

Part 3.
Modification of Child Support Orders

I. General Principles

A. Support orders are modifiable.

1. Because a child support order determines the current and **continuing** rights and obligations of the parties with respect to the support of a minor child, the issue of support remains *in fieri* (that is, open and pending before the court for further action) following the entry of a “final” or “permanent” child support order and remains so until the child for whose benefit the order was entered is emancipated and the parent’s legal support obligation has been fully discharged. [See *Brooks v. Brooks*, 107 N.C.App.44, 418 S.E.2d 534 (1992).]

a) A “final” or “permanent” child support order is res judicata with respect to the amount, scope, and duration of a parent’s child support obligation only as long as the circumstances upon which the order was based remain substantially unchanged. [*Schroader v. Schroader*, 120 N.C.App. 790, 463 S.E.2d 790 (1995); see also *Walker v. Walker*, 63 N.C.App. 644, 306 S.E.2d 485 (1983).]

b) Conversely, the amount, scope, or duration of a parent’s child support obligation as adjudicated in a “final” or “permanent” child support order may be modified by a subsequent child support order if the court finds that there has been a significant change of circumstances relevant to the issue of child support. [G.S. § 50-13.7(a); see also *Ebron v. Ebron*, 40 N.C.App. 270, 252 S.E.2d 235 (1979).]

c) Parties cannot by agreement deprive the court of jurisdiction to modify a child support order. [See *Young v. Young*, ___ N.C.App. ___, 609 S.E.2d 795 (2005) (provision agreed to by the parties and included in a court order that barred mother from bringing a motion to increase father’s support obligation based in part on his increased ability to pay found void).]

2. Only a court is authorized to modify a child support order.

a) The parties may not extrajudicially modify the provisions of a child support order through unilateral action or mutual agreement (other than a consent order approved by the court). [*Baker v. Showalter*, 151 N.C.App. 546, 566 S.E.2d 172 (2002) (parties could not modify a child support order by oral agreement; amount of support in separation agreement remained in effect); *Chused v. Chused*, 131 N.C.App. 668, 508 S.E.2d 559 (1998) (husband’s unilateral reduction in support payments after job loss improper); *Leak v. Leak*, 129 N.C.App. 142, 497 S.E.2d 702, review denied, 348 N.C. 498, 510 S.E.2d 385 (1998) (father improperly terminated his support payments for 18 year old child who had not graduated from high school); *Massey v. Massey*, 121 N.C.App. 263,

465 S.E.2d 313 (1996) (parties cannot, after reconciling, vacate by stipulation a support order previously entered in the action); *Van Nynatten v. Van Nynatten*, 113 N.C.App. 142, 438 S.E.2d 417 (1993) (defendant who unilaterally reduced his child support payments required to apply to the court before altering his payments); *Craig v. Craig*, 103 N.C.App. 615, 406 S.E.2d 656 (1991) (even though child support normally terminates as a matter of law upon a child reaching age 18, where at least one child for whom support was ordered remains a minor, defendant cannot unilaterally reduce payments by half but must apply to trial court for modification); *Griffin v. Griffin*, 96 N.C.App. 324, 385 S.E.2d 526 (1989) (father had no authority to twice reduce child support payments required by divorce decree when his income was reduced).]

b) Remedies for a unilateral reduction.

(1) Order for payment of arrears.

(a) *Spencer v. Spencer*, 133 N.C.App. 38, 514 S.E.2d 283 (1999) (when mother reduced her child support payments by half when oldest child moved in with her, case remanded to determine arrearages accruing between date of unilateral modification and date petition filed for modification).

(b) *Baker v. Showalter*, 151 N.C.App. 546, 566 S.E.2d 172 (2002) (former wife ordered to pay child support arrears based upon separation agreement sum).

(2) Contempt.

(a) *Chused v. Chused*, 131 N.C.App. 668, 508 S.E.2d 559 (1998) (father who unilaterally reduced payments after job loss in contempt since he had ability to pay full amount from his sizeable estate).

B. What constitutes a modification.

1. An order modifies a prior child support order if it changes or otherwise affects, directly or indirectly, the amount, scope, or duration of a parent's child support obligation as determined under the prior order. [See 28 U.S.C. §1738B(b)]

2. But an order that required an obligor to pay only a portion of the amount required under an initial child support order so that obligor might purge himself of contempt did not constitute a modification of the prior order. [See *Bogan v. Bogan*, 134 N.C.App. 176, 516 S.E.2d 641 (1999) (trial court could allow obligor to purge himself of contempt upon a payment of some amount less than that owed without modifying the initial support order).]

3. See also G.S. § 50-13.9(a) (the court may at any time order that support payments be made to the Child Support Collection and Disbursement Unit; change not treated as a modification).

II. Modifying North Carolina Child Support Orders

A. Statutory authority.

1. G.S. § 50-13.7(a) authorizes a North Carolina court to modify or vacate an order of a North Carolina court providing for the support of a minor child at any time upon motion in the cause by an interested party and a showing of changed circumstances.

a) In exercising its authority under G.S. § 50-13.7(a), a court may not modify vested past-due child support payments that have accrued under a child support order. [G.S. § 50-13.10]

b) *See* section II.G of this Part, page 132, for a discussion on the retroactive modification of child support arrearages and section II.H.4 of this Part, page 136, for a discussion on the effective date of a modification.

2. G.S. § 50-13.7(a) applies to any “final” or “permanent” order entered by a North Carolina court for the support of a minor child.

a) G.S. § 50-13.7(a) applies to and authorizes modification of:

(1) Child support orders entered in civil child support actions brought pursuant to G.S. § 50-13.4;

(2) Child support in divorce decrees [*In re Register*, 303 N.C. 149, 277 S.E.2d 356 (1981)];

(3) Child support orders entered in a Uniform Interstate Family Support Act (UIFSA) proceeding pursuant to G.S. § 52C-4-401(a);

(4) Voluntary support agreements approved pursuant to G.S. § 110-132(b) [G.S. § 110-132(a)];

(5) The child support provisions of a separation agreement that has been incorporated into a divorce decree or other court order [*Beamer v. Beamer*, ___ N.C.App. ___, 610 S.E.2d 220 (2005); *Duffey v. Duffey*, 113 N.C.App. 382, 438 S.E.2d 445 (1994); *see also Cavanaugh v. Cavanaugh*, 317 N.C. 652, 347 S.E.2d 19 (1986)]; and

(6) Consent orders for child support. [*Mason v. Erwin*, 157 N.C.App. 284, 579 S.E.2d 120 (2003); *O’Neal v. Wynn*, 64 N.C.App. 149, 306 S.E.2d 822 (1983), *aff’d*, 310 N.C. 621, 313 S.E.2d 159 (1984).]

b) G.S. § 50-13.7(a) probably applies to and authorizes modification of child support orders entered in criminal nonsupport proceedings pursuant to G.S. § 14-322(e) or G.S. § 49-7.

3. G.S. § 50-13.7(a) does not apply to:

a) Interim or temporary child support orders. [*Sikes v. Sikes*, 330 N.C. 595, 411 S.E.2d 588 (1992) (court may order final support without finding a substantial change of circumstances since entry of temporary order); *Cole v. Cole*, 149 N.C.App. 427, 562 S.E.2d 11 (2002).]

b) Child support obligations that are included in an **unincorporated** separation agreement or property settlement. [*Bottomley v. Bottomley*, 82 N.C.App. 231, 346 S.E.2d 317 (1986) (trial court could, notwithstanding unincorporated separation agreement, make its own independent determination of what was fair and reasonable child support and could require a parent to pay child support in an amount different from that provided in the separation agreement without making a finding that circumstances have changed).] [*See* section IV.A of this Part, page 147.]

4. Other modifications.

a) When a court has confirmed an award of child support made pursuant to the Family Law Arbitration Act, the court may modify the child support award pursuant to G.S. § 50-13.7 or, upon joint motion and agreement of the parties, remit the matter to arbitrators chosen pursuant to G.S. § 50-45 for arbitration and entry of a modified award of child support by the arbitrators pursuant to G.S. § 50-13.7. [*See* G.S. § 50-56]

b) Following entry of an equitable distribution order, the court, upon request of either party, must consider whether a child support order should be modified pursuant to G.S. § 50-13.7. [G.S. § 50-20(f)]

c) A court of another state may modify a child support order entered by a North Carolina court if the other state's court has jurisdiction to modify the North Carolina child support order under UIFSA and FFCCSOA. [*See* section III.B of this Part, page 138.]

d) If a court or tribunal of another state modifies a North Carolina child support order pursuant to UIFSA, North Carolina courts must recognize the modification of its order by the other state's court. [*See* G.S. § 52C-6-612]

B. Jurisdiction.

1. A North Carolina court that enters a valid order for child support retains continuing exclusive jurisdiction to modify that order pursuant to G.S. § 50-13.7(a) as long as **all** of the following conditions are met.

a) **Either** of the individual parties **or** the child continues to live in North Carolina (*see* G.S. § 52C-2-205(a)(1); *see also Jurado v. Brashear*, 782 So.2d 575 (La. 2001) (when both parents and the child move out of the issuing state, the court of the issuing state retains jurisdiction to *enforce* its order, but not to *modify* the order).]

b) The individual parties have **not** filed written consent allowing a court in another state to assume jurisdiction (*see* G.S. § 52C-2-205(a)(2)).

c) The order has not been validly modified by another court pursuant to UIFSA (*see* G.S. §§ 52C-2-205(b) and 52C-6-612) **or** a court has not determined that the order is not the one "controlling" child support order entitled to recognition under UIFSA [*see* G.S. § 52C-2-207].

2. The trial court's jurisdiction is limited to the specific issues properly raised by a party or interested person.

a) If the only motion before the court is for modification of child support, the court may not address other issues. [*See Van Nynatten v. Van Nynatten*, 113 N.C.App. 142, 438 S.E.2d 417 (1993) (court erred by addressing alimony when only motion before it was for modification of child support).]

b) Trial court may not modify child support upon a motion to modify child custody; modification of support was not before the court. [*Royall v. Sawyer*, 120 N.C.App. 880, 463 S.E.2d 578 (1995).]

c) It was error for trial court to modify support when only question before court was alimony. [*Smith v. Smith*, 15 N.C.App. 180, 189 S.E.2d 525 (1972).]

C. Venue.

1. Venue for modification is in court that entered support order.

a) A motion to modify a child support order entered by a North Carolina court is to be filed with the court that entered the order. [*Brooker v. Brooker*, 133 N.C.App. 285, 515 S.E.2d 234 (1999) (court first obtaining jurisdiction is the only proper court in which to bring an action for modification of an order establishing support); *Broyhill v. Broyhill*, 81 N.C.App. 147, 343 S.E.2d 605 (1986).]

b) The statute relating to venue of an action for custody and support [G.S. § 50-13.5(f)] does not apply to a proceeding for modification of an existing order. [*Tate v. Tate*, 9 N.C.App. 681, 177 S.E.2d 455 (1970).]

2. Proper way to object to venue. Objection to improper venue in a proceeding to modify a child support order is made by motion pursuant to G.S. § 1A-1, Rule 12. [*Brooks v. Brooks*, 107 N.C.App. 44, 418 S.E.2d 534 (1992).]

3. Court that entered support order may transfer venue.

a) In its discretion and based on the convenience of the parties or in the interest of justice, the court that entered a child support order may transfer venue to a more appropriate county. [*Broyhill v. Broyhill*, 81 N.C.App. 147, 343 S.E.2d 605 (1986) (plaintiff requested court of original venue to transfer her request for modification of support to another county; change of venue affirmed).]

b) Orders entered on or after October 1, 1997, in IV-D cases must require the clerk of superior court to transfer the case to another jurisdiction in the state if the IV-D agency requests the transfer and the obligor, the child's custodian, and the child no longer reside in the jurisdiction in which the order was entered. [G.S. § 50-13.4(e1)]

4. One case has found no abuse of discretion when request to transfer venue denied.

a) Trial court did not abuse its discretion by denying defendant's motion to transfer venue from Iredell County to Forsyth County. [*Brooker v. Brooker*, 133 N.C.App. 285, 515 S.E.2d 234 (1999) (Iredell remained the most convenient forum even though defendant had relocated to Forsyth County and plaintiff and child had relocated to Wilkes County).]

5. Parties can waive venue.

a) By failing to file a timely objection to improper venue.

(1) Mother waived her right to remove custody and support modification case to county where original proceedings were held, by failing to demand removal either in preanswer motion or in answer; mother's oral motion made at trial not timely. [*Brooks v. Brooks*, 107 N.C.App. 44, 418 S.E.2d 534 (1992) (New Hanover County was court of original venue; mother failed to timely object to venue in Buncombe County).]

b) By an agreement in writing.

(1) Parties agreed in writing to bring all actions regarding support in the children's home state, and in so doing waived venue and acknowledged jurisdiction of that state. [*Montgomery v. Montgomery*, 110 N.C.App. 234, 429 S.E.2d 438 (1993).]

D. Standing.

1. A motion to modify a child support order may be filed by either party or by an "interested" person. [G.S. § 50-13.7(a)]

a) A county social services department to which child support rights have been assigned as a condition of a child's receipt of public assistance has standing as an "interested person" to seek modification of an order providing support for that child. [*Cox v. Cox*, 44 N.C.App. 339, 260 S.E.2d 812 (1979).]

b) An interested person who seeks modification of a child support order but is not a party to the pending child support action may move to intervene in the action pursuant to G.S. § 1A-1, Rule 24.

2. A party or an interested person must request modification; the court lacks authority to modify a child support order on its own motion sua sponte. [*Young v. Young*, ___ N.C.App. ___, 609 S.E.2d 795 (2005); *Henderson v. Henderson*, 165 N.C.App. 477, 598 S.E.2d 433, *aff'd*, 359 N.C. 184, 605 S.E.2d 637 (2004) (per curiam) (trial court erred by modifying mother's child support obligation when neither party had requested modification); *Miller (Sikes) v. Miller*, 153 N.C.App. 40, 568 S.E.2d 914 (2002); *Bogan v. Bogan*, 134 N.C.App. 176, 516 S.E.2d 641 (1999); *Fink v. Fink*, 120 N.C.App. 412, 462 S.E.2d 844 (1995), *review denied*, 342 N.C. 654, 467 S.E.2d 710 (1996) (this true whether the previous order utilized Guideline amounts or deviated therefrom).]

E. Procedure.

1. Request for modification made by motion in the cause.
 - a) A request for modification of a child support order should be made by filing a motion in the pending child support action. [See G.S. § 50-13.7(a) allowing modification upon motion in the cause and changed circumstances; *Baker v. Showalter*, 151 N.C.App. 546, 566 S.E.2d 172 (2002) (order setting child support may be modified only upon motion in the cause and a showing of changed circumstances).]
2. Requirements of the motion.
 - a) Except as otherwise allowed under G.S. § 1A-1, Rule 7, a motion seeking modification of a child support order must be made in writing, state the facts upon which the motion is based, and indicate the specific relief sought. [Cf. *Elmore v. Elmore*, 4 N.C.App. 192, 166 S.E.2d 506 (1969) (noting a lack of authority requiring that the change of circumstances be alleged, either specifically or in general terms, in the motion in the cause) (decided before N.C. Rules of Civil Procedure became effective).]
3. Notice of the motion.
 - a) The party seeking modification of a child support order must serve the motion on all other parties pursuant to G.S. § 1A-1, Rule 5 at least 10 days before the date of the hearing on the motion. [See G.S. § 50-13.5(d)(1); see also *Osborne v. Osborne*, 129 N.C.App. 34, 497 S.E.2d 113 (1998) (party given less than 10 days notice of hearing to establish child support but no prejudice to party).]
 - b) A party's failure to give timely notice of a motion to modify a child support order is waived if the opposing party does not object in a timely manner. [See *Brandon v. Brandon*, 10 N.C.App. 457, 179 S.E.2d 177 (1971) (in child custody proceeding, mother's motion for postponement due to insufficient notice denied where mother suggested no additional testimony that would have been available to her at a later hearing and failed to show how she might have benefited from a later hearing).]
4. A party to a North Carolina child support action who is a nonresident of North Carolina may file a UIFSA petition seeking modification of a North Carolina child support order. [G.S. § 52C-2-206(b)]
 - a) Special rules governing discovery and admissibility of evidence apply to UIFSA proceedings in which a nonresident requests a responding state's court to modify a child support order issued by that court. [See G.S. §§ 52C-2-206(b), 52C-3-315, 52C-3-317]
5. No jury. Motions seeking modification of child support orders are heard and decided by a district court judge without a jury. [G.S. § 50-13.5(h)]
6. No appointment of counsel for a *pro se* indigent obligor. A *pro se* indigent obligor is not entitled to court-appointed counsel in connection with a motion to

modify child support. [*King v. King*, 144 N.C.App. 391, 547 S.E.2d 846 (2001) (motion to reduce child support does not place physical liberty interest at stake).]

7. Burden of proof. The party seeking modification of a child support order has the burden of proving, by a preponderance of the evidence, that a substantial change in circumstances has occurred since the date the order was entered. [*Trevillian v. Trevillian*, 164 N.C.App. 223, 595 S.E.2d 206 (2004); *Thomas v. Thomas*, 134 N.C.App. 591, 518 S.E.2d 513 (1999); *Hamill v. Cusack*, 118 N.C.App. 82, 453 S.E.2d 539, *review denied*, 340 N.C. 359, 458 S.E.2d 187 (1995).]

8. Modification of a child support order is a two-step process. [*McGee v. McGee*, 118 N.C.App. 19, 453 S.E.2d 531, *review denied*, 340 N.C. 359, 458 S.E.2d 189 (1995).]

a) The first step in the modification process is to determine whether there has been a substantial change of circumstances since the existing child support order was entered.

(1) See section II.F of this Part, page 127, for more on changed circumstances.

