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Chapter 3: **Child Support**

Part 2. Procedure for Initial Child Support Orders

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Part 2. Procedure for Initial Child Support Orders

I. Civil Action for Child Support [G.S. 50-13.4 *et seq*.]

A. Subject Matter Jurisdiction

1. When a North Carolina court has subject matter jurisdiction to establish support.
    a. The district court has subject matter jurisdiction over civil actions that are brought pursuant to G.S. 50-13.4 *et seq*. seeking support for a child. [G.S. 7A-242, 7A-244; 50-13.5(c).]
        i. Pursuant to G.S. 7A-244, the district court had subject matter jurisdiction over an action relating to child support. The court of appeals rejected the contention that a fund created by the district court as a supplemental source of payment of the father's child support obligation was a trust over which the clerk had exclusive jurisdiction. [*Eakes v. Eakes,* 194 N.C. App. 303, 669 S.E.2d 891 (2008).]
        ii. While the district court and clerk of superior court have concurrent jurisdiction to determine child support from the estate of an incompetent ward, the district court had original jurisdiction to determine the issue when the child support proceeding was initiated before, and was pending when, the clerk adjudicated the defendant incompetent. [*Clements v. Clements ex rel. Craige,* 219 N.C. App. 581, 725 S.E.2d 373 (citing the general rule that when courts have concurrent jurisdiction, the court that first acquires jurisdiction retains it; district court's original jurisdiction outweighed concurrent jurisdiction of the two forums), *review denied*, 366 N.C. 388, 732 S.E.2d 481 (2012).]
        iii. A trial court has subject matter jurisdiction over a parent's claim for child support asserted against his spouse even though the parents have neither physically separated nor asserted a claim for divorce from bed and board, at least when one party expresses an intent to leave the marital residence as soon as custody is settled. [*Baumann-Chacon v. Baumann,* 212 N.C. App. 137, 710 S.E.2d 431 (2011) (trial court erred when it dismissed claim for child support for lack of subject matter jurisdiction based on fact that spouses had not separated as of date complaint was filed or when matter was heard).]
    b. A North Carolina tribunal that has issued a valid child support order has and shall exercise continuing, exclusive jurisdiction to modify the order pursuant to G.S. 50-13.7(a) if the order is the controlling order and:
        i. At the time a request for modification is filed, either the individual obligee, the obligor, or the child for whose benefit the support order was issued resides in North Carolina [G.S. 52C-2-205(a)(1), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] or

ii. Even if the individual obligee, the obligor, or the child for whose benefit the support order was issued do not reside in North Carolina, the parties consent in a record or in open court for a North Carolina tribunal to continue to exercise jurisdiction to modify its order. [G.S. 52C-2-205(a)(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015. See G.S. 52C-1-101(13c), *added by* S.L. 2015-117, § 1, effective June 24, 2015, for definition of "record".]

iii. For more on modification jurisdiction, see *Modification of Child Support Orders*, Part 3 of this Chapter, Section II.B; for more on modification jurisdiction generally, see Cheryl Howell, *Child Custody and Support: Jurisdiction to Modify*, UNC Sch. of Gov't: On the Civil Side Blog (Apr. 15, 2016), http://civil.sog.unc.edu/child-custody-and-support-jurisdiction-to-modify.]

2. When a North Carolina court does not have subject matter jurisdiction to establish support.

a. When a controlling child support order already exists. [Regarding jurisdiction to modify an existing order, see *Modification of Child Support Orders*, Part 3 of this Chapter.]

i. The federal Full Faith and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C. § 1738B) (applicable to a child support order issued by a state tribunal but not to a foreign support order) and the Uniform Interstate Family Support Act (UIFSA) (G.S. Chapter 52C) (applicable to a child support order issued by a state tribunal and to a foreign support order) prohibit a North Carolina court from entering a child support order if another court (in North Carolina, in another state, or in a foreign country) having personal jurisdiction over both the obligor and individual obligee has entered a child support order with respect to the same obligor and same child and that order is entitled to recognition as the controlling child support order under FFCCSOA and UIFSA. [*See* G.S. 52C-2-207(d), *amended by* S.L. 2015-117, § 1, effective June 24, 2015 (the tribunal that issued the controlling order under G.S. 52C-2-207(a), (b), or (c) has continuing jurisdiction to the extent provided in G.S. 52C-2-205 (modification) or 52C-2-206 (enforcement)).]

ii. While the problem of multiple orders is "fast disappearing," at least on the appellate level, G.S. 52C-2-207 sets out a "relatively simple procedure to identify a single viable order that will be entitled to prospective enforcement in every state." [Official Comment (2015), G.S. 52C-2-207.]

(a) If only one tribunal has issued a child support order, that order controls. [G.S. 52C-2-207(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] This order controls regardless of when and where it was issued and whether any of the individual parties or the child continue to reside in the issuing state. [Official Comment (2015), G.S. 52C-2-207.] For discussion of determining the validity of an order when there has been more than one order entered under the Uniform Reciprocal Enforcement of Support Act, see *Modification of Child Support Orders*, Part 3 of this Chapter, Section V.C.

(b) If two or more child support orders have been issued by tribunals in North Carolina, another state, or a foreign country for the same obligor and same

child, a North Carolina tribunal having personal jurisdiction over both the obligor and the individual obligee shall apply the rules in G.S. 52C-2-205(b) and shall by order determine which order controls by applying the rules in G.S. 52C-2-207(6).

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under UIFSA, the order of that tribunal controls. [G.S. 52C-2-207(b)(1), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

(2) If more than one tribunal would have continuing, exclusive jurisdiction under UIFSA, an order issued by a tribunal in the child's current home state controls. [G.S. 52C-2-207(b)(2)a., *amended by* S.L. 2015-117, § 1, effective June 24, 2015; see definition of "home state" in G.S. 52C-1-101(4), *amended by* S.L. 2015-117, § 1, effective June 24, 2015, to include a foreign country.]

(3) If more than one tribunal would have continuing, exclusive jurisdiction under UIFSA and no order has been issued in the child's current home state, the order most recently issued controls. [G.S. 52C-2-207(b)(2)b., *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

(4) If none of the tribunals would have continuing, exclusive jurisdiction under UIFSA, a North Carolina tribunal must issue a child support order, which controls. [G.S. 52C-2-207(b)(3), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

(5) For the requirements of an order entered after application of the rules in G.S. 52C-2-207(b), see G.S. 52C-2-207(e), *amended by* S.L. 2015-117, § 1, effective June 24, 2015, discussed in Section I.H.12.g, below.

iii. A child support order that is entered in violation of FFCCSOA's and UIFSA's one order provisions probably is void for lack of subject matter jurisdiction. [*See State ex rel. Harnes v. Lawrence,* 140 N.C. App. 707, 538 S.E.2d 223 (2000) (agreeing with plaintiff's argument that North Carolina did not have subject matter jurisdiction to enter orders for child support and contempt; North Carolina required to give full faith and credit to New Jersey child support order).]

b. Simultaneous proceedings: Jurisdiction when a complaint seeking child support is filed in North Carolina **after** a petition has been filed in another state. A North Carolina tribunal may exercise jurisdiction to establish a child support order pursuant to UIFSA or G.S. 50-13.4 *et seq.* if the North Carolina child support action is filed after a petition or comparable pleading seeking child support with respect to the same obligor and same child has been filed in another state or foreign country only if:

i. The petition or comparable pleading seeking child support was filed in North Carolina before expiration of the time allowed in the other state or foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or foreign country; [G.S. 52C-2-204(a)(1), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. The party filing the child support action in North Carolina timely challenges the exercise of jurisdiction in the other state or foreign country; [G.S. 52C-2-204(a)(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] and

iii. If relevant, North Carolina is the child's home state (that is, the child has lived in North Carolina with a parent or a person acting as a parent since the child's birth if the child is less than 6 months old, or for at least six consecutive months immediately preceding the filing of the petition for support). [G.S. 52C-2-204(a)(3); 52C-1-101(4), *amended by* S.L. 2015-117, § 1, effective June 24, 2015 (definition of "home state" amended to include a foreign country).]

c. Simultaneous proceedings: Jurisdiction when a complaint seeking child support is filed in North Carolina **before** a petition is filed in another state or foreign country. A North Carolina tribunal may not exercise jurisdiction to establish a child support order pursuant to UIFSA or G.S. 50-13.4 *et seq.* if the North Carolina child support action is filed before a petition or comparable pleading seeking child support with respect to the same obligor and same child is filed in another state or foreign country if:

i. The petition or comparable pleading seeking child support is filed with the other state or foreign country before expiration of the time allowed in North Carolina for filing a responsive pleading challenging the exercise of jurisdiction by North Carolina; [G.S. 52C-2-204(b)(1), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. The party filing the child support action in the other state or foreign country timely challenges North Carolina's exercise of jurisdiction; [G.S. 52C-2-204(b)(2).] and

iii. If relevant, the other state or foreign country is the child's home state (that is, the child has lived in the other state or foreign country with a parent or a person acting as a parent since the child's birth if the child is less than 6 months old, or for at least six consecutive months immediately preceding the filing of the petition for support). [G.S. 52C-2-204(b)(3), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; 52C-1-101(4), *amended by* S.L. 2015-117, § 1, effective June 24, 2015 (definition of "home state" amended to include a foreign country).]

d. G.S. Chapter 52C (UIFSA) does not grant a North Carolina tribunal jurisdiction to render judgment or issue an order relating to child custody or visitation in a Chapter 52C proceeding. [G.S. 52C-1-103(b)(2), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

e. For procedure in cases involving proceedings in other states, see Section II, below, on UIFSA, G.S. Chapter 52C.

3. Jurisdiction when child and/or parties are reservation Indians.

a. Absent a congressional act governing jurisdiction, if the exercise of state court jurisdiction would unduly infringe on a tribe's self-governance, the district court does not have subject matter jurisdiction. [*See Jackson Cty. ex rel. Jackson v. Swayney*, 319 N.C. 52, 352 S.E.2d 413 (exercise of state court jurisdiction to determine paternity of a child would unduly infringe on tribal self-governance where mother, child, and putative father were all members of the Eastern Band of Cherokee Indians living on reservation; exclusive tribal court jurisdiction over the determination of paternity

especially important to tribal self-governance), *cert. denied*, 484 U.S. 826, 108 S. Ct. 93 (1987).]

b. If the matter at issue does not unduly infringe upon the tribe's right of self-governance, the tribal court and district court have concurrent jurisdiction, except in cases where the tribal court has first exercised jurisdiction and retains jurisdiction.

i. District court had concurrent jurisdiction with the tribal court for action to recover Aid to Families with Dependent Children (AFDC) payments. [*Jackson Cty. ex rel. Jackson v. Swayney*, 319 N.C. 52, 352 S.E.2d 413 (tribe's interest in self-government not significantly affected; no prior action for the same claim filed in tribal court), *cert. denied*, 484 U.S. 826, 108 S. Ct. 93 (1987).]

ii. When a claim for child support had been filed in tribal court and that court had retained jurisdiction, the district court did not have jurisdiction of an action to recover AFDC payments. [*Jackson Cty. ex rel. Smoker v. Smoker*, 341 N.C. 182, 459 S.E.2d 789 (1995) (claim for AFDC payments was based on defendant's duty to support his children, jurisdiction over which had been retained by the tribal court). *See also State ex rel. West v. West*, 341 N.C. 188, 459 S.E.2d 791 (1995) (per curiam) (action to establish current and future child support payable by non-Indian mother for child in custody of Indian father properly dismissed; tribal court exercised jurisdiction first and continued to exercise jurisdiction).]

4. Jurisdiction when a separation agreement with support provisions is involved.

a. The fact that the parents of a minor child have entered into a binding separation agreement that includes provisions for child support does not preclude the custodial parent from instituting a civil action seeking support for the child pursuant to G.S. 50-13.4 *et seq.* and does not deprive the district court of jurisdiction to enter an order requiring the noncustodial parent to pay child support. [*Powers v. Parisher*, 104 N.C. App. 400, 409 S.E.2d 725 (1991) (unincorporated agreement), *review denied,* 331 N.C. 286, 417 S.E.2d 254 (1992); *Pataky v. Pataky*, 160 N.C. App. 289, 585 S.E.2d 404 (2003) (citing *Winborne v. Winborne,* 41 N.C. App. 756, 255 S.E.2d 640 (1979)) (no agreement between the parents can fully deprive the courts of their authority to protect the best interests of minor children), *aff'd per curiam in part, review dismissed in part,* 359 N.C. 65, 602 S.E.2d 360 (2004).]

b. However, a court cannot order prospective support in an amount different than that required by an unincorporated separation agreement without first concluding that the agreed upon amount is not just and reasonable. [See Section III.C.3.c, below, for a discussion of *Pataky v. Pataky,* 160 N.C. App. 289, 585 S.E.2d 404 (2003) (unincorporated separation agreement), *aff'd per curiam in part, review dismissed in part,* 359 N.C. 65, 602 S.E.2d 360 (2004).]

c. A court has no authority to enter an order for retroactive support (also called prior maintenance) if support was paid during the time period for which support is sought pursuant to terms of an unincorporated separation agreement between the parties. [See *Liability and Amount,* Part 1 of this Chapter, Section III.D.5.b for discussion of the N.C. Child Support Guidelines and *Carson v. Carson,* 199 N.C. App. 101, 680 S.E.2d 885 (2009).]

d. See *Spousal Agreements*, Bench Book, Vol. 1, Chapter 1.

5. Jurisdiction to hold a trial at a motion session. [*See Schumacher v. Schumacher,* 109 N.C. App. 309, 426 S.E.2d 467 (1993) (judge did not have jurisdiction to try a civil action for child support at a session designated only for civil motions).]

B. Personal Jurisdiction

1. Generally.

a. Child support actions are in personam. [*Lynch v. Lynch*, 96 N.C. App. 601, 386 S.E.2d 607 (1989).] A court must have personal jurisdiction over a child's parent before it can order that parent to pay child support.

b. The jurisdiction of a North Carolina court to enter a child support order shall be as in actions for the payment of money or the transfer of property. [G.S. 50-13.5(c)(1).]

c. When a nonresident defendant challenges the court's exercise of jurisdiction, the burden is upon the plaintiff to establish by a preponderance of the evidence that personal jurisdiction exists. [*Sherlock v. Sherlock*, 143 N.C. App. 300, 545 S.E.2d 757 (2001) (action seeking, among other things, alimony, postseparation support, and equitable distribution).]

d. Unless the defense has been waived, a child support order entered without personal jurisdiction over a defendant parent is void and may be collaterally attacked by the defendant or set aside at any time pursuant to G.S. 1A-1, Rule 60(b)(4). [*See Brondum v. Cox*, 30 N.C. App. 35, 226 S.E.2d 193 (1976) (Hawaii order determining that defendant was the father of plaintiff's child, and thus was responsible for support, not given full faith and credit in North Carolina because Hawaii court lacked personal jurisdiction over North Carolina defendant), *aff'd,* 292 N.C. 192, 232 S.E.2d 687 (1977).]

e. A court can exercise jurisdiction over any defendant who waives objection to personal jurisdiction. A general appearance in a child support case waives objection to jurisdiction. [See discussion in Section I.B.5.c, below.]

2. Duration of personal jurisdiction.

a. Personal jurisdiction acquired by a tribunal in North Carolina in a proceeding under G.S. Chapter 52C or another North Carolina law relating to a support order continues as long as the North Carolina tribunal has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by G.S. 52C-2-205 or 52C-2-206. [G.S. 52C-2-202, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] A "support order" includes a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or a foreign country for the benefit of a child, a spouse, or a former spouse, providing for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. [G.S. 52C-1-101(21), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

3. Two-part inquiry to determine personal jurisdiction over a nonresident.

a. When a nonresident defendant challenges the court's exercise of personal jurisdiction, the court must undertake a two-part inquiry:

i. The court must first determine whether North Carolina law provides a statutory basis for the assertion of personal jurisdiction, i.e., "long-arm jurisdiction;" [*Speedway Motorsports Int'l Ltd. v. Bronwen Energy Trading Ltd.*, 209 N.C. App. 474, 707 S.E.2d 385 (2011), *review denied*, 365 N.C. 542, 720 S.E.2d 669 (2012).]

ii. If the court concludes that there is a statutory basis for jurisdiction, it next must consider whether the exercise of personal jurisdiction complies with the due process requirements of the Fourteenth Amendment, i.e., "minimum contacts" analysis. [*See Miller v. Kite*, 313 N.C. 474, 329 S.E.2d 663 (1985); *Sherlock v. Sherlock*, 143 N.C. App. 300, 545 S.E.2d 757 (2001).]

b. Because North Carolina's long-arm statute extends personal jurisdiction to the limits permitted by due process, in some appellate opinions the two-part inquiry has been merged into one question: whether the exercise of jurisdiction comports with due process. [*See Lang v. Lang,* 157 N.C. App. 703, 579 S.E.2d 919 (2003); *Sherlock v. Sherlock*, 143 N.C. App. 300, 545 S.E.2d 757 (2001).] Note, however, that in *Speedway Motorsports International Ltd. v. Bronwen Energy Trading Ltd.*, 209 N.C. App. 474, 487, 707 S.E.2d 385, 394 (2011) (citing *Brown v. Ellis*, 363 N.C. 360, 678 S.E.2d 222 (2009)), *review denied*, 365 N.C. 542, 720 S.E.2d 669 (2012), the court of appeals rejected the practice of collapsing the long-arm statute analysis into the minimum contacts analysis in favor of "two separate steps of analysis."

c. Factors to consider when determining whether defendant has sufficient minimum contacts with North Carolina:

i. Quantity of contacts with the state;

ii. The nature and quality of those contacts;

iii. The source and connection of the cause of action to the contacts;

iv. The interest of North Carolina in litigating the matter;

v. The convenience of the parties; and

vi. The interests of, and fairness to, the parties. [*Hamilton v. Johnson,* 228 N.C. App. 372, 747 S.E.2d 158 (2013) (first five factors); *Shaner v. Shaner,* 216 N.C. App. 409, 717 S.E.2d 66 (2011), and *Sherlock v. Sherlock,* 143 N.C. App. 300, 545 S.E.2d 757 (2001) (both citing *Filmar Racing, Inc. v. Stewart,* 141 N.C. App. 668, 541 S.E.2d 733 (2001)).]

d. Service on defendant within the state. [G.S. 52C-2-201(a)(1); 1-75.4(1)a.]

i. It is not necessary to apply the minimum contacts test of due process set forth in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945), and later cases when the defendant is personally served in the forum state. [*Lockert v. Breedlove*, 321 N.C. 66, 361 S.E.2d 581 (1987); *Jenkins v. Jenkins,* 89 N.C. App. 705, 367 S.E.2d 4 (1988) (court need not determine minimum contacts where nonresident defendant was served with process while temporarily in North Carolina for a brief visit related to his employment).]

e. Consent to personal jurisdiction. [G.S. 52C-2-201(a)(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

i. Where a nonresident defendant has consented to the jurisdiction of the court, the two-part inquiry to determine personal jurisdiction over a nonresident

need not be conducted. [*Montgomery v. Montgomery,* 110 N.C. App. 234, 429 S.E.2d 438 (1993).]

ii. A consent agreement in which the parents agreed that future legal actions regarding their children would be brought where the children reside was a valid consent to the exercise of long-arm personal jurisdiction over the nonresident defendant and waived the minimum contacts/due process analysis usually required in the two-step inquiry. [*Montgomery v. Montgomery,* 110 N.C. App. 234, 429 S.E.2d 438 (1993) (consent agreement acted as a waiver of the requirements usually necessary to invoke personal jurisdiction).]

iii. G.S. 52C-2-201(a)(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015, is set out in Section I.B.4.a.iii, below.

4. Statutory basis for personal jurisdiction.

a. A North Carolina tribunal has the statutory authority ("long-arm" jurisdiction) to assert personal jurisdiction over a resident or nonresident parent or custodian who is a defendant in a civil action seeking to establish or enforce a support order for a minor child:

i. If the defendant is personally served with a summons and complaint within this state; [G.S. 52C-2-201(a)(1); 1-75.4(1)a. See Section I.B.3.d, above, on service within state negating need for minimum contacts inquiry.]

ii. If the defendant is domiciled in this state at the time she is served with process; [G.S. 1-75.4(1)b.]

iii. If the defendant submits to jurisdiction by consent in a record, by entering a general appearance in the action, or by filing a responsive document that has the effect of waiving his right to contest personal jurisdiction; [G.S. 52C-2-201(a)(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; 1-75.7(1) (general appearance). See Section I.B.3.e, above, on consent to jurisdiction negating need for two-part inquiry.]

(a) "Record" is defined as "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." [G.S. 52C-1-101(13c), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

iv. If the defendant is engaged in substantial activity within this state at the time she is served with process; [G.S. 1-75.4(1)d.]

v. If the defendant has promised the plaintiff, or a third party for the plaintiff's benefit, to deliver or receive within this state, things of value; [G.S. 1-75.4(5)c.]

vi. If things of value have been shipped from this state by the plaintiff to the defendant on his order or direction; [G.S. 1-75.4(5)d.]

vii. When the child support claim arises out of the marital relationship within this state, notwithstanding subsequent departure from the state, if the other party to the marital relationship continues to reside in this state; [G.S. 1-75.4(12).]

viii. If the defendant resided in this state with the child; [G.S. 52C-2-201(a)(3).]

ix. If the defendant resided in this state and provided prenatal expenses or support for the child; [G.S. 52C-2-201(a)(4).]

x. If the child resides in this state as the result of the defendant's acts or directives; [G.S. 52C-2-201(a)(5).]

xi. If the child may have been conceived as a result of sexual intercourse by the defendant within this state; [G.S. 52C-2-201(a)(6); 49-17.]

(a) G.S. 49-17 creates special jurisdiction under very limited circumstances as set out therein, i.e., an act of sexual intercourse within North Carolina. [*Cochran v. Wallace,* 95 N.C. App. 167, 381 S.E.2d 853 (1989).]

xii. If there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction; [G.S. 52C-2-201(a)(8).]

xiii. G.S. 52C-2-201 was amended in 2015 to delete as a basis for jurisdiction over a nonresident that the defendant asserted paternity in an affidavit filed with the clerk. [S.L. 2015-177, § 1, effective June 24, 2015, deleting G.S. 52C-2-201(7).]

5. Cases on statutory authority for personal jurisdiction.

a. Defendant served with process in the state. [G.S. 1-75.4(1)a.; 52C-2-201(a)(1).]

i. Defendant, an Ohio resident, was personally served with summons and complaint while in North Carolina visiting his parents and children. [*Brookshire v. Brookshire*, 89 N.C. App. 48, 365 S.E.2d 307 (1988).]

ii. Defendant, a Virginia resident, was personally served in North Carolina at his business. [*Morris v. Morris,* 91 N.C. App. 432, 371 S.E.2d 756 (1988).]

iii. It is not necessary to apply the minimum contacts test of due process set forth in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945), and later cases when the defendant is personally served in the forum state. [*Lockert v. Breedlove*, 321 N.C. 66, 361 S.E.2d 581 (1987); *Jenkins v. Jenkins,* 89 N.C. App. 705, 367 S.E.2d 4 (1988) (court need not determine minimum contacts where nonresident defendant was served with process while temporarily in North Carolina for a brief visit related to his employment).]

b. Defendant domiciled in the state when service of process is made. [G.S. 1-75.4(1)b.]

i. "Domicile denotes one's permanent, established home as distinguished from a temporary, although actual, place of residence. . . . It is the place where he intends to remain permanently, or for an indefinite length of time." [*Atassi v. Atassi,* 117 N.C. App. 506, 511, 451 S.E.2d 371, 374 (quoting *Farnsworth v. Jones*, 114 N.C. App. 182, 186, 441 S.E.2d 597, 600 (1994)) (question of fact as to whether husband's domicile was in Syria or North Carolina precluded summary judgment on certain domestic issues), *review denied,* 340 N.C. 109, 456 S.E.2d 310 (1995). *See also Hall v. Wake Cty. Bd. of Elections,* 280 N.C. 600, 187 S.E.2d 52 (1972) (deciding question of a student's domicile).]

c. Defendant makes a general appearance. [G.S. 1-75.7(1); 52C-2-201(a)(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

i. By submitting to the court information relevant to the merits of the case (documents containing financial information relevant to the issue of child support and a letter setting forth other factors to be considered in setting an amount for child support, such as defendant's upcoming expenses), defendant made a general appearance prior to his assertion of lack of personal jurisdiction.

[*Bullard v. Bader*, 117 N.C. App. 299, 450 S.E.2d 757 (1994) (noting very liberal interpretation and that almost anything other than a challenge to personal jurisdiction or a request for an extension of time will be considered a general appearance).]

ii. By filing an answer containing counterclaims for child custody and support and equitable distribution without contesting personal jurisdiction, defendant made a general appearance. [*Judkins v. Judkins*, 113 N.C. App. 734, 441 S.E.2d 139, *review denied,* 336 N.C. 781, 447 S.E.2d 424 (1994).]

iii. Answer to complaint, in which husband did not contest personal jurisdiction, constituted general appearance such that husband waived challenge to court's exercise of personal jurisdiction in wife's subsequent motion in the cause for child support. [*Stern v. Stern*, 89 N.C. App. 689, 367 S.E.2d 7 (1988). *See also Barclay v. Makarov,* 237 N.C. App. 398, 767 S.E.2d 152 (2014) (**unpublished**) (not paginated on Westlaw) (defendant's answer constituted a general appearance when it "addressed factual discrepancies in the complaint" and requested child support in accordance with the law of British Columbia without asserting that the trial court lacked personal jurisdiction over defendant).]

iv. A general appearance in a support action is a submission to jurisdiction in that action only and does not waive a defendant's right to object to jurisdiction in separate causes of action. [*Buck v. Heavner*, 93 N.C. App. 142, 377 S.E.2d 75 (1989) (while the support action was connected with the parties' former marital relationship, it was not, for the purposes of a minimum contacts analysis, related to a breach of contract action arising from obligations imposed by a Colorado distribution order; no personal jurisdiction over defendant in a separate action to enforce a promissory note).]

d. Defendant is engaged in substantial activity within the state when service of process is made. [G.S. 1-75.4(1)d.]

i. Defendant's activities prior to service of process can be considered when determining whether defendant was engaged in substantial activity within the state. [*Lang v. Lang,* 157 N.C. App. 703, 709, 579 S.E.2d 919. 923 (2003) (noting that "our courts have consistently looked to a defendant's conduct prior to service of process to find the existence of minimum contacts").]

ii. Activities constituting "substantial activity."

(a) *Lang v. Lang*, 157 N.C. App. 703, 579 S.E.2d 919 (2003) (defendant, over the course of ten years, was engaged in the business of selling real estate in Henderson County, North Carolina; executed and filed in North Carolina a power of attorney; admitted in an answer in an unrelated matter that he was a resident of North Carolina; detailed in a deposition his extensive involvement with investing in and selling real estate in Henderson County; obtained and renewed a North Carolina driver's license; and with his wife purchased and registered a car in North Carolina).

