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STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

THE HONORABLE EDWARD W. MILLER, CIRCUIT COURT JUDGE
C. A. NO. 2014-CP-23-04096

APPELLATE CASE NO.: 2015-000649

RECEIVED

MAR 07 2016

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.

RECORD ON APPEAL

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February 10, 2015

Other Counsel of Record:

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Attorney for Appellant

INDEX

Orders:

1. Probate Order Approving Settlement filed April 27, 2012, including the Mutual Release and Settlement Agreement attached thereto as Exhibit A	1
2. Probate Contempt Order filed June 15, 2012.....	8
3. Probate Order filed December 21, 2012	14
4. Probate Order filed June 25, 2013	20
5. Probate Order filed September 30, 2013.....	27
6. Probate Order filed April 10, 2014	34
7. Order and Rule to Show Cause filed February 27, 2014	40
8. Probate Court Order filed May 30, 2014	42
9. Circuit Court Order filed December 18, 2014	43
10. Circuit Court Order filed February 12, 2015	45

Pleadings:

11. Respondent's First Amended Verified Petition dated February 25, 2014	52
12. Return to Rule to Show Cause of Paul Trippe	56
13. Appellant's Motion to Reconsider filed April 24, 2014	57
14. Notice of Appeal to Circuit Court filed June 9, 2014	59
15. Appellant's Grounds for Appeal	60
16. Notice of Appeal to Court of Appeals	62

Transcripts:

17. Transcript of August 21, 2013 Probate Court hearing	63
18. Transcript of March 18, 2014 Probate Court hearing	103

19. Transcript of January 20, 2015 Circuit Court hearing	141
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Exhibits:

20. Deed of Distribution to Paul Trippe filed May 27, 2011	165
21. Proposal for Distribution to Paul Trippe filed May 27, 2011	167
22. Receipt of Payment of Contempt dated March 19, 2014.....	168
23. Appellant's Resignation as Personal Representative.....	169
24. Affidavit of Attorney's Fees dated March 18, 2014	170
25. Certificate of Counsel	173

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.

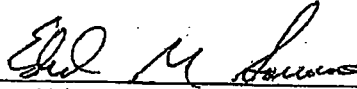
IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the terms of the Settlement Agreement attached hereto are hereby incorporated into and made a part of this Order, and that it completely resolves the issues raised in the petition. The Court retains

1 of 2

#1

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 

#2


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,)

MUTUAL RELEASE AND
SETTLEMENT AGREEMENT

v.)

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

Respondent.)

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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[Signature]

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 Appraisement 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 Appraisement 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 Appraisement 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. Morin~~ 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.

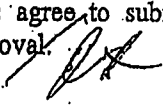
12. **Severability.** The terms of this Settlement Agreement, including paragraph subparts, are severable, and if any part or subpart is found to be unenforceable, the other terms shall remain in full force and effect and are valid and enforceable. Likewise, the Parties expressly recognize that the obligations 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.

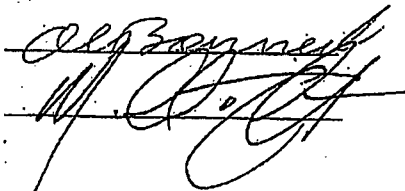


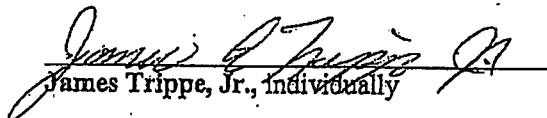
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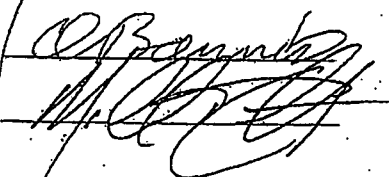
IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be signed. By signing this Settlement Agreement, the Parties warrant that they have read and understand each provision of this Settlement Agreement, that they knowingly and voluntarily agree to and have signed the Settlement Agreement, 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.

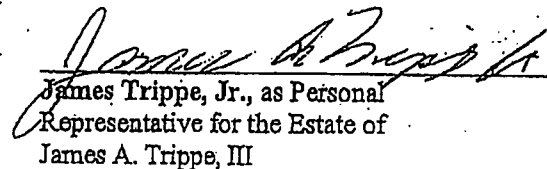
The Parties recognize and agree that this Settlement Agreement may be signed and executed in one or more parts or counterparts. Each counterpart, including a signature page executed by each party, shall be an original counterpart of this Settlement Agreement, but all such counterparts shall constitute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

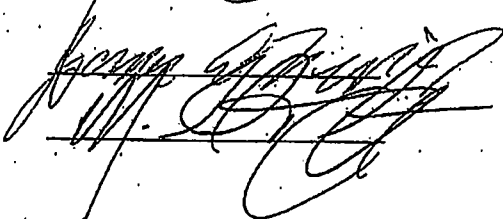
IN WITNESS HEREOF:

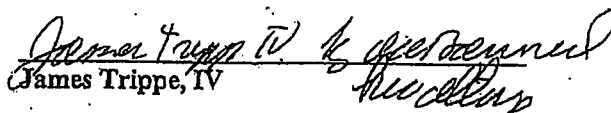

James Trippe, Jr., individually


James Trippe, Jr., individually

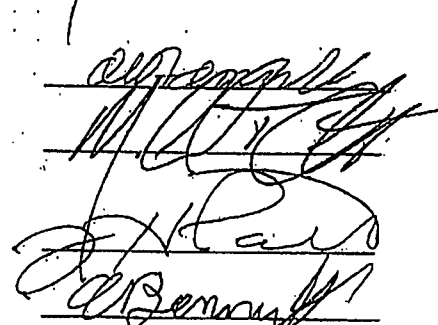

James Trippe, Jr., as Personal Representative for the Estate of James A. Trippe, III

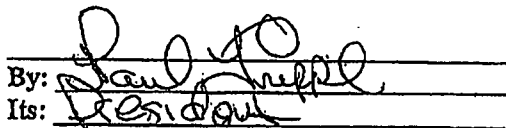

James Trippe, Jr., as Personal Representative for the Estate of James A. Trippe, III


James Trippe, IV


James Trippe, IV

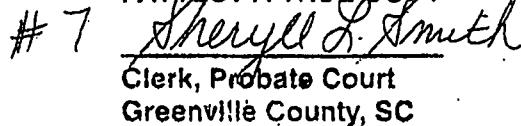
JAT, INC.


Paul Trippe
Resident

By: 
Its: Resident


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

I ATTEST A TRUE COPY

7 
Clerk, Probate Court
Greenville County, SC

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

CONTEMPT ORDER

FILED

JUN 15 2012

GREENVILLE COUNTY
PROBATE COURT

This matter is before the Court upon the Verified Petition of Gene D. Morin as Conservator for Katelin T. [REDACTED] ("Petitioner") filed May 1, 2012, 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, (ii) James Trippe, IV and (iii) Paul Trippe as President of JAT, Inc. (collectively, "Respondents¹") to show cause, if any, why they should not be held in contempt for failing to pay Petitioner \$175,000.00 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 May 1, 2012.

¹ In the action filed by Petitioner on June 6, 2011, James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, was the only named Respondent. However, James Trippe, IV and Paul Trippe as President of JAT, Inc. voluntarily executed the Settlement Agreement, and for purposes of this Contempt Order, shall be identified as Respondents herein.

A hearing was set in this matter for June 12, 2012 at 2:00PM. All interested parties were properly served, and none entered any pleadings responsive to the Verified Petition. Present at the hearing were (i) Petitioner, (ii) Jacqueline H. Patterson, attorney for Petitioner, (iii) O. W. Bannister, attorney for James Trippe, IV, and (iv) W. Todd Nichols, attorney for James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III. James Trippe, Jr., James Trippe, IV and Paul Trippe did not appear although having received proper notice of the hearing.

Based upon the evidence and testimony presented, 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 the 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. On April 20, 2012, a hearing was held seeking Court approval of the Settlement Agreement. At such time, the parties consented to incorporate the Settlement Agreement into an Order of this Court. 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:

(i) ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 (\$175,000.00) DOLLARS to Petitioner on or before 5:00PM on April 25, 2012." No contingencies were placed upon payment of this amount.

5. As of the date of the Rule to Show Cause hearing, Respondents have made no payments, including any partial payments, to Petitioner in satisfaction of their obligations under the Settlement Agreement.

6. I find that no adequate excuse has been advanced by counsel for the Respondent, Personal Representative, for his failure to appear at this hearing.

7. Respondents presented no evidence that they have made any efforts to pay any or all of the payment due to Petitioner.

8. I find that there are sufficient assets in the Estate to pay Petitioner. Notably, JAT, Inc. ("JAT"), an asset which is 100% owned by the Estate, is currently in operation, deriving income and paying salaries.

9. Counsel for Petitioner further noted that the Personal Representative has failed to convey to Petitioner the property identified as 425 Styles Road, Taylors, South Carolina ("Styles Road Property") within the time periods set forth in Paragraph 5 of the Settlement Agreement. Counsel indicated that this could be accomplished without delay.

10. Furthermore, 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."

11. The Order provides, in pertinent part, that the "Court retains jurisdiction to enforce compliance with the agreement by appropriate means, including by its inherent contempt powers."

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).

To date, more than forty-five (45) days after payment of \$175,000.00 became due pursuant to the Settlement Agreement, the first payment remains unpaid. Respondents have presented no evidence to show that they have made any 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, even though the contemnor admittedly had the power to comply at least in part. Similar facts apply here. There is sufficient evidence to show that payment could have been made to Petitioner.

I find that Petitioner has met its burden of proof. No good cause or justification for nonpayment has been presented by Respondents, no contingencies to payment were set forth in the Settlement Agreement to allow for a delay of payment and Respondents did not appear to offer testimony in defense of the nonpayment. Further, Respondents have shown no efforts to pay something to Petitioner toward the amount due to the Petitioner.

Therefore, I find Respondents in willful contempt of this Court's Order dated April 27, 2012; and, as such, I sentence the Personal Representative, James Trippe, Jr. to 60 days in the Greenville County Detention Center suspended upon his payment of \$175,000.00 to the Petitioner plus post-judgment rate of 7.25% from April 25, 2012 until payment is made, and attorney's fees and costs in the amount of \$3,216.70.

Should (i) Respondents fail to pay Petitioner the sum of \$175,000.00 plus interest, costs and attorney's fees by June 20, 2012, a bench warrant will issue for his arrest upon which he shall be taken to the Greenville County Detention Center to serve sixty (60) days in jail or until such time as he has satisfied the terms of this Order with regard to the aforesaid payments. Upon payment, he shall be released from the above sentence for civil contempt of the above referenced Order.

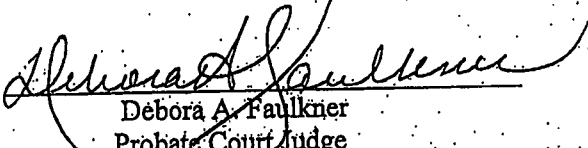
Furthermore, I find that the Personal Representative has not provided the conveyance to Petitioner of the Decedent's interest in the Styles Road Property. I order that a proper conveyance of this property be delivered to Petitioner on or before June 20, 2012.

As to the property in the Bahamas and taking into consideration the difficulties which might arise in transferring property in a foreign jurisdiction, the two (2) lots located in the Bahamas ("Lots") which are to be conveyed to the Petitioner pursuant to Paragraph 4 of the Settlement Agreement, shall be conveyed as soon as possible.

THEREFORE IT IS ORDERED:

1. James Trippé, Jr. is hereby sentenced to 60 days in the Greenville County Detention Center for civil contempt suspended upon his payment of amounts set forth above on or before June 20, 2012. Failure to make said payment shall result in the issuance of a bench warrant for his arrest and incarceration for 60 days or until such time as said payments are made, whichever shall occur first.
2. The deed relating to the Styles property shall be delivered to Petitioner on or before June 20, 2012 together with all information regarding the real property in the Bahamas. The deed for the Bahamas property shall be delivered as soon thereafter as possible.

IT IS SO ORDERED.


Debora A. Faulkner
Probate Court Judge

Greenville, South Carolina

June 15th, 2012

I ATTEST A TRUE COPY


Cheryl D. Smith
Clerk, Probate Court
Greenville County, SC

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE PROBATE COURT

Case No. 2009-ES-23-00707

IN THE MATTER OF
JAMES A. TRIPPE, III Deceased

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

Petitioner,

v.

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

Respondent.

ORDER

FILED
DEC 21 2012
GREENVILLE COUNTY
PROBATE COURT

Hearing Date:	December 19, 2012
Presiding Judge:	Honorable Debora A. Faulkner
Petitioner's Attorneys:	Jacqueline H. Patterson and Nathaniel C. Farmer
Respondent's Attorney:	Michael Coulter
Attorney for James Trippe, IV:	O. W. Bannister
Court Reporter:	Bonnie Walker

This matter is before the Court upon the Summons and Petition of Gene D. Morin as Conservator for Katelin T. [REDACTED] ("Petitioner") filed October 4, 2012. Petitioner seeks an Order of this Court pursuant to S.C. Code Ann. §62-3-1001 compelling James A. Trippe, Jr., as Personal Representative of the Estate of James A. Trippe, III ("Decedent") to perform his duties in administering the Decedent's Estate as required by this Court, the laws of this State and the Settlement Agreement (hereinafter defined).

A hearing was held in this matter on December 19, 2012, at 2:00 P.M. Present at the hearing were (i) Petitioner, (ii) Jacqueline H. Patterson and Nathaniel C. Farmer, attorneys for

Petitioner, (iii) James A. Trippe, Jr. (hereinafter, the "Personal Representative"), (iv) Michael Coulter, attorney for the Personal Representative and (v) O. W. Bannister, attorney for James Trippe, IV.

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

FINDINGS OF FACT

1. Jurisdiction and venue are proper as Decedent's Estate is being administered in this Court.
2. Decedent died on March 26, 2009. The Personal Representative was appointed on or about April 16, 2009.
3. The Personal Representative identified two (2) lots located in the Bahamas (the "Lots") as assets of Decedent's Estate. These Lots were listed as Estate assets on the original Inventory and Appraisement filed by the Personal Representative on July 15, 2009, and on the amended and supplemental Inventory and Appraisements dated May 27, 2011, and December 9, 2011, respectively.
4. On June 6, 2011, Petitioner brought an action against the Personal Representative seeking, among other things, removal of the Personal Representative for violation of fiduciary duties. In settlement of the claims asserted in the Petition, Petitioner entered into a Mutual Release and Settlement Agreement ("Settlement Agreement") with (i) James A. 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.
5. By consent of the parties to that action, the Settlement Agreement was incorporated by reference into an Order of this Court dated April 27, 2012 (the "Order").

6. Paragraph 4 of the Settlement Agreement provides, in pertinent part, the following:

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 Appraisement 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. (Emphasis added)

7. Prior to entry of the Order, this Court had informed the Personal Representative and his counsel that a copy of recorded Deeds of Distribution must be filed with this Court prior to closing the Estate. This information was provided to the Personal Representative and/or his counsel by letters dated (i) December 23, 2009, (ii) February 8, 2010, (iii) June 4, 2010, (iv) August 13, 2010, (v) August 27, 2010, (vi) September 10, 2010, (vii) November 5, 2010, and (viii) May 3, 2011. Therefore, at the time the Personal Representative executed the Settlement Agreement, he was on notice that this Court required a recorded copy of the deed transferring the Lots.

8. Subsequent to the entry of the Order, this Court, by letters dated August 3, 2012, and September 17, 2012, again informed the Personal Representative that copies of the recorded deeds of distribution for the Bahamas Lots must be filed with the Court prior to closing Decedent's Estate.

9. The September 17, 2012, letter from the Court further stated in pertinent part that the requirements for closing the Estate were due by October 4, 2012. No further extensions for filing the documents necessary for closing Decedent's Estate have been granted.

10. To date, the Personal Representative has failed to file a recorded Deed of Distribution with this Court as required by the August 3, 2012, and September 17, 2012, letters

of this Court evidencing transfer of the Lots. I find that, on July 18, 2012, the Personal Representative ineffectively attempted to convey the Lots by a South Carolina Deed of Distribution. Consequently, I find that the Personal Representative has not properly and effectively executed and recorded a deed transferring the Lots to Petitioner.

11. Paragraph 4 of the Settlement Agreement required the Personal Representative to "perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner." For this reason, I find that the Personal Representative has breached the terms of Paragraph 4 of the Settlement Agreement, and, consequently, has violated this Court's Order dated April 27, 2012.

12. The Personal Representative has failed to file the documents necessary for closing Decedent's Estate, and the obligations set forth in the Court's letter dated August 3, 2012, remain past due.

CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. §62-3-1001, Petitioner has brought a claim seeking to compel the Personal Representative to perform his duties as required by the laws of this State and the Order of this Court. S.C. Code Ann. §62-3-1001(a) (2012) provides, in pertinent part, that:

[w]ithin one year after the date of the first publication of notice to creditors. . . , a personal representative must file with the court: . . . (3) an application for settlement of the estate to consider the final account or approve an accounting distribution and adjudicate the final settlement and distribution of the estate.

To date, more than three and one-half (3½) years after his appointment, the Personal Representative has failed to file with this Court (i) a Final Accounting, (ii) an Application for Settlement, (iii) Receipt, Releases and Waivers from Estate beneficiaries and (iv) a recorded Deed of Distribution evidencing transfer of the Bahamas Lots. Closing of this Estate is long past

due, and the Personal Representative has failed to timely perform his duties as required by S.C. Code Ann. §62-3-1001.

"A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by Section 62-7-804. A personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as **expeditiously and efficiently** as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the **best interests of successors to the estate.**" (Emphasis added) S.C. Code Ann. § 62-3-703(a) (2012). With regard to real property, "a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate." S.C. Code Ann. § 62-3-703(a) (2012).

Based upon the South Carolina Probate Code and the Order of this Court, it is the responsibility of the Personal Representative to hold the Lots in trust for the benefit of Petitioner and to effectively transfer the Lots to Petitioner in proper form, free and clear of all liens and encumbrances. The Deed of Distribution signed by the Personal Representative on July 18, 2012, is not effective to transfer title of the Lots to Petitioner. The Personal Representative's failure to effectively transfer the Lots to Petitioner in proper form, free and clear of all liens and encumbrances, is a breach of his duties under Paragraph 4 of the Settlement Agreement, and is consequently a violation of this Court's Order.

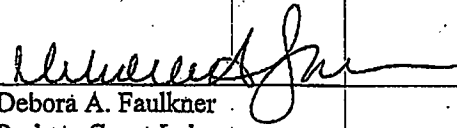
To effectively convey title of the Lots to Petitioner, the Personal Representative must comply with Bahamian law. The Estate, by and through the Personal Representative, shall be responsible for paying all taxes, liens or other encumbrances affecting the Lots prior to the

transfer. Once a deed of conveyance is properly recorded in the Bahamas, a copy of the recorded deed must then be filed with this Court.

