

THE UNIFORM INTERSTATE FAMILY SUPPORT ACT
by Gerald K. Robbins¹
Raleigh, North Carolina

I. One Order, One State

The single, biggest problem with the law as it existed prior to the Uniform Interstate Family Support Act (UIFSA) was that a support order in one state need not, and frequently did not, have any impact or effect on an order entered in another state. County of Stanislaus v. Ross, 41 N.C. App. 518, 255 S.E.2d 229 (1979). This meant that two or more orders could be in effect concerning the same parties and their children. The courts and parties would often be unclear as to which orders were or were not to be enforced. Accordingly, given the ease with which Americans travel and relocate the old system of enforcing interstate child support orders, the Uniform Reciprocal Enforcement of Support Act (URESA), simply became unmanageable. URESA resulted in a proliferation of child support orders. Many of these orders covered the same parties and children with conflicting requirements of the parties involved. Stephens v. Hamrick, 86 N.C. App. 556, 358 S.E.2d 547 (1987). The parties and the courts struggled, often in tedious, contentious litigation, to discern the obligations and duties of each of the parties. As a result the highest goal of UIFSA became to have one state, one order; that is, that a single order originally issued by a state shall be recognized by all other states and given full faith and credit until, and unless, properly modified by a court of competent jurisdiction. G.S. §52C-2-207, Official Comment.

¹ While Mr. Robbins is employed by the North Carolina Department of Justice, any opinions expressed in this paper are those of the author. This paper is not and may not be cited as an opinion of the Attorney General's office.

II. The Concept of Continuing, Exclusive Jurisdiction

In order to ensure that the issuing state's child support order will be given full faith and credit by its sister states the concept of continuing, exclusive jurisdiction came into existence. G.S. §52C-2-205. This concept forbids a state from modifying the child support order of a sister state so long as the individual obligee, individual obligor, or child continues to reside in the issuing state. G.S. §52C-6-611. See also Kilroy v. Superior Court of Los Angeles County, 54 Cal. App.4th 793, 63 Cal. Rptr.2d 390 (1997); Peddar v. Peddar, 43 Mass. App. Ct. 192, 683 N.E.2d 1045 (1997); Hinton v. Hinton, 128 N.C. App. 637, 496 S.E.2d 409 (1998); Badeaux v. Davis, 1999 WL 735426 (S.C. App.); Thompson v. Thompson, 893 S.W.2d 301 (Tx. App. Ct. 1996). If neither the obligee, obligor, or the child reside in the issuing state, then another state's court, assuming they have personal jurisdiction over the parties, may modify the issuing state's order. The issuing state's order may also be modified if the individual obligee and obligor agree in writing that another state may assume continuing, exclusive jurisdiction and that written document is filed with the issuing state. G.S. §52C-6-611(a)(2). But see Bednarsh v. Bednarsh, N.J. Super. 482, 660 A.2d 575 (1995) (failure of either party to mention an outstanding order in a state which would have continuing, exclusive jurisdiction does not constitute written consent for another state to modify).

III. Registration

An order issued by a court or administrative tribunal of another state may be registered for enforcement or modification in this state. G.S. §52C-6-601; G.S. §52C-6-609. The order then becomes enforceable in the same manner as if it were issued by North Carolina. The newly registered order, however, maintains its identity as an order of the foreign state and it may not be

modified other than as allowed pursuant to UIFSA.

A. Initiation of Registration of a Foreign Support Order, G.S. §52C-6-602

A pleading is usually not required unless the law of the responding state requires that the enforcement remedy be specifically pled. UIFSA requires that the following information be submitted to begin the registration process:

- A transmittal letter requesting registration and enforcement;
- Two copies, including one certified copy, of all orders to be registered including any modification of an order;
- The petitioner's sworn statement or a certified statement by the custodian of records showing the amount of any arrears;
- The name, social security number, and address of the obligor;
- The name and address of the obligor's employer and any source of income;
- A description and location of property subject to execution;
- The name and address of the obligee and entity to whom payments should be sent.

B. The Court's Response to the Registration, G.S. §52C-6-605

The clerk of the court must file the foreign support order as it would a foreign judgment, regardless of form. The clerk must then notify the nonregistering party of the registration. The notice must include the following information:

- A hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;
- The amount of the alleged arrears;
- Failure to timely contest the validity or enforcement of the registered order will result in confirmation of the order and enforcement of the order and arrears. A further contest is precluded;

- A registered order is enforceable as of the date of registration in the same manner as a support order issued by a court or administrative tribunal of the registering state.

Additionally, the notice must be accompanied by a copy of the registered order and any attached documents. In the event that the court will be determining the controlling order of multiple orders, the obligor should be so notified. G.S. §52C-2-207(c).

C. Contest to Registration, G.S. §52C-6-606

Upon the request for a hearing to contest the validity or enforcement of the registration the responding state must schedule a hearing and give appropriate notice to all of the parties. The party contesting the registration bears the burden of proving one of the following expressly delineated defenses. G.S. §52C-6-607; Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997); Villanueva v. Office of Attorney General of Texas, 935 S.W.2d 953 (Tx. App. Ct. 1996).

- The issuing tribunal lacked personal jurisdiction;
- The order was obtained by fraud;
- The order has been vacated, suspended, or modified by later order;
- The issuing tribunal has stayed the order pending an appeal;
- There is a defense to the remedy sought under the law of the responding state; see State of North Carolina ex rel. George v. Bray, 130 N.C. App. 552, 503 S.E.2d 686 (1998);
- Full or partial payment has been made; see id.
- The applicable statute of limitations precludes enforcement of some or all of the arrearage. See State of North Carolina ex rel. George v. Bray, 130 N.C. App. 552, 503 S.E.2d 686 (1998).

The responding court may stay enforcement of the registered order if the obligor presents evidence of a full or a partial defense as set out above. The responding court may also continue the hearing to permit the production of additional, relevant evidence. Finally, the responding court may enforce any uncontested portion of the registered order during a stay or a continuance. G.S. §52C-6-607(b).

D. Confirmation

The registered order is confirmed by operation of law if the nonregistering party fails to request a hearing in a timely manner. G.S. §52C-6-606(b); Tepper v. Hoch, 140 N.C. App. 354, 536 S.E.2d 654 (2000). The registered order may also be confirmed by court order after a duly noticed hearing at which the court determines that the contesting party did not establish a valid defense. G.S. §52C-6-607(c). The confirmation of a registered order precludes further contest to the order or to the amount of the support arrears. G.S. §52C-6-608.

IV. Enforcement of a Foreign Child Support Order

A foreign child support order may be enforced in a sister state. In order to accomplish this the order must first be registered. Once registered, as shown above, the responding state may enforce the foreign support order as if it were its own state order. G.S. §52C-6-603(b) There are two methods of enforcement which would bypass the registration process. Those two means are direct income withholding and administrative enforcement without registration.

A. Direct Income Withholding, G.S. §52C-5-501, et seq.

UIFSA's direct income withholding provisions apply to any obligor's employer that does business in a UIFSA state that has enacted this provision. G.S. §52C-5-501(a). A child support agency, an attorney, a party, or any individual can mail an income withholding order issued by

any state directly to an employer in a UIFSA state without filing a pleading or registering an order with the court. G.S. §52C-5-501, Official Comment (“the Act does not restrict who may send an income-wage withholding order across state lines”).

Upon receipt of the direct income withholding order the employer must first determine whether the order appears regular on its face. G.S. §52C-5-501(a)(1). The employer then gives the obligor-employee a copy of the withholding order. G.S. §52C-5-501(a)(2). The withholding should then take place within the time periods established by state law. G.S. §52C-5-501(a)(3). The employer is not civilly liable for complying with a withholding order issued in another state which appears regular on its face. G.S. §52C-5-504. An employer who willfully fails to comply with an income withholding order issued by another state is subject to the same penalties that may be imposed for noncompliance with an in-state income withholding order. G.S. §52C-5-505.

B. Administrative Enforcement Without Registration, G.S. §52C-5-507

UIFSA authorizes a responding state to use administrative remedies to the fullest extent possible. The order need not be registered with the responding state’s court unless there is a challenge to the administrative enforcement or a judicial remedy is sought. If there is a contest, the agency must register the order with the appropriate court in the responding state and follow the registration procedures. G.S. §52C-5-507(b).

V. Modification of a Foreign Child Support Order

A. Jurisdiction

A foreign child support order may be modified by another state in three narrowly defined circumstances. The first instance where a state may modify another state’s child support order

occurs when the individual obligee, the individual obligor, and the child no longer reside within the geographic limits of the issuing state. G.S. §52C-6-611(a)(1). Under this first method the moving party may not be a resident of the responding state. The second method by which a state may modify another state's child support order is when the individual obligee and the individual obligor file a written consent with the issuing state that another state may gain continuing, exclusive jurisdiction. G.S. §52C-6-611(a)(2). The third and final method occurs when both of the parties have moved out of the issuing state and moved to the same state. The new state in which both parties reside may modify the issuing state's order. G.S. §52C-6-613.

B. Registration for Modification

In order to properly modify a foreign state's child support order a party must first register the foreign order in a state with personal jurisdiction over the opposing party. G.S. §52C-6-609. The petitioner must also be a nonresident of the state in which the request to modify is being brought. G.S. §52C-6-611(a)(1)b. (Pursuant to UIFSA a spousal support order may only be modified in the issuing state).