(2) If the court determines there has **not** been a substantial change of circumstances, the court must enter an order denying the motion and may not modify the order.

b) If the court determines there has been a substantial change of circumstances, the second step is the entry of a new child support order that modifies and supersedes the existing child support order.

(1) In determining the amount, scope, and duration of the obligor's modified child support obligation, the court must apply North Carolina's child support guidelines (unless there are sufficient grounds for deviating from the guidelines) and other applicable law. [*Beamer v. Beamer*, __ N.C.App. __, 610 S.E.2d 220 (2005); *Trevillian v. Trevillian*, 164 N.C.App. 223, 595 S.E.2d 206 (2004); *Hamill v. Cusack*, 118 N.C.App. 82, 453 S.E.2d 539, *review denied*, 340 N.C. 359, 458 S.E.2d 187 (1995).]

(2) When a party requests a recalculation of child support, the court is to apply the entirety of the North Carolina Child Support Guidelines, including not only the worksheets but also the commentary. [*Ticconi v. Ticconi*, 161 N.C.App. 730, 589 S.E.2d 371 (2003) (court authorized to modify provision on allocation of tax dependency deduction even though deduction is not utilized in the worksheet calculations of child support; application of the Guidelines is not limited solely to the numbers applied to the worksheet).]

F. Changed circumstances.

1. The pre-1996 evolution of North Carolina’s “changed circumstances” requirement for modification of child support orders is discussed in John L. Saxon and John Giambalvo, “Modification of Child Support Orders in North Carolina: The “Changed Circumstances” Requirement,” *Family Law Bulletin No. 7* (Institute of Government, 1996).

2. A court may not modify a child support order unless there has been a **substantial** change of circumstances occurring **after** the date the order was entered. [*Newman v. Newman*, 64 N.C.App. 125, 306 S.E.2d 540, *review denied*, 309 N.C. 822, 310 S.E.2d 351 (1983); *Wachacha v. Wachacha*, 38 N.C.App. 504, 248 S.E.2d 375 (1978).]

3. A substantial change in circumstances may be shown in one of the following ways, each of which is discussed separately below. (Other matters that have been found to constitute a substantial change of circumstances are discussed in section II.F.7 of this Part, page 130.)

a) When support orders are three years old, proof of a disparity of 15% or more between the amount of support under the original order and the amount owed under the Guidelines establishes a rebuttable presumption of changed circumstances.

b) A significant increase or decrease in the needs of the child.

c) A significant involuntary decrease in the income of the non-custodial parent even though the child’s needs are unchanged. [*Hammill v. Cusack*, 118 N.C.App. 82, 453 S.E.2d 539, *review denied*, 340 N.C. 359, 458 S.E.2d 187 (1995).]

d) A significant involuntary decrease in the income of the custodial parent. [*Bishop v. Bishop*, 245 N.C. 573, 96 S.E.2d 721 (1957).]

4. Support orders more than three years old with a 15% disparity.

(1) North Carolina’s child support guidelines provide “[i]n any proceeding to modify an existing order which is three years old or older, a deviation of 15% or more between the amount of the existing order and the amount of child support resulting from application of the Guidelines shall be presumed to constitute a substantial change of circumstances warranting modification.” [[N.C. CHILD SUPPORT GUIDELINES, 2005 ANN. R. N.C. 47 (effective October 1, 2002, and hereafter referred to as 2002 Guidelines).]

(2) The 15% presumption eliminates the necessity that the moving party show change of circumstances by other means when he or she has presented evidence that satisfies the requirements of the presumption. [*Garrison ex rel. Williams v. Connor*, 122 N.C.App. 702, 471 S.E.2d 644, *review denied*, 344 N.C. 436, 476 S.E.2d 116 (1996) (when plaintiff presented evidence satisfying the requirements of the 15% presumption and defendant presented

no evidence, court found a change of circumstances warranting an increase in defendant's child support).]

(3) The 15% presumption created by the Guidelines applies whether the moving party seeks an increase or decrease in his or her child support obligation. [*Willard v. Willard*, 130 N.C.App. 144, 502 S.E.2d 395 (1998).]

5. A significant increase or decrease in the needs of the child.

a) Cases following rule.

(1) *Wiggs v. Wiggs*, 128 N.C.App. 512, 495 S.E.2d 403 (1998) (recognizing that a substantial increase or decrease in the child's needs can constitute changed circumstances).

(2) *McGee v. McGee*, 118 N.C.App. 19, 453 S.E.2d 531, review denied, 340 N.C. 359, 458 S.E.2d 189 (1995) (where court pointed out that its decision did not affect established law that a change of circumstances sufficient to modify a child support order may be shown by a substantial increase or decrease in the children's needs).

(3) *Meehan v. Lawrance*, 166 N.C.App. 369, 602 S.E.2d 21 (2004) (increase in educational expenses, significant amount of money in travel expenses for visitation as a result of relocation to Georgia, and the fact that the minor children had become involved “in a lot of extracurricular activities” sufficient evidence of increase in needs of the children).

(4) *Lawrence v. Nantz*, 115 N.C.App. 478, 445 S.E.2d 87 (1994) (minor child's hospitalization and its resulting costs was found to constitute a substantial change in circumstances).

(5) *Brooker v. Brooker*, 133 N.C.App. 285, 515 S.E.2d 234 (1999) (increase in needs shown by increase in daycare expenses, recreation expenses, and amount spent on rent and groceries).

(6) *Craig v. Kelly*, 89 N.C.App. 458, 366 S.E.2d 249 (1988) (substantial increase in needs of child who had recently started school).

(7) *Koufman v. Koufman*, 330 N.C. 93, 408 S.E.2d 729 (1991) (changed circumstances based on substantial decrease in monthly expenses of child who enrolled in boarding school).

b) Procedure.

(1) When an increase or decrease in a child's needs is the basis of a motion to modify, the moving party has the burden of proving the amount of the child's needs at the time the existing order was entered and at the time the motion for modification is filed or

heard. [*See Brooker v. Brooker*, 133 N.C.App.285, 515 S.E.2d 234 (1999).]

6. A significant **involuntary** decrease in the income of the noncustodial parent even though the child's needs are unchanged.

a) Cases following rule.

(1) *Padilla v. Lusth*, 118 N.C.App. 709, 457 S.E.2d 319 (1995) (stating that it is well settled that a significant involuntary decrease in a obligor's income can satisfy the changed circumstances requirement even in the absence of any evidence showing a change in the child's needs).

(2) *Chused v. Chused*, 131 N.C.App. 668, 508 S.E.2d 559 (1998) (obligor's involuntary termination from his employment constituted a "changed circumstance" under G.S. § 50-13.7).

(3) *Pittman v. Pittman*, 114 N.C.App. 808, 443 S.E.2d 96 (1994) (trial court erred in holding that obligor's job loss could not, as a matter of law, constitute a substantial change of circumstances authorizing reduction in his child support payments).

(4) *McGee v. McGee*, 118 N.C.App. 19, 453 S.E.2d 531, review denied, 340 N.C. 359, 458 S.E.2d 189 (1995) (involuntary decrease in obligor's income from job loss satisfied change in circumstances requirement of G.S. § 50-13.7 without consideration of actual past expenditures of the minor children).

(5) *Hammill v. Cusack*, 118 N.C.App. 82, 453 S.E.2d 539, review denied, 340 N.C. 359, 458 S.E.2d 187 (1995) (significant decrease in obligor's income from relocation of podiatry practice from one state to another satisfied necessary showing of changed circumstances, even in absence of any change affecting child's needs) (without discussion, court considers the move as an "involuntary" occurrence").

(6) *Young v. Young*, ___ N.C.App. ___, 609 S.E.2d 795 (2005) (noting that appellate courts have routinely held that decreased income may constitute changed circumstances warranting a reduction in support).

b) What constitutes a significant decrease in income.

(1) The court of appeals has held that, in the context of one particular case, a 16 percent decrease in an obligor's disposable earnings was sufficient showing of changed circumstances to justify modification of a consent judgment. [*Springs v. Springs*, 25 N.C.App. 615, 214 S.E.2d 311 (1975).]

(2) A 25% involuntary reduction in income did not constitute a substantial change in circumstances warranting a modification of child support. [*Trevillian v. Trevillian*, 164 N.C.App. 223, 595

S.E.2d 206 (2004) (reduction from \$300,000 per year to \$227,400 per year).]

(3) The court of appeals has held that, in the context of one particular case, a \$500 per year decrease in an obligor's income was not a significant decrease in income. [*See Wiggs v. Wiggs*, 128 N.C.App.512, 495 S.E.2d 402 (1998).]

7. Other matters found to constitute a substantial change of circumstances.

a) The fact that the child for whom support is owed has begun receiving public assistance constitutes a substantial change of circumstances under G.S. § 50-13.7. [*Cartrette v. Cartrette*, 73 N.C.App. 169, 325 S.E.2d 671 (1985) (modifying a previous consent judgment).]

b) A change in the physical custody of the child constitutes a substantial change of circumstances warranting modification of an existing child support order. [*Kowalick v. Kowalick*, 129 N.C.App. 781, 501 S.E.2d 671 (1998); *see also Young v. Young*, __ N.C.App. __, 609 S.E.2d 795 (2005) (noting that a reduction in visitation may constitute a changed circumstance warranting a support modification).]

c) The fact that a parent's legal obligation to support a child, or to support one of several children, has terminated (for example, because the child has reached the age of 18 and is no longer in elementary or secondary school, has been emancipated, etc.) may constitute a substantial change of circumstances warranting modification of an existing order providing for the child's support. [*See Massey v. Massey*, 71 N.C.App. 753, 323 S.E.2d 451 (1984) (stating that defendant could easily have taken the question of payments due after his child reached majority to the court for a modification of the order rather than withholding payments contrary to the court order).]

8. What does **not** constitute a substantial change of circumstances.

a) A substantial **voluntary** decrease in income, standing alone, does not constitute a substantial change of circumstances under G.S. § 50-13.7.

(1) Where defendant willfully and intentionally depressed his income by voluntarily leaving insurance company to become independent agent, defendant failed to meet his burden in proving changed circumstances. [*Askew v. Askew*, 119 N.C.App. 242, 458 S.E.2d 217 (1995).]

(2) Voluntary decrease in obligor's income did not constitute a changed circumstance since no showing that needs of the children had changed. [*King v. King*, 144 N.C.App. 391, 547 S.E.2d 846 (2001).]

(3) Where obligee voluntarily left her employment to enroll as full-time college student, resulting voluntary decrease in income, absent a finding of bad faith, may be considered to support a

finding of changed circumstances only if movant also shows change in child-oriented expenses. [*Schroader v. Schroader*, 120 N.C.App. 790, 463 S.E.2d 790 (1995).]

(4) A substantial voluntary decrease in an obligor's income can constitute a changed circumstance only if accompanied by a substantial decrease in the needs of the child; where mother admitted no change in son's financial needs, modification denied. [*Mittendorff v. Mittendorff*, 133 N.C.App. 343, 515 S.E.2d 464 (1999).]

b) A substantial increase in the obligor's or obligee's income, standing alone, does not constitute a sufficient change of circumstances under G.S. § 50-13.7. [*Thomas v. Thomas*, 134 N.C.App. 591, 518 S.E.2d 513 (1999); *see also Young v. Young*, ___ N.C.App. ___, 609 S.E.2d 795 (2005) (increased income alone does not constitute changed circumstances but is properly considered as a factor in determining whether changed circumstances warranting an increase in child support exist).]

c) The single fact that defendant had a newborn child in his home did not constitute a significant and material change of circumstances. [*State ex rel. Cross v. Saunders*, 168 N.C.App. 235, 607 S.E.2d 309 (2005).]

d) The adoption or revision of the child support guidelines is not a sufficient change of circumstances, in and of itself, to justify modification of a child support order. [*See Davis v. Risley*, 104 N.C.App. 798, 411 S.E.2d 171 (1991).]

e) Evidence that the child is older or that the general cost of living has increased is not, standing alone, sufficient to prove a substantial change of circumstances. [*Holder v. Holder*, 87 N.C.App. 578, 361 S.E.2d 891 (1987) (sole finding of fact regarding change of circumstances was that child was older and that inflation had occurred); *Waller v. Waller*, 20 N.C.App. 710, 202 S.E.2d 791 (1974) (fact that children were 8 years older and that father's income had increased did not warrant increase in child support).]

f) The voluntary filing of a Chapter 11 petition in bankruptcy did not constitute a "substantial change of circumstances" that would warrant a reduction in father's child support payments. [*Harris v. Harris*, 91 N.C.App. 699, 373 S.E.2d 312 (1988).]

g) A parent's financial responsibility for children other than the child for whom support is being determined does not constitute a substantial change of circumstances warranting modification of the existing child support order. [*See 2002 Guidelines*]

(1) A parent's assumption of new or increased family support obligations could arise from marriage or remarriage, the birth or adoption of a child other than the child involved in the pending

child support action, or the payment of spousal or child support under an arrangement, agreement, or order entered after the existing child support order.

(2) *See Dishmon v. Dishmon*, 57 N.C.App. 657, 292 S.E.2d 293 (1982) (husband's voluntary support of emancipated son was not a factor to be considered in determining a change of circumstances sufficient to support a reduction for remaining minor children); *Gilmore v. Gilmore*, 42 N.C.App. 560, 257 S.E.2d 116 (1979) (fact that husband voluntarily entered into another marital and family relationship and assumed financial obligation to send his eldest child to a high-tuition, out-of-state university did not constitute change of circumstances).]

G. Modification of child support arrearages.

1. Federal requirement regarding vesting of child support.

a) A 1986 federal law known as the Bradley amendment [42 U.S.C. § 666(a)(9)(C)] required North Carolina and other states, as a condition of receiving federal funding for child support enforcement programs, to enact legislation providing that child support owed under court orders is vested as a judgment when it becomes due and prohibiting the retroactive modification of vested, child support arrearages owed under court orders.

b) North Carolina's General Assembly enacted G.S. § 50-13.10 in order to comply with the Bradley amendment. [*New Hanover County ex rel. Mannthey v. Kilbourne*, 157 N.C.App. 239, 578 S.E.2d 610 (2003); *Craig v. Craig*, 103 N.C.App. 615, 406 S.E.2d 656 (1991).]

c) A child support payment is vested once it becomes due and payable. [*See Craig v. Craig*, 103 N.C.App. 615, 406 S.E.2d 656 (1991); G.S. § 50-13.10]

d) Under G.S. § 50-13.10, a child support payment does not accrue and is not vested if:

(1) It became due after the date of the death of the child for whom support was owed;

(2) It became due after the date of the death of the obligor;

(3) It became due during the period of time that the child for whom support is owed lived with the obligor pursuant to a valid court order or an express or implied written or oral agreement transferring primary custody of the child to the obligor; or

(4) It became due during the period of time that the obligor was incarcerated, was not on work release, and did not have income or resources sufficient to make the payment. [G.S. § 50-13.10(d)]

2. General rule: vested arrearages cannot be modified.

a) G.S. § 50-13.10 generally prohibits a North Carolina court from modifying, reducing, or vacating vested child support arrearages that have accrued under a valid child support order issued by a North Carolina court in a civil child support proceeding pursuant to G.S. § 49-14, G.S. Ch. 50, or G.S. §§ 110-132 or 110-133. [See *New Hanover County ex rel. Mannthey v. Kilbourne*, 157 N.C.App. 239, 578 S.E.2d 610 (2003); *Craig v. Craig*, 103 N.C.App.615, 406 S.E.2d 656 (1991) (under 50-13.10, past due child support is vested in the obligee, is not subject to retroactive modification, and is entitled to full faith and credit by sister states).]

(1) The North Carolina Supreme Court has held that the general rule prohibits a retroactive modification; that is any modification that affects payments due before the motion for modification was filed. [*Hill v. Hill*, 335 N.C. 140, 435 S.E.2d 766 (1993).]

(2) Thus, the prohibition against retroactive modification of vested child support arrearages generally precludes a court from **increasing or decreasing** an obligor's court-ordered child support obligation with respect to a period prior to the date a motion was filed seeking modification of the child support order.

b) The full faith and credit clause of the U.S. Constitution prohibits a North Carolina court from retroactively modifying child support arrearages that have accrued under a child support order issued by the court or tribunal of a sister state and are vested under a state law similar to G.S. § 50-13.10(a). [See *Fleming v. Fleming*, 49 N.C.App. 345, 271 S.E.2d 584 (1980).]

3. Modifications or other court actions that do not violate the general rule.

a) Under G.S. § 50-13.10, an order modifying child support does not retroactively modify vested arrears if it modifies only payments that have not yet accrued or that accrued after the date a motion seeking modification was filed. [See *Hill v. Hill*, 335 N.C. 140, 435 S.E.2d 766 (1993) (order modifying alimony from the date the matter was first noticed for hearing was not a retroactive modification); *Mackins v. Mackins*, 114 N.C.App.538, 442 S.E.2d 352, *review denied*, 337 N.C. 694, 448 S.E.2d 527 (1994) (applying holding in *Hill* on alimony to child support modifications and concluding that trial court has discretion to modify a child support order effective from the date a petition to modify is filed as to support obligations that accrue after that date).]

b) G.S. 50-13.10(a)(2) permits, but does not require, a court to retroactively modify child support payments that accrued before the date a motion seeking modification was filed if the court finds that the moving party was precluded by physical disability, mental incapacity, indigency, misrepresentation of another party, or other compelling reason from filing the motion prior to the date the payment accrued and the moving party

filed the motion seeking modification promptly after he or she was no longer precluded from filing the motion.

c) G.S. § 50-13.10 does not prohibit retroactive “modification” of a child support award under a temporary or interim order. [*See Sikes v. Sikes*, 330 N.C. 595, 411 S.E.2d 588 (1992) (until a final child support order is entered, G.S. § 50-13.10 does not come into play).]

d) G.S. § 50-13.10 does not prohibit a court from giving an obligor credit against vested child support arrearages for timely child support payments that were made directly to the obligee rather than through the state’s Centralized Child Support Collection and Disbursement Unit. [*See* G.S. § 50-13.10(e)]

e) Pursuant to an amendment to G.S. § 110-135 effective December 13, 2005, a past-due public assistance debt is subject to reduction as set forth therein. [G.S. § 110-135, *amended by* 2005 N.C. Sess. Laws 389; for more on the amendment to G.S. § 110-135, *see Liability and Amount*, Part 1, Chapter 3, section VII.D.9 at page 63.]

4. Modifications that have been found to violate the general rule.

a) Error for trial court to forgive portion of arrears that represented past public assistance paid before defendant knew of the existence of his child; no legal basis to retroactively modify defendant's vested child support arrears. [*Orange County ex rel. Harris v. Keyes*, 158 N.C.App. 530, 581 S.E.2d 142 (2003); *cf. Moore County v. Brown*, 142 N.C.App. 692, 543 S.E.2d 529 (2001) (trial court had discretion to consider the equity of granting DSS' motion to pursue father for public assistance debt; trial court's denial of the motion due to equitable considerations affirmed).]

5. *Cf. Biggs v. Greer*, 136 N.C.App. 294, 524 S.E.2d 577 (2000) (a court is not precluded from retroactively increasing the obligor’s child support obligation based on an unanticipated increase in the custodial parent’s expenses with respect to the child).

H. Orders.

1. The court’s determination with respect to changed circumstances is a conclusion of law. [*Brooker v. Brooker*, 133 N.C.App. 285, 515 S.E.2d 234 (1999).]

2. Findings required.

a) Although the court is not required to make specific or evidentiary findings, the court must make “ultimate” findings of fact that indicate the factual basis for the court’s conclusion that there has been a substantial change of circumstances and that are necessary to resolve material disputes in the evidence. [*Brooker v. Brooker*, 133 N.C.App. 285, 515 S.E.2d 234 (1999).]

(1) In *Brooker*, when the moving party relied on an increase in the child's needs to establish changed circumstances, the trial court made ultimate finding that the needs of the child had increased, which was supported by evidence of increased daycare expenses and recreation expenses as well as increases in rent and groceries for the minor child.

(2) Other examples of an ultimate finding would be: “the court finds that there has been a significant increase in the child’s needs since the existing order was entered” or “the court finds that the obligor has experienced a significant, involuntary decrease in income since the existing order was entered.” [For an example of an ultimate finding, see *Madison v. International Paper*, 165 N.C.App. 144, 598 S.E.2d 196 (2004) (where the Commission's ultimate finding, that the heat to which the worker had been exposed was a contributing factor to his heart attack, upheld); see also *In re O.W.*, 164 N.C.App. 699, 596 S.E.2d 851 (2004) (where in an abuse and neglect case the court gave examples of ultimate findings that the court could have made if it found those facts were true: that the natural father “has a history of cocaine and crack use” or that he “has a bad temper, he is impatient, he hollers at the baby and slaps her on her hands”).]

b) Specific findings of fact generally are not required if the court denies a motion for modification based on its conclusion that there has not been a substantial change of circumstances. [See *Davis v. Risley*, 104 N.C.App. 798, 411 S.E.2d 171 (1991) (where father failed to meet burden of changed circumstances, trial court was not required to make “negative findings of fact to justify a holding that a party has not met his or her burden of proof”); see also *Searl v. Searl*, 34 N.C.App. 583, 239 S.E.2d 305 (1977) (in custody context, when no change in circumstances warranting modification, district court not required to make additional findings of fact).]

c) For findings required for the court when the court deviates from the guidelines, see *Liability and Amount*, Part 1, Chapter 3.

d) For findings required to award attorney fees, see *Liability and Amount*, Part 1, Chapter 3.

3. When the court grants a request for modification, the court:

a) Must determine the amount, scope, and duration of the obligor’s child support obligation based on North Carolina’s child support guidelines (unless there are sufficient grounds to deviate from the guidelines) and other applicable law; and

b) Enter a new order establishing the obligor’s modified child support obligation.

- (1) The new order prospectively modifies and supersedes the prior child support order.
 - (2) The new order does not affect the validity or enforceability of vested, past-due child support arrearages that accrued under a prior support order before the date the prior order was modified. [See previous section.]
4. Effective date of modification.
 - a) A court modifying a child support order under G.S. § 50-13.7 may make the modification (increase or decrease in child support payments) effective as of the date the motion for modification was filed, or any ensuing date, as to support obligations that accrue after that date. [*Mackins v. Mackins*, 114 N.C.App. 538, 442 S.E. 2d 352, review denied, 337 N.C. 694, 448 S.E.2d 527 (1994) (first case to so hold; modified support by increasing it); *Spencer v. Spencer*, 133 N.C.App. 38, 514 S.E.2d 283 (1999) (applying the *Mackins* ruling to decreases as well as increases in support payments); see also *Mason v. Erwin*, 157 N.C.App. 284, 579 S.E.2d 120 (2003) (noting that the law is well settled that modification of a child support order takes effect on the date the petition for modification was filed).]
 - b) Although a trial court has the discretion to modify a child support order as of the date the petition to modify is filed, it is not required to do so. [*Barham v. Barham*, 127 N.C.App. 20, 487 S.E.2d 774 (1997), *aff'd*, 347 N.C. 570, 494 S.E.2d 763 (1998) (trial court did not abuse its discretion by making the obligor's modified child support payments effective as of the date the order was entered rather than retroactive to the date the motion was filed).]
 - c) Making the modification effective as of the date the petition for modification was filed, or a subsequent date, does not violate the general rule prohibiting the retroactive modification of vested child support arrearages (i.e., court-ordered child support payments coming due before the date a motion for modification was filed). [*Mackins v. Mackins*, 114 N.C.App. 538, 442 S.E. 2d 352, review denied, 337 N.C. 694, 448 S.E.2d 527 (1994).] [See section II.G of this Part, page 132.]
5. When the court denies a request for modification, the existing order remains in effect and unchanged.
6. Attorney fees.
 - a) Where the action is solely to modify an award of support, the court may award attorney fees to an obligee pursuant to G.S. § 50-13.6 if the court grants the obligee's motion and finds that the obligee was acting in good faith, that the obligee had insufficient means to defray the cost of the proceeding, and that the obligor refused to provide adequate support under the circumstances existing at the time the motion was filed. [See *Mason v. Erwin*, 157 N.C.App. 284, 579 S.E.2d 120 (2003).]

b) A court may award attorney fees to an obligee under G.S. § 50-13.6 in connection with an obligor's motion to modify a child support order if the court finds that the obligor's motion to modify was "frivolous." [G.S. § 50-13.6]

c) For more on attorney fees, see *Liability and Amount*, Part 1, Chapter 3.

7. Amendment of a judgment to correct a clerical mistake.

a) G.S. § 1A-1, Rule 60(a) allows a trial court to amend clerical mistakes or errors in judgments arising from oversight or omission.

b) Rule 60(a) does not authorize a court to make substantive modifications to a judgment. [*Spencer v. Spencer*, 156 N.C.App. 1, 575 S.E.2d 780 (2003) (trial court made impermissible substantive change when it modified existing consent judgment by adding to decretal portion language that husband "shall" share equally in cost of child's college education when original judgment provided only in finding of fact section that parties "should" equally divide cost of child's college education).]

III. Modifying "Foreign" Child Support Orders

A. Introduction.

1. As used in this section, a "foreign" support order is a child support order that was validly entered by a court, tribunal, or administrative agency of a foreign nation, an Indian tribe, a U.S. territory, possession, district, or commonwealth, or a U.S. state other than North Carolina.

a) The restrictions regarding modification of foreign support orders contained in the Uniform Interstate Family Support Act (UIFSA) (G.S. Chapter 52C) and the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C. § 1738B) apply to temporary, as well as final or permanent, child support orders issued by foreign courts or tribunals. [See G.S. § 52C-1-101(21); 28 U.S.C. §1738B(b)]

b) Under UIFSA, a foreign child support order includes an order requiring a parent, pursuant to the law of the issuing jurisdiction, to support a child who is over the age of majority. [See G.S. § 52C-1-101(2)]

2. UIFSA's rules governing the modification of foreign child support orders apply to child support orders issued by a court, administrative agency, or tribunal of the other 49 U.S. states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, a U.S. Indian tribe, or a U.S. territory or possession regardless of whether the other state or jurisdiction has enacted a law substantially similar to UIFSA. [G.S. § 52C-1-101(19)]

a) UIFSA's rules regarding modification of foreign orders also apply with respect to child support orders issued by a court or tribunal of a foreign country. [G.S. § 52C-1-101(19)]

b) If the foreign nation (or a political subdivision of the foreign nation) has enacted a statute or procedure that is substantially similar to UIFSA or the former Uniform Reciprocal Enforcement of Support Act (URESAs), child support orders issued by the courts or tribunals of the foreign nation (or political subdivision of the foreign nation) are treated the same as those issued by the courts or tribunals of a sister state. [See G.S. § 52C-1-101(19)]

c) FFCCSOA's rules governing the modification of foreign support orders do not apply with respect to the modification of child support orders issued by courts or tribunals of foreign nations. [See 28 U.S.C. §1738B(b)]

