TOC

# Chapter 3: **Child Support**

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# Part 3. Modification of Child Support Orders

## I. General Principles

### A. Support Orders Are Modifiable

1. Because a child support order determines the current and continuing rights and obligations of the parties with respect to the support of a minor child, the issue of support remains *in fieri* (that is, open and pending before the court for further action) following the entry of a "final" or "permanent" child support order and remains so until the child for whose benefit the order was entered is emancipated and the parent's legal support obligation has been fully discharged. [*See Brooks v. Brooks*, 107 N.C. App. 44, 418 S.E.2d 534 (1992).]
    a. A "final" or "permanent" child support order is res judicata with respect to the amount, scope, and duration of a parent's child support obligation only as long as the circumstances upon which the order was based remain substantially unchanged. [*Schroader v. Schroader,* 120 N.C. App. 790, 463 S.E.2d 790 (1995). *See also Walker v. Walker*, 63 N.C. App. 644, 306 S.E.2d 485 (1983) (earlier child support action dismissed with prejudice could be res judicata in a later proceeding only if the circumstances existing at the time of the earlier action had remained the same).]
    b. Conversely, the amount, scope, or duration of a parent's child support obligation as adjudicated in a "final" or "permanent" child support order may be modified by a subsequent child support order if the court finds that there has been a significant change of circumstances relevant to the issue of child support. [G.S. 50-13.7(a); *Ebron v. Ebron*, 40 N.C. App. 270, 252 S.E.2d 235 (1979) (requiring a substantial change of circumstances affecting the welfare of the child).]
2. Only a court is authorized to modify a child support order.
    a. The parties may not extrajudicially modify the provisions of a child support order through unilateral action or mutual agreement (other than a consent order approved by the court). [*Baker v. Showalter*, 151 N.C. App. 546, 566 S.E.2d 172 (2002) (parties could not modify a child support order by oral agreement; amount of support in an incorporated separation agreement remained in effect); *Chused v. Chused,* 131 N.C. App. 668, 508 S.E.2d 559 (1998) (husband's unilateral reduction in support payments after job loss improper); *Leak v. Leak*, 129 N.C. App. 142, 497 S.E.2d 702 (father improperly terminated his support payments for 18-year-old child who had not graduated from high school), *review denied,* 348 N.C. 498, 510 S.E.2d 385 (1998); *Massey v. Massey*, 121 N.C. App. 263, 465 S.E.2d 313 (1996) (parties cannot, after reconciling, voluntarily dismiss by stipulation a support order previously entered in the action); *Van Nynatten v. Van Nynatten*, 113 N.C. App. 142, 438 S.E.2d 417 (1993) (defendant who unilaterally reduced his child support payments required to apply

to the court before altering his payments); *Craig v. Craig*, 103 N.C. App. 615, 406 S.E.2d 656 (1991) (even though child support normally terminates as a matter of law upon a child reaching age 18, where at least one child for whom support was ordered remains a minor, defendant cannot unilaterally reduce payments by half but must apply to trial court for modification); *Griffin v. Griffin*, 96 N.C. App. 324, 385 S.E.2d 526 (1989) (father had no authority to twice reduce child support payments required by divorce decree when his income was reduced; father obligated to pay full amount of support even though trial court found that wife agreed to accept less than amount ordered).]

b. Remedies for a unilateral reduction.

i. Order for payment of arrears.

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

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

ii. Contempt.

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

## B. What Constitutes a Modification

1. An order modifies a prior child support order if it changes or otherwise affects the amount, scope, or duration of a parent's child support obligation as determined under the prior order. [*See* 28 U.S.C. § 1738B(b)(8), *amended by* Pub. L. 113-183, Title III, §§ 301(f)(2)(B), (3)(B) (Sept. 29, 2014).]

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

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

4. A court may modify certain provisions of an order, for example, the amount of support, but leave other provisions, such as the duration of support, in effect.

a. An order that modified only the amount of support and provided that prior orders remained in full force and effect did not modify the duration of support beyond the age of majority in an earlier order. [*See Martin v. Martin,* 180 N.C. App. 237, 636

S.E.2d 340 (2006) (**unpublished**) (parent's obligation in a 1994 consent order to support a child with Down Syndrome beyond the age of majority remained enforceable after a 1997 modification of the amount of support; the 1997 order, which included language that, except as modified, prior orders remained in full force and effect, modified and controlled only the amount of child support, leaving the durational terms of the 1994 order in full effect), *review denied,* 361 N.C. 220, 642 S.E.2d 444 (2007).]

# II. Modifying North Carolina Child Support Orders

## A. Statutory Authority

1. G.S. 50-13.7(a) authorizes a North Carolina court to modify or vacate an order of a North Carolina court providing for the support of a minor child at any time upon motion in the cause by an interested party and a showing of changed circumstances.
   a. In exercising its authority under G.S. 50-13.7(a), a court may not modify vested past due child support payments that have accrued under a child support order. [G.S. 50-13.10.]
   b. See Section II.H.4.b, below, for a discussion on the retroactive modification of child support arrearages, and Section II.I.4, also below, for a discussion on the effective date of a modification.
2. G.S. 50-13.7(a) applies to any "final" or "permanent" order entered by a North Carolina court for the support of a minor child.
   a. G.S. 50-13.7(a) applies to and authorizes modification of:
      i. Child support orders entered in civil child support actions brought pursuant to G.S. 50-13.4,
      ii. Child support terms in a divorce decree, [*In re Register,* 303 N.C. 149, 277 S.E.2d 356 (1981).]
      iii. Child support orders entered in a Uniform Interstate Family Support Act (UIFSA) proceeding pursuant to G.S. 52C-4-401(a),
      iv. Voluntary support agreements approved pursuant to G.S. 110-132(a3) and 110-133, [G.S. 110-132(a3); 110-133.]
      v. The child support provisions of a separation agreement that has been incorporated into a divorce decree or other court order, [*Beamer v. Beamer,* 169 N.C. App. 594, 610 S.E.2d 220 (2005); *Duffey v. Duffey,* 113 N.C. App. 382, 438 S.E.2d 445 (1994). *See also Cavenaugh v. Cavenaugh*, 317 N.C. 652, 347 S.E.2d 19 (1986) (incorporated separation agreement may be modified on the basis of changed circumstances).]
      vi. Confessions of judgment, [*Snipes v. Snipes*, 118 N.C. App. 189, 454 S.E.2d 864 (1995).] and

vii. Consent orders for child support. [*Mason v. Erwin,* 157 N.C. App. 284, 579 S.E.2d 120 (2003); *O'Neal v. Wynn*, 64 N.C. App. 149, 306 S.E.2d 822 (1983), *aff'd*, 310 N.C. 621, 313 S.E.2d 159 (1984).] Form AOC-CV-615, Consent Agreement and Order to Modify Child Support Order, may be used.

(a) If the consent order does not contain findings of fact, the trial court must take evidence and make findings about the circumstances existing at the time the initial order was entered for the order to have a "base line" to determine whether there has been a substantial change warranting modification. [*Balawejder v. Balawejder,* 216 N.C. App. 301, 721 S.E.2d 679 (2011) (consent custody order was at issue).]

b. G.S. 50-13.7(a) probably applies to and authorizes modification of child support orders entered in criminal nonsupport proceedings pursuant to G.S. 14-322(e) or 49-7. For criminal nonsupport in the context of enforcement, see *Enforcement of Child Support Orders,* Part 4 of this Chapter.

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

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

b. Child support obligations that are included in an unincorporated separation agreement or property settlement. [*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); *Bottomley v. Bottomley*, 82 N.C. App. 231, 346 S.E.2d 317 (1986) (trial court could, notwithstanding unincorporated separation agreement, make its own independent determination of what was fair and reasonable child support and could require a parent to pay child support in an amount different from that provided in the separation agreement; no finding made as to changed circumstances).] In child support cases involving unincorporated agreements or settlements, the court must apply a rebuttable presumption that the support amount agreed upon is reasonable. [*See 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); see Section V.A, below, for more on modification of child support provisions in an unincorporated separation agreement).]

4. Other modifications.

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

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

i. A property settlement reached by agreement is not an equitable distribution triggering G.S. 50-20(f). [*Diehl v. Diehl,* 177 N.C. App. 642, 630 S.E.2d 25 (2006).]

ii. Absent the request of a party, a trial court is not required to reconsider child support after equitable distribution. [*Diehl v. Diehl,* 177 N.C. App. 642, 630 S.E.2d 25 (2006).]

iii. No requirement of finding of substantial change of circumstances if prior order of child support is clearly temporary, pending entry of an ED order and a final support order. [*Little v. Little,* 74 N.C. App. 12, 327 S.E.2d 283 (1985).]

iv. An earlier order of child support may not be modified in an ED order but, rather, must be modified in an order entered after the ED order. [*Dorton v. Dorton*, 77 N.C. App. 667, 336 S.E.2d 415 (1985) (trial court erred when, in an ED order, it terminated a writ of possession to the marital home granted to mother and child in a child support order).] However, the court may in an ED order modify a provision of an earlier support order concerning the depository of the child support payment. [*Shoffner v. Shoffner,* 91 N.C. App. 399, 371 S.E.2d 749 (1988) (ED order modified support only to provide that defendant was to pay child support to clerk rather than to plaintiff directly).]

c. A tribunal of another state may modify a child support order issued by a tribunal in North Carolina if the other state's tribunal has jurisdiction to modify the North Carolina child support order under the Uniform Interstate Family Support Act (UIFSA) and the Full Faith and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C. § 1738B). [See Section III.B, below.]

d. If a tribunal of another state which assumed jurisdiction pursuant to UIFSA modifies a child support order issued by a tribunal in North Carolina, the North Carolina tribunal:

i. May enforce the order that was modified only as to arrearages and interest accruing before the modification; [G.S. 52C-6-612(1), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. May provide other appropriate relief for violations of its order that occurred before the effective date of the modification; [G.S. 52C-6-612(3), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] and

iii. Must recognize the modifying order of the other state, upon registration, for the purpose of enforcement. [G.S. 52C-6-612(4), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] NOTE: Before June 25, 2015, G.S. 52C-6-612(2), which was repealed, allowed a North Carolina tribunal to enforce only nonmodifiable aspects of its order.

## B. Personal Jurisdiction in Modification Proceedings

1. Personal jurisdiction acquired by a tribunal in North Carolina in a proceeding under G.S. Chapter 52C or other 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;

Official Comment (2015), G.S. 52C-2-202 (the Uniform Interstate Family Support Act establishes that the personal jurisdiction necessary to sustain modification of an order of child support persists as long as the order is in force and effect, even as to arrearages).]

a. A "support order" includes a judgment, decree, order, decision, or directive, 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. It may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees, and other relief. [G.S. 52C-1-101(21), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

2. The bases of personal jurisdiction in G.S. 52C-2-201(a) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the state to modify a child support order of another state unless the requirements of G.S. 52C-6-611 are met or, in the case of a foreign support order, unless the requirements of G.S. 52C-6-615 are met. [G.S. 52C-2-201(b), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

## C. Subject Matter Jurisdiction of a North Carolina Tribunal to Modify Its Child Support Order

1. A North Carolina tribunal that has issued a valid order for child support 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:

a. 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; *Jurado v. Brashear*, 782 So. 2d 575 (La. 2001) (when both parents and the child move out of the issuing state, the court of the issuing state retains jurisdiction to enforce its order but not to modify the order).] or

i. As explained in the Official Comment (2015), G.S. 52C-2-205, if all the relevant persons have permanently left the issuing state, the issuing state no longer has jurisdiction to modify but the original order of the issuing state remains valid and enforceable and in effect in the issuing state and in those states in which the order has been registered. The order also may be registered and enforced in additional states even after the issuing state has lost its power to modify its order.

b. 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"; 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. Notwithstanding G.S. 52C-6-611(a)–(d) and 52C-2-201(b), a North Carolina tribunal retains jurisdiction to modify an order issued by a North Carolina tribunal if one party resides in another state and the other party resides outside the United States.

[G.S. 52C-6-611(d1), *added by* S.L. 2015-117, § 1, effective June 24, 2015; Official Comment (2015), G.S. 52C-6-611 (subsection (d1) created a necessary exception to the "play away" concept (see Section III.B.2.b.iii.(a), below) when the parties and the child no longer reside in the issuing state and one party resides outside the United States).]

3. A North Carolina tribunal that has issued a valid order for child support may not exercise continuing, exclusive jurisdiction to modify the order pursuant to G.S. 50-13.7(a) if:
   a. All of the individual parties file consent in a record with a North Carolina tribunal stating that a tribunal of another state that has jurisdiction over at least one of the individual parties or that is located in the state of the child's residence may modify the order and assume continuing, exclusive jurisdiction [G.S. 52C-2-205(b)(1), *amended by* S.L. 2015-117, § 1, effective June 24, 2015).] or
   b. Its order is not the controlling order. [G.S. 52C-2-205(b)(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; 52C-2-207 (determination of "controlling" child support order).]
4. The trial court's jurisdiction is limited to the specific issues properly raised by a party or interested person.
   a. If the only motion before the court is for modification of child support, the court may not address other issues. [*Van Nynatten v. Van Nynatten*, 113 N.C. App. 142, 438 S.E.2d 417 (1993) (court erred by addressing alimony when only motion before it was for modification of child support).]
   b. Trial court may not modify child support upon a motion to modify child custody; modification of support is not before the court in such instances. [*Royall v. Sawyer*, 120 N.C. App. 880, 463 S.E.2d 578 (1995).]
   c. It was error for trial court to modify support when only question before court was alimony. [*Smith v. Smith*, 15 N.C. App. 180, 189 S.E.2d 525 (1972).]
   d. Similarly, a trial court lacks authority to modify a specific payment provision in a child support order if a party did not seek modification of that provision. [*Moore v. Moore*, 237 N.C. App. 455, 768 S.E.2d 4 (2014) (citing *Henderson v. Henderson,* 165 N.C. App. 477, 598 S.E.2d 433 (2004)) (trial court erred when it modified on its own motion portion of consent child support order addressing payment of uninsured medical expenses when neither party had requested the court to modify that provision; parties had agreed in original order to equally share uninsured medical expenses).]

## D. Venue

1. 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. Subject to the Uniform Interstate Family Support Act and the Full Faith and Credit for Child Support Orders Act, a North Carolina district court that enters a valid child support order generally retains jurisdiction over the subject matter and the parties

with respect to modification and enforcement of its order even if the obligor moves from the county or the state. [*See Brooker v. Brooker*, 133 N.C. App. 285, 515 S.E.2d 234 (1999) (district court that issued consent judgment setting forth father's child support obligation was proper forum for later motion to modify, even though mother and child had moved to second county and father had moved to third county); *Brooks v. Brooks*, 107 N.C. App. 44, 418 S.E.2d 534 (1992) (when modification was sought and parties remained the same, the court of original venue was the proper court, even though none of the parties resided there at time of modification request).]

b. The statute relating to venue of an action for custody and support, G.S. 50-13.5(f), 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).]

c. However, an action to modify custody and child 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).]

2. Proper way to object to venue. Objection to improper venue pursuant to G.S. 1-83(1) in a proceeding to modify a child support order 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).] However, if the modification request is made by motion in the cause and no answer is required by the N.C. Rules of Civil Procedure, it is not clear that Rule 12 will apply.

3. Court that entered support order may transfer 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).]

(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.

4. 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. [G.S. 50-13.4(e1).] 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).]

5. One case has found no abuse of discretion when a request to transfer venue was denied.

a. Trial court did not abuse its discretion by denying defendant's motion pursuant to G.S. 1-83(2) to transfer venue from Iredell County to Forsyth County. [*Brooker v. Brooker,* 133 N.C. App. 285, 515 S.E.2d 234 (1999) (Iredell remained the most convenient forum for modification, even though defendant had relocated to Forsyth County and plaintiff and child had relocated to Wilkes County).]

6. Parties can waive objection to improper venue by failing to file a timely objection to improper venue.

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

## E. Standing

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

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

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

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

## F. Procedure

1. Request for modification is made by motion in the cause.

   a. A request for modification of a child support order should be made by filing a motion in the pending child support action. [G.S. 50-13.7(a) (allows a child support order to be modified "upon motion in the cause and a showing of changed circumstances"); *Baker v. Showalter,* 151 N.C. App. 546, 566 S.E.2d 172 (2002) (order setting child support may be modified only upon motion in the cause and a showing of changed circumstances).]

   b. G.S. 50-13.7(a) requires "a motion in the cause and a showing of changed circumstances" before a trial court can modify an existing order for child support or child custody. A trial court does not have the authority to enter a modification order, whether by consent or pursuant to a contested hearing, if a motion to modify was not filed. [*Catawba Cty. ex rel. Rackley v. Loggins*, 784 S.E.2d 620, 626 (N.C. Ct. App. 2016) (omission of a motion to modify "creates a jurisdictional shortcoming" that leaves a trial court without modification jurisdiction and, more importantly, makes the order "impossible to enforce").] NOTE that the North Carolina Supreme Court issued a temporary stay of this opinion on Apr. 25, 2016, 785 S.E.2d 90 (N.C. 2016), and granted plaintiff's petition for discretionary review and for writ of supersedeas on Sept. 22, 2016, 795 S.E.2d 209 (N.C. 2016).

2. Requirements of the motion.

   a. Except as otherwise allowed under G.S. 1A-1, Rule 7, a motion seeking modification of a child support order must be made in writing, state the facts upon which the motion is based, and indicate the specific relief sought. [*Cf. Elmore v. Elmore*, 4 N.C. App. 192, 166 S.E.2d 506 (1969) (noting a lack of authority on requiring that change of circumstances be alleged, either specifically or in general terms, in the motion in the cause; decided before N.C. Rules of Civil Procedure became effective).]

   b. Although a motion to modify based on a change in circumstances need not include detailed factual allegations, to survive a motion to dismiss, a motion to modify must contain allegations that, if true, would entitle the moving party to relief. [*Devaney v. Miller,* 191 N.C. App. 208, 216, 662 S.E.2d 672, 677–78 (2008) (when only factual allegation supporting motion to modify was that "on information and belief, the parties' incomes have changed significantly since the entry of the order," dismissal was

proper; even if allegation was true, this fact alone not sufficient to survive a motion to dismiss).]

c. The scope of the modification procedure should be limited to the issues raised by the motion filed and noticed for hearing. [*See Guilford Cty. ex rel. St. Peter v. Lyon*, 785 S.E.2d 131, 136 (N.C. Ct. App. 2016) (father filed a motion to modify his permanent child support obligation based on a change in his financial circumstances; the trial court, *sua sponte* and over mother's objection, (1) amended father's motion, considered the amended motion as a G.S. 1A-1, Rule 60(b)(3) motion for relief based on mother's alleged fraud, and as a motion for temporary support and (2) set aside the order for permanent support for fraud and entered a new temporary order, without a showing of a change in circumstances; the trial court's *sua sponte* action placed mother in an "an entirely different procedural posture with substantively different issues to defend than were raised by the motion to modify child support," which resulted in a "judgment by ambush").]

d. Similarly, a trial court lacks authority to modify a specific payment provision in a child support order if a party did not seek modification of that provision. [*Moore v. Moore,* 237 N.C. App. 455, 768 S.E.2d 4 (2014) (citing *Henderson v. Henderson,* 165 N.C. App. 477, 598 S.E.2d 433 (2004)) (trial court erred when it modified on its own motion portion of consent child support order addressing payment of uninsured medical expenses when neither party had requested the court to modify that provision; parties had agreed in original order to equally share uninsured medical expenses).]

3. Notice of the motion.

a. The party seeking modification of a child support order must serve the motion on all other parties, pursuant to G.S. 1A-1, Rule 5, at least ten days before the date of the hearing on the motion. [G.S. 50-13.5(d)(1). *See also Osborne v. Osborne*, 129 N.C. App. 34, 497 S.E.2d 113 (1998) (party given less than ten days' notice of hearing to establish child support but no prejudice to party).]

b. A party's failure to give timely notice of a motion to modify a child support order is waived if the opposing party does not object in a timely manner or attends and participates in the hearing. [*See Brandon v. Brandon*, 10 N.C. App. 457, 179 S.E.2d 177 (1971) (in child custody proceeding, mother's motion for postponement due to insufficient notice denied where mother participated in hearing by testifying, calling witnesses, and cross-examining father's witnesses; no prejudice shown when mother suggested no additional testimony that would have been available to her at a later hearing and when she failed to show how she might have benefited from a later hearing).]

4. A party to a North Carolina child support action who is a nonresident of North Carolina may file a Uniform Interstate Family Support Act (UIFSA) proceeding seeking modification of a North Carolina child support order when North Carolina has jurisdiction to modify the order. [G.S. 52C-3-301(c) (individual can file a request that North Carolina act as a responding tribunal); 52C-3-305 (North Carolina court must act as a responding tribunal when requested by petitioner); 52C-3-315(a) (petitioner's personal appearance is not required).]

a. Special rules governing discovery, admissibility of evidence, and communication between courts apply to UIFSA proceedings in which a nonresident requests a responding tribunal to modify a child support order issued by that court. [*See* G.S. 52C-3-315, 52C-3-316, and 52C-3-317.]

5. No jury. Motions seeking modification of child support orders are heard and decided by a district court judge without a jury. [G.S. 50-13.5(h).]

6. No appointment of counsel for a *pro se* indigent obligor. A *pro se* indigent obligor is not entitled to court-appointed counsel in connection with a motion to modify child support. [*King v. King*, 144 N.C. App. 391, 547 S.E.2d 846 (2001) (motion to reduce child support does not place physical liberty interest at stake).]

7. Burden of proof.

   a. The party seeking modification of a child support order has the burden of proving, by a preponderance of the evidence, that a substantial change in circumstances has occurred since the date the order was entered. [*Devaney v. Miller,* 191 N.C. App. 208, 662 S.E.2d 672 (2008) (citing *Wolf v. Wolf*, 151 N.C. App. 523, 566 S.E.2d 516 (2002)); *Armstrong v. Droessler,* 177 N.C. App. 673, 630 S.E.2d 19 (2006); *Trevillian v. Trevillian,* 164 N.C. App. 223, 595 S.E.2d 206 (2004); *Thomas v. Thomas*, 134 N.C. App. 591, 518 S.E.2d 513 (1999); *Hamill v. Cusack*, 118 N.C. App. 82, 453 S.E.2d 539, *review denied,* 340 N.C. 359, 458 S.E.2d 187 (1995).]

8. Modification of a child support order is a two-step process. [*Young v. Young,* 224 N.C. App. 388, 736 S.E.2d 538 (2012) (citing *Head v. Mosier,* 197 N.C. App. 328, 677 S.E.2d 191 (2009)); *Armstrong v. Droessler,* 177 N.C. App. 673, 630 S.E.2d 19 (2006) (citing *McGee v. McGee*, 118 N.C. App. 19, 453 S.E.2d 531, *review denied,* 340 N.C. 359, 458 S.E.2d 189 (1995)).]

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

      i. See Section II.G, below, for more on changed circumstances.

      ii. If the court determines there has **not** been a substantial change of circumstances, the court must enter an order denying the motion and may not modify the order. [*Lewis v. Lewis,* 181 N.C. App. 114, 638 S.E.2d 628 (2007) (trial court erred when it modified an existing consent order as to support when it concluded, at the same time, that there had not been any substantial change in circumstances).]

      iii. The court's determination of whether changed circumstances exist is a conclusion of law. [*Head v. Mosier,* 197 N.C. App. 328, 677 S.E.2d 191 (2009) (citing *Brooker v. Brooker,* 133 N.C. App. 285, 515 S.E.2d 234 (1999)); *Armstrong v. Droessler,* 177 N.C. App. 673, 630 S.E.2d 19 (2006).]

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

      i. In determining the amount, scope, and duration of the obligor's modified child support obligation, the court must apply North Carolina's child support

guidelines (unless there are sufficient grounds for deviating from the guidelines) and other applicable law. [*Head v. Mosier,* 197 N.C. App. 328, 677 S.E.2d 191 (2009) (citing *Beamer v. Beamer,* 169 N.C. App. 594, 610 S.E.2d 220 (2005)); *Trevillian v. Trevillian,* 164 N.C. App. 223, 595 S.E.2d 206 (2004); *Hamill v. Cusack*, 118 N.C. App. 82, 453 S.E.2d 539, *review denied,* 340 N.C. 359, 458 S.E.2d 187 (1995).]

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

## G. Changed Circumstances

1. Relevant date for a change in circumstances is the date the order was entered. In other words, the substantial change must have occurred since entry of the last order.

   a. A court may not modify a child support order unless there has been a **substantial** change of circumstances occurring **after** the date the order was entered. [*Woodring v. Woodring,* 227 N.C. App. 638, 745 S.E.2d 13 (2013) (in determining substantial change of circumstances, a court may consider only events that occurred after entry of the most recent permanent order, unless the events were previously undisclosed to the court); *Newman v. Newman*, 64 N.C. App. 125, 306 S.E.2d 540, *review denied,* 309 N.C. 822, 310 S.E.2d 351 (1983); *Wachacha v. Wachacha*, 38 N.C. App. 504, 248 S.E.2d 375 (1978).]

   b. The relevant starting point from which a change in circumstances should be determined is the date of the last modification. [*Devaney v. Miller,* 191 N.C. App. 208, 662 S.E.2d 672 (2008) (determinations on the merits on the issue of child support included the original order entered in 1993 and modifications in 1996, 2000, and 2005; date of 2005 modification order was the relevant starting point).]

2. Relevant date for a change in circumstances when a separation agreement has been incorporated into a divorce judgment is the date of incorporation.

   a. When a separation agreement has been incorporated into a divorce judgment, the date to use to determine whether a party has had a substantial and involuntary reduction in income is the date of incorporation. [*Smart v. State ex rel. Smart,* 198 N.C. App. 161, 678 S.E.2d 720 (2009).]

   b. Where's husband's military discharge, and corresponding reduction in income, occurred prior to incorporation of separation agreement into divorce decree, trial court properly entered summary judgment denying husband's motion for modification of child support. [*Smart v. State ex rel. Smart,* 198 N.C. App. 161, 678 S.E.2d 720 (2009) (change of circumstances between execution of separation agreement and entry of divorce decree incorporating agreement irrelevant to father's motion to modify child support).]

