

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2014-CP-23-04096

Appellate Case No. 2015-000649

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SEP 25 2015

SC Court of Appeals

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

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Pursuant to Rule 240, SCACR, Respondent, Gene D. Morin, Conservator for Katelin Trippe (“Respondent”), moved to dismiss the Appeal filed by Appellant, James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III (“Appellant”) on the grounds that the issue before this Court is moot and unappealable. Pursuant to Rule 240, SCACR, Respondent submits this Reply in response to the Appellant’s Return to Motion to Dismiss (“Return”) received by Respondent on September 21, 2015.

LEGAL ARGUMENT AND AUTHORITIES

Appellant has appealed the Order of the Greenville County Circuit Court which upheld the Probate Court’s Order which found Appellant to be in contempt of court for failing to make a payment to Respondent in the amount of \$50,000.00. As noted in the Probate Court’s 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. Respondent has moved to dismiss on the grounds that that the issue of contempt is moot as a result of Appellant’s payment.

In his Return, Appellant tries to confuse the issues by (i) raising the defenses of unconstitutionality and failure of consideration and (ii) citing an exception to the mootness doctrine. Appellant, however, fails to grasp the issue of mootness. Because the contempt is purged, the contempt no longer exists and there is no “justiciable” controversy. Thus, Appellant cannot appeal that which is no longer in existence no matter how valid his defenses may be. Further, for reasons stated below, Respondent would show that this case does not fall within any exceptions to the mootness doctrine.

A. Appellant's Defenses Are Not Relevant to the Issue of Mootness.

In the Return, Appellant argues two defenses. First, Appellant argues that it was unconstitutional for the Probate Court to order incarceration for failure to pay a civil debt. Second, Appellant argues that he cannot be personally liable for a contractual debt when he received no benefit under the contract¹. Respondent certainly disputes these defenses raised by Appellant, but Respondent would show that even if these were valid defenses, the issue of contempt is still moot.

In the Respondent's Memorandum filed on or about July 13, 2015, Respondent cited the cases of *Chappell v. Chappell*, 282 S.C. 376, 318 S.E.2d 590 (Ct.App. 1984) and *Jordan v. Harrison*, 303 S.C. 522, 402 S.E.2d 188 (Ct.App. 1991) in support of its position. In both of these cases, the Court stated that "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." *Chappell* at 591; *Jordan* at 189 (emphasis added). As noted in these cases, it is the contemnor's compliance with the order that renders the contempt issue moot. The consequential effect of the mootness is that it precludes appellate review of the underlying issues in the contempt proceeding (i.e., Appellant's defenses). In other words, compliance with the order renders the underlying defenses in the contempt proceeding irrelevant.

This position was most clearly seen in the *Jordan* case. In that case, Jordan, the contemnor, failed to make child support payments because he had lost his job. Due to his change of financial condition, Jordan was seeking a reduction in child support and an extinguishment of arrearages. However, before those issues could be addressed, Jordan

¹ A clear reading of the Settlement Agreement belies this argument as it is clear Appellant received consideration through the dismissal of the underlying action.

was found to be in contempt. Although Jordan may have had a strong argument that his change in financial condition affected his ability and obligation to make the full payment, the Court ruled that the contempt issue was moot and it precluded appellate review of the issues raised by Jordan.

In the present case, even if we assume *arguendo* that Appellant's defenses are valid, Appellant's compliance with the Probate Court's Order renders the issue of contempt moot and thereby precludes this Court's review of the Appellant's defenses. For this reason, Appellant's arguments that (i) the Probate Court's ruling was unconstitutional or (ii) that there was a failure of consideration as to the Settlement Agreement fail as a matter of law.

B. No Exception to the Mootness Doctrine Applies.

In the Return, Appellant also argues that, even if 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." Although Appellant's non-payment of his obligations due under the Settlement Agreement may be capable of repetition, future non-payments by Appellant would 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).

This scenario is most closely analogous to non-payment of child support which was seen in the *Jordan* and *Chappell* cases above. Because child support is a recurring payment due in intervals, the non-payment is capable of repetition. However, the Courts in those cases did not find that an exception to the mootness doctrine applied. The reason

it does not apply in those cases or in the present case is because, for each non-payment, a hearing will be held and arguments can be presented as to why the payment was not made.

For this reason, this Court should not find that this case falls under any exception to the mootness doctrine.

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,



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September 23, 2015
Greenville, South Carolina

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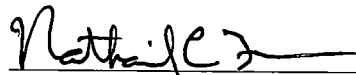
James Trippe, Jr., individually and as Personal Representative
of the Estate of James A. Trippe, IIIAppellant

PROOF OF SERVICE

I certify that I have served Respondent's Reply to Appellant's Motion to Dismiss on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on September 23, 2015, addressed as follows:

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September 23, 2015

Jenny Abbott Kitchings, Clerk
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Re: In the Matter of James A. Trippe, III
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Dear Ms. Kitchings:

Enclosed please find one (1) original and seven (7) copies of the following documents in connection with the above-referenced appeal:

1. Respondent's Reply to Appellant's Return to Motion to Dismiss;
2. Proof of Service.

Please time stamp one copy of each of the foregoing documents and return the same to me in the self-addressed stamped envelope enclosed herewith.

By copy of this letter, I am providing opposing counsel with the foregoing documents as evidenced by the Proof of Service.

Should you have any questions, please do not hesitate to contact me.

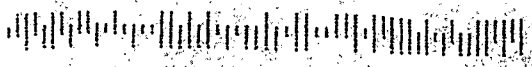
With kind regards,

PATTERSON & ASSOCIATES, P. A.



Nathaniel C. Farmer

NCF/kcg
Enclosures



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