B. Statutory authority.

1. G.S. § 50-13.7(b) authorizes a North Carolina court, upon gaining jurisdiction and upon a showing of changed circumstances, to enter a new child support order that modifies or supersedes a child support order previously entered by a court of another state.

a) UIFSA and FFCCSOA significantly limit a North Carolina court's authority under G.S. § 50-13.7(b) to modify a child support order entered by a court of a sister state. [See G.S. § 52C-2-207; G.S. § 52C-6-611; 28 U.S.C. §1738B; see also *New Hanover County ex rel. Mannthey v. Kilbourne*, 157 N.C.App. 239, 578 S.E.2d 610 (2003) (noting that after the 1996 amendment to FFCCSOA, it was identical to UIFSA with both acts strictly prohibiting modification of a sister state's prior, valid order).]

b) The FFCCSOA requires that state courts afford "full faith and credit" to child support orders issued in other states and refrain from modifying or issuing contrary orders except in limited circumstances. [State ex rel. *Harnes v. Lawrence*, 140 N.C.App. 707, 538 S.E.2d 223 (2000).]

c) Only orders entitled to recognition as the one "controlling" order under UIFSA can be modified. [See section III.B.5 of this Part, page 140.]

d) A North Carolina court **cannot** modify child support arrearages that have accrued under a child support order issued by another state and are vested under a law similar to G.S. § 50-13.10(a). [See *New Hanover County ex rel. Mannthey v. Kilbourne*, 157 N.C.App. 239, 578 S.E.2d 610 (2003).]

2. Under UIFSA and FFCCSOA, a North Carolina court may modify a child support order issued by a court or tribunal of another state in the following situations only.

a) A North Carolina court may modify a child support order entered by another state if both of the individual parties live in North Carolina, the child no longer lives in the issuing state, and the foreign child support order is registered for modification in North Carolina. [G.S. § 52C-6-613(a)]

b) A North Carolina court may modify a child support order entered by another state if the order is registered for modification in North Carolina, neither of the individual parties to the pending action nor the child still live in the issuing state, the North Carolina court has personal jurisdiction over the nonmoving party, **and** the moving party is not a resident of North Carolina (the “play away” rule). [G.S. § 52C-6-611(a)(1)]

(1) *Lombardi v. Lombardi*, 157 N.C.App. 540, 579 S.E.2d 419 (2003) (New Jersey, the issuing tribunal, lost its continuing, exclusive jurisdiction to modify its support order as (1) neither the parties nor the child still resided in the issuing state; (2) the party seeking modification was a nonresident of North Carolina; and (3) the respondent was subject to the personal jurisdiction of the North Carolina court).

c) A North Carolina court may modify a child support order issued by another state if the order is registered for modification in North Carolina, both of the individual parties to the child support order have filed a written consent with the issuing tribunal authorizing a North Carolina court to modify the issuing tribunal’s child support order and one individual party or the child is subject to personal jurisdiction in North Carolina. [G.S. § 52C-6-611(a)(2)]

d) In the case of a child support order issued by a court or tribunal of a foreign nation that has **not** enacted a statute or procedure similar to UIFSA or URESA [G.S. Ch. 52A, repealed by 1995 N.C. Sess. Laws 538, s. 7(a)], a North Carolina court may modify the foreign child support order if one of the individual parties resides in North Carolina, the nonresident individual party files a written consent with the issuing tribunal authorizing a North Carolina court to modify the foreign order, and one individual party or the child is subject to personal jurisdiction in North Carolina. [G.S. § 52C-6-611(a)(2)]

3. Conversely, a North Carolina court may not modify a child support order issued by a court of another state if the issuing court still has continuing, exclusive jurisdiction under UIFSA. [See G.S. § 52C-2-205, deemed by the Official Commentary as perhaps the most crucial provision in UIFSA.]

a) A court that enters a valid child support order retains continuing, exclusive jurisdiction as long as either of the individual parties or the child resides in the state and the individual parties have not filed written consent for another court to assume jurisdiction. [See G.S. § 52C-2-205 and Official Commentary, which states that the issuing tribunal retains continuing, exclusive jurisdiction over a child support order, except in very narrowly defined circumstances.]

b) Registration of an out-of-state child support order for enforcement in North Carolina pursuant to UIFSA does not, in and of itself, give a

North Carolina court jurisdiction to modify the registered child support order. [*See Hinton v. Hinton*, 128 N.C.App. 637, 496 S.E.2d 409 (1998).]

c) Cases where modification not allowed because issuing court had continuing, exclusive jurisdiction.

(1) *New Hanover County ex rel. Mannthey v. Kilbourne*, 157 N.C.App. 239, 578 S.E.2d 610 (2003) (when New Jersey retained continuing, exclusive jurisdiction, North Carolina trial court was required to give the New Jersey order full faith and credit).

(2) *State ex rel. Harnes v. Lawrence*, 140 N.C.App. 707, 538 S.E.2d 223 (2000) (New Jersey retained continuing, exclusive jurisdiction when mother and child continued to live in that state and mother had not consented to a modification of the New Jersey child support order nor did she authorize any approval of the North Carolina voluntary support agreement and order).

(3) *State ex rel. George v. Bray*, 130 N.C.App. 552, 503 S.E.2d 686 (1998) (mother remained in the issuing state, Indiana, and she had not consented to jurisdiction in North Carolina for modification of the order; Indiana retained continuing, exclusive jurisdiction over the action).

(4) *Hinton v. Hinton*, 128 N.C.App. 637, 496 S.E.2d 409 (1998) (when Texas court had continuing, exclusive jurisdiction over order under UIFSA and there was no showing of consent of all parties to allow North Carolina to assume jurisdiction, North Carolina court could not modify order).

(5) *Welsher v. Rager*, 127 N.C.App. 521, 491 S.E.2d 661 (1997) (noting that without evidence in the record that the issuing state has lost jurisdiction or that the parties consented to jurisdiction in North Carolina, no North Carolina court could modify the foreign order).

4. If a North Carolina court lacks the authority under UIFSA and FFCCSOA to modify a child support order entered by a court or tribunal of another state (*see* section III.B of this Part, page 138), the court may serve as an initiating tribunal through which an interested party may request a court or tribunal of another state to modify the child support order. [*See* G.S. § 52C-2-206(a); *see also Procedure for Initial Child Support Orders*, Part 2, Chapter 3, section II.B.2 at page 104.]

5. Modification when there are multiple orders.

a) When the courts or tribunals of two or more states have issued valid orders governing the current or future child support obligation of an obligor with respect to a child and a party requests a court to modify one or more of these orders, the court must first determine which of the orders is entitled to recognition as the one “controlling” order under UIFSA and FFCCSOA. [*See* G.S. § 52C-2-207(c)] [For discussion about determining

the validity of an order where there has been more than one order entered under URESA, *see* section IV.B of this Part, page 148.]

- b) The court can modify only the one “controlling” order.
- c) A child support order is entitled to recognition as the one “controlling” order governing an individual’s obligation to support a child if a court or tribunal has entered a binding determination that it is the controlling child support order under UIFSA. [G.S. § 52C-2-207(c)]
- d) If a court has not entered a binding determination with respect to a “controlling” order, a child support order is entitled to recognition as the one “controlling” order if:
 - (1) It is the only valid order governing the individual’s current obligation to support the child [G.S. § 52C-2-207(a)];
 - (2) There is more than one valid order for current or future child support and it is the only valid current order entered by a court or tribunal that still retains continuing, exclusive jurisdiction under UIFSA [G.S. § 52C-2-207(b)(1)];
 - (3) There is more than one valid order for current or future child support and it is the only valid order for current support entered by a court or tribunal in the child’s current home state (that is, the state in which the child has lived with a parent or a person standing *in loco parentis* for at least six months or from the child’s birth if the child is less than six months old) immediately preceding the date of the determination [G.S. § 52C-2-207(b)(2)];
 - (4) There is more than one valid order for current or future child support and it is the most recent order entered by a court or tribunal that still retains continuing, exclusive jurisdiction under UIFSA and no order for current support has been entered by a court or tribunal in the child’s current home state [G.S. § 52C-2-207(b)(2)]; or
 - (5) It is a valid order for current support that was entered because there were two or more orders governing the individual’s obligation to support the child and the issuing court determined that none of the prior orders was entitled to recognition as the one “controlling” order under UIFSA. [G.S. § 52C-2-207(a)]
- e) If the court determines that the child support order for which modification is sought is entitled to recognition as the one “controlling” order under UIFSA and FFCCSOA, the court may modify the “controlling” child support order only if it has jurisdiction to do so under UIFSA and FFCCSOA.
 - (1) *See* G.S. §§ 52C-6-611 and 52C-6-613, discussed in section III.B of this Part, page 138.

(2) See also *State ex rel. George v. Bray*, 130 N.C.App. 552, 503 S.E.2d 686 (1998) (where mother remained in the issuing state, Indiana, and she had not consented to a North Carolina court's jurisdiction to modify the order, Indiana retained continuing, exclusive jurisdiction over the action and North Carolina did not have jurisdiction to modify the order).

f) Effect of recognizing one of multiple orders as the one "controlling" order.

(1) If the court determines that a child support order is not entitled to recognition as the one "controlling" order under UIFSA or FFCCSOA, the court's determination constitutes a *de facto* modification of the unrecognized order in that it effectively terminates the obligor's prospective (current and future) child support obligation under the unrecognized order, regardless of whether the court could have modified the unrecognized order pursuant to G.S. §§ 52C-6-611, 52C-6-613, or 50-13.7. [John L. Saxon, "'Reconciling' Multiple Child Support Orders Under UIFSA and FFCCSOA: The Twadell, Roberts, and Dunn Cases," *Family Law Bulletin No. 11* (Institute of Government, 2000).]

(2) A court's determination that an otherwise valid child support order is not entitled to recognition as the one "controlling" order under UIFSA or FFCCSOA, however, does not modify or otherwise affect vested, past-due child support arrearages that accrued before the date the court determines that the order is not the one "controlling" order. [John L. Saxon, "'Reconciling' Multiple Child Support Orders Under UIFSA and FFCCSOA: The Twadell, Roberts, and Dunn Cases," *Family Law Bulletin No. 11* (Institute of Government, 2000).]

C. Procedure.

1. A party or support enforcement agency seeking to modify a child support order issued in another state shall register that order if it has not already been registered. [G.S. § 52C-6-609] Registration is in the same manner as registration of a foreign order for the purpose of contesting its validity or seeking enforcement. [G.S. § 52C-6-609]

a) Definition of "state". If a foreign jurisdiction is not a "state" under UIFSA, then the district courts of North Carolina do not have statutory authority under UIFSA to register an alimony or child support order from that foreign jurisdiction. [*Haker-Volkening v. Haker*, 143 N.C.App. 688, 547 S.E.2d 127, *review denied*, 354 N.C. 217, 554 S.E.2d 338 (2001).]

(1) With respect to a foreign jurisdiction, "state" means a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are

substantially similar to the procedure under UIFSA, URESA, or RURES. [G.S. § 52C-1-101(19b)]

(2) England is a “state” for purposes of registering a child support order under UIFSA. [*Foreman v. Foreman*, 144 N.C.App. 582, 550 S.E.2d 792, *review denied*, 354 N.C. 68, 553 S.E.2d 38 (2001) (holding that England has reciprocity with North Carolina in issues of support, in this case, spousal support).]

(3) Switzerland does not constitute a "state" as that term is defined by UIFSA. [*Haker-Volkening v. Haker*, 143 N.C.App. 688, 547 S.E.2d 127, *review denied*, 354 N.C. 217, 554 S.E.2d 338 (2001) (trial court's registration of the Swiss order vacated).]

b) For more on this topic, *see* John Saxon, “International Establishment and Enforcement of Family Support,” *Family Law Bulletin No. 10* (Institute of Government, 1999).

2. Except as otherwise noted, modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of a child support order issued by a North Carolina court. [G.S. § 52C-6-611(b)] [*See* section II of this Part, page 121.]

3. Venue. The proper venue for registering a foreign child support order for modification is the county in which the respondent resides. [*See* G.S. 52C-6-602(a)]

4. Registration.

a) Filing with the clerk. A party seeking modification of a child support order entered by a court of another state must register the foreign support order with the clerk of superior court pursuant to G.S. § 52C-6-602 and give notice of the registration to the respondent pursuant to G.S. § 52C-6-605. [*See* G.S. § 52C-6-609]

b) Effect of filing a foreign support order.

(1) A support order from another state is registered when the order is filed in the registering tribunal of this state. [G.S. § 52C-6-603(a)]

(2) Upon filing, a support order becomes registered in North Carolina, and unless successfully contested, must be recognized and enforced. [*Martin County ex rel. Hampton v. Dallas*, 140 N.C.App. 267, 535 S.E.2d 903 (2000).]

c) Documents required for registration.

(1) Two copies (including one certified copy) of the registered order and any order modifying the registered order. [G.S. § 52C-6-602(a)(2)]

(2) The other documents and information set out in G.S. § 52C-6-602(a) also must be submitted for filing.

- (3) The registering party must **substantially** comply with the required procedures for registering a child support order for modification. [*See Twadell v. Anderson*, 136 N.C.App. 56, 523 S.E.2d 710 (1999), *review denied*, 351 N.C. 480, 543 S.E.2d 510 (2000) (required information found upon a close reading of the submitted material).]
 - d) Motion to modify may be filed with request for registration.
 - (1) A petition or motion seeking modification of the registered order may be filed with the request for registration or at any time following the request for registration. [*See* G.S. § 52C-6-602(c)]
 - (2) A petition or motion seeking modification of the registered order, as a motion for modification pursuant to G.S. § 50-13.7, must be made in writing, state the facts upon which the motion is based, indicate the relief sought, and be served on the respondent. [*See* section II.E of this Part, page 125.]
5. Contesting registration of a foreign support order. [G.S. § 52C-6-606]
- a) The respondent may contest registration of the foreign support order by filing a request for a hearing before a district court judge within 20 days after notice of registration. [G.S. § 52C-6-606(a); G.S. § 52C-6-609]
 - b) If a respondent requests a hearing, the clerk of superior court must schedule the matter for hearing before a district court judge and give notice of the hearing to the parties. [G.S. § 52C-6-606(c); G.S. § 52C-6-609]
 - c) The respondent may contest registration of the foreign support order by asserting one or more of the following defenses:
 - (1) The issuing tribunal lacked personal jurisdiction over the contesting party [G.S. § 52C-6-607(a)(1)];
 - (2) The foreign support order was obtained by fraud [G.S. § 52C-6-607(a)(2)];
 - (3) The foreign support order has been vacated, suspended, or modified by a later order [G.S. § 52C-6-607(a)(3)]; or
 - (4) The issuing tribunal has stayed the foreign order pending appeal [G.S. § 52C-6-607(a)(4)].
 - d) The respondent also may contest registration of the foreign support order by asserting one or both of the following defenses:
 - (1) The registered order is not entitled to recognition as the one “controlling” child support order under UIFSA and FFCCSOA;
 - (2) The registering tribunal lacks jurisdiction to modify the registered order under G.S. §§ 52C-6-611 and 52C-6-613.

e) The respondent's failure to raise any of these defenses in connection with a timely request for a hearing contesting registration and modification of the registered order constitutes a waiver of the defense following confirmation of the registered order. [See G.S. §§ 52C-6-606(b), 52C-6-607(c), 52C-6-608]

f) The respondent has the burden of proving the defenses he or she asserts. [*Martin County ex rel. Hampton v. Dallas*, 140 N.C.App. 267, 535 S.E.2d 903 (2000) (trial court erred in placing the burden on the registering party to prove that a Virginia order should be registered).]

g) The district court judge must consider and rule on the validity of any of the above-listed defenses that are asserted by the respondent (including defenses based on the issuing court's lack of jurisdiction unless the issue of jurisdiction has been conclusively determined by a prior decision that is *res judicata*). [See *Tepper v. Hoch*, 140 N.C.App. 354, 536 S.E.2d 654 (2000); *Martin County ex rel. Hampton v. Dallas*, 140 N.C.App. 267, 535 S.E.2d 903 (2000) (conflicts in the evidence presented by defendant and by plaintiff are for the trial court to resolve; their mere presence does not justify or permit vacation of the prior registration).]

6. Confirmation.

a) Confirmation can only occur in two ways:

(1) Where a respondent contests a registered order within 20 days, a hearing is held, and respondent's contest is unsuccessful. [G.S. § 52C-6-608]

(2) By operation of law where a respondent fails to contest a registered order within 20 days. [G.S. § 52C-6-606(b); *see also Tepper v. Hoch*, 140 N.C.App. 354, 536 S.E.2d 654 (2000).]

b) Setting aside a confirmation.

(1) If a respondent fails to contest registration of a foreign support order within 20 days after notice of registration, the court may, upon motion and a showing of excusable neglect and a meritorious defense, set aside confirmation of the registered order in order to allow the respondent to contest registration of the order. [*Tepper v. Hoch*, 140 N.C.App. 354, 536 S.E.2d 654 (2000) (confirmation set aside due to former husband's inadvertent failure to request a hearing).]

7. Effect of registration.

a) A North Carolina tribunal may enforce a registered child support order of another state in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of G.S. § 52C-6-611 have been met. [G.S. § 52C-6-610]

b) Registration alone does not finally determine the matter in dispute and does not affect a substantial right of the respondent allowing appeal.

[*Haker-Volkening v. Haker*, 143 N.C.App. 688, 547 S.E.2d 127, review denied, 354 N.C. 217, 554 S.E.2d 338 (2001) (petitioner had successfully registered a foreign support order after hearing but had not yet sought enforcement).]

