

UIFSA HYPOTHETICAL

Some thoughts (Is there ever a right answer?)

1. When Major Dad walks into your office this afternoon he, in all probability, has no defenses available to him to contest paternity. The issue of paternity should have been raised at the time that the Onslow County District Court determined that he was the biological father of the three children that were born during his marriage to Mom. G.S. §52C-3-314; also see Reid v. Dixon, 136 N.C. App. 438, 524 S.E.2d 576 (2000)(pursuant to UIFSA nonparentage may not be raised as a defense when the issue has been determined by the court of a sister state); U.S. Const. Art. IV, §1.

You may want to look at Rule 60 of the Rules of Civil Procedure to determine whether there are sufficient facts that warrant a motion to set aside. Leach v. Alford, 63 N.C. App. 118, 304 S.E.2d 265 (1983)(Rule 60 may be used to set aside an order of paternity). Under the facts presented here Major Dad will not be able to avail himself of Rules 60(b)(1), (2), or (3) because more than one year has passed since the entry of the underlying paternity order.

As to the issue of the trial court's award for child support, Major Dad can, even if unsuccessful in setting aside the paternity order review his child support obligation. This can be a double-edged sword. Because of the time that has passed and the fact that Major Dad now makes more money than before with a concomitant increase in ability to pay, a review may demonstrate that he should be obligated to pay more child support.

On the other hand, had Major Dad come to see you before the matter was determined by the Onslow County District Court he would have had many more options available to him. Under North Carolina law each of the three children were born during his marriage and, therefore, are presumed to be his biological children. This presumption is a rebuttable presumption, however. One way to rebut this presumption is by way of genetic testing. G.S. §8.50.1(b1) specifically provides that when paternity is at issue in a civil matter that upon motion of any party, the trial court shall enter an order for genetic testing. See also Ambrose v. Ambrose, 140 N.C. App. 545, 536 S.E.2d 855 (2000)(husband of woman entitled to genetic tests upon motion when paternity is properly at issue for children born during the marriage).

2. So long as Mom or any of the children continue to reside in North Carolina, North Carolina has continuing, exclusive jurisdiction. This means that only North Carolina can modify the child support order. G.S. §52C-2-205; Hinton v. Hinton, 128 N.C. App. 637, 496 S.E.2d 409 (1998). No other state may modify this order with the following exceptions: no party or children reside in North Carolina or Mom and Dad agree in writing that Georgia may exercise jurisdiction.

Any attempt by Dad to contest paternity will meet with the same problems as discussed above.

3. Even though no party or children continue to reside in North Carolina, California may not enter a child support order at Mom's request pursuant to UIFSA. The moving party in a motion to modify may not be a resident of the state in which the motion to modify is being made. G.S. §52C-6-611(a). The only exception to this rule occurs when both Mom and Dad reside in the same state. G.S. §52C-6-613.

Again, California could only modify the North Carolina order if both Mom and Dad agree to allow California jurisdiction or if they both reside in California. California may never modify the North Carolina alimony provision. It may only be modified in North Carolina. See G.S. §§52C-2-205(f) and 52C-2-206(c).

- 4a. North Carolina continues to have continuing, exclusive jurisdiction and, therefore, is the natural place that Mom would look to modify. However, in this case, New York's child support guidelines would probably give her more child support. In order to file in New York both parties need to agree. Why should Dad agree to have the case modified in New York when it will cost him more in child support?

Mom will not be successful in having Dad pay child support until his children are age 21. When the Onslow County District Court established his child support obligation the duration of his obligation was set as a matter of North Carolina law at the later of age 18 or graduation from high school. This is a nonmodifiable aspect of the parties' child support order regardless of whether any other state assumes continuing, exclusive jurisdiction. G.S. §52C-6-604(a); Welsher v. Rager, 127 N.C. App. 521, 491 S.E.2d 661 (1997).

Again, Dad cannot ask New York to modify his child support obligation because he is a resident of the state. The exception is if Mom agrees to allow New York to modify.

When the eldest child is emancipated Dad may move to modify his child support obligation. In fact, even though he is no longer legally obligated to provide support for his eldest child he may not unilaterally reduce his child support obligation. Craig v. Craig, 103 N.C. App. 615, 406 S.E.2d 656 (1991). Presumably he will want to modify in North Carolina because the child support guidelines should result in him paying less than in New York. However, he should review the child support guidelines carefully. If it has been some time since the child support was modified, depending on the parties' respective incomes, Dad may not see a decrease in child support even though he need now only legally support two children rather than three.

- 4b. Dad may bring his motion to determine controlling order in any state which will have personal jurisdiction over Mom. Under the facts of this case, the North Carolina order should be determined to be the controlling order. That is because the California order, entered without subject matter jurisdiction, is a void order under both UIFSA and the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. §1738B. There being only one valid order it should be determined to be the controlling order.

5. Dad must modify his alimony obligation in the state of North Carolina. UIFSA specifically provides that the issuing state will maintain continuing, exclusive jurisdiction throughout the existence of the alimony order. G.S. §§52C-2-205 and 52C-2-206.