3. Each of the following situations, the first four of which are discussed separately below, may amount to a substantial change in circumstances. (Other matters that have been found to constitute substantial change of circumstances are discussed in Section II.G.8, below.)
    a. When a child support order was entered at least three years before the pending motion to modify was filed, proof of a disparity of 15 percent or more between the amount of support payable under the existing order and the amount of support resulting from application of the guidelines establishes a rebuttable presumption of a substantial change of circumstances. [N.C. Child Support Guidelines, 2015 Ann. R. N.C. 49 (effective Jan. 1, 2015, applicable to child support actions heard on or after that date) (hereinafter referred to as 2015 Guidelines). See Section II.G.4, below, for exact language of the provision in the 2015 Guidelines; 2011 Ann. R. N.C. 49 (effective Jan. 1, 2011, and hereinafter referred to as 2011 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.
    b. A significant increase or decrease in the needs of the child. [*McGee v. McGee,* 118 N.C. App. 19, 453 S.E.2d 531, *review denied,* 340 N.C. 359, 458 S.E.2d 189 (1995).]
    c. A significant involuntary decrease in the income of the noncustodial parent, even though the child's needs are unchanged. [*Hammill v. Cusack*, 118 N.C. App. 82, 453 S.E.2d 539, *review denied*, 340 N.C. 359, 458 S.E.2d 187 (1995).]
    d. A voluntary decrease in the income of either parent, absent bad faith, upon a showing of changed circumstances relating to child-oriented expenses. [*Schroader v. Schroader*, 120 N.C. App. 790, 463 S.E.2d 790 (1995); *Young v. Young,* 224 N.C. App. 388, 736 S.E.2d 538 (2012) (citing *Frey v. Best,* 189 N.C. App. 622, 659 S.E.2d 60 (2008)) (substantial change may be shown when either parent, in good faith, suffered a voluntary decrease in income and the child's financial needs changed); *Johnston Cty. ex rel. Bugge v. Bugge,* 218 N.C. App. 438, 722 S.E.2d 512 (2012) (citing *Wolf v. Wolf*, 151 N.C. App. 523, 566 S.E.2d 516 (2002)) (if a party has acted in bad faith, a trial court may refuse to modify a support award).]
    e. A significant involuntary decrease in the income of the custodial parent. [*Bishop v. Bishop*, 245 N.C. 573, 96 S.E.2d 721 (1957) (temporary change in mother's financial circumstances, arising from mother's involuntary termination from teaching position and the need to return to college for recertification, justified an inference that the welfare of the minor children had been affected thereby).]
4. Support orders more than three years old with a 15 percent disparity.
    a. North Carolina's child support guidelines provide that "[i]n a proceeding to modify the amount of child support payable under a child support order that was entered at least three years before the pending motion to modify was filed, a difference of 15% or more between the amount of child support payable under the existing order and the amount of child support resulting from application of the guidelines based on the parents' current incomes and circumstances shall be presumed to constitute

a substantial change of circumstances warranting modification of the existing child support order." [2015 Guidelines.]

i. The three-year period begins to run at the time the existing order was entered. [2015 Guidelines.]

ii. Intervening motions to modify that do not result in a new child support order do not interrupt the time period. [2015 Guidelines, stating that "[i]n a proceeding to modify the amount of child support payable under a child support order that was entered at least three years before the pending motion to modify was filed . . ."]

b. The 15 percent presumption created by the guidelines applies:

i. Whether the moving party seeks an increase or decrease in her child support obligation, [*Willard v. Willard,* 130 N.C. App. 144, 502 S.E.2d 395 (1998).]

ii. When the existing child support order was not based on the child support guidelines, [*Lewis v. Lewis,* 181 N.C. App. 114, 638 S.E.2d 628 (2007) (citing *Willard v. Willard,* 130 N.C. App. 144, 502 S.E.2d 395 (1998)); *Hess v. Hermann-Hess,* 228 N.C. App. 281, 748 S.E.2d 773 (2013) (**unpublished**) (citing *Lewis*).] and

iii. To consent orders for support. [*Hess v. Hermann-Hess,* 228 N.C. App. 281, 748 S.E.2d 773 (2013) (**unpublished**).]

c. When the moving party has presented evidence that satisfies the requirements of the 15 percent presumption, the party does not need to show a change of circumstances by other means. [*Johnston Cty. ex rel. Bugge v. Bugge,* 218 N.C. App. 438, 722 S.E.2d 512 (2012) (citing *Head v. Mosier,* 197 N.C. App. 328, 677 S.E.2d 191 (2009)); *Head* (citing *Garrison ex rel. Williams v. Connor*, 122 N.C. App. 702, 471 S.E.2d 644, *review denied,* 344 N.C. 436, 476 S.E.2d 116 (1996)); *Garrison* (15 percent presumption eliminates the necessity that the moving party show change of circumstances by other means when he has presented evidence that satisfies the requirements of the presumption; where plaintiff presented evidence satisfying the requirements of the 15 percent presumption and defendant presented no evidence, court found a change of circumstances warranting an increase in defendant's child support); *Hess v. Hermann-Hess,* 228 N.C. App. 281, 748 S.E.2d 773 (2013) (**unpublished**) (citing *Head*) (reduction in plaintiff's child support obligation based on 15 percent presumption affirmed when trial court found three years had passed since entry of consent order and difference of 15 percent or more in amount of child support determined by application of the guidelines to the parties' current income and circumstances); *Parrott v. Kriss,* 204 N.C. App. 210, 694 S.E.2d 522 (2010) (**unpublished**) (when 15 percent presumption was applicable, defendant was not required to offer evidence of a substantial change in the children's needs), *cert. denied*, 365 N.C. 212, 710 S.E.2d 40 (2011).]

d. A party who satisfies the requirements of the 15 percent presumption may not be entitled to modification if a trial court determines that the party reduced her income in disregard of her child support obligation. Under those circumstances, the court may refuse to modify the support obligation based on the party's actual income and

may instead use the party's earning capacity to determine if modification is warranted. [*See Johnston Cty. ex rel. Bugge v. Bugge,* 218 N.C. App. 438, 722 S.E.2d 512 (2012) (citing *Wolf v. Wolf*, 151 N.C. App. 523, 566 S.E.2d 516 (2002)) (presumption of a substantial change in circumstances arising from the 15 percent disparity rebutted by a finding that defendant intentionally left his job to pursue other careers out of state, without any concern for the welfare of the children, thus voluntarily depressing his income; defendant's argument that the trial court could not consider his income when the 15 percent presumption applied was rejected); *Andrews v. Andrews,* 217 N.C. App. 154, 159, 719 S.E.2d 128, 131 (2011) (reversing an order that concluded that plaintiff had acted "in good faith, without a disregard for his child support obligation" and ordered modification based on the 15 percent presumption; facts showed that plaintiff voluntarily resigned his position as an engineer earning $172,000 per year plus benefits to start a church at an annual salary of $52,800 without benefits; evidence did not support the finding that there was "no evidence" of plaintiff's bad faith or an intentional disregard of his child support obligation and in fact, only evidence on the point, father's testimony that he acted without considering his ability to meet his child support obligation, was to the contrary), *review denied,* 365 N.C. 561, 722 S.E.2d 595 (2012).]

e. When 15 percent change was shown and there was no request for deviation, there was no abuse of discretion when the trial court made no findings regarding changes in the children's needs or failed to consider the children's needs against the obligor's ability to pay the amount of support. [*Head v. Mosier,* 197 N.C. App. 328, 677 S.E.2d 191 (2009).]

f. The order must include a finding or conclusion that the court applied the 15 percent presumption. [*Badstein v. Badstein,* 197 N.C. App. 628, 680 S.E.2d 271 (2009) (**unpublished**) (order devoid of any findings regarding the 15 percent presumption reversed; court rejected mother's contention that court's reliance on the 15 percent presumption to modify child support was "self-evident" from the findings and the attached worksheet).]

g. A conclusion that there had been a "substantial change in circumstances in that it has been more than three years since the calculation of [obligor's] child support obligation and the current obligation is greater than fifteen percent (15%) of the prior obligation" satisfies the requirement of an ultimate finding on this point. [*Head v. Mosier,* 197 N.C. App. 328, 332, 677 S.E.2d 191, 194–95 (2009) (citing *Brooker v. Brooker,* 133 N.C. App. 285, 515 S.E.2d 234 (1999)).]

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

a. Cases following rule.

i. *Wiggs v. Wiggs,* 128 N.C. App. 512, 495 S.E.2d 401 (1998) (recognizing that a substantial increase or decrease in the child's needs can constitute changed circumstances), *disapproved of on other grounds by Pulliam v. Smith*, 348 N.C. 616, 501 S.E.2d 898 (1998).

ii. *McGee v. McGee,* 118 N.C. App. 19, 453 S.E.2d 531 (court pointed out that its decision did not affect established law that a change of circumstances sufficient to modify a child support order may be shown by a substantial increase or

decrease in the children's needs), *review denied,* 340 N.C. 359, 458 S.E.2d 189 (1995).

iii. *Meehan v. Lawrance,* 166 N.C. App. 369, 602 S.E.2d 21 (2004) (increase in educational expenses, significant amount of money in travel expenses for visitation as a result of relocation to Georgia, and the fact that the minor children had become involved "in a lot of extracurricular activities" sufficient evidence of increase in needs of the children; increase in children's needs, substantial increase in both parents' incomes, and increased cost of living for both parents supported conclusion of substantial change in parents' financial condition).

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

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

vi. *Craig v. Kelly*, 89 N.C. App. 458, 366 S.E.2d 249 (1988) (substantial increase in needs of child who had recently started school; child's expenses for shelter, food, clothing, and dental costs also increased).

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

b. Procedure.

i. When an increase or decrease in a child's needs is the basis of a motion to modify, the moving party has the burden of proving the amount of the child's needs at the time the existing order was entered and at the time the motion for modification is filed or heard. [*See Brooker v. Brooker*, 133 N.C. App. 285, 515 S.E.2d 234 (1999) (citing *Davis v. Risley*, 104 N.C. App. 798, 411 S.E.2d 171 (1991)).]

ii. An order modifying child support based on either an increase or decrease in the child's needs must contain findings of fact sufficient to support the judgment. [*English v. Nixon*, 188 N.C. App. 164, 654 S.E.2d 833 (2008) (**unpublished**) (citing *Brooker v. Brooker*, 133 N.C. App. 285, 515 S.E.2d 234 (1999)) (when party seeking modification did not present evidence regarding the children's expenses at the time the parties entered the original consent order and trial court's only finding to support modification was that the children had grown older and taller, appellate court vacated the portion of the order modifying child support).]

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

a. Cases following rule.

i. *Devaney v. Miller,* 191 N.C. App. 208, 662 S.E.2d 672 (2008) (citing *Wiggs v. Wiggs,* 128 N.C. App. 512, 495 S.E.2d 401 (1998), *disapproved of on other grounds by Pulliam v. Smith*, 348 N.C. 616, 501 S.E.2d 898 (1998)) (recognizing the rule that absent a showing of a change in the needs of the child, only a substantial and involuntary decrease in the noncustodial parent's income can justify

a decrease in the child support obligation; dismissing father's motion to modify because it failed to allege facts that would support a finding of a substantial change in circumstances).

ii. *Armstrong v. Droessler,* 177 N.C. App. 673, 630 S.E.2d 19 (2006) (citing *Askew v. Askew*, 119 N.C. App. 242, 458 S.E.2d 217 (1995)) (in cases where the needs of the children have not changed, a substantial change of circumstances can be found based on the noncustodial parent's ability to pay; case remanded for findings on the issue of whether father's income had been involuntarily decreased).

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

iv. *Chused v. Chused*, 131 N.C. App. 668, 508 S.E.2d 559 (1998) (obligor's involuntary termination from his employment constituted a "changed circumstance" under G.S. 50-13.7). *Cf. Young v. Young,* 224 N.C. App. 388, 736 S.E.2d 538 (2012) (father failed to prove that his sustained unemployment after losing his job was involuntary, given the lack of proof of a job search and self-imposed restrictions on his search; no substantial change of circumstances).

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

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

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

b. What constitutes a significant decrease in income.

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

ii. But in a high income case, a 25 percent involuntary reduction in income was found not to constitute a substantial change in circumstances warranting a modification of child support. [*Trevillian v. Trevillian,* 164 N.C. App. 223, 595 S.E.2d 206 (2004) (reduction was from $300,000 to $227,400 per year).]

iii. The court of appeals has held that a $500 per year decrease in an obligor's income was not a significant decrease in income. [*See Wiggs v. Wiggs*, 128 N.C.

App. 512, 495 S.E.2d 401 (1998), *disapproved of on other grounds by Pulliam v. Smith*, 348 N.C. 616, 501 S.E.2d 898 (1998).]

