NO. COA08-1131

NORTH CAROLINA COURT OF APPEALS

Filed: 15 September 2009

WILLIAM L. UNDERWOOD,
Plaintiff,

v. Catawba County
No. 97 CVD 2123

TERESA W. UNDERWOOD,
Defendant.

Appeal by Defendant from order entered 8 May 2008 by Judge Amy R. Sigmon in Catawba County District Court. Heard in the Court of Appeals 8 April 2009.

CROWE & DAVIS, P.A., by H. Kent Crowe, for Defendant-Appellant.

Blair E. Cody, III, and Wesley E. Starnes, for Plaintiff-Appellee.

ERVIN, Judge.

Defendant Teresa W. Underwood appeals from order entered 8 May 2008 denying her motions to dismiss; terminating her alimony payments; requiring her to reimburse Plaintiff William L. Underwood for alimony paid during the pendency of his termination motion; and reserving ruling on the issue of retroactive reimbursement and attorneys' fees.[1] After careful consideration of the record in

[1] As a preliminary matter, we note that, while no party has questioned the appealability of the trial court's order, an order that reserves the issue of whether attorneys' fees should be awarded for determination at a later hearing is interlocutory in

light of the applicable law, we reverse the trial court's order and remand for further proceedings not inconsistent with this opinion.

Plaintiff and Defendant were married on 29 August 1976 and lived together until they separated on 18 January 1996.[2] Since that date, the parties have continuously lived separate and apart. During their marriage, Plaintiff served in the United States Army. At the present time, however, Plaintiff is retired from the military and works as a high school teacher. Defendant is a teacher by profession as well.

On 6 December 1996, Plaintiff filed a complaint in the District Court of Cumberland County requesting that the court grant him an absolute divorce; grant custody of the parties' minor child to Defendant; award liberal visitation to Plaintiff; reduce Plaintiff's child support obligation from $750 per month to $576 per month; and equitably distribute the parties' marital property. On 5 March 1997, Defendant filed a motion, answer and counterclaims in which she requested that the court change the venue of this case

---

nature. *See Watts v. Slough*, 163 N.C. App. 69, 72-73, 592 S.E.2d 274, 276 (2004). However, under the logic of our decision in *Brown v. Brown*, 85 N.C. App. 602, 604, 355 S.E.2d 525, 526, *disc. review denied*, 320 N.C. 511, 358 S.E.2d 516 (1987), the trial court's order affects a substantial right and is immediately appealable as a matter of right pursuant to N.C. Gen. Stat. § 1-277 and N.C. Gen. Stat. § 7A-27(d)(1).

[2] Plaintiff alleged in his complaint that the parties separated in November 1995. However, the date cited in the text, which first appeared in the motion, answer, and counterclaims filed by Defendant, is utilized in the Order of Post-Separation Support entered on 29 March 1999 and the Consent Order of Alimony and Equitable Distribution entered on 14 February 2000. As a result, we will assume, in the absence of an argument by any party to the contrary, that the separation date stated in the text is correct.

from Cumberland County to Catawba County; award her post-separation support and alimony; award her exclusive possession of the marital home and a 1992 Jeep Cherokee; award her custody of the parties' minor child; order that Plaintiff pay her reasonable child support; order that Plaintiff be required to file a financial affidavit; and order that the parties' marital property be equitably distributed.

On 15 May 1997, venue was changed from Cumberland County to Catawba County. On 25 November 1997, Plaintiff and Defendant were granted an absolute divorce in Harnett County File No. 97 CvD 842. On 29 March 1999, Judge Nancy L. Einstein entered an order concluding that Defendant was a dependent spouse as defined in N.C. Gen. Stat. § 50-16.1A.(2) and that Plaintiff was a supporting spouse as defined in N.C. Gen. Stat. § 50-16.1A.(5). Based on those determinations, the court awarded post-separation support to Defendant in the amount of $1,000 per month, "beginning April 1, 1999, and continuing the same each month thereafter until further Order of this Court" pursuant to N.C. Gen. Stat. § 50-16.2A.

