

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP2305389

Gene D Morin

Katelin Trippe

~~Trippe~~ B. WICKENSIMMER

James Trippe Jr

James A Estate Of
 Trippe III

2014 JUN 6 PM 2 35

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), SCRPC; Rule 41(a), 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:

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

Judge Code

Date 6/6/2014

RECEIVED

AUG 25 2014

For Clerk of Court Office Use Only

This judgment was entered on **6th day of June, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **6th day of June, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Jacqueline Hiatt Patterson Patterson & Associates, P.A.
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

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
CLERK OF COURT
GREENVILLE CO. S.C.
COUNTY OF GREENVILLE
PAUL B. WICKENS, SIMER

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

IN THE MATTER OF 2014 JUN 4 PM 2 13
JAMES A. TRIPPE, III Deceased

APPEAL FROM THE
GREENVILLE COUNTY
PROBATE COURT

Gene D. Morin, Conservator
for Katelin Trippe

C.A. No. 2013-CP-23-05389

Respondent,

v.

ORDER

James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,

Appellant.

I. INTRODUCTION

James Trippe, Jr., individually and as Personal Representative (“PR”) of the Estate of James A. Trippe, III appeals an Order of the Probate Court holding him in civil contempt and awarding attorneys fees to Gene D. Morin, Conservator for Katelin Trippe (“Morin”). Morin moves to Dismiss the Appeal.

The Court heard oral argument on February 18, 2014. The Order of the Probate Court is hereby affirmed in part, for the reasons that follow.

II. FACTUAL / PROCEDURAL BACKGROUND

James A. Trippe, III (“Decedent”) died intestate on March 26, 2009. On or about April 16, 2009, his father, James Trippe, Jr., was appointed Personal Representative. The heirs of Decedent’s Estate are his two children, James Trippe, IV (“James IV”) and Katelin Trippe (“Katelin”). Because Katelin is a minor child, Mr. Morin was appointed her conservator.

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The Estate consists of hundreds of thousands of dollars in assets, including real property located in the Bahamas valued at \$25,000.00. The original deadline for distributing Decedent's assets and closing the Estate was April 16, 2010. On June 6, 2011, Morin petitioned to remove Mr. Trippe, Jr. as Personal Representative on the grounds that he had acted wrongfully in his dealings with Katelin by, among other things, failing to distribute the Estate in a timely manner and by proposing to distribute the Estate contrary to law.

PR and Morin reached a settlement of the allegations set forth in the petition, and the settlement was formalized through the execution of a Mutual Release and Settlement Agreement ("Settlement Agreement"), which was incorporated into an Order of the Probate Court dated April 27, 2012. Paragraph 4 of the Settlement Agreement states as follows:

Bahamas Lots. Within sixty (60) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the two (2) lots located in the Bahamas (the "Lots") and identified on Schedule A.1. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. The Lots shall be transferred free and clear of all liens, mortgages or other encumbrances. In connection herewith, **Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner. (Emphasis added)**

By Order dated June 15, 2012, PR was held in contempt of Court for failing to make a required payment to Morin under a separate provision of the Settlement Agreement. As part of this Order, the Probate Court extended the time for transferring the Bahamas Lots, requiring them to be "conveyed as soon as possible." Specifically, the Ordering clause decreed that "[t]he deed for the Bahama property shall be delivered as soon... as possible." *Id.* at 6. In July 2012, PR's counsel delivered a Deed of Distribution for the Bahama lots to Morin's counsel.

On October 4, 2012, Morin filed a second contempt action. By Order dated December 21, 2012, PR was held in contempt of Court for failing to transfer the Bahamas Lots. The Court

found that PR and his counsel had been advised by letters from the Probate Court that they must furnish recorded deeds of distribution. The Court provided PR a grace period to transfer the Bahamas Lots, ordering it be completed by February 1, 2013.

On February 7, 2013, Morin filed a third contempt action against PR for failing to timely transfer the Bahamas Lots. By Order dated June 25, 2013, the Probate Court found PR to be in contempt of Court. On July 8, 2013, Mr. Bannister filed a Motion to Reconsider on behalf of PR, which the Probate Court denied on September 30, 2013. On or about October 4, 2013, Mr. Coulter filed a Notice of Appeal on behalf of PR. Morin seeks dismissal of the Appeal, claiming it was untimely.