(b) *Strother v. Strother*, 120 N.C. App. 393, 462 S.E.2d 542 (1995) (third-party defendant was present in North Carolina for several days to finalize establishment of a business relationship with husband and wife, North

Carolina residents; third-party defendant received substantial fees as a financial, investment, and tax advisor to husband and wife; prepared monthly financial statements for business entities of the parties and mailed them to husband and wife in North Carolina and prepared personal tax returns for husband and wife; third-party defendant incorporated and owned stock in two North Carolina corporations that husband and wife claimed as marital assets; and until recently third-party defendant owned in trustee capacity several parcels of real property in North Carolina).

e. In any action which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction. [G.S. 1-75.4(2) (special jurisdiction statutes); *Butler v. Butler,* 152 N.C. App. 74, 80 n.5, 566 S.E.2d 707, 711 n.5 (2002) (a determination that statutory jurisdiction exists pursuant to the Uniform Interstate Family Support Act (UIFSA) is also a determination that it exists pursuant to G.S. 1-75.4(2), which confers personal jurisdiction whenever any special personal jurisdiction statute applies).]

f. Action under G.S. Chapter 50 that arises out of marital relationship within North Carolina, notwithstanding one party's subsequent departure from the state, if the other party to the marital relationship continues to reside in this state. [G.S. 1-75.4(12).]

   i. Personal jurisdiction over defendant was proper when parties were married in North Carolina and wife continued to reside in North Carolina; action arose under Chapter 50 and sought resolution of issues pertaining to dissolution of parties' marriage. [*Sherlock v. Sherlock,* 143 N.C. App. 300, 545 S.E.2d 757 (2001).]

   ii. Because child support action under Chapter 50 arose out of parties' marital relationship within this state, G.S. 1-75.4(12) authorized exercise of personal jurisdiction over nonresident defendant. [*Harris v. Harris*, 104 N.C. App. 574, 410 S.E.2d 527 (1991).]

   iii. When plaintiff sought an initial judicial determination of child support, action was brought under Chapter 50; parties' marriage took place in North Carolina and children were born in and resided in this state when action was filed, so action arose out of marital relationship, despite a temporary move out of state by mother and children after divorce. [*Powers v. Parisher*, 104 N.C. App. 400, 409 S.E.2d 725 (1991) (existence of an unincorporated separation agreement relating to child support did not prevent plaintiff's action for judicial determination of support), *review denied,* 331 N.C. 286, 417 S.E.2d 254 (1992).]

g. Defendant resided with the child in this state. [G.S. 52C-2-201(a)(3).]

   i. Fact that defendant during the marriage visited his wife and daughter in Moore County at least once per month for two years and resided in the marital residence for three or more days at a time supported conclusion that defendant "resided with the child in this State." [*Butler v. Butler,* 152 N.C. App. 74, 80, 566 S.E.2d 707, 711 (2002) (quoting former G.S. 52C-2-201(3)).]

h. Defendant resided in this state and provided prenatal expenses or support for the child. [G.S. 52C-2-201(a)(4).]

i. No cases to date.

i. Child resides in this state as the result of defendant's acts or directives. [G.S. 52C-2-201(a)(5).]

i. When defendant purchased a house in North Carolina, partially to allow his daughter to attend school in this state, court properly found that defendant's child resided in this state as a result of defendant's acts or directives. [*Butler v. Butler,* 152 N.C. App. 74, 566 S.E.2d 707 (2002).]

j. Child may have been conceived as a result of sexual intercourse in this state. [G.S. 52C-2-201(a)(6); 49-17.]

i. Defendant's fathering of the infant in North Carolina and his signing of an acknowledgment of paternity and a voluntary support agreement indicated "that defendant engaged in some act or conduct by which he may be said to have invoked the benefits and protections of the law of the forum." [*Moore v. Wilson*, 62 N.C. App. 746, 748, 303 S.E.2d 564, 565 (1983) (defendant's contacts with North Carolina were sufficient to meet both the statutory requirements of G.S. 1-75.4 and due process standards).]

k. Defendant has promised plaintiff or a third party for plaintiff's benefit to deliver or receive within this state things of value. [G.S. 1-75.4(5)c.]

i. A separation agreement executed within this state, which included child support provisions, provided basis for asserting long-arm jurisdiction over nonresident defendant under G.S. 1-75.4(5)c.; separation agreement was a local contract and the support payments were a "thing of value" that were sent into this state. [*Pope v. Pope*, 38 N.C. App. 328, 248 S.E.2d 260 (1978).]

ii. See *Spousal Agreements*, Bench Book, Vol. 1, Chapter 1.

6. Compliance with due process standards.

a. Due process requires that defendant have minimum contacts with the state. [*Sherlock v. Sherlock*, 143 N.C. App. 300, 545 S.E.2d 757 (2001).]

b. A summary of the aspects of a defendant's situation that have proven useful in an analysis of "minimum contacts" with a jurisdiction include:

i. The quantity of the contacts;

ii. The nature and quality of the contacts;

iii. The source and connection of the cause of action to the contacts;

iv. The interest of the forum state;

v. The convenience of the parties; and

vi. The interests of, and fairness to, the parties. [*Hamilton v. Johnson,* 228 N.C. App. 372, 747 S.E.2d 158 (2013) (first five factors); *Shaner v. Shaner,* 216 N.C. App. 409, 717 S.E.2d 66 (2011), and *Sherlock v. Sherlock,* 143 N.C. App. 300, 545 S.E.2d 757 (2001) (both citing *Filmar Racing, Inc. v. Stewart,* 141 N.C. App. 668, 541 S.E.2d 733 (2001)).]

c. In contrast to child custody proceedings, North Carolina courts have consistently required minimum contacts with North Carolina by nonresident defendants in child support actions. [*Harris v. Harris*, 104 N.C. App. 574, 581, 410 S.E.2d 527, 531 (1991) (quoting certain commentators who agree that "this double standard of jurisdiction for child custody and child support actions 'has created a splintered domestic relations jurisdiction' ").]

d. Cases finding minimum contacts requirement met.

i. An assortment of financial, legal, and personal connections within North Carolina sustained over a period of years were sufficient contacts, even though parties lived primarily overseas. [*Sherlock v. Sherlock*, 143 N.C. App. 300, 545 S.E.2d 757 (2001) (parties married in Durham; while parties were overseas, defendant used Durham address to receive important mail, including federal income tax documents; defendant's salary was directly deposited into an account in Durham; defendant had a North Carolina driver's license; defendant executed and filed in Durham a power of attorney, pursuant to which attorney-in-fact conducted business for parties; defendant made a will naming Durham residents as executors; defendant hired Durham accountant to receive and pay bills on his behalf; and parties opened an investment account in North Carolina; court noted unusual history of the parties, characterized by frequent moves from one foreign country to another and their failure to establish a permanent home anywhere in the U.S. or abroad).]

ii. Defendant's substantial past and present contacts with North Carolina were sufficient. [*Harris v. Harris*, 104 N.C. App. 574, 410 S.E.2d 527 (1991) (defendant was former resident of North Carolina; he married plaintiff in this state, had a child here, and lived here for three years as husband and wife; after moving out of state, defendant maintained contact with family members in North Carolina, visiting them during holidays; since the parties' separation, defendant visited family members in this state at least twice; defendant established and maintained business contacts in North Carolina and traveled routinely to state to participate in business-related activities).]

iii. Defendant had substantial long-term contacts with North Carolina. [*Powers v. Parisher*, 104 N.C. App. 400, 409 S.E.2d 725 (1991) (defendant was former resident of North Carolina for some fifteen years; parties resided in this state at time of divorce; two children were born of the marriage in North Carolina; parties entered into separation agreements in state; and defendant regularly visited North Carolina to see his children and other family members), *review denied,* 331 N.C. 286, 417 S.E.2d 254 (1992).]

e. Cases finding minimum contacts requirement not met.

i. The fact that a defendant makes trips to North Carolina in order to exercise his visitation rights cannot supply the necessary minimum contacts for the purposes of a child support action. [*Miller v. Kite*, 313 N.C. 474, 329 S.E.2d 663 (1985) (father's only contacts were six trips over nine years to visit his daughter and that he mailed the monthly support checks to the plaintiff at her North Carolina residence); *Hamilton v. Johnson,* 228 N.C. App. 372, 747 S.E.2d 158 (2013)

(citing *Miller*) (that child had lived since birth with mother in North Carolina, defendant had visited child three times over six months, and defendant's corporate and personal bank statements listed a Charlotte address found insufficient to justify in personam jurisdiction).]

ii. Defendant did not have minimum contacts with North Carolina when plaintiff alleged only that defendant abandoned plaintiff within this state and that the marital relationship still existed when plaintiff initiated action for alimony and equitable distribution. [*Tompkins v. Tompkins*, 98 N.C. App. 299, 304, 390 S.E.2d 766, 769 (1990) (plaintiff's allegation of abandonment within North Carolina was "simply insufficient" without allegations that would show a nexus between defendant's misconduct and North Carolina, such as parties were married in North Carolina or resided here during the marriage or at the time of separation; plaintiff's allegation that the marriage was still in existence when the action was initiated "cannot of itself constitute sufficient contacts to establish personal jurisdiction").]

7. Defense of lack of personal jurisdiction raised by special appearance. A defendant may, by special appearance or motion filed pursuant to G.S. 1A-1, Rule 12(b)(2), challenge the court's lack of personal jurisdiction in an action for child support. [*See Shores v. Shores*, 91 N.C. App. 435, 371 S.E.2d 747 (1988) (defendant who makes a general appearance and does not raise defense of lack of personal jurisdiction by motion or answer pursuant to G.S. 1A-1, Rule 12 waives the defense of lack of personal jurisdiction).]

8. Notice.

a. In addition to the requirement that the court have personal jurisdiction over the defendant, a court may not enter an order for support unless the defendant is properly served with process pursuant to G.S. 1A-1, Rule 4 or makes a general appearance in the action. [G.S. 1-75.3(b)(1) (Rule 4 service required).]

i. When determining the sufficiency of service pursuant to G.S. 1A-1, Rule 4(j)(1)d. and 1-75.10(a)(5), both of which require "delivery to the addressee," the crucial inquiry is whether the defendant in fact received the summons and complaint, not whether the delivery service employee personally served the individual addressee or his service agent. [*Washington v. Cline*, 233 N.C. App. 412, 761 S.E.2d 650 (citing *Granville Med. Ctr. v. Tipton,* 160 N.C. App. 484, 586 S.E.2d 791 (2003)) (service on city employees and current and former police officers was proper under G.S. 1A-1, Rule 4(j)(1)d., even though no employee or officer was personally served (one FedEx package was left at the side door of addressee's home, one FedEx package was left with a visiting 12-year-old grandson, one FedEx package was left with the defendant's receptionist, and six FedEx packages were delivered to the police department loading dock to person responsible for receiving deliveries); evidence of service by designated delivery service, which included delivery receipts and affidavits from defendants admitting that they all, in fact, received the packages met requirements for proof of service in G.S. 1-75.10(a)(5)), *review denied, review dismissed*, 367 N.C. 788, 766 S.E.2d 657 (2014); *Carpenter v. Agee,* 171 N.C. App. 98, 613 S.E.2d 735 (2005) (delivery receipt signed by person other than defendant in certified mail case raised

presumption that person who signed was acting as agent of defendant; service was presumed valid). *But see Hamilton v. Johnson,* 228 N.C. App. 372, 747 S.E.2d 158 (2013) (service by delivery service under G.S. 1A-1, Rule 4(j)(1)d. was insufficient when delivery receipt was not personally signed by defendant; appellate court rejected plaintiff's argument that signature of another person on the receipt raised a presumption of proper service and that person signing was acting as agent of the defendant).] **NOTE:** The *Washington* decision distinguishes *Hamilton* by stating that in *Hamilton*, "the Court makes no mention of whether the defendant actually received the summons and complaint, or more specifically, whether the plaintiff attempted to prove service under section 1-75.10 with affidavits indicating that the defendant received the summons and complaint." *Washington*, 233 N.C. App. at 426, 761 S.E.2d at 659–60.

ii. Service on defendant in Virginia by a process server over the age of 18, and affidavit of service filed by the server, were sufficient under North Carolina law. [*New Hanover Cty. ex rel. Beatty v. Greenfield,* 219 N.C. App. 531, 723 S.E.2d 790 (2012) (first, process server was qualified to make service under Virginia law, allowing service by a nonparty 18 years or older, thus making server qualified to make service under G.S. 1A-1, Rule 4(a); second, affidavit filed by server met proof of service requirements set out in G.S. 1-75.10(a)(1); denial of defendant's motion to dismiss for insufficient process affirmed).]

9. Appeal.

a. The denial of a defendant's motion to dismiss for lack of personal jurisdiction, though interlocutory, is immediately appealable or the defendant may preserve her exception for determination upon any subsequent appeal in the cause. [G.S. 1-277(b); *Lang v. Lang,* 157 N.C. App. 703, 704 n.1, 579 S.E.2d 919, 920 n.1 (2003); *Sherlock v. Sherlock,* 143 N.C. App. 300, 545 S.E.2d 757 (2001).]

b. In reviewing an order determining whether personal jurisdiction is statutorily and constitutionally permissible, "[t]he trial court's findings of fact are conclusive if supported by any competent evidence and judgment supported by such findings will be affirmed, even though there may be evidence to the contrary." [*Butler v. Butler,* 152 N.C. App. 74, 76, 566 S.E.2d 707, 708 (2002) (quoting *Shamley v. Shamley*, 117 N.C. App. 175, 180, 455 S.E.2d 435, 438 (1994)).] For more on appeal, see Section I.I, below.

C. Venue

1. A civil action for child support or custody may be commenced in the county in which the child resides or is physically present or in a county in which either of the child's parents resides. [G.S. 50-13.5(f).]

a. However, an objection to improper venue is waived if not raised by defendant. In a case brought by a grandmother seeking custody of her grandchildren, the trial court erred when it transferred venue *sua sponte* to Lee County, where the grandmother and children lived, when defendant parents had not objected to or requested a transfer of venue and grandchildren were physically present in Durham County District Court when case was called for hearing. [*Zetino-Cruz v. Benitez-Zetino*, 791 S.E.2d

100 (N.C. Ct. App. 2016) (location of defendant parents was unknown and residence or presence of grandmother, since she was not a parent, was not relevant to proper venue under G.S. 50-13.5(f)).]

b. Even if Durham County was not a proper venue under G.S. 50-13.5(f), the trial court could not change venue unless a defendant filed a written demand, before time to answer expired, for a change of venue pursuant to G.S. 1-83. [*Zetino-Cruz v. Benitez-Zetino*, 791 S.E.2d 100 (N.C. Ct. App. 2016).]

2. When other actions are pending between the parties.

a. Prior pending action seeking different relief.

i. A claim for child support must be joined with, or be filed as a motion in the cause in, a pending action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce involving the child's parents if a final judgment has not been entered in the pending action. [G.S. 50-13.5(f).]

ii. If an action for custody and support is pending and an action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce is subsequently instituted in the same or another county, the court having jurisdiction of the prior action may, in its discretion, direct that the actions be consolidated and in the event consolidation is ordered, must determine in which court the consolidated action will be heard. [G.S. 50-13.5(f).]

b. Prior pending action seeking the same relief.

i. Upon timely motion, an action for, or to modify, child support filed in one county or district in North Carolina is abated if a pending action for child support was filed previously in a court of competent jurisdiction within North Carolina. [*Brooks v. Brooks*, 107 N.C. App. 44, 47, 418 S.E.2d 534, 536 (1992) (quoting *Clark v. Craven Reg'l Med. Auth.*, 326 N.C. 15, 20, 387 N.C. App. 168, 171 (1990)) (until children are emancipated, the case in which custody and support are originally determined remains pending and, if the parties remain the same, this prior pending action "works an abatement of a subsequent action . . . in another court of the state having like jurisdiction"); *Basinger v. Basinger*, 80 N.C. App. 554, 342 S.E.2d 549 (1986) (husband's motion in the cause for support, filed in earlier divorce and equitable distribution proceeding, was dismissed based on wife's prior pending action in same county seeking same relief). *Cf. Cushing v. Cushing,* 263 N.C. 181, 139 S.E.2d 217 (1964) (pending action for alimony and child support in South Carolina could not abate subsequent action filed in North Carolina for the same relief; former action must be pending within this state).]

ii. A plea of abatement based upon a prior pending action, although not specifically enumerated in G.S. 1A-1, Rule 12(b), is a preliminary motion of the type enumerated in Rule 12(b)(2)–(5) and also an affirmative defense. Accordingly, the plea in abatement based on a prior pending action must be raised either in a pre-answer motion or set forth affirmatively in the answer and is waived if not timely raised. [*See Brooks v. Brooks*, 107 N.C. App. 44, 418 S.E.2d 534 (1992) (father's action to modify custody and support was improperly dismissed, even though venue was not proper where filed, because mother's objection to venue

was not timely made; oral motion at trial, after pleadings were complete, was not timely and therefore was ineffective to raise the issue of the prior pending action).]

c. Effect of final judgment in the prior action on later action for child support.

i. When a final judgment of divorce had been entered in a prior proceeding and child support was not brought to issue or determined in that proceeding, a party may file an independent proceeding for child support. [*Powers v. Parisher,* 104 N.C. App. 400, 409 S.E.2d 725 (1991), *review denied,* 331 N.C. 286, 417 S.E.2d 254 (1992).]

3. Court of original venue is proper court for subsequent actions. [*Tate v. Tate*, 9 N.C. App. 681, 683, 177 S.E.2d 455, 457 (1970) (emphasis added) (the court first obtaining jurisdiction "is the only proper court . . . [for] an action for the modification of an order *establishing* custody and support"); *Broyhill v. Broyhill*, 81 N.C. App. 147, 343 S.E.2d 605 (1986) (interpreting *Tate* not to preclude a court from transferring venue).]

a. The statute relating to venue of an action for custody and support, G.S. 50-13.5(f), set out in Sections I.C.1 and I.C.2, above, applies only to the institution of an action for custody and support and 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) (Forsyth County court was the proper court to modify its child support obligation; modification action filed in Mecklenburg County properly dismissed).]

b. However, an action to modify custody and support may proceed in a county other than the original county if no objection to venue is raised in a timely manner. [*Brooks v. Brooks*, 107 N.C. App. 44, 418 S.E.2d 534 (1992) (mother waived right to remove custody and support modification case to New Hanover County, where earlier child support order was entered, when she did not seek removal either in a pre-answer motion or answer; mother's oral motion at trial not timely).]

c. For venue when a party seeks modification, see *Modification of Child Support Orders*, Part 3 of this Chapter, Section II.D.

4. Transfer of venue.

a. The most common reasons for a change of venue in custody and support cases are found in G.S. 1-83, which provides that a court may change the place of trial when:

i. The county in which the action is brought is not the proper one [G.S. 1-83(1) (venue is improper).] or

(a) "May change" venue as used in G.S. 1-83(1) has been interpreted to mean "must change" venue. [*Zetino-Cruz v. Benitez-Zetino*, 791 S.E.2d 100 (N.C. Ct. App. 2016) (quoting *Kiker v. Winfield*, 234 N.C. App. 363, 364, 759 S.E.2d 372, 373 (2014).]

ii. The convenience of witnesses and the ends of justice would be promoted by the change. [G.S. 1-83(2) (venue is proper but may be changed for reasons in the statute); *Zetino-Cruz v. Benitez-Zetino*, 791 S.E.2d 100 (N.C. Ct. App. 2016) (change of venue under G.S. 1-83(2) is discretionary with the court); *Broyhill v. Broyhill*, 81 N.C. App. 147, 343 S.E.2d 605 (1986) (court of original venue may, in its discretion, transfer the venue of an ongoing action for

custody or support to a more appropriate county based on convenience of witnesses and parties and the best interest of the child); *Brooker v. Brooker,* 133 N.C. App. 285, 515 S.E.2d 234 (1999) (trial court did not abuse its discretion by denying defendant's motion to transfer venue to Forsyth County based on its determination that Iredell County remained the most convenient forum, even though neither party lived in Iredell).]

(a) G.S. 1-83(2) does not authorize a change of venue for the "convenience of the court." [*Zetino-Cruz v. Benitez-Zetino*, 791 S.E.2d 100, 108 (N.C. Ct. App. 2016).]

b. A court may not change venue *sua sponte* under G.S. 1-83, whether under 1-83(1) or 1-83(2), when no defendant had answered or objected to venue. [*Zetino-Cruz v. Benitez-Zetino*, 791 S.E.2d 100 (N.C. Ct. App. 2016) (trial court's authority to change venue under G.S. 1-83(1) **or** (2) is triggered by a defendant's objection to venue).] For more on this case, see Cheryl Howell, *No Sua Sponte Change of Venue Allowed*, UNC Sch. of Gov't: On the Civil Side Blog (Aug. 26, 2016), http://civil.sog.unc.edu/no-sua-sponte-change-of-venue-allowed.

5. Time for filing request to change venue.

a. A defendant must object to improper venue in a county before the time of answering expires [G.S. 1-83.] or before pleading if a further pleading is permitted. [G.S. 1A-1, Rule 12(b)(3).]

b. Objection to **improper venue** pursuant to G.S. 1-83(1) in a custody or support proceeding must be raised either in a pre-answer motion pursuant to G.S. 1A-1, Rule 12 or be set forth affirmatively in the answer. [*Brooks v. Brooks*, 107 N.C. App. 44, 418 S.E.2d 534 (1992) (failure to raise the defense in this manner constitutes a waiver of the defense; mother's oral motion at trial, after the pleadings were complete, was not timely and therefore was ineffective to raise the issue of the prior pending support action).]

c. Motions for change of venue based on convenience of witnesses pursuant to G.S. 1-83(2) are addressed to the discretion of the judge and cannot be considered by the trial court until after pleadings are complete. [*Thompson v. Horrell,* 272 N.C. 503, 158 S.E.2d 633 (1968); *Zetino-Cruz v. Benitez-Zetino*, 791 S.E.2d 100 (N.C. Ct. App. 2016) (motion for change of venue for convenience of the witnesses must be filed after the answer is filed); *Smith v. Barbour,* 154 N.C. App. 402, 571 S.E.2d 872 (2002) (citing *McCullough v. Branch Banking & Tr. Co., Inc.,* 136 N.C. App. 340, 524 S.E.2d 569 (2000)) (motions pursuant to G.S. 1-83(2) must be filed after an answer has been filed), *cert. denied,* 599 S.E.2d 408 (2004); *McCullough* (same).]

6. Waiver of objection to venue.

a. Venue may be waived by any party. [*Chillari v. Chillari,* 159 N.C. App. 670, 583 S.E.2d 367 (2003) (citing *Teer Co. v. Hitchcock Corp.,* 235 N.C.741, 71 S.E.2d 54 (1952)); *Bass v. Bass*, 43 N.C. App. 212, 258 S.E.2d 391 (1979).]

b. An objection to venue is waived if not timely filed. [*Chillari v. Chillari,* 159 N.C. App. 670, 583 S.E.2d 367 (2003) (objection to venue based on improper county waived when included in an untimely answer); *Brooks v. Brooks*, 107 N.C. App. 44, 418 S.E.2d 534 (1992) (mother waived right to remove custody and support modification case

to New Hanover County, where earlier child support order was entered, when she did not seek removal either in a pre-answer motion or answer; mother's oral motion at trial not timely). *See also Bass v. Bass*, 43 N.C. App. 212, 258 S.E.2d 391 (1979) (if father had objection to venue of support proceeding, he waived it by voluntarily appearing and participating in hearing).]

c. Whether a defendant has waived objection to venue is reviewed on appeal de novo. [*Zetino-Cruz v. Benitez-Zetino*, 791 S.E.2d 100 (N.C. Ct. App. 2016).]

7. Transfer of venue in a IV-D case.

a. A "IV-D case" is a case in which services have been applied for or are being provided by a child support enforcement agency established pursuant to Title IV-D of the Social Security Act, as amended, and Article 9 of G.S. Chapter 110. [G.S. 110-129(7).] A "non-IV-D case" is any case, other than a IV-D case, in which child support is legally obligated to be paid. [G.S. 110-129(7).]

b. In a IV-D case, state law authorizes a IV-D agency to transfer a pending child support case from one jurisdiction to another within the state without obtaining a court order. [G.S. 110-129.1(a)(8)(d).]

c. Orders entered 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 on the basis that the obligor, the child's custodian, and the child no longer reside in the jurisdiction in which the order was issued. The IV-D agency must give notice of the transfer to the obligor in accordance with G.S. 1A-1, Rule 5(b). Nothing in G.S. 50-13.4(e1) is to be construed as preventing a party from contesting the transfer. [G.S. 50-13.4(e1).]

D. Application of Foreign Law

1. Application of foreign law is prohibited if it results in a violation of constitutional rights.

a. The application of foreign law in cases under G.S. Chapters 50 (Divorce and Alimony) and 50A (Uniform Child Custody Jurisdiction and Enforcement Act) is prohibited when it would violate a fundamental right of a person under the federal or state constitution. A motion to transfer a proceeding to a foreign venue must be denied when doing so would have the same effect. [See G.S. 1-87.14, 1-87.17, and other provisions in Article 7A in G.S. Chapter 1, *added by* S.L. 2013-416, effective Sept. 1, 2013, and applicable to proceedings, agreements, and contracts entered into on or after that date.]

E. Parties and Standing

1. A civil action for child support may be brought by:

a. A parent, person, agency, organization, or institution that has custody of a minor child or has filed a legal proceeding seeking custody of a minor child. [G.S. 50-13.4(a).]

i. Physical or "de facto," rather than judicially determined or legal, custody of a child may be sufficient to confer standing to bring a civil action for child support. [*See Craig v. Kelley*, 89 N.C. App. 458, 366 S.E.2d 249 (1988) (noting that

G.S. 50-13.4(a) does not require a judicial determination of custody before a person or agency can bring an action for support).]

b. A minor child through the child's guardian. [G.S. 50-13.4(a).]

c. A IV-D agency on behalf of a minor child, the child's guardian, the child's custodial parent, or the child's custodian if the child's right to child support has been assigned to the state or county pursuant to G.S. 110-137 or the child, guardian, parent, or custodian is receiving services from the IV-D agency pursuant to G.S. 110-130.1 and federal IV-D law and regulations. [G.S. 110-130 and 110-130.1(c).]

i. In an action brought by a IV-D agency pursuant to Article 9 of G.S. Chapter 110 to establish, enforce, or modify child support or to establish paternity, collateral disputes between a custodial parent and a noncustodial parent involving visitation, custody, and similar issues shall be considered only in separate proceedings. [G.S. 110-130.1(c).] Collateral issues regarding visitation and custody cannot be filed in IV-D cases. [*See also* G.S. 52C-1-103(b)(2) (G.S. Chapter 52C does not grant a North Carolina tribunal jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under Chapter 52C; pursuant to G.S. 52C-1-101(22), "tribunal" includes an administrative agency or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child).]

2. The minor child is not a necessary party.

a. Even though the legal right to child support accrues primarily for the benefit of the minor child, [*See Appert v. Appert*, 80 N.C. App. 27, 341 S.E.2d 342 (1986).] the child is not a necessary party to a civil action seeking support on behalf of the child.

b. If a minor child is joined as a party in a civil action for child support, the child must be represented by the child's guardian or through a guardian ad litem appointed pursuant to G.S. 1A-1, Rule 17.

3. Real party in interest.

a. Parent or caretaker as real party in interest.

i. A child's custodial parent or caretaker is the real party in interest in a civil action for child support to the extent that the custodial parent or caretaker provides support that the noncustodial parent was legally obligated to provide. [*See Griffith v. Griffith*, 38 N.C. App. 25, 247 S.E.2d 30 (dismissing father's argument, in an action brought after the child turned 18 for arrearage accruing before the child reached majority, that the minor child was the real party in interest, rather than the mother), *review denied,* 296 N.C. 106, 249 S.E.2d 804 (1978).]

ii. Even when the state or county is a real party in interest as discussed in Section I.E.3.b, immediately below, the child, guardian, parent, or caretaker remains a real party in interest in a civil action for child support to the extent that the child's right to support has not been completely assigned to the state or county. [*State ex rel. Crews v. Parker*, 319 N.C. 354, 354 S.E.2d 501 (1987) (grandmother allowed to intervene in action for support to assert her right to compensation for support she paid for child before receipt of Aid to Families with Dependent Children benefits).]

b. State or county as real party in interest.

i. For extensive discussion of the parties and their legal relationship in a child support enforcement action, see John L. Saxon, *Who Are the Parties in IV-D Child Support Proceedings? And What Difference Does It Make?* Fam. L. Bull. No. 22 (UNC School of Government, Jan. 2007), www.sogpubs.unc.edu/electronicversions/pdfs/flb22.pdf.

ii. The state or county is the real party in interest in an action to establish a child support obligation when the child's right to support has been assigned to the state or county as a condition of receiving public assistance pursuant to G.S. 110-137. [*State ex rel. Crews v. Parker*, 319 N.C. 354, 354 S.E.2d 501 (1987).]

iii. G.S. 110-137 limits the assignment of the child's right to support to the amount of public assistance paid on behalf of the child.

iv. The IV-D agency is not a real party in interest in a civil action for child support when the child has never received public assistance and the child's right to child support has not been assigned to the state or county pursuant to G.S. 110-137.

4. A civil action for child support may be commenced against a minor unemancipated parent of a minor child, but the minor unemancipated parent must have a guardian ad litem appointed pursuant to G.S. 1A-1, Rule 17. [See G.S. 50-13.4(b) and *Liability and Amount*, Part 1 of this Chapter, Section I.B for discussion of when grandparents may be liable for support of a child when one or both of the child's parents are unemancipated minors.]

F. Pleading and Procedure

1. The procedure in an action for child support is the same as in other civil actions, unless a specific statute provides otherwise. [G.S. 50-13.5(a).]

2. Type of action. An action for support may be:

a. Maintained as an independent civil action; [G.S. 50-13.5(b)(1).]

i. If an action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce involving the child's parents is pending and final judgment has not been entered, the support action **must** be joined as a claim in the pending action for divorce, etc. "or be by motion in the cause in such action." [G.S. 50-13.5(f).]

ii. An independent civil action for child support may be prosecuted during the pendency of a subsequently filed action for divorce, etc. filed in the same or a different county or may, at the discretion of the court having jurisdiction of the prior proceeding, be consolidated with the action for divorce, etc. [G.S. 50-13.5(f).]

iii. After a final judgment has been entered in an action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce involving a minor child's parents, the prior action for divorce, etc. does not preclude either parent from filing a separate action seeking child support in the same county or district or in a different county or district unless the prior divorce, annulment, or alimony judgment also determined the parents' child support obligations.

[*See Powers v. Parisher*, 104 N.C. App. 400, 409 S.E.2d 725 (1991), *review denied,* 331 N.C. 286, 417 S.E.2d 254 (1992).]

b. Joined as a claim in an action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce; [G.S. 50-13.5(b)(3).]

   i. If an action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce involving the child's parents is pending and final judgment has not been entered, an action for child support **must** be joined as a claim in the pending action for divorce, etc. "or be by motion in the cause in such action." [G.S. 50-13.5(f).]

   ii. *See Holbrook v. Holbrook,* 38 N.C. App. 303, 247 S.E.2d 923 (1978) (because husband's divorce action was pending in Forsyth County when wife filed custody action in Guilford County, Guilford County was without jurisdiction), *review denied,* 296 N.C. 411, 251 S.E.2d 469 (1979).

c. Filed as a cross action in an action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce; [G.S. 50-13.5(b)(4).]

d. Joined with or filed as a counterclaim in a civil action seeking custody or visitation of a minor child; [G.S. 50-13.5(b)(4). *But see* G.S. 110-130.1(c) (in IV-D cases, visitation, custody, and other "collateral issues" must be considered in separate actions; collateral issues regarding visitation and custody cannot be filed in IV-D cases); G.S. 52C-1-103(b)(2) (G.S. Chapter 52C does not grant a North Carolina tribunal jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under Chapter 52C; pursuant to G.S. 52C-1-101(22), "tribunal" includes an administrative agency or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child).]

e. Filed by motion in the cause (either before or after judgment) in an action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce; [G.S. 50-13.5(b)(5); *Bottomley v. Bottomley*, 82 N.C. App. 231, 346 S.E.2d 317 (1986) (plaintiff-husband not precluded from having his child support obligation determined through a motion in the cause in the divorce action by the fact that the divorce judgment had been entered and the court had not previously entered support orders in that action).]

f. Maintained on the court's own motion in an action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce; [G.S. 50-13.5(b)(6).]

g. Joined with a claim to recover public assistance debts pursuant to G.S. 110-135 or with a claim for prior maintenance of a child;

h. In the context of a paternity determination:

   i. Joined with or filed as a counterclaim in a civil action to determine the paternity of a child born out of wedlock; [*See* G.S. 1A-1, Rule 18(a); 49-15.]

   ii. Prosecuted by the issuance by the court, upon application of an interested party, of a summons signed by a judge, clerk of superior court, or assistant clerk of superior court, requiring a putative father who has executed an affidavit of parentage under G.S. 110-132 to appear and show cause why he should not be

ordered to pay child support. [G.S. 110-132(b).] See *Paternity*, Bench Book, Vol. 1, Chapter 10.

3. Civil action for support generally.
   a. Civil actions for child support are heard and decided by the district court judge without a jury. [G.S. 50-13.5(h).]
   b. A court does not have jurisdiction to try a civil action for child support at a session designated only for civil motions. [*Schumacher v. Schumacher*, 109 N.C. App. 309, 426 S.E.2d 467 (1993) (even though all parties may consent, district judge has no authority to hold a trial when only authorized to conduct a civil motions session).]
   c. Except as otherwise provided, the rules of civil procedure apply in civil child support actions pursuant to G.S. 50-13.4 *et seq.* [G.S. 1A-1, Rule 1; 50-13.5(a).]
   d. An individual who brings an action or motion in the cause seeking support for a minor child, and the individual who defends the action, must provide their Social Security numbers to the clerk of superior court. [G.S. 50-13.4(g).] G.S. 50-13.4(g), (h), *amended by* S.L. 2008-12, § 1, effective Oct. 1, 2008, no longer requires Social Security numbers of the parties in a child support order.
   e. Arrest and bail, attachment and garnishment, and other pre-judgment remedies are available in civil actions for child support. [G.S. 50-13.4(f)(3) (remedy of arrest and bail), (4) (remedy of attachment and garnishment); G.S. Chapter 1, Articles 34 (arrest and bail) and 35 (attachment).]
4. When action may be brought generally.
   a. A civil action for child support may be commenced at any time before the child's 18th birthday. [*Freeman v. Freeman,* 103 N.C. App. 801, 407 S.E.2d 262 (1991) (noting that it is well accepted in North Carolina that courts have no authority to order child support for a child who has reached the age of majority and has become emancipated).]
   b. An action seeking reimbursement for past support expenditures may be brought after the child has turned 18, subject to G.S. 1-52(2), which limits recovery to those expenditures incurred within three years before the date the action for support is filed. [*Freeman v. Freeman,* 103 N.C. App. 801, 407 S.E.2d 262 (1991).]
   c. Under appropriate circumstances, a parent may bring an action for child support against his spouse when the parents have neither physically separated nor asserted a claim for divorce from bed and board, at least when one party expresses an intent to leave the marital residence as soon as custody is settled. [*Baumann-Chacon v. Baumann,* 212 N.C. App. 137, 710 S.E.2d 431 (2011) (trial court erred when it dismissed claim for child support for lack of subject matter jurisdiction based on fact that spouses had not separated as of date complaint was filed or when matter was heard). *But cf. Harper v. Harper,* 50 N.C. App. 394, 273 S.E.2d 731 (1981) (indicating that there is no justiciable issue regarding custody and support when parties live together).]
5. Notice requirements.
   a. Motions for support filed in a pending action must be served on the nonmoving parties at least ten days before the date of the hearing on the motion. [G.S. 50-13.5(d)(1).]

b. The minor child's parents (if their addresses are reasonably ascertainable), any person, agency, organization, or institution that has actual custody of the child, and any person, agency, organization, or institution that has been ordered to support the child must be given notice of a civil action for child support if they have not been named as parties and served with process. Failure to provide notice, however, does not affect the validity of a child support order, unless otherwise ordered. [G.S. 50-13.5(e).]

6. Intervention.

a. The child's parents, any person, agency, organization, or institution that has actual custody of the child, and any person, agency, organization, or institution that has been ordered to support the child may intervene in a civil action for child support by filing a notice of appearance and other appropriate pleadings if they have not been named as parties. [G.S. 50-13.5(e)(4).]

b. *See also* G.S. 1A-1, Rule 24; *State ex rel. Crews v. Parker*, 319 N.C. 354, 354 S.E.2d 501 (1987) (grandmother had right to intervene in state's action against putative father for child support and reimbursement of past paid public assistance to assert her right to reimbursement of support she paid for child before receipt of public assistance).

7. Financial affidavits.

a. Local rules may require the parties to file financial affidavits.

b. Sworn financial affidavits have been found to be competent evidence as to the information contained therein. [*See Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007) (duly-sworn affidavits were competent evidence upon which the trial court could rely to determine the cost of raising the parties' children; father's argument that some expenses credited to mother were either incorrect or not calculated for him was dismissed based on fact that father's financial affidavit, but not mother's, failed to attribute to the children any part of his monthly expenses for mortgage or car payments, taxes, insurance, utilities, telephone, grocery, and other expenditures), *review denied*, 362 N.C. 238, 659 S.E.2d 741, *cert. denied*, 555 U.S. 824, 129 S. Ct. 144 (2008); *Parsons v. Parsons,* 231 N.C. App. 397, 752 S.E.2d 530 (2013) (citing *Row*) (affidavit of expenses itself is evidence of a party's expenses, thus, wife's affidavit as to child's educational expenses did not need to be supported by other evidence to be competent and relevant).]

c. Contrary to defendant's assertion that plaintiff's affidavit did not constitute evidence of actual expenditures, an affidavit is recognized by this court as a basis of evidence for obtaining support. [*Savani v. Savani*, 102 N.C. App. 496, 403 S.E.2d 900 (1991) (plaintiff's affidavit setting out the expenses she incurred while child was in her custody was sufficient basis for an order reimbursing her for past support).]

8. Language access services in child support proceedings.

a. As of Oct. 14, 2013, language services have been expanded to all child custody and child support proceedings for all spoken foreign languages. Court interpreters shall be provided at state expense for all limited English proficient parties in interest who require interpreting services during a child custody or child support proceeding. ["Expansion of Language Access Services to All Child Custody and Child Support Proceedings," Memorandum from Brooke A. Bogue, N.C. Administrative Office

of the Courts, Office of Language Access Services, to various judges, clerks, administrators, and others (Sept. 25, 2013), www.nccourts.org/LanguageAccess/Documents/CustodyInterpreter_ExpMemo0913.pdf.]

b. Information about Language Access Services is available at www.nccourts.org/LanguageAccess/.

9. Presentation of evidence.

a. N.C. R. Evid. 611(a) requires a court to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to . . . ascertain[] . . . the truth, . . . avoid needless consumption of time, and . . . protect witnesses from harassment or undue embarrassment."

i. A trial judge's questioning of an unrepresented defendant seeking to reduce his child support obligation did not prejudice the defendant and complied with Rule 611 when the judge's inquiries were focused, and not impermissibly leading, and addressed defendant's previous employment, which defendant voluntary had left weeks after entry of a temporary support order, and his educational and career goals. [*Cumberland Cty. ex rel. Rettig v. Rettig,* 231 N.C. App. 170, 753 S.E.2d 740 (2013) (**unpublished**) (recognizing practice of treating unrepresented litigants no differently than those represented by counsel).]

b. For a case finding no abuse of discretion from a trial court's imposition of a two-day limitation on the presentation of evidence during a custody trial when the parties had agreed to that limitation in a pretrial conference and made no objection at later pretrial conferences or at trial, see *Wolgin v. Wolgin*, 217 N.C. App. 278, 719 S.E.2d 196 (2011) (citing N.C. R. Evid. 611(a)).

10. Disposition.

a. Except when paternity is at issue, within sixty days from the date of service (or within ninety days from the date of service if the parties have consented to an extension of time or if additional time is required because a party or the party's attorney cannot be present at a hearing), a district court judge must enter:

i. An order dismissing a claim for child support,

ii. A temporary order awarding child support, or

iii. A final order awarding child support. [G.S. 50-32 and 50-31(2), (5).]

b. *See also* 45 C.F.R. § 303.101 (75 percent of all IV-D cases must be decided within six months from date of service; 90 percent of all IV-D cases must be decided within twelve months). For definition of a IV-D case and a non-IV-D case, see Section I.C.7, above.

11. Applicability of G.S. 1A-1, Rule 41 (dismissal of action) in child support actions.

a. Voluntary dismissal pursuant to G.S. 1A-1, Rule 41(a).

i. A plaintiff may dismiss an action or claim without order of court by filing:

(a) A notice of dismissal at any time before plaintiff rests his case or

(b) A stipulation of dismissal signed by all parties who have appeared in the action. [G.S. 1A-1, Rule 41(a)(1).]

ii. Once plaintiff rests his case, plaintiff cannot terminate the case by taking a voluntary dismissal. At that point only a judge can dismiss the case. Unless otherwise specified, a dismissal under Rule 41(a)(2) is without prejudice. [G.S. 1A-1, Rule 41(a)(2).]

iii. Plaintiff cannot take a voluntary dismissal any time after a "final" custody and support order has been entered. [*Massey v. Massey,* 121 N.C. App. 263, 465 S.E.2d 313 (1996) (stipulation of dismissal filed by the parties after reconciliation was void and of no effect as to the child custody and child support issues previously resolved by "final" judgment; parties were not free to dismiss voluntarily under Rule 41(a) a final determination of child custody and support; moreover, express language of G.S. 1A-1, Rule 41(a)(1) provides for dismissal of an action or claim, not an order).]

iv. Voluntary dismissal of a support claim probably vacates a temporary child support order, as long as no affirmative relief has been requested by the nondismissing party. [*See Doe v. Duke Univ.*, 118 N.C. App. 406, 408, 455 S.E.2d 470, 471 (1995) (quoting *Gibbs v. Carolina Power & Light Co.,* 265 N.C. 459, 464, 144 S.E.2d 393, 398 (1965)) (protective order entered during medical malpractice case was nullified by voluntary dismissal; dismissal "carries down with it previous rulings and orders in the case"); *Barham v. Hawk*, 165 N.C. App. 708, 600 S.E.2d 1 (2004) (voluntary dismissal nullified discovery order entered in case), *aff'd without precedential value,* 360 N.C. 358, 625 S.E.2d 778 (2006).]

b. Involuntary dismissal pursuant to G.S. 1A-1, Rule 41(b) for failure to prosecute.

i. Under G.S. 1A-1, Rule 41, a defendant may move for dismissal of an action or of any claim therein for failure of plaintiff to prosecute or to comply with the rules of civil procedure or any court order. [G.S. 1A-1, Rule 41(b).]

ii. Unless the court in its order for dismissal otherwise specifies, a dismissal pursuant to Rule 41(b) and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a necessary party, operates as an adjudication on the merits, meaning it is a dismissal with prejudice. [G.S. 1A-1, Rule 41(b).]

iii. When a motion or complaint is involuntarily dismissed with prejudice, the party is precluded from filing another motion or complaint with identical allegations. The party is not precluded from filing another motion or complaint asserting different allegations and requesting different relief. [*Hebenstreit v. Hebenstreit,* 769 S.E.2d 649 (N.C. Ct. App. 2015) (trial court *sua sponte* involuntarily dismissed for failure to prosecute father's motion for modification of custody and for contempt, the contempt motion being based on a single allegation that mother had left the state with the child, completely denying father access to the child in violation of an earlier order awarding father secondary physical custody and liberal visitation; trial court erred when it dismissed father's second motion for temporary emergency custody and for contempt based on its conclusion that all matters raised in the second motion for contempt had previously been adjudicated by the involuntary dismissal of the first contempt motion; father's second contempt motion contained additional allegations not included in the first

contempt motion, alleged additional acts of contempt, and requested additional relief not requested in the first motion and, thus, was not barred).]

12. Automatic stay of proceedings.
    a. Filing of a bankruptcy petition by an obligor does not automatically stay a civil proceeding to establish support. [*See* 11 U.S.C. § 362 (b)(2)(A)(ii).] The automatic stay does not apply to:
        i. "[T]he commencement or continuation of a civil action or proceeding . . . for the establishment or modification of an order for domestic support obligations." [11 U.S.C. § 362(b)(2)(A)(ii).]
        ii. For a more complete discussion on the automatic stay in the context of child support, see *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section XI.
    b. The stay may affect the court's ability to enforce a support order through civil contempt or to enter wage withholding in cases filed before Oct. 17, 2005. [See *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section XI.]
    c. A defendant who is on active military duty may request that the court stay a civil action for child support if the defendant's military service would materially affect her ability to defend herself. [50 U.S.C. § 3932 (Servicemembers Civil Relief Act (SCRA)). *See Cromer v. Cromer*, 303 N.C. 307, 278 S.E.2d 518 (1981); *Judkins v. Judkins*, 113 N.C. App. 734, 441 S.E.2d 139, *review denied,* 336 N.C. 781, 447 S.E.2d 424 (1994).] For more on the SCRA, see *Child Custody*, Bench Book, Vol. 1, Chapter 4.
13. The Uniform Deployed Parents Custody and Visitation Act (UDPCVA or "the Act"), *added by* S.L. 2013-27, § 3, effective Oct. 1, 2013.
    a. The Act provides a procedure whereby parents may enter into a temporary agreement for custodial responsibility of their child(ren) during deployment; in cases where there is no agreement, the Act sets out a judicial procedure for entry of a temporary custody order.
    b. With respect to child support, the Act provides that if an agreement granting caretaking authority is executed, the court may enter a temporary order for child support consistent with the laws of North Carolina if the court has jurisdiction under the Uniform Interstate Family Support Act, G.S. Chapter 52C. [G.S. 50A-378.] The parties may not modify existing support obligations in an agreement executed pursuant to G.S. 50A-360. For more on the UDPCVA, see *Child Custody*, Bench Book, Vol. 1, Chapter 4.

G. Defenses in an Action for Support

1. Lack of jurisdiction.
    a. A defendant may raise lack of subject matter jurisdiction (including lack of subject matter jurisdiction arising from the existence of a controlling child support order entitled to recognition under the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA) (applicable to a child support order issued by a state tribunal but not to a foreign support order) or the Uniform Interstate Family Support Act (UIFSA) (applicable to a child support order issued by a state tribunal and to a

foreign support order)) or lack of personal jurisdiction as a defense in a civil action for child support. See Sections I.A and I.B, above.

2. Laches or equitable estoppel.
   a. Laches/estoppel when North Carolina law applied.
      i. There do not appear to be any reported cases in which a defendant has successfully asserted the defense of laches in a proceeding to collect vested, past due child support arrearages under a North Carolina or a foreign order, to the extent not barred by North Carolina's ten-year statute of limitations. [*See Malinak v. Malinak,* 775 S.E.2d 915 (N.C. Ct. App. 2015) (citing *Larsen v. Sedberry*, 54 N.C. App. 166, 282 S.E.2d 551 (1981)) (trial court erred in applying the doctrine of laches to bar recovery of court-ordered child support not barred by the statute of limitations); *Larsen* (laches did not bar mother's action against father's estate to collect child support owed under a Florida judgment entered fourteen years before; recovery allowed except to the extent barred by the ten-year statute of limitations), *review denied,* 304 N.C. 728, 288 S.E.2d 381 (1982).]
      ii. North Carolina's court of appeals has not recognized equitable estoppel as a valid defense against the enforcement of an obligor's legal obligation to pay court-ordered child support. [*See Meehan v. Lawrance,* 166 N.C. App. 369, 602 S.E.2d 21 (2004) (wife not estopped from enforcing child support order when husband failed to show detrimental reliance on alleged oral agreement that changed his obligation to provide health insurance); *Baker v. Showalter*, 151 N.C. App. 546, 566 S.E.2d 172 (2002) (when obligor was unable to demonstrate that she relied to her detriment on the written and oral agreement of the parties for reduced child support, the trial court did not err by declining to apply the doctrine of equitable estoppel; wife's reduced payments were to wife's benefit, as they allowed her to buy a townhome); *Webber v. Webber*, 32 N.C. App. 572, 232 S.E.2d 865 (1977) (wife not estopped from bringing an action in North Carolina for divorce, alimony, and child support by agreeing that she would not contest divorce action filed by husband in Georgia in exchange for title to marital residence and a car; wife did not contest Georgia divorce and was entitled to assert her right to alimony and child support).]
   b. Laches when law of another state applied.
      i. Trial court correctly vacated mother's registration of an Illinois child support order based on laches, as construed by the Illinois courts, even though laches is not a defense available in North Carolina in a proceeding to enforce vested, past due child support arrearages. Under the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), father, as nonregistering party, was permitted to assert any defense recognized in Illinois, the issuing state, including the equitable defense of laches. [*Tepper v. Hoch*, 140 N.C. App. 354, 536 S.E.2d 654 (2000) (denial of wife's claim for child support arrears affirmed; father prejudiced by mother's decision to seek arrearages seven years after child emancipated).] For more on equitable estoppel and laches, see *Enforcement of Child Support Orders,* Part 4 of this Chapter, Section I.F.

3. Statute of limitations. See *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section I.F.

4. Nonpaternity when issue was previously decided.

   a. If paternity has not been established by court order, a party may raise the issue of the child's paternity in a child support proceeding. The party may request a paternity test pursuant to G.S. 8-50.1(b1), which provides for blood or genetic marker testing in the trial of any civil action in which the question of parentage arises.

   b. Attempts to challenge paternity have been rejected on the following grounds.

      i. A prior determination of paternity is itself a bar. [*See Helms v. Landry,* 363 N.C. 738, 686 S.E.2d 674 (finding in 2002 custody order involving unmarried parents that plaintiff was the biological father was a judicial determination of paternity and was binding in a 2007 proceeding filed by mother contesting paternity; trial court properly denied mother's motion for paternity testing), *rev'g per curiam for reasons stated in dissenting opinion in* 194 N.C. App. 787, 671 S.E.2d 347 (2009) (Jackson, J., concurring in part and dissenting in part); *see also* G.S. 52C-3-314 and *Reid v. Dixon,* 136 N.C. App. 438, 524 S.E.2d 576 (2000) (when paternity was previously established by Alaska legal proceeding based on father's admission of paternity, father could not later plead nonparentage as a defense in a UIFSA enforcement proceeding); *Heavner v. Heavner,* 73 N.C. App. 331, 326 S.E.2d 78 (parentage already decided when former husband pled guilty in criminal non-support action and admitted paternity in divorce complaint), *review denied,* 313 N.C. 601, 330 S.E.2d 610 (1985).]

      ii. A prior determination of paternity is res judicata in a later proceeding. [*Williams v. Holland*, 39 N.C. App. 141, 249 S.E.2d 821 (1978) (defendant barred by res judicata from putting paternity in issue in child support enforcement action based on Nevada divorce decree that found child to be child of the marriage; when defendant is barred from raising issue, it follows that court should deny motion for paternity testing).]

      iii. A paternity judgment based on an unrescinded affidavit of paternity pursuant to G.S. 110-132 is res judicata in a later proceeding relating to support. [*See Person Cty. ex rel. Lester v. Holloway*, 74 N.C. App. 734, 329 S.E.2d 713 (1985) (defendant could not attack, in an enforcement proceeding relating solely to support, a judgment of paternity based on defendant's acknowledgement of paternity under G.S. 110-132(a)); *Leach v. Alford*, 63 N.C. App. 118, 304 S.E.2d 265 (1983) (language in G.S. 110-132(b) that a "judgment of paternity shall be res judicata as to that issue and shall not be reconsidered by the court" applies to child support proceedings, recognizing the established rule that judgments of paternity are res judicata in later support proceedings; quoted language is not an absolute bar to a party seeking relief under G.S. 1A-1, Rule 60(b) from an acknowledgment of paternity based on G.S. 110-132(a) when support is not at issue).] Note that before Oct. 1, 1997, an acknowledgment of paternity executed pursuant to G.S. 110-132(a) filed with and approved by a district court judge had the same force and effect as a judgment of the court. Between Oct. 1, 1997, and Oct. 1, 1999, an acknowledgment of paternity pursuant to G.S. 110-132(a) constituted

an admission of paternity, subject to a right of rescission. [S.L. 1997-433, § 4.7.] Since Oct. 1, 1999, the admission of paternity arising from an acknowledgment of paternity (now affidavit of parentage) under G.S. 110-132(a) has the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation.

iv. For a discussion on setting aside a voluntary support agreement based on a subsequent denial of paternity, see Section III.A.7, below.

c. A party is entitled to testing under G.S. 8-50.1(b1) to contest paternity if there is no judgment determining paternity and the party never formally acknowledged paternity in the manner prescribed by G.S. 110-132 or in another sworn written statement. [*See Ambrose v. Ambrose*, 140 N.C. App. 545, 536 S.E.2d 855 (2000) (former husband not barred from contesting paternity of child born during marriage because the issue had not been litigated and he had never formally acknowledged paternity under G.S. 110-132 for purposes of child support; blood test could be used to rebut presumption of paternity attaching to child born of the marriage).]

i. In North Carolina, there is no presumption that a father who is named on a birth certificate has had his paternity *judicially* established. [Sara DePasquale, Fathers and Paternity: Applying the Law in North Carolina Child Welfare Cases 42 n.7 (UNC School of Government, 2016) (hereinafter Fathers and Paternity) (emphasis in original) (citing G.S. 130A-101(e), (f); 49-12; 49-13; 130A-118(b)(2), (3); Title 10A of the North Carolina Administration Code, Ch. 41H, § .0910, and *In re J.K.C.,* 218 N.C. App. 22, 721 S.E.2d 264 (2012), and *Gunter v. Gunter,* 228 N.C. App. 138, 746 S.E.2d 22 (2013) **(unpublished)**). *But see J.K.C.* (in a proceeding to terminate parental rights (TPR) pursuant to G.S. 7B-1111(a)(5) (unwed father failed to acknowledge or establish paternity before TPR action initiated), there is a rebuttable presumption that respondent father took the required legal steps to establish paternity if he is named on the child's amended birth certificate); *Gunter* (mother could not rely on the holding in *J.K.C.* to support her argument that husband's name on child's birth certificate judicially established his paternity of the child).]

d. G.S. 50-13.13, *added by* S.L. 2011-328, § 3, effective Jan. 1, 2012, sets out a process to set aside an order of paternity or an affidavit of parentage under limited circumstances. See *Liability and Amount*, Part 1 of this Chapter, Section II.D.1(e).

e. See *Paternity*, Bench Book, Vol. 1, Chapter 10, for more on paternity, including a discussion of res judicata and collateral estoppel as defenses in a civil action to establish paternity.

