

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

NO. COA06-73

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

ROBERT BACHMAN BROWN

v.

Alamance County
No. 99CVD22

VICKIE CURTIS

Appeal by defendant from order entered 22 July 2005 by Judge Ernest J. Harveil in Alamance County Superior Court. Heard in the Court of Appeals 11 December 2006.

Vernon, Vernon, Wooten, Brown, Andrews & Garrett, P.A., by Benjamin D. Overby, for defendant appellant.

No brief filed for plaintiff appellee.

McCULLOUGH, Judge.

Defendant appeals from a child support order modifying plaintiff's child support obligation. We remand for further proceedings.

FACTS

Robert Bachman Brown ("plaintiff") and Vickie Curtis ("defendant") were married in 1997 and had one child who was born in 1998. Plaintiff owed defendant child support in the amount of \$178.85 per week pursuant to a court order.

On or about 31 May 2005, plaintiff filed a motion to modify the child support order. A hearing took place on 22 July 2005 and

the trial court entered an order suspending plaintiff's child support payments from 22 July 2005 until 1 December 2005.

Defendant appeals.

I.

Defendant contends the trial court erred in modifying plaintiff's child support obligation. We remand.

A North Carolina court order for support of a minor child "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 subject to the limitations of G.S. 50-13.10." N.C. Gen. Stat. § 50-13.7 (2005). "Our Court has deemed modification of child support a two-step process." *Armstrong v. Droessler*, ___ N.C. App. ___, ___, 630 S.E.2d 19, 21 (2006). "A trial court 'must first determine a substantial change of circumstances has taken place; only then does it proceed to apply the [North Carolina Child Support] Guidelines to calculate the applicable amount of support.'" *Id.* (citation omitted). "The burden of demonstrating changed circumstances rests upon the party moving for modification of support." *Id.*

In the instant case, plaintiff filed a motion for modification of his child support obligation because of a change in his ability to pay. "In cases where the needs of the children have not changed, a substantial change of circumstances can be found to exist based on a parent's ability to pay." *Id.* We have explained:

"A substantial and *involuntary* decrease in a parent's income constitutes a changed circumstance, and can justify a modification

of a child support obligation, even though the needs of the child are unchanged. A *voluntary* decrease in a parent's income, even if substantial, does not constitute a changed circumstance which alone can justify a modification of a child support award. A *voluntary* and substantial decrease in a parent's income can constitute a changed circumstance only if accompanied by a substantial decrease in the needs of the child."

Id. (citation omitted).

Here, the trial court's order suspending plaintiff's obligation is not supported by sufficient findings of fact. The court entered a order which merely stated that the "Court finds [plaintiff's] motion to decrease is allowed. Child support payments will be suspended until December 1, 2005 will be [sic] reinstated at full amount, plus arrears." In addition, the transcript from the motion to decrease also does not include any findings. The trial judge stated:

I agree that if you have a child, you don't have the right to walk away from a job. But during this period he [plaintiff] hasn't been sitting at home. He's paid all of his support payments, improved his resume, made himself perhaps at an opportunity to, to make a good living for himself and his son.

The trial court did not state whether the facts constitute a substantial change of circumstances. The court did not determine whether plaintiff voluntarily left his employment or if he was involuntarily terminated. Therefore, without sufficient findings we cannot perform a proper review. We remand for further proceedings not inconsistent with this opinion, leaving within the

discretion of the trial court whether to receive additional evidence.

Remanded.

Chief Judge MARTIN and Judge LEVINSON concur.

Report per Rule 30(e).