

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

Edward W. Miller, Circuit Court Judge

JUL 13 2015

SC Court of Appeals

Case No. 2014-CP-23-04096

Appellate Case No. 2015-000649

In the Matter of James A. Trippe, III, Deceased

Gene D. Morin, Conservator for Katelin TrippeRespondent

v.

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

**RESPONDENT'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO DISMISS APPEAL**

Jacqueline H. Patterson, I.D. # 12090
Nathaniel C. Farmer, I.D. #75976
PATTERSON & ASSOCIATES, P.A.
1088 N. Church Street
Greenville, SC 29601
(864) 329-0548
Fax: (864) 239-3816
*Attorneys for Respondent, Gene D. Morin,
Conservator for Katelin Trippe*

Other Counsel of Record:

Michael T. Coulter
Clarkson, Walsh, Terrell & Coulter, PA
1164A Woodruff Rd.
Greenville, SC 29607
864-232-4400

O. W. Bannister
Bannister & Wyatt, LLC
Post Office Box 10007
Greenville, SC 29603
864-298-0084

STATEMENT OF ISSUE BEFORE THE COURT

Appellant has appealed the Order of the Greenville County Circuit Court which upheld the Orders of the Greenville County Probate Court dated April 10, 2014 (the "April 2014 Order") and May 30, 2014. The Probate Court found Appellant, James Trippe, Jr. ("Appellant"), 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 Respondent's attorney's fees in the amount of \$3,585.00. Based upon South Carolina law, Respondent would allege and show that, by purging himself of the contempt, Appellant has mooted the issue of contempt. As such, this Appeal should be DISMISSED.

FACTUAL BACKGROUND RELEVANT TO MOTION

1. Decedent James A. Trippe, III ("Decedent") died intestate on March 26, 2009. On or about April 16, 2009, Appellant was appointed as Personal Representative of Decedent's Estate.

2. 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 Court to act on Katelin's behalf.

3. On June 6, 2011, more than one year after Appellant's original deadline to close Decedent's Estate, Respondent filed an action against Appellant in both his individual capacity **and** as Personal Representative. In the Petition, Respondent asserted

causes of action for (i) breach of fiduciary duty, (ii) removal of Appellant as Personal Representative, (iii) an Accounting, and (iv) a Demand for Bond.

4. In the Petition, Respondent averred that Appellant had acted wrongfully, unreasonably and in bad faith in his dealings toward Katelin by, among other things, failing to distribute the Estate in a timely manner and by proposing to distribute the Estate contrary to law¹ and in unequal shares with Katelin receiving less than her rightful inheritance. During the litigation, Respondent discovered that Appellant, as self-appointed Treasurer of JAT, Inc.² (“JAT”) approved large consultation fees to himself and approved large salary increases to Paul Trippe (Appellant’s son) and James IV (Appellant’s grandson). Despite these increased payouts, the Estate received no dividend income from JAT resulting in no distributions for the care and support of the minor child, Katelin.

5. After two mediations, 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”)³ which was incorporated into an Order of the Probate Court on April 27, 2012. A copy of the April 27, 2012 Probate Court Order and the Settlement Agreement are attached hereto as **Exhibit A** and incorporated herein by reference.

6. Pursuant to Paragraph 2 of the Settlement Agreement, Appellant, both in his individual capacity and as Personal Representative of Decedent’s Estate, was jointly

¹ Appellant attempted to distribute approximately one-third of the Estate to Decedent’s son, Paul Trippe.

² JAT, Inc. is a corporation which was wholly owned by Decedent, and it was the largest asset of Decedent’s Estate with an approximate value of \$600,000.00. JAT, Inc. has now filed for bankruptcy.

³ 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.

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:

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)

7. Having not received payment of the amount due by December 31, 2013, Respondent instituted contempt proceedings.⁴

8. The 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 payment and paying attorney's fees and costs to Respondent in the amount of \$3,585.00.

9. Appellant made the payment of \$3,585.00 to Respondent on March 19, 2014 (as evidenced by the April 2014 Order) and, therefore, Appellant purged himself of the contempt. A copy of the April 2014 Order is attached hereto as Exhibit B and incorporated herein by reference. A copy of Appellant's payment is attached hereto as Exhibit C and incorporated herein by reference.

