

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

EDWARD W. MILLER, CIRCUIT COURT JUDGE

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

APPELLATE CASE NO.: 2015-000649

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.

FINAL BRIEF OF APPELLANT

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 1, 2016

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.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

EDWARD W. MILLER, CIRCUIT COURT JUDGE

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

APPELLATE CASE NO.: 2015-000649

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.

FINAL BRIEF OF APPELLANT

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 1, 2016

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.

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Statement of Facts..... 3

Argument:

I. THE COURT ERRED IN AFFIRMING THE PROBATE COURT ORDER HOLDING APPELLANT IN CONTEMPT AND SENTENCING HIM TO INCARCERATION FOR FAILURE TO PAY A CONTRACTUAL OBLIGATION OF AN ESTATE OF WHICH HE WAS THE PERSONAL REPRESENTATIVE BECAUSE INCARCERATION FOR FAILURE TO COMPLY WITH A SETTLEMENT AGREEMENT, ABSENT FRAUD OR BAD FAITH, IS FORBIDDEN BY S.C. CONST. art. I, §19 AND THE CASE LAW OF THIS STATE.....4

II. THE COURT ERRED IN AFFIRMING THE PROBATE COURT ORDER HOLDING APPELLANT PERSONALLY LIABLE FOR THE DEBT OF THE ESTATE AS APPELLANT NEVER AGREED TO BE PERSONALLY LIABLE OF THE DEBTS OF THE ESTATE AS A GUARANTOR OR OTHERWISE.....6

Conclusion7

TABLE OF AUTHORITIES

Cases

1. Cheap-O’s Truck Stop, Inc. v Cloyd, 350 S.C. 596, 567 S.E.2d 514
(Ct. App. 2002)6
2. Coastal States Bank v. Hanover Homes of South Carolina, LLC, 408 S.C. 510,
759 S.E.2d 152 (Ct. App. 2014).....7
3. Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 557 S.E.2d 708
(Ct. App. 2001)6
4. Sanders v. Sanders, 30 S.C. 229, 9 S.E. 97 (1889).....6

Constitution

- S.C. Const. Art. I, §19.....5

STATEMENT OF ISSUES ON APPEAL

- I. Did the circuit court err in affirming the probate court order holding Appellant in contempt and sentencing him to incarceration for failure to pay a contractual obligation of an estate of which he was the personal representative because incarceration for failure to comply with a settlement agreement, absent fraud or bad faith, is forbidden by S.C. Const. Art. I, §19 and the case law of this state?
- II. Did the circuit court err in affirming the probate court order holding Appellant personally liable for the debt of the estate as Appellant never agreed to be personally liable of the debts of the estate as a guarantor or otherwise?

STATEMENT OF THE CASE

James A. Trippe, III, died intestate on March 26, 2009. He left as his heirs James A. Trippe, IV, and Katelin Trippe. The Appellant, James A. Trippe, Jr., the Deceased's father, was named as Personal Representative of the Estate and Gene D. Morin was named as Conservator for Katelin Trippe who is a minor. Among the assets of the Estate was JAT, Inc., a corporation. The Deceased ended up being the sole stockholder of JAT, Inc., but his brother, Paul Trippe was the president and worked in the business. The principal business of JAT, Inc. was placing strips and reflectors on highways and parking lots. JAT, Inc. had ongoing contracts and the equipment to perform those contracts at the time of the Decedent's death.

Under a distribution in kind Katelin Trippe was entitled to one-half of the stock of JAT, Inc. and her half-brother James A. Trippe, IV was entitled to the other half.

The various parties entered into an agreement on the distribution of the assets of the

Estate which was approved by the Probate Court by Order of April 27, 2012. (R. p. 1). Under the agreement Katelin Trippe would receive, among other things, funds in lieu of stock in JAT, Inc. One payment of \$50,000 was due on or before December 31, 2013. On December 31, 2013 JAT, Inc. filed for bankruptcy under Chapter VII which is a liquidation of assets for the benefit of creditors.

On February 27, 2014 Morin, the conservator for Katelin Trippe, filed a rule to show cause against the Personal Representative of the Estate, James A. Trippe, Jr., for failure to pay the \$50,000 timely and for attorney fees and costs. (R. p. 52). This rule was based on James A. Trippe, Jr. being included in the settlement agreement as “individually” and as “Personal Representative”. The rule was heard on March 18, 2014 and the Probate Court ordered James A. Trippe, Jr. to be held in contempt and allowed him to purge himself by paying \$50,000 to the Conservator or serve ninety (90) days in jail. He was also required to pay \$3,585 in attorney fees and costs. James A. Trippe, Jr. filed a motion to reconsider which was denied by Order dated May 30, 2014. (R. p. 42). Notice of Appeal to the circuit court was filed by James A. Trippe, Jr. on June 9, 2014. (R. p. 59). Morin filed his Motion to Dismiss the Appeal which was denied by Order dated December 15, 2014. (R. p. 43). A hearing was held on January 20, 2015 before the Honorable Edward W. Miller. Judge Miller affirmed the probate court Orders dated April 20, 2014 and May 30, 2014, and ordered that each party shall be responsible for its own attorney’s fees. (R. p. 45).

