NO. COA11-964
NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2012

I.J. QUINN, JR.; I.J. QUINN, SR.;
FRANCES A. QUINN,[1]
Plaintiff

v.

Duplin County
No. 89-CVD-62

SHEILA GRAHAM QUINN, (now
Schmalbac[h]),
Defendant

Appeal by defendant from order entered 23 March 2011 by Judge Sarah C. Seaton in Duplin County District Court. Heard in the Court of Appeals 15 December 2011.

White & Allen, P.A., by David J. Fillippeli, Jr., for defendant-appellant.

Thompson & Thompson, P.C., by Kennedy L. Thompson, for plaintiff-appellee.

ERVIN, Judge.

Defendant Sheila Graham Schmalbach (formerly Quinn) appeals from an order denying her motion to have Plaintiff I.J. Quinn, Jr., held in contempt for violating the parties' consent

[1]Plaintiff father and mother, I.J. Quinn, Sr., and Frances A. Quinn, were originally parties to this case. However, they were subsequently relieved of the obligation to be party plaintiffs.

judgment. On appeal, Defendant contends that the trial court erroneously denied her request that Plaintiff be held in contempt because the evidence established that Plaintiff had willfully failed to abide by the terms of the parties' separation agreement as incorporated in an earlier order. After careful consideration of Defendant's challenge to the trial court's order in light of the record and the applicable law, we conclude that the trial court's order should be affirmed.

I. Factual Background

Plaintiff and Defendant were married on 2 March 1985. Two children were born of the parties' marriage, a son, I.J. Quinn, III ("Josh"), born on 18 September 1986, and a daughter, Staci Graham Quinn Bailey ("Staci"), born on 23 May 1988. Plaintiff and Defendant separated on 13 November 1988.

On 31 January 1989, Plaintiff, along with his father and mother, filed a complaint seeking custody of the parties' children. In her answer, Defendant asserted counterclaims seeking custody of the children, child support, and attorney's fees. On 2 May 1989, the parties entered into a separation agreement in which Defendant was awarded primary custody of the children. In addition, the separation agreement provided that Plaintiff would pay child support until certain specifically enumerated events occurred, such as completion of each child's

high school education; attaining the age of 18 years after having completed his or her high school education; marriage or fulltime employment of the child; or other acts of emancipation. The separation agreement also provided, in pertinent part, that Plaintiff would "be responsible for the payment of any and all expenses necessary for the education of either of the minor children should they desire to attend a school beyond high school, to include college, technical or trade school, said expenses to include tuition, books and room and board." Finally, the separation agreement provided that Plaintiff:

> . . . shall pay, or provide by appropriate insurance, payments of all medical, dental, orthodontic, surgical, hospital, eye care and nursing expenses necessarily incurred for the child. [Plaintiff] agrees to maintain hospital, medical, surgical, and dental insurance for the child, not less extensive in coverage than [Plaintiff's] present coverage . . . .

At the time the parties entered into the separation agreement, Josh and Staci were two years and eleven months old, respectively. On 13 June 1989, the trial court entered a consent judgment and order which incorporated the parties' separation agreement and which provided that both parties were subject to being held in civil contempt in the event that they failed to abide by the terms of the separation agreement.

On 16 November 2010, Defendant filed a motion seeking to have Plaintiff held in contempt for willfully refusing to pay educational expenses and medical insurance costs for the benefit of the parties' children. Defendant's motion came on for hearing before the trial court at the 7 March 2011 session of Duplin County District Court. At the hearing, Defendant contended that, although Josh had been accepted to DePaul University, Plaintiff had refused, in contravention of the separation agreement, to accommodate Josh's request to attend DePaul. Furthermore, Defendant asserted that, although Plaintiff had paid the book and tuition costs relating to the four hours of online classes that Josh took at James Sprunt Community College, Plaintiff had failed to pay Josh's room and board expenses (which consisted of rent and utility payments assessed by Josh's maternal grandmother, with whom Josh lived). In addition, Defendant contended that, although Plaintiff had paid the cost of tuition and books associated with Staci's attendance at Mount Olive College, he had ceased to pay any other expenses which she had incurred during her matriculation at that institution, including the mortgage and utility bills incurred in connection with the operation and maintenance of the home at which Staci lived with her husband. Finally, Defendant

contended that Plaintiff had improperly ceased to pay for medical insurance for both Josh and Staci in July 2010.

