ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-461

MAY TERM, 2009

Doug Haser	}	APPEALED FROM:
	}	
v.	}	Washington Family Court
	}	
Jessie Graham	}	DOCKET NO. 307-8-01 Wndm
		Trial Judge: Thomas J. Devine

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

Mother appeals from the family court's denial of her request to modify child support to include the cost of a private secondary school for the parties' sixteen year old daughter because the school is necessary to meet daughter's "special needs" under 15 V.S.A. § 653(4). The trial court concluded that the tuition cost did not meet the statutory requirement because the program was not tailored to meet daughter's needs. We affirm.

The relevant facts are not disputed. Mother and father were divorced in March 2002. Initially, the parties shared legal rights and responsibilities and mother had primarily physical responsibilities of the parties' only child. Following the divorce, father remarried and moved to Arizona with his new wife. Daughter lived with mother in Vermont where she initially attended public school, and was later home schooled by mother. Daughter does not have any special learning disabilities, is highly intelligent and has done well in school when she has applied herself. Unfortunately, since the parties' divorce daughter has gone through several traumatic experiences that have caused her to engage in self-destructive and defiant behaviors including experimenting with alcohol and marijuana. Mother had daughter see a counselor, but daughter's oppositional behavior did not improve. The parties agreed that daughter would move to Arizona to be with father in late December 2007. Although daughter initially showed some improvement in Arizona, her behavior deteriorated and she again began engaging in defiant behaviors and would not agree to the rules in father's house. She returned to mother's home in Vermont in June 2008. Daughter resumed counseling with her therapist in Vermont. On the therapist's recommendation, mother sought to send daughter to a boarding school, hoping that it might improve daughter's behavior because it would remove her from conflict with her parents. Father did not agree that it was necessary and felt that public school and counseling could address daughter's needs. Mother filed for sole legal responsibility over daughter's education based on the parent's inability to agree. On August 25, 2008, the court granted mother's request and modified legal parental rights so that mother had sole authority regarding educational decisions.

Mother then decided to send daughter to Gould Academy in Maine and enrolled daughter there beginning in September 2008. Gould Academy is a residential preparatory school, and annual tuition is $41,500. Although counseling and therapy are available, it is not a specially

designed therapeutic school. Mother hoped that having daughter on neutral territory away from conflicts with parents would help her to focus on her education and development. As part of the parties' initial divorce, they had agreed to set aside funds for daughter's college expenses in separate education accounts. Mother withdrew a portion of the funds she had saved for this purpose to make an initial payment to Gould for the 2008-09 academic year. Father declined to withdraw funds from his account to apply towards secondary education. Father felt that daughter could succeed in a public high school and questioned the wisdom of sending daughter to Gould.

Mother moved to modify child support to include the tuition cost for Gould or for an upward deviation from the child support guidelines. Mother argued that while daughter does not have any learning disabilities or special educational needs, her emotional and behavioral needs require a residential school like Gould and therefore the cost should be split between the parents in a ratio relative to their income.

The court granted mother's request to modify child support based on the parties' income, but denied the request to include the tuition cost for Gould or to make an upward deviation from the guidelines. First, the court concluded that the tuition cost was not an extraordinary education expense under § 653(4) because daughter's basic education needs are not extraordinary and Gould does not have any special programs designed to address daughter's behavioral and emotional needs. See McCormick v. McCormick, 159 Vt. 472, 481 (1993) (holding that typically private school tuition is not an extraordinary educational expense). Next, the court modified child support according to the guidelines based on the parties' income. The court considered the statutory factors in § 659 to assess whether an upward deviation from the guidelines was fair, and concluded that there was no basis for a deviation because the parties did not have the financial resources to pay for tuition at the private school, daughter went to public school during the marriage, and the school was not tailored to meet daughter's emotional needs.

On appeal, mother argues that the court erred in interpreting the statutes relating to child support. Mother contends that under § 653(4), the cost of attending Gould qualifies as an extraordinary educational expense given daughter's special behavioral and emotional needs.

Under the statutory scheme, the family court must calculate a parent's total child support obligation by deriving an amount from the guidelines based on the parties' income and also including child care expenses and any extraordinary expenses. Id. § 653(9). The statute in turn defines an extraordinary expense as "any extraordinary medical or education expenses, including expenses related to the special needs of a child, incurred on behalf of involved children." Id. § 653(4). Mother argues that tuition at Gould is such an extraordinary expense.

We conclude that the trial court's decision was consistent with the terms of the statute. In McCormick, in response to the mother's request that the court order the father to pay private school tuition, we held that private school tuition does not typically fall into the definition of extraordinary education expenses. 159 Vt. at 481. Thus, under McCormick, the trial court may award private school tuition as an extraordinary expense, but there is no presumption of such. Pursuant to the terms of the statute, an extraordinary education expense must be "related to the special needs of a child." 15 V.S.A. § 653(4). Mother does not challenge the trial court's findings that daughter's educational needs are not extraordinary, but argues her behavioral and emotional needs meet the statutory requirement of special needs. Even if we accepted that the statutory provision applied to behavioral and emotional as well as educational needs, the court's unchallenged finding is that Gould does not have programs tailored to meet daughter's emotional and behavioral needs, thus the program is not "related to" daughter's needs. On this undisputed

record, we conclude that the court did not err in denying mother's request to include the cost of tuition at Gould as an extraordinary educational expense.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice