No. 86P23 TWENTY-SIXTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

DOUG TURPIN and NICOLE TURPIN,

Plaintiffs–Appellants,

v.

CHARLOTTE LATIN SCHOOLS, INC., CHARLES D. BALDECCHI, TODD BALLABAN, DENNY S. O'LEARY, MICHAEL D. FRENO, R. MITCHELL WICKHAM, COURTNEY HYDER, IRM R. BELLAVIA, PHIL COLACO, JOHN D. COMLY, MARY KATHERINE DUBOSE, ADAORA A. ERUCHALU, DEBBIE S. FRAIL, DON S. GATELY, ISRAEL K. GORELICK, JOY M. KENEFICK, KARIM LOKAS, JOHN T. MCCOY, KRISTIN M. MIDDENDORF, A. COY MONK IV, UMA N. O'BRIEN, DAVID A. SHUFORD, MICHELLE A. THORNHILL, FLETCHER H. GREGORY III, TARA LEBDA, and PAIGE FORD,

Defendants–Appellees.

From Mecklenburg County

****

RESPONSE TO PLAINTIFFS' PETITION FOR DISCRETIONARY REVIEW PRIOR TO DETERMINATION BY THE COURT OF APPEALS

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Defendants–Appellees.

From Mecklenburg County

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RESPONSE TO PLAINTIFFS' PETITION FOR DISCRETIONARY REVIEW PRIOR TO DETERMINATION BY THE COURT OF APPEALS

****

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Defendant-Respondents Charlotte Latin School, Inc. ("Latin") and the individual defendants (collectively with Latin, "Defendants"), pursuant to Rule 15(d) of the North Carolina Rules of Appellate Procedure, respond to the Plaintiff-Appellees' Petition for Discretionary Review Before a Determination by the Court of Appeals filed on 23 March 2023.

Plaintiffs Doug and Nicole Turpin ("Plaintiffs") ask this Court to intervene and immediately review the 13 October 2022 Order granting in part Defendants' Motion to Dismiss entered by the Superior Court (the "Order"). The Order dismissed eight of Plaintiffs' nine claims against Latin arising from Latin's reasonable exercise of its

contractual right to discontinue enrollment of Plaintiffs' two children after it concluded that a positive, collaborative working relationship with Plaintiffs was impossible or that Plaintiffs' conduct seriously interfered with the mission of the school.

The Superior Court denied Defendants' Motion to Dismiss as to Plaintiffs' ninth claim for breach of the implied covenant of good faith against Latin. Despite Plaintiffs' arguments that this Court should immediately address a private school's discretion to terminate enrollment agreements, Plaintiffs chose to abandon their claim that Latin breached their enrollment contracts in violation of the covenant of good faith and fair dealing by filing a voluntary dismissal.

This Court should deny the Petition because Plaintiffs have not shown there are legal matters of significant public interest at stake or that there are any unsettled principles of law to be addressed. Despite Plaintiffs' claims of a liberty interest, they acknowledge that Latin is a private school and that their relationship is merely contractual. There is nothing about the trial court's application of well-established contract and tort law to Plaintiffs' claims that warrants the extraordinary step of bypassing review by the Court of Appeals.

FACTS

Plaintiffs appeal from an Order granting, in part, Defendants' Rule 12(b)(6) motion. Therefore, the allegations of the Complaint are deemed to be true, unless contradicted by documents referenced therein. *See Schlieper v. Johnson*, 195 N.C. App. 257, 263, 672 S.E.2d 548, 552 (2009).

In June of 2020, the Latin Board of Trustees wrote to Latin parents, faculty, and staff, stating, "[t]he principles of diversity, equity and inclusion are foundational for the Board and will lead our thinking in the development of our next strategic plan, the preparation for which is happening now." (R p 14 (quoting Doc. Ex. pp 2-3)). Plaintiffs alleged this letter "showed the first sign that Latin was moving toward a curriculum, culture, and focus associated with a political agenda." (R p 14).

During the 2020-2021 school year, Plaintiffs observed changes in Latin's "curriculum and culture" consistent with Latin's commitment to diversity, equity and inclusion ("DEI") and began to discuss with other parents their concerns that these changes "were indicative of a political agenda." (R p 16).