On 14 February 2000, with the consent of both parties, Judge Jonathan L. Jones entered a Consent Order of Alimony and Equitable Distribution (consent order) in which, among other things, the court awarded "alimony" to Defendant as follows:

> $1,000.00 per month as alimony for a period of forty-eight (48) consecutive months beginning with the month of March, 2000, and continuing the same for forty-seven (47) consecutive months thereafter. However, this obligation shall terminate if the Defendant remarries or dies before the expiration of the aforementioned forty-eight (48) months.

> In addition to the foregoing, beginning March 1, 2004, the Plaintiff shall pay directly to the Defendant the sum of $700 per month as alimony until the death of the Defendant or remarriage of the Defendant.

The consent order also divided the parties' marital property in accordance with N.C. Gen. Stat. § 50-20, *et seq.*, and explicitly stated that "[t]he agreements of the parties as to the payment of alimony as set forth herein have been made and are given in *reciprocal consideration* for the agreements of the parties as to Equitable Distribution and property settlement of the parties." (emphasis added) Judge Jones also entered, with the consent of both parties, a Military Pension Division Order on 14 February 2000 in which the court awarded fifty percent of the marital share of Plaintiff's monthly retirement pay to Defendant.

On 6 July 2007, Plaintiff filed a Motion to Terminate/Modify Alimony in which he alleged that there had been "a substantial and material change in circumstances which would justify this Court in terminating the current alimony obligation of the Plaintiff" in that: (1) Defendant had cohabitated, as that term is defined in N.C. Gen. Stat. § 50-16.9(b), with Robert Samuel Redpath (Redpath) since June 2001; (2) Plaintiff had retired from the military and now works as a high school teacher; (3) Defendant's income has doubled and her living expenses have been reduced as a result of her cohabitation with Redpath; (4) Defendant and Redpath "have conducted themselves in such a manner and held themselves out to be husband and wife since at least June 2001;" and (5) Defendant is no longer substantially dependent on Plaintiff for her maintenance and

support. As a result, Plaintiff requested that the court terminate or modify the alimony that he was required to pay Defendant and that Plaintiff recover $59,600 from Defendant in order to reimburse him for alimony that he had paid after the time that his alimony obligation allegedly should have terminated. On 30 August 2007, Defendant filed a Motion to Dismiss and Motion for Attorneys' Fees in which she stated that the court lacked the authority to modify the "alimony award" set out in the consent order because the parties had entered into a unmodifiable arrangement.

On 8 May 2008, the trial court entered an Order Denying Defendant's Motion to Dismiss and Order on Plaintiff's Motion to Terminate/Modify Alimony. In its order, the trial court determined that the consent order "is a Consent Judgment and is, therefore, subject to modification, and [sic] therefore the Court has jurisdiction to hear Plaintiff's request to modify." In response to Defendant's argument to the effect that the language of the consent order rendered it unmodifiable, the trial court concluded that the consent order "speaks for itself." With respect to the nature of the relationship between Defendant and Redpath, the trial court found as a fact[3] that:

---

[3] Although the trial court's order reflects that the trial court heard evidence at the hearing on the parties' motions, the parties did not file a transcript of the trial proceedings with this Court. In addition, Defendant has not challenged any of the trial court's findings as lacking adequate evidentiary support. As a result, the trial court's findings of fact are deemed binding for purposes of our consideration of Defendant's challenge to the validity of the trial court's order. *State v. Watkins*, 337 N.C. 437, 438, 446 S.E.2d 67, 68 (1994).

A. The Defendant currently resides at 2201 Elbow Road, Maiden, North Carolina, and the Defendant has lived there for approximately eight (8) years.

B. The Defendant currently lives with Robert Redpath. Mr. Redpath has been living with the Defendant for at least five (5) year[s], but perhaps since 2001. Mr. Redpath has lived with Defendant continuously.

C. The Defendant admits that she and Mr. Redpath are in a monogamous sexual relationship and that their monogamous relationship began approximately five (5) years ago.

D. The Defendant and Mr. Redpath share expenses in that home, including rent, utilities, telephone, satellite; they are on the same cell phone plan; they share the water bill; they have separate vehicles but they have pooled money together to buy a Volkswagen truck that is titled in Mr. Redpath's name.

E. The Defendant and Mr. Redpath share a bedroom and they share a bed, but they do not share closet space or drawer space.

F. The Defendant and Mr. Redpath give each other gifts and they have separate pets.

G. The Defendant does not have a will.

H. The Defendant and Mr. Redpath share a post office box.

According to the trial court, "Plaintiff has paid the total sum of $2,800.00 directly to the Defendant for the months of July through October, 2007, at the rate of $700.00 per month." Based upon these findings of fact, the trial court concluded as a matter of law that:

1. This Court has jurisdiction over the subject matter and the parties hereto and

> the issues herein are properly before the Court.
>
> 2. The February 14, 2000 Consent Order of Alimony and Equitable Distribution is subject to modification.
>
> 3. The Defendant's Motion to Dismiss should be denied.
>
> 4. Pursuant to N.C. [Gen. Stat.] § 50-16.9 the Defendant has been cohabitating and, therefore, the alimony order that was entered by consent on February 14, 2000 is hereby terminated effective July 6, 2007.
>
> 5. The termination of alimony should be retroactive to the filing of Plaintiff's Motion to Terminate which was July 6, 2007.
>
> 6. The issue of Defendant's request for attorneys fees and retroactive reimbursement of alimony which was paid prior to the filing of Plaintiff's motion shall be reserved for hearing at a later date upon notice by either party.

As a result, the trial court denied Defendant's dismissal motion; terminated Plaintiff's "alimony" obligation effective 6 July 2007; required Defendant to reimburse Plaintiff $2,800 in "alimony" "paid during the pendency" of Plaintiff's motion; and reserved ruling on Defendant's request for attorneys' fees and Plaintiff's request for retroactive reimbursement of prior alimony payments until a later date. Defendant noted an appeal from the trial court's order to this Court.[4]

---

[4] Plaintiff has advanced several challenges to the adequacy of Defendant's compliance with various provisions of the North Carolina Rules of Appellate Procedure, including assertions that Defendant did not properly reference the assignments of error in her brief and that Plaintiff failed to make the same argument in her brief that she made in her assignments of error. A careful

Trial Court's Authority to Modify Consent Order

In her sole challenge to the trial court's order, Defendant reiterates the principal argument that she advanced before the trial court, which is that the consent order was not subject to modification, so that the trial court lacked the authority to terminate Plaintiff's "alimony" obligation and order the reimbursement of "alimony" paid during the pendency of Plaintiff's termination motion. After careful consideration of the record in light of the applicable law, we agree with Defendant's contention and reverse the trial court's order.

N.C. Gen. Stat. § 50-16.9 provides, in pertinent part, that:

> (a) An 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. . . .

---

review of the record and briefs suggests that the principal legal issues were adequately joined both before the trial court and on appeal, so that Plaintiff was adequately apprised of the basic contention that Defendant would make before this Court from an early stage of the current proceedings. As a result, we are not persuaded by Plaintiff's challenge to the adequacy of Defendant's compliance with the Rules of Appellate Procedure. Assuming for purposes of discussion that Defendant did not adequately comply with the Rules of Appellate Procedure, Defendant's "noncompliance with the appellate rules [did not rise] to the level of a substantial failure or gross violation," nor did it "impair[] the court's task of review[,]" nor does "review on the merits . . . frustrate the adversarial process." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 200, 657 S.E.2d 361, 366-67 (2008). "[R]ules of practice and procedure are devised to promote the ends of justice, not to defeat them." *White Oak Transp. Co.*, 362 N.C. at 194, 657 S.E.2d at 363 (citing *Hormel v. Helvering*, 312 U.S. 552, 557, 85 L. Ed. 1037 (1941)). For all of these reasons, we elect to decide the merits of this case and decline Plaintiff's suggestion to do otherwise.

> (b) If a dependent spouse who is receiving postseparation support or alimony from a supporting spouse under a judgment or order of a court of this State remarries or engages in cohabitation, the postseparation support or alimony shall terminate. Postseparation support or alimony shall terminate upon the death of either the supporting or the dependent spouse.
>
> As used in this subsection, cohabitation means the act of two adults dwelling together continuously and habitually in a private heterosexual relationship, even if this relationship is not solemnized by marriage, or a private homosexual relationship. Cohabitation is evidenced by the voluntary mutual assumption of those marital rights, duties, and obligations which are usually manifested by married people, and which include, but are not necessarily dependent on, sexual relations. Nothing in this section shall be construed to make lawful conduct which is made unlawful by other statutes.

Id.

In order to obtain the entry of an order terminating "alimony" or post-separation support pursuant to N.C. Gen. Stat. § 50-16.9, the moving party must satisfy the trial court that the following three elements exist:

> (1) The court has jurisdiction over the parties and the agreement sought to be modified. Jurisdiction is attained over the agreement when the support provisions of the agreement constitute an order of the court.
>
> (2) The support provisions ordered by the court constitute true "alimony or alimony *pendente lite*" and are not in fact merely part of an integrated property settlement. The support provisions of the agreement must be separable from the property settlement provisions.

> (3) The party seeking modification meets his or her burden of demonstrating such a change in circumstances as would warrant a modification of the alimony or alimony *pendente lite* obligations imposed by court order.

Rogers v. Rogers, 111 N.C. App. 606, 609-10, 432 S.E.2d 907, 908 (1993) (citing *White v. White*, 296 N.C. 661, 666-67, 252 S.E.2d 698, 701 (1979)).

"For a court to have power to modify a consent judgment, the first requirement of the statute, as with our case law, is that the judgment consented to be an order of a court." *White,* 296 N.C. at 666, 252 S.E.2d at 701. In *Walters*, the Supreme Court concluded that all consent judgments that contain or incorporate property settlement agreements, like the consent judgment at issue here, are judgments of the court and are, therefore, modifiable and enforceable by the contempt power of the court. *Walters v. Walters*, 307 N.C. 381, 298 S.E.2d 338 (1983). As a result, since the consent order is an order of the court, the first element that must be established in order for Plaintiff to obtain a modification of his alimony obligation has been established.

"The second essential requirement is that the order be one to pay [actual] *alimony*." White, 296 N.C. at 666, 252 S.E.2d at 701 (emphasis added). As the Court in explained in *White*:

> Even though denominated as such, periodic support payments to a dependent spouse may not be alimony within the meaning of the statute and thus modifiable if they and other provisions for a property division between the parties constitute reciprocal consideration for each other.

Id., 296 N.C. at 666, 252 S.E.2d at 701. "If support provisions are found to be consideration for, and inseparable from, property settlement provisions, the support provisions, even if contained in a court-ordered consent judgment, are not alimony but instead are merely a part of an integrated property settlement which is *not* modifiable by the courts." *Marks v. Marks*, 316 N.C. 447, 455, 342 S.E.2d 859, 864 (1986); *see also Hayes v. Hayes*, 100 N.C. App. 138, 146, 394 S.E.2d 675, 679 (1990) (stating that, "[i]f the support and property provisions exist reciprocally, the order is considered to reflect an integrated agreement, and the support payments are not alimony in the true sense of the word") (citing *Marks*, 316 N.C. at 455, 342 S.E.2d at 864). "Support provisions, although denominated as 'alimony,' do not constitute true alimony within the meaning of N.C.[Gen. Stat.] § 50-16.9(a) if they actually are part of an integrated property settlement." *Marks*, 316 N.C. at 454, 342 S.E.2d at 863. "The test for determining if an agreement is an integrated property settlement is whether the support provisions for the dependent spouse 'and other provisions for a property division between the parties constitute reciprocal consideration for each other.'" *Marks*, 316 N.C. at 454-55, 342 S.E.2d at 863 (quoting *White*, 296 N.C. at 666, 252 S.E.2d at 701); *see also Bunn v. Bunn*, 262 N.C. 67, 70, 136 S.E.2d 240, 243 (1964) (stating that, "if the support provision and the division of property constitute a reciprocal consideration so that the entire agreement would be destroyed by a modification of the support provision, they are not separable and may not be changed without the consent of both

parties"). "Court-ordered support payments which are part of an integrated agreement are not subject to modification by the trial court nor do they terminate as a matter of law upon remarriage of the dependent spouse." *Hayes*, 100 N.C. App. at 146, 394 S.E.2d at 679 (citation omitted).