On 23 March 2011, the trial court entered an order denying Defendant's motion. In its order, the trial court made the following unchallenged findings of fact regarding Josh:

> 1) At the date of this hearing, Josh is 24 years of age and currently resides with his mother, Sheila Schmalbach, and his grandmother, Myrtle Graham, in Warsaw, North Carolina.
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> 2) That Josh pays rent and expenses to his grandmother on a monthly basis in the amount of $800.00, which is paid out of the trust funds [stemming from a trust established by Josh's paternal grandfather for the use and benefit of Josh and Staci, which provides for necessary expenses and terminates when each child reaches the age of 35].
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> 3) His mother, Sheila Schmalbach, and stepfather, Pete Schmalbach, while residing in the same residence, pay no rent or contribute to household expenses.
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> 4) The purported expenses of the grandmother, Myrtle Graham, consist of rent, electricity, telephone and cable.
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> 5) Although Josh contributes the sum of $800.00 a month toward these expenses, he acknowledges that were it not for the trust, he would not pay rent or utilities.
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> 6) Currently, Josh takes approximately [four] hours of online classes from James Sprunt Community College, but is not enrolled as a full-time student in any accredited institution. All tuition, books

and other related expenses have been paid for by the Plaintiffs.[2]

7) Josh graduated from North Duplin High School in 2004 before attending James Sprunt Community College for one year, after which he transferred to Cape Fear Community College in 2006. All living expenses including books, tuition, room and board and insurance were paid for by the Plaintiffs.

8) In 2007, Josh moved to Chicago to pursue a musical career[,] having been discovered by a musical manager on a social network page. He continued his musical career in Chicago from 2007 until July of 2010, at which time all his living expenses, i.e. rent, insurance, utilities and food were provided for by the Plaintiffs. In addition, the Plaintiffs provided an open credit card account for Josh's benefit.

9) For the three years in which Josh lived in Chicago, he never pursued any further formal education and focused solely on his musical career. He was employed part-time at Starbucks, a coffee house located in Chicago. All other living expenses were paid for by the Plaintiffs, as well as expenses for numerous managers in the music field and travel.

10) In 2009, after being advised by the Plaintiffs to either get a full-time job or return to school, and upon further advice from his manager, Josh returned home to Warsaw. He returned to Warsaw, Duplin County, in July of 2010 for the ostensible purpose of getting refreshed and getting a new start in his musical career.

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[2]As we have previously indicated, Plaintiff's father and mother are no longer parties to this case. The record developed at trial established that Plaintiff's father paid all of Josh and Staci's living and educational expenses until his death in 2009.

> 11) One day prior to this hearing, March 6, 2011, a voluminous article appeared in the Wilmington Star News citing in detail the pursuit of a musical career by Josh. The two page article, however, makes no mention of any educational pursuit by Josh nor did it reflect that he had been supported in any manner by the Plaintiffs.
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> 12) Since returning from Chicago to North Carolina, it is unclear whether Josh resides predominantly in Wilmington or Warsaw. It is clear, however, that he travels back and forth between the two towns frequently.
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> 13) According to the Wilmington Star News newspaper article, it appears that Josh resides in Wilmington.

In addition, the trial court made the following unchallenged findings of fact regarding Staci:

> 1) Staci graduated from North Duplin High School in 2006. She then attended Campbell University for one year where her living expenses, including room and board, were provided for by the Plaintiffs.
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> 2) In 2008, she transferred to Cape Fear Community College and lived in Wilmington with her brother Josh. All living expenses, including tuition and room and board, were again paid for by the Plaintiffs.
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> 3) When her brother Josh elected to move to Chicago, she moved back home with her mother. After taking a semester off, she enrolled in Mount Olive College. All expenses for tuition were paid for by the Plaintiffs.

> 4) Staci was married in July, 2010. Before, all her room and board, tuition and other living expenses were paid for by the Plaintiffs.
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> 5) At the present time, she resides with her husband in Warsaw in a home owned by the two of them, which is encumbered by a Note and Deed of Trust.
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> 6) Also, at the present time, she attends Mount Olive College. Tuition and books are paid for by the Plaintiffs, but nothing is contributed towards room and board. Staci acknowledges that she still would not be living on campus, requiring room and board, if she was not married, since she would still be living with her mother in Warsaw.
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> 7) Notwithstanding that on or about the 18th day of August, 2010, Josh and Staci were advised by the Plaintiffs' attorney that, since he was providing for their education, he would like to be advised of their current grades, Josh and Staci refused, saying they were adults and that their grades were their own business and not that of Plaintiffs.

Based upon these findings of fact, the trial court concluded that Plaintiff had fully complied with the terms and provisions of the separation agreement as incorporated in the consent judgment and order and that he had provided ample justification for a decision declining to hold him in contempt. Defendant noted an appeal to this Court from the trial court's order.

II. Legal Analysis

On appeal, Defendant contends that the trial court erroneously denied her motion that Plaintiff be held in contempt because the evidence established that Plaintiff had failed to comply with the terms of the separation agreement as incorporated in the consent judgment and order. More specifically, Defendant contends that (1) the plain and unambiguous language of the separation agreement requires Plaintiff to continue to cover tuition, room and board, and insurance-related expenses for the parties' children given the absence of any limiting language from the applicable provisions of the separation agreement and (2) the testimony received at the hearing established that Plaintiff had willfully violated the terms of the separation agreement as construed in this manner. We are not persuaded by Defendant's argument.

A. Standard of Review

"To hold a defendant in civil contempt, the trial court must find the following: (1) the order remains in force, (2) the purpose of the order may still be served by compliance, (3) the non-compliance was willful, and (4) the non-complying party is able to comply with the order or is able to take reasonable measures to comply." *Shippen v. Shippen*, 204 N.C. App. 188, 190, 693 S.E.2d 240, 243 (2010) (citing N.C. Gen. Stat. § 5A-

21). "In reviewing the trial court's finding of contempt [or lack thereof], this Court is limited to a consideration of 'whether the findings of fact by the trial judge are supported by competent evidence and whether those factual findings are sufficient to support the judgment.'" *Smith v. Smith*, 121 N.C. App. 334, 337, 465 S.E.2d 52, 54 (1996) (quoting *McMiller v. McMiller*, 77 N.C. App. 808, 810, 336 S.E.2d 134, 136 (1985)). "Findings of fact to which no error is assigned 'are presumed to be supported by competent evidence and are binding on appeal.'" *Pascoe v. Pascoe*, 183 N.C. App. 648, 650, 645 S.E.2d 156, 157 (2007) (quoting *In re A.S.*, 181 N.C. App. 706, 709, 640 S.E.2d 817, 819 (2007)). At a non-jury proceeding, the trial court "'passes upon the credibility of the witnesses and the weight to be given their testimony and the reasonable inferences to be drawn therefrom.'" *Phelps v. Phelps*, 337 N.C. 344, 357, 446 S.E.2d 17, 25 (1994) (quoting *Knutton v. Cofield*, 273 N.C. 355, 359, 160 S.E.2d 29, 33 (1968)). We review a trial court's conclusions of law *de novo*. *Shear v. Stevens Building Co.*, 107 N.C. App. 154, 160, 418 S.E.2d 841, 845 (1992).

B. Construction of Consent Judgment and Order

"[A] parent can by contract assume an obligation to his child greater than the law otherwise imposes, and by contract bind himself to support his child after emancipation and past

majority." *Shaffner v. Shaffner*, 36 N.C. App. 586, 588, 244 S.E.2d 444, 446 (1978) (citation omitted). When a party seeks to have another held in contempt for violating a consent order entered in a domestic relations proceeding, the trial court has the authority to "construe the consent order pursuant to its contempt powers." *Holden v. Holden*, __ N.C. App. __, __, 715 S.E.2d 201, 208 (2011).

> A consent judgment must be construed in the same manner as a contract to ascertain the intent of the parties. Where the language of a contract is plain and unambiguous, the construction of the agreement is a matter of law, and the court may not ignore or delete any of its provisions, nor insert words into it, but must construe the contract as written, in the light of the undisputed evidence as to the custom, usage, and meaning of its terms.

Martin v. Martin, 26 N.C. App. 506, 508, 216 S.E.2d 456, 457-58 (1975) (internal citation and citation omitted). However, "'the entire agreement must be examined with an understanding of the result to be accomplished and the situation of the parties at the moment the contract is made.'" *Yount v. Lowe*, 288 N.C. 90, 96, 215 S.E.2d 563, 567 (1975) (quoting *In re Will of Stimpson*, 248 N.C. 262, 265, 103 S.E.2d 352, 355 (1958)); 3 Suzanne Reynolds, *Lee's North Carolina Family Law* § 14.32e, at 529-30 (rev. 5th ed. 2002). We must "'[presume that] . . . the parties intended what the language used clearly expresses, and the

contract must be construed to mean what on its face it purports to mean." *Hagler v. Hagler*, 319 N.C. 287, 294, 354 S.E.2d 228, 234 (1987) (quoting *Indemnity Co. v. Hood*, 226 N.C. 706, 710, 40 S.E.2d 198, 201 (1946)). "[T]he common or normal meaning of language will be given to the words of a contract unless the circumstances show that in a particular case a special meaning should be attached to it." *Marcoin, Inc. v. McDaniel*, 70 N.C. App. 498, 504, 320 S.E.2d 892, 897 (1984) (citation omitted), *disc. review denied*, 312 N.C. 797, 325 S.E.2d 631 (1985).

C. Josh's "Educational" Expenses

In her brief, Defendant initially contends that, because the terms "tuition" and "room and board" are plain and unambiguous, "they should have been given their respective 'ordinary' meanings for purposes of interpretation" and that "it is evident that the terms of the Consent Judgment required Plaintiff to pay for Josh's potential tuition and room and board at DePaul . . . [and] Josh's current tuition and room and board[.]" Assuming, without deciding, that Defendant's argument concerning Josh's educational expenses would otherwise have merit, we must still affirm the trial court's treatment of Defendant's claim for Josh's educational expenses given the trial court's determination that Josh was not seriously seeking

to obtain an education during the time that the expenses underlying this claim were being accrued.

In her brief, Defendant challenges the following "conclusion of fact":

> 14) The Court concludes that Josh's request for financial support to attend James Sprunt Community College, in view of his aforementioned history, is a pretext to obtain money on which to live and not funds for education.

and the trial court's conclusion of law that:

> 1) [] Josh has not demonstrated that he has or will actively pursue any further education, since it is abundantly clear that he is only interested in pursuing a musical career and that his request for funds to further his education is simply a pretext to obtain funds to provide for living expenses while pursuing his musical career.

Although Defendant disputes the validity of the trial court's determination of pretext, the unchallenged findings of fact contained in the trial court's order adequately support its conclusion to that effect.

The unchallenged findings of fact contained in the trial court's order establish that, in 2005 and 2006, Josh attended James Sprunt Community College and Cape Fear Community College. During that time, all of his living and educational expenses were covered by Plaintiff's father and Plaintiff. Subsequently, Josh moved to Chicago for the purpose of pursuing a musical

career. He did not seek to obtain any additional formal education while he was in Chicago. During that time, Plaintiff's father or Plaintiff covered all of Josh's living expenses, including rent, insurance, utilities and food, and provided him with a credit card which he was allowed to use as he saw fit. In 2010, Josh returned to North Carolina for the "ostensible purpose of getting refreshed and getting a new start in his musical career." Upon returning to his native state, Josh began living in his grandmother's home, where he paid rent and reimbursed his grandmother for expenses such as electricity, telephone, and cable costs at the rate of $800.00 per month. Josh acknowledged that, in the absence of the trust that had been established for his benefit by his paternal grandfather, he would not pay rent or utility expenses to his maternal grandmother. Subsequently, Josh began taking four hours of online classes offered by James Sprunt Community College, although he was not enrolled as a full-time student at any accredited institution. All tuition, book, and other expenses directly related to Josh's studies at James Sprunt Community College were paid for by Plaintiff's father and Plaintiff. As we have already noted, the trial court found that it was unclear whether Josh resided predominantly at his grandmother's home or in Wilmington and that a newspaper article profiling Josh's

musical career had made it appear that his real home was in Wilmington.

Given Defendant's failure to challenge these findings, we must presume that they are supported by competent evidence and treat them as binding on appeal. *Pascoe*, 183 N.C. App. at 650, 645 S.E.2d at 157. These unchallenged findings, in turn, provide ample support for the trial court's determination that Josh's requests for educational support, including his request that Plaintiff pay his rent and make utility-related payments to his maternal grandmother, represented nothing more than an attempt to obtain money on which to live despite the fact that Josh was not seriously seeking to further his education. As a result of the fact that the nature and extent of the factual inferences which should be drawn from the record is a matter committed to the trial court rather than to this Court, *Phelps*, 337 N.C. at 357, 446 S.E.2d at 25; *McAulliffe v. Wilson*, 41 N.C. App. 117, 120, 254 S.E.2d 547, 550 (1979) (stating that, "[w]hen there are competing inferences arising from testimony of witnesses in a case, it is for the trier of fact to decide between them"), we conclude that the trial court's determination that Josh had not demonstrated any intention of actively pursuing further educational opportunities is adequately supported by the evidence as reflected in the trial court's

unchallenged findings of fact and that either Plaintiff or Plaintiff's father has paid all legitimate educational expenses incurred by Josh, including the tuition and book expenses stemming from the online courses in which he was enrolled at the time of the hearing.[3] As a result, the trial court's findings adequately support its conclusion that Plaintiff should not be held in contempt for failure to cover Josh's educational expenses.

D. Staci's "Educational" Expenses

Secondly, Defendant contends that the plain and unambiguous terms of the separation agreement require that Plaintiff pay Staci's "tuition, room and board, . . . and other necessary

[3]Although Josh testified at trial that he had been admitted to DePaul, he never enrolled in, attended classes at, or incurred any other education-related expenses associated with any matriculation at DePaul. *See Smith v. Smith*, 121 N.C. App. 334, 336-38, 465 S.E.2d 52, 53-54 (1996) (holding that competent evidence supported the trial court's finding that the defendant should be held in contempt for failing to pay a child's post-secondary educational expenses where the evidence tended to show that the plaintiff incurred $8,349.54 in expenses which were reasonable and directly related to the child's attendance at an out-of-state college and that, although the defendant contended that the tuition costs at the school in question were unreasonable, the consent judgment did not contain any limitation on the amount of support that the child was entitled to receive stemming from the cost of tuition or the location of a college). As was the case in *Smith*, Plaintiff did claim that Josh's attendance at DePaul was unreasonable; however, unlike *Smith*, Josh neither attended DePaul nor incurred education-related expenses associated with services provided at that institution. Thus, Defendant is not entitled to have Plaintiff held in contempt for failing to pay the costs that Josh would have incurred had he pursued his education at DePaul.

educational expenses" and that Plaintiff had violated the consent judgment by failing to pay Staci's "room and board," an amount which Plaintiff calculated based on the expenses that Staci incurred in the course of residing in her marital home. Once again, we do not find Defendant's argument persuasive.