The circuit court Order was dated February 11, 2015 was received by Appellant on February 16, 2015. Notice of Appeal of the circuit court order was served on March 13, 2015. (R. p. 62).

STATEMENT OF FACTS

Prior to his death, James A. Trippe, III (Deceased) was president of a South Carolina corporation named JAT, Inc. His brother Paul Trippe also worked for the company. On one stock certificate in the JAT, Inc. corporate book, James A. Trippe, Jr., the father of the Deceased was named as a shareholder but the stock certificate was never delivered. Thus, the Deceased was determined to be the only shareholder of JAT, Inc.

The Deceased died without a will and left as his heirs at law his son, James A. Trippe, IV, and his daughter, Katelin Trippe, a minor. Gene D. Morin (Morin) was appointed temporary conservator for Katelin Trippe and later was named permanent conservator.

The business of JAT, Inc. was to place thermal strips and reflectors on highways and parking lots. At the time of the Deceased's death JAT, Inc. had a number of contracts to perform and the equipment to complete those contracts.

An agreement was reached between the personal representative, the heirs of the estate, James A. Trippe, IV, and Katelin Trippe by her conservator Morin, and Paul Trippe, as president of JAT, Inc. The agreement provided, among other things, the stock of JAT, Inc. would go to heir James A. Trippe, III. Katelin Trippe would receive cash payments of \$175,000 on April 25, 2012; \$50,000 on December 31, 2013; \$50,000 on December 31, 2014; and \$25,000 on December 31, 2015. The stock of JAT, Inc. would be security for the payments.

The agreement was approved by the Probate Court by Order of April 27, 2012. (R. p. 1). Although late, the first payment of \$175,000 was made to Morin.

On December 31, 2013 JAT, Inc. declared bankruptcy under Chapter 7 which is a liquidation of assets. The payment of \$50,000 to Katelin Trippe was therefore not made.

Initially Morin named JAT, Inc. in a rule to show cause but later amended the rule to

show cause to name only James A. Trippe, Jr., as Personal Representative and individually, as being in contempt for the failure to make the \$50,000 payment. (R. p. 52).

The rule was heard March 18, 2014. The Personal Representative testified that JAT, Inc. did not make the payment because it was in bankruptcy. (R. p. 115).

The Personal Representative testified that the \$50,000 was to be made by JAT, Inc., and not him individually. On cross examination the Personal Representative testified that he had opened an equity line on a home that he and his wife owned jointly through a trust for their benefit. He further testified he had no other land, stocks, bonds, assets, or pensions except for social security which was his only income. (R. pp. 116-117).

Nevertheless the Probate Court held the Personal Representative in contempt and sentenced him to serve ninety (90) days in jail but allowed him to purge himself by paying \$50,000 and the awarded attorney fees by the next afternoon. (R. p. 38).

In its written Order, the Probate Court cited the fact that the Personal Representative could borrow funds from the equity line on his home in order to pay Morin and the attorney fees. (R. pp. 37-38).

The Personal Representative filed a motion to reconsider on April 24, 2014 and pointed out that the Agreement was a contractual obligation not subject to contempt. In addition, the Personal Representative is not a guarantor on a payment to Morin because he received nothing from the Estate. (R. p. 57).

Reconsideration was denied without discussion by probate court Order dated May 30, 2014. (R. p. 42). Notice of Appeal to the circuit court was filed and a hearing was held on January 20, 2015. The Honorable Edward W. Miller denied the appeal by Order filed February 12, 2015 and received by the Appellant on February 16, 2015. An appeal was filed on March 13,

ARGUMENT

I. THE COURT ERRED IN AFFIRMING THE PROBATE COURT HOLDING APPELLANT IN CONTEMPT AND SENTENCING HIM TO INCARCERATION FOR FAILURE TO PAY A CONTRACTUAL OBLIGATION OF AN ESTATE OF WHICH HE WAS THE PERSONAL REPRESENTATIVE BECAUSE INCARCERATION FOR FAILURE TO COMPLY WITH A SETTLEMENT AGREEMENT, ABSENT FRAUD OR BAD FAITH, IS FORBIDDEN BY S.C. CONST. art. I, §19 AND THE CASE LAW OF THIS STATE.

