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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-689

Filed 7 May 2025

Brunswick County, No. 15 CVD 1026

JANET HOLT HILTON, Now (Holt), Plaintiff,

v.

CAMERON THOM HILTON, Defendant.

Appeal by Plaintiff from Order entered 18 December 2023 by Judge Bryan D. Wilson in Brunswick County District Court. Heard in the Court of Appeals 25 February 2025.

*Ward and Smith, P.A., by Christopher S. Edwards, J. Albert Clyburn, and Avery J. Locklear, for Plaintiff-Appellant.*

*Ervin Law, PLLC, by Paul R. Adams and A. David Ervin, for Defendant-Appellee.*

HAMPSON, Judge.

**Factual and Procedural Background**

Janet Holt Hilton (Plaintiff) appeals from an Order allowing a motion by Cameron Thom Hilton (Defendant) to terminate his alimony obligation. The Record before us tends to reflect the following:

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The parties in this case were married on 15 April 2000 and separated on 24 May 2015. The parties entered into a Consent Order on 22 March 2016 which resolved all issues regarding equitable distribution and alimony between the parties. The Consent Order found Plaintiff was a dependent spouse and ordered Defendant to pay permanent alimony of \$3,000.00 per month. The Consent Order provided alimony was terminable upon: “Defendant’s death; Plaintiff’s death, Plaintiff’s remarriage, Plaintiff’s cohabitation as defined by N.C.G.S. 50-16.9, or by other operation of law or modification of this order by a Court of competent jurisdiction based upon a change of circumstance of Defendant’s income.”

Defendant filed a Motion to Modify the Consent Order on 8 March 2019, seeking to modify the Consent Order’s alimony provision. The trial court denied that Motion on 12 May 2020. After retiring in 2022, Defendant filed a second Motion to Modify the Consent Order on 7 March 2023. On 20 November 2023, the trial court held a hearing on Defendant’s Motion to Modify.

On 18 December 2023, the trial court entered an Order allowing Defendant’s Motion. In the Order, the trial court concluded, in pertinent part, “the Plaintiff is no longer a ‘dependent spouse’ under the meaning of [N.C. Gen. Stat. § 50-16.3A] and therefore is not entitled to Alimony.” The trial court then ordered “Alimony due under the prior [Consent] Order is hereby terminated as of the date of entry of this Order.” Plaintiff timely filed Notice of Appeal on 17 January 2024.

### **Issue**

The dispositive issue on appeal is whether the trial court erred by concluding Plaintiff was no longer a dependent spouse.

**Analysis**

Under N.C. Gen. Stat. § 50-16.9(a), “[a]n order of a court of this State for alimony or postseparation support, whether contested or entered by consent, may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested.” While the moving party has the burden to show a change of circumstances to support its motion, “[e]ven where the moving party has met [his] burden to show relevant changed circumstances, however, the trial court is not required to modify an alimony award, but may do so in its discretion.” *Kowalick v. Kowalick*, 129 N.C. App. 781, 785, 501 S.E.2d 671, 674 (1998) (citing *Robinson v. Robinson*, 10 N.C. App. 463, 468, 179 S.E.2d 144, 148 (1971)). “However, the trial court may not reconsider the issue of whether the Plaintiff is a dependent spouse, because it was ‘permanently adjudicated’ during the initial alimony hearing.” *Honeycutt v. Honeycutt*, 152 N.C. App. 673, 676, 568 S.E.2d 260, 262 (2002) (citing *Rowe v. Rowe*, 305 N.C. 177, 187, 287 S.E.2d 840, 846 (1982)).

In *Honeycutt*, this Court considered whether a trial court had properly concluded the plaintiff was no longer a dependent spouse and terminated her alimony. There, the Court held the underlying determination was improper “because the trial court determined that relative status of the parties *permanently* as of the date of the original order.” *Id.* at 677, 568 S.E.2d at 262 (citation omitted) (emphasis

added). “Subsequent to that order, the court may consider only ‘whether any change of circumstances justified a modification or termination of the alimony order.’ ” *Id.* at 677, 568 S.E.2d at 262-63 (quoting *Cunningham v. Cunningham*, 345 N.C. 430, 437, 480 S.E.2d 403, 407 (1997)). The issue here is identical.

In the present case, the trial court’s Order concluded: “the Plaintiff is no longer a ‘dependent spouse’ under the meaning of [N.C. Gen. Stat. § 50-16.3A] and therefore is not entitled to Alimony.” The trial court then ordered: “Alimony due under the prior [Consent] Order is hereby terminated as of the date of entry of this Order.” Consistent with *Honeycutt*, Plaintiff’s status as a dependent spouse was permanently determined in the Consent Order. 152 N.C. App. at 677, 568 S.E.2d at 262. The trial court is therefore limited to considering only “whether any change of circumstances justified a modification or termination of the alimony order.” *Cunningham*, 345 N.C. at 437, 480 S.E.2d at 407. However, “the trial court may, if a change in circumstances is found to exist, reduce the amount of alimony to zero, but such modification does not result in the loss of dependent spouse status.” *Kowalick*, 129 N.C. App. at 786, 501 S.E.2d at 675.

In this case, the trial court did not base its termination of alimony on any of the circumstances enumerated in the Consent Order or in N.C. Gen. Stat. § 50-16.9(b). Instead, it based its termination of alimony on a redetermination of Plaintiff’s entitlement to alimony as a dependent spouse. Under *Honeycutt*, this was

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reversible error.<sup>1</sup> Rather, “[a]lthough dependent spouse status is not properly reconsidered on a section 50-16.9(a) motion to modify, the trial court is required . . . to consider whether there has been a change in the circumstances of the parties which relates to the ‘factors used in the original determination of the amount of alimony awarded.’” *Kowalick*, 129 N.C. App. at 786, 501 S.E.2d at 675 (quoting *Cunningham*, 345 N.C. at 435, 480 S.E.2d at 406). If warranted, the trial court may then “reduce the amount of alimony to zero, but such modification does not result in the loss of dependent spouse status.” *Id.*

Thus, the trial court erred in concluding Plaintiff was no longer a dependent spouse. Therefore, the trial court, in turn, erred in concluding alimony should be terminated on this basis. Consequently, the trial court’s Order must be vacated and remanded to the trial court to determine whether Defendant’s alimony obligation should be modified based on a substantial change in circumstances.

### **Conclusion**

Accordingly, for the foregoing reasons, we vacate the trial court’s Order and remand this matter to the trial court to determine whether a substantial change in circumstances exists and, if so, warrants modification of Defendant’s alimony

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<sup>1</sup> Defendant contends any error in this regard is harmless. However, a determination Plaintiff is no longer a dependent spouse resulting in termination of alimony would deprive Plaintiff of seeking a modification in the future upon a showing of changed circumstances.

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obligation. The trial court may, in its discretion, decide whether to hear additional evidence.<sup>2</sup>

VACATED AND REMANDED.

Chief Judge DILLON and Judge FREEMAN concur.

Report per Rule 30(e).

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<sup>2</sup> Because we conclude the Order must be vacated, we need not reach the merits of Plaintiff's other arguments.