

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.

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

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January 12, 2015

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE AWARD OF ATTORNEY'S FEES FROM \$19,079.91 TO \$4,500.00 BECAUSE THE INITIAL AWARD WAS UNWARRANTED.
- II. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE AWARD OF ATTORNEY FEES BECAUSE THE AWARD WAS HELD IN ABEYANCE BY THE PROBATE COURT ORDER OF DECEMBER 21, 2012 AND ONLY DETERMINED AND AWARDED BY THE ORDER OF THE PROBATE COURT OF APRIL 27, 2012.
- III. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE AWARD OF ATTORNEY FEES BECAUSE THE AWARDED FEES WERE WELL WITHIN THE DISCRETION OF THE CIRCUIT COURT.
- IV. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE ATTORNEY FEES BECAUSE THE ISSUE WAS PROPERLY PRESENTED.
- V. THE CIRCUIT COURT DID NOT ERR IN EXPRESSING CONCERN FOR NEEDLESS FEES PAID FOR BAHAMIAN COUNSEL BY THE RESPONDENT-APPELLANT AND CONCERN FOR THE AMOUNT IN CONTROVERSY BECAUSE ONE BARON FACTOR IN THE TIME AND LABOR NECESSARILY DEVOTED TO THE MATTER.
- VI. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE ATTORNEY FEES BECAUSE THE FEES WERE NOT NECESSARILY INCURRED AND WERE UNREASONABLE.
- VII. THE CIRCUIT COURT DID NOT ERR IN FINDING APPELLANT-RESPONDENT WAS NOT IN CONTEMPT PRIOR TO DECEMBER 21, 2012 BECAUSE THE PROBATE COURT DID NOT FIND HIM IN CONTEMPT.
- VIII. THE CIRCUIT COURT DID NOT ERR IN FINDING THE SETTLEMENT AGREEMENT WAS THE CONTROLLING DOCUMENT AND NO CONTEMPT OCCURRED PRIOR TO THE DECEMBER 21, 2012 ORDER.
- IX. THE CIRCUIT COURT DID NOT ERR IN FINDING THE APPELLANT-RESPONDENT ATTEMPTED TO COMPLY WITH THE PROBATE COURT ORDER AS OF JANUARY 30, 2013 BECAUSE THE APPELLANT-RESPONDENT SO TESTIFIED.

- X. THE CIRCUIT COURT DID NOT ERR IN REFUSING TO DISMISS THE APPEAL FROM THE PROBATE COURT ON THE GROUNDS THE WRONG ATTORNEY FILED THE NOTICE OF APPEAL BECAUSE THE APPELLANT-RESPONDENT WAS THE PARTY APPEALING.

STATEMENT OF THE CASE

James A. Trippe, III died intestate on March 26, 2009. His father 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

On April 27, 2012 the heirs of the Estate of James A. Trippe, Jr., received the approval of the Probate Court for their mediated agreement as to how the assets of the Estate were to be divided. Once the mediated agreement was approved, the remaining task was to effectuate the transfer of assets to each respective heir.

The Respondent-Appellant was to receive two lots in the Bahamas. No deeds to the lots had been located, but numerous tax notices had been found. This fact raised two issues. The first was who would bare the expense of obtaining an ancillary proceeding in the Bahamas to reflect ownership of the lots in the Respondent-Appellant, and the second was how to obtain a deed from the Bahamas reflecting the ownership of the lots in the Respondent-Appellant.

These issues were settled by the Probate Court in a hearing held December 19, 2012. The Appellant-Respondent personal representative was to finance the Bahamas

ancillary proceeding and obtain the deeds. He was given until February 1, 2013 to do so. He could not get the ancillary proceedings accomplished by February 1, 2013.

On February 7, 2013 the Respondent-Appellant filed a contempt rule for this failure. After a hearing the Probate Court held the Appellant-Respondent in contempt.

The contempt order was appealed and the attorney fee portion, among others, was revised downward.

ARGUMENT

- I. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE AWARD OF ATTORNEY'S FEES FROM \$19,079.91 TO \$4,500.00 BECAUSE THE INITIAL AWARD WAS UNWARRANTED.

Judge Hill's Order of June 4, 2014 says it best. These proceedings have turned into a, "... relentless pursuit of a fee from the Estate."

The hearings for which fees are sought are (1) the Probate Court's interpretation of the agreement as to who had the responsibility to finance the ancillary proceedings in the Bahamas, and (2) the failure of the Personal Representative to obtain the Bahamas ancillary proceedings within forty-one (41) days and obtain deeds to the Bahamas lots. These Probate Court hearings are relatively simple.

The first factor for awarding attorney fees under Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989) is the nature, extent and difficulty of the legal services rendered.

The issue of the interpretation took up less than one hour of Court time. The Rule to Show Cause took even less. No issue of foreign law was involved, only who was going to pay for having the foreign law transfer record of ownership of the two Bahamian lots.