Despite their knowledge of Latin's focus on equity and their concerns with perceived changes in its culture, the Turpins re-enrolled their two children at Latin for the 2021-2022 school year by executing Enrollment Agreements on February 5, 2021. (R p 8; Doc. Ex. 12-21).

The Enrollment Agreements provided, *inter alia*, "I understand that in signing this Enrollment Contract for the coming academic year, my family and I understand the mission, values, and expectations of the School as outlined in the Charlotte Latin School Parent-School Partnership and agree to accept all policies, rules, and regulations of Charlotte Latin Schools, Inc." (Doc. Ex. 13).

The Parent-School Partnership ("PSP") set out certain expectations for parents, including:

> Understanding that an effective partnership is characterized by clearly-defined responsibilities, mutual respect, open communication, support of the Mission of the School, adherence to the Honor Code and a commitment to the Core Values.

(Doc. Ex. 15).

The PSP ended,

> A positive, collaborative working relationship between the School and a student's parent/guardian is essential to the fulfillment of the School's mission. Therefore, the School reserves the right to discontinue enrollment if it concludes that the actions of a parent/guardian make such a relationship impossible or seriously interfere with the School's mission.

(Doc. Ex. 16).

During the summer of 2021, Plaintiffs and other "concerned parents," who came to refer to themselves as "Refocus Latin," prepared a PowerPoint presentation for the Board of Trustees outlining their concerns with Latin's culture and curriculum relating to DEI. (R pp 17-18; Doc. Ex. 22-48).

On 24 August 2021, Mr. Turpin and nine other parents representing that group presented the PowerPoint to members of the Board's executive committee and the Head of School, Mr. Charles Baldecchi. (R pp 17-18). The presentation accused Latin's Board leadership of publicly aligning "with a political organization and an ideology that is inconsistent the [sic] school's core values, beliefs and founding principles" and

accused the administration of "[r]eplacing school traditions grounded in American values with politically extremist and anti-nuclear family values." (Doc. Ex. 31, 40).

The Refocus Latin presentation objected to a variety of perceived changes in the curriculum and culture at Latin. (Doc. Ex. 23-48). The Refocus Latin presentation also complained that "equity" would lower the quality of students and faculty at Latin and called on Latin to "affirm meritocracy" (Doc. Ex. 47):

- "DEI goals superseding optimizing evaluations for admitting most qualified students and hiring most qualified faculty." (Doc. Ex. 44).

- "Admissions is weighting diversity over academic excellence, particularly in [Upper School]." (Doc. Ex. 37).

- "The weighting of DEI and Critical Theory [sic] on a 'culturally responsive education' eventually erodes the quality of student, quality of curriculum, quality of teacher and the academic rigor at the school." (Doc. Ex. p 37).

After the presentation, the Latin Board of Trustees thanked the parents, but indicated that the Board would not entertain further discussion with the group regarding Latin's curriculum or culture. (R p 18).

Dissatisfied with the Board's response and apparently not willing to accept "no" for an answer, Mr. Turpin sent an email to members of the Latin Board of Trustees and the Refocus Latin group on 29 August 2021. (R p 19; Doc. Ex. 49-52). Mr. Turpin's email called on members of the Board of Trustees and the Latin administration to individually address numerous issues <u>in writing</u>—most of which had been addressed in the Refocus Latin presentation, including:

- Demanding action in response to objections to a video about Latin's history." "It can not [sic] go unaddressed any longer <u>and it is not going away without being addressed</u>." (Doc. Ex. p 51 (emphasis added)).

- Asking the Board and administration to answer whether certain topics were political, including allegations (which Mr. Turpin heard from another parent) that the sixth grade humanities class spent three days on "being Woke," including reading the book *Woke: A Young Poet's Call to Justice*. (Doc. Ex. p 51).

- Asking the Board to answer whether the administration appropriately refused to have a meeting with the Turpins to discuss its masking and vaccination policies and to direct the administration to have the meeting. (Doc. Ex. p 51).

Mr. Turpin ended his email by noting,

> I think many parents are now in the previously unthinkable and life disrupting position, of having to evaluate whether Latin has left them to become another type of school entirely, one that focuses on radical progressive issues over educating our children, which is forcing them to consider alternatives to being Latin Lifer's.

(Doc. Ex. 52).

