Hope Someone Remembered to File the Motion to Modify……..

*****UPDATE TO POST MAY 2, 2016: On April 26, 2016, the NC Supreme Court granted a temporary stay of the Court of Appeals ruling in the case discussed in this post. See SC docket #152P16-1.**

*****UPDATE TO POST OCTOBER 2, 2017: On September 29, 2017, the NC Supreme Court reversed the opinion of the Court of Appeals discussed in this post.** See Catawba County ex rel. Rackley v. Loggins.

On Tuesday this week, the court of appeals held that a consent order modifying an existing child support order was void because no motion to modify was filed before the consent modification was entered by the court. In Catawba County ex. rel. Rackley v. Loggins, (NC App, April 5, 2016), the court held that GS 50-13.7 clearly requires that a motion in the cause requesting modification be filed in order to invoke the subject matter jurisdiction of the court to enter any further orders in the support case. Without the motion, the court has no subject matter jurisdiction to act.

Unfortunately, it is not uncommon in North Carolina for orders to be entered modifying existing custody and support orders without anyone actually filing a motion to modify. This practice is especially common when all parties in the case agree to the modification. The court of appeals now has made it clear that this practice of ignoring required procedure results in invalid, unenforceable orders.

What Happened in Rackly v. Loggins**?**

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. On appeal, the court of appeals agreed with the trial court that the 2001 order was void.

Support and Custody Orders Are Final Adjudications

The fundamental principal underlying this decision is that, like all other civil judgments, permanent support and custody orders are final adjudications of claims. There are statutes that allow these cases to be re-opened when there is a change in circumstances, but these statutes do not change the fact that orders entered finally resolving pending support and custody claims are final adjudications. *See Massey v. Massey*, 121 NC App 263 (1996)(custody and support orders are final judgments even though the court can act when modification requests are properly presented).

In *Whitworth v. Whitworth*, 222 NC App 771 (2012), an equitable distribution case, the court of appeals reminded us that once a claim is finally adjudicated, the trial court no longer has jurisdiction to act in the case. Unless an "appropriate post-judgment motion is filed" to effectively re-open the matter, the trial court simply has no subject matter jurisdiction to act in that case.

In Rackly, the court held that this principle applies to custody and support cases as well. GS 50-13.7 provides a mechanism for re-establishing the jurisdiction of the court in the form of a motion to modify alleging changed circumstances. Without the motion, the court has no jurisdiction to act in the case that was concluded with the entry of the permanent custody or support order.

But Dad Consented to the Modified Order…….

Subject matter jurisdiction cannot be conferred upon the court by the parties, so the court in Rackly held that "it is immaterial whether the judgment was or was not entered by consent." Similarly, the court rejected plaintiff's claims that defendant should be estopped from challenging the validity of the order because he had treated the modifications as valid through the years and had benefited from the 2011 modification order that reduced his support obligation. The court stated that a challenge to subject matter jurisdiction can be made at any time and a judgment entered without jurisdiction can be attacked collaterally anytime, regardless of the conduct of the party raising the jurisdiction issue.

So What Does This Mean?

This ruling very clearly holds that the motion to modify must be filed before a modification order is entered or the modification order is invalid. The Rackly opinion is a child support matter but it interprets GS 50-13.7. That same statute provides the authority for child custody modifications so this ruling applies to custody cases as well. In addition, GS 50-16.9 also requires that a motion be filed before the court modifies either a postseparation support order or an alimony order. There is no obvious reason this ruling would not apply to those cases as well.