5. Defenses found not valid.

a. A claim that one of the child's parents tricked the other parent into conceiving the child is not a valid defense in a suit to establish paternity and for child support brought against the deceived parent. [*Smith v. Price*, 74 N.C. App. 413, 328 S.E.2d 811 (1985), *aff'd in part, rev'd in part on other grounds,* 315 N.C. 523, 340 S.E.2d 408 (1986).]

b. A defendant may not raise as a defense the custodial parent's or the caretaker's waiver of the child's right to support or release of the defendant by agreement or contract,

either with or without consideration, from her child support obligation. [*See Cartrette v. Cartrette*, 73 N.C. App. 169, 325 S.E.2d 671 (1985) (a parent cannot contract away her obligation to support a dependent child, nor can a parent by contract diminish the rights of the state or a county to seek reimbursement for public assistance paid); *see also Voss v. Summerfield*, 77 N.C. App. 839, 336 S.E.2d 144 (1985) (trial court erred in denying motion of the custodial parent, in this case the father, to modify a consent order to allow for child support where the trial court's denial was based on father's waiver of child support in a separation agreement and was entered without consideration of father's evidence on changed circumstances; while the court of appeals cited precedent holding that parents cannot by contract withdraw their children from the "protective custody" of the court, on remand, father would have the burden to show a substantial change in circumstances affecting the welfare of the child, with the court giving due deference to father's waiver of child support in the separation agreement, which gave rise to a presumption that, absent contrary evidence, the amount agreed upon, in this case zero, was just and reasonable).] For more on the effect of support provisions in incorporated and unincorporated separation agreements, see Section I.G.6., below

c. The significant, separate income or estate of a minor child does not relieve a parent of his responsibility to support the child to the extent he is able to do so. [*See Browne v. Browne*, 101 N.C. App. 617, 400 S.E.2d 736 (1991) (separate property of each child in excess of $300,000 did not diminish or relieve former husband's obligation to provide for their support); *Sloop v. Friberg*, 70 N.C. App. 690, 320 S.E.2d 921 (1984) (no error when court did not consider that children each had substantial trust accounts arising from a wrongful death suit on behalf of their mother's estate).]

d. A noncustodial parent's legal obligation to support her child generally is not dependent or contingent on whether the custodial parent allows her to visit the child or to exercise visitation rights pursuant to a court order. [*See Appert v. Appert*, 80 N.C. App. 27, 341 S.E.2d 342 (1986) (trial court erred when it ordered that child support paid by father be placed in escrow in the event the minor children failed or refused to abide by the visitation privileges allowed the father); *McGee v. McGee,* 118 N.C. App. 19, 453 S.E.2d 531 (duty to pay child support is wholly independent of the noncustodial parent's right to visitation), *review denied,* 340 N.C. 359, 458 S.E.2d 189 (1995).]

e. Fact that children's grandparents had paid private school tuition in the past did not relieve the mother of her obligation to pay her share of that expense. [*Allen v. Allen*, 201 N.C. App. 159, 688 S.E.2d 118 (2009) (**unpublished**).]

6. Effect of support provisions in a separation agreement.

a. Unincorporated separation agreements.

i. The fact that the parents of a minor child have entered into a binding separation agreement that includes provisions for child support does not preclude the custodial parent from instituting a civil action for support pursuant to G.S. 50-13.4 *et seq.* and does not deprive the district court of jurisdiction to enter an order requiring the noncustodial parent to pay support without proof of a change in circumstances. [*Powers v. Parisher*, 104 N.C. App. 400, 409 S.E.2d 725 (1991) (unincorporated agreement), *review denied,* 331 N.C. 286, 417 S.E.2d

254 (1992); *Brind'Amour v. Brind'Amour,* 196 N.C. App. 322, 674 S.E.2d 448 (2009) (unincorporated Memorandum of Agreement of Equitable Distribution and Support).]

ii. However, there is a presumption that the amount of support set in an unincorporated separation agreement is reasonable. [*Pataky v. Pataky,* 160 N.C. App. 289, 585 S.E.2d 404 (2003), *aff'd per curiam in part, review dismissed in part,* 359 N.C. 65, 602 S.E.2d 360 (2004).]

iii. A court must set prospective support in accordance with the agreement unless the presumption is rebutted. [*Pataky v. Pataky,* 160 N.C. App. 289, 585 S.E.2d 404 (2003), *aff'd per curiam in part, review dismissed in part,* 359 N.C. 65, 602 S.E.2d 360 (2004).]

iv. If the *Pataky* presumption is rebutted, the court may enter an order of prospective support establishing child support in an amount less than the amount established by a separation or child support agreement. [*Brind'Amour v. Brind'Amour,* 196 N.C. App. 322, 674 S.E.2d 448 (2009) (citing *Bottomley v. Bottomley*, 82 N.C. App. 231, 346 S.E.2d 317 (1986)).]

v. However, the court of appeals also has held that while parties may contract that support will be paid in a higher amount or for longer than required by statute, if the contract amount or duration is less generous than statutory provisions, the obligee can recover support for the amount or the duration period provided by G.S. 50-13.4. [*Malone v. Hutchinson-Malone*, 784 S.E.2d 206, 209 (N.C. Ct. App. 2016).]

vi. For a discussion of the application of the N.C. Child Support Guidelines when there is an unincorporated separation agreement, see *Liability and Amount*, Part 1 of this Chapter.

b. Incorporated separation agreements.

i. An incorporated separation agreement is treated as a court order and, as such, is enforceable by contempt and may be modified only upon a showing of changed circumstances. [*Beamer v. Beamer,* 169 N.C. App. 594, 610 S.E.2d 220 (2005) (incorporated support agreements modifiable only upon a showing of changed circumstances); *Powers v. Powers,* 103 N.C. App. 697, 407 S.E.2d 269 (1991) (incorporated separation agreement considered a court order enforceable by contempt).]

ii. A separation agreement approved by the court is treated as a court-ordered judgment. [*Walters v. Walters,* 307 N.C. 381, 298 S.E.2d 338 (1983) (applicable to judgments entered on or after Jan. 11, 1983).]

iii. After *Walters v. Walters,* 307 N.C. 381, 298 S.E.2d 338 (1983), a separation agreement entered as a consent judgment is treated the same as a judgment entered after litigation. There is no difference between an agreement that the court adopted or simply signed off on as in other civil cases. [*See Walters v. Walters,* 307 N.C. 381, 298 S.E.2d 338 (1983) (consent judgments are modifiable and enforceable in the same manner as any other judgment in a domestic relations case); *Fucito v. Francis,* 175 N.C. App. 144, 622 S.E.2d 660 (2005) (for practical

purposes, in *Walters*, the court fashioned a "one-size-fits-all" rule applicable to incorporated settlement agreements in the area of domestic law, holding that when parties present their separation agreement to the court for approval, the agreement will no longer be considered a contract between the parties, but rather a court-ordered judgment).]

iv. Parties may contract that support will be paid in a higher amount or for longer than required by statute, but if the contract amount or duration is less generous than statutory provisions, the obligee can recover support for the amount or the duration period provided by G.S. 50-13.4. [*Malone v. Hutchinson-Malone*, 784 S.E.2d 206, 209 (N.C. Ct. App. 2016).]

c. See Section III.C, below, and *Spousal Agreements*, Bench Book, Vol. 1, Chapter 1 for more on the effect of child support provisions in a separation agreement.

H. Child Support Orders

1. Checklists setting out the findings for initial support orders, modification of orders, and attorney fees are included at the end of this Chapter.
2. Generally.
   a. All child support orders must contain a finding as to the obligor's actual present income.
   b. Orders setting support by application of the child support guidelines do not need specific findings of fact regarding a child's reasonable needs or the relative ability of each parent to provide support. [N.C. Child Support Guidelines, 2015 Ann. R. N.C. 49 (effective Jan. 1, 2015, and applicable to child support actions heard on or after that date) (hereinafter referred to as 2015 Guidelines).] For more on the 2015 Guidelines, see Cheryl Howell, *We Have New Child Support Guidelines,* UNC Sch. of Gov't: On the Civil Side Blog (Jan. 28, 2015), http://civil.sog.unc.edu/we-have-new-child-support-guidelines.
   c. Findings of fact are required when a court receives a request to deviate from the guidelines. [See *Liability and Amount*, Part 1 of this Chapter, Sections IV.F and G.]
   d. Findings of fact also are required to show changed circumstances in modification cases. [See *Modification of Child Support Orders*, Part 3 of this Chapter, Section II.F.10.]
   e. In all orders, the decretal part of the order should include a provision directing the parent to pay child support in the amount and manner ordered. However, an order that included a directive requiring a parent to pay child support only in the findings portion of the order, and not in the decretal portion of the order, has been found to be a decree of the trial court enforceable by contempt. [*See Langston v. Johnson,* 142 N.C. App. 506, 543 S.E.2d 176 (2001).]
   f. **NOTE:** G.S. 50-13.13(f) provides a procedure for relief from a child support order based on a finding of nonpaternity under certain circumstances. [G.S. 50-13.13(f), *added by* S.L. 2011-328, § 1, effective Jan. 1, 2012, and applicable to motions or claims for relief filed on or after that date.]

3. Default judgment. A district court judge may enter a default judgment pursuant to G.S. 1A-1, Rule 55 in a civil action for child support. [*Boyd v. Marsh*, 47 N.C. App. 491, 267 S.E.2d 394 (1980) (order setting aside paternity and child support default judgments reversed).]
    a. The Servicemembers Civil Relief Act (SCRA) was enacted by Congress, effective Dec. 19, 2003. It is a complete revision of the Soldiers' and Sailors' Civil Relief Act (SSCRA).
    b. The SCRA and SSCRA were previously codified in the Appendix to Title 50 of the United States Code and cited as 50 U.S.C. app. § ___. In December 2015, the SCRA was recodified at 50 U.S.C. §§ 3901 *et seq*. This section of the Bench Book cites sections of the SCRA as recodified. For a chart setting out the former and current statutory cites, see *Silent Partner*, "The Old and The New" — SCRA Concordance," A.B.A. Sec. Fam. L. (Dec. 16, 2015).
    c. For an overview of the SCRA, see Cheryl Howell, *Servicemembers' Civil Relief Act Applies to Family Cases Too*, UNC Sch. of Gov't: On the Civil Side Blog (Feb. 13, 2015), http://civil.sog.unc.edu/servicemembers-civil-relief-act-applies-to-family-cases-too.
    d. The SCRA limits the court's authority to enter a default judgment against a defendant who is on active military duty.
        i. The SCRA prohibits entry of a "default" judgment against a servicemember who has not made an appearance until after the court appoints an attorney for the defendant servicemember. [50 U.S.C. § 3931(b)(2). *See Smith v. Davis*, 88 N.C. App. 557, 559, 364 S.E.2d 156, 158 (1988) (stating that the "purpose of [SCRA] section 520 [now 521, recodified as 50 U.S.C. § 3931(b)] in particular is to protect persons in the military from having default judgments entered against them without their knowledge and without an opportunity to defend their interests").]
        ii. The term "default judgment" has broad meaning under the SCRA and includes any order or judgment adverse to the interests of the servicemember entered when the servicemember has not made an appearance.
        iii. Default judgments against defendants in violation of the SCRA, however, are voidable, not void. [50 U.S.C. § 3931(g) (authorizing a court to vacate or set aside a default judgment against a servicemember); *United States v. Hampshire,* 892 F. Supp. 1327 (D. Kan. 1995) (district court holding that a judgment rendered in violation of the SSCRA (predecessor of the SCRA) is voidable), *aff'd on other grounds,* 95 F.3d 999 (10th Cir. 1996), *cert. denied,* 519 U.S. 1084, 117 S. Ct. 753 (1997); *Taylor v. Ferguson*, 437 S.W.3d 799, 804 (Mo. Ct. App. 2014) (citing *Klaeser v. Milton*, 47 So. 3d 817 (Ala. Civ. App. (2010)) ("[a] default judgment entered without fulfilling the affidavit requirement-indeed all requirements of the SCRA-is voidable").]
        iv. To reopen a default judgment, a defendant servicemember must make a timely motion and show that he did not appear in the action, that he has a meritorious or legal defense, and that he was materially affected by reason of military service in making a defense to the action. [50 U.S.C. § 3931(g); *Smith v. Davis*, 88 N.C. App. 557, 364 S.E.2d 156 (1988) (active duty servicemember entitled to

reopen pursuant to Soldiers' and Sailors' Civil Relief Act default judgment that increased amount of child support).]

e. For more on the Servicemembers Civil Relief Act, see *Child Custody*, Bench Book, Vol. 1, Chapter 4, Section VIII.

4. Temporary orders. A court may enter a temporary child support order pending the trial of a civil action for child support.

a. Jurisdiction.

i. If the circumstances of the case render it appropriate, the district court has jurisdiction to enter temporary custody and support orders for minor children. [G.S. 50-13.4(d)(2).]

ii. G.S. Chapter 50B gives the district court jurisdiction to enter temporary custody and support orders as part of a domestic violence protection order. [G.S. 50B-3(a)(4), (6).]

iii. In a UIFSA proceeding, a North Carolina tribunal may issue a temporary child support order if the tribunal determines it is appropriate and the individual ordered to pay is:

(a) A presumed father of the child,

(b) Petitioning to have his paternity adjudicated,

(c) Identified as the father of the child through genetic testing,

(d) An alleged father who has declined to submit to genetic testing,

(e) Shown by clear and convincing evidence to be the father of the child,

(f) An acknowledged father as provided by Chapter 110 of the General Statutes,

(g) The mother of the child, or

(h) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated. G.S. 52C-4-401(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

b. Generally.

i. A temporary child support order may be entered ex parte under appropriate circumstances, pending service of process or notice. [G.S. 50-13.5(d)(2).]

ii. The guidelines must be used when the court enters a temporary child support order in a noncontested case or in a contested hearing. [2015 Guidelines.]

iii. Absent grounds for deviation, the amount of a parent's court-ordered child support obligation under a temporary order must be determined pursuant to North Carolina's child support guidelines. [G.S. 50-13.4(c) (the court shall determine amount of support by applying the guidelines); 2015 Guidelines.]

c. Whether an order is temporary or permanent.

i. A child support order is "permanent" when it is based on the merits of the case and is intended to be final. [*Gray v. Peele*, 235 N.C. App. 554, 761 S.E.2d 739 (2014) (citing *Miller* (*Sikes*) *v. Miller,* 153 N.C. App. 40, 568 S.E.2d 914 (2002)).]

ii. When determining whether a child support order is temporary or permanent, the appellate court has looked to the intent behind the trial court's order, considering whether the order explicitly identifies itself as a temporary order and whether the language of the order contemplates that another permanent order will be entered in the future. [*Gray v. Peele*, 235 N.C. App. 554, 761 S.E.2d 739 (2014) (citing *Miller* (*Sikes*) *v. Miller,* 153 N.C. App. 40, 568 S.E.2d 914 (2002), and *Cole v. Cole*, 149 N.C. App. 427, 562 S.E.2d 11 (2002)).]

iii. Where an unincorporated separation agreement contained a provision for child support, there was no provision in the agreement setting a deadline for court action or placing an expiration date on the agreement, the parties were free to abide by the agreement indefinitely and complied with it for more than eight years, the court found the agreement was not intended to be temporary and was not analogous to an interim court order, even though the parties had agreed to "attempt to negotiate the provisions of a child support and custody consent order for entry prior to March 1, 1999." [*Carson v. Carson,* 199 N.C. App. 101, 103, 680 S.E.2d 885, 887 (2009); *Harnett Cty. ex rel. De la Rosa v. De la Rosa,* 770 S.E.2d 106, 112 (N.C. Ct. App. 2015) (2011 child support order was a permanent order when it did not set a future hearing date to determine permanent child support and the parties and the trial court treated it as a permanent child support order in subsequent pleadings and at a later hearing, even though the order was entered without prejudice and stated that it was a temporary order).]

iv. When there is an interim court order, the court clearly intends to take further action. [*Carson v. Carson,* 199 N.C. App. 101, 680 S.E.2d 885 (2009).]

v. A temporary order may convert into a final order when neither party requests calendaring of the matter addressed in the temporary order within a reasonable time after entry of the temporary order. [*LaValley v. LaValley*, 151 N.C. App. 290, 564 S.E.2d 913 (2002) (since temporary custody order had converted into final order, trial court was to employ substantial change of circumstances test).]

vi. For a discussion of when an order is temporary or permanent in the context of child custody, see *Child Custody*, Bench Book, Vol. 1, Chapter 4. The rules used to determine whether a child custody order is temporary or permanent "logically apply to the child support context as well." [*Sarno* v. *Sarno*, 235 N.C. App. 597, 600, 762 S.E.2d 371, 373 (2014); *Harnett Cty. ex rel. De la Rosa v. De la Rosa,* 770 S.E.2d 106, 112 (N.C. Ct. App. 2015) (even though *LaValley v. LaValley*, 151 N.C. App. 290, 564 S.E.2d 913 (2002), addressed whether an order was temporary or permanent in the context of child custody, its logic was "instructive" in a case considering whether a child support order was temporary or permanent).]

d. Effect of temporary order.

i. The amount of support in the final order may be more or less than the support required in the temporary order. [*See Zaliagiris v. Zaliagiris*, 164 N.C. App. 602, 596 S.E.2d 285 (2004) (where guidelines did not apply because of parties' high combined annual income, court ordered permanent support in an amount less than that ordered as temporary support), *review on additional issues denied,*

359 N.C. 643, 617 S.E.2d 662 (2005); *Sikes v. Sikes*, 330 N.C. 595, 411 S.E.2d 588 (1992) (court may enter a final support order that requires a parent to pay more support than that required under the temporary order); *Bookholt v. Bookholt*, 136 N.C. App. 247, 523 S.E.2d 729 (1999) (where guidelines did not apply because of parties' high combined annual income, the amount of temporary child support agreed to by the parties, $2,000 per month, did not bind trial court as to the amount of permanent support awarded, $2,350).]

ii. The court may order final support in an amount different from that required in the temporary support order without finding a substantial change of circumstances since entry of the temporary order. [*Sikes v. Sikes*, 330 N.C. 595, 411 S.E.2d 588 (1992); *Harnett Cty. ex rel. De la Rosa v. De la Rosa*, 770 S.E.2d 106, 112 (N.C. Ct. App. 2015) (if child support order is temporary, a parent does not have to demonstrate a change of circumstances to modify the order); *Miller* (*Sikes*) *v. Miller,* 153 N.C. App. 40, 568 S.E.2d 914 (2002). *See also McKyer v. McKyer,* 179 N.C. App. 132, 632 S.E.2d 828 (2006) (noting that, under *Miller,* a permanent support order may not be retroactively modified without a showing of a substantial change of circumstances, while a temporary support order may be retroactively modified without showing such a change).]

iii. The court may make its award of final support effective as of the date the complaint was filed (prospective support); cases barring courts from ordering retroactive increases in child support without some evidence of an emergency situation are not applicable to temporary orders, as rule set out in those cases applies to ordering child support before action is filed. [*Cole v. Cole*, 149 N.C. App. 427, 562 S.E.2d 11 (2002). *See also McKyer v. McKyer,* 179 N.C. App. 132, 632 S.E.2d 828 (2006) (citing *Miller* (*Sikes*) *v. Miller,* 153 N.C. App. 40, 568 S.E.2d 914 (2002)) (a permanent support order may not be retroactively modified without a showing of an emergency, while a temporary support order may be retroactively modified without a showing of such emergency); *Sikes v. Sikes*, 330 N.C. 595, 411 S.E.2d 588 (1992) (until a final order is entered as to child support, G.S. 50-13.10, on vesting, does not come into play).] See *Liability and Amount*, Part 1 of this Chapter.

iv. A trial court has been found not to have abused its discretion when it made a final order effective at a date prior to entry of the final order but not back to the filing date of the complaint. [*Zaliagiris v. Zaliagiris*, 164 N.C. App. 602, 596 S.E.2d 285 (2004) (September 2002 order made permanent support retroactive to Feb. 1, 2002, two weeks before trial started, but not back to Feb. 1, 2000, date complaint was filed), *review on additional issues denied*, 359 N.C. 643, 617 S.E.2d 662 (2005). *But see Albemarle Child Support Enforcement Agency ex rel. Miller v. Hinton*, 147 N.C. App. 700, 556 S.E.2d 634 (2001) (citing *State ex rel. Fisher v. Lukinoff*, 131 N.C. App. 642, 507 S.E.2d 591 (1998)) (there is an implied presumption that prospective child support payments begin at the time of the filing of the complaint).]

e. Appeal of a temporary order.

i. An order providing for temporary child support is interlocutory and not an immediately appealable final order. [*Banner v. Hatcher,* 124 N.C. App. 439, 477

S.E.2d 249 (1996). *Cf. Hamilton v. Johnson,* 228 N.C. App. 372, 747 S.E.2d 158 (2013) (appeal of an order finding defendant in contempt of a temporary child support order affected a substantial right, making appeal proper; no final child support order had been entered in the matter).] See Section I.I, below, for more on appeals.

(a) G.S. 50-19.1, *added by* S.L. 2013-411, § 2, effective Aug. 23, 2013, providing for immediate appeal of certain actions when other claims are pending in the same action, does not change the nonappealability of an order for temporary child support.

ii. A temporary order must in fact be temporary and not just designated as such to prevent appellate review. [*See Cox v. Cox,* 133 N.C. App. 221, 515 S.E.2d 61 (1999) (agreeing with defendant's argument that she should not be denied appellate review based on trial court's statement that the order was temporary, because in reality, order was permanent).]

f. Temporary order pursuant to The Uniform Deployed Parents Custody and Visitation Act (UDPCVA or "the Act"), *added by* S.L. 2013-27, § 3, effective Oct. 1, 2013.

i. The Act provides a procedure whereby parents may enter into a temporary agreement for custodial responsibility of their child(ren) during deployment; in cases where there is no agreement, the Act sets out a judicial procedure for entry of a temporary custody order.

ii. With respect to child support, the Act provides that if an agreement granting caretaking authority is executed, the court may enter a temporary order for child support consistent with the laws of North Carolina if the court has jurisdiction under the Uniform Interstate Family Support Act, G.S. Chapter 52C. [G.S. 50A-378.] The parties may not modify existing support obligations in an agreement executed pursuant to G.S. 50A-360. For more on the UDPCVA, see *Child Custody*, Bench Book, Vol. 1, Chapter 4.

g. Temporary order required in a IV-D case pending paternity determination. For definition of a IV-D case and a non-IV-D case, see Section I.C.7, above.

i. A court must enter a temporary child support order in a IV-D case pending a determination of paternity upon motion and a showing of clear, cogent, and convincing evidence of paternity (including genetic test results indicating a probability of paternity of at least 97 percent). [G.S. 49-14(f).]

ii. If paternity is not thereafter established, the putative father must be reimbursed the full amount of support paid pursuant to the temporary order. [G.S. 49-14(f).]

h. For discussion of temporary orders in the custody context, see *Child Custody*, Bench Book, Vol. 1, Chapter 4.

5. Consent judgment.

a. The court's authority to enter a consent judgment depends upon the consent of all parties to entry of the order at the time the court approves it. [*Rockingham Cty. Dep't of Soc. Servs. ex rel. Walker v. Tate*, 202 N.C. App. 747, 689 S.E.2d 913 (2010) (citing *Tevepaugh v. Tevepaugh,* 135 N.C. App. 489, 521 S.E.2d 117 (1999)).]

b. When defendant had not consented to entry of a consent judgment reinstating a previous child support order, the trial court did not have authority to enter a consent order providing for reinstatement of the obligation. [*Rockingham Cty. Dep't of Soc. Servs. ex rel. Walker v. Tate,* 202 N.C. App. 747, 689 S.E.2d 913 (2010) (there was no written memorandum of the terms of the order signed by all parties and the trial court, no order was dictated in the record at the time of the hearing, defendant was not present at the hearing to indicate his consent to the terms or entry of the consent judgment, no substantive hearing occurred when neither mother nor father, nor father's counsel, were present and no evidence or testimony was presented; defendant's signed and notarized statement presented by plaintiff's counsel in which defendant agreed to have his child support obligation reinstated was not sufficient when it was unclear how the trial court obtained the "consent statement," as it was not presented as an exhibit at the hearing and had no filing date).]

c. A consent judgment need not contain findings of fact or conclusions of law. [*Rockingham Cty. Dep't of Soc. Servs. ex rel. Walker v. Tate*, 202 N.C. App. 747, 689 S.E.2d 913 (2010) (citing *Buckingham v. Buckingham*, 134 N.C. App. 82, 516 S.E.2d 869, *review denied,* 351 N.C. 100, 540 S.E.2d 353 (1999)); *Balawejder v. Balawejder,* 216 N.C. App. 301, 721 S.E.2d 679 (2011) (citing *Buckingham*) (noting, however, that when the trial court is considering a motion to modify a consent order that contains no findings of fact, it must take evidence and make findings about the circumstances existing at the time the initial order was entered for the court to have a "base line" to determine whether there has been a substantial change warranting modification) (consent custody order was at issue).]

i. Consent judgments entered in domestic relations cases are treated as court-ordered judgments for all purposes and, as such, may be modified and are enforceable by contempt. [*Walters v. Walters,* 307 N.C. 381, 298 S.E.2d 338 (1983) (consent judgments are modifiable and enforceable by contempt); *Mason v. Erwin,* 157 N.C. App. 284, 579 S.E.2d 120 (2003) (modification of consent order for child support); *Fucito v. Francis,* 175 N.C. App. 144, 622 S.E.2d 660 (2005) (for practical purposes, in *Walters*, the court fashioned a "one-size-fits-all" rule applicable to incorporated settlement agreements in the area of domestic law, holding that when parties present their separation agreement to the court for approval, the agreement will no longer be considered a contract between the parties, but rather a court-ordered judgment); *Hess v. Hermann-Hess,* 228 N.C. App. 281, 748 S.E.2d 773 (2013) (**unpublished**) (recognizing that alimony and child support agreements approved by the court are court-ordered judgments).]

