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STATE OF VERMONT  
RUTLAND COUNTY

|                      |   |                         |
|----------------------|---|-------------------------|
| DONALD SINEX,        | ) |                         |
| Plaintiff,           | ) | Rutland Superior Court  |
|                      | ) | Docket No. 430-6-07Rdcv |
| v.                   | ) |                         |
|                      | ) |                         |
| CHRISTOPHER WURSTER, | ) |                         |
| Defendant.           | ) |                         |

**DECISION**  
**Defendant’s Motion to Dismiss, filed July 13, 2007**

This matter came before the court for hearing on September 20, 2007 on Defendant’s Motion to Dismiss for lack of subject-matter jurisdiction. Plaintiff Donald Sinex was present and represented by Attorney Peter F. Langrock. Defendant Christopher Wurster was present and represented by Attorney Pamela Gatos.

Plaintiff Sinex is the stepfather of a fifteen-year-old girl enrolled in private school. He is married to the girl’s mother. He alleges that he entered into an agreement with Defendant Wurster that each would pay half of the girl’s tuition expenses at the private school. He also alleges that Wurster breached the contract by failing to pay, and that he has been damaged by having to pay all the expenses, including Wurster’s share.

Wurster challenges the jurisdiction of the Superior Court to hear the case. He argues that the claim is a collateral attack upon a child support order issued by the Rutland Family Court on May 21, 2007, and that it should be addressed by the Family Court in relation to the child support order. He argues that when his child support was modified upward by that order from \$866.67 per month to \$1,498.27 per month, the private school expense formed the basis of the stipulated amended order, and that the Plaintiff should not be allowed to address a claim for education expenses in Superior Court when the issue lies properly in Family Court.

The Family Court has exclusive jurisdiction over child support matters. 4 V.S.A. § 454(4); *St. Hilaire v. DeBlois*, 168 Vt. 445, 447 (1998). This jurisdiction is limited to

actions cognizable in Family Court, however, and the Superior Court retains general jurisdiction over civil matters. 4 V.S.A. § 113. For this reason, Superior Court complaints are not dismissed for lack of subject matter jurisdiction unless the pleadings establish that the complaint is “nothing more than a collateral attack” upon a Family Court order. *Tudhope v. Riehle*, 167 Vt. 174, 178 (1997).

For example, in *Tudhope*, the Plaintiff and Defendant negotiated a separation agreement that dealt with the distribution of marital property. *Id.* at 176. The agreement was incorporated into their judgment of divorce. *Id.* Six years later, the Plaintiff brought suit in Superior Court, alleging that her husband fraudulently induced her to sign the separation agreement. *Id.* The Supreme Court agreed that dismissal of the complaint was appropriate, noting that the negotiated agreement was assailable “only through a motion to set aside the judgment.” *Id.* at 177 (citing V.R.C.P. 60(b)). In other words, the complaint “should have been directed to the family court.” *Id.*

On the other hand, dismissal is not appropriate when it is not conclusively established that jurisdiction is lacking. See *Demgard v. Demgard*, 173 Vt. 526, 527–28 (2001) (mem.) (refusing to dismiss a complaint for contribution between ex-spouses where the Family Court divorce order did not reference the marital debts in question).

The standard applicable on a motion to dismiss is firmly established: an action should not be dismissed unless there is no set of facts on which the plaintiff would be entitled to relief. *Assoc. of Haystack Property Owners v. Sprague*, 145 Vt. 443, 446 (1985).

In this case, Sinex is alleging a private contract between himself and Wurster. Plaintiff has no family relationship with his wife’s daughter, and is not a party to the Family Court case between his wife and Wurster. Because of the limited jurisdiction of the Family Court, he does not have a claim cognizable in Family Court. 4 V.S.A. § 454; see also *Office of Child Support ex rel Lewis v. Lewis*, 2004 VT 127, ¶ 7, 178 Vt. 204 (“We strictly construe the family court’s grant of authority, and we do not infer jurisdiction where it does not explicitly exist.”); *Rogers v. Wells*, 174 Vt. 492, 494 (2002) (mem.) (refusing to dismiss Superior Court complaint related to child support where the parents were unmarried and negotiated for themselves an agreement on support and property division). While Wurster argues that Sinex is asserting this claim as a surrogate for the mother, that is a question of fact for the fact-finder.

Moreover, the child support order is not clearly consistent with Defendant’s assertions that the issue of private school was resolved by the settlement agreement. On the worksheet upon which the magistrate calculated the child-support obligations, the field marked “Educational Expenses” simply contains the entry “\$0.00.” Furthermore, the court cannot infer that educational expenses are included in the total amount because Wurster’s income exceeds “the uppermost levels of the support guidelines.” See 15 V.S.A. § 656(d) (providing that the magistrate may exercise discretion in determining obligations when income exceeds the guidelines); accord *C.D. v. N.M.*, 160 Vt. 495, 500 (1993).

The pleadings show a complaint alleging a breach of a private contract between two unrelated parties. Defendant has cited no clear authority precluding an adult from contracting with a child's parent concerning payment of educational expenses for the child. Plaintiff has set forth sufficient facts to establish subject matter jurisdiction. 5B Wright & Miller, Federal Practice & Procedure: Civil 2d § 1350. The court cannot conclude that there is no possible set of facts entitling Plaintiff to recovery.

**ORDER**

For the foregoing reasons, Defendant's Motion to Dismiss is *denied*.

Dated at Rutland, Vermont this \_\_\_\_ day of November, 2007.

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Hon. Mary Miles Teachout  
Superior Court Judge