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

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

FINAL BRIEF OF RESPONDENT

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

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

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

FINAL BRIEF OF RESPONDENT

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases

STATEMENT OF ISSUES ON APPEAL

1. The decisions of the Probate Court and Circuit Court should be upheld because the issue of contempt became moot when Appellant purged himself of the contempt.

2. The decisions of the Probate Court and Circuit Court should be upheld because the finding of contempt against Appellant, James A. Trippe, III (the "PR" or "Appellant") was proper because the PR made no legitimate efforts to comply with the Settlement Agreement and numerous Probate Court Orders.

3. The Probate Court's award of attorney's fees to Respondent, Gene D. Morin as Conservator for Katelin Trippe ("Conservator" or "Respondent"), was also proper because (i) the PR was in contempt of court and (ii) Conservator, as the prevailing party, was entitled to such award under the contempt laws of this State and pursuant to Paragraph 14 of the Settlement Agreement incorporated into the Probate Court's Order dated April 27, 2012.

STATEMENT OF THE CASE

This matter arises from the administration of the probate estate of James A. Trippe, III ("Decedent"). Decedent died intestate on March 26, 2009. (R. p. 3). Appellant, James A. Trippe, Jr. was appointed as Personal Representative of Decedent's Estate. (R. p. 4). The heirs of Decedent's Estate are his two children, James Trippe, IV ("James IV") and Katelin Trippe ("Katelin"). (*Id.*). Because Katelin was a minor child, Conservator was appointed by the Probate Court to act on Katelin's behalf. (*Id.*).

The original deadline for distributing Decedent's assets and closing the Estate was April 16, 2010. (Respondent's Petition filed June 6, 2011[1], ¶ 14). On June 6, 2011, more than one year after such deadline, Conservator, acting on behalf of Katelin, filed a petition with the Probate Court to remove PR as personal representative on the grounds that PR had acted wrongfully, unreasonably and in bad faith in his dealings with Katelin by, among other things, failing to distribute the Estate in a timely manner and by proposing to distribute the Estate contrary to law[2] and in unequal shares with Katelin receiving less than her rightful inheritance. (Respondent's Petition filed June 6, 2011, ¶ 23 and 30).[3]

At a second mediation, Conservator and PR reached an agreement as to the allegations set forth in the petition. The terms of such settlement were more fully set forth

---

[1] Despite request made by Respondent, Respondent's Petition dated June 6, 2011 was not included in the Record on Appeal. Respondent listed this document as #3 on Respondent's Designation of Matter to be included in the Record on Appeal.

[2] PR attempted to distribute approximately 1/3 of the Estate to Decedent's brother, Paul Trippe. (Respondent's Petition filed June 6, 2011; R. pp. 165-166; R. p. 167).

[3] During discovery, Respondent discovered that Appellant had taken large "consultation fees" from JAT, the Estate's largest asset. The action settled prior to entry of these documents into the record.

in a Mutual Release and Settlement Agreement ("Settlement Agreement")[4] which was incorporated into the Order of the Probate Court dated April 27, 2012. (R. pp. 1-7).

Pursuant to Paragraph 2 of the Settlement Agreement, Appellant, both in his individual capacity and as Personal Representative of Decedent's Estate, became 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:

> **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)

(R. p. 4). Appellant did not make the payment as required by Paragraph 2(ii) of the Settlement Agreement. As a result, Respondent initiated this contempt proceeding.

The present contempt proceeding is the fourth contempt proceeding initiated by Respondent as a result of Appellant's failure to comply with the terms of the Settlement Agreement[5]. The Probate Court found Appellant to be in contempt at all three prior proceedings:

(1) By Order dated June 15, 2012 (less than two months after entry of the Court Order Approving Settlement), Appellant was held in contempt of court for failing to make the first installment payment to Respondent. (R. p. 12).

(2) By Order dated December 21, 2012, Appellant was held in contempt of court for failing to transfer two Bahamas Lots to Respondent as

[4] 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.

[5] A fifth contempt hearing was initiated in 2015. Appellant has appealed the Probate Court's ruling, and the appeal is currently pending before the Greenville County Circuit Court.

required by the Settlement Agreement (R. p. 18). The Probate Court found that PR and/or his counsel had received at least ten (10) different letters stating that the Probate Court required copies of recorded deeds of distribution. (R. p. 16).