10. By Order filed February 12, 2015, the Honorable Edward W. Miller of the Greenville County Circuit upheld and affirmed the Orders of the Greenville County Probate Court dated April 10, 2014 and May 30, 2014. Although the Circuit Court provided additional sustaining grounds, the Circuit Court found that Appellant's appeal failed as a matter of law because the issue had become moot. A copy of the Circuit Court

⁴ This contempt proceeding was the third contempt proceeding filed by Respondent due to Appellant's failure to comply with the April 27, 2012 Probate Court Order and the Settlement Agreement.

Order dated February 11, 2015 (filed February 12, 2015) is attached hereto as **Exhibit D** and incorporated herein by reference.

LEGAL ARGUMENT AND AUTHORITIES

For the reasons hereinafter set forth, this Court should dismiss the Appeal on the grounds that the contempt issue is moot and unappealable.

Appellant argues that the lower courts erred in finding him in contempt of court, and he seeks reimbursement of the monies he paid to purge himself of the contempt. However, this issue is not appealable because it became moot when Appellant purged himself of the 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 *Jordan v. Harrison*, 303 S.C. 522, 402 S.E.2d 188 (Ct.App. 1991), this Court encountered facts almost identical to the present case. Harrison was held in contempt of court for failing to make child support payments, and he was sentenced to serve two months in jail which could be purged upon the payment of arrearages and a fine. Harrison paid the amounts due and then appealed. The Court of Appeals stated as follows: “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.” *Id.* at 189 (emphasis added).

Similarly, in *Chappell v. Chappell*, 282 S.C. 376, 318 S.E.2d 590 (Ct.App. 1984), Marvin Chappell failed to pay child support in a manner acceptable to the Clerk of Court. The Family Court found Chappell to be in “willful contempt” and ordered him confined to county jail for ten (10) days and fined him the sum of \$250.00. The jail sentence could be suspended upon payment of both the child support arrearage and the fine. Chappell

paid the fine and arrearages and then appealed. The Court of Appeals dismissed the appeal by stating 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.

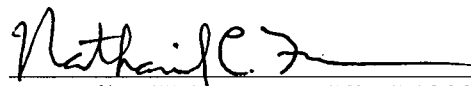
Id. at 591 (internal citations omitted).

In the present case, Appellant paid the amount due and the attorney's fees, and therefore purged himself of contempt by satisfying the sentence imposed by the Probate Court. By satisfying the sentence, the contempt is now moot and unappealable. Accordingly, the appeal should be DISMISSED.

CONCLUSION

Based upon the foregoing, the Appeal filed by Appellant should be dismissed, and Respondent requests its costs and attorney's fees in defending this Appeal pursuant to Paragraph 14 of the Settlement Agreement.

Respectfully Submitted,



Jacqueline H. Patterson, I.D. # 12090
Nathaniel C. Farmer, I.D. #75976
PATTERSON & ASSOCIATES, P.A.
1088 N. Church Street
Greenville, SC 29601
(864) 370-4159
Attorneys for Respondent

July 9, 2015
Greenville, South Carolina

Exhibit A

Appellate Case No. 2015-000649

**Respondent's Memorandum of Law in
Support of its Motion to Dismiss Appeal**

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE PROBATE COURT

JUDGMENT IN A CIVIL CASE
Case No. 2009ES2300707

Petitioner(s)/Plaintiff(s):

Gene D. Morin, Temporary
Conservator for Katelin [REDACTED]

vs.

Respondent(s)/Defendant(s):

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

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.
- ACTIONS DISMISSED.** (*CHECK REASON*): Rule 12(b), SCRPC; Rule 41, SCRPC; Rule 43(k), SCRPC; 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 27th day of April, 2012.

Edward M. Suwain
PRESIDING JUDGE

This judgment was entered on the 27th day of April, 2012, and a copy mailed first class this 27th day of April, 2012, to attorney(s) of record or to parties (when appearing pro se) as follows:

Jacqueline H. Patterson
Nathaniel C. Farmer
1088 North Church Street
Greenville, SC 29601
Attorneys for Petitioner

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

O. W. Bannister
P. O. Box 10007
Greenville, SC 29603
Attorney for Paul Trippe

James A. Trippe, IV
216 Ashmore Road
Greer, SC 29650

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APR 30 2012
BANNISTER & WYATT, LLC

Sheryll L. Smith
Clerk of Court, Probate Court
Greenville County, South Carolina
(864) 467-7179

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 IN THE MATTER OF)
 JAMES A. TRIPPE, III Deceased)
)
 Gene D. Morin, Temporary Conservator)
 for Katelin T. [REDACTED])
)
 Petitioner,)
)
 v.)
)
 James Trippe, Jr., individually and as)
 Personal Representative of the Estate of)
 James A. Trippe, III,)
)
 Respondent.)

