

ORIGINAL

STATE OF SOUTH CAROLINA

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 10 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.

**SUPPLEMENTAL
RECORD ON APPEAL**

O. W. Bannister (S.C. Bar No. 00506)
BANNISTER, WYATT & STALVEY, LLC
P.O. Box 10007
Greenville, SC 29603
Ph: 864-298-0084; Fax: 864-298-0146
Attorney for Appellant

March 4, 2016

Other Counsel of Record:

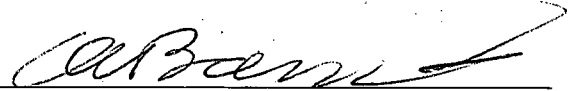
Jacqueline H. Patterson
1088 North Church Street
Greenville, SC 29601
Attorney for Respondent

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

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O. W. Bannister (S.C. Bar No. 00506)
BANNISTER, WYATT & STALVEY, LLC
P.O. Box 10007
Greenville, SC 29603
Ph: 864-298-0084; Fax: 864-298-0146
Attorney for Appellant

March 4, 2016

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, Temporary Conservator)
for Katelin [REDACTED])

Petitioner,)

v.)

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

Respondent.)

PETITION

FILED
JUN 06 2011
Greenville County
Probate Court

Petitioner would respectfully show unto the Court as follows:

1. Jurisdiction is proper in this Court as this Court has jurisdiction over probate estates.
2. Venue for this action is proper in Greenville County as the Estate of James Trippe, III ("Decedent") is being administered in Greenville County.
3. Decedent died intestate on March 26, 2009.
4. Upon information and belief, Respondent James A. Trippe, Jr. ("Respondent" or "Personal Representative") is a resident of Greenville County, has reached the age of majority and was appointed as Personal Representative of the Decedent's Estate on April 16, 2009. Respondent is the father of the Decedent.

5. Petitioner Gene D. Morin ("Petitioner") is the Court-appointed temporary Conservator for Katelin T. [REDACTED] pursuant to an Order of the Honorable Edward M. Sauvain dated March 1, 2011, Case No. 2010GC2300131.

6. Katelin T. [REDACTED] is a minor child, and she is the daughter of Decedent and Elaine Trippe.

7. Elaine Trippe is the former spouse of Decedent. She and Decedent were divorced prior to Decedent's death.

8. Pursuant to an Order of the Greenville County Family Court, Elaine Trippe had custody of Katelin T. [REDACTED]. However, upon information and belief, the Greenville County Family Court has awarded temporary custody of Katelin T. [REDACTED] to Greg and Beth Ross, Katelin T. [REDACTED] maternal Aunt.

9. Upon information and belief, James A. Trippe, IV is the son of Decedent, is a resident of Greenville County, has reached the age of majority and is competent.

10. Katelin T. [REDACTED] and James A. Trippe, IV constitute the Decedent's intestate heirs pursuant to S.C. Code Ann. §§ 62-2-102 and 62-2-103.

11. Decedent was survived by his brother, Paul Trippe, who, upon information and belief, is a resident of Greenville County. Paul Trippe is not an heir of Decedent's Estate.

12. On April 16, 2009, this Court appointed Respondent to serve as Personal Representative of the Decedent's Estate.

13. On July 15, 2009, Respondent filed an original Inventory and Appraisement listing the net value of the Estate as \$652,628.67.

14. By letters dated December 23, 2009 and February 8, 2010, the Personal Representative was placed on notice by this Court that the deadline for closing the Estate was April 16, 2010.

15. On April 13, 2010, Respondent requested a one hundred twenty (120) day extension to complete the filing of the Accounting and Proposal for Distribution. The only explanation given for this extension request was that they were "[s]till trying to reach an agreement". The Court denied this request due to Respondent's failure to file an Interim Accounting.

16. On May 14, 2010, this Court informed Respondent's counsel that an Interim Accounting must be filed by May 20, 2010.

17. One month after this deadline, on June 22, 2010, Respondent filed an Interim Accounting with this Court, and the Court granted an extension until August 11, 2010 to file the Final Accounting and close the Estate.

18. The Personal Representative failed to close the Estate by the August 11, 2010 deadline.

19. Approximately three months later and after numerous demands from this Court, on November 8, 2010, the Personal Representative filed an Interim Accounting and requested another one hundred twenty (120) day extension to complete the Final Accounting and Proposal for Distribution.

20. This Court granted the Personal Representative until March 8, 2011 to close the Estate; however, the Personal Representative again failed to close the Estate by the Court's deadline.

21. On May 12, 2011, this Court notified Respondent that he was delinquent in closing the Estate and informed Respondent that the Estate documents had to be filed no later than May 27, 2011.