7. A voluntary decrease in income of either parent, in good faith, and a change in the child's financial needs.
    a. Even if the court assumed that father suffered a voluntary decrease in income, father failed to prove that it was in good faith. [*Young v. Young,* 224 N.C. App. 388, 736 S.E.2d 538 (2012) (father failed to show a good faith effort to find employment when the evidence showed that he submitted only five job applications over the previous year and no applications for seasonal work or in fields outside his area of expertise, that he voluntary moved to a rural area with fewer job opportunities, and that he failed to report Navy income and purchased additional insurance for the children even though they were insured through mother's employment; moreover, trial court found that father's testimony about employment matters was contradictory and not completely honest).]
8. Other matters found to constitute a substantial change of circumstances.
    a. The fact that the child for whom support is owed has begun receiving public assistance constitutes a substantial change of circumstances under G.S. 50-13.7. [*Cartrette v. Cartrette*, 73 N.C. App. 169, 325 S.E.2d 671 (1985) (modifying a previous consent judgment).]
    b. A change in the physical custody of the child constitutes a substantial change of circumstances warranting modification of an existing child support order. [*Kowalick v. Kowalick*, 129 N.C. App. 781, 501 S.E.2d 671 (1998); *Gray v. Peele*, 235 N.C. App. 554, 761 S.E.2d 739 (2014) (citing *Kowalick*).]
    c. The fact that a parent's legal obligation to support a child, or to support one of several children, has terminated (for example, because the child has reached the age of 18 and is no longer in elementary or secondary school, has been emancipated, etc.) may constitute a substantial change of circumstances warranting modification of an existing order providing for the child's support. [*See Craig v. Craig*, 103 N.C. App. 615, 406 S.E.2d 656 (1991) (supporting parent must apply to trial court for modification when one of two or more minor children for whom support is ordered reaches age 18 and support is not allocated by child); *Massey v. Massey*, 71 N.C. App. 753, 323 S.E.2d 451 (1984) (stating that defendant could easily have taken the question of payments due after his child reached majority to the court for a modification of the child support order rather than withholding payments contrary to the court order).] See Section I.A.2, above, for more on attempts to unilaterally modify a child support order.
    d. The fact that mother could no longer claim child 1, who had reached majority since entry of the order being modified, as a dependent for tax purposes was a substantial change of circumstances, justifying modification of the existing order to award mother the right to claim child 2 as a dependent for tax purposes. [*Laws v. Laws*, 235 N.C. App. 656, 764 S.E.2d 698 (2014) (**unpublished**) (order being modified had awarded father the right to claim child 2 as a dependent).] Note that the change to the 2015 Guidelines to delete the sentence "[i]f the parent who receives child support has minimal or no income tax liability, the court may consider requiring the custodial

parent to assign the [tax] exemption to the supporting spouse and deviate from the guidelines", should not change the result in *Laws*.

9. What does **not** constitute a substantial change of circumstances.
    a. A substantial **voluntary** decrease in income of either parent, standing alone, does not constitute a substantial change of circumstances under G.S. 50-13.7.
        i. Where defendant obligor willfully and intentionally depressed his income by voluntarily leaving an insurance company to become an independent agent, defendant failed to meet his burden to prove changed circumstances. [*Askew v. Askew*, 119 N.C. App. 242, 458 S.E.2d 217 (1995).]
        ii. Voluntary decrease in obligor's income did not constitute a changed circumstance since there was no showing that the needs of the children had changed. [*King v. King*, 144 N.C. App. 391, 547 S.E.2d 846 (2001).]
        iii. A substantial voluntary decrease in an obligor's income can constitute a changed circumstance only if accompanied by a substantial decrease in the needs of the child; where mother admitted no change in son's financial needs, modification was denied. [*Mittendorff v. Mittendorff,* 133 N.C. App. 343, 515 S.E.2d 464 (1999) (citing *Schroader v. Schroader*, 120 N.C. App. 790, 463 S.E.2d 790 (1995)).]
        iv. Where obligee/custodial parent voluntarily left her employment to enroll as a full-time college student, the resulting voluntary decrease in her income, absent a finding of bad faith, could be considered to support a finding of changed circumstances only if movant also showed a change in child-oriented expenses. [*Schroader v. Schroader*, 120 N.C. App. 790, 463 S.E.2d 790 (1995).]
    b. A substantial increase in the obligor's income, standing alone, does not constitute a sufficient change of circumstances under G.S. 50-13.7. [*Thomas v. Thomas*, 134 N.C. App. 591, 518 S.E.2d 513 (1999) (increase in obligor's income in a high-income case); *Wilson v. Wilson,* 214 N.C. App. 541, 714 S.E.2d 793 (2011) (noting that under *Thomas*, an increase in income alone is not enough to prove a change of circumstances and reversing an order that implemented provisions in an incorporated separation agreement providing for automatic yearly increases in child support, based on a percentage of bonuses and salary increases received by defendant, as impermissibly modifying child support without finding a substantial change of circumstances).]
    c. The adoption or revision of the child support guidelines is not a sufficient change of circumstances, in and of itself, to justify modification of a child support order. [*See Davis v. Risley*, 104 N.C. App. 798, 411 S.E.2d 171 (1991).]
    d. Evidence that the child is older or that the general cost of living has increased is not, standing alone, sufficient to prove a substantial change of circumstances. [*Holder v. Holder*, 87 N.C. App. 578, 361 S.E.2d 891 (1987) (sole finding of fact regarding change of circumstances was that child was older and that inflation had occurred); *Waller v. Waller*, 20 N.C. App. 710, 202 S.E.2d 791 (1974) (fact that children were eight years older and that father's income had increased did not warrant increase in child support).]

e. The voluntary filing of a Chapter 11 petition in bankruptcy did not constitute a "substantial change of circumstances" that would warrant a reduction in father's child support payments. [*Harris v. Harris,* 91 N.C. App. 699, 373 S.E.2d 312 (1988).] For a discussion of bankruptcy and child support enforcement, see *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section XI.

f. The voluntary assumption of support obligations greater in amount or scope than those imposed by G.S. Chapter 50 is not a factor to be considered in determining a change of circumstances.

   i. Husband's voluntary support of emancipated son was not a factor to be considered in determining a change of circumstances sufficient to support a reduction for remaining minor children. [*Dishmon v. Dishmon,* 57 N.C. App. 657, 292 S.E.2d 293 (1982).]

   ii. The fact that defendant voluntarily assumed the financial burden to send his eldest child to a high tuition, out-of-state university does not justify a reduction in child support for his other children. [*Gilmore v. Gilmore*, 42 N.C. App. 560, 257 S.E.2d 116 (1979) (defendant also had voluntarily entered into another marital and family relationship).]

g. A parent's financial responsibility for children other than the child for whom support is being determined.

   i. A parent's assumption of new or increased family support obligations could arise from marriage or remarriage, the birth or adoption of a child other than the child involved in the pending child support action, or the payment of spousal or child support under an arrangement, agreement, or order entered after the existing child support order.

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

      (b) Fact that husband remarried and had a child with his new spouse cannot be the sole basis for a finding of a substantial change in circumstances regarding the amount of child support. [*Frey v. Best,* 189 N.C. App. 622, 659 S.E.2d 60 (2008) (noting provision in 2002 Guidelines stating that deduction from a parent's gross income for other children who reside with the parent could not be sole basis for modifying an existing support order); 2015 Guidelines contain the same language.]

      (c) Fact that husband voluntarily entered into another marital and family relationship did not constitute a change of circumstances. [*Gilmore v. Gilmore*, 42 N.C. App. 560, 257 S.E.2d 116 (1979) (increase in husband's needs and obligations resulted from his voluntary assumption of additional obligations arising from his remarriage and from college expenses of his eldest son).]

   ii. Current child support payments actually made by a parent under any existing court order, separation agreement, or voluntary support arrangement for a child other than the child for whom support is being determined are deducted from the parent's gross income, regardless of whether the child or children for

whom support is being paid was/were born before or after the child or children for whom support is being determined. Amounts paid towards arrears are not deducted from income. [2015 Guidelines.]

10. Findings of fact.
    a. Findings to support a modification of child support must be specific enough to indicate to the appellate court that the judge took due regard of the particular estates, earnings, conditions, and accustomed standard of living of both the child and the parents. [*Frey v. Best,* 189 N.C. App. 622, 659 S.E.2d 60 (2008) (citing *Coble v. Coble,* 300 N.C. App. 708, 268 S.E.2d 185 (1980)).]
    b. Where the trial judge sits as the trier of fact on a motion to modify child support, she must find the facts specially, state separately her conclusions of law, and direct entry of the appropriate judgment. [*Smart v. State ex rel. Smart,* 198 N.C. App. 161, 678 S.E.2d 720 (2009) (citing *Koufman v. Koufman,* 330 N.C. 93, 408 S.E.2d 729 (1991); G.S. 1A-1, Rule 52(a)).]
    c. Findings are not necessary when a case is disposed of by summary judgment or by judgment on the pleadings. [*Smart v. State ex rel. Smart,* 198 N.C. App. 161, 678 S.E.2d 720 (2009).]

## H. Modification of Child Support Arrearages

1. Federal requirement regarding vesting of child support.
    a. A 1986 federal law known as the Bradley Amendment [42 U.S.C. § 666(a)(9)(C).] required North Carolina and other states, as a condition of receiving federal funding for child support enforcement programs, to enact legislation providing that child support owed under court orders is vested as a judgment when it becomes due and prohibiting the retroactive modification of vested child support arrearages owed under court orders.
    b. North Carolina's General Assembly enacted G.S. 50-13.10 in order to comply with the Bradley Amendment. [*New Hanover Cty. ex rel. Mannthey v. Kilbourne,* 157 N.C. App. 239, 578 S.E.2d 610 (2003).]
    c. A child support payment is vested once it becomes due and payable. [*See Craig v. Craig,* 103 N.C. App. 615, 406 S.E.2d 656 (1991); G.S. 50-13.10.]
    d. Under G.S. 50-13.10, a child support payment does not accrue and is not vested if:
        i. It became due after the date of the death of the child for whom support was owed;
        ii. It became due after the date of the death of the obligor;
        iii. It became due during the period of time that the child for whom support is owed lived with the obligor pursuant to a valid court order or an express or implied written or oral agreement transferring primary custody of the child to the obligor; or
        iv. It became due during the period of time that the obligor was incarcerated, was not on work release, and did not have income or resources sufficient to make the payment. [G.S. 50-13.10(d).]

2. General rule: Vested arrearages cannot be modified.
    a. G.S. 50-13.10 generally prohibits a North Carolina court from modifying, reducing, or vacating vested child support arrearages that have accrued under a valid child support order issued by a North Carolina court in a civil child support proceeding pursuant to G.S. 49-14, G.S. Chapter 50, or G.S. 110-132 or 110-133. [*See New Hanover Cty. ex rel. Mannthey v. Kilbourne,* 157 N.C. App. 239, 578 S.E.2d 610 (2003) (under G.S. 50-13.10, past due child support is vested, is not subject to retroactive modification, and is entitled to full faith and credit by sister states).]
        i. The North Carolina Supreme Court has held that the general rule prohibits a retroactive modification; that is, any modification that affects payments due before the motion for modification was filed. [*Hill v. Hill,* 335 N.C. 140, 435 S.E.2d 766 (1993) (in context of modification of an alimony award, court noted that a trial court cannot, without evidence of an emergency situation, order modification of child support to take place before a motion for modification is filed).]
        ii. Thus, the prohibition against retroactive modification of vested child support arrearages generally precludes a court from **increasing or decreasing** an obligor's court-ordered child support obligation with respect to a period prior to the date a motion was filed seeking modification of the child support order.
    b. The Full Faith and Credit Clause of the U.S. Constitution prohibits a North Carolina court from retroactively modifying child support arrearages that have accrued under a child support order issued by the court or tribunal in another state and that are vested under a state law similar to G.S. 50-13.10(a). [*See Fleming v. Fleming*, 49 N.C. App. 345, 271 S.E.2d 584 (1980).]
3. Modifications or other court actions that do not violate the general rule.
    a. Making the modification effective as of the date the petition for modification was filed, or a subsequent date, does not violate the general rule.
        i. Under G.S. 50-13.10, an order modifying child support does not retroactively modify vested arrearages if it modifies only payments that have not yet accrued or that accrued after the date a motion seeking modification was filed. [*See Hill v. Hill*, 335 N.C. 140, 435 S.E.2d 766 (1993) (order modifying alimony from the date the matter was first noticed for hearing was not a retroactive modification); *Mackins v. Mackins*, 114 N.C. App. 538, 442 S.E.2d 352 (applying holding in *Hill* on alimony to child support modifications and concluding that trial court has discretion to modify a child support order, effective from the date a petition to modify is filed, as to support obligations that accrue after that date), *review denied,* 337 N.C. 694, 448 S.E.2d 527 (1994).] For more on awards of prior maintenance, see *Liability and Amount,* Part 1 of this Chapter, Section VII.D.
    b. G.S. 50-13.10(a)(2) permits, but does not require, a court to retroactively modify child support payments that accrued before the date a motion seeking modification was filed if the court finds that the moving party was precluded by physical disability, mental incapacity, indigency, misrepresentation of another party, or other compelling reason from filing the motion prior to the date the payment accrued and if the

moving party filed the motion seeking modification promptly after he was no longer precluded from filing it.

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

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

e. Pursuant to an amendment to G.S. 110-135 effective Dec. 13, 2005, a past due public assistance debt is subject to reduction as set forth therein. [G.S. 110-135, *amended by* S.L. 2005-389; for more on the amendment to G.S. 110-135, see *Liability and Amount*, Part 1 of this Chapter, Section VII.E.11.]