IN THE PROBATE COURT
 Case No. 2009-ES-23-00707

FILED
 APR 27 2012

**Greenville County
 Probate Court**


**ORDER APPROVING
 SETTLEMENT**

This is an action filed by Petitioner seeking an accounting, recovery of Estate assets, and the removal of the Personal Representative of the Estate of James A. Trippe, III, Greenville County Case No. 2009-ES-23-00707 (the "Action"). The allegations of Petitioner are more particularly described in the Petition filed with this Court on June 6, 2011. Respondent has answered the aforesaid Petition, generally denying the allegations contained therein.

Following mediation, the parties have reached an agreement and compromise of all issues raised in this Action, and the parties have reduced their Agreement to writing, a copy of which is attached hereto as Exhibit A. That Agreement was approved by the Court at a hearing on April 20, 2012. The parties agreed that the Settlement Agreement should be made and incorporated into the Order of the Court by reference.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the terms of the Settlement Agreement attached hereto are hereby incorporated into and made a part of this Order, and that it completely resolves the issues raised in the petition. The Court retains

1 of 2 Pages

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jurisdiction to enforce compliance with the agreement by appropriate means, including by its inherent contempt powers.

IT IS SO ORDERED.



Edward M. Sauvain
Associate Probate Court Judge

Greenville, South Carolina

Dated: April 27, 2012

2 of 2 ¹⁰ *ESV*

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ESV

EXHIBIT A

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	
COUNTY OF GREENVILLE)	Case No. 2009-ES-23-00707
)	
IN THE MATTER OF)	
JAMES A. TRIPPE, III Deceased)	
)	
Gene D. Morin, Temporary Conservator)	
for Katelin T. [REDACTED])	
)	
Petitioner,)	
)	
v.)	
)	
James Trippe, Jr., individually and as)	
Personal Representative of the Estate of)	
James A. Trippe, III,)	
)	
Respondent.)	

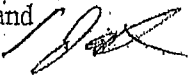
MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This MUTUAL RELEASE AND SETTLEMENT AGREEMENT (hereinafter "Settlement Agreement") is executed by and among Gene D. Morin, Temporary Conservator for Katelin T. [REDACTED] ("Petitioner"), James Trippe, Jr., individually ("Respondent Trippe") and as Personal Representative of the Estate of James A. Trippe, III ("Respondent PR"), James Trippe, IV ("Jamie"), and JAT, Inc. ("JAT") and all persons acting by, through, under, or in concert with any of them (all collectively, the "Parties").

WHEREAS, the Parties have agreed upon a compromise settlement and now wish to forever resolve, settle, compromise, and end any and all claims arising from or related to distributions made or to be made to or for the benefit of Katelin T. [REDACTED] from the assets of the Estate of James A. Trippe, III (the "Estate") or that they otherwise may have against one another in the above-captioned action;

WHEREAS, the Parties agree that, to the extent, if any, that the distribution of Estate assets made or to be made hereunder to or for the benefit of Katelin T. [REDACTED] is contrary to the intestacy laws of the State of South Carolina, this Settlement Agreement shall be deemed an Agreement Among Successors to Decedent as authorized by South Carolina Code Ann. §§ 62-3-912 (2012) and/or 62-3-1101 (2012); and

WHEREAS, James A. Trippe, III (the "Decedent") died intestate on March 26, 2009, and his estate is being probated in the Probate Court for Greenville County, South Carolina, as Case No. 2009-ES-23-00707; and



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WHEREAS, on or about April 16, 2009 James A. Trippe, Jr. was appointed as Personal Representative of Decedent's Estate; and

WHEREAS, Katelin T. [REDACTED] ("Katelin") and Jamie constitute the Decedent's intestate heirs pursuant to S.C. Code Ann. §§ 62-2-102 and 62-2-103; and

