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**Feb 17 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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**REPLY TO RESPONDENT’S RETURN TO PETITION  
FOR A WRIT OF CERTIORARI**

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Pursuant to Rule 242, SCACR, Petitioner Henry David Still, V (hereafter “Petitioner”) hereby files this Reply to Respondent’s Return to Petition for a Writ of Certiorari. The Petition should be heard as the question presented is a novel question of law regarding a conflict of procedural rules set forth by this Court.

### **ARGUMENT**

Respondent’s Reply can be summarized as followed: a court cannot act when it lacks subject matter jurisdiction and Rule 82 is only about venue and territorial jurisdiction. Respondent’s Reply repeatedly states that a trial court must dismiss an action when it lacks subject matter jurisdiction. Petitioner is well aware of the existence of Rule 12(h). Petitioner contends that Rule 82(b), if it can be followed alongside Rule 12(h), must be followed. In this specific circumstance, both rules can be complied with. 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.<sup>1</sup> The transfer of a case under Rule 82(b) would have ended the case in Common Pleas in compliance with Rule 12(h)(3). Any other result would render the portion “or court” of Rule 82(b) superfluous. Respondent does not explain why the trial court should not comply with both rules.

Similarly, Respondent does not cite a single case or authority for the proposition that Rule 82 is only about territorial jurisdiction. Petitioner, on the other hand, has cited cases from other jurisdictions for the principle that a court may transfer a case even when it lacks subject matter jurisdiction. In response, Respondent just states that those cases are not authoritative because they

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<sup>1</sup> Rule 82 is just as mandatory as Rule 12. The word “shall” is used twice in Rule 82 whereas only once in Rule 12(h).

are outside of South Carolina. That response misses the mark because there is only one case in South Carolina that even comes remotely close to answering this novel question, and that is Pee Dee Health Care v. Thompson, No. 2013-UP-311, 2013 WL 8538755, at \*1 (S.C. Ct. App. July 3, 2013).

Pee Dee Health Care, cited by Petitioner in its Petition, was not addressed by Respondent, and for obvious reasons. Although an unpublished case, the facts and the Court's analysis is instructive here. In that case, Pee Dee Health Care ("PDHC") filed a notice of intent to appeal in circuit court and probate court. PDHC then filed its grounds of appeal in the circuit court rather than the probate court as required by statute. Furthermore, the grounds of appeal were not filed within the forty-five day time period prescribed by statute. PDHC argued that Rule 82(b) required the circuit court to transfer PDHC's grounds of appeal to the court in which it should have been filed. Addressing Rule 82(b), the Court of Appeals said that the rule only applies to timely filed appeals. Here, Petitioner timely filed his lawsuit, but in the wrong court. Under a plain reading of Pee Dee Health Care v. Thompson and Rule 82(b), the trial court must transfer a wrongly (but timely) filed case to the proper court.

Finally, Respondent says that Petitioner is trying to expand the subject matter jurisdiction of the circuit court and divest the probate court of its exclusive subject matter jurisdiction. It is difficult to understand how Respondent got to this conclusion. Petitioner's argument is simply that the circuit court should have transferred the case to probate court pursuant to 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 to the proper court, which also would have allowed a just, speedy, and inexpensive determination of the action. 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.

Respectfully submitted,

*s/ F. Truett Nettles*

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**PROOF OF SERVICE**

I do hereby certify that on February 17, 2022, I have served all counsel in this action with  
a copy of the documents herein below specified via email:

Documents: **REPLY TO RESPONDENT’S RETURN TO PETITION FOR A WRIT OF  
CERTIORARI**

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