D. Choice of law.

1. General rule.

a) Once North Carolina has obtained modification jurisdiction under G.S. § 52C-6-611 or § 52C-6-613, the North Carolina court must apply the law of the forum. [*Lombardi v. Lombardi*, 157 N.C.App. 540, 579 S.E.2d 419 (2003) (noting one exception to this rule, discussed below).]

b) In other words, a North Carolina court may modify the registered child support order if, applying the procedural and substantive law of North Carolina as set forth in G.S. § 50-13.7, G.S. § 50-13.10, G.S. § 52C-6-611, and applicable case law, it determines that there has been a substantial change of circumstances warranting modification of the order. [See section II of this Part, page 121.]

2. The general rule is subject to one exception.

a) Pursuant to G.S. § 52C-6-611(c), a "tribunal of this State may not modify any aspect of a child support order that may not be modified under the law of the issuing state."

b) Subsection (c) prevents the modification of any final, nonmodifiable aspect of the original order. [G.S. § 52C-6-611(c) official commentary (2001); *Lombardi v. Lombardi*, 157 N.C.App. 540, 579 S.E.2d 419 (2003) (New Jersey court's determination that mentally retarded child was unemancipated was not a final, nonmodifiable term of the order so father's support obligation modifiable; North Carolina court could modify order under North Carolina law so that defendant no longer required to pay support.).]

c) For example, if a child support order was entered by a New York court and New York law requires that child support be paid until a child's 21st birthday, a North Carolina court may not modify the order to require that child support be paid only until the child's 18th birthday.

3. Except as noted above, North Carolina law governs the amount, scope, and duration of child support under an out-of-state child support order that is modified by a North Carolina court under UIFSA. [See G.S. § 52C-6-611(b)]

4. When a North Carolina court modifies, consistently with UIFSA, a controlling child support order issued by a court of another state, the modified order entered by the North Carolina court becomes, from that point forward, the one "controlling" child support order entitled to recognition under UIFSA and the North Carolina court retains continuing, exclusive jurisdiction over the order as long as either individual party or the child resides in North Carolina. [G.S. § 52C-6-611(d); *Lombardi v. Lombardi*, 157 N.C.App. 540, 579 S.E.2d 419 (2003) (after

North Carolina court modified a New Jersey order, North Carolina court became court with continuing, exclusive jurisdiction).]

IV. Other Issues

A. Modification of child support provisions in unincorporated separation agreements.

1. Absent the consent of both parties, a court has no authority to modify child support provisions in a separation agreement that has not been incorporated in a divorce decree, judgment, or consent order. [*Rose v. Rose*, 108 N.C.App. 90, 422 S.E.2d 446 (1992) (trial court erred by modifying child support provision in an unincorporated agreement without the consent of both parties); *cf. Holthusen v. Holthusen*, 79 N.C.App. 618, 339 S.E.2d 823 (1986) (incorporated agreement subject to modification in same manner as court order).]

2. However, provisions of a separation agreement relating to custody and support of minor children are not binding on the court, which has the inherent and statutory authority to protect the interests of children. [*Boyd v. Boyd*, 81 N.C.App. 71, 343 S.E.2d 581 (1986); *see also Morrow v. Morrow*, 103 N.C.App. 787, 407 S.E.2d 286 (1991) (parents cannot enter into an agreement that will deprive the court of its inherent as well as statutory authority to protect the interests and provide for the welfare of minors).]

3. Thus, either party to an unincorporated agreement or settlement may seek a court order requiring payment of child support pursuant to G.S. § 50-13.4 in an amount, scope, or duration different from that provided in the unincorporated separation agreement. [*See Bottomley v. Bottomley*, 82 N.C.App. 231, 346 S.E.2d 317 (1986) (noncustodial parent sought a decrease in his support payments); *Boyd v. Boyd*, 81 N.C.App. 71, 343 S.E.2d 581 (1986) (custodial parent sought an increase in amount of support).]

a) In the situation described above, the moving party is not required to prove that there has been a substantial change of circumstances since the date the separation agreement was executed. [*See Boyd v. Boyd*, 81 N.C.App. 71, 343 S.E.2d 581 (1986) (moving party's only burden is to show the amount of support necessary to meet the reasonable needs of the child at the time of the hearing).]

b) However, there is a rebuttable presumption that the amount set forth in the agreement is just and reasonable. [*Pataky v. Pataky*, 160 N.C.App. 289, 583 S.E.2d 404 (2003), *aff'd in part, review dismissed in part*, 359 N.C. 65, 602 S.E.2d 360 (2004) (per curiam).] [*See discussion in Procedure for Initial Child Support Orders*, Part 2, Chapter 3, section III.C.4.f, page 110.]

c) When the court enters an order for child support, the child support order entered by the court is an **initial** child support order and does not modify the child support provisions contained in the unincorporated separation agreement or property settlement.

d) If the court enters an order requiring a parent to pay less child support than provided under an unincorporated separation agreement, the party receiving support can still seek to enforce his or her contractual rights to support under the unincorporated separation agreement. [*Bottomley v. Bottomley*, 82 N.C.App. 231, 346 S.E.2d 317 (1986) (order setting child support in lesser sum than that provided for in parties' separation agreement did not deprive obligee wife of her contractual right to recover sums provided for in the agreement but limited her contempt remedy to sums provided for by court order); (*McKaughn v. McKaughn*, 29 N.C.App. 702, 225 S.E.2d 616 (1976) (noting that judgment cutting monthly support payments in half did not change the contractual obligations under the separation agreement); *but see Richardson v. Richardson*, 261 N.C. 521, 135 S.E.2d 532 (1964) (when court ordered less in support than required by separation agreement, mother not entitled to enforce separation agreement to recover the difference).]

B. Modification of child support orders entered under URESA.

1. Although North Carolina's Uniform Reciprocal Enforcement of Support Act (URES A) was repealed effective January 1, 1996, URES A's provisions regarding modification of "foreign" child support orders will determine whether a child support order entered under URES A before January 1, 1996 modified or superseded a prior child support order. [*See New Hanover County ex rel. Mannthey v. Kilbourne*, 157 N.C.App. 239, 578 S.E.2d 610 (2003) (although superseded by UIFSA, URES A is still applicable to determine the validity of an order originally entered when URES A was in effect) (citing *Twaddell v. Anderson*, 136 N.C.App. 56, 523 S.E.2d 710 (1999), *review denied*, 351 N.C. 480, 543 S.E.2d 510 (2000).]

a) If the URES A order did not modify or supersede a prior order, **both** orders remain valid. [*See Twaddell v. Anderson*, 136 N.C.App. 56, 523 S.E.2d 710 (1999), *review denied*, 351 N.C. 480, 543 S.E.2d 510 (2000) (1986 North Carolina order entered under URES A did not nullify, supersede or void a California order entered in 1981); *New Hanover County ex rel. Mannthey v. Kilbourne*, 157 N.C.App. 239, 578 S.E.2d 610 (2003); *cf. Wilson County ex rel. Egbert v. Egbert*, 153 N.C.App. 283, 569 S.E.2d 727 (2002) (1989 North Carolina support order not modified by subsequent Florida orders reducing and then terminating father's support obligation; North Carolina order entered in 2001 for arrears based on 1989 order affirmed).]

b) If the URES A order did modify or supersede the prior order, the prior order is not a "valid" order to be considered when applying UIFSA's rules to determine the one controlling child support order pursuant to G.S. § 52C-2-207.

c) In North Carolina, UIFSA's and FFCCSOA's "one order" rules took effect on January 1, 1996. In other states, UIFSA's and FFCCSOA's "one order" rules took effect on August 22, 1996, or the effective date of

the issuing state's UIFSA statute, whichever was earlier. [28 U.S.C. § 1738B, *amended by* Pub. L. No. 104-193 § 322]

d) The relationship between URESA's provisions regarding modification of out-of-state child support orders and the "controlling" order provisions of UIFSA and FFCCSOA is discussed in greater detail in John L. Saxon, "'Reconciling' Multiple Child Support Orders Under UIFSA and FFCCSOA: The Twadell, Roberts, and Dunn Cases," *Family Law Bulletin No. 11* (Institute of Government, 2000).

2. Under North Carolina's former URESA statute, a "de novo" child support order entered by a North Carolina court under URESA (former G.S. § 52A-13) before January 1, 1996 did not nullify, supersede, or modify a prior child support order entered by a North Carolina court or by a court of a sister state under URESA or any other law, unless the URESA order expressly and specifically stated that it nullified, superseded, or modified the prior child support order and the modification was ordered in accordance with G.S. § 50-13.7 and G.S. § 13.10. [See former G.S. § 52A-21; *South Carolina Dept. of Social Services obo Ratteree v. Hamlett*, 142 N.C.App. 501, 543 S.E.2d 189 (2001); *Stephens v. Hamrick*, 86 N.C.App. 556, 358 S.E.2d 547 (1987).]

a) Thus, a case may involve more than one valid order even if they are inconsistent in their terms. [*New Hanover County ex rel. Mannthey v. Kilbourne*, 157 N.C.App. 239, 578 S.E.2d 610 (2003).]

b) The URESA statutes of most other states included an "anti-nullification" provision similar to former G.S. § 52A-21.