A child support order registered for modification is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by the state of North Carolina. G.S. §52C-6-611(b). The registering state cannot modify any aspect of the original order that is not modifiable under the law of the issuing state, e.g., duration of support. G.S. §52C-6-611(c), Official Comment; Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997). The determination of a new support amount is governed by the law of the registering state in accordance with that state's guidelines. Once the registering state has modified the child support order, the registering state takes the mantle of continuing, exclusive jurisdiction. G.S.

§52C-6-611(d).

No more than 30 days after the entry of the order modifying the foreign child support order, the party obtaining the modification must file a certified copy of the order with the issuing state that originally had continuing, exclusive jurisdiction and with any other state which the party knows had registered the order. G.S. §52C-6-614. The issuing state must recognize the modification so long as the modification is done in accordance with the procedures prescribed in UIFSA. It may no longer enforce the ongoing support terms of its old order. G.S. §52C-6-612.

Once the foreign child support order is modified, the original issuing state can, upon request, do the following:

- Enforce the order as to amounts accruing before the modification;
- Enforce only nonmodifiable aspects of the order, e.g., contractual obligation to provide college education trust fund;
- Provide appropriate relief for violations of order that occurred prior to modification;
- Prospectively enforce modified order if registered in the state for enforcement.

VI. The Concept of Controlling Order, G.S. §52C-2-207.

Given the reality of today's child support world, many cases involve a multiple number of orders; UIFSA provides a means by which the courts may determine which order should be recognized prospectively. This order becomes the controlling order and dictates the duties, obligations, and responsibilities of the parties involved. This allows the courts to get to a child support world of one state, one order as quickly as possible. Otherwise, we would have to wait until each of the multiple orders was no longer applicable because the children involved had emancipated.

A. Request for Determination of Controlling Order

A party may request that the trial court determine which of several child support orders should be deemed to be controlling in the pending matter. There are three requirements. First, an individual party must reside in the state making the controlling order determination. Second, the party requesting the determination must accompany the written request with a certified copy of every support order in effect. Third, every party whose rights may be affected by the controlling order determination must be given notice of the request for determination. The requesting party need not reside in the state making the controlling order determination. G.S. §52C-2-207(c). Moreover, the request for controlling order determination may be brought outside of the ordinary enforcement and modification actions. In order to make a controlling order determination, however, the court must have personal jurisdiction of each of the parties.

The ability to determine the controlling order is critical in moving to the one order world as rapidly as possible. There are potential pitfalls for attorneys acting on behalf of clients, however. The decision about the controlling order revolves, in part, around where the parties reside at the time of the court's decision. Therefore, depending upon the child support awards required in the various orders and who the practitioner represents at the time of the decision, the most strategic time for requesting a decision as to which order controls may change in each case.

In reaching its determination of the controlling order, the trial court must include findings detailing how it reached its decision. G.S. §52C-2-207(e). Additionally, no more than 30 days following the trial court's decision the party obtaining the order must file a certified copy of the trial court's decision with each tribunal that had issued or registered an order of child support. G.S. §52C-2-207(f).

B. Controlling Order Determination

If there is only one child support order, that child support order must be recognized as the controlling order. G.S. §52C-2-207(a). The requirements of this single order dictate the enforcement of child support even if all of the parties and the child have left the issuing state.

If two or more child support orders exist, and only one state would currently have continuing, exclusive jurisdiction, the order issued by the state which would have continuing, exclusive jurisdiction is the controlling order that must be recognized for purposes of prospective enforcement. G.S. §52C-2-207(b)(1).

If two or more child support orders exist, and more than one state would currently have continuing, exclusive jurisdiction, the order issued by the child's home state is the controlling order that must be recognized for purposes of prospective enforcement. G.S. §52C-2-207(b)(2); State of North Carolina on behalf of Harnes v. Lawrence, 140 N.C. App. 707, 538 S.E.2d 223 (2000). If no order has been issued by the child's home state, then the most recently issued order is the controlling order. Id.

If two or more child support orders exist, and no state would currently have continuing, exclusive jurisdiction, the state making the controlling order determination must issue a new child support order. The new child support order becomes the controlling order in the case. G.S. §52C-2-207(b)(3).

VII. Determination of Paternity, G.S. §52C-7-701

UIFSA allows a responding state to determine whether a man is the biological father of a minor child. Procedural and substantive law of the responding state will apply in the paternity action. G.S. §52C-7-701(b). If paternity has been previously decided by another state, the

respondent in a child support matter may not plead nonpaternity as a defense to a UIFSA petition.

G.S. §52C-3-314. Beyer v. Metze, 482 S.E.2d 789 (S.C. App. 1997).