeks a remedy beyond the jurisdiction of the district court, the district court shall order the entire case removed to superior court.” That case, which has no precedential value in South Carolina, concerned a litigant who filed a claim for damages in excess of the \$100,000 limit placed on the jurisdiction of the district court, then sought to use the above-referenced rule, which speaks specifically to that anticipated error in filing, to remove the case to superior court.

The *Banowsky* has no relevance to the facts of this case, concerning subject matter jurisdiction and the South Carolina Probate Court, whose subject matter jurisdiction is defined by statute. *Judy v. Judy*, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011). In South Carolina, the Probate Court has exclusive original jurisdiction over a contest of wills, which is the subject matter of this case. *See S.C. Code Ann.* §62-1-302(a)(1)(Supp.2020). A statutory grant of exclusive subject matter jurisdiction by the legislature is absolute. Rule 12(h)(3), SCRCP, offers the mechanism for enforcing the statutory parameters on subject matter jurisdiction. The overly broad and unwarranted reading of Rule 82(b), SCRCP proposed by the Petitioner would render subject matter jurisdiction a nullity.

The cited Washington state case is not relevant to the question before the Court, which does not concern an amount in controversy. Further, the Washington rule specifically authorized the transfer sought by the litigants. Rule 82(b), SCRCF speaks to territorial jurisdiction or venue. South Carolina specifically does not allow a transfer from a Court lacking subject matter jurisdiction. *See S. C. Dep't. of Soc. Servs. v. Tran*, 418 S.C. 308, 314, 792 S.E.2d 254, 257 (Ct. App. 2016).

Petitioner also cites a footnote from a dissent from a Tennessee case, as if it were authoritative. The cited language is neither the law in Tennessee nor the law in South Carolina. *See Milcrofton Util. Dist. of Williamson Cty. v. Non Potable Well Water, Inc.*, No. M201801431COAR3CV, 2019 WL 2083329, fn. 2 *6 (Tenn. Ct. App. May 10, 2019). Rather, Tennessee law conforms to South Carolina law: "If subject matter jurisdiction is lacking, the Court must dismiss the case." *Dishman v. Shelby State Cmty. Coll.*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999), cited affirmatively in *Milcrofton*. As the lower court affirmed in this case, in South Carolina, "Whenever it appears...the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Rule 12(h)(3), SCRCF. More to the point in this case, "A court without subject matter jurisdiction does not have authority to act." *Tran*, 418 S.C. at 314, 792 S.E.2d at 257 (Ct. App. 2016).

Petitioner seeks to expand the subject matter jurisdiction of the circuit court and divest the probate court of its exclusive subject matter jurisdiction through a flawed application of Rule 82(b), SCRCF, which is expressly limited in scope to matters of territorial jurisdiction and venue. Further, Rule 82(a), SCRCF disallows the proposed approach. The lower court correctly concluded that this attempt is improper and is not permitted under South Carolina law. There is no novel question of law or conflict

between the cited Rules. Rather, Petitioner misapprehends the distinction between subject matter jurisdiction and territorial jurisdiction or venue.

CONCLUSION

Within his Petition for Writ of Certiorari, Petitioner seeks to complicate what is a simple question of the exclusive subject matter jurisdiction of the probate court, which specifically includes a challenge to a will. Rule 82(b), SCRPC is not relevant in this case, where the issues raised do not concern territorial jurisdiction or venue.

The lower court correctly applied South Carolina law to the facts of this matter. The Court should deny the Petition for a Writ of Certiorari.

February 11, 2022
Bamberg, SC

Respectfully submitted,
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