The Personal Representative must file all documents necessary to close this Estate, including but not limited to a recorded copy of the Bahamas deed, no later than February 1, 2013.

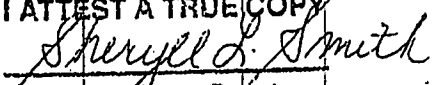
Payment of all attorney's fees and costs owed by the Estate are held in abeyance.

IT IS SO ORDERED.


Deborah A. Faulkner
Probate Court Judge

Greenville, South Carolina
Dec. 21, 2012

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I ATTEST A TRUE COPY

Clerk, Probate Court
Greenville County, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF
JAMES A. TRIPPE, III Deceased

Gene D. Morin, 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

ORDER

FILED
JUN 25 2013
GREENVILLE COUNTY
PROBATE COURT

Hearing Date:

April 24, 2013

Presiding Judge:

Honorable Debora A. Faulkner

Petitioner's Attorneys:

Jacqueline H. Patterson

Respondent's Attorney:

Michael T. Coulter

Attorney for James Trippe, IV:

O. W. Bannister, Jr.

This matter is before the Court upon the Verified Petition of Gene D. Morin as Conservator for Katelin T. [REDACTED] ("Petitioner") filed February 7, 2013, seeking the issuance of a Rule and Order to Show Cause requiring James Trippe, Jr., as Personal Representative of the Estate of James A. Trippe, III (hereinafter, the "Personal Representative") to show cause why he should not be held in contempt for failing to (i) transfer two lots located in the Bahamas to Petitioner as agreed upon by the parties and set forth in the Settlement Agreement and (ii) close Decedent's Estate in the manner required by this Court's Orders dated April 27, 2012, June 15, 2012, and December 21, 2012. Based upon the Verified Petition, the Court issued the requested Order and Rule to Show Cause on February 7, 2013.

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A hearing was set in this matter for April 23, 2013, at 9:00 a.m. and was rescheduled with the consent of all parties for April 24, 2013, at 1:00 p.m. All interested parties were properly served, and no party entered a responsive pleading to the Verified Petition. Present at the hearing were (i) Petitioner, (ii) Jacqueline H. Patterson, attorney for Petitioner, (iii) James A. Trippe, Jr., the Personal Representative, (iv) Michael T. Coulter, attorney for the Personal Representative, and (v) O. W. Bannister, Jr., attorney for James Trippe, IV.

Based upon the evidence and testimony presented and the records of this Court, I hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Jurisdiction and venue are proper as Decedent's Estate is being administered in this Court.
2. Decedent died on March 26, 2009. The Personal Representative was appointed on or about April 16, 2009.
3. The Personal Representative identified two (2) lots located in the Bahamas (the "Bahamas Lots") as assets of Decedent's Estate. These Bahamas Lots were listed as Estate assets on the original Inventory and Appraisal filed by the Personal Representative on July 15, 2009, and on the amended and supplemental Inventory and Appraisements dated May 27, 2011, and December 9, 2011, respectively.
4. On June 6, 2011, Petitioner brought an action against the Personal Representative seeking, among other things, removal of the Personal Representative for violation of fiduciary duties. The action was settled in mediation on March 26, 2012, and a Mutual Release and Settlement Agreement ("Settlement Agreement") was executed by the parties.

5. By consent of the parties, the Settlement Agreement was incorporated by reference into an Order of this Court dated April 27, 2012 (the "April 2012 Order").

6. Paragraph 4 of the Settlement Agreement provides, in pertinent part, the following:

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. (Emphasis added)

7. Paragraph 14 of the Settlement Agreement provides, in pertinent part, the following:

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.

8. Prior to entry of the April 2012 Order, this Court provided written notice to the Personal Representative and his counsel that a copy of recorded Deeds of Distribution were required to be filed with this Court prior to closing the Estate. This information was provided to the Personal Representative and/or his counsel by letters dated (i) December 23, 2009, (ii) February 8, 2010, (iii) June 4, 2010, (iv) August 13, 2010, (v) August 27, 2010, (vi) September 10, 2010, (vii) November 5, 2010, and (viii) May 3, 2011. Therefore, at the time the Personal Representative executed the Settlement Agreement, he was on notice that this Court required a recorded copy of a deed transferring the Bahamas Lots.

9. On or about May 1, 2012, Petitioner initiated an action against the Personal Representative seeking a finding of contempt against the Personal Representative for his failure to comply with the terms of the Settlement Agreement.

10. On June 15, 2012, this Court entered a finding of contempt against the Personal Representative for his failure, among other things, to make payments to Petitioner as required by the Settlement Agreement (the "June 2012 Order"). With regard to the Bahamas Lots, the June 2012 Order states in pertinent part:

As to the property in the Bahamas and taking into consideration the difficulties which might arise in transferring property in a foreign jurisdiction, the two (2) lots located in the Bahamas ("Lots") which are to be conveyed to the Petitioner pursuant to Paragraph 4 of the Settlement Agreement, shall be conveyed as soon as possible. (Emphasis added)

11. By letters dated August 3, 2012, and September 17, 2012, this Court again informed the Personal Representative that copies of the recorded deeds of distribution for the Bahamas Lots must be filed with the Court prior to closing Decedent's Estate. The September 17, 2012, letter stated that the requirements for closing the Estate were due by October 4, 2012, and that no further extensions would be granted.

12. Having failed to receive a proper recorded deed for the Bahamas Lots from the Personal Representative, on October 4, 2012, Petitioner instituted another action against the Personal Representative for failure to convey the Bahamas Lots in accordance with the Settlement Agreement and the April 2012 and June 2012 Orders of this Court.

13. On December 21, 2012, this Court issued an Order (the "December 2012 Order") finding that the Personal Representative had breached the terms of Paragraph 4 of the Settlement Agreement, and, consequently, had violated the Court's Order dated April 27, 2012. The December 2012 Order further states:

To effectively convey title of the Lots to Petitioner, the Personal Representative must comply with Bahamian law. The Estate, by and through the Personal Representative, shall be responsible for paying all taxes, liens or other encumbrances affecting the Lots prior to the transfer. Once a deed of conveyance is properly recorded in the Bahamas, a copy of the recorded deed must then be filed with this Court.



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The Personal Representative must file all documents necessary to close this Estate, including but not limited to a recorded copy of the Bahamas deed, no later than February 1, 2013.

14. To date, the Personal Representative has not conveyed the Bahamas Lots to Petitioner and has not filed the documents necessary for closing Decedent's Estate. As such, he is in violation of the December 2012 Order.

15. On February 7, 2013, Petitioner filed a Verified Petition seeking the Personal Representative to appear and show cause why he should not be held in contempt for failing to transfer the Bahamas Lots.

16. Despite having agreed to convey the property in March of 2012 and despite having three Court Orders directing the Personal Representative to convey the Bahamas Lots, it was not until February, 2013, that the Personal Representative took the initiative to identify counsel in the Bahamas and begin the process of conveying the Bahamas Lots. Further, the Personal Representative did not hire counsel until March, 2013, after Petitioner had filed the present action.

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). A finding of

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contempt may be predicated upon a violation of a settlement agreement approved by a Court where it was determined that the offender made no legitimate efforts to comply with settlement agreement. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596 (Ct. App. 2002).

Here, Petitioner has met its burden by showing that the Personal Representative has failed to comply with three Orders of this Court. The April 2012 Order incorporated the Settlement Agreement, and pursuant to Paragraph 4 of the Settlement Agreement, the Personal Representative was required to convey the Bahamas Lots to Petitioner no later than May, 2012. Understanding the difficulties of transferring foreign properties, this Court extended the time for transfer by stating in the June 2012 Order that the Bahamas Lots were to be "conveyed as soon as possible." In the December 2012 Order, this Court provided the Personal Representative with a deadline of February 1, 2013, to comply with transferring the Bahamas Lots.

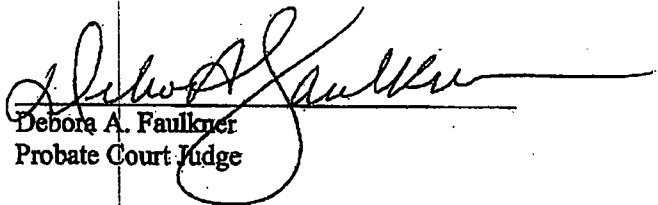
Despite the grace periods provided to the Personal Representative, the Personal Representative has demonstrated a lack of good faith and a willful disregard for this Court's Orders as evidenced by, among other things, his failure to retain Bahamian counsel until March, 2013. The record supports by clear and convincing evidence a finding of contempt.

In addition to contempt, Petitioner requested reimbursement of its attorney's fees for having to enforce the Settlement Agreement and the Orders of this Court. 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). Here, Paragraph 14 of the Settlement Agreement specifically authorizes the prevailing party to recover attorney's fees when an action is commenced to enforce the terms of the Settlement Agreement. Based upon the agreement between the parties, I find that Petitioner, as the prevailing party in seeking to enforce Paragraph 4 of the Settlement Agreement, is entitled to recover its attorney's fees.

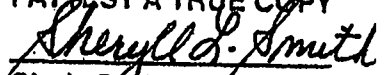
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[Signature]

Based upon the foregoing finding, I hereby sentence the Personal Representative to ninety (90) days incarceration which may be suspended upon (i) proper conveyance of the Bahamas Lots to Petitioner on or before July 12, 2013, plus payment by the Personal Representative of all attorney's fees and costs submitted by Petitioner, or (ii) payment of the sum of Twenty-five Thousand (\$25,000.00) Dollars in certified funds to Petitioner (the reported value of the Bahamas Lots on the Inventory and Appraisement which Petitioner has agreed to accept in lieu of the real property) on or before July 12, 2013, plus payment by the Personal Representative of all attorney's fees and costs submitted by Petitioner. Post-judgment interest on all sums due by July 12, 2013, shall begin to accrue on July 13, 2013. Should the Personal Representative fail to comply with (i) or (ii) above on or before July 12, 2013, a Bench Warrant shall be issued for his arrest.

IT IS SO ORDERED.


Debora A. Faulkner
Probate Court Judge

Greenville, South Carolina
June 25, 2013

7 I ATTEST A TRUE COPY

Clerk, Probate Court
Greenville County, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
IN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)
)
Gene D. Morin, 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

ORDER

FILED
SEP 30 2013
GREENVILLE COUNTY
PROBATE COURT

Hearing Date: August 21, 2013
Presiding Judge: Honorable Debora A. Faulkner
Petitioner's Attorney: Jacqueline H. Patterson
Respondent's Attorney: Michael Coulter
Attorney for James Trippe, IV: O. W. Bannister

A Motion to Reconsider ("Motion") filed on July 8, 2013, by O.W. Bannister is before the Court seeking reconsideration of the Court's Order filed June 25, 2013 (hereinafter, the "June 2013 Order"). Although Respondent, James Trippe, Jr. ("Respondent" or "Personal Representative"), individually and as Personal Representative of the Estate of James A. Trippe, III, has been and continues to be represented by Attorney Michael Coulter, Attorney O.W. Bannister (counsel for James Trippe, IV) filed the Motion on behalf of Respondent.

Pursuant to his Motion, Mr. Bannister seeks reconsideration of the Court's Order on the following grounds:

- (i) Respondent believed that he had effectively transferred the two Bahamas lots through the execution of a South Carolina deed of distribution, and it was "[n]ot



until the Court ruled the Personal Representative had to bear the costs of opening an ancillary estate in the Bahamas" that the Personal Representative believed he had to do so;

- (ii) Respondent has filed a motion with this Court to extend the time for getting the Deed of Distribution recorded in the Bahamas;
- (iii) Respondent cannot close the estate until the Deed of Distribution is honored in the Bahamas; and
- (iv) The Probate Court did not make findings in awarding Petitioner its attorney's fees.

At the request of Mr. Bannister, a motion hearing was set in this matter for August 21, 2013. Present at the hearing were (i) Petitioner Gene D. Morin as Conservator for Katelin T. [REDACTED] ("Petitioner"), (ii) Jacqueline H. Patterson, attorney for Petitioner, (iii) Michael Coulter, attorney for Respondent, (iv) O. W. Bannister, attorney for James Trippe, IV and (v) Greg Ross, Co-guardian for Katelin Trippe.

Based upon the evidence, testimony, and records before this Court and the arguments presented by counsel, the Motion for Reconsideration filed by Mr. Bannister is hereby DENIED for the reasons set forth below.

A. Mr. Bannister does not represent Respondent and his Motion is improper.

The Motion was filed in this matter by Attorney O. W. Bannister. Mr. Bannister represents James Trippe, IV, such representation being duly noted by the Orders of this Court dated (i) June 15, 2012, (ii) November 20, 2012, (iii) December 21, 2012 and (iv) June 25, 2013.

Over the objection of Petitioner and his counsel, Mr. Bannister has on numerous occasions attempted to assume the role as attorney for the Personal Representative despite a clear

conflict of interest. In November, 2012, Respondent's attorney, Mr. Coulter, failed to appear for a hearing but requested that Mr. Bannister represent the Personal Representative at the hearing.

In response thereto, this Court stated:

It is obvious that Mr. Bannister has a conflict of interest having represented individuals with interests diametrically opposed to Katelin T. [REDACTED] Mr. Bannister cannot now use the knowledge he gained from that representation to affect or to appear to affect Katelin T. [REDACTED] distribution from this estate. As an heir, she has a right to a personal representative and an estate attorney (both of whom receive compensation from the estate) whose concern is only with the proper administration of the estate and meeting the fiduciary obligations thereto, see the SC Probate Code.

Mr. Bannister cannot now, in his Motion, represent to the Court that he is the attorney for the Personal Representative (see page 3 of the Motion) in contravention of the foregoing Order filed November 20, 2012. The conflict of interest for Mr. Bannister still exists, and Petitioner has not waived this conflict.

B. The Personal Representative has disregarded the Court's Orders and Instructions.

As this Court noted in its June 2013 Order, the Personal Representative has shown a conscious disregard toward the Orders and letters of this Court. Mr. Bannister again argues that the Personal Representative did not know he had to file a deed of distribution in the Bahamas until the Court ordered him to do so in December, 2012. This argument, however, is contrary to the evidence and findings of the Court. Prior to the December, 2012, Order, the Court provided at least ten written notices to the Personal Representative and/or his counsel stating that a copy of recorded Deeds of Distribution were required to be filed with this Court prior to closing the Estate.

In the Motion, Mr. Bannister argues that Respondent has done all that he is able to do in transferring the Bahamas lots. In support thereof, Mr. Bannister has attached a Motion for Extension (filed April 29, 2013) and correspondence from Bahamian counsel (dated April 25,



2013). Such attached documents are all dated after the April 24, 2013, Rule to Show Cause hearing. The Motion attempts to mislead the Court by using actions taken post-hearing as a justification for the Court to reconsider its June 2013 Order.

In the December, 2012, Order, the Court ordered the Personal Representative to transfer the Bahamas lots and close the Estate no later than February 1, 2013. Despite such Order, the Personal Representative did not retain Bahamian counsel until March, 2013. As noted in the June 2013 Order, a finding of contempt may be predicated upon a violation of a settlement agreement approved by a Court where it was determined that the offender made no legitimate efforts to comply with the settlement agreement. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596 (Ct. App. 2002). Here, it is clear that the Personal Representative made no legitimate effort to comply with the Court's instructions and Orders until after the February 1, 2013, deadline had passed, and Petitioner had filed his Verified Petition on February 7, 2013.

At the hearing, Petitioner met its burden by showing that the Personal Representative has failed to comply with three (3) Orders of this Court. At such time, Respondent failed to provide any defense as to why he did not comply or even attempt to comply with this Court's Orders prior to the February 1, 2013, deadline set by the Court. For this reason, the Court upholds its finding of contempt.

C. Reasonableness of Petitioner's Attorney's Fee.

In the Motion, Mr. Bannister cites *Baron Data System, Inc. v. Loter*, 297 S.C. 382, 277 S.E.2d 296 (S.C. 1989) in arguing that the "Probate Court erred in making no findings as required in any award of attorney fees." This Court's June 2013 Order required Respondent to pay all of Petitioner's attorney's fees. In making this ruling, the Court had analyzed the factors set forth in *Baron* and found that the evidence in the record fully supports the reasonableness of

the attorney's fees requested by Petitioner as shown by the Affidavit of Fees filed by Petitioner's counsel on or about January 25, 2013 (two affidavits), and April 24, 2013.

The factors which were considered by this Court in rendering such decision were: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. In examining these factors, it is clear that the fees incurred by Petitioner are very reasonable. This is a very contentious case which has extended over several years and which involves unusual legal issues regarding foreign property. Much time and labor has been devoted by Petitioner's counsel in enforcing the Settlement Agreement and the Orders of this Court and in defending against the positions taken by Attorneys Bannister and Coulter for Respondent's failure to act. Patterson & Associates, P.A., is respected in this community and has litigated other cases in this Court. Contingency of compensation is not applicable. The rates charged by Petitioner's counsel are consistent with those charged by other attorneys practicing in this Court. Petitioner's counsel has obtained the result for which they petitioned.

At the hearing, Petitioner's counsel informed the Court that she would be providing an affidavit opining to the reasonableness of such fees. However, having heard the testimony of counsel and having examined the factors to be considered, I find that such affidavit is not necessary. For the reasons set forth in the June 2013 Order, Petitioner is entitled to recover the attorney's fees and costs in the amount of \$12,920.53 as shown on the affidavits of counsel filed on or about January 25, 2013, and April 24, 2013.

Petitioner has incurred additional attorney's fees since the filing of such affidavits. Subsequent to the hearing, Petitioner's counsel filed another Affidavit of Fees. Because of (i) the

nature of the Motion, (ii) the positions taken by Respondent and counsel throughout this proceeding, and (iii) the factors set forth above, and upon review of the Affidavit of Jacqueline H. Patterson, I hereby grant to Petitioner additional attorney's fees and costs in the amount of \$6,159.18.

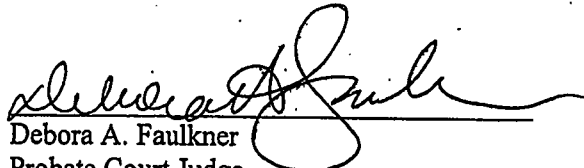
CONCLUSION

Based upon the foregoing, it is ORDERED, ADJUDGED and DECREED as follows:

1. The Motion to Reconsider filed by Mr. Bannister is hereby DENIED.
2. Having failed to (i) properly convey the Bahamas lots to Petitioner on or before July 12, 2013, and pay all attorney's fees and costs submitted by Petitioner, or, in the alternative (ii) pay Twenty-five Thousand (\$25,000.00) Dollars in certified funds to Petitioner and pay all attorney's fees and costs submitted by Petitioner on or before July 12, 2013, Respondent is hereby sentenced to ninety (90) days incarceration. A Bench Warrant is hereby being issued for his arrest.
3. In accordance with the June 2013 Order, post-judgment interest on all sums which were due by July 12, 2013, began to accrue on July 13, 2013, and shall continue to accrue until paid in full.
4. In accordance with the June 2013 Order, Petitioner is entitled to recover from Respondent its attorney's fees and costs incurred on or before April 24, 2013, said attorney's fees and costs being in the amount of \$12,920.53. Post-judgment interest on this amount shall accrue in accordance with the preceding paragraph.
5. Additionally, Petitioner is entitled to recover from Respondent its attorney's fees and costs incurred on or after April 24, 2013, said attorney's fees and costs being in the amount

of \$6,159.18. Post-judgment interest on this amount shall begin to accrue thirty (30) days following the date of this Order.

