

FILED-CIRCUIT COURT

STATE OF SOUTH CAROLINA)
GREENVILLE S.C.)
PAUL B. WICKER)
COUNTY OF GREENVILLE)

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

2015 FEB 12 PM 4 38

IN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)

APPEAL FROM THE
GREENVILLE COUNTY
PROBATE COURT

Gene D. Morin, Conservator)
for Katelin Trippe)

Respondent,)

Case No. 2014-CP-23-04096

v.)

ORDER

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

Appellant.)
_____)

DATE OF HEARING:	January 20, 2015
PRESIDING JUDGE:	Hon. Edward W. Miller
RESPONDENT'S ATTORNEY:	Nathaniel C. Farmer
APPELLANT'S ATTORNEY:	O. W. Bannister and Michael T. Coulter
COURT REPORTER:	Cheryl Smith

The above-captioned matter came before me for oral arguments on appeal from the Greenville County Probate Court. Appellant James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III ("Appellant" or "PR") has appealed the Orders of the Greenville County Probate Court dated April 10, 2014 (the "April 2014 Order") and May 30, 2014, which found him to be in contempt of court for failing to make a payment to Respondent in the amount of \$50,000.00 as required by that certain Mutual Release and Settlement Agreement incorporated into an Order of the Probate Court dated April 27, 2012. As noted in the April 2014 Order, Appellant purged himself of the contempt by making the \$50,000.00 payment and by paying attorney's fees in the amount of \$3,585.00.

Present at the hearing was Respondent Gene D. Morin, Conservator for Katelin Trippe (“Respondent” or “Conservator”) and his attorney, Nathaniel C. Farmer. Attorneys O. W. Bannister and Michael T. Coulter appeared on behalf of Appellant. Counsel for Respondent and Appellant zealously advocated their client’s position through oral arguments. For the reasons set forth herein, the Orders of the Greenville County Probate Court dated April 10, 2014 and May 30, 2014 are AFFIRMED.

SUMMARY OF FACTS AND PROCEDURAL HISTORY

This matter arises from the administration of the Estate of Decedent James A. Trippe, III (“Decedent”). Decedent died intestate on March 26, 2009. On or about April 16, 2009, Appellant was appointed as Personal Representative of Decedent’s Estate. 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, Respondent was appointed by the Probate Court to act on Katelin’s behalf.

On June 6, 2011, Respondent filed an action against Appellant in both his individual capacity and as Personal Representative. Appellant and Respondent 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”)¹ which was incorporated into an Order of the Probate Court on April 27, 2012.

Pursuant to Paragraph 2 of the Settlement Agreement, Appellant, both in his individual capacity and as Personal Representative of Decedent’s Estate, was jointly liable to pay the sum of \$50,000.00 to Respondent on or before December 31, 2013. Paragraph 2 of the Settlement Agreement states, in pertinent part, as follows:

¹ Although not parties to the action, James IV and JAT, Inc. were signatories to the Settlement Agreement because they obtained certain rights and obligations under the Settlement Agreement.

Cash Payments to Petitioner. Respondent PR, Respondent Trippe,
Jamie and/or JAT will pay to Petitioner the following sums of money:

- (ii) An additional FIFTY THOUSAND AND NO/100 (\$50,000.00) DOLLARS to Petitioner on or before December 31, 2013; (emphasis added)

Having not received payment of the amount due by December 31, 2013, Respondent instituted contempt proceedings.² A contempt hearing was held on March 18, 2014. At the hearing, Appellant was found in contempt of court for failure to make the required payment. Appellant was given the opportunity to purge the contempt by making the required \$50,000.00 payment and paying attorney's fees and costs to Respondent in the amount of \$3,585.00. If payment was not made by March 19, 2014, Appellant would be sentenced to ninety (90) days incarceration. Appellant made the payment on March 19, 2014 as evidenced by the April 2014 Order and, therefore, purged himself of the contempt.