WHEREAS, Katelin is a minor child, and by Order of the Court dated March 1, 2011, Case No. 2010GC2300131, Gene D. Morin was appointed temporary Conservator to represent the best interests of Katelin with regard to Estate matters; and

WHEREAS, Decedent was also survived by his father (Respondent Trippe) and his brother, Paul Trippe ("Paul") who, by law, are not heirs of Decedent's Estate; and

WHEREAS, on June 6, 2011, Petitioner filed a Petition in this matter alleging the following causes of action against Respondent Trippe and Respondent PR: (i) Breach of Fiduciary Duty, (ii) Removal of the Personal Representative, (iii) an Accounting, and (iv) a Demand for Bond; and

WHEREAS, Respondent Trippe and Respondent PR filed an Answer in this matter, generally denying the allegations of the Petition; and

WHEREAS, the Parties wish to resolve fully, finally and irrevocably any and all claims made in the above-captioned action by entering into this Agreement upon the terms and conditions set forth below; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the exchange of other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties hereto agree to the following terms of settlement in full satisfaction of all claims against one another:

1. Recitals. The recitals are incorporated herein as if fully set forth.
2. Cash Payments to Petitioner. Respondent PR, Respondent Trippe, Jamie and/or JAT will pay to Petitioner the following sums of money:
 - (i) ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 (\$175,000.00) DOLLARS to Petitioner on or before 5:00PM on April 25, 2012;
 - (ii) An additional FIFTY THOUSAND AND NO/100 (\$50,000.00) DOLLARS to Petitioner on or before December 31, 2013;
 - (iii) An additional FIFTY THOUSAND AND NO/100 (\$50,000.00) DOLLARS to Petitioner on or before December 31, 2014; and
 - (iv) An additional TWENTY-FIVE THOUSAND AND NO/100 (\$25,000.00) DOLLARS to Petitioner on or before December 31, 2015.

The payment in paragraph (i) above shall be delivered to the law offices of Patterson & Associates, P.A. All remaining payments shall be made to Petitioner at such address as provided by Petitioner. The payments set forth in paragraphs (ii), (iii) and (iv) above shall be secured by stock in JAT, and said stock shall at all times represent not less than fifty percent (50%) of the total shares issued by JAT.

3. **1955 Chevy Bel Air.** Within thirty (30) days following the execution of this Settlement Agreement, Respondent PR shall distribute to Petitioner the 1955 Chevy Bel Air (the "Chevy") as listed on Schedule F.3. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. Respondent PR shall perform all acts and execute all documents necessary to transfer the Chevy to Petitioner, including but not limited to delivering possession and title to Petitioner, free and clear of all liens and other encumbrances.

4. **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.

5. **425 Styles Road.** Within thirty (30) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the Decedent's interest in the real property identified as 425 Styles Road, Taylors South Carolina and listed on Schedule A.2. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. This transfer shall be made, subject to any mortgages, liens and other encumbrances of record.

6. **Titling of Assets.** All assets to be transferred to Petitioner under this Settlement Agreement shall be titled as follows: Gene D. Morin as Conservator for Katelin T. [REDACTED] a minor child.

7. **Full Cooperation.** All Parties will cooperate in the timely execution of all documents incidental and related to the obligations set forth herein, the conclusion of this action and the closing of Decedent's Estate.

8. **Dismissal of the Underlying Lawsuit.** Upon execution of this Settlement Agreement, the Parties agree to direct their respective counsel to file a Consent Order dismissing the underlying lawsuit, and any and all claims that have been asserted therein.

9. **Authority.** Each party represents and warrants that, as of the date of the execution of this Settlement Agreement, he/she/it has the right and authority to execute this Settlement Agreement, and each signatory represents that he or she is fully authorized to execute this Settlement Agreement on behalf of, the party for whom he or she signs.

10. **Time.** Time is of the essence in this Settlement Agreement. Reference to days in this Settlement Agreement, unless otherwise indicated, means consecutive calendar days, including weekends and holidays. In computing any period of time prescribed or allowed by this

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Agreement which begins to run on the date of execution or any other specific date, the date of execution or other specific date is not to be included in computing said time. The last day of the period so computed is to be counted, unless it is a Saturday or Sunday or a state or federal holiday, in which event the period runs until the end of the next day, which is neither a Saturday, Sunday or such holiday.

