

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

D. GARRISON HILL, CIRCUIT COURT JUDGE

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

APPELLATE CASE NO.: 2014-001401

In the Matter of James A. Trippe, III Deceased

Gene D. Morin, Conservator for Katelin Trippe, Respondent-Appellant,

v.

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

**RESPONDENT-APPELLANT'S
INITIAL BRIEF OF APPELLANT**

O. W. Bannister (S.C. Bar No. 00506)
BANNISTER, WYATT & STALVEY, LLC
P.O. Box 10007
Greenville, SC 29603
Ph: 864-298-0084; Fax: 864-298-0146
Attorney for Respondent-Appellant

October 27, 2014

Other Counsel of Record:

Jacqueline H. Patterson
1088 North Church Street
Greenville, SC 29601
Attorney for Appellant-Respondent

Michael T. Coulter
P. O. Box 6728
Greenville, SC 29606
Attorney for Respondent-Appellant

RECEIVED

OCT 29 2014

SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Statement of the Facts 2

Argument:

I. THE COURTS BELOW ERRED IN HOLDING THE APPELLANT IN CONTEMPT BECAUSE THE CONTEMPT WAS BASED ON AN ARBITRARY DATE TO TRANSFER DEEDS AND WAS DEPENDANT ON A FOREIGN COURT TO ACT WITHIN THE TIME LIMIT SET BY THE PROBATE COURT WHICH PROVED TO BE IMPOSSIBLE.....7

II. IN THE EVENT THIS COURT REVERSES THE CONTEMPT OF APPELLANT THE COURT SHOULD ALSO REVERSE THE AWARD OF ATTORNEY FEES.....9

Conclusion9

TABLE OF AUTHORITIES

CASES

1. Edwards v. Edwards, 254 S.C. 466, 176 S.E.2d 123 (1970)7

STATEMENT OF ISSUES ON APPEAL

- I. THE COURTS BELOW ERRED IN HOLDING THE APPELLANT IN CONTEMPT BECAUSE THE CONTEMPT WAS BASED ON AN ARBITRARY DATE TO TRANSFER DEEDS AND WAS DEPENDANT ON A FOREIGN COURT TO ACT WITHIN THE TIME LIMIT SET BY THE PROBATE COURT WHICH PROVED TO BE IMPOSSIBLE

- II. IN THE EVENT THIS COURT REVERSES THE CONTEMPT OF APPELLANT THE COURT SHOULD ALSO REVERSE THE AWARD OF ATTORNEY FEES

STATEMENT OF THE CASE

James A. Trippe, III died intestate on March 26, 2009. His father, the Appellant, James A. Trippe, Jr. was duly appointed as the Personal Representative of the estate.

A Mutual Release and Settlement Agreement between the two heirs at law, James A. Trippe, IV and Gene D. Marin, Conservator for the other heir, Katelin Trippe, a minor was reached and approved by the Probate Court on April 27, 2012 as an Agreement Among Successors by Decedent as authorized by South Carolina Code Ann Section 62-3-912 and/or Section 62-3-1101.

A dispute arose as to which party would obtain an ancillary proceeding in the Bahamas to transfer two Bahamian lots to the minor heir.

By Order filed December 21, 2012 the Probate Court ordered the Estate to obtain the two lots by properly recorded Bahamian deeds and close the Estate by February 1, 2013, a total of Forty one (41) days.

On February 7, 2013, Morin filed a Petition for a Rule requiring Trippe to show cause, why he should not be held in contempt for failure to obtain the Bahamian deeds, close the Estate, and for attorney fees and costs.

On or about June 25, 2013 the Probate Court issued an Order holding Trippe in contempt for failure to transfer the Bahamian lots and close the Estate by February 1, 2013. The Court also awarded attorney fees.

On July 8, 2013 Trippe filed a Motion to Reconsider.

By Order of the Probate Court dated September 30, 2013, the Motion was denied.