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

a. Modification of an order that provided for reimbursement of past paid public assistance.

i. Error for trial court to forgive portion of arrearages that represented past public assistance paid before defendant knew of the existence of his child; no legal basis to retroactively modify defendant's vested child support arrearages. [*Orange Cty. ex rel. Harris v. Keyes,* 158 N.C. App. 530, 581 S.E.2d 142 (2003) (1998 voluntary support agreement ordered defendant to reimburse the state $1,272 for past paid public assistance; trial court erred when, pursuant to a 2002 motion to modify, it forgave the public assistance arrearage of $1,272 because that sum represented public assistance paid before defendant knew of the existence of his child).]

b. Retroactive increase in the amount of child support in an existing order.

i. A court is not precluded from retroactively increasing the obligor's child support obligation in emergency situations based on an unanticipated increase in the custodial parent's expenses with respect to the child. [*Biggs v. Greer*, 136 N.C. App. 294, 524 S.E.2d 577 (2000) (citing *Fuchs v. Fuchs*, 260 N.C. 635, 133 S.E.2d 487 (1963)).]

ii. A retroactive increase in the amount provided in an existing support order should be allowed only sparingly and only under the limited circumstance constituting a true sudden emergency situation that required the expenditure of sums in excess of the existing child support order. [*Biggs v. Greer,* 136 N.C. App. 294, 524 S.E.2d 577 (2000) (citing *Fuchs v. Fuchs*, 260 N.C. 635, 133 S.E.2d 487 (1963)).]

iii. Findings and conclusions.

(a) The order must contain a conclusion of law that there was a substantial and material change in circumstances since entry of the existing order affecting the welfare of the child that was the result of a sudden emergency sufficient to warrant an increase. [*Biggs v. Greer*, 136 N.C. App. 294, 524 S.E.2d 577 (2000).]

(b) A trial court must set out specific findings of fact to sustain the above conclusion and to support the award of retroactive support. [*Biggs v. Greer*, 136 N.C. App. 294, 524 S.E.2d 577 (2000); *Savani v. Savani*, 102 N.C. App. 496, 403 S.E.2d 900 (1991).]

(c) The findings must reflect the actual amount disbursed by a party within three years or less of the date of the filing of the motion to modify, the reasonably necessary expenditures made on behalf of the child, and the extraordinary "sudden emergency" situation that required expenditures in excess of the existing amount of ordered support. [*Biggs v. Greer*, 136 N.C. App. 294, 524 S.E.2d 577 (2000).]

(d) The findings also must set out the parent's ability to pay during the period for which increased support is sought. [*Biggs v. Greer*, 136 N.C. App. 294, 524 S.E.2d 577 (2000).]

(e) When father's only evidence of a substantial change of circumstances was mother's receipt of $249,000 from sale of the marital home after entry of a custody and support order, and father presented no evidence of an emergency situation after entry of the order and before he filed a motion to modify, trial court correctly refused to award retroactive child support. [*McKyer v. McKyer,* 179 N.C. App. 132, 632 S.E.2d 828 (2006) (emergency situation is required to justify an award of retroactive child support), *review denied,* 361 N.C. 356, 646 S.E.2d 115 (2007).]

(f) 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. [*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)), *review denied,* 361 N.C. 356, 646 S.E.2d 115 (2007).]

## I. Orders

1. The court's determination with respect to changed circumstances is a conclusion of law. [*Brooker v. Brooker*, 133 N.C. App. 285, 515 S.E.2d 234 (1999).]
2. Findings required.
   a. Although the court is not required to make specific or evidentiary findings, the court must make "ultimate" findings of fact that indicate the factual basis for its conclusion that there has been a substantial change of circumstances and that are necessary to resolve material disputes in the evidence. [*Brooker v. Brooker,* 133 N.C. App. 285, 515 S.E.2d 234 (1999).]
      i. In *Brooker v. Brooker,* 133 N.C. App. 285, 515 S.E.2d 234 (1999), when the moving party relied on an increase in the child's needs to establish changed circumstances, the trial court made an ultimate finding that the needs of the child had increased, which was supported by evidence of increased daycare expenses and recreation expenses, as well as increased rent and grocery costs for the minor child.
      ii. Other examples of ultimate findings in a child support case would be: "the court finds that there has been a significant increase in the child's needs since the

existing order was entered" or "the court finds that the obligor has experienced a significant, involuntary decrease in income since the existing order was entered."

iii. For examples of ultimate findings in other contexts, see *Madison v. International Paper,* 165 N.C. App. 144, 598 S.E.2d 196 (2004) (workers' compensation case where the N.C. Industrial Commission's ultimate finding, that the heat to which the worker had been exposed was a contributing factor to his heart attack, was upheld); *In re O.W.*, 164 N.C. App. 699, 703, 596 S.E.2d 851, 854 (2004) (where, in an abuse and neglect case, the court gave examples of ultimate findings that the court could have made if it found that certain facts were true: that the natural father "has a history of cocaine and crack use" or that he "has a bad temper, he is impatient, he hollers at the baby and slaps her on her hands").

b. For findings required to deviate from the guidelines, see *Liability and Amount,* Part 1 of this Chapter, Section IV.

c. For findings required to award attorney fees, see *Liability and Amount,* Part 1 of this Chapter, Section VIII.

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

a. Determine the amount, scope, and duration of the obligor's child support obligation based on North Carolina's child support guidelines (unless there are sufficient grounds to deviate from the guidelines) and other applicable law [2015 Guidelines: "guidelines apply as a rebuttable presumption in all legal proceedings involving the child support obligation of a parent".] and

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

4. Effective date of modification.

a. A court modifying a child support order under G.S. 50-13.7 may make the modification (increase or decrease in child support payments) effective as of the date the motion for modification was filed, or as of any ensuing date, as to support obligations that accrue after that date. [*Mackins v. Mackins*, 114 N.C. App. 538, 442 S.E. 2d 352 (first case to so hold; modified support by increasing it), *review denied*, 337 N.C. 694, 448 S.E.2d 527 (1994); *Spencer v. Spencer,* 133 N.C. App. 38, 514 S.E.2d 283 (1999) (applying the *Mackins* ruling to decreases as well as increases in support payments). *See also Mason v. Erwin,* 157 N.C. App. 284, 579 S.E.2d 120 (2003) (citing *Mackins*) (noting that the law is well settled that modification of a child support order takes effect on the date the petition for modification was filed).] For more on the effective date of a modification, 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.

b. Although a trial court has the discretion to modify a child support order as of the date the petition to modify is filed, it is not required to do so. [*Barham v. Barham*, 127 N.C. App. 20, 487 S.E.2d 774 (1997) (trial court did not abuse its discretion by making the obligor's modified child support payments effective as of the date the order was entered rather than retroactive to the date the motion was filed), *aff'd,* 347 N.C. 570, 494 S.E.2d 763 (1998); *Widenhouse v. Crumpler*, 177 N.C. App. 150, 627 S.E.2d 686 (**unpublished**) (no abuse of discretion when court awarded child support

from the date of the last hearing and not retroactive to the date of the filing of the motion to modify six months earlier), *review denied,* 360 N.C. 545, 635 S.E.2d 63 (2006).]

c. The general rule is that a modification cannot be made effective prior to the date the motion was filed because vested child support arrearages cannot be modified. [See Section II.H, above.]

d. Making the modification effective as of the date the petition for modification was filed, or a subsequent date, does not violate the general rule prohibiting the retroactive modification of vested child support arrearages (i.e., court-ordered child support payments coming due before the date a motion for modification was filed). [*Mackins v. Mackins*, 114 N.C. App. 538, 442 S.E. 2d 352, *review denied*, 337 N.C. 694, 448 S.E.2d 527 (1994). See Section II.H, above.]

5. When the court denies a request for modification:

a. The existing order remains in effect and unchanged.

b. Specific findings of fact generally are not required if the court denies a motion based on its conclusion that there has not been a substantial change of circumstances. [*See Davis v. Risley*, 104 N.C. App. 798, 801, 411 S.E.2d 171, 173 (1991) (quoting *Searl v. Searl,* 34 N.C. App. 583, 587, 239 S.E.2d 305, 308–09 (1977), *disapproved of on other grounds by Pulliam v. Smith*, 348 N.C. 616, 501 S.E.2d 898 (1998)) (court's conclusion that there was no substantial change of circumstances indicated that father did not meet his burden of proof, in which case, "[A] trial court is not required to make negative findings of fact to justify a holding that a party has not met his or her burden of proof on an issue"); *Searl*, 34 N.C. App. at 587, 239 S.E.2d at 308 (citing *In re Custody of Mason*, 13 N.C. App. 334, 185 S.E.2d 433 (1971)) (in custody context, when there is no change in circumstances warranting modification, district court not required to make negative findings of fact justifying a holding that a party has not met the burden of proof on an issue; trial court's conclusion that there were "no material changes of circumstances with respect to the custody and welfare of the minor children" since entry of the prior order was sufficient).]

6. Attorney fees.

a. Where the action is solely to modify an award of support, the court may award attorney fees to an obligee pursuant to G.S. 50-13.6 if the court finds that the obligee was acting in good faith, that the obligee had insufficient means to defray the cost of the proceeding, and that the obligor refused to provide adequate support under the circumstances existing at the time the motion was filed. [*See* G.S. 50-13.6; *Mason v. Erwin,* 157 N.C. App. 284, 579 S.E.2d 120 (2003) (trial court's three findings, that plaintiff was acting in good faith to obtain reasonable support for her daughter, that she lacked sufficient means to pay her attorney fees, and that defendant had refused to provide support at time modification was sought, supported award of fees).]

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

c. For more on attorney fees, see *Liability and Amount*, Part 1 of this Chapter, Section VIII.

7. Relief from a judgment or order pursuant to G.S. 1A-1, Rule 60.
    a. Relief pursuant to G.S. 1A-1, Rule 60(a) to correct a clerical mistake.
        i. G.S. 1A-1, Rule 60(a) allows a trial court to amend clerical mistakes or errors in judgments arising from oversight or omission.
        ii. Rule 60(a) does not authorize a court to make substantive modifications to a judgment. [*Spencer v. Spencer,* 156 N.C. App. 1, 575 S.E.2d 780 (2003) (trial court made impermissible substantive change when it modified existing consent judgment by adding to decretal portion language that husband "shall" share equally in cost of child's college education when original judgment provided only in finding of fact section that parties "should" equally divide cost of child's college education); *S.C. Dep't of Soc. Servs. ex rel. Ratteree v. Hamlett*, 142 N.C. App. 501, 543 S.E.2d 189 (2001) (trial court substantially altered its 1991 order when, some nine years later, it added to the decretal portion of the order language nullifying a South Carolina judgment; the change prejudiced mother's rights to receive the child support ordered in that judgment by effectively reducing arrearages to zero and was not a mere correction of clerical error).]
    b. Relief pursuant to G.S. 1A-1, Rule 60(b)(3) for fraud.
        i. Fraud as a basis for relief from a judgment cannot be based on a statement that is true or represents the speaker's future intention. [*See Guilford Cty. ex rel. St. Peter v. Lyon*, 785 S.E.2d 131 (N.C. Ct. App. 2016) (father sought relief from a permanent child support order based on mother's alleged fraud in obtaining father's agreement to deviate from the guideline support amount; fraud allegation was based on a statement, which mother did not admit making, that if father did not agree to pay child support greater than required by the guidelines, he would not be allowed to see their son; because representation was not false and evidenced a future act by mother, even if mother followed through on her statement, it would not be sufficient to grant relief from the judgment for fraud).]

## J. Appeal

1. Dismissal of a motion to modify support based on the insufficiency of the allegations as a matter of law without the weighing of facts is subject to de novo review. [*Devaney v. Miller,* 191 N.C. App. 208, 662 S.E.2d 672 (2008) (citing *State ex rel. Lively v. Berry,* 187 N.C. App. 459, 653 S.E.2d 192 (2007)).]
2. Appeal of a modification order was dismissed as interlocutory when order required parents to submit affidavits of actual expenses each parent incurred for child's golf-related activities, which the court would then use to allocate the expenses between the parents. [*Plomaritis v. Plomaritis,* 200 N.C. App. 426, 684 S.E.2d 702 (2009) (order was not certified for immediate appeal and did not affect a substantial right).]
3. For appeal of a support order generally, including the effect of G.S. 50-19.1, see *Procedure for Initial Child Support Orders,* Part 2 of this Chapter, Section I.I.

