

Cohabitation is a Defense to Alimony

[N.C. Gen. Stat. 50-16.9\(b\)](#) provides that “if a dependent spouse who is receiving postseparation support or alimony from a supporting spouse ... engages in cohabitation, the postseparation support or alimony shall terminate.” In *Setzler v. Setzler*, 781 SE2d 64 (NC App., 2015), the court stated that “the primary intent in making cohabitation grounds for termination of alimony was to evaluate the economic impact of a relationship on a dependent spouse and, consequently, avoid bad faith receipts of alimony;” bad faith meaning a dependent spouse avoiding remarriage for the sole purpose of continuing to receive alimony. So if the relationship is such that one would expect the parties to be married, the assumption is the only reason they are not married is the desire to avoid the termination of alimony. For more on defining cohabitation, see my earlier post [Alimony: Cohabitation is All About Money After All](#).

Cohabitation clearly terminates an award of support. What if the dependent spouse is cohabitating or has cohabitated at the time she or he is asking the court for an award of postseparation support or alimony? Is cohabitation a defense to the establishment of a support obligation? Does it matter whether the dependent spouse still is cohabitating at the time of the support request?

Williamson v. Williamson

The first case to address this issue was *Williamson v. Williamson*, 142 NC App 702 (2001). Plaintiff Mr. Williamson was ordered to pay PSS to defendant Ms. Williamson beginning December 3, 1996. The court conducted a hearing on defendant’s claim for alimony during June and July 1998. During that hearing, the trial court concluded defendant had been cohabitating since June 1995, before the PSS order was entered. The trial court ordered Mr. Williamson to pay support to Ms. Williamson from the date of separation until June 1995 when she began cohabitating and denied her request for alimony.

On appeal, defendant argued that the clear language of GS 50-16.9(b) indicates that while cohabitation will terminate an existing order of support, it is not a defense to an initial award of alimony. The court of appeals disagreed, stating:

“[h]ere, the defendant both received payments pursuant to a court order and engaged in cohabitation since 16 July 1995. The statute clearly and unequivocally states that where these circumstances exist, the support payments shall terminate.”

The court of appeals affirmed the trial court’s determination that “plaintiff was not obligated for alimony or postseparation support payments from the time defendant’s cohabitation began” and held that “[i]n cases in which a dependent spouse receives alimony or postseparation support pursuant to a judgment or court order, cohabitation or remarriage terminates that spouse’s right to receive payments.”

The opinion does not indicate whether Ms. Williamson continued to cohabit at the time of her request for alimony and also does not indicate that it would matter at all in the analysis if she no longer was in that relationship when she requested support. The court actually states that the fact “that the defendant began cohabitating prior to the postseparation or alimony award is not relevant.”

Orren v. Orren

Very recently, the court of appeals interpreted the *Williamson* case broadly and held that even in a case where no support is being paid pursuant to a court order, cohabitation is a defense to a dependent spouse’s request for alimony.

In [Orren v. Orren, NC App \(May 16, 2017\)](#), defendant Ms. Orren requested postseparation support and alimony as well as equitable distribution. No PSS order was entered. Following entry of the equitable distribution judgment, the trial court held a hearing on Ms. Orren’s alimony claim. Following the hearing, the trial court wrote and signed an alimony order granting alimony but the written document was not filed. Three years later, after the trial court was informed that the alimony order had not been entered, the trial court determined that evidence should be reopened on the issue of alimony. Mr. Orren attempted to introduce evidence of wife’s cohabitation, but the trial court refused to admit the evidence, stating on the record that “cohabitation is not a defense to an alimony claim.”

After entry of the alimony order, Mr. Orren appealed. The court of appeals agreed with his contention that the trial court “acted under a misapprehension of the law” when it denied his request to introduce evidence of defendant’s cohabitation.

Ms. Orren argued that GS 50-16.9(b) states only that when a “spouse *who is receiving* postseparation support or alimony ... engages in cohabitation, the postseparation support or alimony shall terminate,” and the court of appeals acknowledged the precise language of the statute stating “[t]hus, the statute addresses situations in which postseparation support or alimony already has been ordered before cohabitation begins.”

Nevertheless, the court in *Orren* held that the opinion in *Williamson* clearly and broadly holds that cohabitation is “a defense to an initial action for alimony.” In addition, the court in *Orren* indicated that it would not make sense to allow alimony to go forward following cohabitation because the award “would immediately be subject to termination based on cohabitation.” The *Orren* court concluded that “[s]imply put, ...cohabitation may be asserted as a defense to an initial alimony claim.”

So once cohabitation occurs, all support obligation terminates forever?

Like *Williamson*, the court in *Orren* does not indicate whether the dependent spouse continued to

cohabit at the time the trial court considered her request for alimony. Also like *Williamson*, the court in *Orren* indicates that it does not matter. In stating that cohabitation would automatically terminate any order of alimony entered, the court seems to say clearly that cohabitation at any point in time will terminate a supporting spouse's obligation to pay support forever, regardless of whether the dependent spouse continues to cohabit at the time of the request for support or not.