On October 4, 2013 Trippe timely filed an Appeal to the Circuit Court.

On November 15, 2013 Trippe filed his Grounds for Appeal.

On February 4, 2014 Morin filed a Motion to Dismiss the Appeal.

On February 18, 2014 the matter was heard by the Honorable D. Garrison Hill.

On June 6, 2014 Judge Hill filed his Order from the Appeal.

On June 19, 2014, Morin filed a Motion with Judge Hill to Alter or Amend his Order of June 19, 2014. This Motion was received by Trippe on June 24, 2014.

On June 20, 2014 Trippe filed his Notice of Appeal for Judge Hill's Order.

On July 31, 2014 Judge Hill filed an Amended Order.

On or about August 21, 2014 Morin filed his Notice of Appeal of Judge Hill's Order.

STATEMENT OF THE FACTS

James A. Trippe, III died intestate on March 26, 2009 (hereinafter "Deceased and/or Decedent"). The Respondent-Appellant James A. Trippe, Jr., (hereinafter "Personal Representative") is the Deceased's eighty-five (85) year old father who was appointed Personal Representative of the Deceased's Estate (hereinafter "Estate"). The Deceased left two children as his sole heirs namely James A. Trippe, IV, and Katelin Trippe, a minor. Gene Morin (hereinafter "Conservator") was duly appointed the Conservator for Katelin Trippe.

Among the assets of the Estate was all of the stock in a South Carolina corporation, JAT, Inc., and two lots in the Bahamas. No deed was ever found for the two lots in the Bahamas, but tax notices were found for the two lots and these tax notices were being paid by the Deceased and subsequently by the Estate.

Following mediation and negotiation the parties reached an agreement which was approved by the Probate Court by Order dated April 27, 2012. Under the settlement agreement Katelin Trippe was to receive, among other things, \$300,000 in three payments in exchange for her stock in JAT, Inc., which stock would then go to the other heir of the estate, James A. Trippe, IV. She also received the two lots in the Bahamas.

A dispute arose between Personal Representative and Conservator over the transfer of the Bahamian lots. Personal Representative interpreted the agreement to mean he could satisfy the terms of the agreement by filing a deed of distribution of the two Bahamian lots to Conservator for Katelin Trippe. Conservator took the position that under the agreement the Estate had to open an ancillary administration in the Bahamas and to pay for transfer of the two lots to Katelin Trippe by Bahamian deed.

The agreement concerning the lots specifically stated as follows:

BAHAMA 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.I of the Second Supplementary Inventory and Appraisal dated December 9, 2011. The lots should 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.

A hearing was held on the interpretation of the agreement before the Probate Court on December 19, 2012 and the Probate Court issued an Order filed December 21, 2012 requiring Personal Representative to file all documents necessary to close the Estate

to include recorded copies of the Bahamian deeds to Katelin Trippe no later than February 1, 2013. Personal Representative was unable to open an ancillary estate in the Bahamas and complete the transfer of the two lots by February 1, 2013.

On February 7, 2013, Conservator filed a rule to show cause why Personal Representative should not be held in contempt for failure to close the Estate and obtain the deeds for the Bahamian lots. A hearing was held on April 24, 2013.

Personal Representative testified that after he received the Probate Court's Order in January, 2013, he hired Attorney Bannister to assist in getting the lots in the Bahamas transferred which would be necessary in order to close the Estate.

Personal Representative offered a Google search of lawyers in the Bahamas who did probate and property work near where the two lots were located. (R. p. 46, l. 3-21). The attorney for Conservator objected because the Google search had not been supplied pursuant to a subpoena issued to Bannister. (R. p. 47, l. 12-18). The Probate Court allowed the Google search to be proffered but ruled it would not consider the search in the rule to show cause because it was not produced pursuant to the subpoena. (R. p. 52, l. 25 – p. 53, l. 21).

