

N.C. Gen. Stat. § 50-13.4

GENERAL STATUTES OF NORTH CAROLINA
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*** STATUTES CURRENT THROUGH THE 2009 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH JULY 30, 2010 ***

CHAPTER 50. DIVORCE AND ALIMONY
ARTICLE 1. DIVORCE, ALIMONY, AND **CHILD SUPPORT**, GENERALLY

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N.C. Gen. Stat. § 50-13.4 (2010)

§ 50-13.4. Action for support of minor child

(a) Any parent, or any person, agency, organization or institution having custody of a minor **child**, or bringing an action or proceeding for the custody of such **child**, or a minor **child** by his guardian may institute an action for the **support of such child** as hereinafter provided.

(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the **support** of a minor **child**. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated **child** who is the custodial or noncustodial parent of a **child** shall share this primary liability for their grandchild's **support** with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the **child** requiring **support** were unemancipated minors at the time of the **child's** conception, the parents of both minor parents share primary liability for their grandchild's **support** until both minor parents reach the age of 18 or become emancipated. If only one parent of the **child** requiring **support** was an unemancipated minor at the time of the **child's** conception, the parents of both parents are liable for any arrearages in **child support** owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such **support**. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide **support** or the inability of one or more of them to provide **support**, and the needs and estate of the **child**. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the **support of the child** as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the **child to his support**. However, the judge may not order **support** to be paid by a person who is not the **child's** parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of **support** in writing. The preceding sentence shall not be construed to prevent any court from ordering the **support of a child** by an agency of the State or county which agency may be responsible under law for such **support**.

The judge may order responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the **child**. The court may further order the responsible parent to participate in work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate.

(c) Payments ordered for the **support** of a minor **child** shall be in such amount as to meet the reasonable needs of the **child** for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the **child** and the parties, the **child** care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the **support** of a minor **child** shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of **child support** payments by applying the presumptive **guidelines** established pursuant to subsection (c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the **child** for **support** and the relative ability of each parent to provide **support**. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the **guidelines** would not meet or would exceed the reasonable needs of the **child** considering the relative ability of each parent to provide **support** or would be otherwise unjust or inappropriate the Court may vary from the **guidelines**. If the court orders an amount other than the amount determined by application of the presumptive **guidelines**, the court shall make findings of fact as to the criteria that justify varying from the **guidelines** and the basis for the amount ordered.

Payments ordered for the **support** of a **child** shall terminate when the **child** reaches the age of 18 except:

(1) If the **child** is otherwise emancipated, payments shall terminate at that time;

(2) If the **child** is still in primary or secondary school when the **child** reaches age 18, **support** payments shall continue until the **child** graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving **support** to show, upon motion and with notice to the opposing party, that the **child** has not graduated or attained the age of 20.

If an arrearage for **child support** or fees due exists at the time that a **child support** obligation terminates, payments shall continue in the same total amount that was due under the terms of the previous court order or income withholding in effect at the time of the **support** obligation. The total amount of these payments is to be applied to the arrearage until all arrearages and fees are satisfied or until further order of the court.

(c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe uniform statewide presumptive **guidelines** for the computation of **child support** obligations of each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop criteria for determining when, in a particular case, application of the **guidelines** would be unjust or inappropriate. Prior to May 1, 1990 these **guidelines** and criteria shall be reported to the General Assembly by the Administrative Office of the Courts by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The

purpose of the **guidelines** and criteria shall be to ensure that payments ordered for the **support** of a minor **child** are in such amount as to meet the reasonable needs of the **child** for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the **child** and the parties, the **child** care and homemaker contributions of each party, and other facts of the particular case. The **guidelines** shall include a procedure for setting **child support**, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

Periodically, but at least once every four years, the Conference of Chief District Judges shall review the **guidelines** to determine whether their application results in appropriate **child support** award amounts. The Conference may modify the **guidelines** accordingly. The Conference shall give the Department of Health and Human Services, the Administrative Office of the Courts, and the general public an opportunity to provide the Conference with information relevant to the development and review of the **guidelines**. Any modifications of the **guidelines** or criteria shall be reported to the General Assembly by the Administrative Office of the Courts before they become effective by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The **guidelines**, when adopted or modified, shall be provided to the Department of Health and Human Services and the Administrative Office of the Courts, which shall disseminate them to the public through local IV-D offices, clerks of court, and the media.

Until July 1, 1990, the advisory **guidelines** adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall operate as presumptive **guidelines** and the factors adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall constitute criteria for varying from the amount of **support** determined by the **guidelines**.

(d) In non-IV-D cases, payments for the **support** of a minor **child** shall be ordered to be paid to the person having custody of the **child** or any other proper person, agency, organization or institution, or to the State **Child Support** Collection and Disbursement Unit, for the benefit of the **child**. In IV-D cases, payments for the **support** of a minor **child** shall be ordered to be paid to the State **Child Support** Collection and Disbursement Unit for the benefit of the **child**.

(d1) For **child support** orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(e) Payment for the **support** of a minor **child** shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property solely owned by the obligor in payment of arrearages of **child support** so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which payment for the **support** of a minor **child** is ordered and alimony or postseparation **support** is also ordered, the order shall separately state and identify each allowance.

(e1) In IV-D cases, the order for **child support** shall provide that the clerk shall transfer the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis that the obligor, the custodian of the **child**, and the **child** do not reside in the jurisdiction in which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor by delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule 5(b) of the Rules of Civil Procedure. The clerk shall transfer the case to the jurisdiction requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian of the **child**, or the **child** resides. Nothing in this subsection shall be construed to prevent a party from contesting the transfer.

(f) Remedies for enforcement of **support** of minor children shall be available as herein provided.

(1) The court may require the person ordered to make payments for the **support** of a minor **child** to secure the same by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) as a part of an order for payment of **support** for a minor **child**, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the General Statutes, shall be available in actions for **child-support** payments as in other cases.

(4) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1 of the General Statutes, shall be available in an action for **child-support** payments as in other cases, and for such purposes the **child** or person bringing an action for **child support** shall be deemed a creditor of the defendant. Additionally, in accordance with the provisions of G.S. 110-136, a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original **child support** proceeding or by independent action through the filing of a petition.

(5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for **child support** as in other cases.

(6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in action for **child support** as in other cases.

(7) A minor **child** or other person for whose benefit an order for the payment of **child support** has been entered shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to fraudulent conveyances.

(8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a judgment for **child support** shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments and may include provisions for periodic payments.

(9) An order for the periodic payments of **child support** or a **child support** judgment that provides for periodic payments is enforceable by proceedings for civil contempt, and disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294, an order for the payment of **child support** which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for **child support** until the appeal is decided, if justice requires.

(10) The remedies provided by Chapter 1 of the General Statutes, Article 28, Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings, shall be available for

the enforcement of judgments for **child support** as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution as provided in Article 16 of Chapter 1C of the General Statutes.

(11) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available.

(g) An individual who brings an action or motion in the cause for the **support** of a minor **child**, and the individual who defends the action, shall provide to the clerk of the court in which the action is brought or the order is issued, the individual's social security number.

(h) **Child support** orders initially entered or modified on and after October 1, 1998, shall contain the name of each of the parties, the date of birth of each party, and the court docket number. The Administrative Office of the Courts shall transmit to the Department of Health and Human Services, **Child Support** Enforcement Program, on a timely basis, the information required to be included on orders under this subsection and the social security number of each party as required under subsection (g) of this section.

HISTORY: 1967, c. 1153, s. 2; 1969, c. 895, s. 17; 1975, c. 814; 1977, c. 711, s. 26; 1979, c. 386, s. 10; 1981, c. 472; c. 613, ss. 1, 3; 1983, c. 54; c. 530, s. 1; 1985, c. 689, s. 17; 1985 (Reg. Sess., 1986), c. 1016; 1989, c. 529, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 1067, s. 2; 1993, c. 335, s. 1; c. 517, s. 5; 1995, c. 319, s. 9; c. 518, s. 1; 1997-433, ss. 2.1(a), 2.2, 4.4, 7.1; 1997-443, ss. 11A.118(a), 11A.122; 1998-17, s. 1; 1998-176, s. 1; 1999-293, ss. 3, 4; 1999-456, s. 13; 2001-237, s. 1; 2003-288, s. 1; 2008-12, s. 1.

NOTES: LOCAL MODIFICATION. --Person: 1967, c. 848, s. 2.

CROSS REFERENCES. --As to actions for custody and **support**, see also G.S. 50-13.5 and notes thereunder. As to the maintenance of certain actions as independent actions, see G.S. 50-19. For the North Carolina **Child Support Guidelines**, effective August 1, 1991, see the Annotated Rules of North Carolina. As to liens on real and personal property of persons owing past due **child support**, see G.S. 44-86. As to discharge of liens on property of persons owing past due **child support**, see G.S. 44-87. As to legislation deleting the June 30, 1998 expiration date for all enactments and amendments by Session Laws 1997-443, see the editor's note under G.S. 44-86.

EDITOR'S NOTE. --Session Laws 1995, c. 319, which amended this section, in s. 12 provides that this act applies to civil actions filed on or after October 1, 1995, and shall not apply to pending litigation, or to future motions in the cause seeking to modify orders or judgments in effect on October 1, 1995.

This section, prior to the amendment by Session Laws 1995, c. 319, read as follows: "*Action for **support** of minor **child**.*"

(a) Any parent, or any person, agency, organization or institution having custody of a minor **child**, or bringing an action or proceeding for the custody of such **child**, or a minor **child** by his guardian may institute an action for the **support of such child** as hereinafter provided.

(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the **support** of a minor **child**, and any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such **support**. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide **support** or the inability of one or more of them to provide **support**, and the needs and estate of the **child**. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the **support of the child** as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the **child to his support**. However, the judge may not order **support** to be paid by a person who is not the **child's**

parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of **support** in writing. The preceding sentence shall not be construed to prevent any court from ordering the **support** of a **child** by an agency of the State or county which agency may be responsible under law for such **support**.

(c) Payments ordered for the **support** of a minor **child** shall be in such amount as to meet the reasonable needs of the **child** for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the **child** and the parties, the **child** care and homemaker contributions of each party, and other facts of the particular case.

The court shall determine the amount of **child support** payments by applying the presumptive **guidelines** established pursuant to subsection (c1). However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the **child** for **support** and the relative ability of each parent to provide **support**. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the **guidelines** would not meet or would exceed the reasonable needs of the **child** considering the relative ability of each parent to provide **support** or would be otherwise unjust or inappropriate the Court may vary from the **guidelines**. If the court orders an amount other than the amount determined by application of the presumptive **guidelines**, the court shall make findings of fact as to the criteria that justify varying from the **guidelines** and the basis for the amount ordered.