On 7 September 2021, Mr. Turpin sent yet another email, this time criticizing his son's humanities teacher and demanding that his son be reassigned to an instructor that Mr. Turpin deemed suitable. (Doc. Ex. 72-73). Mr. Turpin's September 7 email requested a telephone discussion with Todd Ballaban, Latin's Head of Middle School, before the issue was addressed with the teacher. (Doc. Ex. 72). Mr. Ballaban, however, responded to Mr. Turpin that he needed to investigate the matter with the teacher. (Doc. Ex. 72). After he had done so, he requested an in-person meeting with the Turpins. (Doc. Ex. 71). As a result, on 10 September 2021, Mr. Baldecchi, the Head of School, and Mr. Ballaban met with Mr. Turpin. During the meeting, Mr. Baldecchi terminated Plaintiffs' Enrollment Agreements pursuant to the PSP. (R p 23).

Plaintiffs asserted nine causes of action against Latin, its administrators, and its Board of Trustees:

1. Unfair Trade Practices ("UDTP") [Latin, Baldecchi, Ballaban] ¶¶ 87-112
2. Fraud [Latin, Baldecchi, Ballaban] ¶¶ 113-131
3. Negligent Misrepresentation [Latin, Ballaban] ¶¶ 132-151
4. Negligent Infliction of Emotional Distress [Latin, Baldecchi] ¶¶ 152-164
5. Negligent Supervision and Retention [Latin] ¶¶ 165-173
6. Slander per quod [Latin, Baldecchi] ¶¶ 174-188
7. Libel per quod [Latin, Board defendants] ¶¶ 189-203
8. Breach of Contract [Latin] ¶¶ 204-212
9. Breach of Implied Covenant of Good Faith [Latin] ¶¶ 213-221.

The 13 October 2022 Order dismissed all claims except Plaintiff's ninth claim for breach of the implied covenant of good faith. (R pp 78-79). Plaintiffs voluntarily dismissed, without prejudice, their ninth claim on 17 October 2022 and filed a Notice of Appeal on 18 October 2022.

REASONS WHY THE PETITION SHOULD BE DENIED

I. Plaintiffs Have Not Demonstrated a Strong Public Interest to Warrant Bypassing the Court of Appeals.

Plaintiffs first argue that this Court should immediately consider this appeal without first allowing the Court of Appeals to make a determination because there is significant public interest in the question of what rights parents have to direct and provide input on their children's education. (Pet. 11). However, there is no state action here, meaning there are no constitutionally protected interests. When it comes to private school, a parent's rights are secured by contract—not by the Constitution. *See, e.g.*, *Rendell-Baker v. Kohn*, 457 U.S. 830, 839-43 (1982) (holding that a private school was not subject to the Fourteenth Amendment); *Hart v. State*, 368 N.C. 122, 139-40,

774 S.E.2d 281, 293 (2015) (holding that the North Carolina Constitution does not impose minimal educational standards on private schools). Indeed, this Court has previously recognized that the government's ability to regulate private schools is limited and that instead, well-established laws pertaining to fraud and contracts apply to private schools. *See State v. Williams*, 253 N.C. 337, 345, 117 S.E.2d 444, 450 (1960).

Therefore, the answer to Plaintiffs' question is simple: Parents have the right to enter the marketplace for private education and choose whichever institution best meets the needs and desires of their family. There is no significant public interest in allowing the courts to decide what educational product a private school provides. If a parent does not like the education they have purchased, their remedies lie in contract and in the marketplace.

Plaintiffs point to North Carolina's numerous independent schools and argue that this Court's review "will provide guidance to any potentially disaffected parent" who questions changes in a school's culture or curriculum. (Pet. 12-13). This Court, however, does not provide guidance, it provides legal principles.

As of July 2022, there were 297 independent and 531 religious private schools in North Carolina. (*See* N.C. Dep't Educ., https://ncadmin.nc.gov/dnpe/2021-2022-annual-conventional-schools-stats-reportpdf). Subject to certain health and safety regulations, these 828 schools develop their curriculum and course of study without government interference. *See* N.C. Gen. Stat. §§ 115C-554 & 562 (schools which comply with provisions relating to religious or qualified nonpublic schools shall not

"be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation and immunization").