Personal Representative then proffered an email from the attorney in the Bahamas, Mr. Seligman, dated February 6, in which attorney Seligman quoted a fee and requested a certain number of documents. (R. p. 56, l. 5-16). Personal Representative further testified he sent a check for \$2,000 to the attorney in the Bahamas (Exhibit for proffer, No. 6). He produced into evidence a letter dated February 25, 2013 addressed to the attorneys for Conservator which set forth the requirements for opening an ancillary estate and transferring the two Bahamian lots. (Exhibit No. 6)

Personal Representative testified regarding an email sent to Seligman dated March 6, 2013, agreeing to pay the retainer and negotiating half the fee when the Estate got the lots transferred. (Proffered Exhibit 6). He testified that he had asked that the attorney in the Bahamas do the work as quickly as possible and that he was paying out of his own pocket for these expenses.

Personal Representative then offered a number of exhibits which were proffered to demonstrate by document and by testimony his immediate response to the attorney in the Bahamas with the documents requesting and the supplying of the documents by Conservator. Personal Representative further testified that he had not willfully or intentionally delayed the transfer of the lots and that he wished to get the lots transferred as quickly as possible. (R. p. 70, l. 24 – p. 71, l. 13)

By Order filed June 25, 2013, the Probate Court held Personal Representative in contempt and sentenced him to ninety (90) days incarceration to be suspended upon the proper conveyance of the Bahamian lots to Conservator on or before July 12, 2013, plus payment of Conservator's attorney fees and costs or payment of the sum of \$25,000 in certified funds which Conservator agreed to accept in lieu of the conveyance of the Bahamian lots on or before July 12, 2013. While the Order did not state the amount of attorney fees and costs to be paid by Personal Representative, the Probate Court simply stated Personal Representative was to pay said sums.

On July 8, 2013, Personal Representative moved the Probate Court to reconsider its order because the Probate Court ignored the controversy over who should pay for the ancillary estate pursuant to the agreement and the fact that Personal Representative delivered a deed of distribution for the Bahamian lots on July 20, 2012. The Probate

Court did not determine who was to pay for the ancillary administration of the lots in the Bahamas under the agreement until its December, 2012 Order.

In addition, Personal Representative pointed out that he had hired an attorney at his own personal expense to open the ancillary estate and to get the Bahamian deeds conveyed and had done all that he could to comply with the Order in a timely manner. Also, Personal Representative had moved to extend the time for recording the deeds which had been ignored or denied by the Probate Court. Finally, Personal Representative pointed out that the Probate Court made no findings in regard to the award of attorney fees. (Motion to Reconsider, July 8, 2013)

On August 21, 2013 the Probate Court heard the Motion to Reconsider. By Order filed September 30, 2013 the Probate Court denied the Motion to Reconsider the finding of contempt, held that Attorney Bannister could not assist Personal Representative in the contempt action because of a conflict of interest which the Probate Court did not explain, and awarded \$12,920.25 to Conservator in attorney fees and costs. (Order, September 30, 2013).

Personal Representative filed an appeal on October 4, 2013 (Notice of Appeal, October 4, 2013) to the Circuit Court and set forth his grounds for appeal on November 15, 2013. (Grounds of Appeal). The Notice of Appeal and the Grounds for Appeal were signed by the attorney of record for Personal Representative, Michael T. Coulter.

On February 4, 2014, Conservator filed a Motion to Dismiss the appeal. This motion was based on Attorney Bannister filing the Motion to Reconsider of June 5, 2013 on behalf of Personal Representative instead of Attorney Michael Coulter.

The matter was heard by the Honorable D. Garrison Hill on February 18, 2014. Judge Hill issued an Order on June 4, 2014 which upheld the finding of contempt,

reduced the award of attorney fees and denied Conservator's Motion to Dismiss. (Order, June 4, 2014).

