

ENTRY ORDER

SEP 4 2009

SUPREME COURT DOCKET NO. 2009-048

SEPTEMBER TERM, 2009

Donald Sinex	}	APPEALED FROM:
	}	
v.	}	Rutland Superior Court
	}	
Christopher Wurster	}	DOCKET NO. 430-6-07 Rdev
	}	
		Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

Christopher Wurster appeals from the trial court's order requiring him to pay one-half of his daughter's tuition at a private high school. He argues that there is no legal basis for the court's decision. Alternatively, he maintains that even if he did agree with Donald Sinex that he would pay half the child's tuition, the court erred in interpreting the terms of the parties' agreement. We reverse and remand for additional findings.

The record indicates the following. Wurster and his ex-wife divorced in 1994, and they share legal custody of their teenage daughter. Wife has primary physical custody of the child. Wife married Donald Sinex, and the family now lives in Rutland, Vermont. Rutland does not have a high school, and daughter decided to enroll in a private boarding school in Vermont. The Town of Rutland contributes approximately \$10,000 in tuition costs for daughter. Sinex asked Wurster if he wanted to contribute to the costs of daughter's education. Sinex and Wurster met several times during the summer of 2006 to discuss this issue, and they apparently agreed to split the child's tuition costs. The parties also discussed splitting the costs of other school-related expenses that daughter might incur. Both Sinex and Wurster appear to be successful and experienced businessmen.

In July 2006, Sinex paid \$20,160.40 in tuition costs. Wurster made some payments toward his share of the tuition expenses and the child's incidental costs. The interactions between Sinex and Wurster became increasingly contentious, however, and in October 2006, Wurster stopped making any payments beyond his monthly child-support obligation. That same month, Wurster moved to increase his child support payment, which had been set at \$886.67 per month since 1994. Wurster and his ex-wife apparently agreed to a guideline figure of \$1,500 per month as of May 2007.

In June 2007, Sinex sued Wurster for breach of contract. He alleged that the parties had agreed to share the cost of private school tuition equally, and that Wurster had made only partial payment of his share. Sinex also alleged that the parties agreed to equally divide the incidental expenses incurred by the child. Sinex sought to recover the sums due under the agreement, and

he sought a declaratory judgment that Wurster would be responsible for one-half of the school tuition and one-half of the incidental expenses until the child graduated or reached the age of eighteen.

In November 2007, Wurster moved to dismiss the case for lack of subject-matter jurisdiction. He asserted that Sinex's complaint was an improper collateral attack on the modified child support order. Following a hearing, the court denied the motion in a written order. The court found in part that Sinex was alleging a private contract between himself and Wurster and that Sinex did not have a claim that would be cognizable in family court. The court also reasoned that the child support order did not clearly indicate, as Wurster asserted, that the issue of private school tuition had been resolved through a settlement agreement with his ex-wife. Wurster does not challenge this decision, and we have not reviewed it on appeal.

Following a bench trial on the merits of Sinex's claim, the court made findings on the record. It found that Sinex and Wurster met several times during the summer of 2006 and had "some discussions involving payment and participation in the child's education." From that point, things appeared to be falling apart as to the terms and conditions of the agreement. Wurster and his former wife subsequently modified Wurster's child support obligation. The court found that while Wurster indicated that his modified child support payment included tuition expenses, he did not make that clear to anyone during negotiations with his ex-wife or her attorney. The court concluded that the only way to equitably address the child's tuition costs was to split the amount due after deducting the amount of tuition paid by the town. The court ordered Wurster to pay this amount in addition to his child support payment, finding that the child support payment was designed to cover other expenses. Wurster appealed from this order.

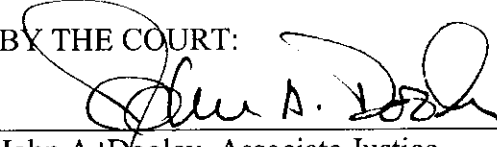
Wurster argues that the court did not find that the parties entered into a legally binding agreement, and thus, there is no basis for its order. In a related vein, he asserts that any action that could be perceived as acceptance of a contract was made under duress, and that any alleged contract was invalid for lack of consideration. Wurster points to his increased child support obligation as evidence that he intended to contribute to the cost of his daughter's education through child support rather than through a separate contract with Sinex. He maintains that the court erred in finding that his child support payment was intended to cover the child's incidental expenses while at school, rather than her tuition. Finally, Wurster asserts that even if the court did conclude that the parties entered into a binding agreement that was breached, the parties always intended Wurster's child support would be included in calculating the amount owed toward tuition.

We cannot address Wurster's arguments because the trial court's findings are insufficient to allow us to determine what was actually decided here. It is not clear if the court found that a binding contract existed between the parties. See, e.g., Quenneville v. Buttolph, 2003 VT 82, ¶ 16, 175 Vt. 444 (explaining that a binding agreement "must contain all of the material and essential terms," although it need not contain each and every contractual term). The question of whether an agreement exists is one of fact, and we cannot resolve factual disputes on appeal. See id. (the existence of a legally binding agreement "is a question of fact, which depends, in part, on the reasonable inferences that may be drawn from the facts of the case" (citation omitted)). Assuming, arguendo, that a legally binding agreement existed, the court similarly did not determine what the terms of such agreement were and whether Wurster in fact breached this

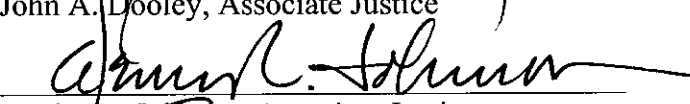
agreement. While both parties testified that they agreed to split the child's tuition costs equally, both have different positions as to what this means. Wurster asserts that the parties agreed to include his child support obligation in determining the amount of tuition owed, and Wurster points to evidence that Sinex acquiesced in this approach. Sinex argues that the child-support offset was not part of the parties' initial agreement, and that he had gratuitously allowed Wurster to deduct the child-support payment from the amount of tuition due. The trial court did not expressly resolve this dispute regarding the terms of the parties' agreement. See Sec'y, Vt. Agency of Natural Res. v. Irish, 169 Vt. 407, 419 (1999) (recognizing that trial court has fundamental duty to make all findings necessary to support its conclusions, resolve the issues before it, and provide a basis for appellate review). In the absence of such critical findings, we cannot discern the basis of the court's decision that Wurster must pay half of the child's tuition, not including the offset for the child-support payment. See Slade v. Slade, 2005 VT 39, ¶ 5, 178 Vt. 540 (mem.) (where trial court makes findings, "whether upon request or on its own initiative—the findings must be adequate to explain to the parties, and to this Court on appeal, how the family court arrived at its decision"); see also Maurer v. Maurer, 2005 VT 26, ¶ 12, 178 Vt. 489 (mem.) (remanding for further findings where the trial court issued some findings on its own initiative, but the findings were inadequate to support the decision). The trial court's findings here do not "meet the test of adequacy upon review," and we therefore reverse and remand for additional findings. Id.

Reversed and remanded.

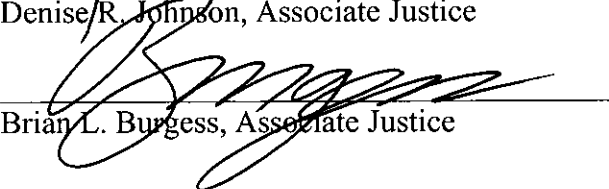
BY THE COURT:



John A. Dooley, Associate Justice



Denise R. Johnson, Associate Justice



Brian L. Burgess, Associate Justice