IT IS SO ORDERED.


Debora A. Faulkner
Probate Court Judge

Greenville, South Carolina
September 30, 2013

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, Conservator for
Katelin Trippe

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 10th day of April, 2014.

Debra A. Faulkner

PRESIDING JUDGE

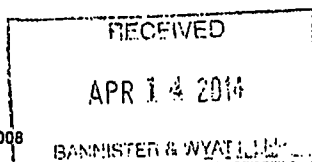
This judgment was entered on the 10th day of April, 2014, and a copy mailed first class this 11th day of April, 2014, to attorney(s) of record or to parties (when appearing pro se) as follows:

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 James A. Trippe, Jr.

O. W. Bannister
P. O. Box 10007
Greenville, SC 29603
Attorney for James A. Trippe, IV

SCRPC - Form 4; Revised 6/2008



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, Conservator)
for Katelin Trippe)
)
Petitioner,)
)
v.)
)
James Trippe, Jr., individually and as)
Personal Representative of the Estate of)
James A. Trippe, III,)
)
Respondent.)

IN THE PROBATE COURT

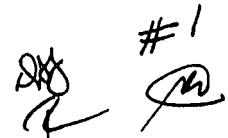
Case No. 2009-ES-23-00707

FILED
APR 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.

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

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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.

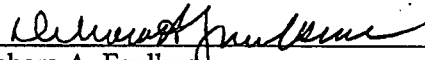
Therefore, I find Respondent in willful contempt for failing to pay the sum of \$50,000.00 on or before December 31, 2013. Based upon Paragraph 14 of the Settlement Agreement and the factors set forth in *Baron Data Sys. v. Loter*, 297 S.C. 382 (1989), Petitioner is also entitled to recover attorney's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

WAB
ETL
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②

IT IS SO ORDERED.


Debora A. Faulkner
Probate Court Judge

Greenville, South Carolina
April 10, 2014

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I ATTEST A TRUE COPY

Clerk, Probate Court
Greenville County, SC

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, Conservator)
for Katelin Trippe)

Petitioner,)

v.)

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

ORDER AND RULE TO
SHOW CAUSE

FILED
FEB 27 2014
GREENVILLE COUNTY
PROBATE COURT

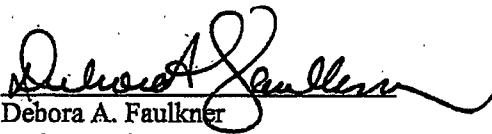
UPON REVIEWING AND CONSIDERING the First Amended Verified Petition of Petitioner and, it appearing that the relief sought therein is just and proper;

IT IS ORDERED, ADJUDGED and DECREED that (i) James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, and (ii) James Trippe, IV are hereby required to appear before the this Court on the 18th day of March, 2014, at 4:00 PM, then and there to show cause, if any they can, why they should not be held in contempt of this Court for failure to abide by the terms and conditions of that certain Mutual Release and Settlement Agreement incorporated into this Court's Order Approving Settlement filed April 27, 2012; why appropriate sanctions should not be imposed as a result of said refusal and failure to perform; and why Petitioner should not be awarded interest, costs and attorney fees, together with such other requested relief set forth in the Verified Petition.

LET A CERTIFIED COPY of this Amended Order and Rule to Show Cause be forthwith served upon the following which is deemed by this Court to be sufficient service:

- (1) Michael T. Coulter
1164A Woodruff Rd.
Greenville, SC 29607
Attorney for Respondent, James A. Trippe, Jr.
- (2) O.W. Bannister
Bannister & Wyatt, LLC
Post Office Box 10007
Greenville, SC 29603
Attorney for James A. Trippe, IV

IT IS SO ORDERED.


Debora A. Faulkner
Probate Judge

February 27, 2014
Greenville, SC

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE PROBATE COURT
) 2009-ES-23-00707

IN THE MATTER OF
James A. Trippe, III, Deceased

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

Petitioner,

vs

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

FILED
MAY 30 2014
GREENVILLE COUNTY
PROBATE COURT

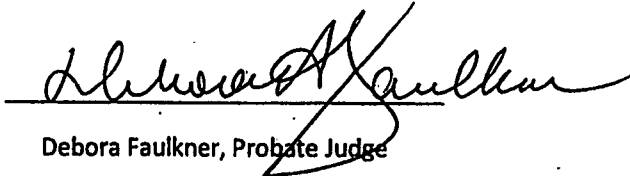
ORDER

After a review of the record of the case in chambers and considering applicable law, I deny Respondent's *Motion to Reconsider* without a hearing.

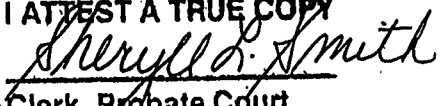
IT IS SO ORDERED.

Greenville, SC

May 30, 2014


Debora Faulkner, Probate Judge

I ATTEST A TRUE COPY


Clerk, Probate Court

FORM 4

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2304096**

Gene D Morin

Katelin Trippe

PAUL E. WICKENS
James Trippe Jr

James A Estate Of
Trippe III

2014 DEC 18 PM 12 29

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (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. ☐ See Page 2 for additional information.
- ☐ **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; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before the Court on December 15, 2014 for a hearing on the Respondent's Motion to Dismiss the Appeal from the Greenville County Probate Court. The Motion is hereby DENIED.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

CPFORM4Cm
SCCA SCRPC Form 4C (Revised 3/2013)

ENTERED COMPUTER

Chri



Circuit Court Judge

2162

Judge Code

12/15/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, 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

ATTORNEY(S) FOR THE PLAINTIFF(S)

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 DEFENDANT(S)

Court Reporter

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



FILED - J. COURT
 STATE OF SOUTH CAROLINA GREENVILLE CO. S.C.
 COUNTY OF GREENVILLE PAUL D. WICKENBARGER
 2015 FEB 12 PM 4 38

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.

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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,

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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*.

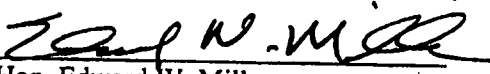
Furthermore, because Appellant paid this amount in order to purge his contempt, the issue of attorney's fees awarded by the Probate Court is moot for the reasons set forth above relating to Appellant's contempt. Respondent is entitled to retain the attorney's fees paid by Appellant as awarded by the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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Gene D. Morin, Conservator for Katelin T

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

**FIRST AMENDED
VERIFIED PETITION**

Petitioner Gene D. Morin, Conservator for Katelin T ("Petitioner"), does hereby petition this Court to require (i) James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III and (ii) James Trippe, IV to appear and show cause, if any they can, why they should not be held in contempt of court for failure to comply with the Mutual Release and Settlement Agreement incorporated into this Court's Order Approving Settlement filed April 27, 2012. In connection therewith, Petitioner would show unto the Court as follows:

1. Jurisdiction and venue are proper in this Court.
2. 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) JAT, Inc., by and through its President, Paul Trippe.

3. 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,"

4. James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, James Trippe, IV and JAT, Inc. breached the terms of the Settlement Agreement by failing to pay the sum of Fifty Thousand (\$50,000.00) Dollars to Petitioner on or before December 31, 2013. This payment remains due and owing to Petitioner as required by Paragraph 2(ii) of the Settlement Agreement.

5. The Settlement Agreement was incorporated into this Court's Order Approving Settlement dated and filed April 27, 2012 (the "Order").

6. The Order provides, in pertinent part, that the "Court retains jurisdiction to enforce compliance with the agreement by appropriate means, including by its inherent contempt powers."

7. Petitioner is informed and believes that it is entitled to recover interest, costs and attorney's fees based upon Paragraph 14 of the Settlement Agreement and other applicable law.

8. Petitioner is further informed and believes that JAT, Inc. has filed for Chapter 7 bankruptcy. Pursuant to 11 U.S. Code § 362, collection actions against JAT, Inc. must be stayed. As such, Petitioner hereby amends its original Petition by removing JAT, Inc. as a party-respondent to this contempt proceeding.

9. Petitioner requests that the Court impose such sanctions as it deems just and proper, including but not limited to fines or imprisonment.

WHEREFORE, Petitioner prays unto this Honorable Court as follows:

- 1) that a Rule and Order to Show Cause be issued, requiring (a) James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III and (b) James Trippe, IV to show cause, if any, why they should not be held in contempt for failing to pay Petitioner the sum of Fifty Thousand (\$50,000.00) Dollars as required by Paragraph 2(ii) of the Settlement Agreement;
- 2) that appropriate sanctions, including but not limited to fines and imprisonment, be imposed against (a) James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III and (b) James Trippe, IV for any willful failure and refusal to abide by the terms of the Settlement Agreement incorporated by Order of this Court;
- 3) that Petitioner be awarded the sum of \$50,000.00 plus interest, costs and attorney's fees; and
- 4) for such other and further relief as this Court deems just and proper.

Respectfully submitted,

PATTERSON & ASSOCIATES, P.A.



Jacqueline H. Patterson, S.C. Bar #12090

Nathaniel C. Farmer, S.C. Bar # 75976

Attorneys for Petitioner

1088 North Church Street

Greenville, SC 29601

(864) 329-0548

nfarmer@pattlawfirm.com

Greenville, SC
February 25, 2014

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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

Gene D. Morin, Conservator
for Katelin [REDACTED]

Petitioner,

v.

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

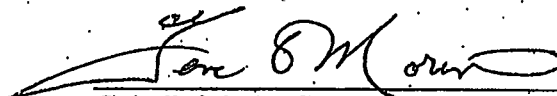
Respondent.

IN THE PROBATE COURT

Case No. 2009-ES-23-00707

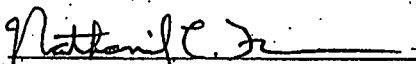
VERIFICATION

PERSONALLY appeared before me Gene D. Morin, Conservator for Katelin T [REDACTED]
who, after being duly sworn, deposes and states that he has read the attached First Amended
Verified Petition, and the allegations contained therein are true and accurate except those alleged
upon information and belief, and as to those allegations, he believes them to be true.


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

SWORN TO AND SUBSCRIBED BEFORE ME

This 25 day of February, 2014


Notary Public for South Carolina
My Commission Expires: 4/03/17

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF
James A. Trippe, III, Deceased

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

Petitioner,

vs.

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

Respondent.

IN THE PROBATE COURT

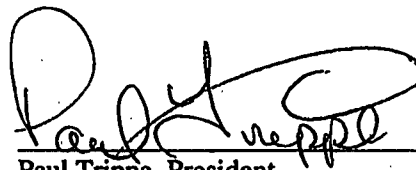
C. A. No.: 2009-ES-23-00707

**RETURN TO RULE TO SHOW CAUSE
BY PAUL TRIPPE, PRESIDENT,
JAT, INC.**

Responding to the Rule to Show Cause, JAT, Inc., would respectfully show as follows:

1. All allegations not admitted are denied.
2. JAT, Inc. has filed bankruptcy as is evidenced by the Notice of Chapter 7 Bankruptcy Case attached hereto and incorporated herein by reference.
3. The filing of bankruptcy acts as an automatic stay of all actions to attempt to collect any debt from JAT, Inc., under Title 11, U.S.C. §362.

WHEREFORE, JAT, Inc., by and through its president, Paul Trippe, prays this Court stay any action for the collection of any debt owed by JAT, Inc., and such other and further relief as the Court may deem just and proper.



Paul Trippe, President
JAT, Inc.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF
James A. Trippe, III, Deceased

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

Petitioner,

vs.

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

Respondent.

IN THE PROBATE COURT

C. A. No.: 2009-ES-23-00707

MOTION TO RECONSIDER
RULE 59, S.C.R.C.P.

FILED
APR 24 2014
GREENVILLE COUNTY
PROBATE COURT

NOW COMES James Trippe, Jr., by and through his attorney and moves the Court to reconsider its Contempt Order filed April 10, 2014, and received by Respondent on April 14, 2014. Grounds for said motion are as follows:

1. The Mutual Release and Settlement Agreement ("Agreement") referred to in the Contempt Order is contractual in that one heir, James Trippe, IV, receive all of the stock of JAT, Inc. in exchange for payments to the other heir, Katelin T. [REDACTED]. The Respondent received nothing under the Agreement. Settlement agreements are viewed as contracts and contempt for failure to pay a civil debt arising from a contractual obligation does not permit civil contempt.

Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 557, S.E.2d 708 (Ct. App. 2001):

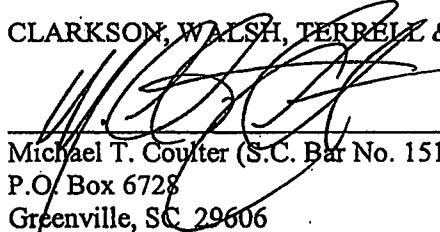
2. The Respondent is at best a guarantor of the payment of the settlement debt. His guarantee is without consideration and therefore void under contractual principles. McPeters v. Yeargin Construction Co., Inc., 290 S.C. 327, 350 S.E.2d 208 (Ct. App. 1986).

3. The Court erred in citing the benefits James Trippe, IV received from the Agreement because he was not a party to the contempt action and was the beneficiary of the Settlement Agreement. The Court ignored that the assets transferred to James Trippe, IV are now covered by the bankruptcy court in which the Petitioner could make a claim for debts due under the contractual agreement.

4. The Court erred in awarding attorney fees based upon the errors cited above.

WHEREFORE, Respondent prays this Court reconsider its previous Order and rescind the payment of the personal funds of Respondent to satisfy the debt of another under a void guaranty and to rescind the order of payment of attorney fees, and for such other and further relief as the Court may deem just and proper.

CLARKSON, WALSH, TERRELL & COULTER



Michael T. Coulter (S.C. Bar No. 15177)
P.O. Box 6728
Greenville, SC 29606
Ph: 864-298-0084; Fax: 864-298-0146
ATTORNEY FOR RESPONDENT

April 23, 2014

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE MATTER OF
James A. Trippe, III, Deceased

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

Respondent,

vs.

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

C. A. No.: 2009-ES-23-00707

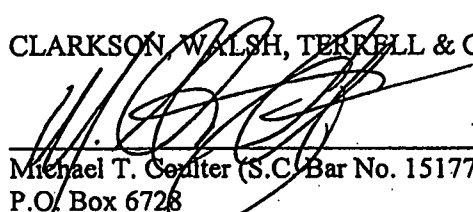
2013-CP-23-05389

NOTICE OF APPEAL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 JUN 9 PM 3:21

James Trippe, Jr., individually, and as Personal Representative of the Estate of James
Trippe, III, appeals the Contempt Order of the Honorable Deborah A. Faulkner, Probate Court
Judge, dated April 10, 2014, and the Order on Respondent's Motion to Reconsider dated May
30, 2014. Appellant received written notice and entry of this Order on June 2, 2014.

CLARKSON, WALSH, TERRELL & COULTER


Michael T. Coulter (S.C. Bar No. 15177)
P.O. Box 6728
Greenville, SC 29606
PH: 864-298-0084; Fax: 864-298-0146
ATTORNEY FOR APPELLANT

June 5, 2014

Other Counsel of Record:

Jacqueline H. Patterson
1088 North Church Street
Greenville, SC 29601
Attorney for Respondent

O. W. Bannister, Jr.
P.O. Box 10007
Greenville, SC 29601
Attorney for James Trippe, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF
James A. Trippe, III, Deceased

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

Respondent,

vs.

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

C. A. No.: 2009-ES-23-00707

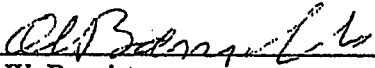
GROUND FOR APPEAL

The Probate Court erred in holding James Trippe, Jr., personal representative of the estate of his son, James A. Trippe, III, in willful contempt for failure to personally pay \$50,000.00 to the Petitioner by December 31, 2013 on the following grounds:

- 1) The Settlement Agreement between the Petitioner and the heirs of the Estate provided that the minor Katelin T. [REDACTED] would receive certain payments in exchange for the stock in a corporation owned by the deceased. The minor's half-brother was the only other statutory heir and received the stock.
- 2) The Settlement Agreement was signed by James Trippe, Jr., as the Personal Representative of the Estate guaranteeing the payments. These payments, however, are limited to the assets of the Estate and not a personal guarantee from his own personal funds.
- 3) The corporation whose stock the minor through her guardian ad litem assigned to the other heir in the corporation has now declared bankruptcy.
- 4) In essence, the Probate Court held the Personal Representative in contempt unless he personally paid his own personal funds to satisfy the Settlement Agreement arrived at by the heirs as to their inheritance.

- 5) That James Trippe, Jr. should not be held liable beyond the assets of the Estate as he received no consideration under the Agreement.

BANNISTER, WYATT & STALVEY, LLC


O. W. Bannister
SC Bar No. 506; Fed. ID No. 1184
401 Pettigru Street (29601)
P. O. Box 10007 (29603)
Greenville, South Carolina
Phone: (864) 298-0084; Fax: (864) 298-0146
ATTORNEY FOR JAMES TRIPPE, JR.

July 17, 2014

Other Counsel of Record:

Jacqueline H. Patterson, Esq.
1088 North Church Street
Greenville, SC 29601
Attorney for Respondent

Michael T. Coulter, Esq.
P.O. Box 6728
Greenville, SC 29606
Attorney for Appellant

RECEIVED

MAR 17 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

EDWARD W. MILLER, CIRCUIT COURT JUDGE

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

In the Matter of James A. Trippe, III Deceased

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

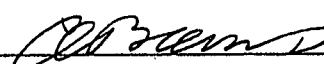
v.

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

NOTICE OF APPEAL

James A. Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, Appellant appeals the order of the Honorable Edward W. Miller dated February 11, 2015. Appellant received written notice of entry of this order on February 16, 2015.

BANNISTER, WYATT & STALVEY, LLC


O. W. Bannister, S.C. Bar No. 00506

P. O. Box 10007

Greenville, South Carolina 29603

Phone: (864) 298-0084; Fax: (864) 298-0146

Attorney for Appellant

March 13, 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.

1 STATE OF SOUTH CAROLINA)
2) IN THE PROBATE COURT
3 COUNTY OF GREENVILLE) **COPY**

4 IN THE MATTER OF:

5 JAMES A. TRIPPE, III, Deceased

6 CASE NUMBER:

7 2009ES2300707.