6. Amount of support.

a. The ultimate objective in setting awards for child support is to secure support commensurate with the needs of the children and the ability of the obligor to meet the needs. [*Cauble v. Cauble*, 133 N.C. App. 390, 515 S.E.2d 708 (1999); *Shaw v. Cameron,* 125 N.C. App. 522, 481 S.E.2d 365 (1997); *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) (all three cases citing *Pittman v. Pittman,* 114 N.C. App. 808, 443 S.E.2d 96 (1975)).]

b. Payments ordered for the support of a minor child must be in an amount that will meet the reasonable needs of the child for health, education, and maintenance, considering the estates, earnings, conditions, and accustomed living standard of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. [G.S. 50-13.4(c).]

   i. On remand of an order in a high-income case, the trial court was directed to take into account the relative abilities and financial circumstances of both parties. Even though one parent's earnings and estate may be far greater than that of the other parent, the circumstances of the less wealthy parent must be taken into account. [*Loosvelt v. Brown*, 235 N.C. App. 88, 760 S.E.2d 351 (2014).]

   ii. While the child care and homemaker contributions of a party may not be quantifiable in monetary terms, when one parent has no role at all in the child's daily life and care, it is appropriate for a trial court to consider that the other parent bears 100 percent of the daily child care responsibilities. [*Loosvelt v. Brown*, 235 N.C. App. 88, 107, 760 S.E.2d 351, 363 (2014) (on remand, if the trial court recognizes mother's "non-monetary, but truly priceless" contribution as sole caregiver, trial court should make findings regarding those contributions sufficient for appellate review).]

c. Unless the amount of support determined under the child support guidelines would not meet or would exceed the child's reasonable needs considering the relative ability of each parent to provide support, the amount of a parent's court-ordered child support obligation must be determined by applying North Carolina's child support guidelines. [G.S. 50-13.4(c); 2015 Guidelines.]

d. Regardless of whether the court enters a child support order determined pursuant to the child support guidelines or deviates from the guidelines, a copy of the worksheet used to determine a parent's presumptive child support obligation should be attached to the child support order, be incorporated by reference into the child support order, or be included in the case file. [2015 Guidelines; G.S. 52C-3-305(c).] See *Liability and Amount*, Part 1 of this Chapter, Section III.M.

e. A court may not order that child support payments automatically increase on an annual or periodic basis to take inflation or cost-of-living increases into account. [*See Snipes v. Snipes*, 118 N.C. App. 189, 454 S.E.2d 864 (1995) (agreeing with trial court's implicit determination that judgment which increased payments according to increases in consumer price index was void *ab initio*); *Falls v. Falls*, 52 N.C. App. 203, 278 S.E.2d 546 (award of annual increases in child support based upon "Cost of Living Index" was improper), *review denied,* 304 N.C. 390, 285 S.E.2d 831 (1981); *Wilson v. Wilson,* 214 N.C. App. 541, 714 S.E.2d 793 (2011) (citing *Snipes* and *Falls*) (order implementing provisions in an incorporated agreement that provided for automatic yearly increases in child support, based on a percentage of bonuses and salary increases received by defendant, was reversed; trial court's calculation of the increases in defendant's salary, and its application of those increases to defendant's payments over an eighteen-year period without a finding of a substantial change of circumstances, constituted an impermissible modification of the child support order).]

f. If a court order requires the payment of both child support and alimony or postseparation support, it must separately state and identify the amount awarded as alimony or postseparation support and the amount awarded as child support. [G.S. 50-13.4(e); 50-16.7(a).]

g. For more on the amount and scope of a child support obligation, see *Liability and Amount*, Part 1 of this Chapter, Section II.

7. Prospective support payable from date support claim filed.

a. There is an implied presumption that prospective child support payments begin at the time of the filing of the complaint. [*Albemarle Child Support Enforcement Agency ex rel. Miller v. Hinton,* 147 N.C. App. 700, 556 S.E.2d 634 (2001) (citing *State ex rel. Fisher v. Lukinoff,* 131 N.C. App. 642, 507 S.E.2d 591 (1998)) (unless a trial court finds that beginning the prospective child support payments on the date the complaint was filed would be unjust or inappropriate, it is error to order prospective support to begin at any time other than the date the support claim was filed).]

i. Pursuant to G.S. 1A-1, Rule 3, a civil action is commenced by filing a complaint with the court.

ii. If an action is discontinued because a summons expires but the action is later revived by issuance of an alias and pluries summons or by an endorsement of the original summons pursuant to G.S. 1A-1, Rule 4(d), the date the action is commenced is the date the summons is revived, not the date the complaint was filed. [*See Moore v. McLaughlin,* 772 S.E.2d 14 (N.C. Ct. App. 2015) (**unpublished**) (complaint originally filed on July 23, 2010, was discontinued twice but was revived when a third summons was issued on Feb. 14, 2012, with proper service on Feb. 24, 2012; an order for child support was entered on May 1, 2014, awarding prospective support from Aug. 1, 2010, the month after the complaint was filed; the court of appeals remanded for a determination of retroactive support for the period between Aug. 1, 2010, and Feb. 14, 2012, and a determination of prospective support after Feb. 14, 2012).]

b. Prospective child support payments begin at the time of the filing of the complaint even when the parties have entered a temporary support order by consent shortly after the complaint was filed. [*Cole v. Cole,* 149 N.C. App. 427, 562 S.E.2d 11 (2002) (rejecting defendant's argument that consent order established his support obligation while action was pending). *But cf. Zaliagiris v. Zaliagiris,* 164 N.C. App. 602, 596 S.E.2d 285 (2004) (trial court did not abuse its discretion when it made a final order effective at a date prior to entry of the final order but not back to the filing date of the complaint; amount of permanent support less than temporary support), *review on additional issues denied,* 359 N.C. 643, 617 S.E.2d 662 (2005).]

c. A decision not to order prospective support is a deviation from the guidelines, and the order must include findings of fact to support the decision to deviate. [*State ex rel. Gillikin v. McGuire,* 174 N.C. App. 347, 620 S.E.2d 899 (2005) (citing *State ex rel. Fisher v. Lukinoff,* 131 N.C. App. 642, 507 S.E.2d 591 (1998)) (trial court found that prospective child support back to the date of the filing of the complaint was owed but did not order payment thereof because court was unable to determine

amount due to receipt by both parents of disability income during relevant period; decision not to order prospective support required findings to support deviation).]

d. A court may award prejudgment interest at the legal rate with respect to unpaid child support that has accrued between the date the action was commenced and the date an order is entered. [*See Taylor v. Taylor*, 128 N.C. App. 180, 493 S.E.2d 819 (1997).] For interest on past due child support, see *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section V.A.3.

8. Treatment of credits and tax exemptions.

a. A credit is not an automatic right even when the trial court finds that one party has overpaid his child support obligation. [*Brinkley v. Brinkley,* 135 N.C. App. 608, 522 S.E.2d 90 (1999) (in a modification action, father not entitled to a credit against future child support for the amount he paid above his court-ordered child support obligation or for the amount the other spouse owed pursuant to an equitable distribution judgment); *Jones v. Jones*, 52 N.C. App. 104, 278 S.E.2d 260 (1981) (decision whether to allow a credit is not bound by hard and fast rules but is to be decided according to the equitable considerations of the facts and circumstances in each case).]

b. In those rare cases in which a trial court properly awards a credit against future child support, it should conclude in its written order that, as a matter of law, an injustice would exist if the credit were not allowed, and it should support that conclusion by findings of fact based on competent evidence. [*Brinkley v. Brinkley,* 135 N.C. App. 608, 522 S.E.2d 90 (1999).] Examples of credits allowed include:

i. Father given a credit for travel expenses related to visitation with the minor children. [*Meehan v. Lawrance,* 166 N.C. App. 369, 602 S.E.2d 21 (2004).]

ii. Father given a credit against his ongoing support obligation for amounts expended for clothing, food, day-care costs, YMCA fees, and medical expenses he incurred for the children during their visitation with him. [*Jones v. Jones*, 52 N.C. App. 104, 278 S.E.2d 260 (1981).]

iii. Instead of compelling father to immediately pay an arrearage owed to the mother, after custody change mother was given a credit in that amount against her future support obligation as the secondary custodial parent. [*Shipman v. Shipman,* 155 N.C. App. 523, 573 S.E.2d 755 (2002), *aff'd,* 357 N.C. 471, 586 S.E.2d 250 (2003).]

iv. Father given a credit for child support payments made by his mother on his behalf to his former wife. [*Transylvania Cty. Dep't of Soc. Servs. ex rel. Dowling v. Connolly*, 115 N.C. App. 34, 443 S.E.2d 892 (applying Georgia law, credit allowed as a matter of equity; Judge Greene concurring and noting that credits on a court-ordered child support obligation are permitted if the obligor has substantially complied with the child support order), *review denied*, 337 N.C. 806, 449 S.E.2d 758 (1994).]

v. For discussion of credits against arrearages, see *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section I.F.3.

c. A child support order may require the custodial parent to waive her right to claim the federal and state income tax exemption for a child for whom support is paid. [*Rowan Cty. Dep't of Soc. Servs. ex rel. Brooks v. Brooks,* 135 N.C. App. 776, 522 S.E.2d 590 (1999) (district court acted within its authority in ordering the custodial parent to waive her dependency exemption in favor of the noncustodial parent); *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990), *review denied*, 328 N.C. 270, 400 S.E.2d 451 (1991).]

9. Orders for support of more than one child.

a. In cases involving multiple children, the court is not required to designate in the order the amount of support for each individual child. [*See Christie v. Christie*, 59 N.C. App. 230, 296 S.E.2d 26 (1982) (rejecting father's objection to being required to pay support in one sum for all children rather than having support payments allotted among the children); *Brooks v. Brooks*, 12 N.C. App. 626, 184 S.E.2d 417 (1971) (law does not require trial court to designate the amount of support for each child). *See* 2015 Guidelines (awarding one lump sum regardless of the number of children).]

b. The payor under an order for support of multiple children may not unilaterally terminate or proportionally reduce his child support payments upon one child's emancipation, graduation from high school, or reaching the age of majority. The payor may file a motion seeking modification of the order pursuant to G.S. 50-13.7. [See *Modification of Child Support Orders,* Part 3 of this Chapter.]

10. Payment of current support by lump sum, periodic payments, or transfer of property.

a. A court may order that current child support payments be made by lump sum or by periodic payments. [G.S. 50-13.4(e).] The court of appeals has found that a directive for payment of private school tuition is a "periodic payment, whether [plaintiff] chooses to pay it once a year, once a semester or over ten months[.]" [*Smith v. Smith*, 785 S.E.2d 434, 438 (N.C. Ct. App. 2016) (construing *Brown v. Brown*, 171 N.C. App. 358, 615 S.E.2d 39 (2005)).]

b. When income is received on an irregular, nonrecurring, or one-time basis, the court may average or pro-rate the income over a specified period of time or require an obligor to pay as child support a percentage of the nonrecurring income that is equivalent to the percentage of the obligor's recurring income paid for child support. [2015 Guidelines.]

i. A trial court may use a formula to determine the amount of child support to be paid from nonrecurring income, provided the formula is based on logic and reason and meets the child's reasonable needs in light of the parties' accustomed standard of living and the parent's ability to pay. [*See Spicer v. Spicer,* 168 N.C. App. 283, 607 S.E.2d 678 (2005) (a personal injury settlement paid to the father on a one-time, nonrecurring basis and placed in a family trust with the father as grantor was nonrecurring income; after determining that application of the guidelines to the trust principal would be unjust to the father, the court properly applied a formula, not specified in the case, to order a lump sum payment from the trust principal to be placed in a second trust to secure or provide for the child's support).]

c. Although most court orders require payment of child support in cash, a court also may order payment of current child support by transfer of title or possession of personal property or by transfer of possession or a security interest in real property. [G.S. 50-13.4(e).]

i. When ordering the transfer of personal property under G.S. 50-13.4(e), the trial court is not required to value the property transferred so that the value could be deducted from the amount of support awarded. [*Respess v. Respess,* 232 N.C. App. 611, 754 S.E.2d 691 (2014) (in this case, the property transferred was a vehicle that was fifteen years old, had high mileage, and on which wife had paid all post-transfer expenses, and husband had consented to the transfer as a form of support and did not assert any prejudice from the failure to value).]

ii. When a child support order grants the custodial parent exclusive possession of the marital residence, it is good practice to provide in the order that possession is only until entry of the final equitable distribution order.

d. A North Carolina court does not have authority to order a parent to transfer to the other parent past Social Security disability payments made to that parent on behalf of their children. [*O'Connor v. Zelinske,* 193 N.C. App. 683, 668 S.E.2d 615 (2008) (citing *Brevard v. Brevard,* 74 N.C. App. 484, 328 S.E.2d 789 (1985)) (noting that two later appellate opinions conflict with *Brevard*).]

e. A trial court is not limited to ordering any one of the designated methods of payment or to the methods of payment specified in the statute. [*Spicer v. Spicer,* 168 N.C. App. 283, 607 S.E.2d 678 (2005) (no error when father required to pay both monthly payments and a lump sum payment to be placed in trust).]

11. Order for establishment of arrearages.

a. An order determining the amount of child support arrearages must be based on evidence to support the trial court's finding on the amount owed. [*Harnett Cty. ex rel. De la Rosa v. De la Rosa,* 770 S.E.2d 106, 112 (N.C. Ct. App. 2015) (at modification hearing, no evidence was presented to the trial court regarding arrearages or any payments father had made thereon; appellate court was unable to determine how the trial court calculated arrearages of $7,728 or the actual time period for which arrearages were calculated, requiring reversal of the trial court's determination of the amount of the arrearages).]

12. Mandatory provisions.

a. All child support orders must require that periodic payment of child support be made on a monthly basis and that monthly child support payments are due and payable on the first day of each month. [G.S. 50-13.4(c).]

b. All child support orders entered in IV-D cases must include a provision ordering immediate income withholding. [G.S. 110-136.3(a).] For definition of a IV-D case and a non-IV-D case, see Section I.C.7, above.

c. All child support orders entered in non-IV-D cases must order that child support payments be made through immediate income withholding unless the court finds that there is good cause not to require immediate income withholding or the parties agree in writing to an alternate method of payment. [G.S. 50-13.4(d1), 50-13.9(a), 110-136.3(a), 110-136.5(c1).]

i. "Good cause" includes a reasonable and workable plan for consistent and timely payments by some means other than income withholding. [G.S. 110-136.5(c1).]

ii. In considering whether a plan is reasonable, the court may consider the obligor's employment history and record of meeting financial obligations in a timely manner. [G.S. 110-136.5(c1).]

d. In most cases, payments must be made through the State Child Support Collection and Disbursement Unit.

i. In IV-D cases, child support orders must require that child support payments be made through the State Child Support Collection and Disbursement Unit. [G.S. 50-13.4(d).]

ii. In non-IV-D cases in which child support is paid through income withholding under an order entered on or after Jan. 1, 1994, child support payments must be made through the State Child Support Collection and Disbursement Unit. [G.S. 110-139(f).]

iii. In non-IV-D cases in which child support is not paid through income withholding, child support payments may be ordered paid through the State Child Support Collection and Disbursement Unit or paid to the person who has custody of the child or to another proper person, agency, organization, or institution. [G.S. 50-13.4(d).]

e. All child support orders entered or modified on or after Oct. 1, 1998, must state the name and date of birth of each party. [G.S. 50-13.4(h).]

i. G.S. 50-13.4(g)(8) and (h), *amended by* S.L. 2008-12, § 1, effective Oct. 1, 2008, no longer require Social Security numbers of the parties in a child support order.

ii. Form AOC-CV-607, Voluntary Support Agreement and Approval by Court, does not require Social Security numbers of the parties or the child.

f. All child support orders entered in IV-D cases and all child support orders in non-IV-D cases in which income withholding is ordered must:

i. Require the obligor to keep the clerk of superior court or the IV-D agency informed of the obligor's current residence and mailing address; [G.S. 110-136.3(a)(1).]

ii. Require the obligor to cooperate fully with the initiating party in verifying the amount of the obligor's disposable income and to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income; [G.S. 110-136.3(a)(3), (5).]

iii. Require the custodial party to keep the obligor informed of the custodial party's disposable income and the amount and effective date of any substantial change in this disposabley income; [G.S. 110-136.3(a)(4).] and

iv. Include the current residence and mailing address of the custodial parent, or the address of the child if the address of the custodial parent and the address of the child are different. There is no requirement that the child support order contain the address of the custodial parent or the child if (1) there is an existing order prohibiting disclosure of the custodial parent's or child's address to the

obligor or (2) the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats of violence that constitute domestic violence under G.S. Chapter 50B. [G.S. 110-136.3(a)(4a), *amended by* S.L. 2014-115, § 44.5, effective Aug. 11, 2014.]

g. If a North Carolina tribunal determines by order which is the controlling order under G.S. 52C-2-207(b)(1), (b)(2), or (c), or issues a new controlling order under G.S. 52C-2-207(b)(3), the order must state:

i. The basis upon which it made its determination;

ii. The amount of the prospective support, if any; and

iii. The total amount of consolidated arrearages and accrued interest, if any, under all of the orders after all payments made are credited as provided by G.S. 52C-2-209. [G.S. 52C-2-207(e), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

13. Assignment of pension benefits.

a. An order that requires an employee to assign an interest in his right to pension benefits or other deferred compensation that would otherwise be protected against alienation under the federal Employee Retirement Income Security Act (ERISA) to the employee's spouse, former spouse, or child as child support will be honored by the pension or deferred compensation plan only if it meets ERISA's definition of a qualified domestic relations order (QDRO). [29 U.S.C. § 1056(d)(3).]

b. ERISA applies to most, but not all, pension plans and to employee 401(k) plans, simplified employee pensions (SEP), and employee stock ownership plans (ESOP).

c. A QDRO must:

i. Include the name and last known mailing address of the employee and each alternate payee covered by the order, [29 U.S.C. § 1056(d)(3)(C)(i).]

ii. State the amount or percentage of the employee's benefits that must be paid by the plan to the alternate payee or the manner in which the amount or percentage to be paid is to be determined, [29 U.S.C. § 1056(d)(3)(C)(ii).]

iii. State the number of payments or period of time covered by the order, [29 U.S.C. § 1056(d)(3)(C)(iii).] and

iv. Designate the plan to which the order applies. [29 U.S.C. § 1056(d)(3)(C)(iv).]

d. A QDRO must be served on and approved by the pension plan administrator. [29 U.S.C. § 1056(d)(3)(G)(i) (implied service requirement). *See Sippe v. Sippe,* 101 N.C. App. 194, 398 S.E.2d 895 (1990) (pension plan itself makes initial determination of whether a domestic relations order issued by the district court is a QDRO under the terms of the plan), *review denied*, 329 N.C. 271, 407 S.E.2d 840 (1991).]

e. A QDRO may direct the payment of plan benefits to an alternate payee as of the date the employee is first eligible to receive benefits under the plan (earliest retirement date). [29 U.S.C. § 1056(d)(3)(E)(i)(I).]

I. Appeal

1. Right to take an immediate appeal.

a. A final order may be appealed as a matter of right to the court of appeals. [G.S. 7A-27(b)(2), *added by* S.L. 2013-411, § 1, effective Aug. 23, 2013; 1-277(a).] A final judgment is one that disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court. [*Hausle v. Hausle,* 226 N.C. App. 241, 739 S.E.2d 203 (2013); *Duncan v. Duncan,* 366 N.C. 544, 742 S.E.2d 799 (2013) (final judgment generally is one that ends the litigation on the merits).]

   i. An alimony order was final and immediately appealable as of right pursuant to G.S. l-277(a), even though it reserved the issue of attorney fees. Attorney fees and costs are collateral issues and not part of the parties' substantive claims. [*Duncan v. Duncan,* 366 N.C. 544, 742 S.E.2d 799 (2013) (citing *Budinich v. Becton Dickinson & Co.,* 486 U.S. 196, 202–03, 108 S. Ct. 1717, 1722 (1988)) (announcing a bright-line rule applicable to any civil case disposing of the parties' substantive claims but leaving open the issue of attorney fees and costs); *Lucas v. Lucas,* 209 N.C. App. 492, 706 S.E.2d 270 (2011) (citing *Bumpers v. Cmty. Bank of N. Va.,* 364 N.C. 195, 695 S.E.2d 442 (2010)) (alimony and equitable distribution judgment final for purposes of appeal, even if a claim for attorney fees under G.S. 50-16.4 remained pending; claim for attorney fees under G.S. 50-16.4 is not a substantive issue or part of the merits of an alimony claim under G.S. 50-16.3A). *See also Ray Haluch Gravel Co. v. Cent. Pension Fund,* 571 U.S. ___, 134 S. Ct. 773 (2014) (holding, for federal appellate jurisdictional purposes, that whether a claim for attorney fees is based on a statute, a contract, or both, a pending claim for fees and costs does not prevent, as a general rule, the merits judgment from becoming "final" for purposes of appeal).]

   ii. But when a child support order is appealed, the trial court loses jurisdiction to consider a request for attorney fees arising from the child support case. [*Balawejder v. Balawejder,* 216 N.C. App. 301, 721 S.E.2d 679 (2011) (appeal from an order for custody and child support).] *But see Duncan v. Duncan,* 366 N.C. 544, 742 S.E.2d 799 (2013), discussed immediately above and in Section I.I.6.d.ii, below. Because *Duncan* identified attorney fees as a "collateral issue," separate from the parties' substantive claims, court of appeals opinions holding that trial courts lose jurisdiction to determine attorney fees while the support order is on appeal because the fee issue is affected by child support may be called into question.

b. Generally there is no right of immediate appeal of an interlocutory order. An interlocutory order is one made during the pendency of an action that does not dispose of the case but leaves it for further action by the trial court in order to settle and determine the entire controversy. [*Peters v. Peters,* 232 N.C. App. 444, 754 S.E.2d 437 (2014) (quoting *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950)); *Sarno* v. *Sarno*, 235 N.C. App. 597, 599, 762 S.E.2d 371, 373 (2014), and *Gray v. Peele*, 235 N.C. App. 554, 557, 761 S.E.2d 739, 741 (2014) (both quoting *Banner v. Hatcher,* 124 N.C. App. 439, 441, 477 S.E.2d 249, 250 (1996)) (a child support order "is not a final order for purposes of appeal until no further action is necessary before the trial court upon the motion or pleading then being considered").]

c. Appeal of child support order was dismissed as interlocutory in each of the following cases when a motion to modify custody was pending:

i. *Gray v. Peele*, 235 N.C. App. 554, 761 S.E.2d 739 (2014) (father filed motion to modify custody and later filed motions in the IV-D case to modify support, based in part on an informal change in custody to a week on/week off schedule; even though the amount of child support was dependent on the custodial schedule, the IV-D court could hear only the motion to modify support, which it denied; appeal from that order was dismissed as interlocutory because of the pending motion to modify custody, the disputed custodial schedule, and the legal interdependence of the support and custody claims).

ii. *Sarno* v. *Sarno*, 235 N.C. App. 597, 762 S.E.2d 371 (2014) (mother's claims for custody and support were heard at one trial conducted over two sessions that resulted in (1) after first session, a March 2012 custody order based on mother's representation that she was moving out of state, which reserved issue of child support, noting insufficient time to rule on that claim; (2) mother's motion to modify custody filed July 2012 based on her decision not to relocate, and (3) after second session, an April 2013 order setting child support which "clearly anticipated" that child support would need to be revisited after modification of custody was resolved; appeal from the child support order was dismissed as interlocutory because of the pending motion to modify custody and the fact that the establishment of child support "depended heavily" on the determination of mother's custodial time).

d. Immediate appeal of an interlocutory order generally is allowed in two instances:

i. When the order affects a substantial right. [G.S. 7A-27(b)(3)a., *added by* S.L. 2013-411, § 1, effective Aug. 23, 2013; 1-277(a).]

(a) A substantial right is one that "will clearly be lost or irremediably adversely affected if the order is not reviewable before final judgment." [*Peters v. Peters,* 232 N.C. App. 444, 448, 754 S.E.2d 437, 440 (2014) (quoting *Turner v. Norfolk S. Corp.*, 137 N.C. App. 138, 142, 526 S.E.2d 666, 670 (2000)).]

(b) Orders dealing with prospective child support payments have been found to affect a substantial right, [*Appert v. Appert*, 80 N.C. App. 27, 341 S.E.2d 342 (1986) (appeal of an order that affected parent's right to receive monthly child support in an amount found reasonably necessary affected a substantial right); *Gunter v. Gunter,* 228 N.C. App. 138, 746 S.E.2d 22 (2013) (**unpublished**) (citing *Appert*) (order dismissing mother's claim for child support affected a substantial right).] while an order that denied a claim for retroactive support was found not to affect a substantial right. [*Peters v. Peters,* 232 N.C. App. 444, 754 S.E.2d 437 (2014).]

ii. In cases involving multiple parties or claims, when the order is final as to some but not all of the claims or parties and the trial judge certifies the order for immediate appeal by including in the order "that there is no just reason for delay." [G.S. 1A-1, Rule 54(b); *Duncan v. Duncan,* 366 N.C. 544, 742 S.E.2d 799 (2013) (certification under Rule 54(b) permits an interlocutory appeal from

orders that are final as to a specific portion of the case but which do not dispose of all claims as to all parties).]

(a) Appeal of an alimony order that was interlocutory when filed because of pending child support and equitable distribution (ED) claims was no longer interlocutory when those claims had been resolved by the time the appeal was heard. [*Crowley v. Crowley,* 203 N.C. App. 299, 691 S.E.2d 727 (granting defendant's motion to amend the record on appeal to reflect entry of a judgment resolving claims for ED, child support, and attorney fees), *review denied,* 364 N.C. 749, 700 S.E.2d 749 (2010).]

e. Note also that the court of appeals has discretion to treat an appeal as a petition for certiorari to review an interlocutory appeal. [N.C. R. App. P. 21(a)(1).]

f. However, for appeals taken on or after Aug. 23, 2013, G.S. 7A-27 was amended to allow for an immediate appeal when the order determines a claim prosecuted under G.S. 50-19.1. [G.S. 7A-27(b)(3)e., *added by* S.L. 2013-411, § 1, effective Aug. 23, 2013.] G.S. 50-19.1 provides:

i. Notwithstanding any other pending claims filed in the same action, a party may appeal from an order or judgment adjudicating a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution if the order or judgment would otherwise be a final order or judgment within the meaning of G.S. 1A-1, Rule 54(b), but for the other pending claims in the same action.