11. **Entire Agreement.** The Parties further represent and acknowledge that this Settlement Agreement constitutes the entire agreement between the Parties. Any oral or written representations, prior agreements, or understandings not reflected in this Settlement Agreement shall have no force or effect, and are superseded by this Settlement Agreement.

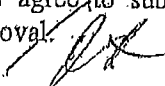
12. **Severability.** The terms of this Settlement Agreement, including paragraph subparts, are severable, and if any part or subpart is found to be unenforceable, the other terms shall remain in full force and effect and are valid and enforceable. Likewise, the Parties expressly recognize that the obligations set forth in this Settlement Agreement are independent of one another, in that a breach of one provision does not extinguish any duties or rights set forth in other provisions of this Settlement Agreement.

13. **Interpretation.** The Parties agree that this Settlement Agreement shall be interpreted according to South Carolina law. Further, this Settlement Agreement is the result of negotiations among the Parties, each of which has participated in the drafting hereof, with the aid and advice of their attorneys. This Settlement Agreement shall be interpreted in accordance with the plain meaning of its terms and shall not be strictly construed for or against any of the Parties hereto. The Parties agree that this Settlement Agreement shall be construed as though each party to this Agreement participated equally in the preparation and drafting of each provision of this Settlement Agreement.

14. **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.

15. **Modification.** This Settlement Agreement shall not be modified or amended except by an instrument in writing signed by the Parties.

16. **Approval.** The parties agree to submit this Settlement Agreement to the Greenville County Probate Court for approval.



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IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be signed. By signing this Settlement Agreement, the Parties warrant that they have read and understand each provision of this Settlement Agreement, that they knowingly and voluntarily agree to and have signed the Settlement Agreement, that in so doing they are not relying upon any inducements, representations, agreements, or understandings other than as are set forth herein, and that they are acting with full advice of, and explanation by, their respective legal counsel.

The Parties recognize and agree that this Settlement Agreement may be signed and executed in one or more parts or counterparts. Each counterpart, including a signature page executed by each party, shall be an original counterpart of this Settlement Agreement, but all such counterparts shall constitute one instrument.

IN WITNESS HEREOF:

[Signature]
[Signature]

James A. Trippe, Jr.
James Trippe, Jr., individually

[Signature]
[Signature]

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

[Signature]
[Signature]

James Trippe IV
James Trippe, IV
Successor

JAT, INC.

[Signature]
[Signature]

By: Paul Trippe
Its: President

[Signature]
[Signature]

Gene D. Morin
Gene D. Morin, Temporary Conservator for Katelin T. [REDACTED]

I ATTEST A TRUE COPY
7 Sheryll L. Smith
Clerk, Probate Court
Greenville County, SC

Exhibit B

Appellate Case No. 2015-000649

**Respondent's Memorandum of Law in
Support of its Motion to Dismiss Appeal**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 IN THE MATTER OF)
 JAMES A. TRIPPE, III Deceased)
)
 Gene D. Morin, Conservator)
 for Katelin Trippe)
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 Petitioner,)
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 v.)
)
 James Trippe, Jr., individually and as)
 Personal Representative of the Estate of)
 James A. Trippe, III,)
)
 Respondent.)

IN THE PROBATE COURT
 Case No. 2009-ES-23-00707

FILED
 APR 10 2014
 GREENVILLE COUNTY
 PROBATE COURT

CONTEMPT ORDER

This matter came before the Court upon the First Amended Verified Petition of Gene D. Morin, Conservator for Katelin Trippe (“Petitioner”), filed February 26, 2014, seeking the issuance of a Rule and Order to Show Cause requiring (i) James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III (“Respondent”), and (ii) James Trippe, IV (collectively, “Debtors”) to show cause, if any, why they should not be held in contempt for failing to pay Petitioner \$50,000.00 as required by a Settlement Agreement entered into by the parties and incorporated into an Order of this Court dated April 27, 2012. Based upon the Verified Petition, the Court issued the requested Order and Rule to Show Cause on February 27, 2014.