Each private school decides what textbooks to use and what materials are appropriate in their library. They also determine whether and to what extent cultural or religious principles will underpin their mission and curriculum. Not surprisingly, these choices vary from school to school, and parents are free to choose among them to obtain a philosophy and curriculum that suits their family. Each private school is also free to define parents' roles and responsibilities in their contracts. It is for parents and the marketplace to decide whether private schools' choices are appropriate—not the courts.

Plaintiffs incorrectly argue that the trial court believed Latin had "unilateral discretionary authority to terminate" the Enrollment Agreements because it is one of North Carolina's 828 private schools. (*See* Pet. 16). However, it was not simply Latin's status as a private school that gave it the right to terminate the agreements. As discussed more fully below, Latin had that discretionary right because it was given to Latin in the written agreements that the Plaintiffs executed. (Doc. Ex. 13-16; *see also* T p 31 [Pet. App. 7] (trial court recognizing "the enrollment agreement provides the school with unilateral discretionary authority to terminate the enrollment")). The unique terms of each private school's contract are what govern and "provide guidance" to both parents and schools in these circumstances. This State's principles of contract law are well-established and were correctly applied by the trial court.

Plaintiffs also allege that there is significant public interest in the subject matter of this appeal because they allege Latin "expelled" their children, which will cause them significant harm. "Expulsion" has significant meaning and is not what occurred here. (*See, e.g.* T p 33) [Pet. App. 9]. There are no allegations that the Turpin children were the subject of any disciplinary actions. Instead, the contractual relationship between Latin and the Turpins was terminated based on the parents' conduct. Regardless, any alleged harm to the Turpin children has no bearing on this appeal. As Plaintiffs acknowledge, the only claims in this action are brought by the Turpin parents on their own behalves. (Pet. 14).

Plaintiffs also allege there is significant public interest warranting bypass of the Court of Appeals because Latin attempted to intimidate Plaintiffs and to "thwart constructive dialogue." (Pet. 17). Again, however, Plaintiffs have no constitutional or statutorily protected rights at stake in this case. There are no legal grounds to look beyond the terms of the parties' contract in this situation. To do so could have vast and unintended consequences on North Carolina's 828 independent and religious private schools.

Plaintiffs' claims are merely an attempt to litigate their "political differences" with Latin. Because their relationship is governed entirely by contract, the questions or issues that Plaintiffs allege are important to the public are unique to the facts of this case and to the language of the Latin contracts. There are no widely applicable legal principles that could arise from a review of the Order dismissing eight of Plaintiffs' nine claims.

A review by this Court—especially before the Court of Appeals has an opportunity to parse through voluminous allegations and claims—is simply not in the best interest of the public or judicial economy.

II. The Legal Principles At Issue Here Are Well-Settled.

Plaintiffs focus on their breach of contract claim, but they fail to identify any issues of contract law that require the Court's immediate attention. Plaintiffs also do not identify any principles of contract law that the trial court purportedly misstated. Instead, they merely disagree with the trial court's interpretation of the Enrollment Agreements and its application of that interpretation to the facts. These are run-of-the-mill appellate issues, which the Court of Appeals is well-suited to resolve.

There is nothing unique or novel about the Enrollment Agreements or the fact that they give Latin unilateral discretion to terminate the contract. North Carolina law is well-settled that, "[w]here a contract confers on one party a discretionary power affecting the rights of the other, this discretion must be exercised in a reasonable manner based upon good faith and fair play." *Mezzanotte v. Freeland*, 20 N.C. App. 11, 17, 200 S.E.2d 410, 414 (1973), *cert. denied*, 284 N.C. 616 (1974); *see also Fulcher v. Nelson*, 273 N.C. 221, 224, 159 S.E.2d 519, 522 (1968) (upholding one party's right to terminate a contract based on dissatisfaction if such election is made in good faith).