# III. Modifying Child Support Orders of Another State

## A. Introduction

1. 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 the Uniform Interstate Family Support Act (UIFSA) (G.S. Chapter 52C), to bring it into compliance with the Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance (the Convention). S.L. 2015-117, § 1, effective June 24, 2015, made the necessary amendments to G.S. Chapter 52C. For background of the 2015 amendments to UIFSA, see *Liability and Amount*, Part 1 of this Chapter, Section VII.A
2. Before June 24, 2015, the effective date of amendments to the Uniform Interstate Family Support Act (UIFSA):
   a. The terms "child support order", "home state", "initiating tribunal", "issuing tribunal", "responding tribunal", and "support order" were defined in terms of, or as being applicable to, a "state". [G.S. 52C-1-101(2); 52C-1-101(4); 52C-1-101(8); 52C-1-101(10); 52C-1-101(17); 52C-1-101(21).]
   b. The definition of "state" included each state in the United States, various territories and possessions, Indian tribes, and a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under UIFSA, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act. [52C-1-101(19).]
   c. The term "foreign support order" was not defined in G.S. Chapter 52C and, based on the definition of "state" in G.S. 52C-1-101(19), was generally used to refer to an order for child support entered by a court in a state other than North Carolina or a foreign jurisdiction with a law or procedure substantially similar to UIFSA.
   d. Part 3, Article 6 of G.S. Chapter 52C, which included G.S. 52C-6-609 through 52C-6-614, addressed "Registration and Modification of Child Support Order[s]," with little differentiation between modification of an order of another state or of a foreign country, given that both were included in the definition of "state".
3. After June 24, 2015, the effective date of amendments to the Uniform Interstate Family Support Act (UIFSA):
   a. The six terms set out in Section III.A.2.a, above, were amended to specifically apply to a "state or a foreign country."
   b. Definitions were added for "foreign country", "foreign support order", "foreign tribunal", "issuing foreign country", and "outside this State". [G.S. 52C-1-101(3a); 52C-1-101(3b); 52C-1-101(3c); 52C-1-101(8a); 52C-1-101(13a).]
   c. "State" is now defined as a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States, including an Indian nation or tribe.

i. The definition of "state" in G.S. 52C-1-101(19) was amended to do away with the "legal fiction" that a foreign country can be a state of the United States. [Official Comment (2015), G.S. 52C-1-101.]

ii. In the current version of UIFSA, "state" is clearly intended to refer only to a state of the United States or to other designated political entities subject to federal law. [Official Comment (2015), G.S. 52C-1-101.] According to Official Comment (2015), G.S. 52C-1-101, the new definitions in UIFSA "are fine-tuned to avoid ambiguity in order to ensure that 'foreign' is used strictly to identify international proceedings and orders."

d. Part 3, Article 6 of G.S. Chapter 52C, which includes G.S. 52C-6-609 through 52C-6-614, as amended, now addresses registration and modification of child support orders of another state.

e. Part 4, Article 6 of G.S. Chapter 52C, which includes G.S. 52C-6-615 and 52C-6-616, was added by S.L. 2015-117, § 1, effective June 24, 2015, and addresses registration and modification of foreign child support orders.

4. Application and scope of Uniform Interstate Family Support Act (UIFSA) and Full Faith and Credit for Child Support Orders Act (FFCCSOA).

a. The rules regarding modification of support orders contained in UIFSA (G.S. Chapter 52C) apply to temporary, as well as final or permanent, child support orders issued by a state or a foreign country. [G.S. 52C-1-101(21), *amended by* S.L. 2015-117, § 1, effective June 24, 2015 (definition of "support order" includes a judgment, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child).]

b. The rules regarding modification of support orders contained in the federal FFCCSOA (28 U.S.C. § 1738B) apply to temporary, as well as final or permanent, child support orders issued by a state. [28 U.S.C. § 1738B(b)(5), *amended by* Pub. L. 113-183, Title III, § 301(f)(2)(B), (3)(B) (Sept. 29, 2014) (definition of "child support order" includes a permanent or temporary order); FFCCSOA is applicable to a child support order issued by a "state" as defined in 28 U.S.C. § 1738B(b)(9), but not to a foreign support order).]

c. Under UIFSA, a child support order means a support order for a child, which includes a child who has attained the age of majority under the law of the issuing state or foreign country. [G.S. 52C-1-101(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015 (definition of "child support order").]

5. An order of another state means an order of a tribunal in the other forty-nine U.S. states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, a U.S. Indian nation or tribe, or any territory or insular possession under the jurisdiction of the United States. [G.S. 52C-1-101(19), *amended by* S.L. 2015-117, § 1, effective June 24, 2015 (definition of "state"); 52C-1-101(22), *amended by* S.L. 2015-117, § 1, effective June 24, 2015 (definition of "tribunal").]

## B. Statutory Authority to Modify Support Order of Another State

1. G.S. 50-13.7(b) authorizes a North Carolina court, upon gaining jurisdiction and upon a showing of changed circumstances, to enter a new child support order that modifies or supersedes a child support order previously entered by a court of another state.
    a. The Uniform Interstate Family Support Act (UIFSA) and Full Faith and Credit for Child Support Orders Act (FFCCSOA) significantly limit a North Carolina court's authority under G.S. 50-13.7(b) to modify a child support order entered by a court of another state. [*See* G.S. 52C-2-207(d) (tribunal that issued the controlling order has continuing jurisdiction to the extent provided in G.S. 52C-2-205), 52C-6-611 (setting out the criteria that must be satisfied before a North Carolina tribunal can modify a child support order of another state); 28 U.S.C. § 1738B(a)(2) (modification only in accordance with §§ 1738B(e), (f), and (i)); *Lacarrubba v. Lacarrubba,* 202 N.C. App. 532, 534, 688 S.E.2d 769, 771 (2010) (stating that UIFSA and FFCCSOA have "severely limited the circumstances under which a state may modify a child support order issued by another state"); *New Hanover Cty. ex rel. Mannthey v. Kilbourne,* 157 N.C. App. 239, 578 S.E.2d 610 (2003) (noting that after the 1996 amendment to FFCCSOA, it was identical to UIFSA, with both acts strictly prohibiting modification of a sister state's prior, valid order).]
    b. FFCCSOA requires that state courts afford "full faith and credit" to child support orders issued in other states and refrain from modifying or issuing contrary orders except in limited circumstances. [*State ex rel. Harnes v. Lawrence,* 140 N.C. App. 707, 538 S.E.2d 223 (2000).]
    c. FFCCSOA is binding on all states and supersedes any inconsistent provisions of state law. [*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).]
    d. The restrictions on the authority of a court to modify apply to ongoing child support payments and to arrearages due under a child support order of another state. [*Lacarrubba v. Lacarrubba,* 202 N.C. App. 532, 688 S.E.2d 769 (2010) (order entered in New York, registered in Florida, and then registered in North Carolina); *New Hanover Cty. ex rel. Mannthey v. Kilbourne,* 157 N.C. App. 239, 578 S.E.2d 610 (2003) (a North Carolina court **cannot** modify child support arrearages that have accrued under a child support order issued by another state and are vested under a law similar to G.S. 50-13.10(a)).]
    e. Only an order entitled to recognition as the controlling order under UIFSA can be modified. [G.S. 52C-2-207.]
2. Under the Uniform Interstate Family Support Act (UIFSA) and Full Faith and Credit for Child Support Orders Act, a North Carolina court may modify a child support order issued by a court or tribunal of another state and registered in North Carolina in the following situations only:
    a. If all individual parties reside in North Carolina and the child does not reside in the issuing state; [G.S. 52C-6-613(a).]
    b. If G.S. 52C-6-613 does not apply, provided the following criteria under G.S. 52C-6-611(a)(1) are satisfied:
        i. Neither the individual obligee, the obligor, nor the child resides in the issuing state;

ii. The North Carolina tribunal has personal jurisdiction over the respondent or nonmoving party; **and**

iii. The petitioner or party moving for modification is not a resident of North Carolina (the "play away" rule). [G.S. 52C-6-611(a)(1), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

(a) The result of the "play away" rule is that the nonresident movant for modification (usually the obligee) must play an away game on the home field of the other party (usually the obligor). [Official Comment (2015), G.S. 52C-6-611. *See Crenshaw v. Williams,* 211 N.C. App. 136, 710 S.E.2d 227 (2011) (obligee/custodial father filed for modification of a Michigan child support order in North Carolina, where father lived; G.S. 52C-6-611(a)(1) required father to register and seek modification of Michigan order in Georgia, where obligor mother lived).]

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

(c) When a child support order issued in New York and registered in Florida was registered in North Carolina for enforcement only and North Carolina did not have personal jurisdiction over the nonmoving party, a Florida resident, the trial court lacked authority to modify the order. [*Lacarrubba v. Lacarrubba,* 202 N.C. App. 532, 688 S.E.2d 769 (2010).]

(d) Defendant's challenge to registration and enforcement of a support order of another state did not confer subject matter jurisdiction upon the trial court to modify the order. [*Lacarrubba v. Lacarrubba,* 202 N.C. App. 532, 688 S.E.2d 769 (2010).]

(e) A jurisdictional statement in an order confirming registration of an order for enforcement only does not give the court jurisdiction to modify the registered order. [*Lacarrubba v. Lacarrubba*, 202 N.C. App. 532, 538, 688 S.E.2d 769, 773 (2010) (rejecting argument that language in the order that the trial court had "personal and subject matter jurisdiction over the parties" gave North Carolina full and unfettered jurisdiction).]

(f) Even though issuing state (New York) had lost jurisdiction because parties and child had moved, registration in North Carolina of a child support order that had been registered in another state (Florida) did not give North Carolina jurisdiction to modify the order. [*Lacarrubba v. Lacarrubba,* 202 N.C. App. 532, 688 S.E.2d 769 (2010).]

(g) Trial court lacked jurisdiction under G.S. 52C-6-611 to modify a child support order issued in Russia pursuant to a motion filed in North Carolina by mother residing with child in North Carolina against father who resided in Canada. Mother was required to seek modification of the Russian order in Canada. [*Barclay v. Makarov,* 237 N.C. App. 398, 767 S.E.2d 152 (2014)

(**unpublished**) (applying UIFSA provisions in effect before 2015 amendments) (Russia did not have continuing, exclusive jurisdiction to modify its order because neither party resided in Russia when modification was sought; if both parents had resided in North Carolina, North Carolina would have had jurisdiction to modify pursuant to G.S. 52C-6-613; because the parties here resided in different states and there was no state or country with continuing, exclusive jurisdiction, mother seeking modification had to register the Russian order in Canada, where father resided, as Canada was the only state, as that term was defined in G.S. C 52C-1-101(19)(b), with jurisdiction to modify).] Note that the outcome in *Barclay* would be the same after the 2015 amendments to UIFSA except that Canada would be considered a foreign country as defined in G.S. 52C-1-101(3a), *added by* S.L. 2015-117, § 1, effective June 24, 2015, instead of being considered a state.

c. If G.S. 52C-6-613 does not apply, provided the following criteria under G.S. 52C-6-611(a)(2) are satisfied:

   i. North Carolina is the residence of the child, or a party who is an individual is subject to personal jurisdiction in North Carolina, and all individual parties have filed consents in a record with the issuing tribunal authorizing a North Carolina tribunal to modify the support order and assume continuing, exclusive jurisdiction. [G.S. 52C-6-611(a)(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; Official Comment (2015), 52C-6-611 (for another tribunal to assume modification jurisdiction by agreement under G.S. 52C-6-611(a)(2), the individual parties first must agree in a record to modification in the responding tribunal and file the record with the issuing tribunal; for the definition of a "record", see G.S. 52C-1-101(13c), *added by* S.L. 2015-117, § 1, effective June 24, 2015).]

   ii. When the foreign child support order was registered in North Carolina for enforcement only and the parties had not consented to North Carolina's jurisdiction to modify the foreign order, the trial court lacked authority to modify the order or reduce arrearages. [*Lacarrubba v. Lacarrubba,* 202 N.C. App. 532, 688 S.E.2d 769 (2010).]

3. Conversely, a North Carolina tribunal may not modify a child support order issued by a tribunal of another state or foreign country if the issuing or other tribunal has continuing, exclusive jurisdiction under the Uniform Interstate Family Support Act (UIFSA) over its order. [*See* G.S. 52C-2-205, *amended by* S.L. 2015-117, § 1, effective June 24, 2015; Official Comment (2015) to G.S. 52C-2-205 considers 52C-2-205 as "perhaps the most crucial provision in UIFSA"); 28 U.S.C. § 1738B(e)(2), *amended by* Pub. L. 113-183, Title III, §§ 301(f)(2)(B), (3)(B) (Sept. 29, 2014) (under the Full Faith and Credit for Child Support Orders Act , a child support order may be modified by another state only if the rendering state no longer has continuing, exclusive jurisdiction over the child support order or each individual contestant has filed written consent with the state of continuing, exclusive jurisdiction for a court of another state to modify the order and assume continuing, exclusive jurisdiction; Official Comment (2015), G.S. 52C-6-611 (citing G.S. 52C-2-205 through 52C-2-207, if an issuing tribunal has continuing, exclusive jurisdiction over its child support order, a responding tribunal is precluded from modifying the controlling order).]

a. A North Carolina tribunal that has issued a valid child support order has and shall exercise continuing, exclusive jurisdiction to modify the order if the order is the controlling order and (1) 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 or (2) 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 tribunal in North Carolina to continue to exercise jurisdiction to modify its order. [G.S. 52C-2-205(a)(1), (2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015, and the Official Comment (2015), which states that the issuing tribunal retains continuing, exclusive jurisdiction over a child support order, except in very narrowly defined circumstances; 28 U.S.C. § 1738B(e)(2), *amended by* Pub. L. No. 113-183, Title III, §§ 301(f)(2)(B), (3)(B) (Sept. 29, 2014).]

i. Modification of a valid order by a responding state is allowable only if the court has jurisdiction to enter the order and all parties have consented to the jurisdiction of the responding state to modify the order or if neither the child nor any of the parties remain in the issuing state. [*State ex rel. Lively v. Berry,* 187 N.C. App. 459, 653 S.E.2d 192 (2007) (where mother still resided in Florida and had not consented to North Carolina's exercise of jurisdiction, North Carolina did not have jurisdiction to modify the child support order; Florida retained jurisdiction).]