(a) An order was not a final judgment under G.S. 1A-1, Rule 54(b) as required by G.S. 50-19.1 when mother's visitation was not finally determined, based on order for review hearings to be held in thirty, sixty, and ninety days so trial court could consider mother's mental health evaluation and its effect on her visitation. [*Lueallen v. Lueallen*, 790 S.E.2d 690 (N.C. Ct. App. 2016) (appeal proceeded on other grounds).]

ii. A party does not forfeit the right to appeal under this section if the party fails to immediately appeal from an order or judgment described in G.S. 50-19.1.

iii. An appeal from an order or judgment under G.S. 50-19.1. shall not deprive the trial court of jurisdiction over any other claims pending in the same action. [G.S. 50-19.1, *added by* S.L. 2013-411, § 2, effective Aug. 23, 2013.]

g. Before the effective date of G.S. 50-19.1, final judgments of equitable distribution, alimony, child support, custody, divorce, and divorce from bed and board could not be appealed if other claims remained pending in the case, unless the trial judge certified that there is no just reason for delay pursuant to G.S. 1A-1, Rule 54(b).

h. A temporary child support order is interlocutory and is not immediately appealable. [*Banner v. Hatcher,* 124 N.C. App. 439, 477 S.E.2d 249 (1996).] Whether a child support order is temporary or final depends on its purpose, form, and content, not merely its designation. [*See Cox v. Cox*, 133 N.C. App. 221, 515 S.E.2d 61 (1999) (agreeing with defendant's argument that she should not be denied appellate review based on trial court's statement that the order was temporary, because in reality the order was permanent).] For more on temporary orders, see Section I.H.4, above.

2. Treatment of findings of fact and conclusions of law by an appellate court.
    a. Court of appeals evaluates whether a trial court's findings of fact are supported by substantial evidence and then determines if the factual findings support the conclusions of law. [*Smart v. State ex rel. Smart,* 198 N.C. App. 161, 678 S.E.2d 720 (2009) (citing *Shipman v. Shipman,* 155 357 N.C. 471, 586 S.E.2d 250 (2003)).]
    b. Findings of fact are conclusive if supported by competent evidence, irrespective of evidence to the contrary. [*Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007), *review denied*, 362 N.C. 238, 659 S.E.2d 741, *cert. denied*, 555 U.S. 824, 129 S. Ct. 144 (2008); *Meehan v. Lawrance,* 166 N.C. App. 369, 602 S.E.2d 21 (2004) (if the record indicates substantial evidence to support the trial court's findings, the findings are conclusive on appeal, even if evidence might sustain findings to the contrary).]
    c. The trial court must make sufficient findings of fact and conclusions of law to allow the reviewing court to determine whether a judgment, and the legal conclusions that underlie it, represent a correct application of the law. [*Johnston Cty. ex rel. Bugge v. Bugge,* 218 N.C. App. 438, 722 S.E.2d 512 (2012) (citing *Spicer v. Spicer,* 168 N.C. App. 283, 607 S.E.2d 678 (2005)); *Brind'Amour v. Brind'Amour,* 196 N.C. App. 322, 674 S.E.2d 448 (2009) (citing *Roberts v. McAllister,* 174 N.C. App. 369, 621 S.E.2d 191 (2005)).]
3. Standard of review.
    a. Generally.
        i. Review of child support orders is limited to a determination of whether the trial court abused its discretion. [*Johnston Cty. ex rel. Bugge v. Bugge,* 218 N.C. App. 438, 722 S.E.2d 512 (2012) (citing *Spicer v. Spicer,* 168 N.C. App. 283, 607 S.E.2d 678 (2005)); *Brind'Amour v. Brind'Amour,* 196 N.C. App. 322, 674 S.E.2d 448 (2009) (citing *Roberts v. McAllister,* 174 N.C. App. 369, 621 S.E.2d 191 (2005)).]
        ii. To reverse a trial court's award of child support, an appellant must show that the trial court's actions were manifestly unsupported by reason. [*State ex rel. Godwin v. Williams*, 163 N.C. App. 353, 593 S.E.2d 123 (2004) (citing *Bowers v. Bowers*, 141 N.C. App. 729, 541 S.E.2d 508 (2001)).]
        iii. "A [trial] court by definition abuses its discretion when it makes an error of law." [*In re A.F.*, 231 N.C. App. 348, 352, 752 S.E.2d 245, 248 (2013) (quoting *Koon v. United States,* 518 U.S. 81, 100, 116 S. Ct. 2035, 2047 (1996)).]
        iv. The appellate court's review is limited to the record on appeal and to the verbatim transcript of the proceedings. [*Cunningham v. Cunningham,* 171 N.C. App. 550, 615 S.E.2d 675 (2005) (court of appeals refusing to take judicial notice of a document, in this case a school calendar, not available to the trial court).]
    b. Standard of review in appeal of the following matters is de novo:
        i. Review of questions concerning constitutional rights; [*Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007) (reviewing constitutionality of the guidelines), *review denied*, 362 N.C. 238, 659 S.E.2d 741, *cert. denied*, 555 U.S. 824, 129 S. Ct. 144 (2008).]
        ii. Review of a question of subject matter jurisdiction; [*Smith v. Smith*, 785 S.E.2d 434 (N.C. Ct. App. 2016) (quoting *Keith v. Wallerich,* 206 N.C. App. 550, 554,

687 S.E.2d 299, 302 (2009)); *Tardani v. Tardani,* 201 N.C. App. 728, 689 S.E.2d 601 (2010) (**unpublished**) (citing *In re K.A.D.,* 187 N.C. App. 502, 653 S.E.2d 427 (2007)).]

iii. Review of whether a trial court's findings support its conclusions of law; [*Respess v. Respess,* 232 N.C. App. 611, 754 S.E.2d 691 (2014).]

iv. When the issue concerns a question of statutory interpretation, full review is appropriate and the conclusions of law are reviewable de novo; [*Smith v. Smith*, 785 S.E.2d 434 (N.C. Ct. App. 2016) (quoting *Romulus v. Romulus,* 216 N.C. App. 28, *32,* 715 S.E.2d 889, 892 (2011)).]

v. When an issue concerns a matter of law; [*Romulus v. Romulus,* 216 N.C. App. 28, 715 S.E.2d 889 (2011) (questions of law are reviewable de novo); *Carson v. Carson,* 199 N.C. App. 101, 680 S.E.2d 885 (2009).]

vi. Review of a decision to deny registration and enforcement of an out-of-state child support order; [*Carteret Cty. ex rel. Amor v. Kendall,* 231 N.C. App. 534, 752 S.E.2d 764 (2014) (amounts to a conclusion of law).]

vii. Review of whether the statutory requirements in G.S. 50-13.6 for an award of attorney fees have been met; [*Hudson v. Hudson*, 299 N.C. 465, 263 S.E.2d 719 (1980) (presents a question of law); *Bramblett v. Bramblett,* 218 N.C. App. 454, 721 S.E.2d 763 (2012) (**unpublished**) (citing *Hudson*).]

viii. Review of whether a trial court has properly interpreted the statutory framework applicable to costs; [*Peters v. Pennington*, 210 N.C. App. 1, 707 S.E.2d 724 (2011).]

ix. Review of a decision granting intervention of right under G.S. 1A-1, Rule 24(a). [*Hunt v. Hunt*, 784 S.E.2d 219 (N.C. Ct. App. 2016).]

c. An appellate court reviews for abuse of discretion a trial court's decision regarding:

i. The amount of child support; [*Ludlam v. Miller,* 225 N.C. App. 350, 739 S.E.2d 555 (2013) (citing *Robinson v. Robinson,* 210 N.C. App. 319, 707 S.E.2d 785 (2011)); *Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007) (a trial court's determination as to the proper amount of child support will not be disturbed on appeal absent a clear abuse of discretion, i.e., only if manifestly unsupported by reason), *review denied*, 362 N.C. 238, 659 S.E.2d 741, *cert. denied*, 555 U.S. 824, 129 S. Ct. 144 (2008), and *Hartley v. Hartley,* 184 N.C. App. 121, 645 S.E.2d 408, *appeal dismissed,* 654 S.E.2d 475 (2007) (both citing *State ex rel. Fisher v. Lukinoff,* 131 N.C. App. 642, 507 S.E.2d 591 (1998)).]

ii. The establishment of an appropriate remedy; [*Ludlam v. Miller,* 225 N.C. App. 350, 739 S.E.2d 555 (2013) (citing *Moore v. Onafowora,* 208 N.C. App. 674, 703 S.E.2d 744 (2010)).]

iii. A deviation from the child support guidelines; [*Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007), *review denied*, 362 N.C. 238, 659 S.E.2d 741, *cert. denied*, 555 U.S. 824, 129 S. Ct. 144 (2008), and *Beamer v. Beamer,* 169 N.C. App. 594, 610 S.E.2d 220 (2005) (both citing *State ex rel. Fisher v. Lukinoff*, 131 N.C. App. 642, 507 S.E.2d 591 (1998)).]

iv. The manner of the presentation of evidence; [*Wolgin v. Wolgin*, 217 N.C. App. 278, 719 S.E.2d 196 (2011) (citing *State v. Harris,* 315 N.C. 556, 340 S.E.2d 383 (1986), and G.S. 8C-1, Rule 611(a)).]

v. The supervision and control of a trial; [*Cumberland Cty. ex rel. Rettig v. Rettig,* 231 N.C. App. 170, 753 S.E.2d 740 (2013) (**unpublished**) (citing *State v. Bethea,* 173 N.C. App. 43, 617 S.E.2d 687 (2005)).]

vi. The reasonableness and necessity of an award of attorney fees. [*Peters v. Pennington,* 210 N.C. App. 1, 707 S.E.2d 724 (2011); *Simpson v. Simpson,* 209 N.C. App. 320, 703 S.E.2d 890 (2011) (amount of attorney fees awarded is reviewed for an abuse of discretion).]

d. Standard of review for findings and conclusions.

i. The standard of review for findings made by a trial court sitting without a jury is "whether any competent evidence exists in the record to support" such findings. [*Row v. Row*, 185 N.C. App. 450, 460, 650 S.E.2d 1, 7 (2007) (quoting *Hollerbach v. Hollerbach*, 90 N.C. App. 384, 387, 368 S.E.2d 413, 415 (1988)), *review denied*, 362 N.C. 238, 659 S.E.2d 741, *cert. denied*, 555 U.S. 824, 129 S. Ct. 144 (2008); *Thomas v. Thomas*, 200 N.C. App. 436, 683 S.E.2d 791 (2009) (**unpublished**).]

4. Requirement of an appeal bond.

a. An order for child support is a money judgment under G.S. 1-289, which authorizes the trial court to require an appeal bond as security for payment of amount owing under the order. [*Clark v. Gragg,* 171 N.C. App. 120, 614 S.E.2d 356 (2005) (trial court did not err when it required that appellant file an appeal bond).]

b. G.S. 1-289 addresses a bond for the purpose of staying execution on a money judgment but does not "specifically address the ability to hold a party in contempt during an appeal." In child support matters, G.S. 50-14.3(f)(9) addresses that issue. [*Smith v. Smith*, 785 S.E.2d 434, 438 (N.C. Ct. App. 2016).] For more on the enforceability of a child support order during appeal pursuant to G.S. 50-14.3(f)(9), see *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section VII.B.19.

5. Post-remand procedure.

a. When case remanded to trial court for additional findings:

i. Absent direction from the court of appeals, the trial court has discretion to receive new evidence or to rely on evidence previously submitted. [*Hicks v. Alford,* 156 N.C. App. 384, 576 S.E.2d 410 (2003) (when court of appeals did not order trial court to hold a new hearing or receive new evidence, trial court was not required to take additional evidence on modification motion).]

b. When case remanded with specific instructions:

i. It is error not to follow the mandate of the appellate court. [*McKinney v. McKinney,* 228 N.C. App. 300, 745 S.E.2d 356 (2013) (when the court of appeals gave specific instructions to compensate an expert only for time spent testifying, as provided in G.S. 7A-305(d)(11), and not for time expert spent waiting in court, trial court on remand was bound by that mandate and erred in awarding compensation for court time pursuant to G.S. 7A-314(d)), *review denied,* 367 N.C. 288, 753 S.E.2d 678, *review dismissed,* 753 S.E.2d 679 (2014).]

G.S. 7A-314(d) was amended in 2015 to clarify that an award of expert witness costs is subject to G.S. 7A-305(d)(11). [G.S. 7A-314(d), *amended by* S.L. 2015-153, § 2, effective Oct. 1, 2015, and applicable to motions or applications for costs filed on or after that date, now provides that compensation and allowances awarded to an expert witness are "subject to the specific limitations set forth in G.S. 7A-305(d)(11)."]

6. Effect of an appeal on jurisdiction.
   a. Pursuant to G.S. 1-294, when an appeal is perfected, the trial court is divested of jurisdiction "upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure." [G.S. 1-294, *amended by* S.L. 2015-25, § 2, effective May 21, 2015.]
   b. The court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. [G.S. 1-294, *amended by* S.L. 2015-25, § 2, effective May 21, 2015.]
      i. Pursuant to G.S. 1-294, a trial court has jurisdiction to enter an order on matters other than child support while a child support order is on appeal.
      ii. Likewise, a trial court has jurisdiction to enter an order for child support while matters other than child support are on appeal. [*See McKyer v. McKyer,* 179 N.C. App. 132, 632 S.E.2d 828 (2006) (citing *Rosero v. Blake,* 150 N.C. App. 250, 563 S.E.2d 248, *rev'd on other grounds,* 357 N.C. 193, 581 S.E.2d 41 (2003), *cert. denied,* 540 U.S. 1177, 124 S. Ct. 1407 (2004)) (appeal of a custody order, which did not address child support, did not divest the trial court of jurisdiction to decide question of child support; court noting, however, that appeal of earlier custody order, expressly providing for child support by ordering mother to provide insurance, fell within scope of G.S. 1-294 so that husband's complaint for past and future child support, filed while appeal pending, was properly dismissed); *Cox v. Cox,* 33 N.C. App. 73, 234 S.E.2d 189 (1977) (child support can be modified while property division issue on appeal); *see also Huang v. Huang*, 151 N.C. App. 752, 567 S.E.2d 469 (2002) (**unpublished**) (trial court could enter order for child support while custody order on appeal; while there was an "obvious relationship" between the two, under the facts presented, one did not directly affect the other).]
      iii. Note also that an appeal from an order or judgment adjudicating a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution, where the order or judgment would otherwise be a final order or judgment within the meaning of G.S. 1A-1, Rule 54(b), does not deprive the trial court of jurisdiction over any other claims pending in the same action. [G.S. 50-19.1, *added by* S.L. 2013-411, § 2, effective Aug. 23, 2013.]
   c. G.S. 50-13.4(f)(9) provides that a child support order is enforceable by civil contempt and that failing to obey the order may be punished by criminal contempt. Notwithstanding the provisions of G.S. 1-294, child support orders are enforceable by civil contempt pending appeal. [G.S. 50-13.4(f)(9).] See *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section VII for more on contempt.

d. When request for attorney fees is pending when support order is appealed.

i. After a child support order is appealed, the trial court lacks jurisdiction to consider a request for attorney fees arising from the child support case. [*Balawejder v. Balawejder,* 216 N.C. App. 301, 721 S.E.2d 679 (2011) (citing *McClure v. Cty. of Jackson,* 185 N.C. App. 462, 648 S.E.2d 546 (2007)) (stating rule in context of appeal from order for custody); *In re Scearce,* 81 N.C. App. 662, 345 S.E.2d 411, *review denied,* 318 N.C. 415, 349 S.E.2d 590 (1986).]

ii. However, the North Carolina Supreme Court has held that an alimony order was final and immediately appealable as of right pursuant to G.S. l-277(a), even though it reserved the issue of attorney fees, reasoning that attorney fees and costs are collateral issues and not part of the parties' substantive claims. [*Duncan v. Duncan,* 366 N.C. 544, 742 S.E.2d 799 (2013) (citing *Budinich v. Becton Dickinson & Co.,* 486 U.S. 196, 202–03, 108 S. Ct. 1717, 1722 (1988)) (announcing a bright-line rule applicable to any civil case disposing of the parties' substantive claims but leaving open the issue of attorney fees and costs); *Lucas v. Lucas*, 209 N.C. App. 492, 706 S.E.2d 270 (2011) (citing *Bumpers v. Cmty. Bank of N. Va.,* 364 N.C. 195, 695 S.E.2d 442 (2010)) (alimony and equitable distribution judgment final for purposes of appeal, even if a claim for attorney fees under G.S. 50-16.4 remained pending; claim for attorney fees under G.S. 50-16.4 is not a substantive issue or part of the merits of an alimony claim under G.S. 50-16.3A).] Because *Duncan* identified attorney fees as a "collateral issue," separate from the parties' substantive claims, court of appeals opinions holding that trial courts lose jurisdiction to determine attorney fees while the support order is on appeal because the fee issue is affected by child support may be called into question.

iii. The attorney fee issue may be addressed by the trial court after the appeal is resolved. [*In re Scearce,* 81 N.C. App. 662, 345 S.E.2d 411 (holding that a request for attorney fees may be raised by a motion in the cause subsequent to the determination of the main custody action; if the matter is on appeal, trial court can properly consider the motion for attorney fees upon resolution of the appeal), *review denied,* 318 N.C. 415, 349 S.E.2d 590 (1986).] Alternatively, the trial court could defer entry of the written judgment until after a ruling is made on the issue of attorney fees and incorporate all of its rulings into a single, written judgment, from which appeal could be taken. [*McClure v. Cty. of Jackson,* 185 N.C. App. 462, 648 S.E.2d 546 (2007) (suggesting procedure).]

II. UIFSA Proceedings to Establish Child Support Orders (G.S. Chapter 52C)

A. Overview

1. The Uniform Interstate Family Support Act (UIFSA) (G.S. Chapter 52C) sets out procedures for the interstate establishment, enforcement, and modification of child and spousal support obligations. [*Lombardi v. Lombardi,* 157 N.C. App. 540, 579 S.E.2d 419 (2003); Official Comment (2015), G.S. 52C-1-103; G.S. Chapter 52C, Articles 3 through 6.]

2. The Preventing Sex Trafficking and Strengthening Families Act of 2014: Improving Child Support Recovery, Pub. L. No. 113-183, required North Carolina to adopt the most recent amendments to the 2008 version of UIFSA to bring it into compliance with the Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance. S.L. 2015-117, § 1, effective June 24, 2015, made the necessary amendments to G.S. Chapter 52C.
3. G.S. Chapter 52C does not provide the exclusive method of establishing or enforcing a support order under the law of North Carolina. [G.S. 52C-1-103(b)(1), *added by* S.L. 2015-117, § 1, effective June 24, 2015; Official Comment (2015), G.S. 52C-1-103 (new G.S. 52C-1-103(b)(1) "gives notice that UIFSA is not the only means for establishing or enforcing a support order with an interstate aspect").]
4. G.S. 52C-1-104(a), *added by* S.L. 2015-117, § 1, effective June 24, 2015, addresses the application of G.S. Chapter 52C to a resident of a foreign country and to a foreign support proceeding and requires that a North Carolina tribunal apply UIFSA Articles 1 through 6 and, as applicable, UIFSA Article 7, to a support proceeding involving:
   a. A foreign support order; [See definition in G.S. 52C-1-101(3b), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]
   b. A foreign tribunal; [See definition in G.S. 52C-1-101(3c), *added by* S.L. 2015-117, § 1, effective June 24, 2015.] or
   c. An obligee, obligor, or child residing in a foreign country. [See definition of foreign country in G.S. 52C-1-101(3a), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]
5. The new definitions in G.S. 52C-1-101 "are fine-tuned to avoid ambiguity in order to ensure that 'foreign' is used strictly to identify international proceedings and orders." [Official Comment (2015), G.S. 52C-1-101.]
6. UIFSA governs proceedings involving any support order registered in North Carolina after Jan. 1, 1996, UIFSA's effective date, regardless of when entered. [*Uhrig v. Madaras,* 174 N.C. App. 357, 620 S.E.2d 730 (2005), *review denied,* 360 N.C. 367, 630 S.E.2d 455 (2006); *Lombardi v. Lombardi,* 157 N.C. App. 540, 579 S.E.2d 419 (2003).]
7. UIFSA establishes a one-order system whereby all states adopting UIFSA are required to recognize and enforce the same obligation consistently. [*New Hanover Cty. ex rel. Mannthey v. Kilbourne*, 157 N.C. App. 239, 578 S.E.2d 610 (2003); *Uhrig v. Madaras,* 174 N.C. App. 357, 620 S.E.2d 730 (2005) (under UIFSA (applicable to a support order issued by a state tribunal and to a foreign support order) and the Full Faith and Credit for Child Support Orders Act (applicable to a support order issued by a state tribunal but not to a foreign support order), there can only be one controlling support order at any given time), *review denied,* 360 N.C. 367, 630 S.E.2d 455 (2006). See also Section I.A, above, and *Modification of Child Support Orders*, Part 3 of this Chapter, Section II.C.]
8. Interstate UIFSA proceedings to establish a child support order are civil, not criminal, actions.
9. A petitioner is not required to pay a filing fee or other costs in connection with a UIFSA proceeding. [G.S. 52C-3-312(a).]
10. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information,

that information must be sealed and may not be disclosed to the other party or made public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the best interest of justice. [G.S. 52C-3-311, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] Former G.S. 52C-3-311 allowed this determination to be made ex parte.

11. Some UIFSA evidentiary and discovery provisions have general application in interstate cases. [*See* G.S. 52C-3-315 and 52C-3-317, *both amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

12. UIFSA provides two options for a petitioner seeking to establish a child support order against a respondent residing in another state or foreign country without traveling to that other state or foreign country:

    a. First, a petitioner may utilize UIFSA's expanded long-arm statute [G.S. 52C-2-201(a).] to obtain personal jurisdiction over a nonresident respondent when the exercise of personal jurisdiction over the respondent is consistent with due process. In this case, the petitioner files a petition in her state of residence and proceeds to establish support in accordance with the laws of that state. [*Butler v. Butler,* 152 N.C. App. 74, 566 S.E.2d 707 (2002). See Section I.B, above, discussing personal jurisdiction in cases filed in North Carolina.] The limitation in G.S. 52C-2-201(b), *added by* S.L. 2015-117, § 1, effective June 24, 2015, on the use of the jurisdictional bases in G.S. 52C-2-201(a) in proceedings to modify a child support order of another state or a foreign support order does not apply to a proceeding to establish a child support order.

    b. Second, the petitioner may initiate an interstate proceeding to establish a support order in the respondent's state of residence. In this situation, the petitioner may file a petition in an initiating tribunal for forwarding to a responding tribunal or may file a petition or comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent. [G.S. 52C-3-301(c), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; *Butler v. Butler,* 152 N.C. App. 74, 566 S.E.2d 707 (2002). See Section II.B, below.]

        i. For the definitions of "initiating tribunal" and "responding tribunal", see G.S. 52C-1-101(8) and (17), both of which now include a tribunal of a foreign country.

        ii. While the filing of a petition in an initiating tribunal for forwarding is still recognized as an available procedure, the direct filing procedure has proven to be one of the most significant improvements in efficient interstate case management. [Official Comment (2015), G.S. 52C-3-301.]

13. A UIFSA petition seeking establishment of a child support order must do all of the following:

    a. Conform substantially with the federally approved UIFSA petition. [*See* G.S. 52C-3-310(b).]

    b. Be filed by the petitioner. [G.S. 52C-3-310(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] Before the 2015 amendment, G.S. 52C-3-310(a) required that the petition be verified.

c. State the names, residential addresses, and Social Security numbers of the obligor and obligee or the parent and alleged parent and the name, sex, date of birth, Social Security number, and residential address of each child for whose benefit support is sought or whose parentage is to be determined (if a party has alleged under oath that disclosure of identifying information would jeopardize the health, safety, or liberty of a party or child, a tribunal, after a hearing, may order disclosure of information that the tribunal determines to be in the best interest of justice). [G.S. 52C-3-310(a), 52C-3-311, *both amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

i. The Official Comment (2015) to the confidentiality provision in G.S. 52C-3-311 mentions Social Security numbers of the parties or the child as an example of identifying information that can be shielded from disclosure.

ii. G.S. 50-13.4(g), (h), *amended by* S.L. 2008-12, § 1, effective Oct. 1, 2008, no longer requires Social Security numbers of the parties in a child support order.

d. Have attached to it a certified copy of any support order known to have been issued by another tribunal with respect to the child, unless filed at the time of registration. [G.S. 52C-3-310(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

e. Specify the relief sought. [G.S. 52C-3-310(b).]