22. On May 27, 2011, the Personal Representative filed the following documents with the Court: (i) Amended Inventory and Appraisalment; (ii) Interim Accounting; (iii) Proposals for Distribution to James A. Trippe, IV, Katelin T [REDACTED] (sic) and Paul Trippe (sic); (iv) Deeds of Distribution to James A. Trippe, IV, Katelin T [REDACTED] and Paul Trippe; and (v) a Petition for Settlement.

23. Petitioner would allege and show that the documents filed by Respondent on May 27, 2011 contained the following errors:

- Respondent has proposed to distribute assets to Paul Trippe who does not qualify as an heir of Decedent's Estate pursuant to S.C. Code Ann. §§ 62-2-102 and 62-2-103.

- Respondent has proposed to distribute Decedent's Estate in unequal shares, with Katelin T [REDACTED] receiving a smaller share than James A. Trippe, IV. Based upon the Proposals for Distribution filed with the Court and the values listed on the Amended Inventory and Appraisalment, Petitioner would show the following:

Proposed Distribution to James A. Trippe, IV

2004 Boston Whaler with trailer and two Merc 225 XL motors (\$70,000.00 – 63,178.61)	\$6,821.39
Rolex Watch	\$14,600.00
Personal gun collection	\$1,125.00
Furniture, clothing, household property	\$2,395.00
5163 Locust Hill Road, Taylors, SC 29687 mobile home and land	\$40,000.00
Lot in Bahamas (EIS SEC 1 B67 L5)	\$12,600.00
25% of home and lot located at 425 Styles Road, Taylors, SC 29687 (((\$56,000.00-51,710.29) / 2).	\$2,144.86
250 shares of JAT, Inc.	\$115,168.75

50% of cash in acct#0005124432660 of BB&T Bank	\$ <u>TBD</u>
Total:	\$194,855.00

<u>Proposed Distribution to Katelin</u> [REDACTED]	
2003 Polaris Four-Wheeler ATV	\$500.00
1955 Chevrolet Bel Air	\$37,000.00
Lot in Bahamas (EIS SEC 1 B67 L4)	\$12,600.00
25% of home and lot located at 425 Styles Road, Taylors, SC 29687	\$2,144.86
250 shares of JAT, Inc.	\$115,168.75
50% of cash in acct#0005124432660 of BB&T Bank	\$ <u>TBD</u>
Total:	\$167,413.61

<u>Proposed Distribution to Paul Trippe</u>	
500 shares of JAT, Inc.	\$230,337.50
Total:	\$230,337.50

- The Personal Representative has removed assets and reduced values of Estate assets which were listed on the original Inventory and Appraisal without providing any basis for these changes.

- The Personal Representative has failed to propose a distribution for certain assets listed on the Amended Inventory and Appraisal.

- As shown on the Petition for Settlement, the Personal Representative has failed to file income tax returns for the Estate, and upon information and belief, J.A.T., Inc. is an operating corporation but no income or loss has been reported.

- The Personal Representative is attempting to transfer real property located in the Bahamas but has failed to provide documentation evidencing the transfer of real property in that jurisdiction.

24. Since March 1, 2011, the Personal Representative has not, at any time, contacted Petitioner regarding the filing of any extensions, the distribution of Estate assets or the delinquencies in the administration of the Estate.

25. On or about May 6, 2011, Petitioner contacted the Personal Representative's counsel, Michael Coulter, regarding the status of the Estate and the distribution of Estate assets, and, at Petitioner's request, Petitioner met with Mr. Coulter and the Personal Representative on May 12, 2011 regarding this Estate.

26. On May 15, 2011, Petitioner met with Katelin T [REDACTED] and her temporary guardians, Greg and Beth Ross. At this meeting, Petitioner was informed of the following:

(a) Katelin T [REDACTED] has been requested to sign a document transferring her interest in the stock which she is inheriting from Decedent's Estate.

(b) Katelin T [REDACTED] has been provided a list of Estate assets and a proposed distribution of those assets.

(c) Katelin T [REDACTED] has received cash proceeds directly from J.A.T., Inc. which is an asset of the Estate.