On April 24, 2014, Appellant filed a Motion to Reconsider. The Motion was denied by Order of the Probate Court on May 30, 2014. This appeal followed.

STANDARD OF REVIEW

In this Appeal, Appellant argues that the Probate Court erred by (i) "holding [him] in contempt and sentencing him to incarceration for failure to pay", (ii) "holding him personally liable for the debt", and (iii) "awarding attorney fees" to Respondent.

"A decision on contempt rests within the sound discretion of the [trial] court. It is within the [trial] court's discretion to punish by fine or imprisonment every act of contempt before the court. On appeal, [an appellate court] should reverse the contempt decision only if it is without

² The present contempt hearing is the fourth contempt hearing on matters related to the Settlement Agreement incorporated into the April 27, 2012 Order. By Orders dated June 15, 2012, December 21, 2012 and June 25, 2013, the Probate Court found Appellant to be in contempt for failing to comply with the Settlement Agreement. Appellant has appealed the Probate Order dated June 25, 2013.

evidentiary support or the [trial] court has abused its discretion.” (internal citations omitted) *Ex parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct.App. 2009).

A review of attorney's fees awarded is governed by an abuse of discretion standard. *Blumberg v. Nealco*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). An appellate court will not reverse an award unless it is based on an error of law or is without any evidentiary support. *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997).

CONCLUSIONS OF LAW

Contempt:

It is well-settled in South Carolina that the issue of contempt becomes moot when the party in contempt purges himself of the contempt. In *Chappell v. Chappell*, 282 S.C. 376, 318 S.E.2d 590 (Ct.App. 1984), the Court of Appeals held the following:

Where one held in contempt for violation of a court order complies with the order, his compliance renders the question concerning whether he was in contempt academic or moot and precludes appellate review of the contempt proceedings. The payment of a fine imposed in contempt proceedings also waives the right of review. Here, by paying the arrearages Chappell purged himself of contempt for failure to pay child support; and by paying the fine he satisfied the sentence imposed for contempt in attempting to pay the child support in a manner that interfered with the due administration of justice. We therefore regard the case as moot and unappealable.

Id. at 591 (internal citations omitted). In *Jordan v. Harrison*, 303 S.C. 522, 402 S.E.2d 188 (Ct.App. 1991), the Court of Appeals restated the rule of law found in *Chappell* - “where one held in contempt for violation of a court order complies with the order, his compliance renders the issue of contempt moot and precludes appellate review of the contempt proceeding.” *Jordan*, 402 S.E.2d at 189 (emphasis added).

Here, Appellant paid the amount due under the Settlement Agreement and the attorney's fees. By so doing, Appellant purged himself of contempt. By complying with the Order imposed by the Probate Court, the issue of contempt is now moot and cannot be appealed.

Appellant argues that, although the contempt issue is moot, this case falls under one of the exceptions to the mootness doctrine because it is "capable of repetition, yet evading review." Appellant's argument is based upon the hypothetical scenario that a finding of contempt and sentence of incarceration is capable of repetition if Appellant again violates the Settlement Agreement incorporated into the Probate Court's Order dated April 27, 2012. Although this scenario may be capable of repetition, it does not evade review because Appellant will have an opportunity to present argument at future hearings. See, e.g. *Seabrook v. City of Folly Beach*, 337 S.C. 304, 307, 523 S.E.2d 462, 463 (1999); *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). Because such issue will not evade review, Appellant's argument that this case falls under the exception to the mootness doctrine fails as a matter of law.

As an additional sustaining ground, I find that there is evidentiary support for the Probate Court's finding of contempt. Under Paragraph 2 of the Settlement Agreement, Appellant, both individually and as Personal Representative, was jointly liable to make the installment payment due December 31, 2013. Paragraph 2 of the Settlement Agreement is clear and unambiguous. See e.g., *C.A.N. Enterprises, Inc. v. South Carolina Health and Human Services Finance Commission*, 296 S.C. 373, 373 S.E.2d 584 (1988) (If the language of the contract is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect.) By failing to make the required payment, Appellant breached the terms of the Settlement Agreement, and he consequently violated the Probate Court's Order dated April 27, 2012.