Plaintiffs incorrectly describe the Enrollment Agreements as "impos[ing] an impossibility standard." (Pet. 18). The Enrollment Agreements do not require an objective showing that a collaborative working relationship between Latin and parents is literally impossible. Instead, they give Latin the discretion to terminate

the contractual relationship if Latin determines a parent's actions make such a relationship impossible or if Latin determines their conduct seriously interferes with the School's mission. (Doc. Ex. 16). Our Court of Appeals previously addressed similar contractual language granting discretion to a private school to terminate enrollment if the school determined dismissal was in the best interest of the school or the child. *Radinger v. Asheville Sch., Inc.*, 259 N.C. App. 424, 812 S.E.2d 914 (2018) (unpublished) [Add. 1-4]. The Court of Appeals, citing *Mezzanotte*, noted that this discretionary authority was valid as long as the school exercised its discretionary power in a reasonable manner based upon good faith and fair play. *Id.*

Here, based on the Plaintiffs' allegations and incorporated documents, it was clear that they did not—and would not—support Latin's DEI initiatives. When Latin and its Board of Trustees stayed the course, the Turpins were not dissuaded. They continued to object and insisted, in a confrontational style, that Latin answer for its mission, core values, and curriculum—which the Turpins describe as a "political agenda." The concerns the Turpins raised with Mr. Ballaban had already been raised by the Refocus Latin group and heard by the Board. (*Compare* Doc. Ex. 72-73 *with* Doc. Ex. 45 (raising identical allegations about a poetry book)). The trial court did not need to determine whether a collaborative working relationship between Latin and Plaintiffs was "impossible as a matter of law." It merely determined, correctly, that Latin made such a determination in good faith.

Plaintiffs are not asking this Court to clarify or settle a "burgeoning issue" of how to interpret contracts with equitable principles. (Pet. 20). Instead, they are

asking this Court to radically change the good faith standard that *Fulcher* and its progeny impose on a party that exercises its discretionary right to terminate a contract. It is unclear exactly what heightened standard Plaintiffs seek to impose, but it is clear that such an extension would have vast consequences for a wide variety of contracts in this State. Careful consideration of the issues and arguments is warranted before any change in this State's jurisprudence is even considered by this Court.

Finally, while the Petition focuses on Plaintiffs' express breach of contract claim (they voluntarily dismissed their breach of the implied covenant claim), it is important to note that Plaintiffs are also asking this Court to bypass the Court of Appeals as to the dismissal of their claims for unfair trade practices, fraud, negligent misrepresentation, negligent infliction of emotional distress, negligent supervision or retention, slander, and libel. (Pet. 20; R p 100). As the error-correcting court of first resort, the Court of Appeals can fully and finally resolve this appeal without any need for this Court to further develop or modify the State's jurisprudence. Moreover, allowing the Court of Appeals to wade through Plaintiffs' arguments and myriad claims will provide this Court with a more thorough and reasoned analysis to consider for certification after the Court of Appeals makes its determination.

CONCLUSION

Plaintiffs, having full knowledge of Latin's focus on DEI principles, voluntarily contracted with Latin for private education. When Plaintiffs refused to accept the education they knowingly purchased, Latin properly exercised its discretion to end

the contractual relationship. Plaintiffs' arguments about the importance and scope of parental rights in education are misplaced. Latin is not a public school. There is no need for the Court to address those issues in this simple breach of contract case between parents and private school. Defendants respectfully request that the Court deny Plaintiff's Petition for Discretionary Review Before a Determination by the Court of Appeals.

This the 5th day of April, 2023.

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N.C. R. App. P. 33(b) Certification:
I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

The undersigned attorney for Defendant-Appellants hereby certifies that on this day the foregoing Response to Plaintiffs' Petition for Discretionary Review Prior to Determination by the Court of Appeals was served on the attorneys of record for Plaintiffs, pursuant to N.C. R. App. P. 26(c), by email to:

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259 N.C.App. 424
Unpublished Disposition
NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN THE REPORTER.
An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.
Court of Appeals of North Carolina.

Carl Christian RADINGER, Plaintiff,

v.

ASHEVILLE SCHOOL, INC., Defendant.

No. COA17-1173
|
Filed: May 1, 2018

Appeal by Plaintiff from order granting summary judgment entered 22 June 2017 by Judge Mark E. Powell in Buncombe County Superior Court. Heard in the Court of Appeals 5 April 2018. Buncombe County, No. 16-CVS-1102

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Opinion

MURPHY, Judge.

***1** In 2013, Carl Christian Radinger ("Plaintiff") entered into a contract with Defendant Asheville School, Inc., ("Asheville School") to board and educate his son Philippe for the 2013-2014 academic year. During the fall semester, Philippe's mother emailed Asheville School faculty members that it was Philippe's grandmother's birthday and asked to excuse Philippe from an upcoming mandatory school camping trip. Asheville School later learned that it was not Philippe's grandmother's birthday and that Philippe had lied to Asheville School faculty members. Asheville School then dismissed Philippe for violation of Asheville School's Honor Code.

