

## **Child Support Modification: Yes, we're still supposed to file a motion to modify**

In 2016, the court of appeals held that a voluntary support agreement that modified an existing child support order was void because neither party filed a motion to modify as required by [GS 50-13.7](#). [Catawba County ex. Rel. Rackley, 784 SE2d 620 \(N.C. App. 2016\)](#). On September 29, 2017, the [North Carolina Supreme Court](#) reversed the court of appeals and held that the order was not void.

This is important. Among other things, this decision means that if a court accepts a consent order for modification and the requirements of [GS 50-13.7](#) have not been met, the consent order nevertheless is valid and enforceable. However, [GS 50-13.7](#) still requires that a motion be filed and that the court conclude there has been a substantial change in circumstances before modifying a child support or a child custody order can be modified. The failure to comply with the statute is legal error that will support reversal by the court of appeals if there is a direct appeal.

### **What happened in Rackley?**

In 1999, Shawna Rackly and Jason Loggins signed a Voluntary Support Agreement and the court approved the agreement, making it a court order for support. The agreement provided that Loggins would pay \$0 monthly child support, assign all unemployment benefits to the child support agency, reimburse the State \$1,996 for public assistance paid on behalf of his children, and provide health insurance for the children whenever it became available to him through his employment.

In 2000, a motion to show cause for contempt was filed, alleging defendant had failed to reimburse the public assistance as ordered in the 1999 order. As a result of the contempt proceedings, defendant paid a portion of the amount owed and agreed to a modification of the 1999 order. In June 2001, the court entered a "Modified Voluntary Support Agreement and Order" with the consent of all parties providing that defendant would pay \$419 per month in child support starting July 1, 2001 and reimburse the State \$422 for assistance provided to his children. No motion to modify was filed before the modified order was entered by the court.

In the years that followed, a number of show cause orders were issued and a number of modification orders were entered, only one of which was preceded by the filing of a motion to modify. In April 2011, defendant filed a motion to modify the most recent support order, alleging that he was unemployed and the children had become emancipated. The trial court entered an order in September 2011, reducing defendant's support obligation and setting his arrears at \$6,640.75.

In 2014, defendant filed a motion pursuant to Rule 60 of the Rules of Civil Procedure alleging that the 2001 "Modified Voluntary Support Agreement and Order" was void because no motion to

modify had been filed. As a result, he contended that the only valid order was the original 1999 order setting his monthly support obligation at \$0. The trial court agreed and set aside the 2001 order.

### **The Court of Appeals decision**

[The court of appeals](#) agreed with the trial court that the 2001 order was void. The court reasoned that because the clear language of [GS 50-13.7](#) requires that a motion in the cause be filed before the court enters a child support order that modifies an existing permanent order, a trial court has no subject matter jurisdiction to act if a motion is not filed. A trial court generally has no jurisdiction to act in a civil case once a final judgment has been entered absent the filing of an appropriate post-judgment motion. Because the motion is required to invoke the subject matter jurisdiction of the court, the fact that the order was entered by consent is 'irrelevant'. Subject matter jurisdiction cannot be conferred upon the court by consent of the parties.

### **The Supreme Court decision**

[The supreme court](#) reversed the court of appeals, holding that the failure to file a motion to modify did not divest the district court of jurisdiction. Because the court had subject matter jurisdiction, the consent order was not void.

The court listed the following as the reasons the trial court retained jurisdiction to modify the original support order:

1. The trial court maintained continuing jurisdiction over the child support issue until the child reached majority or until the death of one of the parties;
2. The language of [GS 50-13.7\(a\)](#) does not create a jurisdictional prerequisite that would divest the court of jurisdiction;
3. The legislative history of this statutory provision suggests that the General Assembly did not intend to create a jurisdictional prerequisite;
4. The provision requiring a motion to modify a child support order to be filed so as to prompt a district court's review of an existing child support order is directory rather than mandatory, and therefore did not deprive the court of jurisdiction; and
5. The VSA filed by plaintiff satisfied the legislative purpose of [GS 50-13.7\(a\)](#).

Two justices concurred in the result only, arguing that the failure to file a motion does deprive the trial court of jurisdiction but concluding that the VSA filed by consent in this case "served as the functional equivalent of a motion."

### **GS 50-13.7 still applies**

It is important to remember that this case holds only that the failure to file a motion does not render

a modification void. [GS 50-13.7\(a\)](#) clearly requires that a motion be filed and requires that the court conclude there has been a substantial change in circumstances before the court modifies a support or a custody order. The failure to follow the requirements of the statute is a legal error that can be challenged in a direct appeal by a party who does not waive objection to the error.

It also is important to remember that the court's decision in this case relies substantially on the fact that a trial court retains continuing jurisdiction in a child support or custody case until a child reaches majority or a party dies. A trial court does not have continuing jurisdiction in other types of civil cases. See *Whitworth v. Whitworth*, 222 NC App 771 (2012)(trial court has no jurisdiction to act in an equitable distribution case following final judgment absent an appropriate post-judgment motion).