Conservator filed a Motion to Alter or Amend on July 31, 2014. Judge Hill filed an Amended Order which again upheld the contempt and reaffirmed the reduction of attorney fees. (Order, July 31, 2014).

Both parties appealed.

ARGUMENT

- I. THE COURTS BELOW ERRED IN HOLDING THE APPELLANT IN CONTEMPT BECAUSE THE CONTEMPT WAS BASED ON AN ARBITRARY DATE TO TRANSFER DEEDS AND WAS DEPENDENT ON A FOREIGN COURT TO ACT WITHIN THE TIME LIMIT SET BY THE PROBATE COURT WHICH PROVED TO BE IMPOSSIBLE.

A court's finding of contempt is reviewed for an abuse of discretion amounting to an error of law or for lack of evidentiary support.

Contempt results from the willful disobedience of an order of the court, and before a person may be held in contempt, the record must be clear and specific as to the acts or conduct upon which such finding is based. Edwards v. Edwards, 254 S.C. 466, 176 S.E.2d 123 (1970).

By Order filed December 21, 2012, Personal Representative was ordered to have two lots in the Bahamas titled in Katelin Trippe's name and for the Estate to be closed by February 1, 2013. This arbitrary date was not based on any factual finding by the Probate Court that the Bahamian legal system could accomplish the opening of an ancillary estate and the transferring of the deeds within that timeframe. As the record makes clear, the Bahamian courts require a plethora of documents from the parties and cannot be rushed. For example, the Bahamian attorney hired at Personal Representative's own expense (R.

p. 245, l. 34-38) required a number of documents to include an application, fiduciary letter, inventory and appraisal, inventory, amended inventory, settlement agreement, certified copies of death certificate and information from Conservator. The fact that the Bahamian deeds were never located further stalled the process.

The Probate Court cited the failure of Personal Representative to act before January 30, 2012 as the basis for the contempt. If a finding of civil contempt is to force compliance with the Probate Court Order then the Probate Court ignored the actions of Personal Representative from January 30, 2012 until the contempt hearing was held on April 24, 2013.

During that period of time Personal Representative: (1) hired at his personal expense an attorney in Greenville and the Bahamas to comply with the Probate Court's Order (R. p. 324, 325); (2) sent Katelin Trippe's attorney a letter relaying the request for document from Conservator (R. p. 269); (3) paid the Bahamian attorney (R. p. 325); (4) furnished the Bahamian attorney the documents he requested (R. p. 335); (5) transmitted additional documents to the Bahamian attorney on April 4, 2013 (R. p. 347); and (6) furnished additional documents to the Bahamian attorney on April 23, 2013 (R. p. 275).

A cursory review of the correspondence and documents furnished from January 30, 2012 until the contempt hearing reflects a maximum effort to comply with the Probate Court's Order. While Personal Representative may be faulted for being slow in getting started, he certainly moved with zeal after getting started. Therefore, the Probate Court should not hold him in contempt because he cannot meet what turned out to be an unrealistic deadline.

II. IN THE EVENT THIS COURT REVERSES THE CONTEMPT OF APPELLANT THE COURT SHOULD ALSO REVERSE THE AWARD OF ATTORNEY FEES.

In the event this Court reverses the contempt of the Appellant, the Court should also reverse the award of attorney fees.

In hearing the appeal from the Probate Court, the Honorable D. Garrison Hill described the motivation for this litigation as a “relentless pursuit of a fee from the Estate.” (Order, p. 6). Given the information furnished as to the efforts to get the Bahamian lots transferred, the pursuit of a contempt action was questionable at best.

Because any award of attorney fees has to be based on the slowness of Personal Representative to try and comply with the unrealistic Probate Court Order, the attorney’s fees, if any, should be minimum. If the contempt is reversed, the award of attorney fees of any amount be also be reversed.

CONCLUSION

The finding of contempt should be reversed along with the award of attorney fees.

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC



O. W. Bannister

ATTORNEY FOR RESPONDENT-APPELLANT