8 GENE D. MORIN, Conservator for Katelin T [REDACTED],

9 Petitioner.

10 JAMES TRIPPE, JR./PR,

11 Respondent.

12

13 - - - - -
14 Probate hearing taken in the aforementioned
15 matter was heard before the Honorable Judge
16 Debora A. Faulkner, taken before Donna B.
17 Friddle, Court Reporter and Notary Public,
18 at Probate Court, Greenville County Square,
19 301 University Ridge, Greenville, South
20 Carolina, on the 21st day of August, 2013,
21 commencing at the hour of 4:06 o'clock, p.m.

21

JUDY COMP & ASSOCIATES, INC.

1 APPEARANCES:

2 JACQUELINE H. PATTERSON, Esquire

3 NATHAN FARMER, Esquire (Not Present)

4 Patterson & Coker, P.A.

5 1088 North Church Street

6 Greenville, South Carolina 29601

7 Attorneys for Petitioner.

8 MICHAEL COULTER, Esquire

9 Clarkson, Walsh, Terrell & Coulter, P.A.

10 1164 A Woodruff Road (29607)

11 Post Office Box 6728

12 Greenville, South Carolina 29606

13

14 O. W. BANNISTER, Esquire

15 Bannister & Wyatt, LLC

16 401 Pettigru Street

17 Greenville, South Carolina 29601

18 Attorneys for Respondent.

19 ALSO PRESENT: Greg Ross.

20

21 INDEX OF EXAMINATION

22

PAGE

23 COLLOQUY BETWEEN THE COURT AND

3

24 COUNSEL

25

INDEX OF EXHIBITS

PAGE

THERE WERE NO EXHIBITS INTRODUCED.

- - - - -

(In the following transcript, a dash [--] is used to indicate an unintentional or purposeful interruption in a sentence, or to indicate halting speech or an unfinished sentence in dialogue.)

- - - - -

JUDY COMP & ASSOCIATES, INC.

1 THE COURT:

2 We're on the record here in the Estate
3 of James A. Trippe, III, deceased,
4 09707. This matter here is the -- this
5 is a Motion for Reconsideration. This
6 if filed on behalf of the estate, Mr.
7 Coulter?

8 MR. COULTER:

9 Mr. Bannister did file it on behalf of,
10 I believe, the Personal Representative.

11 THE COURT:

12 How is that --

13 MR. COULTER:

14 Who was found in contempt. Correct?

15 THE COURT:

16 Well, I have you as representing the
17 estate, and we've already made a ruling
18 about conflict of interest. So are you
19 here to argue on behalf of the estate?

20 MR. COULTER:

21 Judge, that will be fine.

22 THE COURT:

23 Okay. I'll be glad to hear from you.

24 MR. COULTER:

25 Judge, as I think you recall from the

1 previous hearing I believe that the
2 ruling for the contempt had to do with
3 the issue of the transfer of the
4 Bahamian properties and how quickly
5 they were actually presented in terms
6 of to the beneficiary in the case.

7 THE COURT:

8 Uh-huh.

9 MR. COULTER:

10 All right. And, as I understand it, as
11 you may recall the first issue that we
12 had was whether or not Mr. Trippe had
13 failed to contact the people in the
14 Bahamas about having the title
15 transferred. And initially he did not
16 do that other than to provide a Deed of
17 Distribution to the beneficiary as it
18 was his belief that that was sufficient
19 in terms of his responsibility as the
20 PR. That was the initial delay in
21 actually having the transfer was his
22 belief that doing the Deed of
23 Distribution was sufficient. There was
24 a hearing on that, and Your Honor ruled
25 that that wasn't sufficient, and so

1 after that had happened he then took
2 the position to contact the attorneys
3 in the Bahamas, do what needed to be
4 done, or start moving towards that
5 direction, and lo and behold we find
6 out when we had the hearing for the
7 initial contempt is that the
8 Conservator had indicated that he had
9 not provided everything necessary to
10 actually make the transfer. So my
11 point, Judge, is that my client, Mr.
12 Trippe, first was delayed because of
13 his belief, mistaken belief, that the
14 Distribution Deed was sufficient; and,
15 secondly, that he didn't have all the
16 information necessary to transfer. And
17 The Court, despite that, held him in
18 contempt. And what I respectfully
19 point out to The Court is that -- and
20 I'm sure The Court is aware -- for
21 contempt it's a willful act for the
22 purposes of contempt. There's one done
23 voluntarily and intentionally with
24 specific intent to do something the law
25 forbids, or the specific intent to fail

JUDY COMP & ASSOCIATES, INC.

1 to do something the law requires to be
2 done, that's to say with bad purpose
3 either to disobey or disregard the law.
4 And so I guess my point being, Judge, I
5 don't believe the initial delay, based
6 on his belief that the Deed of
7 Distribution was sufficient is willful.
8 And the fact that the titles have not
9 transferred aren't completely his
10 responsibility or his fault because the
11 information necessary to transfer had
12 not yet been provided to him. So I
13 would argue to you, Judge, that's not
14 willful. And so my point is, I believe
15 everything he had done in regards to
16 this distribution was not willful, may
17 have been mistaken, but certainly not
18 willful. And I'm not even certain at
19 this point whether he has received
20 necessary information from the
21 Conservator, which he certainly did not
22 have, and was admitted on the stand at
23 the time of the previous contempt
24 hearing. So that's why we would ask
25 The Court to consider it because I

JUDY COMP & ASSOCIATES, INC.

1 don't believe Mr. Trippe has done
2 anything willful in the case. He is
3 trying to get the estate of his
4 deceased son closed. He is using money
5 out of his own pocket to try to get
6 that done, and now The Court has
7 ordered him to pay more money based on
8 a belief that he was acting willfully,
9 which I submit to you just wasn't the
10 case.

11 THE COURT:

12 Any other grounds that you are wanting
13 to bring forth on your --

14 MR. COULTER:

15 Your Honor, I think that's it.

16 THE COURT:

17 Okay.

18 MR. COULTER:

19 Thank you.

20 THE COURT:

21 Ms. Patterson.

22 MS. PATTERSON:

23 If it please The Court, Your Honor. We
24 have argued this point over, and over,
25 and over again, and to be very clear so

1 that everybody understands, this Court
2 provided ten letters prior to your
3 ruling in December requesting that the
4 Personal Representative provide a
5 recorded Deed of Distribution. The
6 December ruling was not -- did not come
7 out of left field. They knew, and they
8 were told over and over that we want a
9 recorded Deed of Distribution. This
10 Court provided it to him ten different
11 writings. So for them to say that it
12 was not willful, I'm not sure if I
13 understand that. Secondly, the
14 information that they requested that
15 the Conservator provide to the attorney
16 in the Bahamas was not required of my
17 Conservator until the end of the
18 probate process and was made very clear
19 to us. However, we provided that
20 information as soon as possible. When
21 we provided our information, which was
22 necessary to close the estate probate
23 in the Bahamas, the Personal
24 Representative still had not provided
25 theirs. In fact, you will see that in

1 their filing in their Motion to
2 Reconsider there is a letter from Mr.
3 Bannister's office to the attorney in
4 the Bahamas, and he is once again
5 saying, "Once I've been supplied all
6 the paperwork and support." That is
7 dated April 25th. The timeline here is
8 that you requested on December 21st
9 that the lots be transferred by
10 February 1st. We had no filing, no
11 information from the Personal
12 Representative. February 1st comes.
13 On February 7th we file with The Court,
14 another Rule to Show Cause. The
15 Bahamas attorney was not hired until
16 March of 2013, well after you had
17 requested that the Bahamas lots be
18 transferred. There was no movement.
19 We received no information. They made
20 absolutely no attempt. The hearing was
21 scheduled on the 24th, and then on the
22 25th there's an E-mail from Mr.
23 Bannister to the Bahamian attorney
24 asking for what is the length of the
25 process of the probate. That is in the

JUDY COMP & ASSOCIATES, INC.

1 record. At the same time we have
2 served discovery, which is not
3 answered, was not given to us prior to
4 the hearing so that we could bring
5 forth that evidence of what had
6 occurred between Bahamian counsel and
7 the Personal Representative. On April
8 29th then Mr. Bannister, after our
9 hearing, filed a Motion for an
10 extension based on the information
11 after retaining counsel in the Bahamas.
12 So from the time of your Order to
13 February 1st when you asked them to
14 have this completed, we have no
15 evidence that anything was done until
16 we filed our Rule. We feel like your
17 Order fully satisfies what we're asking
18 for, which is either our lots, or the
19 value of our lots, which we have waited
20 for for a year and a half now after our
21 settlement agreement, and we would like
22 this Court to grant us the attorney's
23 fees, which we do feel meet the Baron
24 standard of reasonableness, and that
25 there is no rule that they have to be

JUDY COMP & ASSOCIATES, INC.

1 set out in a Court Order, and we would
2 like The Court to Order a postjudgment
3 interest.

4 THE COURT:

5 Is that not in the Order?

6 MS. PATTERSON:

7 It is, Your Honor.

8 THE COURT:

9 Okay. All right. Okay. Mr.
10 Bannister, are you still representing
11 James, IV? That's what I've got in my
12 file. It seems like you're doing a lot
13 of estate work on the side, but I've
14 got you down as James, IV.

15 MR. BANNISTER:

16 All right.

17 THE COURT:

18 And that's how I've got the court
19 records have you down as attorney for
20 James, IV, which I think -- is that the
21 brother of Katelin?

22 MS. PATTERSON:

23 That's Katelin's brother.

24 THE COURT:

25 Okay. Okay.

1 MR. BANNISTER:

2 Your Honor, as I have stated before I
3 have represented Mr. Trippe, who is the
4 Personal Representative for a lot of
5 stuff prior to the death of his son,
6 who I also represented, so I am trying
7 to help Mr. Trippe, who is the Personal
8 Representative get the estate closed.

9 THE COURT:

10 Well, tell me this, and maybe I'm
11 missing something. You've been
12 practicing law a long time, but maybe
13 I'm missing it. I know we had this
14 issue come up before about having a
15 conflict, and I issued an Order, and I
16 said, you know, Mr. Coulter is going to
17 do the estate. Mr. Bannister has got
18 -- you know, he's representing other
19 members of the family. But yet, I get
20 Motions that I just discovered are
21 signed by you as attorney for him as
22 PR, and obviously you're helping out
23 when there's an obvious conflict of
24 interest. What am I missing?

25 MR. BANNISTER:

1 There's no conflict of interest between
2 Mr. Trippe, who is the Personal
3 Representative, and his son.

4 THE COURT:

5 But Katelin. Katelin --

6 MR. BANNISTER:

7 I don't represent Katelin.

8 THE COURT:

9 No. But Katelin is an heir to this
10 estate, and the Personal Representative
11 is not supposed to do anything that
12 would diminish her inheritance or delay
13 her inheritance. He is supposed to be
14 trying to find out ways to maximize her
15 inheritance, and, instead, he's delayed
16 it over the course of this thing.
17 There was a Deed of Distribution he
18 filed, as I recall, giving shares to
19 Paul, and Paul wasn't even an heir.
20 He's gotten into a -- there was a
21 dispute about what went to James, IV
22 and Katelin, which is a clear
23 violation, I mean, or conflict right
24 there. Katelin has a right to have a
25 PR who is looking out to maximize her

1 interest and her inheritance, and not
2 see how you can get out of doing it, or
3 delay it, or increase all these fees.
4 She's a child, and was a child of this
5 decedent, and I understand, I think, as
6 I recall, I think there's something in
7 here you may have represented the
8 deceased against her mother in a
9 divorce, and maybe there's ill will
10 against the mother, and Katelin's
11 having to pay the price. I don't know.
12 But this child needs her inheritance,
13 and there's no way that all of this is
14 complying with the fiduciary duty that
15 a Personal Representative has in
16 probate law to maximize the assets,
17 maximize the inheritance, keep the
18 overhead low, and do it in a timely
19 fashion. It's just -- it's always been
20 like this the whole way, and it's -- I
21 don't understand it, and I don't
22 understand how you can't see how Mr.
23 Trippe, Jr. has taken an adversarial
24 position against Katelin, it seems.
25 MR. BANNISTER:

JUDY COMP & ASSOCIATES, INC.

1 Well, Judge, let me -- what you're
2 asking me about --

3 THE COURT:

4 I mean, I don't get it.

5 MR. BANNISTER:

6 Okay. There was an agreement made that
7 Judge Sauvain approved. Part of that
8 agreement was is that they would
9 transfer these lots in the Bahamas.
10 That was part of the settlement
11 agreement.

12 THE COURT:

13 Yes. That was in April, I think, of
14 2012.

15 MR. BANNISTER:

16 Correct. And there were other things
17 that had to be transferred.

18 THE COURT:

19 Right.

20 MR. BANNISTER:

21 Those are just administerial things,
22 Judge, for lack of a better word
23 "getting it done." For example, the
24 transfer of the vehicle. You've got to
25 get the title. The title has to be

1 executed. It has to be sent over. The
2 car has to be delivered.

3 THE COURT:

4 Right. But the --

5 MR. BANNISTER:

6 There's no conflict there to see to
7 tell Mr. Trippe, "Mr. Trippe, get the
8 title. Sign it. Here is where you
9 sign it."

10 THE COURT:

11 But didn't they have to file a contempt
12 action right after that and had to come
13 back here to make him give a payment to
14 Katelin that he agreed to pay?

15 MR. BANNISTER:

16 They did. And --

17 THE COURT:

18 And transfer Styles property that he
19 agreed to do.

20 MR. BANNISTER:

21 And there were funds that they had to
22 pay the estate.

23 THE COURT:

24 That he agreed to pay.

25 MR. BANNISTER:

JUDY COMP & ASSOCIATES, INC.

1 That's right. He had to borrow the
2 money.

3 THE COURT:

4 Well, he should have known that before
5 he agreed to it.

6 MR. BANNISTER:

7 He did. He just didn't know how
8 difficult it was going to be to borrow
9 the money.

10 THE COURT:

11 Well, he should have known that.

12 MR. BANNISTER:

13 Well --

14 THE COURT:

15 It was a Court Order.

16 MR. BANNISTER:

17 If -- if --

18 THE COURT:

19 So a child who is relying on that
20 agreement had to spend money on have a
21 Conservator to force him to come in to
22 pay what he said he would pay in an
23 agreement and what The Court said he
24 would pay. How is that in her
25 interest?

1 MR. BANNISTER:

2 Well, you make an assumption that I
3 maybe don't actually agree with you. I
4 do not believe Mr. Trippe was aware of
5 how difficult it was going to be to
6 borrow the money.

7 THE COURT:

8 He had a duty to be aware. Whether or
9 not he was is irrelevant.

10 MR. BANNISTER:

11 Well, Judge --

12 THE COURT:

13 He is the fiduciary, and he had
14 lawyers, and he's supposed to know what
15 he's doing. He signed on to this.

16 MR. BANNISTER:

17 When you borrow money from a third
18 party, you are dealing with somebody
19 who is outside of Mr. Trippe's ability
20 to control. All during the process of
21 borrowing the money for Mr. Trippe's
22 sake we tried to keep the Conservator
23 in the loop as to how difficult it was
24 being and what the timing was. Finally
25 it got done, and the money was paid.

1 THE COURT:

2 But he didn't even transfer the real
3 estate though. The Styles property.
4 Forget the Bahamas. He didn't even do
5 that.

6 MR. BANNISTER:

7 Yes, he did.

8 THE COURT:

9 After the contempt action he did.

10 MR. BANNISTER:

11 Well, that's been done. That's --

12 THE COURT:

13 But my point to you is you said, "I
14 don't see how there's a conflict." He
15 has a fiduciary duty to make sure that
16 Katelin gets what's supposed to be
17 hers. There was an agreement. He's
18 not supposed to be coming up with
19 excuses. Okay, so he can't get the
20 money. He can do the transfer of the
21 Styles property. You know, there's no
22 reason for -- he is supposed to be
23 anxious for her to get her share, not
24 trying to delay it. So that was a
25 contempt action number one. And then

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1 -- I don't know how many there have
2 been. I know that the last one was
3 two. There may be more. I don't know.

4 MR. BANNISTER:

5 Judge, how would it be a conflict for
6 me to assist Mr. Trippe in
7 accomplishing what The Court has
8 ordered him to do?

9 THE COURT:

10 Because -- it is a conflict, Mr.
11 Bannister, because Katelin is a
12 beneficiary of this estate, and she has
13 a right to have a Personal
14 Representative protect her interests
15 and not use information that he may
16 have against her. And if you're
17 representing him, and you've
18 represented his son, the decedent's
19 son, who is obviously not the son of
20 Katelin's mother, who has a
21 distribution which was contested;
22 you've also represented Paul, who Mr.
23 Coulter's office filed the Deed of
24 Distribution trying to get him 500
25 shares of J.A.T., and he's not even an

1 heir to this estate. I don't know what
2 information you may have known from the
3 divorce that may have given you special
4 knowledge, but none of that -- none of
5 the times have you-all been here have
6 you-all said or we ended this with
7 "Let's get Katelin -- what can we do
8 for Katelin today as her PR?" That's
9 never been the attitude. It's always
10 been, "We can't do this. We can't do
11 that. They want this, but we can't do
12 that. He didn't know he was supposed
13 to do that. I know he agreed to it,
14 but he didn't know, he didn't
15 understand." All that, and here we
16 are, what is this, 2013, four years
17 later.

18 MR. BANNISTER:

19 Judge, I was not involved with anybody
20 at the time that the original
21 distribution of stock to Paul was made.
22 I was not involved in that.

23 THE COURT:

24 Well, there are Notices in here that
25 were sent to you as his attorney.

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1 MR. BANNISTER:

2 For distribution?

3 THE COURT:

4 For Notices, Certificates of Service,
5 and such as that.

6 MR. BANNISTER:

7 I don't believe I got involved until
8 after that had taken place.

9 THE COURT:

10 Okay. So you've never represented Paul
11 then?

12 MR. BANNISTER:

13 I didn't say that.

14 THE COURT:

15 Okay.

16 MR. BANNISTER:

17 What I said was at the time that you
18 cited there was some stock transferred
19 to Paul I was not involved.

20 THE COURT:

21 Well, that came from Mr. Coulter's
22 office.

23 MR. BANNISTER:

24 Well, I know that. That's through Mr.
25 Coulter's place, not mine.

1 THE COURT:

2 Right. But I'm just saying you've
3 represented the PR's brother. You've
4 represented the PR's other biological
5 son -- I mean, the decedent's
6 biological son who has an interest
7 adverse to Katelin. You've represented
8 the decedent in a divorce against
9 Katelin's mother. And I've already
10 made a finding in some Order that I
11 found there was a conflict, so -- but
12 yet, you're still involved. So I guess
13 -- I don't know if Mr. Coulter -- I've
14 gotten -- I don't know. Every document
15 it's like musical chairs here, and I
16 don't know if you-all are trying to
17 game it, or what are you-all trying to
18 do with this thing. We just need to
19 get this estate closed, property
20 transferred, money paid, and I'm just
21 really confused on if this is a
22 strategy or what, because it just
23 doesn't make sense to me. I was just
24 looking at it today. We have given you
25 guys 17 extensions, 17, and you've

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1 missed 21 deadlines since this thing
2 was opened. And one of the
3 continuances that we had was because
4 Mr. Coulter didn't show up one day,
5 and, you know, you tried to help him
6 out, and take it over, and I wouldn't
7 let you because I said you've got a
8 conflict. How is that being a good
9 fiduciary for this child? It's
10 ridiculous.

