Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-217

FEBRUARY TERM, 2007

John Brumsted	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
Nicole Murtha (Brumsted)	}	
	}	DOCKET NO. 924-11-00 Cndm
		Trial Judge: Geoffrey W. Crawford

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

¶ 1. Father appeals an order of the family court requiring him to reimburse mother for certain of child's medical expenses pursuant to the language of the parties' stipulated divorce agreement. We reverse and remand.

¶ 2. This dispute concerns father's obligation to pay the expenses of the couple's youngest child, Kellen. Kellen was in high school when his parents divorced and lived with mother at that time. Kellen graduated from high school in June 2002, and began to attend Vanderbilt University that fall. Kellen left school, however, in 2003, and returned to live with mother. From 2003 to 2005, Kellen was no longer a full-time student, although he began attending a college near mother's residence on a part-time basis in 2005. In the time since Kellen left Vanderbilt University, he incurred $5,556.86 in medical expenses which turned out not to be covered by the health insurance maintained by father for the child, because the services were provided by a doctor outside of the insurer's pre-approved "network" of providers. Mother sought to compel father to reimburse her for these costs, arguing that father was obligated to do so under the language of the parties' divorce agreement. Father maintained that his obligation to pay Kellen's healthcare costs ended with his obligation to make annual payments to mother in support of the child. Mother maintained—and the family court held—that father remains responsible for Kellen's medical expenses until Kellen completes his undergraduate education.

¶ 3. The relevant language of the divorce agreement is as follows:

> 4. In lieu of direct child support, the husband shall continue to pay the private school education for Kellen at Exeter including room, board, tuition and all associated living expenses, automobile expenses and insurance until he graduates. In addition, the husband shall pay

> to the wife the sum of $5,000 per year for five years beginning August 1, 2001 as support for Kellen and to help defray his living costs. This amount shall not be considered as spousal support. The Husband shall also pay any additional mutually agreed upon expenses incurred directly for Kellen's benefit while he resides with her. The husband shall also provide medical, dental and health care insurance and otherwise be solely responsible for all of Kellen's medical, dental and healthcare costs. The husband shall also be solely responsible for any extra expenses for Kellen including sports, camps, sports equipment and the like. Commencing in 2001, the wife shall be entitled to claim Kellen as an exemption of her Federal and State income tax returns.
>
> 5. The husband shall be solely responsible for and pay all post-secondary educational expenses for Kellen, Meghann who is currently enrolled at Wellesley College, and Lauren, currently enrolled at Dartmouth College, including room, board, tuition, associated expenses, living expenses, automobile expenses, and insurance. The husband's obligation for post-secondary education shall continue for each child until each obtains his/her undergraduate degree. The husband shall have no obligation to provide for post-graduate expenses except by agreement between the parties. The husband shall also pay and hold the wife harmless from [L]auren's VSAC loan in the approximate amount of $25,000 and Meghann's MEFA loan in the approximate amount of $25,000.

Reading these provisions, the family court held that the divorce agreement was unambiguous and that father's obligation to "provide medical, dental and health care insurance and otherwise be solely responsible for all of Kellen's medical, dental and healthcare costs" under paragraph four extended until such time that Kellen "obtain[ed] his . . . undergraduate degree," as provided in paragraph five.

¶ 4. On appeal, father contends that the family court misconstrued the terms of the agreement. Specifically, father argues that his obligation to pay Kellen's medical expenses ended on August 1, 2005, the date of the last annual payment due to mother under paragraph four to "help defray [Kellen's] living costs." Ordinary rules of contract interpretation apply when parties stipulate to the terms of their divorce. Lussier v. Lussier, 174 Vt. 454, 455 (2002) (mem.). We review de novo the family court's determination that the divorce agreement was unambiguous. Rogers v. Wells, 174 Vt. 492, 494 (2002) (mem.).

¶ 5. We cannot agree with the family court that the duration expressed for father's obligations in paragraph five necessarily governs the obligations set forth in paragraph four. Paragraph five addresses father's "sole responsibility to pay for all post-secondary educational expenses" for the child, "including room, board, tuition, associated expenses, living expenses, automobile expenses, and insurance" until graduation. Father apparently secured the required insurance. On the face of paragraph five, the payment claimed by mother does not appear on the list

of father's obligations.

¶ 6. Similarly, the plain language of paragraph four does not support father's position that his commitment to pay "healthcare costs" expired along with the explicit August 1, 2005 termination of his duty to make annual support payments. Father's agreement to "also" be responsible for the child's healthcare expenses was expressly in addition to the support and boarding school payments. On the other hand, paragraph four reads to make father's liability for the child's healthcare costs coextensive with the obligation to pay for the child's "extra expenses . . . including sports, camps, sports equipment and the like,"an obligation we would not ordinarily expect to last indefinitely. Mother defends the family court's interpretation of the agreement to require such payments until the child receives his bachelor's degree as within the court's discretion, suggesting that the agreement contemplated an end to father's obligation at some point.

¶ 7. The agreement is ambiguous on this point. Both constructions can be reasonably argued, but the actual language of the two clauses does not entirely support either position. See In re Vt. State Employees' Ass'n, Inc., 2005 VT 129, ¶ 15, 179 Vt. 228 ("Ambiguity exists where the disputed language will allow more than one reasonable interpretation."). The parties may have intended a literal application of paragraph four to require father to pay both sporting and healthcare costs in perpetuity, but absent particular evidence of such intent, such a meaning seems unlikely.

¶ 8. Accordingly, the intent of the parties must be determined by examining circumstances outside the language of the agreement. See Main St. Landing, LLC v. Lake St. Ass'n, 2006 VT 13, ¶ 7 (mem.) (if a writing is ambiguous, "interpretation of the parties' intent becomes a question of fact to be determined based on . . . evidence concerning its subject matter, its purpose at the time it was executed, and the situations of the parties"); see also Ferrill v. N. Amer. Hunting Retriever Ass'n, 173 Vt, 587, 590 (2002) (mem.) (remanding matter to trial court to take evidence of circumstances surrounding creation of agreement where agreement was ambiguous).

Reversed and remanded for further proceedings consistent with this decision.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice