IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 17-987

Filed: 3 April 2018

Mecklenburg County, No. 11 CVD 12894

PATRICK MICHAEL CONNOR, Plaintiff,

v.

TERESA LYNN CONNOR, Defendant.

Appeal by defendant from order entered 13 February 2017 by Judge Christy T. Mann in Mecklenburg County District Court. Heard in the Court of Appeals 7 February 2018.

James, McElroy & Diehl, P.A., by Preston O. Odom, III, Jonathan D. Feit, and Caroline E. Daniel, for plaintiff-appellee.

Collins Family Law Group, by Rebecca K. Watts, for defendant-appellant.

DIETZ, Judge.

Defendant Teresa Lynn Connor challenges the trial court's termination of alimony based on cohabitation. Ms. Connor argues that cohabitation requires a showing that the dependent spouse's new relationship has an "economic impact" that is "akin to the impact that would be created by remarriage."

As explained below, we reject this argument because our precedent requires us to apply a totality-of-the-circumstances test that eschews bright line rules in favor of a flexible, case-by-case analysis. *See*, *e.g.*, *Setzler v. Setzler*, 244 N.C. App. 465, 472, 781 S.E.2d 64, 68 (2015). Although this Court has emphasized that economic impact is a key factor in the cohabitation analysis, we likewise have held that no single factor is controlling. *Id.* Thus, we must reject Ms. Connor's proposed economic impact test because it would, in effect, make a certain level of economic impact a controlling factor in every cohabitation case.

As explained below, applying this Court's totality-of-the-circumstances test established in our precedent, the trial court properly concluded that Ms. Connor engaged in cohabitation. Accordingly, we affirm the trial court's order.

Facts & Procedural History

In November 2010, Defendant Teresa Lynn Connor and Plaintiff Patrick Michael Connor separated after roughly seventeen years of marriage. At the time of separation, Ms. Connor was unemployed, and Mr. Connor worked as a surgeon, as team physician for the Carolina Panthers, and as a consultant. The couple had four children during their marriage, two of whom are minors. On 6 July 2011, Mr. Connor filed an action for custody and equitable distribution. Ms. Connor filed an answer and counterclaims for custody, child support, postseparation support, alimony, and equitable distribution.

That same year, Ms. Connor began dating Reginald Brezeault, who is divorced and has three children of his own. Ms. Connor and Brezeault maintained separate homes, but they spent considerable time together, with Brezeault spending the night at Ms. Connor's house, on average, three to four nights a week. The couple also had dinner together nearly every night and took vacations together, sometimes bringing their respective children with them.

While together, Ms. Connor and Brezeault held themselves out as a "team," referring to each other as their "better half," their "partner," and their "family." Brezeault referred to Ms. Connor's house as his "home" and Ms. Connor referred to her bed as "our bed." The couple also attended social events and church services as a couple. Additionally, the couple discussed parenting decisions, advised each other on how to discipline their kids, and supported each other's children at games and events.

Brezeault regularly performed chores in Ms. Connor's home, including vacuuming; helping with the dishes; blowing off the back porch; cleaning out the outdoor fireplace; taking care of her pets; clearing out the garage; watering the flowers; cleaning around the home; picking up groceries; and taking out the trash. He also arranged for cleaning services and maintenance workers to service Ms. Connor's home, which he occasionally paid for.

Ms. Connor and Brezeault have never shared bank accounts or credit cards. They have also never paid for each other's rent or utilities. The couple typically

"pay[s] everything fifty/fifty." However, Brezeault has financially supported Ms. Connor in other ways. For example, Brezeault covered Ms. Connor on both his AAA account and his Costco membership. Brezeault also covered Ms. Connor and two of the Connor children on his monthly cell phone plan, and paid this monthly bill on Ms. Connor's behalf without seeking reimbursement from her. He has also been paying the insurance on each cell phone.

Brezeault sometimes provided Ms. Connor with cleaning supplies. He also gifted her a dishwasher, a refrigerator, a purse, and a diamond ring. At one point, Brezeault spent $300 on food and supplies for Ms. Connor's father's birthday party. As with the phone bills, Brezeault did not seek reimbursement from Ms. Connor for any of these items. Additionally, Brezeault provided Ms. Connor's children with extra spending money and allowed them to use his Netflix account without charge.

On 2 March 2012, the Connors divorced. On 27 January 2014, the trial court entered an order resolving equitable distribution and alimony. Then, on 29 March 2016, Mr. Connor filed a motion to terminate alimony, alleging that Ms. Connor was cohabiting with Brezeault. By the time Mr. Connor filed this motion, Ms. Connor had been dating Brezeault for five years.

On 13 February 2017, the trial court entered an order terminating Mr. Connor's alimony obligation, finding that Ms. Connor engaged in cohabitation. The

order required Ms. Connor to reimburse Mr. Connor for the five alimony payments he made after he moved to terminate alimony. Ms. Connor timely appealed.

Analysis

I. Appellate jurisdiction

We first address this Court's jurisdiction to hear the appeal. Mr. Connor argues that Ms. Connor's notice of appeal, which Ms. Connor filed *pro se*, was defective and thus did not confer jurisdiction on this Court. Specifically, Mr. Connor argues that Ms. Connor was represented by counsel in the trial court and the notice of appeal was not signed by counsel in violation of Rule 3(d) of the Rules of Appellate Procedure, which requires that a notice of appeal "be signed by counsel of record of the party or parties taking the appeal[] or by any such party not represented by counsel of record." N.C. R. App. P. 3(d).

We reject Mr. Connor's argument. As Ms. Connor correctly observes, many lawyers undertake trial-level representation with the understanding that the client engagement does not extend to an appeal. The language in Rule 3(d) requiring the notice of appeal to be signed by "counsel of record" applies only if, at the time the notice of appeal is filed, the appellant is represented by counsel who will handle the appeal. Here, Ms. Connor's trial counsel did not represent Ms. Connor on appeal. Instead, new appellate counsel appeared later in the case. It was entirely appropriate

for Ms. Connor to file a *pro se* notice of appeal in this circumstance. Therefore, we hold that Ms. Connor's notice of appeal conferred appellate jurisdiction on this Court.

II. Legal standard for cohabitation

We next turn to Ms. Connor's arguments on appeal. Ms. Connor first challenges the legal test for cohabitation applied by the trial court—a test created by this Court's precedent.

By law, a supporting spouse's court-ordered alimony obligation terminates when the dependent spouse engages in cohabitation. N.C. Gen. Stat. § 50-16.9(b). Cohabitation is defined as "the act of two adults dwelling together continuously and habitually" where the couple voluntarily assumes "those marital rights, duties, and obligations which are usually manifested by married people." *Id.*

Ms. Connor, citing the legislative history and purported intent of the cohabitation statute, argues that cohabitation requires a finding that the relationship has an "economic impact" on the dependent spouse. She asks this Court to articulate a rule that cohabitation exists only if the relationship creates an economic impact "akin to the impact that would be created by remarriage."

We decline to adopt this proposed holding because it is inconsistent with our precedent. When reviewing claims of cohabitation, this Court has instructed trial courts to consider "the totality of the circumstances" and "evaluate all the circumstances of the particular case, with no single factor controlling." *Setzler v.*

Setzler, 244 N.C. App. 465, 472, 781 S.E.2d 64, 68 (2015) (citation omitted). The economic impact of the relationship is a factor in this analysis, but it is not the only factor, nor is it the controlling factor. *Id.* Were we to create a specific level of economic impact that must be shown in every case of cohabitation, it would undermine our holding that no single factor controls, and that trial courts must individually consider the totality of the circumstances in every case. *See, e.g.*, *Smallwood v. Smallwood*, 227 N.C. App. 319, 325–26, 742 S.E.2d 814, 819 (2013).

Simply put, this Court implicitly has rejected Ms. Connor's argument by creating a totality-of-the-circumstances test that eschews any specific requirements in favor of a case-by-case analysis. This panel has no authority to overrule this line of cases and require a showing of a specific level of economic impact in every case. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 36 (1989). If Ms. Connor believes this Court has misread the General Assembly's intent, and that some minimum level of economic impact must be shown in every cohabitation case, she must take up that issue with our Supreme Court.

III. Findings concerning cohabitation

Finally, Ms. Connor argues that the trial court's findings are insufficient to establish cohabitation. We review the trial court's findings to determine whether they are supported by competent evidence in the record and whether those findings, in

turn, support the trial court's conclusions of law. *Smallwood*, 227 N.C. App. at 325–26, 742 S.E.2d at 820.

In its order, the trial court expressly found the following facts: that Ms. Connor and Brezeault have a "monogamous" dating relationship; that Ms. Connor and Brezeault "have dwelled together in a habitual and continuous fashion . . . with Mr. Brezeault spending, on average, three to four (3-4) nights per week at [Ms. Connor's] home"; that Brezeault "regularly performs chores in and around [Ms. Connor's] home"; that Brezeault arranged for maintenance and cleaning services at Ms. Connor's home; that the couple "jointly parent one another's children"; and that the couple "routinely" attended church and "attended numerous social events together."

The trial court also found that the relationship had various economic impacts because Brezeault covered Ms. Connor on his AAA and Costco accounts; covered Ms. Connor and two of her children on his cell phone plan; and occasionally "provided cleaning supplies for [Ms. Connor's] home" and "paid for third parties to clean [Ms. Connor's] home on at least two (2) occasions." The court also found that Brezeault bought Ms. Connor goods, including a refrigerator and diamond ring, and "provided the Connor children with extra spending money."

We hold that these findings are supported by competent evidence in the record and that they are sufficient to support the trial court's conclusion that, examining the totality of the circumstances, "[Ms. Connor] and Mr. Brezeault have voluntarily and

mutually assumed those marital rights, duties, and obligations which are usually manifested by married people." Accordingly, we reject Ms. Connor's argument and affirm the trial court's order.

Conclusion

For the reasons described above, we affirm the trial court's order.

AFFIRMED.

Judges ELMORE and HUNTER, JR. concur.

Report per Rule 30(e).