In the portion of her brief relating to this issue, Defendant challenges the following "conclusions of fact":

> 2) Notwithstanding that the Separation Agreement provides that Plaintiffs will pay the expenses of room and board and tuition for education beyond high school, it was not contemplated by the parties that this would include expenses for room and board after Staci was married and not living on campus or attending college in a conventional manner. Consequently, any expenses incurred by Staci at the present time are not necessary expenses as contemplated by the Separation Agreement drafted in 1989, since the expenses would be ongoing notwithstanding whether she pursued a further education or not.
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> 3) The Court further finds the fact that she is now 22 years of age, she is emancipated and further since she is married, she is further emancipated and should not be the financial responsibility of the Plaintiffs.

Given that these "conclusions of fact" amount to and rest upon an interpretation of the separation agreement, they are, in essence, conclusions of law which should be reviewed *de novo*. *Zimmerman v. Appalachian State Univ.*, 149 N.C. App. 121, 131, 560 S.E.2d 374, 380-81 (2002).

According to the literal language of the separation agreement, Plaintiff agreed to pay any and all "expenses necessary" should either Josh or Staci "desire to attend a school beyond high school, to include college, technical or trade school, said expenses to include tuition, books and room and board." Thus, the ultimate issue raised by this aspect of Defendant's challenge to the trial court's order is the extent to which living expenses incurred in connection with Staci's residence in her marital home constitute "room and board" expenses incurred in connection with her matriculation at Mount Olive College. After giving "necessary" and "room and board" their common meanings, we conclude that expenses incurred in connection with residence in Staci's marital home did not constitute necessary room and board expenses for purposes of the separation agreement.

"Necessary" has been defined as "an indispensable item . . . [or] essential." *Webster's Ninth New Collegiate Dictionary* 790 (1991). "Room and board" consists of "lodging and food usually furnished for a set price or as part of wages." *Id.* at 1023. As a general proposition, "[r]oom and board are expenses [considered] incidental, even necessary, to obtaining a college education." *Boyles v. Boyles*, 70 N.C. App. 415, 420, 319 S.E.2d 923, 927 (1984).

In the unchallenged findings of fact, the trial court found that, as of the date of the hearing, Staci resided with her husband in a home near the residence occupied by her grandmother. Staci's marital home was encumbered by a note and deed of trust. At that time, Staci was attending Mount Olive College, where her tuition and books were paid for by Plaintiff or Plaintiff's father. Staci acknowledged that, even if she were not married, she would not be living on campus and would, instead, still be living with her mother at her maternal grandmother's home. These unchallenged findings amply support the trial court's conclusion that the room and board "expenses incurred by Staci . . . are not necessary expenses as contemplated by the [s]eparation [a]greement . . . , since [they] would be ongoing notwithstanding whether [Staci] pursued a further education or not." After examining the entire agreement for the purpose of understanding the result sought to be accomplished by the parties and the situation of the parties at the time that the contract was made, *Yount*, 288 N.C. at 96, 215 S.E.2d at 567, we conclude that the parties could not have intended that Plaintiff, by agreeing to pay for the expenses necessary for his children to obtain a post-secondary education, had obligated himself to make mortgage, utility, and other payments related to his daughter's occupancy of her marital

home. Were we to accept Defendant's argument to the contrary, Staci could, if she so desired, spend the balance of Plaintiff's lifetime pursuing college degrees while requiring Plaintiff to pay her living expenses, including the mortgage and utility payments necessary for her to comfortably occupy her marital residence. As a result, the trial court did not err by concluding that Plaintiff should not be held in contempt for failing to pay Staci's necessary educational expenses.[4]

E. Children's Medical Insurance

Finally, Defendant contends that the trial court erred by declining to hold Plaintiff in contempt for his failure to pay for Josh and Staci's medical insurance. In support of her position, Defendant asserts that Plaintiff's refusal to pay the medical insurance costs is "against the express terms of the [separation] agreement" because the provision governing Plaintiff's obligation to provide medical insurance for the parties' children contains no limiting language. We do not find Defendant's argument persuasive.