A hearing was set in this matter for March 18, 2014, at 4:00 p.m. All interested parties were properly served, and none entered any pleadings responsive to the Verified Petition. Present at the hearing were (i) Petitioner, (ii) Respondent, (iii) Jacqueline H. Patterson and Nathaniel C. Farmer, attorneys for Petitioner, (iv) O. W. Bannister, attorney for James Trippe, IV, (v) Michael

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Coulter, attorney for James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, (vi) Katelin Trippe, the minor child, and (vii) Greg Ross, co-guardian for Katelin Trippe. James Trippe, IV did not appear.

At the hearing, Attorney Bannister verbally moved to be relieved as counsel for James Trippe, IV. This motion was denied on the grounds that proper notice of the motion had not been given to James Trippe, IV, and all parties.

Based upon the evidence and testimony presented by Petitioner and Respondent, I hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Jurisdiction and venue are proper in this Court.
2. In settlement of certain claims asserted by Petitioner in his Petition filed June 6, 2011, Petitioner entered into a Mutual Release and Settlement Agreement ("Settlement Agreement") with (i) James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, (ii) James Trippe, IV and (iii) Paul Trippe as President of JAT, Inc.
3. The Order Approving Settlement was executed by the Court and filed on April 27, 2012 (the "Order").
4. Paragraph 2 of the Settlement Agreement states in pertinent part that "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." No contingencies were placed upon payment of this amount.
5. As of the date of the Rule to Show Cause hearing, Debtors had made no payments to Petitioner in satisfaction of their obligations under Paragraph 2(ii) of the Settlement Agreement, not even a partial payment.

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6. Respondent claims he has no money and no money is left in the Estate.

7. In the various versions of the Inventory and Appraisement in this Estate, the Estate has shown assets in excess of \$600,000. An asset valued at \$200,000 was transferred to James Trippe IV, the other child of the Decedent along with other assets of the Estate. Respondent has paid creditor claims, has retained attorneys, and, most recently, he has acquired funds via a \$150,000 equity line on his home which he acknowledged while under oath.

8. Further incorporated herewith is the full record of this case which shows a pattern of continuous and systematic violations of court orders by Respondent.

9. Paragraph 14 of the Settlement Agreement provides that “[i]f 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.”

CONCLUSIONS OF LAW

“Contempt results from the willful disobedience of an order of the court.” *Miller v. Miller*, 375 S.C. 443 (2007). (citations omitted) “The power to punish for contempt is inherent in all courts.” *Id.* “It is within the [Court’s] discretion to punish by fine or imprisonment every act of contempt before the court.” *Ex parte Cannon*, 385 S.C. 643 (2009). The standard of proof for civil contempt is clear and convincing evidence. *Poston v. Poston*, 331 S.C. 106 (1998). Once the moving party shows noncompliance with the Court’s Order, the burden shifts to the offender to establish his defense and inability to comply. *Brasington v. Shannon*, 288 S.C. 183 (1986); *Pratt v. South Carolina Dept. of Social Services*, 283 S.C. 550 (Ct. App. 1984).

At the time of the hearing, more than seventy-five (75) days had passed after payment of \$50,000.00 became due pursuant to the Settlement Agreement. Debtors presented no evidence to

 #3


show that they made efforts to pay, in whole or in part. In *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596 (Ct. App. 2002), the Court upheld a finding of contempt which was predicated upon a violation of a settlement agreement approved by a Court where it was determined that the contemnor made no legitimate efforts to comply with settlement agreement. Similar facts apply in this case.

The evidence is clear and convincing. Petitioner met its burden of proof by showing the default in payment, and Respondent has without just cause failed to pay the sum of Fifty Thousand (\$50,000.00) Dollars. No contingencies to payment were set forth in the Settlement Agreement to allow for a delay of payment, and Respondent made no efforts to pay Petitioner despite his recent line of credit. Further, neither Respondent nor his counsel made any effort, by way of basic common courtesy, to communicate with the Petitioner on the delay in this Court-ordered payment.

Therefore, I find Respondent in willful contempt for failing to pay the sum of \$50,000.00 on or before December 31, 2013. Based upon Paragraph 14 of the Settlement Agreement and the factors set forth in *Baron Data Sys. v. Loter*, 297 S.C. 382 (1989), Petitioner is also entitled to recover attorney's fees from Respondent in the amount of \$3,585.00.