Plaintiff first argues that the contract he entered into with Asheville School is unenforceable due to a lack of consideration. Alternatively, Plaintiff argues that the contract is ambiguous and that Asheville School breached the contract when it dismissed Philippe. We reject Plaintiff's argument that the contract he entered into with Asheville School is illusory and fails for lack of consideration. We further hold that the contract is unambiguous, and Asheville School did not breach the contract. Accordingly, we affirm the trial court's grant of summary judgment in favor of Asheville School.

BACKGROUND

The facts of this case are not in dispute. Philippe was enrolled at Asheville School for the 2013-2014 academic year, and Plaintiff paid a reservation fee of $6,833.00 and tuition of $38,717.00. Plaintiff did not purchase tuition refund insurance. To enroll Philippe, Plaintiff was required to sign Asheville School's Reservation Agreement which provides in relevant part:

> The Reservation Fee reserves a place for your child at Asheville School for the 2013-2014 academic year and shall be applied against tuition charges for the 2013-2014 academic year. The Reservation Fee is not refundable.
>
> ....
>
> The School shall have no obligation to refund or forgive any part of the tuition charges if your child is withdrawn or dismissed after June 30, 2013. If your child is withdrawn or dismissed on or before June 30, 2013, the School shall refund all tuition charges paid in advance, less the Reservation Fee.
>
> ....
>
> The School reserves the right to dismiss your child at any time if in the judgment of the Headmaster such dismissal is in the best interest of the School or your child. The School may expel or suspend your child in accordance with the policies set out in the Student Handbook.

Philippe signed Asheville School's Honor Code Agreement which provides, *inter alia*:

> I will not lie, cheat, or steal, and I will report any violation of the Honor Code.

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On the weekend of 11 October 2013, Asheville School students were preparing for a mandatory camping trip. Philippe hated camping, and his mother sent an email to Asheville School faculty members stating that it was his grandmother's birthday. Philippe's mother and grandmother then came to Asheville School and checked Philippe out for the weekend. Mary Wall ("Wall"), Assistant Head of Student Affairs for Asheville School, saw a Facebook photo which showed Philippe at a gathering with friends the night of the mandatory camping trip. The following Tuesday, Wall and another faculty member met with Philippe to discuss what happened over the weekend. They "asked why he did not participate in the Asheville School camping trip." Philippe responded that he and his family went out to eat and then returned home where he spent the evening talking with his mother and grandmother. Wall continued questioning Philippe, and, with the benefit of the Facebook photo, she again asked why he did not participate in the camping trip. Philippe then told Wall that it was not his grandmother's birthday and that he was actually socializing with friends the night of the camping trip. He confessed that he asked his mother to help him get out of the camping trip.

***2** Wall reported this incident to Asheville School's Honor Council. Proceedings to determine whether Philippe violated the Honor Code commenced on 15 October 2013. The Honor Council determined that an Honor Code violation had occurred and unanimously recommended to the Headmaster that Philippe be dismissed from Asheville School. The next day, the Headmaster dismissed Philippe and sent Plaintiff a letter informing him of his son's dismissal. Plaintiff requested a pro-rata reimbursement of tuition paid and Asheville School declined, stating that it had no obligation to reimburse the payment.

Plaintiff filed a complaint in Buncombe County Superior Court alleging three causes of action. He alleged that the parties' agreement was voidable for failure of consideration. Alternatively, he alleged that Asheville School breached the contract, because Plaintiff had already paid the annual tuition and Asheville School did not board and educate Philippe for the remainder of the year. Plaintiff also alleged that Asheville School was unjustly enriched by his tuition payment. Asheville School filed a motion for summary judgment, and the motion was granted. Plaintiff timely appealed and argues that the trial court erred by granting summary judgment in Asheville School's favor.

STANDARD OF REVIEW

"Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.' " *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (citation omitted).

ANALYSIS

Plaintiff first argues that the contract he entered into with Asheville School is illusory and is unenforceable due to a lack of consideration. Alternatively, Plaintiff argues that the contract that he entered into with Asheville School is ambiguous and that Asheville School breached the contract when it dismissed Philippe on 16 October 2013. Plaintiff's final argument is that Asheville School has been unjustly enriched by Philippe's tuition.