The facts underlying this contempt charge is simple. The two heirs of the Trippe Estate came to an agreement as to how the assets of the Estate would be distributed. Their agreement was put into writing and signed (“Mutual Release and Settlement Agreement”). This Agreement self-refers to two Probate Code sections that deal with agreements, namely §62-3-912 and §62-3-1101. The Agreement was approved by the Probate Court by Order dated April 27, 2012. (R. p. 1).

The Agreement provides for payment to one heir of funds in exchange for her ownership interest of stock in JAT, Inc. a corporation. The other heir received the entire stock of JAT, Inc. Payment of the funds to the heir was secured by the pledge of at least one-half of the JAT, Inc. stock.

By the time one payment of \$50,000 was due, JAT, Inc. was in bankruptcy. Following a rule to show case the Probate Court held the appellant is civil contempt for failure to personally make the payment of \$50,000 and sentenced him to incarceration. There is no allegation of fraud or bad faith.

The Probate Court ruling of incarceration to pay an obligation arising solely out of a civil debt based on a contractual obligation violations S.C. Const. art I, §19 which reads, “No person

shall be imprisoned for debt except in case of fraud.”

In Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 557 S.E.2d 708 (Ct. App. 2001) at p. 179, the court stated: “We note and emphasize that South Carolina law does not permit a person to be held in contempt for failure to pay a civil debt, which has arisen solely out of a contractual obligation.” Sanders v. Sanders, 30 S.C. 229, 9 S.E. 97 (1889). See also Cheap-O’s Truck Stop, Inc. v Cloyd, 350 S.C. 596, 567 S.E.2d 514 (Ct. App. 2002).

The Probate Court’s ruling of civil contempt and incarceration on behalf of the Appellant violates the South Carolina Constitution and the case law thereunder and should be reversed *in toto*. The Circuit Court erred in upholding the Probate Court Order.

II. THE COURT ERRED IN AFFIRMING THE PROBATE COURT HOLDING APPELLANT PERSONALLY LIABLE FOR THE DEBT OF THE ESTATE AS APPELLANT NEVER AGREED TO BE PERSONALLY LIABLE OF THE DEBTS OF THE ESTATE AS A GUARANTOR OR OTHERWISE.

Simply stated, the parties named in the Mutual Release and Settlement Agreement agreed to the distribution of the assets of the estate of the Deceased. Their agreement was approved by Order of the Probate Court.

The Appellant signed the Agreement as Personal Representative and individually. He received no estate assets under the Agreement. All estate assets went to the two heirs. As part of the Agreement, one heir received stock of the other heir in JAT, Inc. In exchange for that stock the heir was to receive certain payments secured by not less than fifty percent (50%) of the outstanding shares of stock in JAT, Inc. In other words, the heir receiving all of the stock of JAT, Inc. was to earn the necessary funds to pay for the transfer of the JAT, Inc. stock to him. The Agreement was approved by the Probate Court.

As argued in the Appellant's Argument No. I, civil contempt is not available for payment of a civil debt which arises out of a contractual obligation absent fraud. No fraud was alleged.

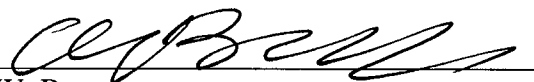
It is inescapable that either the Probate Court violated the South Carolina Constitution by holding the Appellant in civil contempt in ordering his incarceration for the non-payment of a civil debt arising out of a contractual obligation or the Probate Court found the Appellant had obligated himself to pay the debt of the other heir who received the stock in JAT, Inc. If so, the Probate Court found the Appellant to have guaranteed the debt of one heir or the Estate in general.

Guaranties are contracts. Coastal States Bank v. Hanover Homes of South Carolina, LLC, 408 S.C. 510, 759 S.E.2d 152 (Ct. App. 2014).

Even assuming the Appellant guaranteed the payment of one heir to the other the guaranty is a civil debt and incarceration is prohibited for the non-payment of that guaranty absent fraud. The finding of civil contempt and incarceration of the Appellant was beyond the contempt powers of the Probate Court and should be reversed. The Circuit Court Order upholding the Probate Court Order should also be reversed.

CONCLUSION

The Appellant requests: 1) that this Court reverse the lower court's finding of civil contempt incarceration as being in violation of the South Carolina Constitution and case law as provided hereunder; 2) that the funds paid under the Order of the Probate Court should be returned immediately; and 3) that the attorney fees paid under the illegal threat of incarceration should also be returned immediately.



O. W. Bannister
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

EDWARD W. MILLER, CIRCUIT COURT JUDGE

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

APPELLATE CASE NO.: 2015-000649

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.

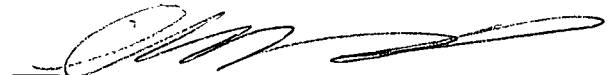
RECEIVED

MAR 07 2016

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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 1, 2016