11 MR. BANNISTER:

12 Judge, I wish there was some way to
13 wave a magic wand and get an ancillary
14 proceeding in the Bahamas to register
15 these deeds in the Conservator's name
16 for Katelin, but I will be honest with
17 you, I don't know any way to do it or
18 to assist anybody else to do it.

19 THE COURT:

20 Pay her \$25,000. That's the other
21 option. That's what your guy said
22 those lots were worth. Pay her. Let
23 him worry about the transfer, and I
24 won't be involved with that. He won't
25 have to answer to me. It will -- it

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1 will be whoever else gets it.

2 MR. BANNISTER:

3 Well, Your Honor, that's not my
4 decision to make. It's not mine.

5 THE COURT:

6 Well, it's a Court Order. I mean, and
7 I know you're going to appeal it, but,
8 I mean, the Order said do it, I gave
9 him till July, or pay her the value of
10 that, of her inheritance, and then your
11 client, or whoever is going to get this
12 property, they can work that out after
13 we close the estate, and, you know --

14 MR. BANNISTER:

15 Judge, I believe the agreement that was
16 worked out was that she would get these
17 two lots. That's the Court Order
18 that's present now. That he was to
19 transfer these two lots. Well, I take
20 that back. He was to transfer the lots
21 to the Guardian, which he tried to do,
22 if you recall. He gave a Deed of
23 Distribution and said, "Okay." There
24 was never an argument that what had to
25 be done. It was a question of who was

1 going to have to do it. He didn't
2 think he was the one who was going to
3 have to do it, but you ruled in
4 December that he had to do it, and you
5 told him to do it by February.

6 THE COURT:

7 It's basic probate. And I mean, he
8 entered into this agreement in March of
9 2012. He didn't hire a lawyer to do
10 anything about this transfer till March
11 of 2013.

12 MR. BANNISTER:

13 That is because, Judge, he did not --
14 once the Deed of Distribution was sent
15 he thought he had complied with the
16 agreement made by --

17 THE COURT:

18 Mr. Bannister, people come in here all
19 the time thinking they know the law.
20 Thinking, "Oh, well I thought I did."
21 If I took that every time, I never
22 would close an estate. He has a duty
23 when he signed on to know what the law
24 is. He can't just agree to do
25 something and then come in later,

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1 "Well, I thought the law was this," or
2 "I thought I could do that." He has to
3 do his due diligence, and to say that
4 now, I ruled on that a long time ago.
5 He should have known that when he
6 entered into the agreement. He had
7 from March of 2012 to -- okay. We've
8 got to transfer this property. Okay.
9 That's probate. We've got to do an
10 ancillary proceeding in the Bahamas.
11 We've got to make sure the property
12 gets transferred in the Bahamas. He
13 could have had that done, you know.
14 That would have been a year till March
15 the 3rd of 2013, but he never did, and
16 we kept having extensions after
17 extensions. We had one Mr. Coulter
18 would rise and say, "Well, we're just
19 having a time -- if you'll just give us
20 90 more days, we will have this
21 finished." And that was one of his
22 requests. I've got a letter in my
23 file, "Ninety days we will have this
24 wrapped up, and we'll have the property
25 done." That went by, came and went.

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1 The next time we've got several more.
2 "Yeah, we're going to get this wrapped
3 up. We think we've got it done." And
4 then the next thing I'm seeing is a
5 contempt. I don't -- I don't get it.
6 It doesn't make sense. Good lawyers
7 don't practice that way. I don't get
8 it, Bill. I mean I just don't get it.

9 MR. BANNISTER:

10 Well, just make allowances for us being
11 bad lawyers, but, Judge, I will tell --

12 THE COURT:

13 No, you're not bad lawyers. That's why
14 I don't understand.

15 MR. BANNISTER:

16 I will tell you I have done all I can
17 do to get the lawyer in the Bahamas to
18 get on the stick and get this done,
19 including have Mr. Trippe pay him.
20 I've harassed him. And as a matter of
21 fact, every communication I've had with
22 him I've tried to keep Ms. Patterson
23 aware of what was going on as -- as
24 well as I think I sent them to you.

25 THE COURT:

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1 It's just a very curious estate. It is
2 an estate that is -- it had -- it is an
3 epic failure in estate administration
4 is what it is. And I've got attorneys
5 with conflicts of interest who still
6 keep working on the estate for I can't
7 understand why. I've got a person who
8 entered into an agreement, made perfect
9 sense, March of 2012. April it was
10 approved by The Court. He didn't hire
11 a lawyer to do that till March of 2013.
12 So I gave him till July to do this
13 transfer, and then that didn't happen.
14 Had another contempt. So I would say,
15 "Okay. You either do it, or you pay
16 her the \$25,000. You get to keep your
17 lots. This child gets her \$25,000."
18 But we keep coming back to the lots,
19 the lots, the lots. Just pay her. And
20 if it's going to be -- you know, I just
21 don't understand why this estate has
22 taken such a horrible turn and used up
23 so much of my time, and your time,
24 Patterson's time, Gene's time, Mr.
25 Coulter's time for a simple matter. I

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1 do estates more complicated than this
2 all the time. I have property that's
3 in Japan and all these other places.
4 Lawyers seem to do ancillary estates.
5 They are not a problem. And so I don't
6 get this. Surely you-all don't have an
7 animus against a child. She is a
8 child. Surely this isn't a
9 continuation of a divorce bad feeling -

10 MR. BANNISTER:

11 I can assure --

12 THE COURT:

13 -- coming from your PR because none of
14 this makes sense to me.

15 MR. BANNISTER:

16 Well, I can assure you, Judge, that he
17 does not have -- Mr. Trippe has no
18 animus toward his granddaughter. None.

19 THE COURT:

20 Well, the way he's handling this estate
21 is not helping that child and is
22 causing her to not get the benefit of
23 her inheritance, and is causing her
24 Conservator to rack up fees for no good
25 reason, no good reason. I mean, I just

1 -- I did everything I could to try to
2 come have -- and not have Mr. Trippe go
3 to jail. He's been -- like I said, I
4 don't remember how many contempts, but
5 I have tried to be as understanding as
6 I know how to be because it seems to me
7 that reasonable people should be able
8 to handle this, but it just seems like
9 he is just wanting to push the envelope
10 and doesn't think the horns will hook.

11 MR. BANNISTER:

12 Judge, he has had absolutely no input
13 -- I mean, I'll represent to you he has
14 had absolutely no input in dealing with
15 the lawyer in the Bahamas other than to
16 pay everything I've told him to pay
17 him.

18 THE COURT:

19 Well --

20 MR. BANNISTER:

21 And I have been the contact with that,
22 and I just -- I mean, I can't really --

23 THE COURT:

24 Well, if you think I'm going to let a
25 Bahamas lawyer keep that child from

1 getting her inheritance, you are sorely
2 mistaken.

3 MR. BANNISTER:

4 Judge, the Bahamas lawyer, as far as I
5 know, is working as hard as anybody to
6 get the ancillary estate filed and get
7 the lots deeded to her.

8 THE COURT:

9 I'm sure he's working on it every day
10 first thing every day.

11 MR. BANNISTER:

12 I don't understand why it takes so long
13 either, and I have asked, "What does it
14 take?" And I attached his E-mail in
15 response back.

16 THE COURT:

17 Well, but for the fact that your client
18 hadn't done such a -- he's done such a
19 horrible job in his estate
20 administration, as I said, I've got 21
21 missed deadlines and about 17
22 extensions, and I've even got a Motion
23 from you right now wanting another
24 extension.

25 MR. BANNISTER:

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1 Based on what the attorney tells me,
2 Judge. That's all I can do.

3 THE COURT:

4 \$25,000, and that problem is cured.
5 And that is, you know, that is part of
6 the Order that's in effect right now,
7 which we are here to reconsider. But I
8 had to just get that off my chest. I
9 mean, I read through this thing this
10 afternoon, and it is just abysmal the
11 way this thing has been handled.
12 Anything else?

13 MR. BANNISTER:

14 I don't believe the Motion stated it
15 all, Judge, but --

16 THE COURT:

17 Well, the Motion, I think, Mr. Coulter,
18 you had in there, since you wrote the
19 Motion, even though Mr. Coulter should
20 have, I don't know who is getting --
21 well, about her fees. You don't think
22 her fees were -- met the standards in
23 the Order. What was it -- you believe
24 that her fees weren't justified or
25 didn't go down through all the factors

1 in the last Order, and I have not -- I
2 mean, I've read over the last Order,
3 and it just said that she's entitled to
4 fees from Mr. Trippe. Are you still,
5 Mr. Coulter, are you wanting to pursue
6 that?

7 MR. COULTER:

8 I agree with Mr. Bannister that
9 everything we wanted to pursue was just
10 contained in the Memorandum.

11 THE COURT:

12 All right. Ms. Patterson, have you got
13 a Fee Affidavit?

14 MS. PATTERSON:

15 Your Honor, I have engaged a separate
16 counsel to review all my time on this
17 matter on the several contempt actions
18 to provide to this Court the
19 reasonableness of my fees. He hasn't
20 had time to review that. We'll submit
21 it next week.

22 THE COURT:

23 All right. And I think the last time
24 you were here did you get examined
25 about your fees?

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1 MS. PATTERSON:

2 I believe I did.

3 THE COURT:

4 Didn't they ask you --

5 MS. PATTERSON:

6 Yes. Yes, Your Honor.

7 THE COURT:

8 Weren't you sitting up here? Mr.

9 Bannister went through your time sheets
10 and why was this, and why was that?

11 MS. PATTERSON:

12 Yes, Your Honor, and I think you made a
13 ruling thereafter, but out of an
14 abundance of caution, which is what
15 I've had to do in this case over and
16 over again, I have engaged counsel to
17 review it all and provide to this Court
18 an Affidavit of separate counsel as to
19 the reasonableness.

20 THE COURT:

21 Well, once I receive that, if you'll
22 copy opposing counsel with it. What I
23 may do, I may have you amend the Order
24 just to include a separate section on
25 the fees, and once I get your -- once I

1 get your Fee Affidavit I will send you
2 and opposing counsel an E-mail on what
3 I want you to do as far as amending the
4 Order, if anything.

5 MS. PATTERSON:

6 Yes, Your Honor. Just so the record is
7 clear, I -- I am as well confused about
8 whether or not this Motion is a true
9 Motion because it's signed by a
10 beneficiary who is not a real party in
11 interest to the action because the
12 action was the Conservator against the
13 Personal Representative to close this
14 estate. The James, IV was never a
15 named party, however, Mr. Bannister
16 showed up at every hearing, but never
17 -- never filed to be a party to this
18 action. So, just for the record, to
19 make it clear, I don't think he has
20 standing. I don't think he's a real
21 party interest. He did not follow Rule
22 24. I feel like this is a Rule 11
23 frivolous action, and we're asking The
24 Court, again, for our fees, and we
25 would like our fees to stop, we really

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1 would, because we would like this to
2 come to an end, and we would like the
3 25,000, and we would like postjudgment
4 interest.

5 THE COURT:

6 Mr. Coulter?

7 MR. COULTER:

8 Just final, Judge. If The Court would
9 like me to sign that Motion, I would be
10 happy to do that, one. Two, and I
11 understand The Court's position on
12 this, but we would just like to note
13 for the record, with all due respect,
14 we would object to the admission of any
15 additional evidence regarding fees at
16 this time since all evidence was
17 presented during the last hearing, but
18 I just want to make that note.

19 MS. PATTERSON:

20 Your Honor, we will have additional
21 fees for this hearing.

22 MR. COULTER:

23 I'm sorry. I was just referring to an
24 Affidavit by another attorney talking
25 about the reasonableness of the fees.

1 That's what I was referring to as far
2 as additional evidence and objection
3 to. Thank you.

4 THE COURT:

5 Okay. All right. Well, the Motion to
6 Reconsider is denied. It's denied,
7 first of all, because it wasn't filed
8 by the estate attorney. Second of all,
9 even if it were filed by the estate's
10 attorney, for the reasons I've already
11 discussed I find that the Order as
12 issued should stand. Ms. Patterson has
13 asked for fees for today's hearing.
14 I'm going to hold that in abeyance
15 until I get her Affidavit fees, and
16 I'll make a ruling on that when I get
17 it. And, counsel, if you have any
18 objection to her fees, send me
19 something, and let me know why you
20 object, and I'll make a ruling on that
21 on the Pleadings. Okay.

22 **(HEARING ADJOURNED)**

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF GREENVILLE)

4 I, DONNA B. FRIDDLE, a Notary Public, duly
5 commissioned and qualified in and for the
6 State of South Carolina, do hereby certify
7 that the Probate Court hearing was taken
8 before me on August 21, 2013, commencing at
9 4:06 p.m., and concluding at 4:40 p.m.; that
10 said hearing was transcribed under my
11 direction; and that this transcript is a
12 true record of said proceedings. I further
13 certify that I am not of kin or counsel to
14 the parties in this case, am not in the
15 regular employ of counsel for any of said
16 parties, nor am I interested in the results
17 of this case.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my official seal this
20 _____ day of _____, 2013.

21

22 Notary Public for South Carolina

23 My Commission Expires: 01/30/16

JUDY COMP & ASSOCIATES, INC.

1 STATE OF SOUTH CAROLINA)
2) IN THE PROBATE COURT
3 COUNTY OF GREENVILLE) **COPY**
4 IN THE MATTER OF:

5 JAMES A. TRIPPE, III, Deceased

6 CASE NUMBER:

7 2009ES2300707.

8 GENE MORIN as Conservator for Katelin Trippe,
9 Petitioner.

10 JAMES A. TRIPPE, JR., JAMES A. TRIPPE, IV,
11 Respondents.

12 - - - - -
13 Probate hearing taken in the aforementioned
14 matter was heard before the Honorable Judge
15 Debora A. Faulkner, taken before Rachel H.
16 Wood, Court Reporter and Notary Public, at
17 Probate Court, Greenville County Square, 301
18 University Ridge, Greenville, South
19 Carolina, on the 18th day of March, 2014,
20 commencing at the hour of 4:03 o'clock, p.m.

21 - - - - -

JUDY COMP & ASSOCIATES, INC.

1 APPEARANCES:
2 JACQUELINE PATTERSON, Esquire
3 NATHANIEL C. FARMER, Esquire
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8 O. W. BANNISTER, Esquire
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14 Trippe, IV.
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18 Post Office Box 6728 (29606)
19 Greenville, South Carolina 29607
20 Attorney for Respondent James A.
21 Trippe, Jr.
22 - - - - -

JUDY COMP & ASSOCIATES, INC.

1	INDEX OF EXAMINATION	
2		PAGE
3	TESTIMONY OF GENE MORIN	
4	DIRECT EXAMINATION: BY MS. PATTERSON	7
5	TESTIMONY OF JAMES A. TRIPPE, JR.	
6	DIRECT EXAMINATION: BY MS. PATTERSON	11
7	CROSS-EXAMINATION: BY MR. BANNISTER	13

8	- - - - -	
9	INDEX OF EXHIBITS	
10		PAGE

11 THERE WERE NO EXHIBITS INTRODUCED.

12 - - - - -

13 (In the following transcript, a dash [--]
 14 is used to indicate an unintentional or
 15 purposeful interruption in a sentence, or to
 16 indicate halting speech or an unfinished
 17 sentence in dialogue.)

18 - - - - -

JUDY COMP & ASSOCIATES, INC.

1 THE COURT: Please be seated. All
2 right. We are here today in the
3 estate of James A. Trippe, III,
4 deceased. Estate file number 09-
5 707. The matter is before The
6 Court today on a Rule to Show Cause
7 which was filed by the Petitioner
8 in this case, Mr. Gene Morin,
9 Conservator for Katelin Trippe.
10 Mr. Morin is here represented by
11 Jackie Patterson. James Trippe,
12 Jr., individually and as PR of the
13 estate, he's present represented by
14 Mr. Bannister. Mr. Coulter is here
15 for the estate and also James A.
16 Trippe, III. Ms. Patterson.
17 MS. PATTERSON: James, III is the
18 decedent, Your Honor.
19 THE COURT: He's listed as a
20 Respondent. The estate of James A.
21 Trippe, III.
22 MS. PATTERSON: Right. And James,
23 IV would be the son.
24 THE COURT: The son. Okay.
25 MS. PATTERSON: Of the decedent.

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1 Also present today is Katelin
2 Trippe, the daughter of the
3 decedent.

4 THE COURT: Okay. And how old is
5 Katelin?

6 MS. TRIPPE: Sixteen.

7 THE COURT: Sixteen.

8 MS. PATTERSON: And her guardian
9 is here present as well, Mr. Ross.

10 THE COURT: All right. What are
11 the issues today, Ms. Patterson?

12 MS. PATTERSON: Your Honor, we're
13 before The Court again
14 unfortunately on another Rule to
15 Show Cause for failure to pay
16 \$50,000 that was due on December
17 31st of 2013 to the Conservator for
18 Katelin Smith. A Verified Petition
19 has been filed with this Court, and
20 we're seeking a Rule to Show Cause
21 in the contempt of the Personal
22 Representative, both individually
23 and as the Personal Representative
24 of the estate. There's a
25 complication here, Your Honor, in

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1 that JAT, Inc. also signed the
2 settlement agreement agreeing to
3 pay this 50,000, and JAT, Inc. is
4 an estate asset as filed with the
5 Bankruptcy Court. They have filed
6 bankruptcy. So we filed our
7 initial petition requesting that
8 JAT, Inc., the Personal
9 Representative, and Mr. Trippe,
10 Jr., individually, and Jamie, IV,
11 all parties that agreed to make
12 this payment under the settlement
13 agreement be brought in under this
14 Rule to Show Cause. We then
15 amended after we were -- received
16 the automatic stay under the
17 Bankruptcy Court. A little
18 confusing for us is that under the
19 documents filed with this Court,
20 JAT, Inc. has been distributed out
21 to Jamie who is the IV, the son.
22 But under the Bankruptcy Court
23 documents they are claiming it is
24 still an estate asset. So we are
25 here to ask this Court's

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1 determination for contempt against
2 Mr. Trippe, Jr., Mr. Trippe, IV,
3 and the estate, the Personal
4 Representative on behalf of the
5 estate.