The evidence further supports the Probate Court's finding that the Appellant's violation of the April 27, 2012 Order was willful. Although Appellant disputed this issue at trial, Appellant's payment of the \$53,585.00 within twenty-four (24) hours of the contempt hearing supports the Probate Court's finding that Appellant had the means in which to make the required payment.

Because a decision on contempt should only be reversed "if it is without evidentiary support or the [trial] court has abused its discretion," I find that the Probate Court's finding of contempt should be affirmed. See, *Ex parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct.App. 2009).

Attorney's Fees:

With regard to attorney's fees, it is well settled in South Carolina that attorney's fees are recoverable if authorized by contract or statute. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). 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.

Any award of attorney's fees must comply with the factors set forth in *Baron*, 297 S.C. at 384.

Attorney's fees are also recoverable under the Court's contempt powers. *Poston v. Poston*, 331 S.C. 106, 114, 502 S.E.2d 86, 90, (1998) ("In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs he incurred in enforcing the court's prior order, including reasonable attorney's fees. The award of attorney's fees is not a punishment but an indemnification to the party who instituted the contempt proceeding. Thus, the court is not required to provide the contemnor with an opportunity to purge himself of these attorney's fees in order to hold him in civil contempt."); *Curlee v. Howle*, 277 S.C. 377, 386-87,

287 S.E.2d 915, 919-20 (1982) ("Compensatory contempt is a money award for the plaintiff when the defendant has injured the plaintiff by violating a previous court order..... Included in the actual loss are the costs of defending and enforcing the court's order, including litigation costs and attorney's fees.")

Based upon the foregoing law, I find that the Probate Court had the authority to award attorney's fees to Respondent under both the Settlement Agreement and its contempt powers. Based upon that authority, the Probate Court awarded attorney's fees to Respondent in the amount of \$3,585.00 which I find to be reasonable under *Baron*.

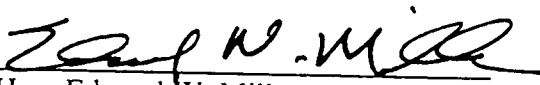
Furthermore, because Appellant paid this amount in order to purge his contempt, the issue of attorney's fees awarded by the Probate Court is moot for the reasons set forth above relating to Appellant's contempt. Respondent is entitled to retain the attorney's fees paid by Appellant as awarded by the Probate Court.

With regard to attorney's fees incurred on Appeal, Respondent argues that it is entitled to recover such fees based upon the Settlement Agreement and under the Court's contempt powers. However, I find that each party must bear its own costs and attorney's fees on appeal.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The Orders of the Greenville County Probate Court dated April 10, 2014 and May 30, 2014 are AFFIRMED.
2. Each party is responsible for its own attorney's fees on appeal.

IT IS SO ORDERED.


Hon. Edward W. Miller
Circuit Court Judge

This 11 day of February, 2015
Greenville, South Carolina

9

FILED IN COURT OF COMMON PLEAS
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2014CP2304096

2015 FEB 12 PM 4 37

Gene D Morin vs. James Trippe Jr

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.
- 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; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 12th day of February, 2015, and a copy mailed first class this 12th day of February, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Jacqueline Hiatt Patterson Patterson & Associates,
P.A. 1088 North Church Street Greenville, SC 29601-1639
Nathaniel Curtis Farmer 1088 N. Church St.
Greenville, SC 29601-1639

Oscar W. Bannister PO Box 10007 Greenville, SC 29603
Michael T. Coulter Clarkson, Walsh, Terrell & Coulter, P.A. P.O. Box 6728 Greenville, SC 29606

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