The second issue under Baron is the time and labor necessarily devoted to the case. As Judge Hill said in his Order, “that the mushrooming fee was out of bounds became evidence when Morin announced he was claiming \$8,562.25 (to date) to defend this appeal...” (p. 7) The Court should note that the Respondent-Appellant brief on the issue of attorney’s fees is thirty-nine (39) pages. It seems that in each proceeding the Respondent-Appellant reinvents the wheel.

Judge Hill’s Order on attorney fees should be affirmed.

II. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE AWARD OF ATTORNEY FEES BECAUSE THE AWARD WAS HELD IN ABEYANCE BY THE PROBATE COURT ORDER OF DECEMBER 21, 2012 AND ONLY DETERMINED AND AWARDED BY THE ORDER OF THE PROBATE COURT OF APRIL 27, 2012.

The Respondent-Appellant misstated the Orders of the Probate Court. The December 21, 2012 Order did not find the Appellant-Respondent in contempt but did find he was responsible for obtaining the ancillary Bahamian proceedings and procuring the recorded Bahamas deeds.

In addressing attorney fees, the December 21, 2012 Order stated, “Payment of all attorney’s fees and costs owed by the Estate are held in abeyance.”

Therefore, the amount of attorney fees and costs for the December 21, 2012 hearing is properly under appeal.

III. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE AWARD OF ATTORNEY FEES BECAUSE THE AWARDED FEES WERE WELL WITHIN THE DISCRETION OF THE CIRCUIT COURT.

The Circuit Court recognized that the issues litigated were fairly simply and uncomplicated. Who was responsible for obtaining and paying for the Bahamian ancillary proceedings which would result in the required deeds? That issue involved a

hearing with the Probate Court interpreting the parties' agreement. This issue certainly was not complicated.

A Rule to Show Cause is likewise uncomplicated.

As Judge Hill observed, these proceedings became a "relentless pursuit of a fee from the Estate."

Reducing egregious fees is a function of the appellant process.

IV. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE ATTORNEY FEES BECAUSE THE ISSUE WAS PROPERLY PRESENTED.

The Probate Court did not award attorney fees in any amount in its December 21, 2012 Order. At that point there was no award to appeal. When there was an award, it was appealed.

V. THE CIRCUIT COURT DID NOT ERR IN EXPRESSING CONCERN FOR NEEDLESS FEES PAID FOR BAHAMIAN COUNSEL BY THE RESPONDENT-APPELLANT AND CONCERN FOR THE AMOUNT IN CONTROVERSY BECAUSE ONE BARON FACTOR IN THE TIME AND LABOR NECESSARILY DEVOTED TO THE MATTER.

The Respondent-Appellant correctly states the law that there is no requirement that attorney's fees be less than or comparable to a party's monetary judgment. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998).

In Taylor, a medical malpractice case that involved unfair trade practice, the court referred back to the Baron factors which the Court found sufficient. Common sense in applying the Baron factors show the excessiveness of the fees run up in light of the simple issues involved and the amount in controversy.

Apparently, the Respondent-Appellant argues that the amount in controversy cannot be considered in applying the Baron factor. That position is obviously not the law.

VI. THE CIRCUIT COURT DID NOT ERR IN REDUCING THE ATTORNEY FEES BECAUSE THE FEES WERE NOT NECESSARILY INCURRED AND WERE UNREASONABLE.

The Circuit Court reviewed the redacted time sheets of the Respondent-Appellant and concluded that under the Baron factors the Respondent-Appellant was relentless in pursuing fees from the Estate. For example, the Respondent-Appellant listed 37.8 hours spent on the appeal from the Probate Court to the Circuit Court. (R.A. Brief, p. 28). The Circuit Court noted that all that work resulted in the combined length of the briefs of both parties was less than twenty-five (25) pages. One Baron factor is time and labor necessary for the controversy. The Circuit Court correctly found the time and labor necessary was far less for attorneys who claim to be skilled and experienced attorneys.

VII. THE CIRCUIT COURT DID NOT ERR IN FINDING APPELLANT-RESPONDENT WAS NOT IN CONTEMPT PRIOR TO DECEMBER 21, 2012 BECAUSE THE PROBATE COURT DID NOT FIND HIM IN CONTEMPT.

The Respondent-Appellant takes the position that the Probate Court Order of December 21, 2012 found the Appellant-Respondent in contempt.

In response the Appellant-Respondent would point out that the Petition of the Respondent-Appellant which resulted in the December 21, 2012 Order did not seek contempt but sought an Order compelling the Appellant-Respondent to perform his duties. (Petition)

The Order resulting from the Petition did not hold the Appellant-Respondent in contempt either.

In short, the Circuit Court did not alter any findings of contempt.