6 THE COURT: Okay. All right. Any
7 of the issues settled? None?

8 MS. PATTERSON: No, Your Honor.

9 THE COURT: All right. I will
10 call Mr. Morin. Mr. Morin.

11 GENE MORIN,

12 being first duly sworn/affirmed, was
13 examined and testified as follows:

14 THE COURT: Thank you, sir.

15 Please have a seat. All right, Ms.
16 Patterson.

17 DIRECT EXAMINATION

18 BY MS. PATTERSON:

19 Q. State your full name, please.

20 A. Gene Douglas Morin.

21 Q. And what is your capacity today, sir?

22 A. I am the Conservator for Katelin
23 Trippe, minor.

24 Q. In the matter of James A. Trippe, III?

25 A. That's correct.

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- 1 Q. Did you file a Verified Petition with
2 this Court recently?
- 3 A. Yes, I did.
- 4 Q. Okay. And that was on February 26th of
5 this year; correct?
- 6 A. That's correct.
- 7 Q. What are you seeking?
- 8 A. We're seeking to get compliance with
9 the terms of the settlement that we
10 have.
- 11 Q. Okay. And more specifically are you
12 seeking the payment of an additional
13 \$50,000, the settlement payment?
- 14 A. That's correct. That was due on
15 December 31st, 2013.
- 16 Q. Okay. And is that pursuant to a
17 settlement agreement?
- 18 A. Yes, it was.
- 19 Q. Okay. And was that settlement
20 agreement approved by this Court?
- 21 A. It was.
- 22 Q. And made an Order of this Court?
- 23 A. Yes.
- 24 Q. And you have not received this payment?
- 25 A. I have not.

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- 1 Q. Okay. Have you had any communication
2 from the estate regarding nonpayment?
3 A. I have not.
4 Q. Any communication from Mr. Trippe, Jr.
5 individually?
6 A. No, not from Mr. Trippe, Jr.
7 Q. Have you had any communication from
8 Jamie, which would be James Trippe, IV
9 regarding --
10 A. The payment on the settlement?
11 Q. Yes.
12 A. I have not.
13 Q. Okay. Do you know any reason why this
14 payment has not been made?
15 A. Nobody has said anything to me about
16 it.
17 Q. Okay. And are there any conditions
18 that must be met for this payment to be
19 made?
20 A. There are none.
21 Q. Okay. And are you seeking this Court
22 to find the Respondents in contempt?
23 A. Yes, I am.
24 Q. Okay. And are you seeking to recover
25 your attorney's fees for this Action?

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1 A. Yes, I am.

2 Q. Okay.

3 MS. PATTERSON: No further
4 questions, Your Honor.

5 THE COURT: Mr. Coulter?

6 MR. COULTER: I don't have any
7 questions, Judge.

8 MR. BANNISTER: I don't have any
9 questions.

10 THE COURT: All right. Anything
11 further?

12 MS. PATTERSON: That's it.

13 THE COURT: Okay. Any other
14 witnesses?

15 MS. PATTERSON: No, Your Honor.

16 THE COURT: Fee affidavit?

17 MS. PATTERSON: So, Your Honor, I
18 would like to call the Personal
19 Representative if I may.

20 THE COURT: Okay. All right. Mr.
21 Trippe.

22 JAMES A. TRIPPE, JR.,
23 being first duly sworn/affirmed, was
24 examined and testified as follows:

25 THE COURT: Thank you, sir.

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1 Please have a seat. Okay. All
2 right, Ms. Patterson.

3 **DIRECT EXAMINATION**

4 **BY MS. PATTERSON:**

5 Q. Can you state your full name, please.

6 A. James A. Trippe, Jr.

7 Q. And, Mr. Trippe, are you currently the
8 Personal Representative for the estate
9 of James A. Trippe, III?

10 A. I think so. I asked to be relieved,
11 but I don't whether I have or not. I
12 don't know.

13 Q. Have you received a Court Order
14 relieving you of that capacity?

15 A. No. No.

16 Q. And you're here represented by whom
17 today, sir?

18 A. By Mike -- Mr. Coulter, Mike Coulter.

19 Q. Okay. And under the settlement
20 agreement that you entered into with
21 the Conservator, Mr. Morin, you're
22 aware that you were to make certain
23 payments, and one of which was \$50,000
24 by December 31st; is that correct?

25 A. I understand JAT is supposed to make

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1 the payment, yes.

2 Q. Okay. A payment was to be made by

3 December 31st; correct, Sir?

4 A. By JAT, yes.

5 Q. Okay. Is there any reason that payment

6 was not made?

7 A. They didn't have the money.

8 Q. And do you have the money to make that

9 payment, sir?

10 A. No, I do not.

11 Q. You don't have the money. And have you

12 incurred any -- recently incurred any

13 debt, sir?

14 A. For JAT?

15 Q. No, individually, sir.

16 A. Individually, yes.

17 Q. Okay. And what debt have you recently

18 incurred?

19 A. I -- on -- on my house.

20 Q. Okay.

21 A. And a debt on a credit card thing that

22 where I was letting JAT use it to pay

23 some bills.

24 Q. So the debt on your house prior to

25 March 20 -- March 18 of this year you

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1 had no debt on your house; is that
2 correct?

3 A. Prior to that I didn't have any.

4 Q. Okay. And as of March 18; isn't that
5 today?

6 A. Yeah, it is.

7 Q. March 18, today, you have encumbered
8 your house for 150,000; is that
9 correct, sir?

10 A. That's correct.

11 Q. Okay.

12 MS. PATTERSON: No further
13 questions. Thank you.

14 THE COURT: Mr. Coulter?

15 MR. COULTER: No questions.

16 THE COURT: Mr. Bannister?

17 **CROSS-EXAMINATION**

18 **BY MR. BANNISTER:**

19 Q. Mr. Trippe, JAT is now in bankruptcy;
20 is that correct?

21 A. That's correct, yes.

22 Q. There was previously a payment made on
23 a loan, I think it was \$175,000. Do
24 you recall that?

25 A. Yes.

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- 1 Q. Are you personally obligated on that
2 loan?
- 3 A. Yes.
- 4 Q. All right. Now I believe you are
5 married? Are you married?
- 6 A. Yes.
- 7 Q. And the real property that you own is
8 in a trust?
- 9 A. Yes.
- 10 Q. For you and your wife; is that correct?
- 11 A. That's correct. Correct.
- 12 Q. Do you have any other interest in any
13 land anywhere?
- 14 A. No.
- 15 Q. Do you have any retirement funds other
16 than your Social Security?
- 17 A. No.
- 18 Q. Do you own any stocks, bonds --
- 19 A. No.
- 20 Q. -- or investment accounts?
- 21 A. No.
- 22 Q. Do you have any pensions?
- 23 A. No.
- 24 Q. To your knowledge --
- 25 A. Social Security is all.

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- 1 Q. To your knowledge does your wife own
2 any other property?
- 3 A. No.
- 4 Q. Does she have any retirement funds
5 other than Social Security?
- 6 A. Social Security is all.
- 7 Q. Does she have any other property of
8 value of any kind other than her
9 interest --
- 10 A. No.
- 11 Q. -- or being a beneficiary of this
12 trust?
- 13 A. No.
- 14 Q. Do you have the means to pay \$50,000 to
15 your granddaughter, Katelin Trippe?
- 16 A. No.
- 17 Q. You testified that JAT was to make the
18 payments on the debt to Katelin Trippe,
19 and I believe that was for her one-half
20 interest in that asset; is that your
21 understanding?
- 22 A. Yes.
- 23 Q. And that asset is now of course now
24 controlled by the Bankruptcy Court?
- 25 A. That's -- that's correct.

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1 MR. BANNISTER: That's all the
2 questions I have.

3 THE COURT: Any redirect?

4 MS. PATTERSON: No, Your Honor.
5 At this time I would like to hand
6 up our attorney fee affidavit.

7 THE COURT: Okay. No more
8 questions?

9 MS. PATTERSON: No.

10 THE COURT: Okay. Thank you. Mr.
11 Coulter, Mr. Bannister, you may
12 call your first witness.

13 MR. BANNISTER: Your Honor, I'm
14 going to ask at this time that I be
15 relieved of representing James A.
16 Trippe, III. On February the 24th
17 he retrieved his files from my
18 office. I have a letter picked up
19 by Sandy Stern. I called Mr.
20 Stern, and I have not received any
21 notice from Mr. Stern that he is
22 representing the IV. Nor have I
23 been able to communicate with James
24 A. Trippe, IV. So noncommunication
25 and the fact that he has picked up

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1 his file, I would ask to be
2 relieved from further
3 representation of him.

4 THE COURT: Have you got a Motion
5 where you've served him?

6 MR. BANNISTER: I don't have a
7 Motion that I served him. I'm
8 asking The Court today, and I'm
9 making my Motion now for
10 noncommunication that I be
11 relieved.

12 THE COURT: Denied.

13 MR. BANNISTER: Okay. Could I
14 make that a part of the record?

15 THE COURT: Yes. I believe the
16 reason I'm doing that is because he
17 has to be served and noticed, and
18 also the other parties to this
19 lawsuit need notice as well. I
20 don't know if you've gotten notice
21 or not.

22 MS. PATTERSON: No, Your Honor,
23 we've received no notice.

24 THE COURT: Once proper notice is
25 done then I can hear it again.

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1 Witnesses?

2 MR. COULTER: No witnesses, Your
3 Honor.

4 THE COURT: All right. Ms.
5 Patterson, tell me exactly what --
6 what relief are you requesting
7 today? I know that there is an
8 outstanding payment of 50,000 and
9 then your affidavit here of your
10 fees; is that correct?

11 MS. PATTERSON: Yes, Your Honor.
12 Because of the nature of this
13 contempt, which I think we're here
14 on our fourth contempt hearing,
15 we're asking this Court to use its
16 full powers to right a wrong here.
17 We have not received -- we have had
18 to bring a Rule to Show Cause for
19 every dollar that is due to this
20 minor child from the date of
21 settlement and real property. And
22 now we have Mr. Coulter, the
23 Personal Representative, and Mr.
24 Bannister all asking to be relieved
25 of their positions, nonpayment

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1 being made to the minor child and a
2 company that was valued at over
3 \$700,000 now in bankruptcy two
4 years later. We would like to see
5 that this Court exercise its power
6 to hold the Personal Representative
7 in contempt, and if that includes
8 jail time we would like to see that
9 as well, Your Honor.

10 THE COURT: Now you received one
11 payment; is that right?

12 MS. PATTERSON: After filing our
13 first Rule to Show Cause you gave
14 them ten days, and they did make
15 that one payment.

16 THE COURT: And did that -- did
17 that payment -- was that a full
18 payment of that particular portion?

19 MS. PATTERSON: It's a total of
20 four payments, and we got the first
21 payment, the second payment being
22 due on December 31st.

23 THE COURT: Was that payment made
24 by JAT, or was that out of the
25 estate?

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1 MS. PATTERSON: I would have to go
2 back and see exactly how the
3 payment came into my trust account.
4 I believe the estate owned JAT at
5 the time and may have leveraged
6 some property in order to obtain
7 the cash proceeds to make that
8 payment.

9 THE COURT: Okay. The estate and
10 the inventory shows that it had 100
11 percent interest in JAT, Inc. And
12 on the first inventory it was
13 valued at \$260,000, and then it was
14 amended. The amendments I believe
15 -- the first amendment then said it
16 was worth \$460,000. And it listed
17 it as an estate asset. And also it
18 lists -- in the real estate part of
19 the inventory it lists JAT
20 corporate property Locust Hill
21 Road, Taylors and valued that at
22 \$200,000. That was real property
23 that I think eventually was
24 transferred by Deed of Distribution
25 to James Trippe, IV.

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1 MS. PATTERSON: The IV. That's
2 correct.

3 THE COURT: So he received --

4 MS. PATTERSON: Proceeds from the
5 estate.

6 THE COURT: -- he received real
7 estate valued at 200,000.

8 MS. PATTERSON: Correct. Which
9 was leveraged at that point by the
10 estate.

11 THE COURT: Okay.

12 MS. PATTERSON: Which I believe
13 Independent Bank is a creditor.
14 The records of the Bankruptcy Court
15 and the records that were filed
16 with this Court by the Personal
17 Representative do not match.

18 THE COURT: Do you -- so are you
19 telling me that the documents that
20 the Personal Representative filed
21 with the Bankruptcy Court lists
22 JAT as an estate asset?

23 MS. PATTERSON: I don't know who
24 filed the documents with the
25 Bankruptcy Court, but, yes, I have

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1 confirmed with the Trustee that
2 they have JAT listed as an estate
3 asset. That there are
4 distributions and accountings with
5 this Court showing it has been
6 distributed out shortly after the
7 settlement agreement.

8 THE COURT: Okay. (The Court
9 reviewing file.) In the settlement
10 agreement, which I'm looking at
11 page two, it says, "Cash payments
12 to Petitioner, Respondent PR,
13 Respondent Trippe, Jamie, and/or
14 JAT will pay to Petitioner the
15 following sums of money. \$175,000
16 on or before April 25th, 2012. An
17 additional \$50,000 to Petitioner on
18 or before December 31st, 2013."
19 Another 50,000 on December 31st,
20 2014 and \$25,000 on or before
21 December 31st, 2015. It says,
22 Respondent PR, Respondent Trippe,
23 Jamie, and/or JAT will pay." So it
24 doesn't say just JAT.

25 MS. PATTERSON: No. No, Your

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1 Honor. And we specifically
2 negotiated that all parties would
3 be bound by this agreement and the
4 use of "or" was specifically put in
5 this agreement.

6 MR. COULTER: Could I point
7 something out, Judge?

8 THE COURT: Yes.

9 MR. COULTER: I see where you have
10 that on page two, but if you would
11 look at page three.

12 THE COURT: Okay.

13 MR. COULTER: The last paragraph
14 -- the last sentence of the first
15 paragraph states that "The payments
16 set forth in paragraphs two, three,
17 and four above shall be secured by
18 stock in JAT, and the stocks at all
19 time should represent not less than
20 a 50 percent share." So there was
21 a mutual understanding that payment
22 would be as a result of the
23 leverage of the JAT stock as you
24 see through qualification by that
25 paragraph.

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1 MS. PATTERSON: I don't agree,
2 Your Honor. I think that the
3 sentence speaks for itself. In
4 order to provide security one might
5 give collateral in stock, but that
6 doesn't in any way negate the
7 payment of the parties that were
8 bound by it. Just as a husband and
9 wife may own a piece of property
10 and the husband is the only
11 borrower, she may sign the mortgage
12 allowing for the collateral to be
13 used as security.

14 THE COURT: Well, I'm looking at
15 the paragraph, and clearly the
16 first sentence of paragraph two
17 says that they will pay, and then
18 it says payment goes -- is to be
19 made to your law office. Remaining
20 payments made to Petitioner at such
21 address as provided and the
22 payments will be secured by stock
23 at JAT. It doesn't say payment is
24 contingent upon, you know, the
25 security. It just says that

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1 they're going to be secured, but
2 the payment paragraph up here has
3 no condition -- condition precedent
4 to it. It says, "Respondent PR,
5 Respondent Trippe, Jamie, and/or
6 JAT." All of these entities will
7 pay to Petitioner the following
8 sums. Now what they agreed among
9 themselves, you know, it just says
10 all of -- it lists all these
11 people, lists the payments, lists
12 how they're to be made, where
13 they're to be made, and then says
14 the payments will be secured by
15 JAT.

16 MR. COULTER: Exactly. And JAT is
17 now in bankruptcy.

18 THE COURT: But it doesn't say
19 it's contingent upon that.

20 MR. COULTER: But that's exactly
21 --

22 THE COURT: Because we have not
23 just JAT, but we have Respondent
24 PR, Respondent Trippe, Jamie and/or
25 JAT. It doesn't say just JAT.

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1 MR. COULTER: But, you know, what
2 it does say signed by all the
3 parties is that everybody agreed
4 that the final three payments would
5 be made by the stock used for
6 security on JAT. That's clear.

7 MS. PATTERSON: That's not clear,
8 and that is not a reading of that
9 language.

10 THE COURT: Okay. I understand
11 you-all don't agree on that, and
12 that's fine. And it's interesting
13 that those three are the ones that
14 were -- we're waiting on the second
15 one. Katelin?

16 MS. TRIPPE: Yes, ma'am.

17 THE COURT: Would you stand up for
18 me, please? Do you understand
19 what's going on here today?

20 MS. TRIPPE: The company has been
21 bankrupt, and they haven't paid
22 what they're supposed to on the due
23 dates.

24 THE COURT: Right. And I haven't
25 asked you to testify or anything,

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1 but this affects you directly more
2 than anybody in the room. You're
3 16?

4 MS. TRIPPE: Uh-huh.

5 THE COURT: Okay. Have you kept
6 up with what's going on here?

7 MS. TRIPPE: Yes, ma'am.

8 THE COURT: And when will you be
9 18?

10 MS. TRIPPE: Two years from now.
11 December 19th.

12 THE COURT: December 19th. Do you
13 have any question about the
14 proceeding here today?

15 MS. TRIPPE: I would like to know
16 why they haven't paid or anything.

17 THE COURT: I understand. This
18 has been a long and drawn out case.
19 And what my -- my job here is to
20 make sure that you receive your
21 inheritance, and make sure --
22 because you're a minor, that's why
23 you have Mr. Morin who is looking
24 after your assets for you. What
25 I'm concerned about, because I

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1 don't think this case is going to
2 be over any time soon, and I don't
3 -- I don't want you to allow this
4 sort of -- allow them to run the
5 clock out on you. Okay? Because
6 what I'm worried about is this case
7 is going to be ongoing probably
8 when you turn 18. And I just --
9 you have -- at 18 years old you
10 will be able to hire your own lawyer.
11 You can talk to Mr. Morin. I don't
12 want you to be dazzled by a few
13 dollars and compromise your legal
14 right. And at 18 you will be able
15 to do that. I just want you to
16 make sure that you don't do that
17 without getting good counsel. You
18 and Ms. Patterson talk to Mr.
19 Morin, because this case is going
20 to be going on probably until -- I
21 will probably be on Medicare and in
22 a nursing home by the time this
23 thing is over. Okay? I just
24 wanted you to be aware of that
25 because this is your property.

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1 This is your future. This is your
2 birthright, and you need to be
3 aware of it. And I don't think
4 you've ever been to one of these
5 hearings before.

6 MS. TRIPPE: I have been to some
7 of them.

8 THE COURT: You have? Okay. I
9 guess I didn't remember. Okay.
10 Thank you. Any final closing
11 arguments?

12 MS. PATTERSON: Your Honor, we
13 strongly feel that the Personal
14 Representative has delayed and
15 delayed and delayed the transfer of
16 assets, the payment of assets. He
17 has not communicated with the
18 Conservator. He has stalled at
19 every point that he could from the
20 date that this settlement agreement
21 was approved by this Court, and he
22 is surely in contempt, and we ask
23 this Court to exercise its full
24 power to enforce this settlement
25 agreement for the benefit of this

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1 minor child.

2 THE COURT: All right. Counsel,
3 can your client pay the \$50,000
4 that he signed off as the Personal
5 Representative of this estate, and
6 he's duty bound to make sure that
7 this child gets her inheritance?
8 Can he come up with this money
9 immediately?