At the hearing, Respondent was sentenced to serve ninety (90) days in the Greenville County Law Enforcement Center; provided however, Respondent was provided the opportunity to purge himself of the contempt by the payment of \$53,585.00 to be delivered to the offices of Patterson & Associates, P.A. on or before 11:59 A.M. on Tuesday, March 19, 2014.

Following the hearing, Petitioner's counsel informed this Court that payment was made by the Court-ordered deadline. Having made such payment, Respondent has purged himself of this contempt.

ASB
#4
RW

IT IS SO ORDERED.

Deborah A. Faulkner
Deborah A. Faulkner
Probate Court Judge

Greenville, South Carolina
April 10, 2014

5
I ATTEST A TRUE COPY
Sheryll R. Smith
Clerk, Probate Court
Greenville County, SC

Exhibit C

Appellate Case No. 2015-000649

**Respondent's Memorandum of Law in
Support of its Motion to Dismiss Appeal**

JAMES A. TRIPPE JR 03-12
HAZEL M. TRIPPE
 7 TERRAIN DRIVE
 GREENVILLE, SC 29605

663
 67-118/532
 161

Date 3-19-2014

Pay to the Order of James A. Trippe Jr \$ 5,585.00
Fifty Three Thousand Five Hundred Eighty Five and 00/100 Dollars

The Palmetto Bank
 Upstate South Carolina
 1-800-PAL-BANK

THE SENIORITY CLUB
James A. Trippe Jr

For _____

MICR: ⑆053201186⑆ 043362567⑆ 00663

Holland Check

Jacqueline H. Patterson
 Nathan Farmer
 Patterson & Associates, PA
 1088 North Church Street
 Greenville, SC 29601

Cherith Whitaker acknowledges receipt of the original
 check this 19 day of March, 2014.

Cherith Whitaker
 Signature

Exhibit D

Appellate Case No. 2015-000649

**Respondent's Memorandum of Law in
Support of its Motion to Dismiss Appeal**

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

FILED-CLERK OF COURT
GREENVILLE CO. SC
PAUL B. WICKENSIMER

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

FILED IN THE COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C.
PAUL B. WICKER
COUNTY OF GREENVILLE)

2015 FEB 12 PM 4 37

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

Gene D. Morin, Conservator)
for Katelin Trippe)

Respondent,)

v.)

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

Appellant.)

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

APPEAL FROM THE
GREENVILLE COUNTY
PROBATE COURT

Case No. 2014-CP-23-04096

ORDER

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*.

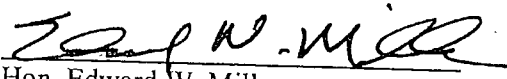
Furthermore, because Appellant paid this amount in order to purge his contempt, the issue of attorney's fees awarded by the Probate Court is moot for the reasons set forth above relating to Appellant's contempt. Respondent is entitled to retain the attorney's fees paid by Appellant as awarded by the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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

RECEIVED

JUL 13 2015

Case No. 2014-CP-23-04096

SC Court of Appeals

Appellate Case No. 2015-000649

In the Matter of James A. Trippe, III, Deceased

Gene D. Morin, Conservator for Katelin TrippeRespondent

v.

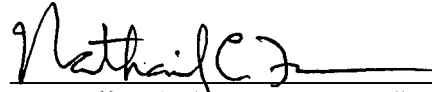
James Trippe, Jr., individually and as Personal Representative
of the Estate of James A. Trippe, IIIAppellant

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Dismiss Appeal and Respondent's Memorandum of Law in Support of its Motion to Dismiss Appeal on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on July 9, 2015, addressed as follows:

Michael T. Coulter
Clarkson, Walsh, Terrell & Coulter, PA
1164A Woodruff Rd.
Greenville, SC 29607
864-232-4400
Fax: (864) 235-4399

O. W. Bannister
Bannister & Wyatt, LLC
Post Office Box 10007
Greenville, SC 29603
864-298-0084
Fax: 864-298-0146



Jacqueline H. Patterson, I.D. # 12090

Nathaniel C. Farmer, I.D. #75976

PATTERSON & ASSOCIATES, P.A.

1088 N. Church Street

Greenville, SC 29601

(864) 329-0548

Fax: (864) 239-3816

Attorneys for Respondent, Gene D. Morin,

Conservator for Katelin Trippe