27. Based upon the foregoing, Petitioner would allege and show that Respondent has had an additional twelve (12) months to close this Estate, and that despite this additional time, he has failed to properly account for assets and income of the Estate, and has failed to administer and close this Estate in accordance with the South Carolina Probate Code.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

28. Petitioner incorporates by reference all previous and subsequent allegations consistent herewith.

29. As Personal Representative of Decedent's Estate, Respondent stands in a fiduciary relationship to Katelin T [REDACTED]

30. The Personal Representative has breached his fiduciary duty to deal fairly with Katelin T [REDACTED] by acting wrongfully, unreasonably, in bad faith and contrary to its fiduciary duties in the following respects:

- (a) Respondent has failed to administer the Estate in accordance with the South Carolina Probate Code.
- (b) Respondent has failed to administer the Estate in a timely manner.
- (c) Respondent has failed to account for all Estate assets, including but not limited to income derived from Estate assets.
- (d) Respondent has proposed to distribute Estate assets contrary to South Carolina's intestacy laws.
- (e) Respondent has proposed to distribute Estate assets in unequal shares.
- (f) Prior to the appointment of a conservator, Respondent attempted to deal directly with Katelin T [REDACTED], a minor child, in regards to Estate matters (i) by requesting her to sign legal documents; (ii) by distributing cash proceeds from the corporation directly to her, and (iii) by seeking her approval of proposed distributions.
- (g) Upon information and belief, assets of the Estate have been damaged, lost or taken without proper authority due to the maladministration of Respondent.
- (h) Respondent has failed to perform an ancillary probate of real property located in foreign jurisdictions.
- (i) Respondent has failed to communicate with Petitioner and keep him informed regarding the status of the Estate.

- (j) Respondent retained Michael Coulter to serve as the attorney for the Estate, and upon information and belief, Mr. Coulter has in the past and/or now represents either or both J.A.T., Inc. and Respondent in non-Estate matters. In the event that Mr. Coulter has had any of the above attorney-client relationships, the Petitioner would show that Mr. Coulter has a conflict of interest.

31. As a direct and proximate result of Respondent's breach of its fiduciary obligations, Petitioner, on behalf of Katelin T [REDACTED] has experienced loss and injury in an amount to be determined.

FOR A SECOND CAUSE OF ACTION

(Removal of Personal Representative pursuant to S.C. Code Ann. § 62-3-611)

32. Petitioner herein incorporates by reference all previous and subsequent allegations consistent herewith.

33. Petitioner requests the removal of Respondent as Personal Representative of the Decedent's Estate.

34. Petitioner would allege and show that removal is in the best interests of the Estate.

35. For the reasons set forth in Paragraph 30 above, Petitioner would show that Respondent has failed to perform his duties and obligations inherent in his position as Personal Representative.

36. Respondent is incapable of discharging the duties of the office of Personal Representative.

37. Petitioner requests the removal of Respondent as Personal Representative of Decedent's Estate.

38. Petitioner further requests the simultaneous appointment of Stephanie Rosso to serve as personal representative of Decedent's Estate.

FOR A THIRD CAUSE OF ACTION
(Accounting)

39. Petitioner herein incorporates by reference all previous and subsequent allegations consistent herewith.

40. Due to the aforesaid breach of duties by Respondent, Petitioner is entitled to a detailed accounting from Decedent's date of death forward in the ordinary and customary format used in the Probate Court. Specifically, Petitioner requests a copy of all tax returns, bank statements, cancelled checks, invoices, and receipts of the Estate together with all financial records of J.A.T., Inc., including but not limited to contracts, payroll records, distribution records and tax returns, if any.

FOR A FOURTH CAUSE OF ACTION
(Demand for Bond)

41. Petitioner herein incorporates by reference all previous and subsequent allegations consistent herewith.

42. Petitioner hereby demands that bond be required of the Personal Representative until the Personal Representative has been removed as Personal Representative of Decedent's Estate and has accounted for all Estate assets, receipts and disbursements.

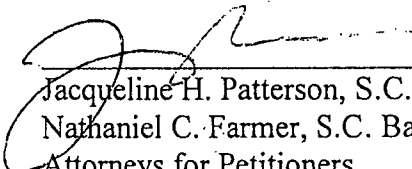
WHEREFORE, the Petitioner respectfully requests the following relief:

- (i) An Order of this Court removing Respondent as Personal Representative of the Decedent's Estate with the simultaneous appointment of Stephanie Rosso as successor personal representative;

- (ii) An Order of this Court directing that Respondent account for all Estate assets, receipts and disbursements, including but not limited to the assets of J.A.T., Inc.;
- (iii) An Order of this Court requiring Respondent to post bond until he has accounted for all Estate assets and is removed as Personal Representative;
- (iv) For actual damages incurred;
- (v) For interest, costs and attorney's fees; and
- (vi) For such other and further relief as the 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 Petitioners

1088 North Church Street

Greenville, SC 29601

(864) 329-0548

nfarmer@pattlawfirm.com

Greenville, SC
June 2, 2011