10 MR. COULTER: Can he come up with
11 this money immediately?

12 THE COURT: Yes. He was supposed
13 to have it in December. He's
14 looking at going to jail.

15 MR. COULTER: Well, Judge, I can
16 only tell what was testified to a
17 minute ago. That's all I know.

18 THE COURT: I will give you a five
19 minute recess. Let's say ten.
20 Talk to your client because if he
21 doesn't have it he's going to jail.

22 MR. COULTER: Okay.

23 THE COURT: So we will break for
24 ten minutes.

25 (OFF RECORD)

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1 THE COURT: Has it been resolved?

2 MR. COULTER: What I'd say to The
3 Court is, Judge, that Mr. Trippe
4 has a 78 year old wife who has got
5 Alzheimer's and dementia, and she
6 can't be left alone, so obviously
7 jail is not an option. But what we
8 would ask The Court to consider is
9 to give Mr. Trippe the opportunity
10 to purge himself of the contempt in
11 order to be able to try to find the
12 funds to make that payment. He
13 doesn't have the \$50,000 in pocket
14 right now. He doesn't have a
15 vehicle by which he can get it here
16 immediately.

17 THE COURT: Well, Mr. Coulter,
18 this is a finding of a civil
19 contempt so he will be able to
20 purge himself. It's just a matter
21 of complying with The Court's
22 Order, so it's not -- as soon as he
23 pays the money he's out of jail.

24 MR. COULTER: But he wouldn't have
25 anybody to be able to get the money

1 to get --

2 THE COURT: He's got lawyers.
3 He's got two of them over there
4 helping him.

5 MR. BANNISTER: Judge, let me tell
6 you our problems, and that's why we
7 ask for some time for him to purge
8 himself of contempt. He has an
9 equity line. We can't sign the
10 equity line for him. So he's got
11 to get -- his wife and he both have
12 to sign the equity line because
13 it's a joint house. That's why
14 we're asking for time before you
15 put your sentence into effect. He
16 ain't going anywhere. I mean he's
17 taking care of his wife. So, he's
18 not going anywhere. He's going to
19 need that amount of time to get his
20 wife down there to sign and to get
21 the funds. So if you can give him
22 ten days to purge himself then he
23 can use that equity line to do so.
24 That's the plan. I don't know if
25 they object to it or not, if they

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1 do or don't.

2 MS. PATTERSON: Your Honor, this
3 equity line that we found at 1:00
4 today is available for his draw
5 immediately by this document, and
6 it's at Palmetto Bank. I don't
7 think it takes ten days to go down
8 to Palmetto Bank. I mean if his
9 wife is incompetent in that she has
10 Alzheimer's and can't sign I'm not
11 sure if I understand how she was
12 able to sign this legal document
13 today for the mortgage. But we are
14 agreeable to allow them to pay us
15 by tomorrow morning.

16 MR. BANNISTER: Well, give us --
17 can we have till Friday? This is a
18 matter of --

19 THE COURT: Well, you know, that's
20 something that you and Ms.
21 Patterson -- I mean I'm about to
22 put him in jail today. I don't
23 want to do that, but, you know,
24 there is nothing left for me to do.
25 All my options and all the times

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1 I've tried to be accommodating have
2 got us nowhere. If Ms. Patterson
3 will wait until in the morning I
4 would suggest you take her up on
5 that. Otherwise, you know, I've
6 got to force it. This is something
7 that's not going to -- he's not
8 playing -- he's not playing nice
9 here. It's got to, you know, have
10 consequences.

11 MR. BANNISTER: Well, let me ask
12 her if she will give us till
13 Friday?

14 MS. PATTERSON: No, I'm sorry.
15 It's been 77 days. I've counted
16 it. We've had no response, not
17 even a call to tell us why the
18 payment wasn't made. We've had to
19 go through appeals. We're done.

20 THE COURT: Mr. Bannister --

21 MR. BANNISTER: We'll take her up
22 on it tomorrow.

23 THE COURT: Excuse me?

24 MR. BANNISTER: Tomorrow by 11:59.

25 MS. PATTERSON: Yes, Your Honor.

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1 MR. BANNISTER: In your office.

2 MS. PATTERSON: We'll have the
3 money delivered to our office.

4 THE COURT: What I have down is
5 payment of 50,000 plus 3,585 in
6 attorney's fees, so 53,585 by
7 11:59, and if that's not done you
8 need to let us know if it's not
9 done, and we'll issue an Arrest
10 Warrant.

11 MR. BANNISTER: And since Jamie
12 was also named on that does this
13 Contempt Order include him as well?

14 THE COURT: The estate owes
15 50,000, and whoever pays it, you
16 know. It's the Personal
17 Representative is the one who
18 signed off on behalf of the estate.
19 The estate agreed to pay it, and if
20 the estate had some sort of side
21 agreement with Jamie and JAT and
22 these other people then they can
23 turn around and go after those
24 folks or he can, but.

25 MR. BANNISTER: So you're not --

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1 you are not going to hold him in
2 contempt? That's all I'm asking.

3 THE COURT: The contempt action
4 was brought against your client.

5 MR. BANNISTER: Not mine, it was
6 brought against --

7 THE COURT: Your client
8 individually.

9 MR. BANNISTER: -- Jamie Trippe,
10 Jr.

11 THE COURT: But you've been
12 representing him individually as
13 well. The Personal Representative
14 in his capacity as PR is being
15 represented by Mr. Coulter, and
16 you've represented him and maybe
17 the IV, you know, throughout this
18 whole thing.

19 MR. BANNISTER: But I also am on
20 the record for Jamie, IV, and what
21 I'm asking for Jamie, IV, are you
22 holding him in contempt?

23 THE COURT: Am I holding -- no, I
24 am not..

25 MR. BANNISTER: All right.

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1 THE COURT: I am holding the
2 Personal Representative who signed
3 that document on behalf of the
4 estate, and he came before this
5 Court and asked this Court to
6 enforce that agreement versus going
7 to trial back in April of 2012, and
8 he has failed to do it. He has
9 made a first payment to Ms.
10 Patterson, but he didn't make the
11 second, and therefore he's in
12 contempt. And I believe Ms.
13 Patterson is saying by 11:59
14 tomorrow they have the money as
15 required, otherwise she will inform
16 The Court; is that correct?

17 MS. PATTERSON: Correct, Your
18 Honor.

19 THE COURT: All right.

20 **(HEARING ADJOURNED)**

21
22

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF GREENVILLE)

4 I, RACHEL H. WOOD, a Notary Public, duly
 5 commissioned and qualified in and for the
 6 State of South Carolina, do hereby certify
 7 that the Probate Court hearing was taken
 8 before me at on March 18, 2014; commencing
 9 at 4:03 p.m. and concluding at 4:51 p.m.;
 10 that said Witnesses were duly sworn; that
 11 their testimonies were transcribed by me;
 12 and that this transcript is a true record of
 13 said proceedings. I further certify that I
 14 am not of kin or counsel to the parties in
 15 this case, am not in the regular employ of
 16 counsel for any of said parties, nor am I
 17 interested in the results of this case.

18 IN WITNESS WHEREOF, I have hereunto set my
 19 hand and affixed my official seal this
 20 _____ day of _____, 2014.

21

22 Notary Public for South Carolina

23 My Commission Expires: 03/25/19

JUDY COMP & ASSOCIATES, INC.

COURT OF COMMON PLEAS

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TRANSCRIPT OF RECORD

COURT OF COMMON PLEAS

January 20, 2015
Greenville, South Carolina

THE HONORABLE EDWARD W. MILLER, JUDGE

NATHANIEL CURTIS FARMER, ESQ.
Attorney for the Plaintiff

OSCAR W. BANNISTER, ESQ
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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INDEX

PAGE

January 20, 2015, Hearing

3

EXHIBITS

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: All right. The next case is Morin vs. Trippe. Who wants to -- who's driving the bus?

MR. BANNISTER: Judge, I believe I'm the appellant. I believe we are.

Just by way of background, Judge, there was a James Trippe Junior who died intestate. He left two heirs: one a minor, one an adult. His father, James Trippe Senior, was appointed his personal representative. One of the assets of the estate was a corporation called JAT, Inc. It was a paving -- a strip paving company.

In the administration of the estate, the stock book for JAT was found, and it had in there a share of stock, some stock, going to the father who is the personal administrator. But it had never been delivered. The parties had a disagreement as to how they would divide the assets, so they came to an agreement which was approved by the probate court.

In that agreement, stock of JAT would go to the son who would then own all the stock, but the minor would receive payments of money for the shares of stock, among other things. That agreement was approved, and the personal representative signed the agreement that was approved by the probate court.

1 Thereafter, the minor received \$175,000, and then
2 the next payment was due in December of 2013. In
3 December of 2013, JAT declared bankruptcy liquidation.
4 So the guardian for the minor brought a rule to show
5 cause against the personal representative who alleged the
6 personal representative was personally obligated to hold
7 the agreement and pay this money.

8 A hearing was held before the probate court, and the
9 probate court determined reading the agreement that the
10 personal representative was obligated to pay \$50,000 to
11 the minor and held him in contempt, sentenced him that
12 day to jail if he didn't come up with the \$50,000.

13 So the personal representative came up with the
14 \$50,000. He borrowed it on an equity line on his house
15 and appealed. So the appeal has two issues: the
16 correctness of the probate court's interpretation of the
17 agreement, and the second issue is sentencing him to jail
18 for contempt.

19 The argument is this: number one, the personal
20 representative was not a guarantor of the debt to the
21 minor for this \$50,000. He got no consideration
22 whatsoever for the agreement. None of the stock went to
23 him, he wasn't employed by JAT, he had no interest in it.
24 He was just administering the estate. By signing the
25 agreement, he gave up whatever claim he might have had to

1 the stock. So we say, first of all, the judge
2 misinterpreted the agreement.

3 Second is, Judge, is the case law is clear that it's
4 a civil debt, and the Court cannot sentence someone, hold
5 them in contempt, sentence them to jail for a civil debt.
6 I've cited in my brief cases that hold that, the South
7 Carolina Constitution holds that. You can't do it. But
8 you did. He paid it.

9 That raises --

10 THE COURT: Let me interrupt you. Was there --
11 there was not an order of the probate court other than
12 the original order requiring payment?

13 MR. BANNISTER: That's right. The original order
14 approved the agreement which set out the payments.

15 THE COURT: Okay.

16 MR. BANNISTER: So it's a civil debt approved by the
17 order of the Court, settled up the issues and from which
18 the personal representative was held in contempt and
19 sentenced to jail.

20 Being a civil debt, Judge, and having a rule to show
21 cause as to why he shouldn't be required to pay it
22 violates the Constitution -- South Carolina Constitution.
23 He can't be jailed for purely a civil debt. That raises
24 the issue, is the order of the probate court void ab
25 initio or void -- or voidable? If it's void ab initio,

1 then it should be reversed all the way back down because
2 there's jurisdictional issues for the Court to issue an
3 order which violates the Constitution. If it's merely
4 voidable, then it has to be voided on this appeal.

5 In response to that, the representative of the young
6 girl or the guardian is citing a case where a man was
7 held in contempt for failure to pay child support, but he
8 paid it to get out of jail, and the Court of Appeals said
9 that mooted the issue because his issue was I don't have
10 money to pay it, but he paid it, so it mooted the appeal
11 because he had the money to pay it because he proved he
12 did by paying it.

13 That case is distinguishable on several grounds.
14 Number one, the initial order requiring him to pay an
15 obligation, a lawful obligation, child support, was not
16 an issue. Just his ability to pay. In this case, at
17 issue is whether the order actually requires him to pay
18 anything. And if it's a civil debt, not an obligation
19 like child support, but a civil debt, then it violates
20 the Constitution by rooting him in, threatening him with
21 jail and actually sentencing him to jail unless he pays
22 the money.

23 The second issue, Judge, is he should not be mooted
24 because the issue is going to come up again. The next
25 payment to the minor was due December 2014. JAT is in

1 bankruptcy so it's not a source of funds, and the
2 personal representative still is a personal
3 representative of the estate. So where you can
4 anticipate that the claim is going to be made based on
5 the judge's earlier interpretation of the order that the
6 personal representative is personally liable for this
7 payment, although no rule has been served so far, it is
8 certainly capable of repetition. Therefore, it is
9 distinguishable on the origin and also that it should not
10 be mooted because the issue is going to come back up.

11 So finally, Judge, I would argue that if you can't
12 -- if the Court is not empowered to hold you in contempt
13 for failure to pay a civil debt and it does so, then that
14 order ought to be declared void ab initio and the entire
15 thing erased and sent back to probate court to reverse
16 it.

17 THE COURT: All right. Thank you.

18 MR. FARMER: May it please the Court, Your Honor,
19 I'm Nathan Farmer. I'm here today on behalf of the
20 conservator who is the respondent in this matter. He is
21 sitting behind me. He's had a cold and flu bug so he has
22 to -- he may need to slip out, so that's why he asked to
23 sit back there.

24 But I want to just correct a couple things. The
25 decedent here is actually James Trippe III. The personal

1 representative is James Trippe Junior, just so that
2 doesn't cause any confusion. And there is a beneficiary
3 who is James Trippe IV. James Trippe IV is the adult.
4 My client represents Caitlin, who is a minor child.

5 This case, the decedent died in 2009, so we're six
6 years almost past the time that the decedent passed and a
7 PR was appointed. In 2011, we brought an action against
8 the PR both individually and in a representative capacity
9 as the personal representative because he had breached
10 fiduciary duties to my client. He attempted to transfer
11 assets out of the estate to his son. He was increasing
12 fees paid to himself through JAT. And so we filed that
13 action seeking to recover against not only him as the
14 personal representative, but also against him
15 individually.

16 When we entered into the settlement agreement, we
17 did enter into a release, so Mr. Bannister is trying to
18 argue today that there was no consideration. But we did
19 waive those claims, we released those claims, so there
20 was consideration at the time he signed that agreement.

21 We are currently here on the 2012 -- April 2012
22 order which did incorporate the settlement agreement.
23 That settlement agreement is in the record on appeal. It
24 was attached to that April 2012 order. And you see at
25 paragraph 2 under that, and I have it listed in my brief,

1 states that cash payments that are owed to petitioner,
2 and you'll see it was the second payment. We're already
3 -- the first payment we had also a contempt hearing on,
4 but the second payment is what we're here on today. And
5 it says, "Respondent PR," which is the appellant, "in his
6 personal representative capacity, and Respondent Trippe,
7 in an individual capacity, Jamie and/or JAT will pay to
8 the petitioner the following sums of money," and it was a
9 \$50,000 payment that was due December 31, 2013. That
10 payment was not made.

11 As I mentioned to you, this is actually the fourth
12 contempt hearing in this case since signing this
13 agreement in 2012. The only time we can get the personal
14 representatives to comply is by bringing a rule to show
15 cause. He missed the first payment. As I mentioned to
16 you, this is the second payment. He's failed to transfer
17 property on numerous occasions, and so we've had to
18 continually bring rule to show cause hearings before the
19 Court.

20 Mr. Bannister mentioned an issue that has been
21 raised, it was raised in my brief, as to whether or not
22 this case can be heard before this court. And I've cited
23 the mootness doctrine on that.

24 As it is noted in the order, there was -- the
25 contempt was found. He was given the right to purge by

1 making the payment, and he did purge it. And so in the
2 order, it references the fact that he paid the contempt
3 and purged it -- or purged himself of the contempt.

4 I've cited a couple of issues in my brief, and it's
5 well settled in South Carolina that an issue of contempt
6 becomes moot when that party in contempt purges themselves
7 of the contempt. And I've cited Jordan vs. Harrison and
8 Chapel vs. Chapel.

9 Mr. Bannister actually misinterprets the facts in
10 that case. In Jordan vs. Harrison, Mr. Harrison was held
11 in contempt of court for failing to make his child
12 support payments, and the reason he was trying -- or
13 wasn't making them was not because he wasn't necessarily
14 able, but it was because he was trying to get a reduction
15 in the child support, and he was continually trying to go
16 before the Court to get a hearing set so those payments
17 could be reduced so he would have to pay less. And the
18 reason for that was because his job status changed. So
19 there may have been some justifiable arguments as to
20 reduce those fees. But once he paid them, the Court
21 said, "Where one held in contempt for violation of a
22 court order complies with the order, his compliance
23 renders the issue of contempt moot and precludes
24 appellate review of the contempt proceeding." So no
25 appellate review in that case because he purged himself

1 of the contempt.

2 Chapel vs. Chapel, you have another issue with child
3 support. And this guy was failing to make a payment not
4 because he couldn't, but he was just trying to be
5 stubborn and pay it in ways that weren't authorized by
6 the Court. And the Court said -- held him in violation.
7 Finally, he paid it and then he appealed. And the Court
8 basically reiterated the same language that it said in
9 Jordan vs. Harrison -- actually, this case came first --
10 and says that it precludes appellate review of the
11 contempt proceedings, therefore, we regard the case moot
12 and not appealable.

13 So there is the mootness issue. Because he paid it,
14 he purged himself of the contempt, and he is not entitled
15 to a return of his funds. And this makes sense in the
16 fact that, you know, you can't go ahead, pay a minor
17 child who may need these funds for educational purposes,
18 health purposes, and then try to rescind that payment
19 back from it, you know. There has to be -- there could
20 be some detrimental reliance on that. And so that makes
21 sense as to why it would become unappealable.

22 As far as the merits of the case itself, as
23 Mr. Bannister had talked about, there's a standard of
24 review here in this case. And the standard of review at
25 trial was the moving party must show noncompliance with

1 the court order, and at that point, the burden then would
2 shift to the -- who is the appellant to show why he did
3 not comply.

4 The reasons for noncompliance have sort of changed
5 throughout the process. First argument was, well, JAT
6 paid the first time, so they should be the one that's
7 responsible. Then he argued that James IV, the other
8 beneficiary, was receiving the stocks, so he should be
9 responsible. Now it's a constitutional issue. And the
10 fact is, the agreement was very plain and clear. And as
11 I mentioned to you before, the requirement to pay was
12 very specifically stated, and it said that it was him in
13 a personal representative capacity and an individual
14 capacity. So he ---

15 THE COURT: Why is that?

16 MR. FARMER: Why is what?

17 THE COURT: Why in an estate matter is someone
18 individually obligated? I don't understand that.

19 MR. FARMER: Because during the proceeding itself,
20 there was some self-dealing -- wrongdoing that was found,
21 and so we had basically -- he had taken consultant fees
22 from JAT, he had appointed himself treasurer of JAT, and
23 so that's why there was some individual capacity.

24 THE COURT: Okay. All right.

25 MR. FARMER: So he was individually liable.

1 And so in order to reverse the contempt proceeding,
2 there either has to be no evidentiary support, or the
3 trial judge has to use their discretion. And paragraph 2
4 of the settlement is very clear that he was required to
5 pay that \$50,000. Even in his brief, he admits that he
6 was required both individually and as personal
7 representative, and it's very clear in the order that the
8 payment was not timely made.