Payments ordered for the **support** of a **child** shall terminate when the **child** reaches the age of 18 except:

(1) If the **child** is otherwise emancipated, payments shall terminate at that time;

(2) If the **child** is still in primary or secondary school when the **child** reaches age 18, **support** payments shall continue until the **child** graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving **support** to show, upon motion and with notice to the opposing party, that the **child** has not graduated or attained the age of 20.

(c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe uniform statewide presumptive **guidelines** for the computation of **child support** obligations of each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop criteria for determining when, in a particular case, application of the **guidelines** would be unjust or inappropriate. Prior to May 1, 1990 these **guidelines** and criteria shall be reported to the General Assembly by the Administrative Office of the Courts by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The purpose of the **guidelines** and criteria shall be to ensure that payments ordered for the **support** of a minor **child** are in such amount as to meet the reasonable needs of the **child** for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the **child** and the parties, the **child** care and homemaker contributions of each party, and other facts of the particular case. The **guidelines** shall include a procedure for setting **child support**, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

Periodically, but at least once every four years, the Conference of Chief District Judges shall review the **guidelines** to determine whether their application results in appropriate **child support** award amounts. The Conference may modify the **guidelines** accordingly. The Conference shall give the Department of Human Resources, the Administrative Office of the Courts, and the general public an opportunity to provide the Conference with information relevant to the development and review of the **guidelines**. Any modifications of the **guidelines** or criteria shall be reported to the General Assembly by the Administrative Office of the Courts before they become effective by delivering copies to the President Pro Tempore

of the Senate and the Speaker of the House of Representatives. The **guidelines**, when adopted or modified, shall be provided to the Department of Human Resources and the Administrative Office of the Courts, which shall disseminate them to the public through local IV-D offices, clerks of court, and the media.

Until July 1, 1990, the advisory **guidelines** adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall operate as presumptive **guidelines** and the factors adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall constitute criteria for varying from the amount of **support** determined by the **guidelines**.

(d) Payments for the **support** of a minor **child** shall be ordered to be paid to the person having custody of the **child** or any other proper person, agency, organization or institution, or to the court, for the benefit of such **child**.

(d1) For **child support** orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(e) Payment for the **support** of a minor **child** shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. In every case in which payment for the **support** of a minor **child** is ordered and alimony or alimony pendente lite is also ordered, the order shall separately state and identify each allowance.

(f) Remedies for enforcement of **support** of minor children shall be available as herein provided.

(1) The court may require the person ordered to make payments for the **support** of a minor **child** to secure the same by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) as a part of an order for payment of **support** for a minor **child**, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the General Statutes, shall be available in actions for **child-support** payments as in other cases.

(4) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1 of the General Statutes, shall be available in an action for **child-support** payments as in other cases, and for such purposes the **child** or person bringing an action for **child support** shall be deemed a creditor of the defendant. Additionally, in accordance with the provisions of G.S. 110-136, a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original **child support** proceeding or by independent action through the filing of a petition.

(5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for **child support** as in other cases.

(6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in action for **child support** as in other cases.

(7) A minor **child** or other person for whose benefit an order for the payment of **child support** has been entered shall be a creditor within the meaning of Article 3 of Chapter 39 of the General Statutes pertaining to fraudulent conveyances.

(8) A judgment for **child support** shall not be a lien against real property unless the

judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments.

(9) An order for the periodic payments of **child support** is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294, an order for the payment of **child support** which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for **child support** until the appeal is decided, if justice requires.

(10) The remedies provided by Chapter 1 of the General Statutes, Article 28, Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings, shall be available for the enforcement of judgments for **child support** as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution as provided in Article 16 of Chapter 1C of the General Statutes.

(11) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available."

EFFECT OF AMENDMENTS. --Session Laws 2008-12, s. 1, effective October 1, 2008, deleted the last sentence in subsection (g), which read: "The **child support** order shall contain the social security number of the parties as evidenced in the **support** proceeding"; and, in subsection (h), deleted "the social security number of each party," following "date of birth of each party" in the first sentence, and added "and the social security number of each party as required under subsection (g) of this section" at the end of the second sentence.

LEGAL PERIODICALS. --For survey of 1972 case law on **child support** and pre-Chapter 48A consent judgments, see 51 N.C.L. Rev. 1091 (1973).

For survey of 1976 case law on domestic relations, see 55 N.C.L. Rev. 1018 (1977).

For note on the remedy of garnishment in **child support**, see 56 N.C.L. Rev. 169 (1978).

For survey of 1977 law on domestic relations, see 56 N.C.L. Rev. 1045 (1978).

For survey of 1981 family law, see 60 N.C.L. Rev. 1379 (1982).

For comment discussing the status of the presumption of purchase money resulting trust for wives in light of *Mims v. Mims*, 305 N.C. 41, 286 S.E.2d 779 (1982), see 61 N.C.L. Rev. 576 (1983).

For note, "Plott v. Plott: Use of a Formula to Determine Parental **Child Support** Obligations -- A Continuation of Inconsistent and Inequitable Decisions?," see 64 N.C.L. Rev. 1378 (1986).

For note on **child support** provisions as a limit on the doctrine of necessities, in light of *Alamance County Hosp. v. Neighbors*, 315 N.C. 362, 338 S.E.2d 87 (1986), see 65 N.C.L. Rev. 1308 (1987).

For note, "Legislating Responsibility: North Carolina's New **Child Support** Enforcement Acts," see 65 N.C.L. Rev. 1354 (1987).

For article, "Using Hindsight to Change **Child Support** Obligations: A Survey of Retroactive Modification and Reimbursement of **Child Support** in North Carolina," see 10 Campbell L. Rev. 111 (1987).

For article, "Equating a Stepparent's Rights and Liabilities Vis-A-Vis Custody, Visitation and **Support** upon Dissolution of the Marriage with Those of the Natural Parent -- An Equitable Solution to a Growing Dilemma?," see 17 N.C. Cent. L.J. 1 (1988).

For comment, "The Seventeen Percent Solution: Formula **Guidelines** for Determining

Child Support Awards Arrive in North Carolina," see 18 N.C. Cent. L.J. 209 (1989).

For note, "Hendricks v. Sanks: One Small Step for the Continued Parental **Support** of Disabled Children Beyond the Age of Majority in North Carolina," see 80 N.C.L. Rev. 2094 (2002).

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✚I. IN GENERAL.

EDITOR'S NOTE. --A number of the cases cited below were decided under former G.S. 50-13, which dealt with custody and maintenance of children in actions for divorce, and former G.S. 50-16, which dealt with actions for alimony without divorce.

STATE POLICY. --It is the policy of this State that both parents have a duty to **support** their

minor children. *Nisbet v. Nisbet*, 102 N.C. App. 232, 402 S.E.2d 151, cert. denied, 329 N.C. 499, 407 S.E.2d 538 (1991).

PUBLIC POLICY. --The public policy of this state encourages settlement agreements and **supports** the inclusion of a provision for the recovery of attorney's fees in settlement agreements. *Bromhal v. Stott*, 341 N.C. 702, 462 S.E.2d 219 (1995).

HISTORY OF SECTION. --For discussion of the history of this section, see *Browne v. Browne*, 101 N.C. App. 617, 400 S.E.2d 736 (1991).

PROVISIONS IN CHAPTER 110 PREVAIL OVER THIS CHAPTER. --The legislature did not intend for this chapter to control all actions for **child support**. Reading this chapter together with Chapter 110, the more specific provisions of Chapter 110 dealing with the procedure for determining and enforcing **support** obligations of a father who voluntarily acknowledges paternity prevails over any conflicting procedure in this chapter for determining and enforcing custody and **support** of minor children. *Wake County ex rel. Horton v. Ryles*, 112 N.C. App. 754, 437 S.E.2d 404 (1993).

SUBSECTION (A) DOES NOT SPECIFY THAT IT REQUIRES JUDICIAL DETERMINATION OF CUSTODY BEFORE ITS PROVISION CAN BE UTILIZED by a person or agency bringing an action for **support**. *Craig v. Kelley*, 89 N.C. App. 458, 366 S.E.2d 249 (1988).

VISITATION AND CHILD SUPPORT RIGHTS ARE INDEPENDENT RIGHTS accruing primarily to the benefit of the minor **child** and one is not, and may not be made, contingent upon the other. *Appert v. Appert*, 80 N.C. App. 27, 341 S.E.2d 342 (1986).

SUPPORT EXEMPTION. --Section 105-149 has been repealed in apparent effort by General Assembly to bring North Carolina's personal income tax laws into conformity with the 1984 revisions of federal tax statutes. Under federal law, custodial parent, not parent paying primary **support**, is entitled to claim **support** exemption for **child** under circumstances such as are present here. However, federal law also provides that custodial parent may waive right to claim exemption. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

Trial court may order custodial parent to waive right to claim federal and state tax exemptions. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

Court order assigning federal and state tax dependency exemptions to payor of **child support** for all income tax purposes was valid. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

MENTALLY RETARDED CHILDREN --North Carolina trial court properly exercised jurisdiction over a father's action seeking modification of a New Jersey trial court's order requiring the father to pay **child support** for a mentally retarded **child** who was born in 1964, after the **child** and her mother moved to North Carolina and the father moved to Maryland, and the trial court's judgment that the father's request for an order terminating his obligation to pay **child support** had to be granted, pursuant to G.S. 50-13.4(c), was affirmed on appeal. *Lombardi v. Lombardi*, 157 N.C. App. 540, 579 S.E.2d 419 (2003).

THE CHILD SUPPORT GUIDELINES SHOULD NOT BE USED TO DETERMINE THE SUPPORT OBLIGATION OF A STEPPARENT, secondarily liable for a **child's** needs. *Duffey v. Duffey*, 113 N.C. App. 382, 438 S.E.2d 445 (1994).

SUPPORT AND COUNSEL FEES PENDENTE LITE ON HUSBAND'S DENIAL OF PATERNITY. -- Where, upon wife's motion in the cause to require defendant to provide **support** for the minor **child** of the marriage, made after decree of absolute divorce, husband filed an affidavit denying paternity, and at his instance the issue was transferred to the civil issue docket, the trial court had the discretionary power to order defendant to provide for **support of the child** and counsel fees pendente lite. *Winfield v. Winfield*, 228 N.C. 256, 45 S.E.2d 259

(1947).

THE REQUIREMENT THAT A VOLUNTARY ASSUMPTION OF **SUPPORT** BE REDUCED TO WRITING, imposed on those who are secondarily liable under subsection (b) of this section, does not apply to parents of unemancipated minors who have had a **child**, for they are primarily liable for **support** of the infant. *Whitman v. Kiger*, 139 N.C. App. 44, 533 S.E.2d 807 (2000), *aff'd*, 353 N.C. 360, 543 S.E.2d 476 (2001).

APPLIED in *Kearns v. Kearns*, 6 N.C. App. 319, 170 S.E.2d 132 (1969); *Little v. Little*, 9 N.C. App. 361, 176 S.E.2d 521 (1970); *Williams v. Williams*, 12 N.C. App. 170, 182 S.E.2d 667 (1971); *Williams v. Williams*, 13 N.C. App. 468, 186 S.E.2d 210 (1972); *Carter v. Carter*, 13 N.C. App. 648, 186 S.E.2d 684 (1972); *Stanback v. Stanback*, 287 N.C. 448, 215 S.E.2d 30 (1975); *Brady v. Brady*, 24 N.C. App. 663, 211 S.E.2d 823 (1975); *Tidwell v. Booker*, 27 N.C. App. 435, 219 S.E.2d 648 (1975); *Amaker v. Amaker*, 28 N.C. App. 558, 221 S.E.2d 917 (1976); *County of Stanislaus v. Ross*, 41 N.C. App. 518, 255 S.E.2d 229 (1979); *Williams v. Williams*, 42 N.C. App. 163, 256 S.E.2d 401 (1979); *Haddon v. Haddon*, 42 N.C. App. 632, 257 S.E.2d 483 (1979); *Gordon v. Gordon*, 46 N.C. App. 495, 265 S.E.2d 425 (1980); *Lane v. Aetna Cas. & Sur. Co.*, 48 N.C. App. 634, 269 S.E.2d 711 (1980); *In re Register*, 303 N.C. 149, 277 S.E.2d 356 (1981); *Hardee v. Hardee*, 59 N.C. App. 465, 297 S.E.2d 606 (1982); *Wolfe v. Wolfe*, 64 N.C. App. 249, 307 S.E.2d 400 (1983); *Champion v. Champion*, 64 N.C. App. 606, 307 S.E.2d 827 (1983); *Rustad v. Rustad*, 68 N.C. App. 58, 314 S.E.2d 275 (1984); *Stevens v. Stevens*, 68 N.C. App. 234, 314 S.E.2d 786 (1984); *Wilkes County ex rel. Child Support Enforcement Agency ex rel Nations v. Gentry*, 311 N.C. 580, 319 S.E.2d 224 (1984); *Bennett v. Bennett*, 71 N.C. App. 424, 322 S.E.2d 439 (1984); *Toney v. Toney*, 72 N.C. App. 30, 323 S.E.2d 434 (1984); *Massey v. Massey*, 71 N.C. App. 753, 323 S.E.2d 451 (1984); *Appelbe v. Appelbe*, 75 N.C. App. 197, 330 S.E.2d 57 (1985); *State ex rel. Pender County Child Support Enforcement Agency ex rel Crews v. Parker*, 319 N.C. 354, 354 S.E.2d 501 (1987); *Koufman v. Koufman*, 97 N.C. App. 227, 388 S.E.2d 207 (1990); *Hall v. Hall*, 107 N.C. App. 298, 419 S.E.2d 371 (1992); *Rose v. Rose*, 108 N.C. App. 90, 422 S.E.2d 446 (1992); *Thomas v. Thomas*, 134 N.C. App. 591, 518 S.E.2d 513 (1999); *Leary v. Leary*, 152 N.C. App. 438, 567 S.E.2d 834 (2002); *Holland v. Holland*, 169 N.C. App. 564, 610 S.E.2d 231 (2005); *Guilford County ex rel. Holt v. Puckett*, 191 N.C. App. 693, 664 S.E.2d 362 (2008); *New Hanover Child Support Enforcement ex rel. Dillon v. Rains*, 193 N.C. App. 208, 666 S.E.2d 800 (2008).

CITED in *Boston v. Freeman*, 6 N.C. App. 736, 171 S.E.2d 206 (1969); *Robinson v. Robinson*, 10 N.C. App. 463, 179 S.E.2d 144 (1971); *Hill v. Hill*, 11 N.C. App. 1, 180 S.E.2d 424 (1971); *Johnson v. Johnson*, 14 N.C. App. 378, 188 S.E.2d 711 (1972); *Koob v. Koob*, 16 N.C. App. 326, 192 S.E.2d 40 (1972); *Koob v. Koob*, 283 N.C. 129, 195 S.E.2d 552 (1973); *Stanback v. Stanback*, 31 N.C. App. 174, 229 S.E.2d 693 (1976); *Roberson v. Roberson*, 40 N.C. App. 193, 252 S.E.2d 237 (1979); *Gilmore v. Gilmore*, 42 N.C. App. 560, 257 S.E.2d 116 (1979); *Oxendine v. Catawba County Dep't of Social Servs.*, 49 N.C. App. 571, 272 S.E.2d 417 (1980); *Falls v. Falls*, 52 N.C. App. 203, 278 S.E.2d 546 (1981); *Harper v. Harper*, 50 N.C. App. 394, 273 S.E.2d 731 (1981); *Wake County ex rel. Carrington v. Townes*, 53 N.C. App. 649, 281 S.E.2d 765 (1981); *Wilkes County ex rel. Child Support Enforcement Agency ex rel Nations v. Gentry*, 63 N.C. App. 432, 305 S.E.2d 207 (1983); *State v. Caudill*, 68 N.C. App. 268, 314 S.E.2d 592 (1984); *Miller v. Kite*, 69 N.C. App. 679, 318 S.E.2d 102 (1984); *Minor v. Minor*, 70 N.C. App. 76, 318 S.E.2d 865 (1984); *Rice v. Rice*, 81 N.C. App. 247, 344 S.E.2d 41 (1986); *In re Scarce*, 81 N.C. App. 531, 345 S.E.2d 404 (1986); *North Carolina Baptist Hosps. v. Harris*, 319 N.C. 347, 354 S.E.2d 471 (1987); *Smith v. Davis*, 88 N.C. App. 557, 364 S.E.2d 156 (1988); *Williams v. Williams*, 97 N.C. App. 118, 387 S.E.2d 217 (1990); *In re Roberson*, 97 N.C. App. 277, 387 S.E.2d 668 (1990); *McBride v. McBride*, 334 N.C. 124, 431 S.E.2d 14 (1993); *Fitch v. Fitch*, 115 N.C. App. 722, 446 S.E.2d 138 (1994); *Allen v. Piedmond Transp. Servs., Inc.*, 116 N.C. App. 234, 447 S.E.2d 835 (1994); *Moyer v. Moyer*, 122 N.C. App. 723, 471 S.E.2d 676 (1996); *Taylor v. Taylor*, 128 N.C. App. 180, 493 S.E.2d 819 (1997); *Glass v. Glass*, 131 N.C. App. 784, 509

S.E.2d 236 (1998); Vann v. Vann, 128 N.C. App. 516, 495 S.E.2d 370 (1998); Willard v. Willard, 130 N.C. App. 144, 502 S.E.2d 395 (1998); Brewer v. Brewer, 139 N.C. App. 222, 533 S.E.2d 541 (2000); In re Estate of Lunsford, 143 N.C. App. 646, 547 S.E.2d 483 (2001), cert. granted, 353 N.C. 727, 550 S.E.2d 779 (2001); Miller v. Miller, 153 N.C. App. 40, 568 S.E.2d 914 (2002); McKinney v. Richitelli, 357 N.C. 483, 586 S.E.2d 258 (2003); Carson v. Carson, -- N.C. App. --, 680 S.E.2d 885 (Aug. 18, 2009).

II. INSTITUTION OF ACTION.

JUDICIAL DETERMINATION OF CUSTODY. --Subsection (a) does not specify that it requires judicial determination of custody before its provisions can be utilized by person or agency bringing action for **support**. Thus, where mother in her proceeding for modification of **support** order also requested a formal adjudication of custody, which request was granted, plaintiff met the custody requirements of subsection (a). Craig v. Kelley, 89 N.C. App. 458, 366 S.E.2d 249 (1988).

CUSTODIAL PARENT AS REAL PARTY IN INTEREST. --If the custodial parent provides **support** which the other parent is legally obligated to provide, then the custodial parent is a real party in interest in an action to recover the **support** so provided. Griffith v. Griffith, 38 N.C. App. 25, 247 S.E.2d 30, cert. denied, 296 N.C. 106, 249 S.E.2d 804 (1978).

Although plaintiff alleged that he was the father of the **child**, he did not allege that he had custody, therefore under the provisions of this section, only a parent who has custody of a minor **child** may bring an action for its **support**. Becton v. George, 90 N.C. App. 607, 369 S.E.2d 366 (1988).

REQUIRED NOTICE DEEMED WAIVED. --Where both parties introduced evidence on the reasonable needs of the children and the relative ability of each parent to pay **support** for the children, the defendant's failure to give proper notice of his request that a hearing be conducted regarding these issues was waived and the trial court was required to find facts and enter conclusions on this evidence. Browne v. Browne, 101 N.C. App. 617, 400 S.E.2d 736 (1991); Rose v. Rose, 108 N.C. App. 90, 422 S.E.2d 446 (1992).

NOTICE FOR HEARING. --This section does not identify any time restrictions for making the request for a hearing described in subsection (c). However, to effectuate the purpose of this section, any party in a pending action requesting a variance from the **guidelines** must, unless the request is made in the original pleadings, give at least ten days written notice as required by G.S. 50-13.5(d)(1). Browne v. Browne, 101 N.C. App. 617, 400 S.E.2d 736 (1991).

THERE IS NO LIMITATION AS TO TIME within which actions for the **support** of legitimate children must be commenced. County of Lenoir ex rel. Cogdell v. Johnson, 46 N.C. App. 182, 264 S.E.2d 816 (1980).

MOTION IN CAUSE. --Plaintiff-husband, as a parent seeking custody, could seek to have his **child support** obligation determined through a motion in the cause in the divorce action. He was not precluded from doing so by the fact that the court had not previously entered orders in that action relating to **child support**. Bottomley v. Bottomley, 82 N.C. App. 231, 346 S.E.2d 317 (1986).

DISCOVERY HELD OVERBROAD. --For a case in which it was held that plaintiff's discovery request in a **child-support** case was overbroad and should have been limited by the trial court, see Powers v. Parish, 104 N.C. App. 400, 409 S.E.2d 725 (1991), appeal dismissed, 331 N.C. 286, 417 S.E.2d 254 (1992).

PRAYER FOR INCREASE IN SUPPORT ACTUALLY ACTION UNDER THIS SECTION. --Although

plaintiff's complaint prayed for an increase in **child support** based upon a substantial change in circumstances, plaintiff's action was in fact brought pursuant to subsection (a) of this section because the amount sought to be increased was paid pursuant to a non-judicial separation agreement; plaintiff was actually asking the Court to enter an original award of **child support**. Powers v. Parisher, 104 N.C. App. 400, 409 S.E.2d 725 (1991), appeal dismissed, 331 N.C. 286, 417 S.E.2d 254 (1992).

III. LIABILITY FOR **SUPPORT**.

SUBSECTION (B) IMPOSES PRIMARY LIABILITY UPON BOTH FATHER AND MOTHER to **support** a minor **child**. Plott v. Plott, 313 N.C. 63, 326 S.E.2d 863 (1985).

Subsection (b) of this section, as amended in 1981, does not diminish a father's responsibilities. Rather, it enlarges a mother's responsibilities by making both parents primarily liable for the **support** of their children. Alamance County Hosp. v. Neighbors, 315 N.C. 362, 338 S.E.2d 87 (1986).

EQUAL DUTY OF **SUPPORT** IS RULE RATHER THAN EXCEPTION. --Today, the equal duty of both parents to **support** their children is the rule rather than the exception is virtually all states. Plott v. Plott, 313 N.C. 63, 326 S.E.2d 863 (1985).

BOTH PARENTS HAVE EQUAL **SUPPORT** DUTIES UNDER THE LAW, absent pleading and proof that circumstances otherwise warrant. Plott v. Plott, 65 N.C. App. 657, 310 S.E.2d 51 (1983), modified on other grounds, 313 N.C. 63, 326 S.E.2d 863 (1985).

Support for minor children is an obligation shared by both parents according to their relative abilities to provide **support** and the reasonable needs and estate of the **child**. Boyd v. Boyd, 81 N.C. App. 71, 343 S.E.2d 581 (1986).

BUT EQUAL FINANCIAL CONTRIBUTIONS ARE NOT NECESSARILY REQUIRED. --Subsection (b) of this section provides that both mothers and fathers share primary liability for the **support** of their minor children, thus imposing an equal legal duty on the parent of each gender. However, subsection (b) neither mandates equal financial contributions nor requires any contribution from either party where it is proved that the circumstances otherwise warrant. Plott v. Plott, 65 N.C. App. 657, 310 S.E.2d 51 (1983), modified on other grounds, 313 N.C. 63, 326 S.E.2d 863 (1985).

Equal legal duty to **support** does not impose an equal financial contribution by both parties. Plott v. Plott, 313 N.C. 63, 326 S.E.2d 863 (1985).

EQUAL DUTY TO **SUPPORT** DOES NOT NECESSARILY MEAN THAT THE AMOUNT OF **CHILD SUPPORT** IS TO BE AUTOMATICALLY DIVIDED EQUALLY between the parties. Rather, the amount of each parent's obligation varies in accordance with their respective financial resources. Plott v. Plott, 313 N.C. 63, 326 S.E.2d 863 (1985).

EQUAL FINANCIAL CONTRIBUTIONS NOT IMPOSED WHERE UNFAIR OR BURDENSOME. --The parental obligation for **child support** is not primarily an obligation of the father but is one shared by both parents. This equal duty to **support**, however, does not impose upon both parties an equal financial contribution when such an allocation would be unfair or place too great a burden on a party. Plott v. Plott, 313 N.C. 63, 326 S.E.2d 863 (1985).

DISCRETION OF COURT AS TO AMOUNT AND SOURCE OF **SUPPORT**. --The trial court has considerable discretion in determining whether and in what amounts the party from whom **support** is sought may be ordered to provide it. Therefore, the trial court has a duty to exercise an informed and considered discretion with respect to the **support** obligation of the parties. Plott v. Plott, 65 N.C. App. 657, 310 S.E.2d 51 (1983), modified on other grounds, 313 N.C. 63, 326 S.E.2d 863 (1985).

AMOUNT OF EACH PARTY'S CONTRIBUTION DETERMINED ON CASE-BY-CASE BASIS. --The amount of each party's contribution to **child support** is generally determined by the judge on a case-by-case basis. The judge must evaluate the circumstances of each family and also consider certain statutory requirements in fixing the amount of **child support**. Subsection (c) of this section mandates that the trial judge consider the certain factors in setting **child support** amounts. *Plott v. Plott*, 313 N.C. 63, 326 S.E.2d 863 (1985).

RELATIVE ABILITY TO PAY MAY BE CONSIDERED. --Although Session Laws 1981, c. 613 had the effect of changing the previous rule that the mother was only secondarily liable for **child support**, in all other relevant respects involving the relative ability or inability of the mother and father to provide such **support**, the relevant statutory provisions remained unchanged. Therefore, other circumstances may properly be considered, including the relative ability of the parties to pay. *Plott v. Plott*, 65 N.C. App. 657, 310 S.E.2d 51 (1983), modified on other grounds, 313 N.C. 63, 326 S.E.2d 863 (1985).

It was apparent from the record that the trial court considered both the existence and structure of appellee's trust fund and appellant's income as an ophthalmologist in making its determination that appellant should contribute one-half of **child's** necessary and actual expenses. It concluded that a father in an established ophthalmologic practice, and who had a 1991 income of at least \$88,000 was able to contribute half of his **child's support**. *Munn v. Munn*, 112 N.C. App. 151, 435 S.E.2d 74 (1993).

CONSIDERATION OF ABILITY TO PAY -- PROCEDURE. --Defendant's contention that summary judgment was improper because he was financially unable to make the **child support** payments called for in the agreement would be relevant only to future payments and could be considered only after the defendant had filed a motion in the cause for the trial court to set an amount of **child support** which differs from that in the separation agreement. *Nisbet v. Nisbet*, 102 N.C. App. 232, 402 S.E.2d 151, cert. denied, 329 N.C. 499, 407 S.E.2d 538 (1991).

VOLUNTARY UNEMPLOYMENT. --Trial court order finding that mother was obligated to pay **child support** to her ex-husband for their three minor children who resided with the ex-husband, which was based on a deviation from the North Carolina **Child Support Guidelines**, was error; although the deviation was supported by the evidence in that the mother was voluntarily unemployed and had cash reserves to meet her financial obligations of the children, the amount awarded was not supported by any evidence. *Roberts v. McAllister*, 174 N.C. App. 369, 621 S.E.2d 191 (2005), appeal dismissed, -- N.C. --, 629 S.E.2d 608 (2006).

DETERMINATION OF RELATIVE ABILITY. --The relative ability of the parties to contribute under subsections (b) and (c) of this section cannot depend solely on the determination of monthly available income after expenses. Rather, it must be reflective of all the relevant circumstances, including the relative hardship to each parent in contributing to the reasonable needs of the **child**. *Plott v. Plott*, 65 N.C. App. 657, 310 S.E.2d 51 (1983), modified on other grounds, 313 N.C. 63, 326 S.E.2d 863 (1985).

STEPPARENT IN LOCO PARENTIS. --If an individual assumes the status of in loco parentis, he is secondarily liable to the **child's** natural parents for the **support of that child**, and if the needs of the **child** exceed the ability of the **child's** natural parents to meet those needs, then and only then is the individual in loco parentis secondarily responsible for the deficiency. *Duffey v. Duffey*, 113 N.C. App. 382, 438 S.E.2d 445 (1994).

By signing a separation agreement in which he agreed to pay **child support** to plaintiff, stepparent voluntarily and in writing extended his status of in loco parentis and gave the court the authority to order that **support** be paid. *Duffey v. Duffey*, 113 N.C. App. 382, 438 S.E.2d 445 (1994).

CHILD'S NEEDS AND HARDSHIP TO EACH PARENT MUST BE CONSIDERED. --Enforcement of

each parent's statutory duty to contribute **child support** depends on the urgency of the needs of the **child** and the relative hardship to each parent in contributing to these needs. *Plott v. Plott*, 65 N.C. App. 657, 310 S.E.2d 51 (1983), modified on other grounds, 313 N.C. 63, 326 S.E.2d 863 (1985).

CHILDREN WITH PROPERTY OF THEIR OWN. --There is nothing in the statute to suggest any legislative intent to change the firmly established rule that the supporting parent who can do so remains obligated to **support** his or her minor children, even though they may have property of their own. *Sloop v. Friberg*, 70 N.C. App. 690, 320 S.E.2d 921 (1984).

Although trial court found as a fact that each **child** had an estate in excess of \$300,000.00, the separate incomes and estates of children did not diminish or relieve the obligation of the defendant father to **support** his children, even though former husband's income was about \$37,000.00. *Browne v. Browne*, 101 N.C. App. 617, 400 S.E.2d 736 (1991).

EDUCATION NEEDS OF **CHILD**. --Although public funding may have been available for special education needs of **child**, but was not sought by custodial parent, court did not err in requiring noncustodial parent to pay costs of **child's** educational expenses in proportion to parent's gross income. *Sikes v. Sikes*, 98 N.C. App. 610, 391 S.E.2d 855 (1990), aff'd, 330 N.C. 595, 411 S.E.2d 588 (1992).

Mother had to continue paying **child support** under subdivision (c)(2) of this section for her son who had turned 18 where, although he would not be able to receive a standard high school diploma because he had Down's Syndrome, his teacher and school counselor showed that his attendance at the school was in his best interests, that he would continue to benefit in the future from the curriculum, and that he was making satisfactory academic progress toward a non-traditional graduation. *Hendricks v. Sanks*, 143 N.C. App. 544, 545 S.E.2d 779 (2001).

APPORTIONMENT OF COSTS IS NOT REQUIRED WHERE ONE PARENT IS UNABLE TO ASSIST IN **SUPPORT**. --Although apportionment of the costs of a **child's support** between his father and mother according to their respective means and responsibilities is statutorily authorized, it is not required where the mother is financially unable to assist the father with the **support** of their son. *Plott v. Plott*, 65 N.C. App. 657, 310 S.E.2d 51 (1983), modified on other grounds, 313 N.C. 63, 326 S.E.2d 863 (1985).

SUPPORT OF CHILD LEGITIMATED UNDER § 49-12. --Where the reputed father of a **child** marries the **child's** mother after its birth, under G.S. 49-12 such **child** is deemed legitimate just as if it had been born in lawful wedlock, and such **child** is a minor **child** of the marriage; thus, the father may be required to furnish **support** for such **child** upon motion made either before or after decree of divorce. *Carter v. Carter*, 232 N.C. 614, 61 S.E.2d 711 (1950).

PRIMARY LIABILITY OF FATHER UNDER FORMER PROVISIONS. --For cases as to father's primary liability and mother's secondary liability to **support** their children, prior to the amendment by Session Laws 1981, c. 613, see *Bailey v. Bailey*, 127 N.C. 474, 37 S.E. 502 (1900); *Sanders v. Sanders*, 167 N.C. 319, 83 S.E. 490 (1914); *Tidwell v. Booker*, 290 N.C. 98, 225 S.E.2d 816 (1976); *Hicks v. Hicks*, 34 N.C. App. 128, 237 S.E.2d 307 (1977); *Coble v. Coble*, 44 N.C. App. 327, 261 S.E.2d 34 (1979), rev'd on other grounds, 300 N.C. 708, 268 S.E.2d 185 (1980); *Flippin v. Jarrell*, 301 N.C. 108, 270 S.E.2d 482 (1980), rehearing denied, 301 N.C. 727, 274 S.E.2d 228 (1981); *In re Register*, 303 N.C. 149, 277 S.E.2d 356 (1981).

AS TO MOTHER'S STANDING FORMERLY TO BRING CLAIM for loss of **child's** services and medical expenses, based upon her formerly secondary **support** obligation, prior to the amendment by Session Laws 1981, c. 613, see *Flippin v. Jarrell*, 301 N.C. 108, 270 S.E.2d 482 (1980), rehearing denied, 301 N.C. 727, 274 S.E.2d 228 (1981).

FATHER'S REDUCTION IN PAYMENTS AS EVIDENCE HE HAD NOT MET OBLIGATIONS. -- Where judge found that mother provided no evidence that she was entitled to payment of back **child support**, the evidence did not **support** the judge's finding; there was evidence that father had not met his **child support** obligations where father testified that in 1985, he reduced the amount of the payments due to a decrease in salary. *Correll v. Allen*, 94 N.C. App. 464, 380 S.E.2d 580 (1989).

EQUITABLE ESTOPPEL DID NOT BAR CLAIM FOR PAST **SUPPORT**. --Even assuming that on some set of facts equitable estoppel might properly bar a claim for **child support** arrears, it was inapplicable where husband, seeking to rely on equitable estoppel, could not show that, in good faith reliance on the conduct of his ex-wife, he had changed his position for the worse; the only change made in his position was the retention to his benefit of money owed for the **support** of his children. *Griffin v. Griffin*, 96 N.C. App. 324, 385 S.E.2d 526 (1989).

APPLICABILITY OF DOCTRINE OF "NECESSARIES". --Although the normal vehicle today for enforcing the obligation of **support** is undoubtedly the payment of court-ordered **support** pursuant to statute, the common law provided another vehicle through the so-called doctrine of "necessaries." North Carolina accepts this process for enforcing a parent's obligation to **support** minor children. *Alamance County Hosp. v. Neighbors*, 315 N.C. 362, 338 S.E.2d 87 (1986).

SUPPORT OBLIGATION OF NONCUSTODIAL PARENT. --Under new **child Support Guidelines** an adjustment in **support** obligation of noncustodial parent is reduced only when each parent has **child** for more than 33 percent of year. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

RIGHT OF THIRD PARTY TO RECOVER FOR "NECESSARIES" FURNISHED TO **CHILD**. -- Because a **child's** right to **support** continues unimpaired despite the divorce of his or her parents, the right of a third party provider of goods or services to claim against the noncustodial parent also continues, unimpaired by contracts or judicial decrees or orders affecting the relations between the parents. *Alamance County Hosp. v. Neighbors*, 315 N.C. 362, 338 S.E.2d 87 (1986).

The payment of court-ordered **child support** does not bar a third party from seeking reimbursement directly from a noncustodial parent for "necessaries" provided to that parent's minor **child**. However, because the third party provider's right to recover against the parent is based upon the **child's** right to **support**, the third party provider must still show that the services or goods provided were legal "necessaries" and that the parent against whom relief is sought has failed or refused to provide them. In this context, any payment a noncustodial parent has made for the **support of his or her child** would be a factor for the trial judge to consider in deciding whether the parent has in fact met the obligation to **support that child**. *Alamance County Hosp. v. Neighbors*, 315 N.C. 362, 338 S.E.2d 87 (1986).

NON-BIOLOGICAL PARENTS. --The court will not impose the burden of **child support** on a non-biological parent who has not voluntarily assumed such an obligation. *Pott v. Pott*, 126 N.C. App. 285, 484 S.E.2d 822 (1997).

PERSONS STANDING IN LOCO PARENTIS. --Although **support** of a **child** ordinarily is a parental obligation, other persons standing in loco parentis may also acquire a duty to **support the child**; thus, in a case where custodial father and **child** had believed him to be the father of the **child**, the duty of **support** should have accompanied the right to custody. *Price v. Howard*, 346 N.C. 68, 484 S.E.2d 528 (1997).

PARENTS OF UNEMANCIPATED MINORS PRIMARILY RESPONSIBLE FOR GRANDCHILDREN'S **SUPPORT**. --The statutory language of this section, coupled with the legislative intent, imposes primary responsibility for an infant born to unemancipated minors on the minors' parents (i.e. the infant's grandparents). *Whitman v. Kiger*, 139 N.C. App. 44, 533 S.E.2d 807

(2000), *aff'd*, 353 N.C. 360, 543 S.E.2d 476 (2001).

IV. AMOUNT OF **SUPPORT**.

A. IN GENERAL.

HISTORY AND PURPOSE OF GUIDELINES. --As of July 1, 1991, the State adopted **guidelines** based on income-sharing approach for determining **child support**. **These guidelines** were promulgated by Conference of Chief District Judges in accordance with subsection (c1) of this section. Income-sharing formulas ignore problem of attempting to determine cost of raising a **child** and are based instead on assumption that each parent will contribute all of his or her income to one fund. Then the formulas provide method for equitably dividing income among family members. Income-sharing formulas seeking to equalize financial burden of divorce so that all family members experience about same proportional reduction in standard of living after divorce. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

CONSTITUTIONALITY OF GUIDELINES. --**Child Support Guidelines** (2002) did not violate substantive due process; the state had a compelling interest in regulating **child support** obligations, and through establishing a rebuttable presumption with regard to the **guidelines** under G.S. 50-13.4(c), the act was narrowly drawn. *Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007), review denied, 362 N.C. 238, 659 S.E.2d 741 (2008), cert. denied, -- U.S. --, 129 S. Ct. 144, 172 L. Ed. 2d 39 (2008).

EFFECTIVE DATE OF GUIDELINES. --At time **support** order was entered in June, 1989, the **Guidelines** in subsection (c1) of this section were only advisory in nature. The **Guidelines** became presumptive as of October 1, 1989. New presumptive **guidelines** became effective July 1, 1990. Therefore, at the time, (June 1989) order was entered, trial judge was neither required to follow nor refer to advisory **guidelines** in order. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

USE OF GUIDELINES TO DETERMINE SUPPORT PROPER. --Where parents' combined gross income was \$11,980, below the \$20,000 per month threshold, the trial court was permitted to use the **child support guidelines** and require the husband to continue paying \$1,521 per month in **child support**. *Francis v. Francis*, 169 N.C. App. 442, 612 S.E.2d 141 (2005).

THE AMOUNT OF A PARENT'S CHILD SUPPORT OBLIGATION IS DETERMINED BY APPLICATION OF THE CHILD SUPPORT GUIDELINES. *Barham v. Barham*, 127 N.C. App. 20, 487 S.E.2d 774 (1997), *aff'd*, 347 N.C. 570, 494 S.E.2d 763 (1998).

GUIDELINES ARE NOT MANDATORY BUT ADVISORY. --An examination and interpretation of subsection (c1) as written clearly indicates that the **guidelines** prescribed by the Conference of Chief District Court Judges are not mandatory and binding but rather advisory in nature. *Morris v. Morris*, 92 N.C. App. 359, 374 S.E.2d 441 (1988), decided prior to later amendments to subsection (c1).

DEVIATION FROM GUIDELINES. --According to the statute, the trial court has the discretion to deviate from the presumptive **guidelines** in only two situations: (1) when application does not meet or exceeds the reasonable needs of the **child**; or (2) when application would be unjust or inappropriate. *Guilford County ex rel. Child Support Enforcement Agency ex rel. Easter v. Easter*, 120 N.C. App. 260, 461 S.E.2d 798 (1995), modified, 344 N.C. 166, 473 S.E.2d 6 (1996).

A trial court may deviate from the **Guidelines** when it finds, by the greater weight of the evidence, application of the **Guidelines**: (1) would not meet or would exceed the reasonable

needs of the **child** considering the relative ability of each parent to provide **support**; or (2) would be otherwise unjust or inappropriate. *Barham v. Barham*, 127 N.C. App. 20, 487 S.E.2d 774 (1997), *aff'd*, 347 N.C. 570, 494 S.E.2d 763 (1998).

Although the trial court properly considered the father's settlement trust to be non-recurring income when making its **child support** order, the case was remanded because the trial court failed to make specific findings regarding the reasonable needs of the **child** when it deviated from the North Carolina **Child Support Guidelines**. *Spicer v. Spicer*, 168 N.C. App. 283, 607 S.E.2d 678 (2005).

North Carolina **Child Support Guidelines** were inapplicable because the combined monthly adjusted gross income of the parents exceeded \$20,000; thus, the trial court was required to make a case-by-case determination. Consequently, the trial court was not bound by the **Guidelines** in determining the father's **child support** obligations. *Diehl v. Diehl*, 177 N.C. App. 642, 630 S.E.2d 25 (2006).

In considering a father's motion to modify **child support**, the trial court did not err in deviating only slightly from the **guidelines**; **the guidelines** were constitutional, and the slight deviation was not manifestly unsupported by reason. *Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007), *review denied*, 362 N.C. 238, 659 S.E.2d 741 (2008), *cert. denied*, -- U.S. --, 129 S. Ct. 144, 172 L. Ed. 2d 39 (2008).

TRIAL COURT'S METHODOLOGY PROPER. --Even if the father had assigned error to the methodology employed by the trial court, there was no error in the trial court's determination process under circumstances in which both parties maintained full-time employment and earned average monthly incomes in excess of \$10,000; the trial court's findings of fact included an updated analysis of the **child's** total reasonable needs while in the mother's care, the mother's pro rata share of the parties' gross income, and the mother's pro rata share of the **child's** reasonable needs while in her custody. *Pascoe v. Pascoe*, 183 N.C. App. 648, 645 S.E.2d 156 (2007).