(3) By Order dated June 25, 2013, the Probate Court found Appellant to be in contempt of court because he again failed to make legitimate efforts to transfer the Bahamas Lots despite being given additional time to comply (R. pp. 25-26).

On March 18, 2014, testimony and evidence was presented to the Probate Court relating to the present contempt proceeding. At the hearing, Appellant argued that (i) it was not his obligation to pay the agreed-upon sum and (ii) that he did not have the funds to make the payment despite a recent equity line obtained by Appellant whereby he was able to withdraw equity from his home. (R. p. 114, line 2-p. 115, line 10). The Probate Court disagreed with Appellant and found him to be in contempt of court for failure to pay the second installment payment in the amount of $50,000.00 on or before December 31, 2013 as required by the Settlement Agreement and April 27, 2012 Probate Order. (R. pp. 35-39). 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 incarcerated. (R. p. 38)

The following day, March 19, 2014, Appellant paid the sum of $53,585.00 to Respondent. The payment is acknowledged in the April 10, 2014 Probate Order (hereinafter, the "April 2014 Order") (Id.; R. p. 168). On April 24, 2014, Appellant filed

a Motion to Reconsider with the Probate Court. (R. pp. 57-58). The Motion was denied by Order of the Probate Court on May 30, 2014. (R. p. 42).

On or about July 28, 2014, PR served his Notice of Appeal on opposing counsel. (R. p. 59).

On January 20, 2015, oral arguments were presented before the Honorable Edward W. Miller of the Greenville County Circuit Court. On February 11, 2015 the Circuit Court issued an Order upholding the Probate Court's finding of contempt. (R. p. 45-51).

On or about March 13, 2015, PR served a Notice of Appeal upon opposing counsel. (R. p. 62). This appeal followed.

STANDARD OF REVIEW

The appeal filed by PR involves the following questions: (i) whether the contempt issue is moot, (ii) whether the evidence presented by PR was sufficient to establish his defense for failing to comply with numerous orders of the Probate Court and (iii) whether Conservator is entitled to recover his attorney's fees in seeking to enforce the Settlement Agreement and the Probate Court orders. For reasons more fully set forth below, Conservator would show the Probate Court's finding of contempt and award of attorney's fees (which was upheld by the Circuit Court) should be upheld.

"Contempt results from the willful disobedience of an order of the court." *Miller v. Miller*, 375 S.C. 443, 652 S.E.2d 754 (Ct.App. 2007). (citations omitted) "The power to punish for contempt is inherent in all courts." *Id.* at 453. "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, 685 S.E.2d 814 (2009). The standard of proof for civil contempt is clear and convincing evidence. *Poston v. Poston*, 331 S.C. 106, 502 S.E.2d 86 (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, 341 S.E.2d 130 (1986); *Pratt v. South Carolina Dept. of Social Services*, 283 S.C. 550, 324 S.E.2d 97 (Ct. App. 1984). "On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused his discretion." (citations omitted) *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct.App. 2005), *overturned on other grounds by 2008 S.C. Acts 211, § 1.*

A review of attorney's fees awarded is also 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) ("An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support.").

ARGUMENT

For the reasons stated herein, Respondent would respectfully show that the decisions of the Greenville County Probate Court and Greenville County Circuit Court should be AFFIRMED.

I. The issue of contempt is moot.

Appellant argues that the lower courts erred in finding him in contempt of court, and he seeks a return of the $53,585.00 he paid to purge himself of the contempt. However, this issue is not appealable because it became moot when Appellant purged himself.

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), the Court of Appeals 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 524 (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 377-78 (internal citations omitted).

During this appeal, Appellant has argued 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. Respondent agrees that a finding of contempt and sentence of incarceration due to Appellant's non-compliance may be capable of repetition - in the same way contempt for failure to pay child support is capable of repetition. However, such issue would not evade review because, like child support contempt proceedings, 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.

Appellant has cited no law which supports its position that Respondent should be required to return the funds paid by Appellant. Instead, Appellant raises defenses to the Probate Court's finding of contempt. As noted above, Appellant's "compliance [with the Probate Court's Order] renders the issue of contempt moot and precludes appellate review of the contempt proceeding." *Jordan,* 303 S.C. at 524. Thus, Appellant's compliance with the Order through the payment of the amount due precludes this Court's review of the defenses raised by Appellant. The mootness issue must be overcome before Appellant's defenses can be addressed.