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

i. *State ex rel. Harnes v. Lawrence,* 140 N.C. App. 707, 538 S.E.2d 223 (2000) (New Jersey retained continuing, exclusive jurisdiction when mother and child continued to live in that state and mother had not consented to a modification of the New Jersey child support order).

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

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

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

4. If a North Carolina court lacks the authority under the Uniform Interstate Family Support Act and Full Faith and Credit for Child Support Orders Act to modify a child support order of another state, the North Carolina court may serve as an initiating tribunal to forward proceedings to a tribunal of another state. [G.S. 52C-2-203, *added by* S.L. 2015-117, § 1, effective June 24, 2015; Official Comment (2015), G.S. 52C-2-203 (G.S. 52C-2-203 does not deal with whether an initiating tribunal may forward a proceeding to a tribunal

in a foreign country, which may be left to the individual support enforcement agency. See also *Procedure for Initial Child Support Orders*, Part 2 of this Chapter, Section II.B.2.]

## C. Procedure

1. Registration and modification of a support order before June 24, 2015.
    a. Former definition of "state". If a foreign jurisdiction is not a "state" under UIFSA, then the district courts of North Carolina do not have statutory authority under UIFSA to register an alimony or child support order from that foreign jurisdiction. [*Haker-Volkening v. Haker*, 143 N.C. App. 688, 547 S.E.2d 127, *review denied,* 354 N.C. 217, 554 S.E.2d 338 (2001).]
        i. With respect to a foreign jurisdiction, "state" means a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedure under UIFSA, URESA, or RURESA (Revised Uniform Reciprocal Enforcement of Support Act, which, like URESA, was superseded by UIFSA). [G.S. 52C-1-101(19b).]
        ii. England is a "state" for purposes of registering a child support order under UIFSA. [*Ugochukwu v. Ugochukwu,* 176 N.C. App. 741, 627 S.E.2d 625 (2006); *Foreman v. Foreman*, 144 N.C. App. 582, 550 S.E.2d 792 (holding that England has reciprocity with North Carolina in issues of support, in this case, spousal support), *review denied,* 354 N.C. 68, 553 S.E.2d 38 (2001).]
        iii. Switzerland does not constitute a "state" as that term is defined by UIFSA. [*Haker-Volkening v. Haker*, 143 N.C. App. 688, 547 S.E.2d 127 (trial court's registration of the Swiss order vacated), *review denied,* 354 N.C. 217, 554 S.E.2d 338 (2001).]
2. Registration and modification of a support order after June 24, 2015.
    a. Generally.
        i. A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state if it has not already been registered. [G.S. 52C-6-609, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]
            (a) A "support order" is defined as 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, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. A support order may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees, and other relief. [G.S. 52C-1-101(21), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]
        ii. Registration is in the same manner provided in G.S. 52C-6-601 through 52C-6-608. [G.S. 52C-6-609, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

iii. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a North Carolina court. [G.S. 52C-6-611(b).]

b. Registration is subdivided into distinct categories:

i. Registration for enforcement; [G.S. 52C-6-601 through 52C-6-608, *all amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. Registration for modification; [G.S. 52C-6-609, *amended by* S.L. 2015-117, § 1, effective June 24, 2015 (a child support order issued in another state is registered in this state in the same manner provided in G.S. 52C-6-601 through 52C-6-608).] or

iii. Registration for both enforcement and modification. [Official Comment (2015), G.S. 52C-6-609 (if the tribunal has the requisite personal jurisdiction over the parties and may assume subject matter jurisdiction as provided in G.S. 52C-6-611 or 52C-6-613, modification may be sought in connection with registration and enforcement); Official Comment (2015), G.S. 52C-6-610 (an order issued in another state registered for purposes of modification may be enforced in the same manner as an order registered for purposes of enforcement).]

c. Filing with the clerk. A party or support enforcement agency seeking modification of a child support order issued in another state must register that order with the clerk of superior court in the same manner provided in G.S. 52C-6-602 through 52C-6-608. [G.S. 52C-6-609, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

d. Effect of filing a support order issued in another state or a foreign support order.

i. A support order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state. [G.S. 52C-6-603(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. Upon filing, a support order becomes registered in North Carolina, and unless successfully contested, it must be recognized and enforced. [*Martin Cty. ex rel. Hampton v. Dallas,* 140 N.C. App. 267, 535 S.E.2d 903 (2000) (citing *Welsher v. Rager,* 127 N.C. App. 521, 491 S.E.2d 661 (1997)).]

e. Effect of registration for purposes of modification.

i. A North Carolina tribunal may enforce an order of another state registered for modification in the same manner as if the order had been issued by a tribunal of this state. [G.S. 52C-6-610, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. A North Carolina tribunal may modify an order registered for modification only if the requirements of G.S. 52C-6-611 or G.S. 52C-6-613 have been met. [G.S. 52C-6-610, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.] See Section III.B.2.b, above.]

iii. Registration of an out-of-state child support order for enforcement in North Carolina pursuant to UIFSA does not, in and of itself, give a North Carolina court jurisdiction to modify the registered child support order. [*See Hinton v. Hinton*, 128 N.C. App. 637, 496 S.E.2d 409 (1998).]

f. Documents required for registration.

i. Two copies (including one certified copy) of the order to be registered and any order modifying the order. [G.S. 52C-6-602(a)(2), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

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

iii. If two or more orders are in effect, the person requesting registration must:

(a) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in G.S. 52C-6-605.

(b) Specify the order alleged to be the controlling order, if any.

(c) Specify the amount of consolidated arrearages, if any. [G.S. 52C-6-602(d), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

(d) Notwithstanding G.S. 52C-3-310 and 52C-6-602(a), a request for registration of a Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance (Convention) support order must be accompanied by the documents and information set out in G.S. 52C-7-706(b), *added by* S.L. 2015-117, § 1, effective June 24, 2015.

iv. The registering party must **substantially** comply with the requirements in G.S. 52C-6-602 for registering a child support order for modification. [*See Twaddell v. Anderson*, 136 N.C. App. 56, 523 S.E.2d 710 (1999) (required information found upon a close reading of the submitted material), *review denied,* 351 N.C. 480, 543 S.E.2d 510 (2000).]

g. If two or more orders are in effect, a request for a determination of which is the controlling order may be filed separately or with a request for registration and modification. [G.S. 52C-6-602(e), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

i. The person requesting registration must give notice of the request for determination of controlling order to each party whose rights may be affected by the determination. [G.S. 52C-6-602(e), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

h. Motion to modify may be filed with a request for registration.

i. A petition or motion seeking modification of the registered order may be filed at the same time as the request for registration or at a later time. [G.S. 52C-6-609, *amended by* S.L. 2015-117, § 1, effective June 24, 2015; 52C-6-602(c).]

ii. A petition or motion seeking modification of the registered order, as a motion for modification pursuant to G.S. 50-13.7, must be made in writing, state the facts upon which the motion is based, indicate the relief sought, and be served on the respondent. [See Section II.F.2, above.]

3. Contesting the validity or enforcement of a registered support order. [G.S. 52C-6-606.]

a. The respondent may contest the validity or enforcement of a registered order in this state by filing a request for a hearing before a district court judge within the time required by G.S. 52C-6-605(b), which is twenty days after notice of registration, unless the registered order is under G.S. 52C-7-707 (time is extended for

cases subject to the Convention). [G.S. 52C-6-606(a); 52C-6-605(b); 52C-6-609, *all amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

b. If a respondent requests a hearing, the registering tribunal must schedule the matter for hearing before a district court judge and give notice of the hearing to the parties. [G.S. 52C-6-606(c); 52C-6-609, *both amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

c. The respondent may contest the validity of a registered support order or seek to vacate the registration by asserting one or more of the following defenses:

   i. The issuing tribunal lacked personal jurisdiction over the nonregistering party in the original proceeding; [G.S. 52C-6-607(a)(1); Official Comment (2015), G.S. 52C-6-607.]

   ii. The order was obtained by fraud; [G.S. 52C-6-607(a)(2).]

   iii. The order has been vacated, suspended, or modified by a later order; [G.S. 52C-6-607(a)(3).]

   iv. The issuing tribunal has stayed the order pending appeal; [G.S. 52C-6-607(a)(4).] or

   v. The alleged controlling order is not the controlling order. [G.S. 52C-6-607(a)(8), *added by* S.L. 2015-117, § 1, effective June 24, 2015.] For a complete list of the defenses set out in the statute, see G.S. 52C-6-607(a) or *Enforcement of Child Support Orders*, Part 4 of this Chapter, Section II.A.3.

d. The respondent has the burden of proving any of the defenses listed immediately above. [G.S. 52C-6-607(a), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; *Martin Cty. ex rel. Hampton v. Dallas,* 140 N.C. App. 267, 535 S.E.2d 903 (2000) (trial court erred in placing the burden on the registering party to prove that a Virginia order should be registered in North Carolina; dispute as to amount of arrearages did not shift burden of proof to registering party).]

e. If the respondent does not establish a defense under G.S. 52C-6-607(a), the registering tribunal must issue an order confirming the registered support order. [G.S. 52C-6-607(c), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

f. The respondent also may contest the validity of a registered support order or seek to vacate the registration by asserting that the registering tribunal lacks jurisdiction to modify the registered order under G.S. 52C-6-611 and 52C-6-613.

g. The respondent's failure to contest the validity or enforcement of the registered support order in a timely manner constitutes a waiver of the defense, resulting in the order being confirmed by operation of law. [G.S. 52C-6-606(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

h. Confirmation of a registered support order, whether by operation or law or after notice and hearing, precludes further contest of the order as to any matter that could have been asserted at the time of registration. [G.S. 52C-6-608, *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

i. The district court judge must consider and rule on the validity of any of the above-listed defenses that are asserted by the respondent (including defenses based on the issuing court's lack of jurisdiction, unless the issue of jurisdiction has been

conclusively determined by a prior decision that is res judicata). [*See Martin Cty. ex rel. Hampton v. Dallas*, 140 N.C. App. 267, 535 S.E.2d 903 (2000) (conflicts in the evidence presented by defendant and by plaintiff are for the trial court to resolve; their mere presence does not justify or permit vacation of the prior registration).]

j. Defendant's challenge to registration and enforcement of a support order of another state did not confer subject matter jurisdiction upon the trial court to modify the order. [*Lacarrubba v. Lacarrubba,* 202 N.C. App. 532, 688 S.E.2d 769 (2010) (moreover, when matter heard, defendant consented to registration).]

k. A jurisdictional statement in an order confirming registration of an order for enforcement only does not give the court jurisdiction to modify the registered order. [*Lacarrubba v. Lacarrubba,* 202 N.C. App. 532, 538, 688 S.E.2d 769, 773 (2010) (rejecting argument that language in the order that the trial court had "personal and subject matter jurisdiction over the parties" gave North Carolina full and unfettered jurisdiction).]

4. Confirmation of a support order issued in another state.

a. Confirmation can only occur in two ways:

i. Where a respondent contests a registered order within twenty days after notice of registration, unless the registered order is under G.S. 52C-7-707 (registered Convention support order), a hearing is held, and respondent's contest is unsuccessful. [G.S. 52C-6-605, 52C-6-606(a), 52C-6-608, *all amended by* S.L. 2015-117, § 1, effective June 24, 2015.]

ii. By operation of law where a respondent fails to contest a registered order within a timely manner. [G.S. 52C-6-606(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; *Tepper v. Hoch*, 140 N.C. App. 354, 536 S.E.2d 654 (2000).]

b. Setting aside a confirmation for excusable neglect.

i. If a respondent fails to contest registration of a foreign support order within twenty days after notice of registration, the court may, on the court's own initiative or upon motion and a showing of excusable neglect and a meritorious defense, set aside confirmation of the registered order to allow the respondent to contest registration of the order. [*Tepper v. Hoch*, 140 N.C. App. 354, 536 S.E.2d 654 (2000) (confirmation set aside under G.S. 1A-1, Rule 60(b)(1) due to former husband's inadvertent failure to request a hearing).]

c. Effect of confirmation.

i. Confirmation of a support order, whether by action or as the result of inaction, validates both the terms of the order and the asserted arrearages. [Official Comment (2015), G.S. 52C-6-608.]

## D. Choice of Law

1. G.S. 52C-6-604, *amended by* S.L. 2015-117, § 1, effective June 24, 2015, establishes choice of law rules based on the principle in the Uniform Interstate Family Support Act that throughout the process, the controlling order remains the order of the tribunal of the issuing state or foreign country until a valid modification. [Official Comment (2015), G.S. 52C-6-604.]