III. STANDARD OF REVIEW

A finding of contempt must be affirmed unless it represents an abuse of discretion. There are many definitions of what constitutes an "abuse of discretion"; most contain unhelpful circular references to a "lack of evidentiary support" or an "error of law." The standard gives considerable deference to the trial judge, who occupies a superior position to gauge the issues. Mere disagreement with the ruling is not enough. Discretion is abused when the decision exceeds the bounds of reason or the contours of the law, and leaves the reviewing Court with the firm belief that error occurred. The standard therefore tolerates reasonable disagreement, yet serves as a "check on judgment which strays too far from the mark." See Evans v. Eaton Corp. Long Term Disability Plan, 514 F.3d 315, 322 (4th Cir. 2008).

An award of attorneys fees is also reviewed under an abuse of discretion standard, Blumberg v. Nealco, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993), and will be affirmed if supported by any competent evidence. Baron Data Sys. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 296 (1989).



IV. LAW / ANALYSIS

A. Morin's Motion to Dismiss Appeal

Morin contends that because the December 21, 2012 Order of the Probate Court disqualified Mr. Bannister from representing PR, his July 8, 2013 Motion to Reconsider filed on PR's behalf was ineffective to toll the deadline to appeal the September 30, 2013 Order. Merely stating this argument exposes its weakness, for clearly the Probate Court ruled on the merits of the Motion to Reconsider and did not rule it was improperly filed. The Probate Court's disqualification of Mr. Bannister cannot affect the jurisdiction of this Court to hear this Appeal. Indeed, as the Probate Court understood, it did not affect that Court's jurisdiction to hear the Motion to Reconsider. The Motion to Reconsider was filed on behalf of a party, and the previous disqualification of that party's attorney does not render the filing of the Motion a nullity. If that were so then anytime a Court disqualified a lawyer, the client would be placed in the untenable position of having to scramble to find new counsel in the short time available to move to reconsider or appeal. And the lawyer—who may have been improperly disqualified by the Court's order—would in effect be prohibited from further protecting his client's interest at a crucial juncture in the litigation. Moreover, such an emasculating rule would render the disqualification order itself effectively immune from review. Appeal deadlines, being strictly jurisdictional, cannot be extended or enlarged. No authority has been presented that holds a notice of appeal is void because the lawyer who perfected an intervening Motion to Reconsider had been disqualified by the trial Court order appealed from. Consequently, this Appeal (which was filed by Mr. Coulter) was timely and Morin's Motion to Dismiss is denied.

B. Finding of Contempt

A party is in contempt when it willfully disregards or disobeys a clear Court order. Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982). A willful act is one done voluntarily and intentionally, with the specific intent to do something the law forbids, or the specific intent to fail to do something the law requires to be done.

Civil contempt must be proven by clear and convincing evidence. The party seeking a contempt ruling bears the burden of proving a prima facie case for contempt; the burden then shifts to defendant to establish any defense, including inability to comply. The contempt power should be invoked cautiously and sparingly.

Morin contends that PR's failure to transfer the Bahamas Lots violated three Orders of the Probate Court. While certain issues in administering this Estate may have been complicated, the issue concerning the Bahamas property was never difficult. Before the fall of 2012, the Personal Representative had a good faith belief that his July 2012 delivery of the Deed of Distribution discharged his duties under the Settlement Agreement to transfer the Bahamas lots. The Personal Representative's counsel, Mr. Bannister, repeatedly communicated this belief to Ms. Patterson, even citing the case law he was justifiably relying on. See September 10, 2012 letter from O.W. Bannister, Jr. to Jacqueline H. Patterson. To be sure, there are letters from the Clerk of the Probate Court stating that the Court required recorded deeds of distribution. But, before December 21, 2012, the controlling document arguably remained the Court Order that approved the Settlement Agreement, which did not expressly require or even reference recording.

There is sufficient evidence, however, to support finding the Personal Representative in willful contempt of the December 21, 2012 Order. The Personal Representative did not contact

Bahamian counsel until January 30, 2013, when the Court had established a February 1, 2013 deadline to complete recording. Even if, as the PR contends, this deadline was unrealistic given Bahamian procedure (a reality Morin's counsel evidently understood), there is clear and convincing evidence that the PR failed to timely comply with the clear order to get the process moving.