In summary, because Appellant paid the amount due and the attorney's fees, Appellant 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 lower courts' decision should be AFFIRMED.

II. The Probate Court's Finding of Contempt was Proper.

It is important to note that the highest of standards is needed to overturn a decision on contempt. South Carolina law states that a "decision on contempt rests within the sound discretion of the trial court. On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused his discretion." (citations omitted) *Floyd*, 365 S.C. at 71-72. "An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support." *Gooding*, 326 S.C. at 252.

In this case, Appellant has alleged that the Probate Court erred in adjudging Appellant to be in contempt of court. On appeal, Appellant has raised the following arguments:

(1) Appellant did not receive any consideration under the Settlement Agreement and therefore, he is not bound by the terms of the Settlement Agreement.

(2) Even if Appellant did receive consideration, Appellant was not personally responsible to make the installment payment to Respondent.

(3) Even if Appellant is personally liable for the payment, South Carolina law does not permit the Probate Court to find Appellant in contempt for failure to pay.

(4) Even if Appellant was in contempt, the Probate Court's sentence of incarceration violated South Carolina law.[6]

(5) Respondent is not entitled to an award of attorney's fees.

Respondent would show that Appellant has not met the burden imposed upon him by South Carolina law because (i) there is competent evidence to support the Probate Court's decision and (ii) the Probate Court's decision is not based upon an error of law. The Probate Court's and Circuit Court's decisions on contempt should therefore be upheld for the reasons set forth herein.

A. Appellant was personally obligated to pay $50,000.00 to Respondent on or before December 31, 2013.

On appeal, Appellant argues that he was not personally obligated to make the $50,000 payment to Respondent because (i) he did not receive any consideration for executing the Settlement Agreement and, (ii) at best, he was only a guarantor of the Estate's debts. Both of these arguments are factually inaccurate.

1. Appellant received consideration under the Settlement Agreement.

As stated above, the Settlement Agreement resulted from a compromise of an action brought by Respondent against Appellant. (R. pp. 1-7). In the original action,

[6] This issue was first raised on appeal. Furthermore, it was not included as an issue in Appellant's Grounds for Appeal.

Respondent brought claims against Appellant in his individual capacity **and** as Personal Representative of Decedent's Estate. During the discovery process, Respondent discovered that Appellant, as self-appointed Treasurer of JAT, had paid himself and other family members large consultation fees and increased salaries. Such self-dealing by Appellant supported Respondent's claim that Appellant had breached fiduciary duties owed to Respondent. By agreeing to the terms of the Settlement Agreement, Respondent agreed to dismiss the causes of action against Appellant. (R. p. 5, ¶ 8).

South Carolina law states that "[v]aluable consideration may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *McPeters v. Yeargin Const. Co., Inc.*, 290 S.C. 327, 350 S.E.2d 208 (Ct.App. 1986). Here, Respondent gave valuable consideration to Appellant by agreeing to dismiss the claims against Appellant. Although Appellant may not have received any Estate assets under the Settlement Agreement, he still received valuable consideration. Therefore, Appellant's contention that he received no consideration is without merit.

2. Appellant contractually obligated himself to make the payment to Respondent, and he is not a guarantor of the debt.

At the contempt hearing, Appellant alleged that JAT was responsible for payment of the amount due to Respondent. (R. p. 114, lines 2-7). In his Initial Brief, Appellant also argues that James IV was responsible for payment. Appellant states that, at best, he was merely a guarantor of the debt. Again, Appellant's argument is factually inaccurate and contrary to the terms of the Settlement Agreement.

Under Paragraph 2 of the Settlement Agreement, the following parties were responsible for the payment owed to Respondent:

(i) Appellant, as Personal Representative of Decedent's Estate;
(ii) Appellant, individually;
(iii) James Trippe, IV; **and/or**
(iv) JAT, Inc.

(R. p. 4). South Carolina law has repeatedly upheld the position that 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. *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). Here, it is clear that Appellant, both individually and as Personal Representative, was jointly liable to make the installment payment to Respondent. *See e.g., Dean v. Dean*, 229 S.C. 430, 93 S.E.2d 206 (1956). The Settlement Agreement does not state that JAT and James IV were solely responsible for the debt. If Appellant believes that James IV and JAT were responsible to make any or all of the required payment to Respondent, then he has the right and the opportunity to seek indemnification from them.