THE **CHILD SUPPORT GUIDELINES** WERE HELD INAPPLICABLE AND **CHILD SUPPORT** WAS DETERMINED BY ASSESSING THE PARTICULAR FACTS OF THE CASE where a father's monthly income was \$15,181; the denial of a father's motion to reduce **child support** was affirmed where the trial court acknowledged the father's income decrease, considered the father's family related expenses and **support** obligations, and determined, based on the father's net income of over \$5,000 per month, that a reduction in **child support** from the original amount of \$2,500 was unwarranted. *Trevillian v. Trevillian*, 164 N.C. App. 223, 595 S.E.2d 206 (2004).

DEVIATION FROM **GUIDELINES** IMPROPER. --Trial court's findings that mother's live-in boyfriend earned \$16.61 per hour and worked forty hours a week was insufficient to **support** the decision to deviate from the **Child Support Guidelines**. *State ex rel. Carteret Child Support Enforcement Office ex rel. Horne v. Horne*, 127 N.C. App. 387, 489 S.E.2d 431 (1997).

AUTOMATIC **SUPPORT** INCREASES. --Provision in judgment by confession ordering automatic **child support** increases based upon the C.P.I. was void where it did not contain the requirements for a valid annual adjustment formula in *Falls v. Falls*, 52 N.C. App. 203, 278 S.E.2d 546, *cert. denied*, 304 N.C. 390, 285 S.E.2d 831 (1981). *Snipes v. Snipes*, 118 N.C. App. 189, 454 S.E.2d 864 (1995).

THE DETERMINATION OF **CHILD SUPPORT** MUST BE DONE IN SUCH WAY AS TO RESULT IN FAIRNESS TO ALL PARTIES. *Walker v. Walker*, 38 N.C. App. 226, 247 S.E.2d 615 (1978); *Plott v. Plott*, 65 N.C. App. 657, 310 S.E.2d 51 (1983), *modified on other grounds*, 313 N.C. 63, 326 S.E.2d 63, 326 S.E.2d 863 (1985).

ULTIMATE OBJECTIVE. --While it is the legal obligation of the father (now father and mother) to provide for the **support** of his minor children, and while the welfare of the **child** is a

primary consideration in matters of custody and maintenance, yet common sense and common justice dictate that the ultimate object in such matters is to secure **support** commensurate with the needs of the **child** and the ability of the father to meet the needs. Holt v. Holt, 29 N.C. App. 124, 223 S.E.2d 542 (1976).

NO PRECISE FORMULA EXISTS TO ASSIST THE COURT IN DETERMINING A FAIR **SUPPORT** AWARD, and the uniqueness of each divorce renders a precedent almost valueless. Plott v. Plott, 313 N.C. 63, 326 S.E.2d 863 (1985).

REQUEST FOR VARIANCE FROM **CHILD SUPPORT GUIDELINES**. --Section 50-13.4 does not identify any time restrictions for making the request for a hearing. However, to effectuate the purpose of that statute, any party in a pending action requesting a variance from the **guidelines** must, unless the request is made in the original pleadings, give at least ten days written notice as required by this section. Browne v. Browne, 101 N.C. App. 617, 400 S.E.2d 736 (1991).

IN DEVIATING FROM **CHILD SUPPORT GUIDELINES**, the trial court was required to make findings of fact as to the criteria that justified varying from the **guidelines** and the basis of the amount ordered; the court committed error because its findings were insufficient to meet this requirement. Gowing v. Gowing, 111 N.C. App. 613, 432 S.E.2d 911 (1993).

FAILURE TO FOLLOW THE PRESUMPTIVE **CHILD-SUPPORT GUIDELINES** prescribed pursuant to subsection (c1) required that a **support** order be reversed; the **guidelines** were not mentioned in the order and the order did not make reference to any of the factors used to vary a **support** payment from the presumptive amounts. Greer v. Greer, 101 N.C. App. 351, 399 S.E.2d 399 (1991).

IN **CHILD SUPPORT** ACTION, TRIAL COURT MUST FIRST DETERMINE PRIMARY LIABILITY FOR MINOR **CHILD'S SUPPORT** under subsection (b). The court then determines the actual amount of **support** necessary to meet the minor **child's** reasonable needs pursuant to subsection (c). McLemore v. McLemore, 89 N.C. App. 451, 366 S.E.2d 495 (1988).

DEVIATION FROM **GUIDELINES** IN SPECIAL NEEDS CASE. --The trial court erred in simply halving the mother's **child support** obligation when she was no longer liable for the **support** of one of the two children; the court was required to hold a hearing and make findings of fact when it deviated from the **Child Support Guidelines**, and, considering the second **child's** special needs, an amount higher than one-half of the original total might have been more appropriate. Hendricks v. Sanks, 143 N.C. App. 544, 545 S.E.2d 779 (2001).

WHERE 11 U.S.C.S. § 1325(B)(2) REQUIRED THAT **CHILD SUPPORT** PAYMENTS BE REASONABLY NECESSARY to be expended for a **child** and where G.S. 50-13.4(c) also provided that **child support** payments must be in such an amount as to meet the reasonable needs of a **child**, the court assumed that the **child support** payments made to a Chapter 13 debtor were determined in accordance with state law and that the full amount of the payment was reasonably necessary for the **support** of the children where there had been no contention to the contrary. In re Parker, -- Bankr. -- (Bankr. M.D.N.C. Apr. 28, 2009).

ABILITY TO PAY AND NEEDS OF **CHILD** MUST BE CONSIDERED. --Ordinarily, in entering a judgment for the **support** of a minor **child**, the ability to pay, as well as the needs of such **child**, will be taken into consideration. Bishop v. Bishop, 245 N.C. 573, 96 S.E.2d 721 (1957); Fuchs v. Fuchs, 260 N.C. 635, 133 S.E.2d 487 (1963); Coggins v. Coggins, 260 N.C. 765, 133 S.E.2d 700 (1963).

In providing for the **support** of minor children, the ability of the father (or mother) to pay, as well as the needs of the children, must be taken into consideration by the court. Martin v. Martin, 263 N.C. 86, 138 S.E.2d 801 (1964).

In determining the amount of **support**, the court must take into consideration the needs of

the children and the ability of the defendant to pay during the time for which reimbursement is sought. *Hicks v. Hicks*, 34 N.C. App. 128, 237 S.E.2d 307 (1977).

An order for **child support** must be based not only on the needs of the **child**, but also on the ability of the father (or mother) to meet the needs. *Poston v. Poston*, 40 N.C. App. 210, 252 S.E.2d 240 (1979).

In order to be fair and just, the court entering an order for **child support** must consider not only the needs of the **child**, but also the abilities of the parents to provide **support**. *Plott v. Plott*, 65 N.C. App. 657, 310 S.E.2d 51 (1983), modified on other grounds, 313 N.C. 63, 326 S.E.2d 863 (1985).

An order for **child support** must be based upon the interplay of the trial court's conclusions of law as to (1) the amount of **support** necessary to meet the reasonable needs of the **child** and (2) the relative ability of the parties to provide that amount. *Atwell v. Atwell*, 74 N.C. App. 231, 328 S.E.2d 47 (1985).

Computing the amount of **child support** is normally an exercise of sound judicial discretion, requiring the judge to review all of the evidence before him. Absent a clear abuse of discretion, a judge's determination of what is a proper amount of **support** will not be disturbed on appeal. *Plott v. Plott*, 313 N.C. 63, 326 S.E.2d 863 (1985).

The trial court's findings lacked the necessary specificity to justify its deviation from **child support guidelines**, where it failed to make any findings regarding the **child's** reasonable needs, including his education, maintenance, or accustomed standard of living. *State ex rel. Fisher v. Lukinoff*, 131 N.C. App. 642, 507 S.E.2d 591 (1998).

WHEN ABILITY TO PAY DETERMINED. --A party's ability to pay **child support** is determined by the party's ability to pay at the time the award is made or modified. *Askew v. Askew*, 119 N.C. App. 242, 458 S.E.2d 217 (1995).

AS BASIS OF ORDER FOR CHILD SUPPORT. --An order for **child support** under this section must be based upon the interplay of the trial court's conclusions of law as to (1) the amount of **support** necessary to meet the reasonable needs of the **child**, and (2) the relative ability of the parties to provide that amount. *Coble v. Coble*, 300 N.C. 708, 268 S.E.2d 185 (1980); *In re Biggers*, 50 N.C. App. 332, 274 S.E.2d 236 (1981); *Dishmon v. Dishmon*, 57 N.C. App. 657, 292 S.E.2d 293 (1982); *In re Allen*, 58 N.C. App. 322, 293 S.E.2d 607 (1982); *Byrd v. Byrd*, 62 N.C. App. 438, 303 S.E.2d 205 (1983); *Campbell v. Campbell*, 63 N.C. App. 113, 304 S.E.2d 262, cert. denied, 309 N.C. 460, 307 S.E.2d 362 (1983); *Newman v. Newman*, 64 N.C. App. 125, 306 S.E.2d 540, cert. denied, 309 N.C. 822, 310 S.E.2d 351 (1983).

ALONG WITH OTHER RELEVANT FACTS. --A court, when entering an order for **support**, should take into account the needs of the **child**, the resources of the parties and any other facts relevant to the case. *McCall v. McCall*, 61 N.C. App. 312, 300 S.E.2d 591 (1983).

USING DISPOSABLE INCOME (net income after expenses) is a way to fairly reflect the parties relative ability to contribute proportionately to **support of the child**. *Savani v. Savani*, 102 N.C. App. 496, 403 S.E.2d 900 (1991).

WITH REFERENCE TO THE SPECIAL CIRCUMSTANCES OF THE PARTIES. --What amount is reasonable for a **child's support** is to be determined with reference to the special circumstances of the particular parties. *Warner v. Latimer*, 68 N.C. App. 170, 314 S.E.2d 789 (1984).

JUDGE'S CONSIDERATION OF THE FACTORS CONTAINED IN SUBSECTION (C) of this section is not guided by any magic formula. *Plott v. Plott*, 313 N.C. 63, 326 S.E.2d 863 (1985).

VACATION OF SUPPORT ORDER ABSENT EVIDENCE AS TO PARENT'S ABILITY TO PAY AND CHILD'S NEEDS. --An order for **child support** will necessarily be vacated where there is no evidence offered as to a party's ability to pay or where there is no evidence as to the **child's** needs and expenses. *Dixon v. Dixon*, 67 N.C. App. 73, 312 S.E.2d 669 (1984).

