

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2010-0472, In the Matter of Kathleen Moore and Michael Moore, the court on May 16, 2012, issued the following order:

The petitioner, Kathleen Moore, appeals an order of the trial court dismissing her petition for contempt. She argues that, construed in the light most favorable to her, the allegations in her petition constituted a basis for relief. We reverse and remand.

In reviewing a motion to dismiss, our standard of review is whether the allegations in the petitioner's pleadings are reasonably susceptible of a construction that would permit recovery. See McNamara v. Hersh, 157 N.H. 72, 73 (2008). We assume the petitioner's allegations to be true and construe all reasonable inferences in the light most favorable to her. See id. We need not, however, accept allegations in the writ that are merely conclusions of law. Beane v. Dana S. Beane & Co., 160 N.H. 708, 711 (2010). We then engage in a threshold inquiry, testing the facts alleged in the pleadings against the applicable law. Id. We will uphold the trial court's grant of a motion to dismiss if the facts pleaded do not constitute a basis for legal relief. Id.

In this case, the trial court found that the parties were divorced in 1997. We have not been provided with a copy of the divorce decree. Their two children attended college from 1999 to 2003 and from 2002 to 2007 respectively. In 2008, the petitioner sought to enforce the following provision of the permanent stipulation that was incorporated into the parties' divorce decree: "The parties agree to contribute to their children's post-secondary expenses to the extent each Party is financially able at the time. Both parties shall cooperate in completing any financial aid applications." The respondent filed a motion to dismiss. The trial court granted the motion, finding that the "phrase 'at the time' can only reasonably be meant to require contemporaneous contribution at the time that the bills are incurred."

A stipulated agreement is contractual in nature and therefore governed by contract rules. In the Matter of Taber-McCarthy & McCarthy, 160 N.H. 112, 115 (2010). Its interpretation is a question of law, which we review de novo. Id. When interpreting a written agreement, we give the language used by the parties its reasonable meaning, considering the circumstances and context in which the agreement was negotiated and reading the document as a whole. Id. Absent ambiguity, the parties' intent will be determined from the plain meaning of the language used in the contract. Id.

The language of the cited provision contains no requirement that the parent paying educational expenses seek contemporaneous contribution from the other parent. Rather, because the language “at the time” directly follows “financially able,” we conclude that the contemporaneity condition modifies the financial ability of the parties. Accordingly, it was error for the trial court to dismiss the petition for contempt on this basis.

The respondent argues that the trial court properly ruled that the petition was barred by laches. The trial court ruled that the petitioner offered no reasonable explanation for failing to pursue her claim at the time that the expense was incurred for each child. Even if we were to assume that this finding was intended to support a dismissal on the basis of laches, we would not affirm.

Laches is an affirmative defense and the burden was on the respondent to demonstrate that the delay was unreasonable and prejudicial. See Flaherty v. Dixey, 158 N.H. 385, 387 (2009); Nordic Inn Condo. Owners Assoc. v. Ventullo, 151 N.H. 571, 582 (2004). In reviewing this asserted defense, the trial court should consider the knowledge of the petitioner, the conduct of the respondent, the interests to be vindicated and the resulting prejudice. Flaherty, 158 N.H. at 387. Even if we accept the parties’ offers of proof made at the hearing as well as the trial court’s finding that the petitioner gave no reasonable explanation for the delay in pursuing her claim, we conclude based upon our interpretation of the language of the cited provision that the record fails to support a finding that the respondent proved that the delay was unreasonable and prejudicial to him.

Reversed and remanded.

DALIANIS, C.J., and HICKS and CONBOY, JJ., concurred.

**Eileen Fox,
Clerk**