Here, under Paragraph 2 of the Settlement Agreement, it is clear and unambiguous that Appellant was jointly obligated to make the payment to Respondent. As such, it was not error for the Probate Court to find Appellant in violation of the April 27, 2012 Probate Court Order which approved the Settlement Agreement.

B. The Probate Court did not violate South Carolina law by holding Appellant in contempt and sentencing him to incarceration.

Appellant next argues (i) that South Carolina law does not permit a person to be held in contempt for failure to pay a civil debt which has arisen solely out of a contractual obligation and (ii) that South Carolina law does not permit Appellant to be incarcerated for his contempt. Respondent would show that Appellant's argument is in error for three

reasons. First, Appellant misinterprets South Carolina case law by stating that Appellant cannot be held in contempt for violating the Settlement Agreement. Second, the sentence of incarceration does not violate the South Carolina Constitution because Appellant has acted and continues to act fraudulently and in bad faith with regard to his obligations under the Settlement Agreement. Lastly, Appellant has waived his right to challenge the constitutionality of the Probate Court's ruling.

1. Appellant misinterprets South Carolina law in stating that Appellant cannot be held in contempt for violating the Settlement Agreement.

Appellant relies upon *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), and *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 567 S.E.2d 514 (Ct. App. 2002) to state the proposition that "South Carolina law does not permit a person to be held in contempt for failure to pay a civil debt, which has arisen **solely** out of a contractual obligation" (emphasis added). Appellant's application of this language is inaccurate and misleading.

A clear reading of the cases referenced by Appellant indicates that a finding of contempt cannot be based upon a contract when such contract has **not** been incorporated into an order of the court. In *Sanders*, the Supreme Court refused to find contempt because there had been no violation of any court order. The Supreme Court stated that while "it may be true that Brown has violated the obligation of his contract evidenced by the undertaking, we do not see how it is possible to say that either he or Sanders has disobeyed any order of the court, for precisely what the order required has been done."

Under the present facts, the Settlement Agreement was made a part of the Probate Court's Order, and therefore, *Sanders* is factually distinguishable.

The facts in *Cheap-O's Truck Stop, Inc. v. Cloyd* are most analogous to the facts of this case. In *Cheap-O's Truck Stop*, the parties reached a settlement which they put on the record in open court. When Cloyd refused to comply with the settlement agreement, Cheap-O's Truck Stop, Inc. and Midlands Gaming, Inc. instituted contempt proceedings. The Court of Appeals upheld the Circuit Court's finding of contempt which was predicated upon a violation of the settlement agreement approved by the Court. *Id.* at 608. The Circuit Court determined that Cloyd made no legitimate efforts to comply with the settlement agreement and that he acted in bad faith in fulfilling the obligations of the settlement. *Id.*

Such is the case here. Appellant made no legitimate efforts to comply with Paragraph 2 of the Settlement Agreement. Prior to the contempt proceeding, Appellant made no payment to Respondent. In fact, he did not even attempt to make a partial payment of the amount due or, by way of courtesy, inform Respondent as to when payment might be made. (R. p. 36, ¶ 5; R. p. 110, line 4-p. 111, line 16). As noted below, Appellant has acted and continues to act in bad faith with regard to his obligations under the Settlement Agreement.

Based upon *Cheap-O's Truck Stop*, the case relied upon by Appellant, it is clear that contempt can be predicated upon the failure to make a payment required by a settlement agreement. As such, the Probate Court's finding of contempt was proper.

2. Appellant has acted fraudulently and in bad faith, and therefore, incarceration was a proper remedy.

Appellant next argues that the Probate Court erred and violated the South Carolina Constitution by sentencing Appellant to incarceration for ninety (90) days. This issue was also addressed in *Cheap-O's Truck Stop* when the Court of Appeals stated that "[i]ncarceration should never be imposed due to the simplistic failure of an individual to pay a civil debt. Additionally, imprisonment is not authorized for the failure to comply with a settlement agreement **in the absence of fraud or bad faith**." *Id.* at 610 (emphasis added).