[4]In light of our determination that the expenses incurred in order for Staci to occupy and enjoy her marital home did not constitute necessary room and board expenses incidental to her college education, we need not address Defendant's challenge to that portion of the trial court's order which concluded that Plaintiff was entitled to avoid responsibility for these payments because Staci had been emancipated by virtue of her age and marital status.

In her brief, Defendant challenges the following "conclusion of fact":

> 4) It is further concluded that said agreement provided that medical insurance would be provided by the Plaintiffs for each child and that said provision did not reasonably contemplate medical expenses when such children reached their majority or were otherwise emancipated.

Given that this "conclusion of fact" involves an interpretation of the separation agreement, we, therefore, treat it as a conclusion of law rather than a factual finding. *Zimmerman*, 149 N.C. App. at 131, 560 S.E.2d at 380-81.

The separation agreement provides, in pertinent part, that Plaintiff "shall pay, or provide by appropriate insurance, payments of all medical, dental, orthodontic, surgical, hospital, eye care and nursing expenses necessarily incurred for the child." Because the provision in question provides no explicit limitation on the time period during which Plaintiff's obligation to pay for Josh and Staci's medical expenses continues, we look to the parties' intent at the time the agreement was drafted in order to determine its meaning. As we have previously recognized, the entire document must be examined "'with an understanding of the result to be accomplished and the situation of the parties at the moment the contract is made.'" *Yount*, 288 N.C. at 96, 215 S.E.2d at 567 (quoting *Stimpson*, 248

N.C. at 265, 103 S.E.2d at 355). After carefully studying the record, we conclude that the disputed contractual language was intended to ensure that the children's safety and health are provided for while they were under-aged, not to ensure that one parent would pay their medical expenses indefinitely, including the time when both children were well past the age of majority. As evidence of this fact, we note that the applicable contractual language provides that Plaintiff will provide for the medical expenses of and medical insurance for "the child," a fact which suggests that the medical care obligation did not continue past the point at which the children reached the age of majority. If we were to adopt Defendant's interpretation of the separation agreement, Plaintiff would be obligated to pay Josh and Staci's medical expenses even if they had reached the age of majority, married, and begun leading adult lives. The unreasonableness of this outcome should be obvious. As a result, we do not believe that the relevant contractual language can be understood to impose an unlimited, lifetime medical expense payment obligation on Plaintiff.

According to Defendant, our decisions in *Smith*, 121 N.C. App. at 336-38, 465 S.E.2d at 53-54 and *Church v. Hancock*, 261 N.C. 764, 766-67, 136 S.E.2d 81, 83 (1964) (holding that a child's marriage at the age of sixteen did not affect the

defendant's obligation to make continued support payments to his ex-wife and children because Plaintiff had agreed to continue payments until a specified date or until his ex-wife's remarriage or the death of a child), preclude a determination that Plaintiff's obligation to pay Josh and Staci's medical expenses had ceased by the time of the hearing. In advancing this argument, Defendant notes that the separation agreement contains no terms providing for the termination of Plaintiff's obligations pursuant to this provision. We believe, however, that our decisions in *Smith* and *Church* are distinguishable from this case given that neither address a situation in which an agreement to cover certain expenses that might be incurred by the children has no termination date at all. Although *Smith* did reject a defendant's challenge to the reasonableness of his child's choice to attend school in Montana given the absence of limiting language in the underlying agreement 121 N.C. App. at 338, 465 S.E.2d at 54, nothing in our opinion in that case sheds any light upon the extent to which the provision obligating the defendant to cover his child's post-secondary educational expenses would remain in effect indefinitely. *Id.* For those reasons, we do not believe that *Smith* and *Church* control our decision in this case. As a result, we conclude that the trial court did not err by declining to hold Plaintiff in contempt for

failing to pay his children's medical expenses after they reached the age of majority.

III. Conclusion

Thus, for the reasons set forth above, we hold that the trial court did not err by concluding that Plaintiff should not be held in contempt of the 13 June 1989 consent judgment. As a result, the trial court's order should be, and hereby is, affirmed.

AFFIRMED.

Judges BEASLEY AND THIGPEN concur.

Report per rule 30(e).