> In determining whether a provision in a consent judgment is for alimony alone and thus severable from the remaining provisions and terminable upon the wife's remarriage, or whether the provisions for alimony and the provisions for division of property constitute reciprocal consideration so that they are not separable and may not be changed without the consent of both parties, a consent judgment must be construed in the same manner as a contract to ascertain the intent of the parties.

Rogers, 111 N.C. App. at 611, 432 S.E.2d at 909. However, "where the parties include unequivocal integration or non-integration clauses in the agreement, this language governs." *Hayes*, 100 N.C. App. at 147, 394 S.E.2d at 680 (1990) (citing *Acosta v. Clark*, 70 N.C. App. 111, 114, 318 S.E.2d 551, 554 (1984) (separation agreement expressly stated that the support provisions were independent of the property settlement provisions)).

In *White*, the Court adopted what it considered a "sensible approach for dealing with the issue of separability of provisions in a consent judgment or separation agreement in cases in which the question is not adequately addressed in the document itself[.]" *White*, 296 N.C. at 671-72, 252 S.E.2d at 704. In other words, when the intent of the parties to an agreement embodied in a consent judgment that contains both alimony or spousal support and property settlement provisions is not clear:

> [T]here is a presumption that provisions in a separation agreement or consent judgment made a part of the court's order are separable and that provisions for support payments therein are subject to modification upon an appropriate showing of changed circumstances. The effect of this presumption is to place the burden of proof on the party opposing modification. . . . [T]his burden [is] discharged only by a preponderance of the evidence.

White, 296 N.C. at 672, 252 S.E.2d at 704. However, the *White* presumption is not conclusive; instead, a party contending that provisions in a consent judgment should be construed as integrated rather than separable must show by the preponderance of the evidence that his or her view of the agreement is the correct one as a matter of fact.

In light of these decisions a trial judge required to determine whether a consent judgment both requiring the payment of alimony or spousal support *and* equitably distributing the parties' marital property is subject to modification in light of changed circumstances must undertake a two-step analysis. First, the court must determine whether the language of the agreement is clear and unambiguous on its face. If the agreement clearly and unambiguously provides that the alimony or spousal support payments constituted reciprocal consideration for the agreement's property settlement provisions, then the alimony or spousal support payments are not subject to subsequent modification. On the other hand, if the court concludes that the agreement clearly and unambiguously provides that the alimony or spousal support payments were independent of the agreement's property settlement provisions, then

the alimony or spousal support payments are subject to subsequent modification. However, if the court concludes that the language of the consent judgment does not clearly and unambiguously address the issue of whether the alimony or spousal support provisions of the agreement constituted reciprocal consideration for the property settlement provisions of that document, then the court should proceed to the second step, at which it must determine, as a matter of fact and giving due weight to the *White* presumption and the other rules applicable to the construction of such documents, whether the alimony or spousal support payments were integrated with or independent of any property settlement provisions contained in the same agreement. After appropriately construing the consent judgment, the trial court will have determined whether it has the authority to modify any alimony or spousal support payments required by that consent judgment.

The language of the trial court's order suggests that the trial court was under the impression that the mere fact that the 14 February 2000 Consent Order of Alimony and Equitable Distribution was "a Consent Judgment," without more, made it "subject to modification." To the extent that the trial court predicated its assertion of the authority to modify the consent judgment on such logic without any consideration of the extent to which the "alimony" and equitable distribution provisions of the consent order constituted reciprocal consideration for each other, the trial court erred. At an absolute minimum, the trial court's order does not analyze the language of the consent judgment for the

purpose of determining whether the consent judgment was or was not subject to modification under the rubric set out above. Since determining whether the consent order clearly and unambiguously provides that the "alimony" and property settlement provisions constitute reciprocal consideration for each other is a question of law rather than a question of fact, *see North Carolina Highway Com. v. Rand*, 195 N.C. 799, 804, 143 S.E. 851, 853 (1928) (stating that "[t]he construction of a contract, it is well settled, is a matter of law, and the meaning of the terms, if precise and explicit, is a question for the court"); *see also Rogers*, 111 N.C. App. at 611, 432 S.E.2d at 908 (holding that the ordinary rules of contract construction apply to the construction of consent judgments), we will examine the consent order for that purpose in an attempt to ascertain whether the necessary determination can be made on appeal or whether this case must be remanded for additional fact finding in the trial court.