2. A North Carolina tribunal with jurisdiction under G.S. 52C-6-613 (all individual parties reside in this state and the child does not reside in the issuing state) must apply Chapter 52C, Articles 1 (General Provisions) and 2 (Jurisdiction) and the procedural and substantive law of North Carolina to the modification proceeding. Articles 3, 4, 5, 7, and 8 of Chapter 52C do not apply. [G.S. 52C-6-613(b), *amended by* S.L. 2015-117, § 1, effective June 24, 2015.]
3. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a North Carolina tribunal. [G.S. 52C-6-611(b); Official Comment (2015), G.S. 52C-6-611 (under subsection (b), when a responding tribunal assumes modification jurisdiction because the issuing tribunal has lost continuing, exclusive jurisdiction, the proceedings will follow local law with regard to modification of a child support order, except as provided in G.S. 52C-6-611(c) and (c1)).]
4. General rule.
    a. Once North Carolina has obtained modification jurisdiction under G.S. 52C-6-611 or 52C-6-613, the North Carolina court must apply the law of the forum. [*Lombardi v. Lombardi,* 157 N.C. App. 540, 579 S.E.2d 419 (2003) (noting one of the exceptions to this rule, discussed below).]
    b. In other words, a North Carolina court may modify the registered child support order if, applying the procedural and substantive law of North Carolina as set forth in G.S. 50-13.7, 50-13.10, 52C-6-611, and applicable case law, it determines that there has been a substantial change of circumstances warranting modification of the order. [See Section II, above.]
5. The general rule is subject to the following exceptions.
    a. Pursuant to G.S. 52C-6-604(d), *added by* S.L. 2015-117, § 1, effective June 24, 2015, after a tribunal in North Carolina or another state determines which is the controlling order and issues an order consolidating arrearages, if any, a North Carolina tribunal must prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrearages, on current and future support, and on consolidated arrearages.
    b. Pursuant to G.S. 52C-6-611(c), *amended by* S.L. 2015-117, § 1, effective June 24, 2015, when North Carolina is acting as a responding state with respect to a child support order registered in North Carolina, it may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support.
        i. In a modification proceeding, the law of the state that issued the initial controlling order governs the duration of the support obligation. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal in North Carolina. [G.S. 52C-6-611(c1), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]
        ii. Subsection 611(c1) as modified makes clear that "the original time frame for support is not modifiable unless the law of the issuing state provides for its modification." [Official Comment (2015), G.S. 52C-6-611(c).] For example, if a child support order was entered by a New York court and New York law requires that

child support be paid until a child's 21st birthday, a North Carolina court may not modify the order to require that child support be paid only until the child's 18th birthday.

c. When a term is not final and is modifiable, the order may be modified. [*Lombardi v. Lombardi,* 157 N.C. App. 540, 579 S.E.2d 419 (2003) (New Jersey court's determination that mentally retarded child was unemancipated was not a final, nonmodifiable term of the order so father's support obligation was modifiable; North Carolina court could modify order under North Carolina law so that father was no longer required to pay support).]

6. When a tribunal in North Carolina modifies, consistent with the Uniform Interstate Family Support Act (UIFSA), a child support order issued in another state, the North Carolina tribunal becomes, from that point forward, the tribunal of continuing, exclusive jurisdiction. [G.S. 52C-6-611(d), *amended by* S.L. 2015-117, § 1, effective June 24, 2015; Official Comment (2015), G.S. 52C-6-611 (pursuant to 52C-6-611(d), on modification the new child support order becomes the controlling order to be recognized by all UIFSA states); *Lombardi v. Lombardi,* 157 N.C. App. 540, 579 S.E.2d 419 (2003) (after North Carolina court modified a New Jersey order, North Carolina court became court with continuing, exclusive jurisdiction).] Good practice mandates that the responding tribunal should explicitly state in its order that it is assuming responsibility for the controlling child support order. [Official Comment (2015), G.S. 52C-6-611(c).]

## IV. Registration and Modification of a Foreign Child Support Order (Other than a Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance (Convention) Order)

### A. Introduction

1. Part 4, Article 6 of G.S. Chapter 52C, which includes G.S. 52C-6-615 and 52C-6-616, was added by S.L. 2015-117, § 1, effective June 24, 2015, and addresses registration and modification of foreign child support orders.
2. "Foreign country" is defined as a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:
   a. Which has been declared under the law of the United States to be a foreign reciprocating country,
   b. Which has established a reciprocal arrangement for child support with North Carolina as provided in G.S. 52C-3-308,
   c. Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under the Uniform Interstate Family Support Act, or
   d. In which the Convention is in force with respect to the United States. [G.S. 52C-1-101(3a), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

### B. Statutory Authority

1. Jurisdiction for a North Carolina tribunal to modify a child support order of a foreign country is addressed in G.S. 52C-6-615.
    a. Except as provided in G.S. 52C-7-711 (modification of a Convention child support order), if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order, a North Carolina tribunal may assume jurisdiction to modify the child support order and bind all individuals subject to personal jurisdiction in North Carolina, whether the consent to modification of a child support order otherwise required of the individual pursuant to G.S. 52C-2-6-611 has been given or whether the individual seeking modification is a resident of North Carolina or of the foreign country. [G.S. 52C-6-615(a), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]
    b. An order issued by a North Carolina tribunal modifying a foreign child support order pursuant to G.S. 52C-6-615(a) is the controlling order. [G.S. 52C-6-615(b), *added by* S.L. 2015-117, § 1, effective June 24, 2015.]
2. The procedure to register a child support order of a foreign country for modification is addressed in G.S. 52C-6-616.
    a. A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register the order in North Carolina under G.S. 52C-6-601 through 52C-6-608 if the order has not been registered. [G.S. 52C-6-616, *added by* S.L. 2015-117, § 1, effective June 24, 2015.]
    b. A petition for modification may be filed at the same time as a request for registration, or at another time, and must specify the grounds for modification. [G.S. 52C-6-616, *added by* S.L. 2015-117, § 1, effective June 24, 2015.]

## V. Other Issues

### A. Modification of Child Support Provisions in an Unincorporated Separation Agreement

1. An unincorporated separation agreement is a contract and can be modified only with consent of the parties. [*Walters v. Walters*, 307 N.C. 381, 298 S.E.2d 338 (1983); *Ticconi v. Ticconi,* 161 N.C. App. 730, 589 S.E.2d 371 (2003); *Torres v. McClain*, 140 N.C. App. 238, 535 S.E.2d 623 (2000); *Rose v. Rose,* 108 N.C. App. 90, 422 S.E.2d 446 (1992) (trial court erred by modifying child support provision in an unincorporated agreement without the consent of both parties). *See also Danai v. Danai*, 166 N.C. App. 279, 603 S.E.2d 168 (2004) (**unpublished**) (in alimony case, district court's lack of jurisdiction to modify an unincorporated separation agreement not cured by provision in the agreement authorizing modification by a court of competent jurisdiction); *Shaffner v. Shaffner,* 36 N.C. App. 586, 588, 244 S.E.2d 444, 446 (1978) (emphasis added) (citing *Church v. Hancock,* 261 N.C. 764, 136 S.E.2d 81 (1964)) ("[t]o the extent an [unincorporated] agreement makes provision for the maintenance and support of a child *past his majority,* it is beyond the inherent power of the court to modify absent the consent of the parties and [agreement] is enforceable at law as any other contract").]

2. Support obligations established by unincorporated separation agreements can be modified only by written agreement executed in accordance with G.S. 52-10.1. [*See Greene v. Greene,* 77 N.C. App. 821, 336 S.E.2d 430 (1985) (attempted oral modification of alimony provisions in unincorporated separation agreement did not meet formalities and requirements of G.S. 52-10.1; husband obligated for payments as set out in the agreement); *Jones v. Jones,* 162 N.C. App. 134, 590 S.E.2d 308 (2004) (citing *Greene*) (conversations between husband and wife in which they purportedly agreed to modify the alimony provisions in their separation agreement, even if true, could not modify that agreement).]
3. G.S. 50-13.7, on modification of an order for child support, does not apply to child support obligations that are included in an **unincorporated** separation agreement or property settlement. [*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); *Bottomley v. Bottomley*, 82 N.C. App. 231, 346 S.E.2d 317 (1986).]
4. For a discussion on establishing child support when there is a prior unincorporated separation agreement, including the application of *Carson v. Carson,* 199 N.C. App. 101, 680 S.E.2d 885 (2009), and *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), see *Procedure for Initial Child Support Orders,* Part 2 of this Chapter, Section III.C.3. For discussion of establishment of court-ordered support following execution of an unincorporated separation agreement regarding support, see *Procedure for Initial Child Support Orders,* Part 2 of this Chapter, Chapter 3, Section I.G.6.
5. For more on the modification of child support provisions in an unincorporated separation agreement generally, see *Spousal Agreements*, Bench Book, Vol. 1, Chapter 1.

## B. Modification of Child Support Provisions in an Incorporated Separation Agreement

1. Child support provisions in an incorporated separation agreement are modifiable in the same manner as any other child support order. [*Walters v. Walters,* 307 N.C. 381, 298 S.E.2d 338 (1983); *Beamer v. Beamer,* 169 N.C. App. 594, 610 S.E.2d 220 (2005); *Tyndall v. Tyndall*, 80 N.C. App. 722, 343 S.E.2d 284 (citing *Walters*), *review denied*, 318 N.C. 420, 349 S.E.2d 606 (1986); *Holthusen v. Holthusen,* 79 N.C. App. 618, 339 S.E.2d 823 (1986).]
2. When a separation agreement has been incorporated into a divorce judgment, the relevant date for a change of circumstances is the date of incorporation and not the date the agreement was executed. [*Smart v. State ex rel. Smart,* 198 N.C. App. 161, 678 S.E.2d 720 (2009) (when a separation agreement has been incorporated into a divorce judgment, the court must compare present circumstances to those existing on the date of incorporation to determine whether there has been a substantial change in circumstances; a change of circumstances between execution of the separation agreement and entry of the divorce decree incorporating that agreement is irrelevant to a motion to modify).]
3. The parties may not extrajudicially modify the provisions of a child support order through unilateral action or mutual agreement (other than a consent order approved by the court). [*Baker v. Showalter*, 151 N.C. App. 546, 566 S.E.2d 172 (2002) (parties could not modify a child support order by oral agreement; amount of support in incorporated separation agreement remained in effect).]

4. For more about child support provisions in an incorporated separation agreement, see *Procedure for Initial Child Support Orders*, Part 2 of this Chapter, Section III.C.
5. For more on the modification of child support provisions in an incorporated separation agreement generally, see *Spousal Agreements*, Bench Book, Vol. 1, Chapter 1.

## C. Modification of Child Support Orders Entered under URESA

1. Although North Carolina's Uniform Reciprocal Enforcement of Support Act (URESA) was repealed effective Jan. 1, 1996, URESA's provisions regarding modification of child support orders of another state will determine whether a child support order entered under URESA before Jan. 1, 1996, modified or superseded a prior child support order. [*See New Hanover Cty. ex rel. Mannthey v. Kilbourne*, 157 N.C. App. 239, 578 S.E.2d 610 (2003) (citing *Twaddell v. Anderson,* 136 N.C. App. 56, 523 S.E.2d 710 (1999), *review denied*, 351 N.C. 480, 543 S.E.2d 510 (2000)) (although superseded by the Uniform Interstate Family Support Act (UIFSA), URESA is still applicable to determine the validity of an order originally entered when URESA was in effect).]
   a. If the URESA order did not modify or supersede a prior order, **both** orders remain valid. [*See Twaddell v. Anderson*, 136 N.C. App. 56, 523 S.E.2d 710 (1999) (1986 North Carolina order entered under URESA did not nullify, supersede, or void a California order entered in 1981), *review denied,* 351 N.C. 480, 543 S.E.2d 510 (2000); *New Hanover Cty. ex rel. Mannthey v. Kilbourne*, 157 N.C. App. 239, 578 S.E.2d 610 (2003); *cf. Wilson Cty. ex rel. Egbert v. Egbert*, 153 N.C. App. 283, 569 S.E.2d 727 (2002) (1989 North Carolina support order not modified by subsequent Florida orders reducing and then terminating father's support obligation; North Carolina order entered in 2001 for arrearages based on 1989 order affirmed).]
   b. If the URESA order did modify or supersede the prior order, the prior order is not a "valid" order to be considered when applying UIFSA's rules to determine the controlling child support order pursuant to G.S. 52C-2-207.
   c. In North Carolina, the "one order" rules of the Uniform Interstate Family Support Act (UIFSA) (G.S. Chapter 52C) and the Full Faith and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C. § 1738B) took effect on Jan. 1, 1996. In other states, UIFSA's and FFCCSOA's "one order" rules took effect on Aug. 22, 1996, or the effective date of the issuing state's UIFSA statute, whichever was earlier. [28 U.S.C. § 1738B, *amended by* Pub. L. No. 104-193, § 322.]
2. Under North Carolina's former URESA statute, a "de novo" child support order entered by a North Carolina court under URESA (former G.S. 52A-13) before Jan. 1, 1996, did not nullify, supersede, or modify a prior child support order entered by a North Carolina court or by a court of a sister state under URESA or any other law, unless the URESA order expressly and specifically stated that it nullified, superseded, or modified the prior child support order and the modification was ordered in accordance with G.S. 50-13.7 and 50-13.10. [*See* former G.S. 52A-21; *S.C. Dep't of Soc. Servs. ex rel. Ratteree v. Hamlett*, 142 N.C. App. 501, 543 S.E.2d 189 (2001); *Stephens v. Hamrick*, 86 N.C. App. 556, 358 S.E.2d 547 (1987).]

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

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

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