B. Interstate Procedure

1. Role of the Responding Tribunal.

a. A North Carolina district court may serve as a "responding tribunal" for proceedings initiated in another state or foreign country. [G.S. 52C-2-203. *See* 52C-1-101(3a) (definition of "foreign country"); 52C-1-101(17) (definition of "responding tribunal"), 52C-1-101(19) (definition of "state"), 52C-1-101(22) (definition of "tribunal"), 52C-1-102(a) (district court is the tribunal of this state), 52C-3-305 (duties and powers of responding tribunal), and 52C-4-401 (establishment of support order), *all amended or added by* S.L. 2015-117, § 1, effective June 24, 2015.]

b. Procedure.

i. An individual petitioner or a support enforcement agency may initiate a UIFSA proceeding to establish a child support order in North Carolina by filing a petition in a tribunal in petitioner's state or foreign country of residence for forwarding to North Carolina or by filing a petition or a comparable pleading directly in North Carolina if North Carolina has or can obtain personal jurisdiction over the respondent. [G.S. 52C-3-301(c), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. If the petitioner files a petition in a tribunal in petitioner's state or foreign country of residence, that tribunal (called the "initiating tribunal") will forward the petition to North Carolina. [G.S. 52C-3-301(c), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; 52C-1-101(8) (definition of "initiating tribunal").] G.S. 2015-117, § 1, effective June 24, 2015, deleted the term "initiating state".

iii. Whether the action is initiated in a state or in a foreign country or in North Carolina by the petitioner, North Carolina is the "responding state" or "responding tribunal" for purposes of UIFSA. [G.S. 52C-1-101(16), *amended*

by S.L. 2015-117, § 1, effective June 24, 2015 (definition of "responding state"); 52C-1-101(17), *amended by* S.L. 2015-117, § 1, effective June 24, 2015 (definition of "responding tribunal").]

iv. If a North Carolina tribunal receives a UIFSA petition and determines that it is not the appropriate tribunal with respect to the proceeding, the North Carolina tribunal must forward the petition and other documents to an appropriate tribunal in this state or in another state and notify the petitioner where and when the petition was sent. [G.S. 52C-3-306, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

v. Except as otherwise provided by UIFSA, a responding tribunal of this state in a UIFSA proceeding seeking establishment of a child support order applies North Carolina's procedural and substantive law, generally applicable to similar proceedings originating in this state; may exercise and apply all powers and provide all remedies available in those proceedings; and determines the duty of support and amount payable in accordance with the law and guidelines of this state. [G.S. 52C-3-303, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] For the choice of law provisions applicable to a proceeding to enforce a registered support order, see G.S. 52C- 6-604, discussed in *Enforcement of Child Support Orders*, Part 4 of this Chapter.

c. In a UIFSA proceeding, a North Carolina support enforcement agency, upon request, must provide services to a petitioner residing in a state, and services to a petitioner requesting services through a central authority of a foreign country as described in G.S. 52C-1-101(3a)a. or d. [G.S. 52C-3-307(a)(1) and (2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] For duties of a North Carolina support enforcement agency, see G.S. 52C-3-307(b1), (b2), and (b3), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

i. If the North Carolina Department of Health and Human Services, Division of Social Services (Department), determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Department may order the agency to perform its duties under UIFSA or may provide those services directly to the individual. [G.S. 52C-3-308(a), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. The Department may determine that a foreign country has established a reciprocal arrangement for child support with North Carolina and take appropriate action for notification of the determination. [G.S. 52C-3-308(b), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

d. An individual may employ private counsel to represent him or her in proceedings authorized by G.S. Chapter 52C. [G.S. 52C-3-308.1, *added by* S.L. 2015-117, § 1, effective June 24, 2015.] Language in former G.S. 52C-3-308, providing for representation of an obligee in a UIFSA proceeding by the district attorney, was repealed by S.L. 2015-117, § 1, effective June 24, 2015..

e. The physical presence of a nonresident individual party before the responding tribunal is not required for the establishment of a child support order. [G.S. 52C-3-315(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; Official Comment (2015),

G.S. 52C-3-315 (this provision ensures that a nonresident petitioner or a nonresident respondent may fully participate in a UIFSA proceeding without being required to appear personally).]

i. A petitioner is not subject to service of civil process while physically present in North Carolina to participate in a UIFSA proceeding. [G.S. 52C-3-313(b).]

ii. Participation by the petitioner in a UIFSA proceeding before a responding tribunal does not confer personal jurisdiction over the petitioner in another proceeding. [G.S. 52C-3-313(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015. *See also* G.S. 52C-1-103(b), *added by* S.L. 2015-117, § 1, effective June 24, 2015 (G.S. Chapter 52C does not grant a North Carolina tribunal jurisdiction to render judgment or issue an order relating to child custody or visitation in a Chapter 52C proceeding).] Participation means participation in person, by private attorney, or through services provided by the support enforcement agency. [G.S. 52C-3-313(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

iii. Immunity under G.S. 52C-3-313 does not extend to civil litigation based on acts unrelated to a UIFSA proceeding committed by a party while present in North Carolina to participate in a UIFSA proceeding. [G.S. 52C-3-313(c).]

f. In a UIFSA proceeding, a responding tribunal in this state must permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state must cooperate with other tribunals in designating an appropriate location for the deposition or testimony. [G.S. 52C-3-315(f), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] The phrase "outside this state" is used in G.S. Chapter 52C when the application of the provision in which it is included is to be "as broad as possible." [Official Comment (2015), G.S. 52C-1-101.] All nations and political subdivisions are "outside this state" and, for example, use of the phrase in G.S. 52C-315 to -317 allows a North Carolina tribunal to accept information or assistance from "everywhere in the world." [Official Comment (2015), G.S. 52C-1-101.]

i. Evidence contained in affidavits, documents substantially complying with federally mandated forms, or documents incorporated by reference in the affidavits or documents, given under penalty of perjury by a party or witness residing outside this state, is admissible in a UIFSA proceeding to the extent that it would not be excluded under the hearsay rule if given in person by the declarant. [G.S. 52C-3-315(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] For a note about the broad application given to the term "outside this state" and, thus, to the provision cited, see Section II.B.1.f, immediately above.

ii. Documentary evidence transmitted from outside this state by telephone, telecopier, or other electronic means that does not provide an original record may not be excluded from evidence based on an objection to the means of transmission. [G.S. 52C-3-315(e), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] For a note about the broad application given to the term "outside this state" and, thus, to the provision cited, see Section II.B.1.f, above.

g. A responding tribunal in this state may assess reasonable attorney fees, filing fees, necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses, and other costs against an obligor if the obligee prevails. [G.S. 52C-3-312(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

i. Payment of child support owed to the obligee has priority over fees, costs, and expenses. [G.S. 52C-3-312(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. [G.S. 52C-3-312(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

iii. The tribunal may not assess fees, expenses, or costs against the obligee or against the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. [G.S. 52C-3-312(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

h. A responding tribunal of this state that issues an order in a UIFSA proceeding must send a copy to the petitioner, the respondent, and the initiating tribunal, if any. [G.S. 52C-3-305(e).] For other powers and duties of a responding tribunal, see G.S. 52C-3-305.

i. Establishment of a support order by a responding tribunal.

i. If a support order entitled to recognition under G.S. Chapter 52C has not been issued, a North Carolina district court serving as a responding tribunal with personal jurisdiction over the parties may issue a support order if:

(a) The individual seeking the order lives outside this state or

(b) The support enforcement agency seeking the order is located outside this state. [G.S. 52C-4-401(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] For a note about the broad application given to the term "outside this state" and, thus, to the provision cited, see Section II.B.1.f, above.

2. Role of the Initiating Tribunal.

a. A North Carolina district court may serve as an "initiating tribunal" in a UIFSA proceeding to forward proceedings to a tribunal of another state. [G.S. 52C-2-203, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

b. As an initiating tribunal, a North Carolina court must forward the UIFSA petition and accompanying documents to the responding tribunal or appropriate support enforcement agency in the responding state or to the state information agency in the responding state if the responding tribunal's identity is unknown. [G.S. 52C-3-304(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] Since 1998, by which time UIFSA had been enacted nationwide, the procedure in 52C-3-304(a) "has gradually become an anachronism." [Official Comment (2015), G.S. 52C-3-304(a).]

c. A petitioner is not required to pay a filing fee or other costs. [G.S. 52C-3-312(a).]

d. If requested by the responding tribunal, a tribunal of this state must issue a certificate or other document and make findings required by the law of the responding state. [G.S. 52C-3-304(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

e. If the responding tribunal is in a foreign country, upon request, a tribunal of this state must specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under the applicable official or market exchange rate, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal. [G.S. 52C-3-304(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] The procedure in G.S. 52C-3-304(b) retains its utility with regard to a support order of a foreign nation. [Official Comment (2015), G.S. 52C-3-305(a).]

f. A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail, or other means to obtain or provide information regarding the laws; the legal effect of a judgment, decree, or order of that tribunal; and the status of a proceeding. [G.S. 52C-3-316, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] For a note about the broad application given to the term "outside this state" and, thus, to the provision cited, see Section II.B.1.f, above.

g. In a UIFSA proceeding, a tribunal of this state must cooperate with other tribunals in designating an appropriate location for a deposition or the taking of testimony under penalty of perjury by telephone, audiovisual means, or other electronic means. [G.S. 52C-3-315(f), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

h. A tribunal of this state may request that a tribunal outside this state assist it in obtaining discovery and, upon request, may compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal outside this state. [G.S. 52C-3-317, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] For a note about the broad application given to the term "outside this state" and, thus, to the provision cited, see Section II.B.1.f, above.

i. In a UIFSA proceeding, a North Carolina support enforcement agency, upon request, must provide services to a petitioner residing in a state and to a petitioner requesting services through a central authority of a foreign country as described in G.S. 52C-1-101(3a)a. or d. [G.S. 52C-3-307(a)(1) and (2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] For duties of a North Carolina support enforcement agency, see G.S. 52C-3-307(b1), (b2), and (b3), *added by* S.L. 2015-117, § 1, effective June 24, 2015.

III. Voluntary Agreements

A. Voluntary Support Agreements [G.S. 110-132(a) and 110-133.]

1. Generally.

a. An order for child support may be established through the execution and approval of a voluntary support agreement (VSA) pursuant to G.S. 110-132(a3) or 110-133.

i. A VSA executed pursuant to G.S. 110-132(a3) establishes support for a child based on affidavits of parentage executed by the putative father and mother in accordance with G.S. 110-132(a), which constitute an admission of paternity and have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation. [G.S. 110-132(a).]

(a) Before Oct. 1, 1997, G.S. 110-132(a) provided that an acknowledgment of paternity filed with and approved by a district court judge had the same force and effect as a judgment of the court.

(b) S.L. 1997-433, § 4.7 amended G.S. 110-132(a) to provide that an acknowledgment of paternity constituted an admission of paternity, subject to the right to rescind, and deleted the language giving an acknowledgment of paternity the same force and effect as a judgment of the court.

(c) S.L. 1999-293, § 1 amended G.S. 110-132(a) to provide that an acknowledgment of paternity shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to a right to rescind.

(d) S.L. 2001-237, § 2 amended G.S. 110-132(a) to change the name of the documents executed by the putative father and mother to affidavits of parentage.

(e) S.L. 2011-328, § 2 amended G.S. 110-132 to add a procedure to set aside an affidavit of parentage.

(f) S.L. 2015-117, § 1 amended G.S. 52C-3-315 to add G.S. 52C-3-315(j), effective June 24, 2015, to provide that a voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish paternity of a child.

ii. A VSA executed pursuant to G.S. 110-133 establishes support for a dependent child born of a marriage.

iii. Form AOC-CV-607, Voluntary Support Agreement and Approval by Court, may be used in either case. When used to establish support for a child born out of wedlock, Form AOC-CV-607 may be accompanied by Form AOC-CV-604, Affidavit of Parentage.

b. A voluntary support agreement pursuant to G.S. 110-132(a3) and the affidavits of parentage executed pursuant to G.S. 110-132(a) may be filed in lieu of, or to dispose of, a civil action for child support brought pursuant to G.S. 50-13.4 *et seq.* or any other legal proceeding instituted to obtain child support for a child born out of wedlock. [G.S. 110-132(a), (a3).]

c. A voluntary support agreement pursuant to G.S. 110-133 may be filed in lieu of, or to dispose of, a civil action for child support brought pursuant to G.S. 50-13.4 *et seq.* or any other legal proceeding instituted to obtain child support from a parent of a child born of the marriage. [G.S. 110-133.]

2. Procedure.

a. If a VSA is filed in connection with a pending proceeding to establish support, there is no filing fee. If there is no pending action, the filing fee is as provided in G.S. 110-134.

b. A voluntary support agreement pursuant to G.S. 110-132(a3) and the affidavits of parentage must be acknowledged by the supporting parents before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmations, affidavits, and agreement were made. [G.S. 110-132(a3).]

c. A voluntary support agreement pursuant to G.S. 110-133 must be acknowledged by the supporting parent before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the acknowledgment was made. [G.S. 110-133.]

d. The voluntary support agreement, whether executed pursuant to G.S. 110-132(a3) or 110-133, must contain the Social Security number of each of the parties to the agreement. [G.S. 110-132(a3); 110-133.]

   i. Note, however, that G.S. 50-13.4(g), (h), *amended by* S.L. 2008-12, § 1, effective Oct. 1, 2008, no longer requires Social Security numbers of the parties in a child support order.

   ii. Form AOC-CV-607, Voluntary Support Agreement and Approval by Court, does not require Social Security numbers of the parties or the child.

e. Although the consent or agreement of the child's custodial parent or caretaker is not statutorily required, a voluntary support agreement that is not entered into with the agreement or consent of the child's custodial parent, as evidenced by the custodial parent's or caretaker's execution of the agreement or other factors, may not be legally binding on the custodial parent, caretaker or child with respect to the amount of support provided. [*See Yarborough v. Yarborough*, 27 N.C. App. 100, 218 S.E.2d 411 (husband's confession of judgment for alimony was a nullity when wife had not expressly or impliedly consented to the judgment confessed), *cert. denied*, 288 N.C. 734, 220 S.E.2d 353 (1975).] Form AOC-CV-607 has an "Acknowledgment and Consent by Obligee" section that must be completed by the obligee.

f. G.S. 110-133 provides that the VSA executed pursuant to G.S. 110-133 is to be filed in the county where the custodial parent, noncustodial parent, or child resides or is found.

g. G.S. 110-132(a3) does not set out where a VSA executed pursuant to G.S. 110-132(a3) is to be filed. As set out in Section III.A.2.b, above, G.S. 110-132(a3) requires that the affidavits and voluntary support agreement be sworn to where made.

3. Right of rescission in G.S. 110-132.

   a. There is no right to rescind a voluntary support agreement (VSA). G.S. 110-132(a) contains a sixty-day right of rescission that applies only to affidavits of parentage, not to voluntary support agreements. Similarly, affidavits of parentage established under G.S. 110-132(a) may be set aside pursuant to G.S. 110-132(a2) or 50-13.13, but neither statute speaks to setting aside a VSA. [*See Paternity*, Bench Book, Vol. 1, Chapter 10.]

   b. However, a voluntary support agreement requiring a man to support a child born out of wedlock should not be approved unless the man has executed an unrescinded

voluntary affidavit of parentage pursuant to G.S. 110-132(a) or 130A-101 or his paternity of the child has been judicially determined.

c. **NOTE**: S.L. 2011-328, §§ 2 and 3, effective Jan. 1, 2012, and applicable to motions or claims for relief filed on or after that date, added G.S. 110-132(a2) and 50-13.13, which provide procedures to set aside affidavits of parentage under certain circumstances.

4. Amount of support.

   a. Federal law requires that all support orders, even those entered by consent, comply with the child support guidelines. [See 2015 Guidelines stating that guidelines apply to voluntary support agreements and to consent orders approved by the court; 42 U.S.C. § 667(b)(2) and 45 C.F.R. § 302.56(f).]

   b. Unless the voluntary support agreement states the presumptive amount of support due under the child support guidelines and indicates that the obligor's presumptive child support obligation would exceed or not meet the child's reasonable needs considering the parents' relative abilities to provide support or would otherwise be unjust or inappropriate, the amount of child support provided through a voluntary support agreement must be determined pursuant to North Carolina's child support guidelines.

5. Optional provisions of the agreement. Pursuant to G.S. 110-132(a3), a VSA may provide for:

   a. Reimbursement of medical expenses incident to the pregnancy and birth of the child,

   b. Accrued maintenance (past expenditures or past maintenance), and

   c. Reasonable expenses of prosecution of a paternity action.

6. Legal force and effect.

   a. The VSA is binding on the responsible parent executing it whether that person is an adult or a minor. [G.S. 110-132(a3).]

   b. A voluntary support agreement, filed with and approved by the district court judge, has the same force and effect as an order of support entered by the court. The VSA is enforceable and subject to modification in the same manner as an order of support entered by the court. [G.S. 110-132(a3); 110-133.]

   c. A voluntary child support agreement under G.S. 110-132(a) (now G.S. 110-132(a3)) has been found sufficient to establish paternity of a child born out of wedlock, entitling the child to inherit pursuant to G.S. 29-19(b)(2) when the father died intestate. [*In re Estate of Potts,* 186 N.C. App. 460, 651 S.E.2d 297 (2007) (VSA met the acknowledgment, execution, and filing requirements of G.S. 29-19(b)(2)).] Strict compliance with the requirement in G.S. 29-19(b)(2) that the instrument acknowledging paternity be filed with the clerk is required. [*In re Estate of Williams,* 783 S.E.2d 253 (N.C. Ct. App.) (citing *In re Estate of Morris,* 123 N.C. App. 264, 472 S.E.2d 786 (1996)) (rejecting purported heir's argument that substantial compliance with the filing requirement would be sufficient), *review denied, review dismissed,* 787 S.E.2d 30 (N.C. 2016).]

7. Setting aside a voluntary support agreement.
    a. Most requests to set aside voluntary support agreements arise when a putative father who has acknowledged paternity subsequently denies paternity.
        i. **NOTE**: S.L. 2011-328, §§ 2 and 3, effective Jan. 1, 2012, and applicable to motions or claims for relief filed on or after that date, added G.S. 110-132(a2) and 50-13.13, which provide procedures to set aside af-fidavits of parentage under certain circumstances.
        ii. **NOTE**: S.L. 2011-328, § 1, effective Jan. 1, 2012, and applicable to motions or claims for relief filed on or after that date, added G.S. 49-14(h), which provides procedures to set aside orders of paternity under certain circumstances.
    b. A motion pursuant to G.S. 1A-1, Rule 60(b) is the appropriate method of challenging acknowledgments of paternity. [*State ex. rel. Davis v. Adams,* 153 N.C. App. 512, 571 S.E.2d 238 (2002) (*citing Leach v. Alford,* 63 N.C. App. 118, 304 S.E.2d 265 (1983)) (trial court properly denied putative father's motion to void his acknowledgment of paternity and voluntary child support agreement and order based on his claim of fraud or mistake where father failed to file motion within one year after entry of the VSA, as required by Rule 60(b)(1)).] NOTE: Motions pursuant to Rule 60(b)(4), (b)(5), and (b)(6) are not subject to the one-year limitation but instead must be filed within a reasonable time after entry of judgment. [G.S. 1A, Rule 60(b).]
    c. If the trial court grants the Rule 60(b) motion, the acknowledgment of paternity and voluntary support order are set aside and the issue of paternity is reopened. [*State ex rel. Bright v. Flaskrud,* 148 N.C. App. 710, 559 S.E.2d 286 (2002).] The court in Bright considered an acknowledgment of paternity and voluntary support executed in 1995. Before Oct. 1, 1997, an acknowledgement of paternity executed pursuant to G.S. 110-132(a) filed with and approved by a district court judge had the same force and effect as a judgment of the court.
    d. A trial court must first set aside the acknowledgment pursuant to Rule 60(b) before considering the paternity issue or ordering blood tests. [*State ex rel. Bright v. Flaskrud,* 148 N.C. App. 710, 559 S.E.2d 286 (2002) (error for court to order blood tests before ruling on Rule 60 motion; acknowledgment of paternity was res judicata so had to be first set aside).]
    e. A judgment of paternity arising from an acknowledgment of paternity under G.S. 110-132 may not be reconsidered by the court in a later proceeding relating solely to support. [*Leach v. Alford,* 63 N.C. App. 118, 304 S.E.2d 265 (1983) (an order of paternity cannot be collaterally attacked in a proceeding relating to support; an unrescinded voluntary paternity affidavit under G.S. 110-132(a) is res judicata on issue of paternity in a subsequent proceeding solely for support); *Person Cty. ex rel. Lester v. Holloway*, 74 N.C. App. 734, 329 S.E.2d 713 (1985) (defendant could not attack, in a contempt proceeding for failure to pay child support, a judgment of paternity arising from defendant's execution of an acknowledgement of paternity under G.S. 110-132(a); enforcement proceeding was one relating solely to support).] Note, that before Oct. 1, 1997, an acknowledgment of paternity executed pursuant to G.S. 110-132(a) filed with and approved by a district court judge had the same force and effect as a judgment of the court.

f. A party is not barred from seeking relief pursuant to Rule 60(b) from an acknowledgment (judgment) of paternity when support is not at issue. [*Leach v. Alford,* 63 N.C. App. 118, 304 S.E.2d 265 (1983).]

g. For a discussion on nonpaternity as a defense in an action for support, see Section I.G.4, above.

h. For a discussion on setting aside a paternity affidavit, see *Paternity*, Bench Book, Vol. 1, Chapter 10.

B. Confession of Judgment

1. If a child support proceeding is not pending, a child support order may be established through confession of judgment. [G.S. 1A-1, Rule 68.1(a).]

2. A confession of judgment for child support must be filed with the clerk of superior court in the county in which the person confessing judgment resides or has property or in the county in which the person to whom support is owed resides. [G.S. 1A-1, Rule 68.1(c).]

3. Confessions of judgment are required to comply with the child support guidelines. [42 U.S.C. § 667(b)(2) and 45 C.F.R. § 302.56(f).] Unless the confession of judgment states the presumptive amount of support due under the child support guidelines and indicates that the obligor's presumptive child support obligation would exceed or not meet the child's reasonable needs considering the parents' relative abilities to provide support or would otherwise be unjust or inappropriate, the amount of child support provided through a confession of judgment must be determined pursuant to North Carolina's child support guidelines.

4. A confession of judgment for child support that is not entered into with the agreement or consent of the child's custodial parent or caretaker, as evidenced by the custodial parent's or caretaker's execution of the agreement or other factors, may not be legally binding on the custodial parent, caretaker, or child with respect to the amount of support provided. [*See Yarborough v. Yarborough*, 27 N.C. App. 100, 218 S.E.2d 411 (husband's confession of judgment for alimony a nullity when wife had not expressly or impliedly consented to the judgment confessed), *cert. denied*, 288 N.C. 734, 220 S.E.2d 353 (1975).]

5. A confession of judgment for child support is enforceable and may be modified in the same manner as a child support order entered by a district court pursuant to G.S. 50-13.4 *et seq.* [*See* G.S. 1A-1, Rule 68.1(e).]

   a. No judgment by confession is res judicata as to any fact in any civil action except in an action on the judgment confessed. [G.S. 1A-1, Rule 68.1(e).]

   b. When the judgment confessed is for child support, defendant's failure to make payment as required by the judgment subjects the defendant to the same penalties as in any other case of contempt of a court order. [G.S. 1A-1, Rule 68.1(e).]

   c. A court may refuse to enforce provisions in a confession of judgment that are against public policy. [*See Snipes v. Snipes*, 118 N.C. App. 189, 454 S.E.2d 864 (1995) (agreeing with trial court's implicit determination that judgment which increased payments according to increases in consumer price index was void *ab initio*).]

   d. If a confession of judgment gives a party judgment on issues later raised in a complaint, the complaint should be dismissed. [*Pierce v. Pierce,* 58 N.C. App. 815, 295

S.E.2d 247 (1982) (complaint seeking enforcement of separation agreement granting custody to wife and specifying amount of child support to be paid by father should have been dismissed where prior judgment by confession was judgment on the issues raised in the complaint; order to show cause for violation of the judgment of confession pending).]

C. Separation Agreements

1. Generally.
   a. The legal obligation of married parents to support a minor child may be established through the execution and acknowledgment of a written separation agreement between the parents. [G.S. 52-10.1.]
   b. A parent may assume in a separation agreement a child support obligation that is greater in amount, scope, or duration than that imposed by G.S. Chapter 50 or other state laws. [*Jackson v. Jackson,* 360 N.C. 56, 620 S.E.2d 862, *rev'g per curiam for reasons stated in dissenting opinion in* 169 N.C. App. 46, 610 S.E.2d 731 (2005) (Hunter, J., dissenting) (provision in unincorporated separation agreement that required father to pay monthly child support beyond age of majority enforceable); *Shaffner v. Shaffner*, 36 N.C. App. 586, 244 S.E.2d 444 (1978) (father agreed in separation agreement to support child until he reached age 21).]
   c. However, no agreement between the parents can fully deprive the courts of their authority to protect the best interests of minor children. [*Pataky v. Pataky*, 160 N.C. App. 289, 585 S.E.2d 404 (2003) (quoting *Fuchs v. Fuchs,* 260 N.C. 635, 639, 133 S.E.2d 487, 491 (1963)), *aff'd per curiam in part, review dismissed in part,* 359 N.C. 65, 602 S.E.2d 360 (2004); *Bottomley v. Bottomley,* 82 N.C. App. 231, 346 S.E.2d 317 (1986) (court has inherent authority to pass on custody and support issues); *Boyd v. Boyd,* 81 N.C. App. 71, 343 S.E.2d 581 (1986) (citing *Fuchs*) (provisions of a separation agreement relating to custody and support are not binding on the court, which has inherent and statutory authority to protect the interests of children).]
   d. See *Spousal Agreements,* Bench Book, Vol. 1, Chapter 1, Section IV.F.4 for more on separation agreements.
2. Separation agreements that are incorporated into a judgment of the court.
   a. Parents can request that a court incorporate their separation agreement into a judgment of the court. [*Pataky v. Pataky*, 160 N.C. App. 289, 303–04 n.6, 585 S.E.2d 404, 414 n.6 (2003) (stating in a footnote that parents should be free to evaluate the relative advantages and disadvantages of incorporation), *aff'd per curiam in part, review dismissed in part,* 359 N.C. 65, 602 S.E.2d 360 (2004).]
   b. Once incorporated, a separation agreement is a court order. As such it is enforceable by the contempt powers of the court, and child support provisions are subject to modification upon a showing of a material change in circumstance. [*Walters v. Walters*, 307 N.C. 381, 298 S.E.2d 338 (1983); *Duffey v. Duffey,* 113 N.C. App. 382, 438 S.E.2d 445 (1994) (trial court free to modify amount of child support in incorporated agreement in the event of changed circumstances).]

3. Separation agreements that are not incorporated into a judgment of the court.
   a. Generally.
      i. An unincorporated separation agreement is a contract between the parties. [*Rose v. Rose,* 108 N.C. App. 90, 422 S.E.2d 446 (1992).]
      ii. A parent's obligation to pay child support pursuant to an unincorporated separation agreement may be enforced by a court in the same manner as other contracts. [*See Morrow v. Morrow,* 103 N.C. App. 787, 407 S.E.2d 286 (1991) (party alleging other parent obligated by separation agreement to support parties' child who was no longer a minor had to file a civil action rather than motion in the cause; G.S. 1A-1, Rule 3, providing that a civil action is commenced by filing a complaint, does not allow for an action to be commenced by a motion in the cause); *Rosen v. Rosen*, 105 N.C. App. 326, 413 S.E.2d 6 (1992) (defendant's agreement to provide for children's educational training beyond high school not enforceable; no meeting of the minds as to amount of his contribution).]
      iii. For more on enforcement of unincorporated separation agreements, see *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section VIII.B and *Spousal Agreements,* Bench Book, Vol. 1, Chapter 1, Section IV.F.4.
   b. Parties to an unincorporated separation agreement may seek court-ordered prospective child support.
      i. Either party to an unincorporated separation agreement may seek a court order to establish child support pursuant to G.S. 50-13.4 in an amount, scope, or duration different from that provided in the unincorporated 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).]
      ii. In this case, 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. [*Pataky v. Pataky*, 160 N.C. App. 289, 585 S.E.2d 404 (2003) (citing *Boyd v. Boyd*, 81 N.C. App. 71, 343 S.E.2d 581 (1986)), *aff'd per curiam in part, review dismissed in part,* 359 N.C. 65, 602 S.E.2d 360 (2004); *Boyd* (moving party is not required to prove that there has been a substantial change of circumstances since the date the separation agreement was executed; 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).]
   c. Awarding prospective support.
      i. To establish prospective child support when there is a prior unincorporated separation agreement:
         (a) The court must first apply a rebuttable presumption that the amount set forth in the separation agreement is just and reasonable.
         (b) The court then determines the actual needs of the child at the time of the hearing, as compared to the provisions of the separation agreement.
         (c) The court next determines whether the presumption of reasonableness has been rebutted by the greater weight of the evidence, taking into account the

needs of the children existing at the time of the hearing and considering the factors enumerated in the first sentence of G.S. 50-13.4(c).

(d) If the presumption of reasonableness **is not** rebutted, the court should enter an order in the amount provided in the separation agreement and make a finding that application of the guidelines would be inappropriate.

(e) If the presumption of reasonableness afforded the separation agreement allowance **has been** rebutted, the court then looks to the presumptive guidelines.