As we have already noted, the first step in the required analysis must focus exclusively upon the language of the consent order. According to the literal language of that document, "[t]he agreements of the parties as to the payment of alimony as set forth herein have been made and are given in *reciprocal consideration* for the agreements of the parties as to Equitable Distribution and property settlement of the parties." (emphasis added) It would be difficult to see how the parties could have expressed the interconnected nature of the "alimony" and property settlement provisions of the consent judgment more plainly. As a result,

based upon the plain meaning of the language used in the relevant provision of the consent order, we are compelled to conclude that the "alimony" and property settlement provisions of that document constitute reciprocal consideration for each other, effectively making the consent order an integrated one.[5] *See Hayes*, 100 N.C. App. at 147, 394 S.E.2d at 680 (stating that "where the parties include unequivocal integration or non-integration clauses in the agreement, this language governs); *see also Marks*, 316 N.C. at 454, 342 S.E.2d at 864 (stating that, "[i]f support provisions are found to be consideration for, and inseparable from, property settlement provisions, the support provisions, even if contained in a court-ordered consent judgment, are not alimony but instead are merely a part of an integrated property settlement which is *not* modifiable by the courts") (emphasis in original).

Plaintiff attempts to defend the result reached by the trial court on the modification issue in a number of different ways. However, none of the arguments advanced by Plaintiff suffice to support an affirmance of the result reached in the court below.

First, Plaintiff argues that the language of the consent order is ambiguous and that the existence of this ambiguity precludes acceptance of Defendant's argument that the consent order is clear and unambiguous on its face. However, despite the fact that

---

[5] Because the consent order at issue here does not satisfy the second prong of the *Rogers* test, we need not address the third component, which focuses on whether the party seeking modification has met his or her burden of demonstrating a legitimate change in circumstances sufficient to justify modification of the existing alimony order.

Plaintiff points to several different ways in which "reciprocal" is used in various legal contexts, he never demonstrates the existence of any ambiguity arising from the manner in which that word is used in the consent order. Furthermore, the operative language for purposes of the present controversy is "reciprocal consideration" rather than "reciprocal," so the fact that "reciprocal" may be used in different ways in different contexts does not indicate the existence of any ambiguity in "reciprocal consideration." In the absence of a showing that the relevant language in the consent order is ambiguous, Plaintiff's first argument fails.

Secondly, Plaintiff argues, in reliance on *White*, that the determination of whether a particular agreement contains integrated or separable obligations is generally dependent upon the parties' intent and points out, quite correctly, that Defendant offered no evidence addressing this issue at the hearing held before the trial court. However, the presentation of such evidence is not necessary, and the *White* presumption is never implicated, in cases where the language of the parties' agreement is, like that at issue here, clear and unambiguous. *Hayes*, 100 N.C. App. at 147-48, 394 S.E.2d at 680 (stating that, "where the parties include unequivocal integration or non-integration clauses in the agreement, this language governs" and no "evidentiary hearing to determine the parties' intent is required"). Thus, the fact that Defendant did not present evidence relating to the intent of the parties' does not require affirmance of the trial court's order.

Thirdly, Plaintiff argues that the language used in the consent order differs from language found to have created integrated agreements in other cases and points out that "integrated" never appears in the relevant provision in the consent judgment. We do not find this argument persuasive. None of the relevant decisions have ever treated any particular language as having talismanic effect. For that reason, the mere fact that the relevant provision in the consent order does not contain the word "integrated" does not preclude a finding that the consent order clearly and unambiguously makes the "alimony" and property settlement provisions reciprocal consideration for each other. To the extent that the use of specific words is important in determining whether the "alimony" provisions of the consent order are subject to later modification, the use of "reciprocal consideration" would appear to be at least as important as the use of "integrated," since the relevant cases all focus the operative legal test on whether the alimony or spousal support provisions constitute "reciprocal consideration" for the equitable distribution or property settlement provisions. *Marks*, 316 N.C. at 454-55, 342 S.E.2d at 864 (stating that "[t]he test for determining if an agreement is an integrated property settlement is whether the support provisions for the dependent spouse 'and other provisions for a property division between the parties constitute reciprocal consideration for each other'") (quoting *White*, 296 N.C. at 666, 252 S.E.2d at 701); *White*, 296 N.C. at 666, 252 S.E.2d at 701 (stating that "periodic support payments to a dependent spouse may