VIII. THE CIRCUIT COURT DID NOT ERR IN FINDING THE SETTLEMENT AGREEMENT WAS THE CONTROLLING DOCUMENT AND NO CONTEMPT OCCURRED PRIOR TO THE DECEMBER 21, 2012 ORDER.

For starters, the Petition for the Rule to Show Cause asked for contempt only for violating the December 21, 2012 Order which required the Appellant-Respondent to transfer the Bahamian lots before February 1, 2013. (Petition)

Based on the Petition the Probate Court went back and held Appellant-Respondent for contempt not requested by Respondent-Appellant.

The Circuit Court was correct in finding the Appellant-Respondent was not in contempt before the February 1, 2013 deadline.

IX. THE CIRCUIT COURT DID NOT ERR IN FINDING THE APPELLANT-RESPONDENT ATTEMPTED TO COMPLY WITH THE PROBATE COURT ORDER AS OF JANUARY 30, 2013 BECAUSE THE APPELLANT-RESPONDENT SO TESTIFIED.

The Appellant-Respondent testified as to his contact with the Bahamian attorney. Even if in error, the Circuit Court based its decision on failure to obtain the Bahamian deeds.

X. THE CIRCUIT COURT DID NOT ERR IN REFUSING TO DISMISS THE APPEAL FROM THE PROBATE COURT ON THE GROUNDS THE WRONG ATTORNEY FILED THE NOTICE OF APPEAL BECAUSE THE APPELLANT-RESPONDENT WAS THE PARTY APPEALING.

The Respondent-Appellant argues that this appeal should be dismissed because it was filed on behalf of the Appellant-Respondent by the wrong attorney and is thus a nullity. This position is based on Probate Court holdings prior to the December 21, 2012 Order that Attorney Bannister could not represent the Estate because of a conflict.

Any actual conflict was ended by the Order of December 21, 2012. As a practical matter, the Personal Representative was required to obtain ancillary proceedings in the Bahamas and obtain recorded deeds for the Respondent-Appellant so he could close the Estate.

The Personal Representative (Appellant-Respondent) personally hired Attorney Bannister to help him get the ancillary proceedings started and to obtain the Bahamian deeds. (T.S. April 24, 2013 hearing, pp. 33-44) Attorney Bannister was paid outside the Estate.

Following the December 21, 2012 Order, the Probate Court direct the Appellant-Respondent to obtain ancillary probate proceedings in the Bahamas and obtain deeds to the two Bahamian lots for the Respondent-Appellant. The Appellant-Respondent personally paid Attorney Bannister to accomplish these tasks. In other words, Attorney Bannister was hired to do what the Court required.

Seeking to carry out court orders does not seem to create any conflict of interests. If there ever was a conflict it was certainly over. But, as the Respondent-Appellant said, “this is a very contentious case...” (Respondent-Appellant Brief, p. 17)

The short answer to this argument is that Attorney Bannister was representing the Appellant-Respondent for the limited purpose of carrying out the December 21, 2012 Order to set up ancillary probate proceedings in the Bahamas and obtain the deeds for Respondent-Appellant. Rather that recognize the efforts being made by Appellant-Respondent, the Respondent-Appellant seeks to continue the litigation.

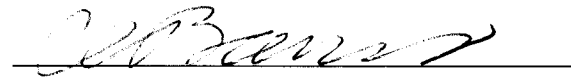
The Circuit Court Order should be upheld.

CONCLUSION

The appeal of the Respondent-Appellant should be dismissed.

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC

A handwritten signature in cursive script, appearing to read "O. W. Bannister", is written over a horizontal line.

O. W. Bannister

ATTORNEY FOR APPELLANT-RESPONDENT

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

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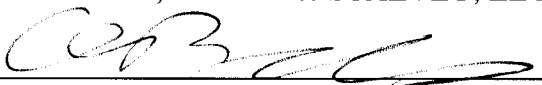
PROOF OF SERVICE

The undersigned hereby certifies that on January 12, 2015 the Appellant-Respondent's Initial Brief of Respondent in the above-captioned matter was served upon counsel of record by placing a copy of same in the U.S. Mail, sufficient postage affixed thereto, addressed as follows:

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January 12, 2015

V. Claire Allen, Deputy Clerk
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P. O. Box 11629
Columbia, SC 29211

**Re: In the Matter of James Trippe, III
Appellate Case No.: 2014-001401**

Dear Ms. Allen:

Enclosed please find the Appellant-Respondent's Initial Brief of Respondent along with our Proof of Service.

By copy of this letter and the enclosed Proof of Service I am serving a copy of the Initial Brief upon counsel of record.

Yours truly,

BANNISTER, WYATT & STALVEY, LLC


O. W. Bannister

OWB/tjc

Enclosures

cc: Jacqueline H. Patterson, w/enclosure
Michael T. Coulter, w/enclosure

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JAN 15 2015

SC Court of Appeals

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