(f) Upon motion of either party or on the court's own motion, the court may deviate from the guidelines under the usual standard for deviation,that application of the guidelines would not meet or would exceed the needs of the child or would be otherwise unjust or inappropriate. [*Pataky v. Pataky*, 160 N.C. App. 289, 585 S.E.2d 404 (2003), *aff'd per curiam in part, review dismissed in part,* 359 N.C. 65, 602 S.E.2d 360 (2004).]

ii. When applying the presumption, the trial court must make findings of fact:

(a) Regarding the needs of the child at the time of the hearing and the factors set out in the first sentence of G.S. 50-13.4(c) and

(b) That indicate whether the party has rebutted the presumption of reasonableness. [*Pataky v. Pataky*, 160 N.C. App. 289, 585 S.E.2d 404 (2003), *aff'd per curiam in part*, *review dismissed in part*, 359 N.C. 65, 602 S.E.2d 360 (2004).]

iii. In determining whether the amount of support in an unincorporated separation agreement is reasonable, a trial court may not impute income to the supporting parent without finding that the supporting parent "deliberately depressed his income or deliberately acted in disregard of his obligation to provide support." [*Lasecki v. Lasecki*, 786 S.E.2d 286, 292 (N.C. Ct. App. 2016) (quoting *McKyer v. McKyer,* 179 N.C. App. 132, 146, 632 S.E.2d 828, 836 (2006)).] Similarly, in determining the amount of child support that father had the ability to pay for specific performance purposes, the trial court erred when it imputed income to father of $150,000/year even though it found that he was not "voluntarily suppressing his income in bad faith to avoid his child support obligation." [*Lasecki v. Lasecki*, 786 S.E.2d 286, 299 (N.C. Ct. App. 2016) (father was unemployed and had no income at the time of the hearing).]

(a) For more on *Lasecki*, see Cheryl Howell, *And They Said It Again: Never Use Earning Capacity Without Bad Faith*, UNC Sch. of Gov't: On the Civil Side Blog (Apr. 22, 2016), http://civil.sog.unc.edu/and-they-said-it-again-never-use-earning-capacity-without-bad-faith.

(b) For more on bad faith generally, see Cheryl Howell *Imputing Income: So What Is Bad Faith?* UNC Sch. of Gov't: On the Civil Side Blog (Oct. 7, 2015), http://civil.sog.unc.edu/imputing-income-so-what-is-bad-faith.

iv. The *Pataky* presumption and required findings have been found to apply even if the parties' unincorporated agreement provides for calculation of support pursuant to the guidelines upon the occurrence of a certain event or condition. [*See Weisberg v. Griffith,* 171 N.C. App. 517, 615 S.E.2d 738 (2005) (**unpublished**)

(when parties agreed in unincorporated agreement to set child support in accordance with the guidelines should one of the parties move fifty miles from the other, trial court ordered guideline support as of date of mother's move with children out of state; order vacated and remanded as not conforming with Pataky when findings did not indicate that trial court applied the presumption that the amount of support in the agreement was reasonable, there were no specific findings regarding the presumption or whether it was rebutted, and no findings as to the reasonable needs of the children at the time of the separation agreement and at the time of trial).]

v. Trial court did not abuse its discretion when it determined that the *Pataky* presumption had been rebutted when it made numerous, in-depth findings as to the children's accustomed standard of living, the needs of the children, and the variance at the time of the hearing between the expenses incurred by the father on behalf of the children and those incurred by the mother on their behalf. [*Brind'Amour v. Brind'Amour,* 196 N.C. App. 322, 674 S.E.2d 448 (2009).]

vi. Where presumption is rebutted, the trial court has discretion to order prospective child support in an amount greater than that in the parties unincorporated separation agreement. [*Carson v. Carson,* 199 N.C. App. 101, 680 S.E.2d 885 (2009).] For a court's discretion to award less than the support provided in the separation agreement, see Section III.C.3.d, immediately below.

d. Setting prospective child support order in an amount less than that provided for in an unincorporated separation agreement.

i. A trial court has discretion to enter an order establishing child support in an amount less than the amount established by a separation or child support agreement. [*Brind'Amour v. Brind'Amour,* 196 N.C. App. 322, 674 S.E.2d 448 (2009) (citing *Bottomley v. Bottomley*, 82 N.C. App. 231, 346 S.E.2d 317 (1986)) (noting, however, that in most cases the custodial parent obtains child support in an amount greater than that in the agreement).]

ii. No abuse of discretion when the trial court awarded mother $9,147 per month in support when the parties unincorporated agreement provided for $15,000. [*Brind'Amour v. Brind'Amour,* 196 N.C. App. 322, 674 S.E.2d 448 (2009) (finding that mother's expenses related to the three children were excessive).]

iii. If the court enters an order requiring a parent to pay less child support than provided under an unincorporated separation agreement, the court of appeals has indicated that the party receiving support may still be able to seek to enforce 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 did limit 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).]

e. Awarding retroactive support when there is an unincorporated separation agreement.

i. Two types of retroactive support.

(a) The first type of retroactive support occurs when a court awards support for a period prior to the date a civil action for support was filed. Such an order has required a parent to reimburse a child's custodian for the parent's fair share of actual and reasonable child-related expenses paid by the custodian before the date an action seeking child support was filed. [*Carson v. Carson,* 199 N.C. App. 101, 680 S.E.2d 885 (2009); *Lawrence v. Tise*, 107 N.C. App. 140, 419 S.E.2d 176 (1992).] This type of support is also known as "prior maintenance."

(b) The second type of retroactive support occurs when a court orders a retroactive increase in the amount provided in an existing support order. [*Biggs v. Greer*, 136 N.C. App. 294, 524 S.E.2d 577 (2000) (in limited circumstances, the trial court may order an obligor to reimburse the other parent for emergency expenses not covered by the existing support order).]

ii. When a valid, unincorporated separation agreement sets out the obligations of the parent for support and the parent fully complies with this obligation, the trial court is not permitted to award retroactive child support absent an emergency situation. [2015 Guidelines; *Carson v. Carson,* 199 N.C. App. 101, 680 S.E.2d 885 (2009) (citing *Fuchs v. Fuchs,* 260 N.C. 635, 133 S.E.2d 487 (1963)) (interpreting the 2006 Guidelines) (time period in *Carson* for which support was sought was three years prior to the filing of the complaint, during which time parties had an unincorporated separation agreement that was not being breached; trial court erred by using guidelines to determine retroactive support when unincorporated separation agreement was in effect and was not being breached).] The 2011 and 2015 Guidelines provide that "if a child's parents have executed a valid, unincorporated separation agreement that determined a parent's child support obligation for the period of time before the child support action was filed, the court shall not enter an order for retroactive child support or prior maintenance in an amount different than the amount required by the unincorporated separation agreement" without mentioning an exception for an emergency. Case law allows retroactive support in an amount different than the amount in an unincorporated separation agreement in an emergency situation. [See *Fuchs*, *Biggs v. Greer,* 136 N.C. App. 294, 524 S.E.2d 577 (2000), and other cases cited in *Carson*.]

iii. For more on retroactive support when there is an unincorporated separation agreement, see Cheryl Howell, *Retroactive Child Support: What Is It and How Is the Amount Determined?* UNC Sch. of Gov't: On the Civil Side Blog (Apr. 1, 2016), http://civil.sog.unc.edu/retroactive-child-support-what-is-it-and-how-is-the-amount-determined.

f. For a discussion of the application of the guidelines when there is an unincorporated separation agreement, see *Liability and Amount*, Part 1 of this Chapter, Section III.D.5.

IV. Criminal Nonsupport Proceedings

A. Offenses

1. A parent who willfully neglects or refuses to provide adequate support for his or her child, whether natural or adopted and whether or not the parent abandons the child, shall be guilty of a Class 2 misdemeanor (or a Class 1 misdemeanor for a subsequent offense). [G.S. 14-322(d), (f) (discussed in Section IV.D, below).]
2. Any man or woman who, without just cause or provocation, willfully abandons his or her child or children for six months and who willfully fails or refuses to provide adequate support for his or her child or children during the six-month period, shall be guilty of a Class I felony if the parent also attempts to conceal his or her whereabouts with the intent of escaping his or her lawful child support obligation. [G.S. 14-322.1 (discussed in Section IV.E, below).]
3. A parent who willfully neglects or refuses to provide adequate support and maintain his or her child born out of wedlock shall be guilty of a Class 2 misdemeanor. [G.S. 49-2, *amended by* S.L. 2013-198, § 17, effective June 26, 2013 (discussed in Section IV.F, below).]

B. Generally

1. A parent may be prosecuted for criminal nonsupport of his child regardless of whether a child support order has been previously entered requiring the parent to pay child support on behalf of the child.
2. Parentage is a necessary element of criminal nonsupport. [*See State ex rel. Lewis v. Lewis,* 311 N.C. 727, 319 S.E.2d 145 (1984) (prosecution under G.S. 14-322); *State v. Coffey,* 3 N.C. App. 133, 164 S.E.2d 39 (1968) (prosecution under G.S. 49-2).]
3. The State must prove all elements of the offense of criminal nonsupport beyond a reasonable doubt. [*See State ex rel. Lewis v. Lewis,* 311 N.C. 727, 319 S.E.2d 145 (1984); *State v. Ellis,* 262 N.C. 446, 137 S.E.2d 840 (1964).]
4. An indigent defendant has a right to court-appointed counsel in a criminal nonsupport proceeding. [G.S. 7A-450 and 7A-451(a).] When a defendant is not indigent, the defendant has a constitutional right to be represented by counsel at trial unless the defendant knowingly and intelligently waives that right. [*State v. Lee*, 40 N.C. App. 165, 252 S.E.2d 225 (1979) (guilty plea of nonindigent defendant charged under G.S. 49-2 stricken because when defendant was called upon to plead, he was neither represented by counsel nor had waived his right to counsel).]
5. Right to trial by jury.
   a. In criminal cases there shall be no jury trial in the district court. [G.S. 7A-196(b).]
   b. Upon appeal to superior court trial shall be de novo, with jury trial as provided by law. [G.S. 7A-196(b); 7A-271(b).]
6. Probation.
   a. The court may (and in some cases must, depending on the defendant's prior record) suspend a sentence of incarceration for criminal nonsupport and place the defendant on probation.

b. If the court places a defendant on probation, the defendant must satisfy child support and other family obligations as required by the court. [G.S. 15A-1343(b)(4).]

C. Jurisdiction

1. The district court has exclusive original jurisdiction over misdemeanor criminal nonsupport proceedings. [G.S. 7A-272; *State v. Caudill*, 68 N.C. App. 268, 314 S.E.2d 592 (1984) (violation of G.S. 49-2 is a misdemeanor over which the district court has exclusive original jurisdiction).] A defendant who is convicted of criminal nonsupport in district court may appeal to the superior court for trial de novo. [G.S. 7A-196(b); 7A-271(b).]
2. The offense of criminal nonsupport is deemed to have been committed in North Carolina whenever the child lives in North Carolina at the time the nonsupport occurs, regardless of the parent's residence. [G.S. 14-325.1; 49-3; *State v. Tickle*, 238 N.C. 206, 77 S.E.2d 632 (1953) (father of child conceived in Virginia but born in North Carolina was constructively present with reference to consummation of the crime of willful nonsupport), *cert. denied,* 346 U.S. 938, 74 S. Ct. 378 (1954).]
3. Willful neglect or failure to provide adequate support to a child is a continuing offense. A parent may be prosecuted for criminal nonsupport if, following his acquittal or conviction for criminal nonsupport in a prior criminal proceeding, he subsequently willfully fails to support his child. [G.S. 14-322(d). *See State v. Hinson*, 209 N.C. 187, 183 S.E. 397 (1936) (initial prosecution is not a bar to a subsequent prosecution, for there is a new violation of the law); *Stephens v. Worley*, 51 N.C. App. 553, 277 S.E.2d 81 (1981) (citing *State v. Ellis,* 262 N.C. 446, 137 S.E.2d 840 (1964)) (previous acquittal on a charge of willful nonsupport does not bar a subsequent prosecution because G.S. 49-2 creates a continuing offense); *State v. Coffey*, 3 N.C. App. 133, 164 S.E.2d 39 (1968) (citing *State v. Johnson,* 212 N.C. 566, 194 S.E.2d 319 (1937)) (since offense of nonsupport under G.S. 49-2 is a continuing offense, a new warrant may be filed charging defendant with nonsupport under G.S. 49-2 if nonsupport occurred after issuance of the warrant on which defendant has been tried).]

D. Failure to Support a Legitimate Child [G.S. 14-322.]

1. Generally.
   a. G.S. 14-322 relates only to the offense of failure to support one's legitimate children. A person may be convicted for nonsupport of a child born out of wedlock only under G.S. 49-2. [*State v. Caudill,* 68 N.C. App. 268, 314 S.E.2d 592 (1984).]
   b. A magistrate is required to issue criminal process under G.S. 14-322 if she finds probable cause to believe that a parent has willfully neglected or failed to make court-ordered child support payments for two consecutive months. [G.S. 110-138.1.]
   c. A parent who abandons a child who is less than seven days old pursuant to G.S. 7B-500(b) or (d) may not be prosecuted for criminal nonsupport of the child pursuant to G.S. 14-322. [G.S. 14-322.3.]
2. When action may be brought. A criminal nonsupport proceeding under G.S. 14-322 may be brought at any time before a child's 18th birthday. [G.S. 14-322(d).]
3. Elements. To obtain a conviction, the State must prove three elements:
   a. That defendant is the parent of the child,

b. That defendant failed or neglected to provide the child with adequate support, and

c. That such failure or neglect was willful. [G.S. 14-322(d); *State ex rel. Lewis v. Lewis,* 311 N.C. 727, 319 S.E.2d 145 (1984).] S.L. 1981-683, effective July 1, 1981, rewrote G.S. 14-322 to provide for criminal sanctions against both genders for nonsupport.

4. Order for support.

a. If a defendant is not required to pay child support under an existing order, the court may enter an order requiring a defendant convicted of criminal nonsupport under G.S. 14-322(d) to pay child support. [G.S. 14-322(e).]

b. The child support guidelines apply. The amount of support is to be determined as provided in G.S. 15-13.4(c). [G.S. 14-322(e).]

c. Child support ordered pursuant to G.S. 14-322(e) generally must be paid through the State Child Support Collection and Disbursement Unit through immediate income withholding. [*See* G.S. 15A-1344.1(a).]

5. Sentence and probation.

a. A first offense is a Class 2 misdemeanor. A second or subsequent offense is a Class 1 misdemeanor. [G.S. 14-322(f).]

b. The maximum sentence for a first offense under G.S. 14-322 is 30, 45, or 60 days (depending of the defendant's prior criminal record) and a fine of up to $1,000. [G.S. 15A-1340.23.]

c. G.S. 15A-1341 and 15A-1343 permit a judge to suspend the activation of a jail sentence and place a defendant on probation subject to the condition that defendant satisfy child support obligations.

i. The terms of the suspended judgment should be specifically stated in the judgment.

ii. Under the terms of the suspended judgment, the judge may also require a defendant to file a bond to secure compliance with the provisions of the suspended judgment. [*See* G.S. 15A-1343(b1)(10) (providing that the court may impose any other conditions reasonably related to defendant's rehabilitation).]

d. The presumptive probationary period for defendants convicted of criminal nonsupport under G.S. 14-322 is 6 to 18 months or 12 to 24 months. The maximum term of probation may not exceed 5 years. [G.S. 15A-1343.2(d)(1) and (2).]

6. Effect of conviction or guilty plea on issue of paternity in a subsequent action.

a. A conviction under G.S. 14-322 for failure to support necessarily required a finding that defendant was the father of the minor children whose support was at issue, so defendant was collaterally estopped from relitigating the issue of paternity in a later civil action by the state for reimbursement of public assistance. [*State ex rel. Lewis v. Lewis,* 311 N.C. 727, 319 S.E.2d 145 (1984) (the State of North Carolina was administering the child support enforcement program for the county that brought the subsequent civil action, so the parties in the civil action were identical or in privity with the parties in the criminal action).] NOTE: When Lewis was decided, the standard of proof for a civil paternity action was beyond a reasonable doubt, allowing application

of collateral estoppel. Collateral estoppel may not be used when the two actions have different standards of proof. [Fathers and Paternity, at 60–61.]

b. Former husband's guilty plea to criminal charge of nonsupport pursuant to G.S. 14-322 was evidentiary admission of paternity precluding blood test in later custody proceeding. [*Heavner v. Heavner,* 73 N.C. App. 331, 326 S.E.2d 78, *review denied,* 313 N.C. 601, 330 S.E.2d 610 (1985).]

E. Abandonment of Child for Six Months [G.S. 14-322.1.]

1. When action may be brought. A criminal nonsupport proceeding under G.S. 14-322.1 may be brought at any time before a child's 18th birthday.
2. Elements. To obtain a conviction, the State must prove three elements beyond a reasonable doubt:
   a. The defendant "willfully fail[ed] or refuse[d] to provide adequate means of support for his or her child" for a period of six months;
   b. The defendant, also without just cause or provocation, "willfully abandon[ed]" the child for the same six-month period; and
   c. The defendant has "attempt[ed] to conceal his or her whereabouts . . . with the intent of escaping his lawful [child support] obligation." [G.S. 14-322.1.]
3. Sentence and probation.
   a. Offense of willful abandonment is punishable as a Class I felony. [G.S. 14-322.1.]
   b. The presumptive sentence for criminal nonsupport under G.S. 14-322.1 ranges from 4 to 6 months to 8 to 10 months, depending on the defendant's prior record. [G.S. 15A-1340.17.]
   c. The presumptive probationary period for defendants convicted of criminal nonsupport under G.S. 14-322.1 is 12 to 30 months or 18 to 36 months. The maximum term of probation may not exceed 5 years. [G.S. 15A-1343.2(d)(3), (4).]
   d. A parent who abandons a child who is less than 7 days old pursuant to G.S. 7B-500(b) or (d) may not be prosecuted for abandonment of the child pursuant to G.S. 14-322.1. [G.S. 14-322.3.]

F. Willful Failure to Support a Child Born Out of Wedlock [G.S. 49-2, *amended by* S.L. 2013-198, § 17, effective June 26, 2013.]

1. When action may be brought.
   a. A criminal nonsupport proceeding under G.S. 49-2 against a child's mother may be brought at any time before the child's 18th birthday. [G.S. 49-4.]
   b. A criminal nonsupport proceeding against a reputed father under G.S. 49-2 must be brought:
      i. Before the child's 3rd birthday,
      ii. Any time before the child's 18th birthday if the child's paternity has been determined before the child's 3rd birthday, or

iii. Within three years of the last support payment made by the reputed father and before the child's 18th birthday if the father has acknowledged paternity by making support payments on behalf of the child before the child's 3rd birthday. [G.S. 49-4.]

2. Who may initiate action. Proceedings may be initiated by the mother or her personal representative or, if the child is likely to become a public charge, by the director of social services. [G.S. 49-5.]

3. Where action may be brought.

   a. Proceedings may be brought in the county where the mother or putative father resides or is found or in the county where the child is found. [G.S. 49-5.]

   b. The fact that the child was born outside of the state is not a bar to proceedings against the putative father in any county where he resides or is found, or in the county where the mother resides or the child is found. [G.S. 49-5.]

4. Elements.

   a. To be found guilty of violating G.S. 49-2, the state must prove that:

      i. The defendant is a parent of the child born out of wedlock and

      ii. The defendant has willfully neglected or refused to support such child. [G.S. 49-7, *amended by* S.L. 2013-198, § 20, effective June 26, 2013; *Sampson Cty. ex rel. McPherson v. Stevens,* 91 N.C. App. 524, 372 S.E.2d 340 (1988) (quoting *State v. Hobson,* 70 N.C. App. 619, 320 S.E.2d 319 (1984)).]

   b. Additionally, a defendant must receive notice and demand for support. [*See State v. Ellis*, 262 N.C. 446, 137 S.E.2d 840 (1964) (no conviction under G.S. 49-2 unless demand for the child's support has been made of the parent and the parent refused the demand without just cause or excuse); *State v. Hobson,* 70 N.C. App. 619, 320 S.E.2d 319 (1984) (notice and demand for support should be one of the issues submitted in writing to the jury), *writ denied,* 312 N.C. 497, 322 S.E.2d 562 (1984).]

      i. Demand must be made after the birth of the child and before prosecution for nonsupport has commenced. [*State v. Ellis,* 262 N.C. 446, 137 S.E.2d 840 (1964); *State v. Killian,* 61 N.C. App. 155, 300 S.E.2d 257 (1983) (demand made after warrant issued not sufficient to support prosecution).]

5. Right to counsel.

   a. A defendant charged with willful refusal to support a child born out of wedlock in violation of G.S. 49-2 has a constitutional right to be represented by counsel at his trial unless he knowingly and intelligently waives that right, since a sentence of imprisonment may be imposed for such offense. [*State v. Lee,* 40 N.C. App. 165, 252 S.E.2d 225 (1979) (guilty plea of nonindigent defendant charged under G.S. 49-2 stricken because when defendant was called upon to plead, he was neither represented by counsel nor had waived his right to counsel); 3 Lee's North Carolina Family Law § 16.12a (5th ed. 2002).]

      i. The maximum sentence for criminal nonsupport under G.S. 49-2 is 30, 45, or 60 days (depending on the defendant's prior criminal record) and a fine of up to $1,000. [G.S. 15A-1340.23(b), (c).]

ii. An indigent defendant is entitled to services of court-appointed counsel in "[a]ny case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged." [G.S. 7A-451(a).]

6. Order for support.
   a. If a defendant is not required to pay child support under an existing order, the court must enter an order requiring a defendant convicted of criminal nonsupport under G.S. 49-2 to pay child support regardless of whether the defendant is sentenced to an active term of incarceration or is placed on probation. [G.S. 49-7.]
   b. The amount of child support ordered under G.S. 49-7 must be determined in accordance with G.S. 50-13.4. [G.S. 49-7.]
   c. Child support ordered pursuant to G.S. 49-7 generally must be paid through the State Child Support Collection and Disbursement Unit through immediate income withholding. [G.S. 15A-1344.1.]
7. Sentence.
   a. Offense of willful nonsupport of a child born out of wedlock is punishable as a Class 2 misdemeanor. [G.S. 49-2, *amended by* S.L. 2013-198, § 17, effective June 26, 2013.]
   b. The maximum sentence for criminal nonsupport under G.S. 49-2 is 30, 45, or 60 days (depending of the defendant's prior criminal record) and a fine of up to $1,000. [G.S. 15A-1340.23.]
8. For a discussion on the use of genetic testing to determine paternity in a criminal nonsupport proceeding, see *Paternity*, Bench Book, Vol. 1, Chapter 10.
9. For the effect in a subsequent action of acquittal, conviction, or guilty plea on issue of paternity in a criminal nonsupport proceeding, see *Paternity*, Bench Book, Vol. 1, Chapter 10.

V. Child Support in Domestic Violence and Juvenile Proceedings

A. Child Support in Domestic Violence Cases

1. Subject to the provisions of the Uniform Interstate Family Support Act (UIFSA) (G.S. Chapter 52C), a district court judge may enter an order requiring a parent to pay temporary child support as part of a domestic violence protective order entered pursuant to G.S. 50B-3. [G.S. 50B-3(a)(6).]
2. The amount of child support payable under a child support order entered pursuant to G.S. 50B-3(a)(6) must be determined by application of the child support guidelines unless there are sufficient grounds for deviating from the guidelines. [2015 Guidelines.]
3. A district court judge may enter a temporary child support order in a domestic violence case pending a party's commencement of a civil child support action pursuant to G.S. 50-13.4 *et seq.* The court may also encourage a child's parent to execute and file a voluntary support agreement pursuant to G.S. 110-132(a3) or 110-133 in lieu of entering a child support order pursuant to G.S. 50B-3(a)(6) or commencing a proceeding to establish a child support order. [See Section III.A, above.]

4. Child support provisions contained in a protective order entered pursuant to G.S. 50B-3(a)(6) are valid and enforceable for the period stated in the order, not to exceed one year, but may be renewed by the court for subsequent periods not to exceed one year. [G.S. 50B-3(b).]
5. Violation of a support provision in a G.S. Chapter 50B protective order is a Class A1 misdemeanor. [G.S. 50B-4.1(a).] Unless covered under some other provision of law providing greater punishment, following two convictions for knowingly violating provisions of a valid protective order, a person who knowingly violates a valid protective order as provided in G.S. 50B-4.1(a) is guilty of a Class H felony. [G.S. 50B-4.1(f).]

B. Child Support in Juvenile Proceedings

1. In a juvenile proceeding involving an abused, neglected, or dependent child, the district court may order, at the dispositional hearing or a subsequent hearing, the child's parent to pay child support, if the court finds that the parent is able to do so, when legal custody is vested in someone other than the child's parent and there is no existing order requiring the parent to pay child support. The amount of child support is determined as provided in G.S. 50-13.4(c). [G.S. 7B-904(d); *In re W.V.*, 204 N.C. App. 290, 693 S.E.2d 383 (2010) (G.S. 7B-904(d) authorizes the trial court to order a noncustodial parent to pay child support to the custodial parent upon making the findings required by G.S. 50-13.4(c)).]
2. In a juvenile proceeding involving an undisciplined or delinquent child, the district court may enter an order, at the dispositional hearing or a subsequent hearing, requiring the child's parent to pay child support through the clerk of superior court if there is no existing order requiring the parent to pay child support. [G.S. 7B-2704(1).]
3. Instead of establishing a child support order in juvenile court pursuant to G.S. 7B-904(d) or 7B-2704(1), the district court may encourage a child's parent to execute and file a voluntary support agreement pursuant to G.S. 110-132(a3) or 110-133. [See Section III.A, above.]
4. The amount of child support payable under a child support order entered pursuant to G.S. 7B-904(d) or 7B-2704(1) must be determined by application of the child support guidelines unless there are sufficient grounds for deviating from the guidelines. [G.S. 7B-904(d); 7B-2704(1).]
5. Although G.S. 7B-904(d) allows a juvenile court to order a parent to pay child support as discussed in Section V.B.1, above, the statute does not authorize a juvenile court to order a child's parent to contact a child support enforcement agency and to cooperate with the agency in establishing a child support order for the child. [*See In re Cogdill*, 137 N.C. App. 504, 508 n.3, 528 S.E.2d 600, 603 n.3 (2000) (decided under previous statute) (trial court did not have authority to order parent of child adjudicated abused and neglected to contact child support enforcement agency and file paperwork necessary to begin paying child support or to order parent to obtain housing and employment; trial court may not order a parent to undergo any course of conduct not provided for in the statute); *In re A.S.*, 181 N.C. App. 706, 640 S.E.2d 817 (G.S. 7B-904(d) does not authorize the trial court to order respondent father to contact a child support enforcement authority), *aff'd per curiam*, 361 N.C. 686, 651 S.E.2d 883 (2007); *In re W.V.*, 204 N.C. App. 290, 693 S.E.2d 383 (2010) (trial court not authorized by G.S. 7B-904(d) to order a parent to obtain and

maintain employment, because nothing in record indicated neglect of child was related to father's lack of employment).] For definition of a IV-D case and a non-IV-D case, see Section I.C.7, above.

6. Juvenile court did not err in an abuse and neglect proceeding when it ordered father to comply with an existing child support order. [*In re E.H., Jr.,* 192 N.C. App. 543, 665 S.E.2d 594 (2008) (**unpublished**).]

7. In actions filed on or after Jan. 1, 2002, G.S. 7B-904(d1) authorizes the court to order the parent, guardian, custodian, or caretaker to take certain actions as set out therein. [G.S. 7B-904, *amended by* S.L. 2001-208, § 3, effective Jan. 1, 2002.]

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