I. Consideration

Plaintiff argues that the agreement to board and educate his son is facially illusory and therefore not supported by valid consideration. Specifically, he maintains that Asheville School was not obligated to board and educate Philippe because the terms of the Reservation Agreement do not expressly state Asheville School's obligations after tuition is paid. However, in *Brenner v. Little Red School House, Ltd.*, our Supreme Court discussed how upfront tuition payment serves as valid consideration in a contract for private school education:

> [P]laintiff contracted to pay the tuition for the entire school year in advance of the first day of school. In consideration therefor, defendant promised to hold a place in the school for plaintiff's child, to make all preparations necessary to educate the child for the school year, and to actually teach the child during that period. Both parties received valuable consideration under the terms of the contract. After receiving plaintiff's tuition payment, defendant reserved a space for plaintiff's child, made preparations to teach the child, and at all times during the school year kept a place open for the child. This performance by defendant was sufficient consideration for plaintiff's tuition payment. A school such as defendant must make arrangements for the education of its pupils on a yearly basis, prior to

> the commencement of the school year. Many of these arrangements are based upon the number of pupils enrolled, for example, the teaching materials to be ordered, the number of teachers to be hired, and the desks and other equipment which will be used by the children. In addition, private schools are often limited in the number of pupils that can be accommodated, so that the reservation of a space for one child may prevent another's enrollment in the school.

***3** *Brenner v. Little Red School House, Ltd.*, 302 N.C. 207, 211-12, 274 S.E.2d 206, 209-10 (1981). Here, Asheville School agreed to reserve a space for Philippe, took actions to prepare for his enrollment, and boarded and educated him until he was dismissed. By taking these steps and holding a place for Philippe, Asheville School provided valuable consideration to Plaintiff.

Plaintiff further argues that the dismissal clause in the Reservation Agreement renders the contract unenforceable. The dismissal clause at issue states:

> The School reserves the right to dismiss your child at any time if in the judgment of the Headmaster such dismissal is in the best interest of the School or your child.

Plaintiff argues that this dismissal clause differentiates his case from *Brenner* and results in this contract being unenforceable. We disagree, because well-settled principles of contract law obligate the Headmaster to use good faith and honest judgment when determining whether or not a student's dismissal is in the student or Asheville School's best interest.

"In every contract there is an implied covenant of good faith and fair dealing that neither party will do anything which injures the right of the other to receive the benefits of the agreement." *Bicycle Transit Authority, Inc. v. Bell*, 314 N.C. 219, 228, 333 S.E.2d 299, 305 (1985) (citation omitted). "[A] party who enters into an enforceable contract is required to act in good faith and to make reasonable efforts to perform his obligations under the agreement." *Weyerhaeuser Co. v. Godwin Building Supply Co.*, 40 N.C. App. 743, 746, 253 S.E.2d 625, 627 (1979). Here, the parties' contract obligated Asheville School to exercise good faith if, in its agent's discretion, it was determined to be in the best interest of Philippe or Asheville School to dismiss Philippe. The dismissal clause does not render the contract illusory, and there is no allegation that Asheville School acted in bad faith. *Mezzanotte v. Freeland*, 20 N.C. App. 11, 17, 200 S.E.2d 410, 414 (1973) ("Where a contract confers on one party a discretionary power affecting the rights of the other, this discretion must be exercised in a reasonable manner based upon good faith and fair play."). The provisions of the Reservation Agreement do not render the contract illusory on its face.

II. Ambiguity

Plaintiff next argues that Asheville School's interchangeable use of the words "dismissal" and "expel" in the Reservation Agreement and Student Handbook render the contract ambiguous and create a factual issue that should be interpreted by a jury. Plaintiff maintains that Philippe was dismissed and not expelled. While the words "dismissal" and "expel" are distinct, there is no meaningful difference between these words in this context.

"When language of a contract is plain and unambiguous its construction is a matter of law for the court." *DeTorre v. Shell Oil Co.*, 84 N.C. App. 501, 504, 353 S.E.2d 269, 272 (1987). The Reservation Agreement clearly states that Asheville School "reserves the right to dismiss your child" and "may expel your child in accordance with the policies set out in the Student Handbook." The Student Handbook expressly provides that "[d]ismissal is an unfortunate but very possible consequence" of violating the Honor Code. Together, the Reservation Agreement and Student Handbook unambiguously convey that a student's violation of the Honor Code could result in his or her dismissal from Asheville School.