In sum, it appears the PR initially believed he had complied with Paragraph 4 by filing and delivering Deeds of Distribution. This belief became unreasonable after the December 21, 2012 Order, which clarified that conveyance meant recording the appropriate deed pursuant to Bahamian law. This Court agrees with both the Probate Court and Morin that, after the December 21, 2012 Order, the issue became simply whether the PR had complied with this clear mandate. As noted above, the PR willfully failed to comply with this straightforward order, providing clear and convincing evidence to uphold the Probate Court's June 25, 2013 and September 30, 2013 findings of contempt.

C. Attorney's Fees

Paragraph 14 of the Settlement Agreement provides as follows:

Attorneys' Fees. If an action is commenced to enforce any provision of this Settlement Agreement, the prevailing party as determined by a final Court judgment shall be entitled to recover from the other party such reasonable attorneys' fees and costs incurred in the action as the Court may award.

After analysis of the Baron factors, the Probate Court awarded attorney's fees to Morin in the amount of \$19,079.71. See September 30, 2013 Order. For the same reason there is little difficulty in affirming the Probate Court's ruling for contempt, this Court has considerable difficulty understanding the amount of attorneys fees incurred. Morin and his counsel persistently pushed the Personal Representative regarding the lot transfer. This zealotness, though, has crept into the relentless pursuit of a fee from the Estate.

Several aspects of the attorneys fees are troubling. First, the Court is unable to determine what a large portion of the fees is even related to, as the record contains some 34.65 hours (or \$6,169.75) of attorney time where the descriptions of the services rendered has been redacted. While the redactions served to shield privileged information, it is impossible to fairly review the amount without access to this material information, which represents nearly one-third (1/3) of the time spent.

Second, as noted above the contempt hinged on the discrete issue of who had the responsibility to record the deed in the Bahamas. It appears PR's counsel spent several thousand dollars of attorney time researching Bahamian legal requirements for recording a deed as part of the ancillary administration of a foreign estate, including \$1,500.00 wired on December 11, 2012 to retain a Bahamian lawyer to opine on the necessary procedure. This was remarkably thorough, but thoroughly misguided. No one was disputing the mechanics of Bahamas real estate law; the concrete issue was whose responsibility it was to set those mechanics in motion. Consequently, the hiring of the Bahamas lawyer to advise as to a collateral matter benefitted neither the Estate nor Katelin.

That the mushrooming fee was out of bounds became evident when Morin announced he was claiming \$8,562.25 (to date) to defend this appeal, although the appeal had only been pending a few months. The combined length of the parties' appeal briefs is less than twenty (20) pages. The appeal hearing lasted approximately forty-five (45) minutes. The issues were not complicated.

Morin thus seeks a total of \$27,641.96 in attorneys fees and costs. This Court has not lost sight that this claimed amount exceeds the value of the very land that is the subject of this

dispute.¹ The Probate Court was understandably exasperated by the administration of this Estate, and the PR's perceived unreasonable actions in this and other matters. This frustration, however well-founded, does not warrant such an overreaching fee. A reasonable award of fees and costs for Morin's counsel is \$4,500.00. This amount is a fair, market-rate fee for the work reasonably necessary to bring PR back to Court after the December 20, 2012 Order, and for defense of this appeal. Because there was no basis to find PR in willful contempt before the December 20, 2012 Order, Morin should not have received fees for efforts expended before this date. See Cannon v. Georgia Attorney General's Office, 397 S.C. 541, 548-550, 725 S.E.2d 698 (2012)(reducing attorneys fees award in conjunction with contempt where portion of fees were incurred before date of order Plaintiff was accused of violating).

V. CONCLUSION

1. Morin's Motion to Dismiss the Appeal is DENIED.
2. The June 25, 2013 and September 30, 2013 Orders of the Probate Court are AFFIRMED in part, except as to the amount of attorneys fees awarded to Morin.
3. Morin's counsel is entitled to an award of costs and reasonable attorneys fees in the amount of \$4,500.00 for their efforts, including defending this Appeal.

IT IS SO ORDERED.



D. Garrison Hill
Circuit Judge

June 4, 2014

¹ The Record does not disclose the amount of fees the Conservator has billed related to this matter.