PARENT'S CIRCUMSTANCES MUST BE EVALUATED. --The amount of each parent's contribution to the **support of the child** is based upon the trial court's evaluation of each parent's circumstances, including a determination of certain factors mandated by subsection (c) of this section. *Boyd v. Boyd*, 81 N.C. App. 71, 343 S.E.2d 581 (1986).

ALIMONY AND **CHILD SUPPORT** CONSIDERED TOGETHER. --Trial court reasonably could have concluded that the wife's alimony award needed to be increased because the wife's reasonable expenses had increased after the husband was no longer obligated to pay **child support** because the parties, minor **child** had turned 18-years-old. The original alimony award calculated the wife's reasonable expenses by attributing some of those expenses to the minor **child**, but the wife's reasonable expenses increased when the minor **child** attained the age of majority and those expenses were no longer attributed to the minor **child**. *Harris v. Harris*, 188 N.C. App. 477, 656 S.E.2d 316 (2008).

"COST SHARING" FORMULA IMPROPER. --Use of any cost-sharing formula by a trial judge is now improper in North Carolina. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

"Cost-sharing" approach to **child support** awards embodied in the Franks formula criticized by North Carolina Court of Appeals when applied to case arising before July 1, 1990, effective date of this section. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

UNDER THIS SECTION AND § 50-13.7, PARTY'S ABILITY TO PAY **CHILD SUPPORT** IS ORDINARILY DETERMINED BY PARTY'S ACTUAL INCOME at time the **support** award is made or modified. However, if there is a finding by the trial court that the party was acting in bad faith by deliberately depressing his or her income or otherwise disregarding the obligation to pay **child support**, then the party's capacity to earn may be the basis for the award. *Fischell v. Rosenberg*, 90 N.C. App. 254, 368 S.E.2d 11 (1988).

INTEREST IN CORPORATIONS OR PARTNERSHIPS AND NONTAXABLE INCOME RELEVANT. --The value and nature of defendant's interest in any partnerships or corporations and the terms of any trust of which he might be the beneficiary, as well as the amount of income, including non-taxable, deferred or declined income, flowing therefrom, would all bear relevance to **child support** proceeding. *Shaw v. Cameron*, 125 N.C. App. 522, 481 S.E.2d 365 (1997).

ENCUMBERED CASH RESERVE FUNDS OF CORPORATION. --The trial court's exclusion of plaintiff's corporation's encumbered cash reserve funds in its calculation of **child support** was prejudicial error. *Barham v. Barham*, 127 N.C. App. 20, 487 S.E.2d 774 (1997), *aff'd*, 347 N.C. 570, 494 S.E.2d 763 (1998).

EXCLUSIVE OWNERSHIP OR CONTROL OF ESTATE IRRELEVANT. --Any judgment rendered against defendant setting an amount of **child support** would be dependent in significant part upon the amount of his income and the nature of his estate, whether exclusively owned or controlled by defendant, or jointly with others. *Shaw v. Cameron*, 125 N.C. App. 522, 481 S.E.2d 365 (1997).

ESTATE AND EARNINGS OF BOTH HUSBAND AND WIFE MUST BE CONSIDERED. --The court must consider not only the needs of the wife and children, but also the estate and earnings of both husband and wife. *Roberts v. Roberts*, 38 N.C. App. 295, 248 S.E.2d 85 (1978); *Walker v. Tucker*, 69 N.C. App. 607, 317 S.E.2d 923 (1984).

ORDER WHICH CONTAINED NO FINDINGS OF FACT REGARDING PLAINTIFF'S EARNINGS or employment status was not supported by sufficient findings of fact. *Smith v. Smith*, 103 N.C. App. 488, 405 S.E.2d 912 (1991).

ORDINARILY, PRESENT EARNINGS SHOULD BE BASIS FOR AWARD. --In determining the ability of the father (or mother) to **support the child**, the court ordinarily should examine the father's (or mother's) present earnings, rather than select the earnings for a single year in the past and use that as the basis for an award. *Holt v. Holt*, 29 N.C. App. 124, 223 S.E.2d 542 (1976).

If father (or mother) is honestly and in good faith engaged in a business to which he is properly adapted, and is making a good faith effort to earn a reasonable income, the award for **child support** should be based on the amount which defendant is earning when the award is made. *Holt v. Holt*, 29 N.C. App. 124, 223 S.E.2d 542 (1976).

Ordinarily, father's (or mother's) ability to pay is determined by his income at the time the award is made if father (or mother) is honestly engaged in a business to which he is properly adapted and is in fact seeking to operate his business profitably. *Beall v. Beall*, 290 N.C. 669, 228 S.E.2d 407 (1976); *Whitley v. Whitley*, 46 N.C. App. 810, 266 S.E.2d 23 (1980).

The general rule is that the ability of a party to pay **child support** is determined by that person's income at the time the award is made. *Atwell v. Atwell*, 74 N.C. App. 231, 328 S.E.2d 47 (1985).

The ability of the supporting spouse to pay is ordinarily determined by his or her income at the time the award is made. *Plott v. Plott*, 313 N.C. 63, 326 S.E.2d 863 (1985).

BUT CAPACITY TO EARN MAY BE THE BASIS of an award if it is based upon a proper finding that father (or mother) is deliberately depressing his income or indulging himself in excessive spending because of a disregard of his obligation to provide reasonable **support** for his spouse and children. *Beall v. Beall*, 290 N.C. 669, 228 S.E.2d 407 (1976).

A person's capacity to earn income may be made the basis of an award if there is a finding that the party deliberately depressed his or her income or otherwise acted in deliberate disregard of the obligation to provide reasonable **support** for the **child**. *Greer v. Greer*, 101 N.C. App. 351, 399 S.E.2d 399 (1991).

Under this section and G.S. 50-13.7, father's (or mother's) ability to pay **child support** is normally determined by his actual income at the time the award is made or modified. If, however, there is a finding that father (or mother) is deliberately depressing his income or otherwise acting in deliberate disregard of his obligation to provide reasonable **support** for his **child**, his capacity to earn may be made the basis of the award. Under these circumstances, his motion to reduce the amount of **child support** will be denied. *Goodhouse v. DeFravio*, 57 N.C. App. 124, 290 S.E.2d 751 (1982).

When the trial court makes a finding that a party deliberately depressed his or her income, then the party's capacity to earn or his potential income may be used to determine the **child support** obligation. *McDonald v. Taylor*, 106 N.C. App. 18, 415 S.E.2d 81 (1992).

Where plaintiff took early retirement at age 51, with a 3 year old daughter to **support**, chose to remain unemployed, despite having many skills, and there was testimony that plaintiff could earn at least \$20,000 without decreasing his retirement benefits, the trial court properly based **child support** award on plaintiff's potential income. *Osborne v. Osborne*, 129 N.C. App. 34, 497 S.E.2d 113 (1998).

FINDING WHERE AWARD IS BASED ON CAPACITY TO EARN. --To base an award for **child support** on capacity to earn rather than actual earnings, there should be a finding based on evidence that father (or mother) is failing to exercise his capacity to earn because of a disregard of his obligation to provide reasonable **support** for his spouse and children. *Holt v. Holt*, 29 N.C. App. 124, 223 S.E.2d 542 (1976); *Stanley v. Stanley*, 51 N.C. App. 172, 275 S.E.2d 546, cert. denied, 303 N.C. 182, 280 S.E.2d 454, appeal dismissed, 454 U.S. 959, 102 S. Ct. 496, 70 L. Ed. 2d 374 (1981).

Only where there are findings, based on competent evidence, to **support** a conclusion that the supporting spouse or parent is deliberately depressing his or her income to avoid family responsibilities can the "earning capacity" rule be applied. *Whitley v. Whitley*, 46 N.C. App. 810, 266 S.E.2d 23 (1980); *Atwell v. Atwell*, 74 N.C. App. 231, 328 S.E.2d 47 (1985).

A party's capacity to earn income may become the basis of an award if it is found that the party deliberately depressed its income or otherwise acted in deliberate disregard of the

obligation to provide reasonable **support** for the **child**. *Askew v. Askew*, 119 N.C. App. 242, 458 S.E.2d 217 (1995).

When calculating the **child support** obligation owed by a parent, a showing of bad faith income depression by the parent is a mandatory prerequisite for imputing income to that parent. *Sharpe v. Nobles*, 127 N.C. App. 705, 493 S.E.2d 288 (1997).

MUST BE SUFFICIENT EVIDENCE OF PROSCRIBED INTENT. --A trial court's conclusion underlying imposition of the earnings capacity rule must be based upon evidence that the actions which reduced the party's income were not taken in good faith. There must be sufficient evidence of the proscribed intent. *Fischell v. Rosenberg*, 90 N.C. App. 254, 368 S.E.2d 11 (1988).

CONSIDERATION OF SPOUSE'S CAPACITY TO EARN HELD ERROR. --Trial court could not consider father's capacity to earn in computing his income where the evidence indicated that he lost his job due to no fault of his own, and the court's order contained no findings that he had deliberately stopped working to avoid his **support** obligations. *Greer v. Greer*, 101 N.C. App. 351, 399 S.E.2d 399 (1991).

SUPPORT SHOULD NOT HAVE BEEN BASED ON EARNING CAPACITY. --Where there was no evidence that defendant was engaging in any tactics to avoid paying **child support**, defendant had purchased a substantial amount of farm equipment for use in his farming operation, and he had experienced a net loss from farming for the last three years but had made a profit from this business in the past, the evidence pointed to a genuine effort by defendant to engage in his chosen profession and to **support** his family as well; therefore, the case was remanded so the court could make a determination based upon defendant's present earnings instead of his earning capacity. *Cameron v. Cameron*, 94 N.C. App. 168, 380 S.E.2d 121 (1989).

WRONGFUL INCLUSION OF FUTURE PERSONAL EXPENDITURES. --Where trial court includes personal expenditures not yet made by party with no concrete plans to make such an expenditure, award entered cannot possibly reflect the relative abilities of parties to pay **support** at that time. *Witherow v. Witherow*, 99 N.C. App. 61, 392 S.E.2d 627 (1990).

DETERMINATION OF TRIAL COURT NOT NECESSARY TO MAKE FINDING OF BAD FAITH in reduction of income where the party seeking **support** modification was the custodial parent was not supported by current case law, nor was the trial court correct in concluding that when a custodial parent sought a change of **child support** based upon a reduction in income, that custodial parent had to request the court to make a finding of fact as to his or her "good faith." *Fischell v. Rosenberg*, 90 N.C. App. 254, 368 S.E.2d 11 (1988).