As in *Cheap-O's Truck Stop*, this case falls under the exception to the general rule regarding incarceration because Appellant has acted and continues to act fraudulently and in bad faith in his dealings with Respondent and Katelin. Such fraudulent conduct and bad faith is most clearly evident through Appellant's continued failures to comply with the terms of the Settlement Agreement and his failure to administer and close the Estate in accordance with the laws of this State.

The Honorable Debora Faulkner called this estate "an epic failure in estate administration." (R. p. 92, lines 2-3). This estate has been open for more than six years and is not even close to being closed. At this point, the record in the Probate Court is voluminous, and it is impossible for Respondent to fully inform this Court as to all of Appellant's actions and inactions showing the fraud and bad faith Appellant has exhibited in administering this Estate and in complying with the terms of the Settlement Agreement. To highlight a few of such actions, Respondent would show as follows:

- Appellant attempted to transfer Estate assets to his son who was not an heir of the Estate. (R. pp. 165-166; R. p. 167).

- Appellant took a position contrary to the beneficiaries of the Estate by claiming that he owned stock in J.A.T., Inc., the Estate's largest asset. The Probate Court held that the stock was an Estate asset. (See Appellant's Brief).

- During discovery, Respondent discovered that Appellant used his position as PR to appoint himself as treasurer of J.A.T. and that he approved large consultation fees and increased salaries to himself and his son, Paul Trippe, following Decedent's death.

- As of August 21, 2013, Appellant had been given 17 extensions and had missed 21 deadlines in the administration of the Estate. (R. p. 86, line 24-p. 87, line 2).

- Since the execution of the Settlement Agreement in April 2012, Respondent has had to file five (5) contempt proceedings in order to force Appellant to comply with the terms of the settlement. Appellant continues to deny Katelin of her rightful inheritance by continuing to file appeals in this action and continuing to withhold assets from Katelin.

At all stages throughout the pendency of this probate administration process, Appellant has taken positions adverse to Respondent and Katelin. By way of illustration only, Respondent would show that, at the hearing dated August 21, 2013, the Honorable Debora Faulkner noted the Appellant's bad faith on the record by stating the following:

> No. But Katelin is an heir to this estate and the Personal Representative is not supposed to do anything that would diminish her inheritance or delay her inheritance. He is supposed to be trying to find out ways to maximize her inheritance, and instead, he's delayed it over the course of this thing. There was a Deed of Distribution he filed, as I recall, giving shares to Paul, and Paul wasn't even an heir. He's gotten into a – there was a dispute about what went to James, IV and Katelin, which is a clear violation, I mean, or conflict right there. Katelin has a right to have a PR who is looking out to maximize her interest and her inheritance, and not see how you can get out of doing it, or delay it, or increase all these fees. She's a child, and was a child of this decedent. . . . But this child needs her inheritance and there's no way that all of this is complying with the fiduciary duty that a Personal Representative has in probate law to maximize the assets maximize the inheritance, keep the overhead low, and do it in a timely fashion. It's just – it's always been like this the whole way, and its – I don't understand it, and I don't understand how you can't see how Mr. Trippe, Jr. has taken an adversarial position against Katelin, it seems. (R. p. 76, line 8-p. 77, line 24).

At the same hearing, the Court further stated:

> [N]one of the time have you-all been here have you-all said or we ended this with Let's get Katelin – what can we do for Katelin today as her PR? That's never been the attitude. It's always been, We can't do this. We can't do that. They want this, be we can't do that. He didn't know he was supposed to do that. I know he agreed to it, but he didn't know, he didn't know, he didn't understand. All that, and here we are, what is this, 2013, four years later. (R. p. 84, lines 4-17).

> Well, the way he's handling this estate is not helping that child and is causing her to not get the benefit of her inheritance, and is causing her Conservator to rack up fees for no good reason, no good reason. I mean, I just – I did everything I could to try to come have – and not have Mr. Trippe go to jail. He's been – like I said, I don't remember how many contempts, but I have tried to be as understanding as I know how to be because it seems to me that reasonable people should be able to handle this, but it just seems like he is just wanting to push the envelope and doesn't think the horns will hook. (R. p. 93, line 19-p. 94, line 94).

With regard to his obligations under the present contempt action, Appellant has continued to exhibit his bad faith in, at least, the following ways:

- Despite clearly signing the Settlement Agreement, Appellant denies any liability for the required payment of the $50,000.00. At the contempt hearing, he stated that it was JAT's obligation to make the required payment. (R. p. 114, lines 2-4). (In his Initial Brief, he changes course somewhat by arguing that it was James IV's obligation to pay.)

