

█ Finally, we address the issue raised by F & R's cross-appeal challenging the trial court's denial of an award of attorney's fees. We affirm the trial court's decision. Each party to a lawsuit is responsible for his or her own attorney's fees. *White v. Francoeur*, 138 N.H. 307, 309 (1994). Fees may be awarded to the prevailing litigant only by statutory authorization, an agreement between the parties, or an established exception. *Id.* We have recognized an exception for those who are forced to litigate against an opponent whose position is patently unreasonable. *Id.* at 309-10. Because of the complicated facts and circumstances of this case, the trial court correctly found that the plaintiffs' position was not patently unreasonable; thus, the defendants are not entitled to an award of attorney's fees.

*Affirmed in part; vacated in part; and remanded.*

NADEAU and DUGGAN, JJ., concurred.

Claremont District Court  
No. 2003-189

IN RE JUVENILE 2003-189

Submitted: September 12, 2003  
Opinion Issued: October 14, 2003

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*Peter W. Heed*, attorney general (*Ann F. Larney*, associate attorney general, on the brief), for the State.

*Elliott, Jasper, Auten & Shklar, LLP*, of Newport (*Michael C. Shklar* on the brief), for the juvenile.

#### MEMORANDUM OPINION

DALIANIS, J. In this interlocutory appeal, the juvenile appeals from an order of the Claremont District Court (*Rappa, J.*) denying his motion to dismiss the children in need of services (CHINS) petition brought by his school. *See* SUP. CT. R. 8; RSA ch. 169-D (2002). We reverse and remand.

The relevant facts follow. In November 2002, the school filed a CHINS petition alleging that, from August 28, 2002, to November 20, 2002, the juvenile, an eighth grade student, had been suspended from school for

eight days and had received five detentions. The petition alleged the juvenile had disrupted class, failed to respect property and people, failed to follow directions, harassed others, used obscene language with staff, and stolen. The juvenile moved to dismiss the petition on the ground that it failed to allege a legal basis for relief. The court disagreed, ruling that the school brought the petition under RSA 169-D:2, IV(b) as a “custodian.”

The sole issue on appeal is whether a school is a “custodian” for the purpose of a CHINS petition brought under RSA 169-D:2, IV(b). Because the interpretation of a statute is a question of law, we review the trial court’s decision *de novo*. *Pennelli v. Town of Pelham*, 148 N.H. 365, 366 (2002).

On questions of statutory interpretation, we are the final arbiters of the legislature’s intent as expressed in the words of a statute taken as a whole. *Petition of Hoyt*, 143 N.H. 533, 535 (1999). To discern legislative intent, we examine the language of the statute and ascribe the plain and ordinary meaning to its words. *Franklin Lodge of Elks v. Marcoux*, 149 N.H. 581, 585 (2003). We do not consider statutory language in isolation, however, but within the context of the overall statutory scheme. *Nault v. N & L Dev. Co.*, 146 N.H. 35, 37 (2001).

The trial court ruled that the petition stated a legal basis for relief under RSA 169-D:2, IV(b), which permits a court to find that a child is in need of services who “habitually runs away from home, or who repeatedly disregards the reasonable and lawful commands of his parents, guardian, or custodian and places himself or others in unsafe circumstances.” The court reasoned that the school was a “custodian” under the statute and implied that the petition was legally sufficient because it alleged the juvenile repeatedly disregarded the school’s commands.

■ The trial court’s reasoning is flawed. Although RSA chapter 169-D does not define the word “custodian,” we derive its meaning from how the word is used throughout the chapter, which is to signify one who has custody of the child. *See* RSA 169-D:2, IV(b) (referring to “parents, guardian, or custodian”); RSA 169-D:5, I (referring to a “parent, legal guardian or custodian”); RSA 169-D:8, II (referring to “parents, guardian or other custodian”); RSA 169-D:10 (referring to “parent, guardian or custodian”); RSA 169-D:14, III (referring to “parents, guardian, or person having custody”); RSA 169-D:17, I(a)(1) (referring to “parent, guardian, relative or custodian”); *cf.* RSA 169-C:3, X (2002) (defining “custodian” as “an agency or person, other than a parent or guardian, licensed pursuant to RSA 170-E to whom legal custody of the child has been given by court order.”). Accordingly, we conclude that a school is not a “custodian” under RSA 169-D:2, IV(b). On remand, the trial court may determine whether

the CHINS petition otherwise alleges a legal basis for relief under RSA 169-D:2, IV.

*Reversed and remanded.*

BROCK, C.J., and BRODERICK, NADEAU and DUGGAN, JJ., concurred.

Original  
No. LD-2002-004

O'MEARA'S CASE

Argued: September 10, 2003  
Opinion Issued: October 15, 2003

*Swope & Nicolosi, P.L.L.C.*, of Concord (*Diane M. Nicolosi* on the brief and orally), for the committee on professional conduct.

*Gallagher, Callahan & Gartrell, P.A.*, of Concord (*David A. Garfunkel* on the brief and orally), for the respondent.

NADEAU, J. On May 28, 2002, the Supreme Court Committee on Professional Conduct (committee) filed a petition with this court requesting that the respondent, Timothy A. O'Meara, be publicly censured for violation of certain rules of professional conduct. We referred the petition to a Judicial Referee (*Bean, J.*) for a hearing. The referee found by clear and convincing evidence that the respondent violated New Hampshire Rules of Professional Conduct 3.1, 3.3(a)(1), 8.4(a) and 8.4(c)