not be alimony within the meaning of the statute and thus modifiable if they and other provisions for a property division between the parties constitute reciprocal consideration for each other"); *Bunn*, 262 N.C. at 70, 136 S.E.2d at 243 (stating that, "if the support provision and the division of property constitute a reciprocal consideration so that the entire agreement would be destroyed by a modification of the support provision, they are not separable and may not be changed without the consent of both parties"); *Hayes*, 100 N.C. App. at 146, 394 S.E.2d at 679 (stating that "[w]hether the support payments are in fact alimony does not depend on whether the order refers to it as 'alimony' but instead on whether the support payments constitute 'reciprocal consideration' for the property settlement provisions of the order") (quoting *White*, 296 N.C. at 666, 252 S.E.2d at 701)). Rather than focusing on the presence of specific words or phrases, the important question is the meaning of the words that are actually used. When read in light of ordinary English usage, the language of the consent judgment clearly indicates that the "alimony" payments constitute "reciprocal consideration" for the property settlement provisions of the consent order. We are unable to see any substantive difference between this and the language that Plaintiff quotes as exemplary from Reynolds, Lee's North Carolina Family Law § 14.47d (5th ed 2002), except that the latter specifically uses the word "integrated" while the former does not. Since substance is more important than form and since the substance of the relevant language from the consent order is clear and

unambiguous, the fact that different language may have been held to create an integrated agreement in other cases has no bearing on the proper outcome in this case.

Next, Plaintiff argues that, since counsel for Defendant drafted the consent order and since Plaintiff was not represented at the time that the consent order was entered, the relevant language should be construed against Defendant. *Electrical South, Inc. v. Lewis*, 96 N.C. App. 160, 167, 385 S.E.2d 352, 356 (1989), *disc. review denied*, 326 N.C. 595, 393 S.E.2d 876 (1990) (stating that, "[w]hen the language in a contract is ambiguous, we view the practical result of the restriction by 'construing the restriction strictly against its draftsman'") (citation omitted). Although the ordinary rules of contract construction do apply to the construction of consent judgments, *Rogers*, 111 N.C. App. at 611, 432 S.E.2d at 908, the specific rule upon which Plaintiff relies only applies in situations where the actual contract language is ambiguous. As we have already noted, there is no ambiguity in the relevant provision of the consent order. Thus, the rule of construction upon which Plaintiff relies does not operate to support the result reached in the trial court.

Finally, Plaintiff argues that all of the decisions upon which Defendant relied at the trial court and which form the basis for our decision on appeal involve situations in which a separation agreement was incorporated into a consent order rather than a situation in which the consent order was a complete and independent document. Plaintiff cites no authority in support of his implicit

contention that the two situations should be treated differently in situations like the present one, and we are aware of none. Thus, Plaintiff's final argument does not suffice to support affirmance of the trial court's order.

For all of these reasons, we conclude that the trial court erred by concluding that the provisions of the consent order were modifiable, so that it had jurisdiction to modify the consent judgment by terminating Plaintiff's obligation to make monthly "alimony" payments to Defendant. According to its literal language, the provisions of the consent order clearly and explicitly make Plaintiff's "alimony" payments and the remainder of the agreement's property settlement provisions "reciprocal consideration" for each other, a fact which deprived the trial court of the authority to terminate or modify Plaintiff's spousal support obligation. We are bound by the prior decisions of the Supreme Court and this Court, which render consent orders containing language such as that present here unmodifiable. As a result, we hereby reverse the trial court's order and remand this case to the trial court for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Judges ELMORE and STROUD concur.

Report per Rule 30(e)