9 Because there is evidence to support the contempt
10 finding, then you have to go into, well, did the trial
11 judge abuse the discretion? And he has set forth
12 arguments, and, I think, as I mentioned before, he has
13 argued that there was no consideration. There was a case
14 that I cited in my brief, it was Yearin [phonetic]
15 Construction, I think, where it say, "By giving up a
16 right, he earned the right to pursue an action against
17 him individually." There is consideration there.

18 The second argument he makes is that even if there
19 was consideration, he was not personally responsible.
20 Again, that's factually inaccurate. If you look at the
21 terms of the settlement agreement itself, it very clearly
22 states that he is responsible for that payment.

23 I think the third argument he makes is even if he is
24 personally liable, South Carolina law does not permit him
25 to be held in contempt of court for failure to pay a

1 civil debt. And actually, the case he cites, he cites
2 three different cases. There's a Sanders vs. Sanders
3 that he cites, there's a Harris-Jenkins vs. Nissan Car
4 Mart and there's a Cheapos Truck Stop, Inc., which are
5 all cited. And I've referenced some language from those
6 cases.

7 In the Sanders case, it says, "The Supreme Court
8 stated that while it may be true that the guy violated
9 the contract, we do not see how it is possible to say
10 that he disobeyed any court order." That's not the case
11 here because the settlement agreement was incorporated
12 into that court order, so by filing the settlement
13 agreement, he is in violation of the court order.

14 The Harris-Jenkins case says, "South Carolina law
15 does not permit a person to be held in contempt for
16 failure to pay a civil debt which has arisen solely out
17 of a contractual obligation." Again, it's
18 distinguishable because it's not just a contractual
19 obligation. It's a court order. And so there is a
20 distinction there.

21 The last case that he cites was Cheapos Truck Stop,
22 and it's almost analogous to our case. In Cheapos Truck
23 Stop, they actually found the contempt based upon the
24 failure to pay a civil debt. They said that he had the
25 ability to comply in part, and that by not complying, he

1 was in contempt. Well, they've raised the argument that
2 the appellant was not able to comply, but it turns out
3 the next day he's paying the \$50,000. So, you know, that
4 argument seems to be a bit disingenuous in the fact that
5 he's able to pay the next day even though at hearing he
6 said that he wasn't able to pay.

7 Mr. Bannister also goes into the fact that the
8 sentence of incarceration violates the South Carolina
9 Constitution. And that argument also is not based upon
10 the law. The law says, and this was the Cheapos Truck
11 Stop, that it wouldn't be a violation in absence of bad
12 faith and fraud.

13 I mentioned to you before, this is the fourth
14 contempt hearing. This case has been replete with bad
15 faith, and I've cited several cases in the brief where
16 the judge is basically saying, You're not even looking
17 out for this girl. It's always, We come to this court,
18 and you're saying, I can't do it. I can't do it. Then
19 he mentioned in April of 2013, which is almost two years
20 ago, that they'd already given him 17 extensions and he
21 had missed 21 deadlines in the case.

22 In the June 2013 order, it says that he had failed
23 to act in good faith throughout the process of this
24 administration. In just this case, he's denying -- or
25 just the contempt hearing, he's denying his obligation to

1 pay even though the clear terms of the contract say he's
2 liable. He basically lied about having the ability to
3 pay because it was clear that he had the ability by
4 paying the next day.

5 Your Honor, during the interim of this, he's moving
6 to be relieved as counsel even though he's got still
7 obligations to fulfill under the -- or moved to be
8 relieved as personal representative even though he has
9 obligations to fulfill under the settlement agreement.

10 You know, the issue regarding the constitutionality
11 of the incarceration point has also been waived by the
12 appellant. It says for an issue to be properly reserved,
13 to be raised and ruled upon or preserved for appeal, it
14 has to be raised and ruled upon by the trial court. The
15 only time that this has been mentioned was the first time
16 was in his brief. There was no mention of it in the
17 hearings before the Court, never mentioned at any of the
18 contempt hearings, it was never mentioned even in the
19 post-trial motion to reconsider that he filed after the
20 payment was already been made. The first time it's been
21 raised was in this appeal.

22 Also, it says in some case law that I've cited in
23 the brief that a constitutional question must be raised
24 at the earliest opportunity. This is the second time
25 that he's failed to make a payment. It was, again, never

1 mentioned at the prior hearing, but only mentioned here
2 on appeal.

3 And lastly, the issue that he's raised in a brief
4 and he didn't touch on it today was whether or not we're
5 entitled to attorneys fees. Based upon the settlement
6 agreement, paragraph 14 states that if an action is
7 commenced to enforce any provision of the settlement
8 agreement, attorneys fees are collectible by the
9 prevailing party. Also, under the compensatory contempt
10 rulings of the Court, attorneys fees are also awardable
11 for contempt.

12 So, Your Honor, we would submit that we're not only
13 entitled to the fees that were awarded at that time, but
14 also the fees that we've had to incur to defend this
15 appeal.

16 Thank you, Your Honor.

17 MR. BANNISTER: Judge, I believe he misreads the
18 issue regarding contempt. Because only after the judge
19 passes the order of contempt, which we assume would not
20 be in jail, that the issue could be raised. And we have
21 raised it. We raised it on appeal.

22 In the almost analogous case is Jenkins vs. Nissan
23 Car Mart. In that case, they had an agreement to settle
24 it, and it actually was a fraud case, according to the
25 case. And I can hand you up a copy, Judge, if you'd

1 like.

2 THE COURT: Yeah. Let me look at it.

3 MR. BANNISTER: Judge, I would refer you to the last
4 page, page 6. We note and emphasize that South Carolina
5 law does not permit a person to be held in contempt for
6 failure to pay a civil debt which is risen solely out of
7 contractual obligation. Regardless of how you interpret
8 the agreement that they arrived at in Family Court,
9 that's a civil obligation.

10 Furthermore, the Constitution of South Carolina
11 provides that no person should be imprisoned for a debt
12 except for the case of fraud. There's no fraud alleged
13 in the rule to show cause. He simply -- he didn't pay
14 under their interpretation of the order. So you have a
15 clearly unconstitutional sentence passed.

16 What he's saying is regardless of the
17 unconstitutionality of the sentence, it should be allowed
18 to stand, and the Constitution could be allowed to be
19 violated all because of technical reasons. I believe,
20 Judge, that this is one of those issues that can be
21 raised at any time because it goes to the Court's
22 authority and its jurisdiction or its ability to pass an
23 illegal sentence.

24 THE COURT: Let me ask you, he's been held in
25 contempt before?

1 MR. BANNISTER: Judge, in answer to that, yes.
2 There was a -- the first payment that was to be made, and
3 I don't think Mr. Farmer will deny this, they had to
4 borrow the money. JAT had to borrow the money. There
5 were a number of letters that I sent to him giving them
6 his effort to borrow the money. Well, they got the money
7 promised coming down. They filed a rule to show cause
8 shortly before the money was there. But the money was
9 going to be there, so they held him in contempt. But he
10 got the money, which was borrowed from JAT -- by JAT,
11 paid it. So it was done.

12 The next contempt, which is now under appeal, I
13 think the next one was two lots in the Bahamas that the
14 minor child was to receive. No deed was ever found for
15 those Bahamian lots. And the judge had a hearing. There
16 was an argument about whether or not he was supposed to
17 pay for the ancillary -- or the estate was to pay for the
18 ancillary proceeding in the Bahamas to get the deeds
19 transferred to the minor child. And so there was a
20 hearing to enforce the agreement.

21 Well, it wasn't contempt, as my recollection was, to
22 enforce the agreement. The judge interpreted the
23 agreement and gave him 41 days to get this accomplished
24 in the Bahamas. He wasn't able to get it accomplished in
25 the Bahamas. There was a lot of documents sent to

1 Mr. Farmer's office back and forth. But nevertheless,
2 the judge held him in contempt. That's under appeal.
3 That went before Judge Hill that said he didn't start on
4 it in time, although the process showed that by February
5 1st, right shortly thereafter, he hired a lawyer in the
6 Bahamas, got all these documents, and was proceeding to
7 get these two lots transferred. That's under appeal.

8 THE COURT: What are you asking me to do? To negate
9 the agreement that he shouldn't have to pay the money?

10 MR. BANNISTER: Not personally to have to pay the
11 money, or that he cannot be held in contempt, that that
12 order is void, that you can't sentence him to jail and
13 force him --

14 THE COURT: He wants a do-over, Mr. Bannister.

15 MR. BANNISTER: Sorry?

16 THE COURT: He wants a do-over. He signed this
17 thing. I don't know the circumstances that led to the
18 settlement agreement, but he committed himself to it. Am
19 I wrong about that?

20 MR. BANNISTER: To the extent, Judge, you are right.
21 He committed himself to be sure the agreement was carried
22 out. Why else would they have security in the stock of
23 JAT if the money wasn't going to cover JAT?

24 THE COURT: Well, at issue -- I mean, that's
25 something that apparently was argued back in 2011 or '9

1 or '12 or whenever. That's not in front of me now. I've
2 got to deal with what's on paper, and he obligated
3 himself to be personally responsible to this. So why
4 would he do that? I have no idea. I'm not sure I can
5 ask that question except out of just curiosity.

6 MR. BANNISTER: Judge, the short answer is that he
7 did not believe he was obligating himself to pay the
8 money. It's not a guarantee of the debt. The debt was
9 -- because he got nothing out of the estate.

10 THE COURT: Well, you know, I'm not here to decide
11 whether that is right or wrong. I mean, he's listed as a
12 party individually and as personal representative, and
13 the agreement, the settlement releasing an agreement is
14 the same.

15 MR. BANNISTER: All right. Even conceding that,
16 Judge, we then come to the point that this is a civil
17 debt. If he obligated himself personally, then it's a
18 civil debt. It's not based on fraud. It's a civil debt.

19 THE COURT: Was it a willful failure to pay?

20 MR. BANNISTER: No, sir.

21 THE COURT: Well, that's -- I mean ---

22 MR. BANNISTER: Not a willful failure.

23 THE COURT: I can't go back and examine the facts
24 that were presented in probate court.

25 MR. BANNISTER: No, sir, but you can look at the law

1 and the Constitution that says the probate court passed
2 an illegal sentence.

3 THE COURT: And let's say I do that. What happens
4 then?

5 MR. BANNISTER: Then you set aside that part of the
6 sentence and send it back to the probate court.

7 THE COURT: So they'll be obligated then to pursue
8 your client individually in front of Chuck Simmons.

9 MR. BANNISTER: As a -- yes, sir. In the normal
10 course. If he has assets, they can apply them.

11 THE COURT: Well, is that --

12 MR. BANNISTER: But, Judge, let's say that he has
13 the money. This is borrowed money. This is money that
14 he borrowed to avoid jail, to avoid an unconstitutional
15 incarceration.

16 THE COURT: All right. I'm going to have to take a
17 look at it. Thank you, very much.

18 MR. FARMER: Thank you, Your Honor.

19 Your Honor, may it please the Court, paragraph 14 of
20 the settlement agreement does offer attorneys fees, so I
21 do have a fee affidavit, if that's okay.

22 THE COURT: I think it's in here, isn't it? You
23 filed something.

24 MR. FARMER: I did file one in the probate court. I
25 don't know about -- this is on appeal.

1 THE COURT: This is in the Circuit Court, 13th
2 Circuit, \$5,337; is that right?

3 MR. FARMER: It's just it's extra time. I have
4 about five more hours for this hearing itself. That was
5 at the prior hearing.

6 THE COURT: Okay. You can file it. That's fine.

7 MR. BANNISTER: Judge, we just received the
8 affidavit.

9 THE COURT: I'll allow you to respond to it.
10 (WHEREUPON, proceedings ended at 10:18 a.m.)
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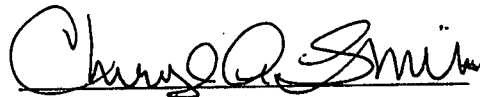
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on
the 20th Day of January, 2015.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

April 20, 2015



Cheryl A. Smith, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

PROBATE COURT

IN THE MATTER OF Estate of James A. Trippe, III

CASE NUMBER 2009-ES-23-00707

FILED

MAY 27 2011

Greenville County
Probate Court

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 26th day of March, 2009, and

WHEREAS, the estate of the decedent is being administered in the Probate Court for Greenville County, South Carolina in File # 2009-ES-23-00707; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name: Paul Trippe
Address: 5135 Locust Hill Road
Travelers Rest, SC 29690

the following described property:

500 shares of JAT, Inc.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Paul Trippe
their heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 20th day of May, 20 11.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Estate of: James A. Trippe, III
by Signature: James A. Trippe, III

Witness: Virginia L. Kase

Witness: Jane M. Tyler

STATE OF SOUTH CAROLINA
COUNTY OF

PROBATE

PERSONALLY appeared before me Virginia L. Kase

and made oath that he/she saw the within named

Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with

Jane M. Tyler witnessed the execution thereof.

SWORN to before this 20th day of
May, 20 11

Jeffrey A. Hammitt
Notary Public for South Carolina
My Commission Expires: 7/16/19

Witness Signature:

Virginia L. Kase

PROBATE COURT

CASE NUMBER 2009-ES-23-00707

PROPOSAL FOR DISTRIBUTION

FILED
MAY 27 2011
Greenville County
Probate Court

Name and Address of Distributee	Amount or Item
Paul Tippe 5135 Locust Hill Road Travelers Rest, SC 29690	500 shares of JAT, Inc.

Executed this 20th day of May, 2011

Signature: James A. Trippe, Jr.
Name: James A. Trippe, Jr.
Address: 7 Terrain Drive
Greenville, SC 29605
Telephone (O): _____
(H): 864-270-2028

Signature: _____
Name: _____
Address: _____
Telephone (O): _____
(H): _____

JAMES A. TRIPPE JR 03-12 663
HAZEL M. TRIPPE
7 TERRAIN DRIVE
GREENVILLE, SC 29605

3-19-2014 Date

Pay to the Order of GRACE D. MORRIS \$ 53,585.00
Fifty Three Thousand Five Hundred Eighty Five and 00/100 Dollars

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

THE SENIORITY CLUB

For James A. Trippe Jr.

⑆053201⑆86⑆ 043362567⑆ 00663

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

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF
James A. Trippe, III, Deceased

Gene D. Morin, Conservator for
Katelin Trippe,

Petitioner,

vs.

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

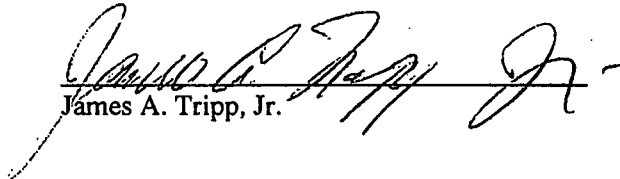
Respondent.

IN THE PROBATE COURT

C. A. No.: 2009-ES-23-00707

**RESIGNATION AS PERSONAL
REPRESENTATIVE**

I, James A. Trippe, Jr., do hereby resign as the personal representative of the estate of my son, James A. Trippe, III.


James A. Tripp, Jr.

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, Conservator for Katelin)

T [REDACTED])

Petitioner,)

v.)

**AFFIDAVIT OF
ATTORNEY'S FEES**

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

Respondent.)

PERSONALLY appeared before me the undersigned, Jacqueline H. Patterson, who,
being duly sworn, deposes and states as follows:

1. I am a licensed practicing attorney with Patterson & Associates, P.A. and have been practicing law in Greenville County since 1997.
2. That I am a member in good standing of the South Carolina Bar and its Association.
3. That I have been retained by Petitioner in the above-referenced matter.
4. That I incorporate herein Rule 1:5 as contained in Rule 407, South Carolina Appellate Court Rules, which contains the Canons of Ethics concerning the setting of attorney's fees. That I further call the attention of the Court to the numerous decisions of the South Carolina Supreme Court and the Court of Appeals concerning the factors and criteria which should be considered in the setting of attorney's fees. That I rely upon the discretion of this Court in the

determination of the amount of fees, based, among other things, upon this affidavit and the Court's file herein, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, and the other factors which are set forth in the Canons of Ethics and the case law decisions of this State including the criteria set forth in *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989).

5. In support of this petition for recovery of fees, I would state that my standard hourly rate of \$300.00 per hour is customary within this locality. Furthermore, the standard hourly rate of \$195.00 per hour for work done by my associate, Nathaniel C. Farmer, is also customary within this locality.

6. That I charge a standard hourly rate of \$65.00 per hour for work done by my paralegals.

7. That, upon review of the time records, the following time has been recorded and services rendered through March 17, 2014, in the representation of Petitioner in connection with the collection of funds owed to Petitioner in accordance with Paragraph 2(ii) of the Settlement Agreement incorporated into this Court's Order dated April 27, 2012:

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Fee</u>
Jacqueline H. Patterson	1.00	\$300 per hour	\$ 300.00
Nathaniel C. Farmer	14.00	\$195 per hour	\$2,730.00
Paralegal	2.0	\$65 per hour	<u>\$ 130.00</u>
			\$3,160.00

8. That I believe that it is a reasonable estimate that 2.0 hours of additional attorney time may be required for today's hearing, preparation of an Order and in attempted collection of Petitioner's claim.

9. That as of March 17, 2014, Deponent has expended on behalf of Petitioner the following costs:

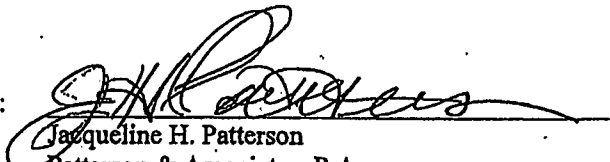
Postage Expense	\$10.00
Copy Costs	<u>\$25.00</u>
	\$35.00

10. That taking all relevant facts into consideration, the additional time necessary for the completion of the proceedings, the nature, extent, and difficulty of the legal services rendered, and the beneficial results obtained, the Deponent believes a reasonable fee for legal services performed to be:

TOTAL COSTS AND FEES: \$3,585.00

FURTHER AFFLIANT SAYETH NOT.

By:


Jacqueline H. Patterson
Patterson & Associates, P.A.
1088 North Church Street
Greenville, SC 29601
(864) 329-0548
Attorney for Petitioner

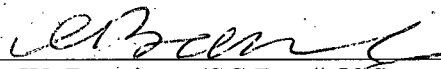
Sworn to and subscribed before me
this 18 day of March, 2014.


Notary Public, State of South Carolina
My Commission Expires: 4/03/17

Certificate Of Counsel

The undersigned certifies that this Record on Appeal contains all material prepared to be included by any of the parties and not any other material and, further, complies with Supreme Court Order dated August 13, 2007, regarding personal identifiers and sensitive information.

BANNISTER, WYATT & STALVEY, LLC



O. W. Bannister (SC Bar # 506)

Attorney for Appellant-Respondent

RECEIVED

MAR 07 2016

SC Court of Appeals