

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

EDWARD W. MILLER, CIRCUIT COURT JUDGE

C. A. NO. 2014-CP-23-04096

APPELLATE CASE NO.: 2015-000649

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SEP 21 2015

SC Court of Appeals

In the Matter of James A. Trippe, III Deceased

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

v.

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

**APPELLANT'S
RETURN TO MOTION TO DISMISS**

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 Appellant

September 18, 2015

Other Counsel of Record:

Jacqueline H. Patterson
Nathaniel Curtis Farmer
Patterson & Associates, P.A.
1088 North Church Street
Greenville, SC 29601
Attorney for Respondent

Michael T. Coulter
Clarkson, Walsh, Terrell & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29603
Attorney for James Tripp, Jr.

NOW COMES the Appellant, James A. Trippe, Jr., by and through his undersigned counsel, and hereby replies to Respondent's Motion to Dismiss Appeal pursuant to Rule 240, S.C.A.C.R.

ARGUMENT

Appellant James A. Trippe, Jr. ("Trippe") was ordered by the probate court to pay \$50,000.00 for a contested civil debt or go to jail. (Probate Court Order April 2014). Jailing one for a civil debt is unconstitutional. S.C. Const. Art. I, §9 which reads, "No person shall be imprisoned for a debt except in the case of fraud." See Cheapo's Truck Stop, Inc. v. Lloyd, 350 S.C. 596, 567, S.E.2d 514 (Ct. App. 2002); Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 557 S.E.2d 708 (Ct. App. 2001); Sanders v. Sanders, 30 S.C. 229, 9 S.E. 97 (1889).

Trippe borrowed the money to avoid going to jail and paid the civil debt. He appealed and raised the unconstitutionality of the sentence on appeal. The appeal was the first opportunity he had to raise the unconstitutionality of being jailed for a civil debt.

Thus, the question before the Court is whether the payment of an unconstitutional contempt sentence forecloses an appeal. This is a novel question in South Carolina.

Respondent cites cases involving contempt for the non-payment of child support. Jailing a parent for failure to pay child support does not violate the South Carolina Constitution. For that reason alone the cited cases are distinguishable.

This Court may consider an issue even if the cause of action is moot. One ground for consideration of the issue is that it can be repeated. Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 360 S.E.2d 474 (2006).

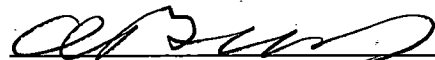
In fact, the underlying issue is whether or not Trippe contractually obligated himself to be personally liable for a contractual debt for which he received no benefit. This issue is currently on appeal before this Court. *In the Matter of James A. Trippe, III Deceased, Gene D. Morin, Conservator for Katelin Trippe, Respondent-Appellant v. James A. Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, Appellant-Respondent*, Appellate Case No. 2014-001401.

An additional appeal on the issue of the constitutionality of sentencing a defendant to jail for failure to pay a civil debt is currently scheduled to be argued before the Circuit Court of the Thirteenth Judicial Circuit on December 7, 2015 *in re: Gene D. Morin, Plaintiff, et al v. James A. Trippe, Jr., et al*, 2015-CP-23-05588. So, this court is presented with the possible result of approving the unconstitutional coercion of the payment of a civil debt for which the defendant was not liable.

Consequently, it appears that the better course is to stay the proceedings until the Appellate Court's decision as to Trippe's obligation to pay the underlying debt and the circuit court's decision as to whether a defendant may be constitutionally jailed for failure to pay a civil debt. Therefore, Appellant requests this Court not declare the issue moot and hold it in abeyance until the issues can be determined.

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC



O. W. Bannister (S.C. Bar No. 00506)

Attorney for Appellant

STATE OF SOUTH CAROLINA

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APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

D. GARRISON HILL, CIRCUIT COURT JUDGE
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James A. Trippe, III, Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on September 18, 2015 the Appellant's Return to Motion to Dismiss 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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September 18, 2015

V. Claire Allen, Deputy Clerk
S.C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211

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**Re: In the Matter of James Trippe, III
Appellate Case No.: 2015-000649**

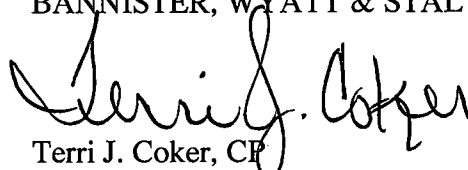
Dear Ms. Allen:

Enclosed please find the original and six copies of the Appellant's Return to Motion to Dismiss along with our Proof of Service. I would appreciate if you would return a stamped copy in the envelope provided.

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

Yours truly,

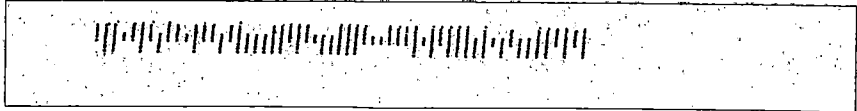
BANNISTER, WYATT & STALVEY, LLC


Terri J. Coker, CP
Paralegal to O. W. Bannister

/tjc

Enclosures

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



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TO:
V. Claire Allen, Deputy Clerk
S.C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211