- After bankrupting JAT through his maladministration and failing to make the second installment payment, Appellant moved to be relieved of his duties and responsibilities as Personal Representative. (R. p. 169).

- Appellant failed to communicate with Respondent regarding the nonpayment. (R. p. 38; R. p. 110, line 4-p. 111, line 16).

- Despite representing to the Court that he did not have the funds to pay, Appellant was able to secure the necessary funds to make the payment by noon the following day. (R. p. 114, line 4-p. 115, line 10; R. p. 38; R. p. 168).

Because Appellant continues to exhibit fraudulent conduct and bad faith in his dealings with Respondent and the minor child, Respondent would show that the Probate

Court did not violate the South Carolina Constitution by sentencing Appellant to incarceration.

3. Appellant has waived his right to challenge the constitutionality of the Probate Court's ruling.

As noted above, Appellant is challenging the constitutionality of the Probate Court's sentence of incarceration. As an additional sustaining ground, Respondent would show that this issue was not raised in any pleadings prior to the contempt hearing nor was it raised at the hearing or in the Motion to Reconsider filed by Appellant on April 24, 2014. (R. pp. 57-58). Instead, Appellant first raised this issue on appeal.

South Carolina law is clear that, in civil cases, "a constitutional question must be raised at the earliest opportunity, or it will be considered as waived." *Hurst v. Sumter County*, 189 S.C. 376, 1 S.E.2d 238 (1938); See, also, *Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 725 S.E.2d 698 (2012). In this case, Appellant waived his right to challenge the constitutionality of the incarceration by failing to raise it at the earliest opportunity.

Furthermore, South Carolina law is clear that "[f]or an issue to be properly preserved it has to be raised and ruled on by the trial court." *State v. Stahlnecker*, 386 S.C. 609, 690 S.E.2d 565 (2010); *Wilder Corp. v. Wilke*, 330 S.C. 71 497 S.E.2d 731 (1998). A party must file a Rule 59(e), SCRCP, motion to preserve an issue the trial court fails to rule on. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). An issue not properly preserved cannot be raised for the first time on appeal. *Wilder Corp.*, 497 S.E.2d at 733; *State v. Hoffman*, 312 S.C. 386, 440 S.E.2d 869 (1994). Because Appellant failed to challenge the constitutionality of the Probate Court's ruling at trial or

in its post-trial Motion to Reconsider, Appellant is barred from raising this issue for the first time on appeal.

As such, Appellant's argument should not be considered on appeal.

III. The Probate Court's Award of Attorney's Fees to Respondent was proper.

As with the contempt issue above, the highest of standards is needed to overturn a decision on attorney's fees. *Blumberg*, 310 S.C. at 493 (abuse of discretion standard applied). 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.

(R. p. 6). Based upon this Paragraph, the Probate Court had the authority to award attorney's fees to Respondent in accordance with the factors set forth in *Baron,* 297 S.C. at 384. After careful analysis of the *Baron* factors, the Court awarded Respondent attorney's fees in the amount of $3,585.00.

Attorney's fees are also recoverable under the Court's contempt powers. *See Poston,* 331 S.C. at 114 ("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.")

In this case, the Probate Court had the authority to award attorney's fees to Respondent under both the Settlement Agreement and its contempt powers. This Court should, therefore, affirm the findings of the Probate Court and should further grant to Respondent the attorney's fees incurred in defending this appeal.

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

February 25, 2016
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

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 Trippe .....Respondent

v.

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

RESPONDENT'S RULE 211 CERTIFICATION

The undersigned counsel for Respondent hereby certifies that the Final Brief of Respondent complies with Rule 211(b).

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

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

February 25, 2016

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

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

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

v.

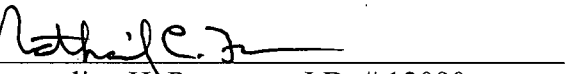
James Trippe, Jr., individually and as Personal Representative
of the Estate of James A. Trippe, III .....Appellant

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent on all counsel of record by depositing a copy of the same in the United States Mail, postage prepaid, on February 29, 2016, addressed as follows:

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

O. W. Bannister
Bannister & Wyatt, LLC
Post Office Box 10007
Greenville, SC 29603



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