III. Breach

***4** Plaintiff contends that if there was a valid contract, then Asheville School breached the agreement by failing to board and educate Philippe for the remainder of the 2013-2014 academic year. However, Philippe was dismissed in accordance with the terms of the contract, and, thus, Asheville School was relieved of any further obligations to Plaintiff.

"The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract." *Montessori Children's House of Durham v. Blizzard*, 244 N.C. App. 633, 636, 781 S.E.2d 511, 514 (2016). "It is well settled that where one party breaches a contract, the other party is relieved from the obligation to perform." *Ball v. Maynard*, 184 N.C. App. 99, 108, 645 S.E.2d 890, 897 (2007) (citation omitted).

By virtue of being a student at Asheville School, Philippe was obligated to adhere to the policies in the Student Handbook

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and the Honor Code. The Reservation Agreement, signed by Plaintiff, incorporates the Student Handbook and Honor Code by reference:

> The School may expel or suspend your child in accordance with the policies set out in the Student Handbook.

The Student Handbook states the Honor Code's purpose, which is "to foster and preserve honor and integrity in the Asheville School community." The Honor Code provides in part:

> I will not lie, cheat, or steal, and I will report any violation of the Honor Code.

The Student Handbook provides that a violation of the Honor Code is a Level 1 offense, and that "[d]ismissal is an unfortunate but very possible consequence" of violating the Honor Code.

Philippe violated the Honor Code when he lied to two Asheville School faculty members after the weekend of 11 October 2013. It is undisputed that Philippe violated the Honor Code and that the Student Handbook provided adequate notice that violations of the Honor Code could result in dismissal. Philippe admitted to lying, and in accordance with Asheville School policy, the Honor Council determined that an Honor Code violation occurred. Based on the Honor Council's recommendation, the Headmaster dismissed Philippe. All of Asheville School's actions were done in accordance with the terms set out in the Reservation Agreement and Student Handbook. Once Philippe had been dismissed in good faith, Asheville School was no longer required to board or educate Philippe and had no obligation to refund the tuition.

Philippe violated Asheville School's Honor Code. Plaintiff has not argued, nor was any evidence presented, that Asheville School acted in bad faith by dismissing Philippe. There is no genuine issue of material fact regarding Plaintiff's cause of action for breach of contract. Summary judgement was properly granted.

IV. Unjust Enrichment

Finally, Plaintiff alleges that Asheville School has been unjustly enriched by refusing to reimburse tuition paid for Philippe's boarding and education after he was dismissed. Asheville School refused to reimburse Plaintiff on the grounds that it was not obligated to do so.

It is true that "[a] person who has been unjustly enriched at the expense of another is required to make restitution to the other." *Booe v. Shadrick*, 322 N.C. 567, 570, 369 S.E.2d 554, 555-56 (1988) (citation omitted). However, "[t]he doctrine of unjust enrichment is based on 'quasi-contract' or contract 'implied in law' and thus will not apply here where a contract exists between two parties." *Atlantic & E. Carolina Ry. Co. v. Wheatly Oil Co.*, 163 N.C. App. 748, 753, 594 S.E.2d 425, 429 (2004) (citation omitted). Plaintiff maintains that he is entitled to have a jury determine whether Asheville School has been unjustly enriched. Because we have determined that there was a valid contract, Plaintiff's cause of action for unjust enrichment must fail.

CONCLUSION

***5** We conclude that there was a valid contract between Plaintiff and Asheville School, and the dismissal clause in the Reservation Agreement did not make the consideration that Plaintiff received illusory. In addition, the terms of the contract were unambiguous, and Asheville School did not breach the contract by dismissing Philippe or by failing to board and educate him for the remainder of the 2013-2014 academic year. As there was a valid contract, unjust enrichment is not a remedy available to Plaintiff.

AFFIRMED.

Report per Rule 30(e).

Judges DAVIS and INMAN concur.

All Citations

259 N.C.App. 424, 812 S.E.2d 914 (Table), 2018 WL 2016459

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