FATHER'S COST-FREE HOUSING WAS PROPERLY CONSIDERED TO BE A FORM OF GROSS-INCOME, and thus, recurring income for purposes of making a **child support** award. *Spicer v. Spicer*, 168 N.C. App. 283, 607 S.E.2d 678 (2005).

THE INCLUSION OF A GIFT when calculating a defendant's income for **child support** purposes was an error, where there was no evidence on the part of defendant's parents that such a gift would be reoccurring. *Sloan v. Sloan*, 87 N.C. App. 392, 360 S.E.2d 816 (1987).

BUT GIFT RENT AND VEHICLE PAYMENTS BY MOTHER'S FATHER SHOULD HAVE BEEN INCLUDED IN **SUPPORT** OBLIGATION. --Trial court erred in failing to include the mother's gift income as attributable income in calculating a father's **child support** obligation; the payment of the mother's vehicle and rent payments by her father totaled \$1,890, which should have been included in calculating income in the **child support** order. *State v. Williams*, 179 N.C. App. 838, 635 S.E.2d 495 (2006).

NON-INTEREST BEARING DEMAND NOTE NOT BY ITSELF A GIFT. --The fact that no demand

had been made on a non-interest bearing demand note from defendant's parents did not render it a gift, and the trial court's finding that the transaction was a gift was erroneous. Sloan v. Sloan, 87 N.C. App. 392, 360 S.E.2d 816 (1987).

THIRD-PARTY CONTRIBUTIONS MAY BE USED TO **SUPPORT** A DEVIATION from North Carolina **Child Support Guidelines**, even where third parties are under no legal obligation to make such payments. Guilford County ex rel. **Child Support** Enforcement Agency ex rel. Easter v. Easter, 344 N.C. 166, 473 S.E.2d 6 (1996).

PERSONAL INJURY SETTLEMENT, PAID ON A ONE-TIME, NON-RECURRING BASIS MET THE DEFINITION OF "NON-RECURRING INCOME" and thus, was properly considered by the trial court when making a **child support** award. Spicer v. Spicer, 168 N.C. App. 283, 607 S.E.2d 678 (2005).

EARNINGS OF **CHILD**. --In a case involving **child support** payments, the trial court erred in refusing to admit the children's tax returns into evidence, the only information concerning the estate and earnings of the children. Sloan v. Sloan, 87 N.C. App. 392, 360 S.E.2d 816 (1987).

EDUCATION AND INSURANCE EXPENSES. --Defendant's argument that provisions to pay for higher education and to provide life and health insurance were not in the nature of **child support** was not without merit. Smith v. Smith, 121 N.C. App. 334, 465 S.E.2d 52 (1996).

DISABILITY CHECKS RECEIVED ON BEHALF OF **CHILD**. --Trial court properly refused to consider a disability check received by disabled defendant on **child's** behalf as defendant's income in figuring his obligation, but erred in allowing defendant to receive the money for his own use. Sain v. Sain, 134 N.C. App. 460, 517 S.E.2d 921 (1999).

ADOPTION ASSISTANCE PAYMENTS. --Adoption assistance payments received by the parties were resources for the parties' adopted children, and thus could not be set off against the father's **child support** obligation. Gaston County v. Miller, 168 N.C. App. 577, 608 S.E.2d 101 (2005).

MEDICAL INSURANCE PREMIUMS PAID BY A PARENT on behalf of a **child** are actual expenditures which must be considered in computing retroactive **child support**. Lawrence v. Tise, 107 N.C. App. 140, 419 S.E.2d 176 (1992).

Failure of the trial court to treat a portion of mother's premiums as an actual expenditure for the purposes of calculating retroactive **support** was not error, because there was no evidence in the record to **support** a finding on the portion of the premiums for the joint policy attributable only to coverage of the **child**. In the absence of such evidence, the trial court would only be speculating as to the **child's** share of the cost, and this it could not do. Lawrence v. Tise, 107 N.C. App. 140, 419 S.E.2d 176 (1992).

CONSIDERATION OF HEALTH INSURANCE COVERAGE ERRONEOUS. --According to former subdivision (c1)(6) of this section, the trial court was not allowed to vary the presumptive amount of **child support** based upon the "provision of health insurance coverage;" therefore, by varying the presumptive **guideline** amount because of the defendant's maintenance of health insurance on the plaintiff and the children, the trial court acted in violation of this section. Browne v. Browne, 101 N.C. App. 617, 400 S.E.2d 736 (1991).

RECONSIDERATION OF ALIMONY OR **CHILD SUPPORT** AFTER EQUITABLE DISTRIBUTION. --Section 50-20 (f) obviously contemplates that **child support** order may precede equitable distribution order. No **child support** order is ever final and delaying **child support** order in lengthy case until after equitable distribution issue was decided would have prolonged an already long-pending case. Trial court's decision to enter **child support** order prior to determination of equitable distribution issue was under the statute. Cohen v. Cohen, 100

N.C. App. 334, 396 S.E.2d 344 (1990).

AMOUNT OF AWARD IS WITHIN TRIAL COURT'S DISCRETION. --Once an award is found to be justified, the amount lies within the trial court's discretion and will not be disturbed absent manifest abuse. *Sloop v. Friberg*, 70 N.C. App. 690, 320 S.E.2d 921 (1984).

AMOUNT SHOULD BE FAIR AND NOT CONFISCATORY. --An order for the maintenance of a **child** should be in an amount that is fair and not confiscatory in light of the parent's earning ability. *Plott v. Plott*, 65 N.C. App. 657, 310 S.E.2d 51 (1983), modified on other grounds, 313 N.C. 63, 326 S.E.2d 863 (1985). See also, *Fuchs v. Fuchs*, 260 N.C. 635, 133 S.E.2d 487 (1963).

ALLOWANCE SHOULD BE MADE FOR PARENT'S LIVING EXPENSES. --In determining the amount of an order for the **support** of children, a reasonable allowance should be made for the living expenses of their father (or mother) in the light of his earnings. *Fuchs v. Fuchs*, 260 N.C. 635, 133 S.E.2d 487 (1963).

DIVIDING PARENT'S INCOME BY NUMBER OF DEPENDENTS IS DISAPPROVED. --Fixing the amount of **support** for minor children by dividing the income of their father (or mother) by the number of people dependent upon him for **support** is not approved. *Fuchs v. Fuchs*, 260 N.C. 635, 133 S.E.2d 487 (1963).

CONDUCT OF PARTIES MAY BE CONSIDERED. --In addition to the factors enumerated in subsection (c) of this section, the trial court may consider the conduct of the parties, the equities of the given case, and any other relevant facts in determining **child support**. *Warner v. Latimer*, 68 N.C. App. 170, 314 S.E.2d 789 (1984).

This section clearly allows the trial court to consider other facts of the particular case in arriving at the amount of defendant's share of **support** in an action for reimbursement. Thus, while the defendant's ability to pay and his earning capacity are factors to be considered, they are not controlling. The court may also consider the conduct of the parties and the equities of the case. *Stanley v. Stanley*, 51 N.C. App. 172, 275 S.E.2d 546, cert. denied, 303 N.C. 182, 280 S.E.2d 454, appeal dismissed, 454 U.S. 959, 102 S. Ct. 496, 70 L. Ed. 2d 374 (1981).

IMPROPER USE OF EARNING CAPACITY RULE --Trial court erred in modifying a father's **child support** obligation pursuant to G.S. 50-13.4; the trial court found that while the father reduced his income, he did not act in bad faith, and a finding of bad faith was required to apply the earning capacity rule under N.C. **Child Support Guidelines**, 2003 Ann. R. N.C. 33, 35. *Cook v. Cook*, 159 N.C. App. 657, 583 S.E.2d 696 (2003).

FINDINGS AND CONCLUSIONS OF LAW REQUIRED. --In setting amounts for **child support**, where the trial court sits without a jury, the judge is required to find the facts specially and state separately its conclusions of law thereon, and to direct the entry of the appropriate judgment. *Dishmon v. Dishmon*, 57 N.C. App. 657, 292 S.E.2d 293 (1982).

Trial court erred in failing to make findings regarding the reasonable needs of a **child** for **support**, or regarding its refusal to award **support** for the time between the filing of suit for **support** and the entry of the **support** order. *State ex rel. Gillikin v. McGuire*, 174 N.C. App. 347, 620 S.E.2d 899 (2005).

FINDINGS MUST INDICATE CONSIDERATION OF NEEDS AND EARNINGS. --Conclusions of law must be based upon factual findings specific enough to indicate to the appellate court that the judge below took due regard of the particular estates, earnings, conditions, and accustomed standard of living of both the **child** and the parents. *Dishmon v. Dishmon*, 57 N.C. App. 657, 292 S.E.2d 293 (1982).

FINDINGS AS TO **CHILD'S** PAST AND PRESENT EXPENSES REQUIRED. --In order to

determine the reasonable needs of the **child**, the trial court must hear evidence and make findings of specific fact on the **child's** actual past expenditures and present reasonable expenses. *Atwell v. Atwell*, 74 N.C. App. 231, 328 S.E.2d 47 (1985).

MINOR CHILD'S HOSPITALIZATION AND ITS RESULTING COSTS CONSTITUTED A SUBSTANTIAL CHANGE IN CIRCUMSTANCES. Thus case was remanded to take into account the parties' abilities to provide **support** for the minor **child's** medical expenses and to enter an order modifying the **support** order. *Lawrence v. Nantz*, 115 N.C. App. 478, 445 S.E.2d 87 (1994).

AWARD WHERE FATHER HAS SUBSTANTIAL INCOME. --In an action for **child support**, the court, in making its award, should keep in mind that children of a man of substantial income are entitled to live accordingly. *McLeod v. McLeod*, 43 N.C. App. 66, 258 S.E.2d 75, cert. denied, 298 N.C. 807, 261 S.E.2d 920 (1979).

CREDIT FOR VOLUNTARY EXPENDITURES. --As to granting of credit towards payment of court-ordered **child support** for voluntary expenditures, see *Goodson v. Goodson*, 32 N.C. App. 76, 231 S.E.2d 178 (1977).

The trial court has a wide discretion in deciding initially whether justice requires that a credit be given under the facts of each case and then in what amount the credit is to be awarded. The better view allows credit when equitable considerations exist which would create an injustice if credit were not allowed. *Evans v. Craddock*, 61 N.C. App. 438, 300 S.E.2d 908 (1983).

EXPENSES DURING VISITATION. --Credit is not likely to be appropriate for frivolous expenses or for expenses incurred in entertaining or feeding the **child** during visitation periods. *Evans v. Craddock*, 61 N.C. App. 438, 300 S.E.2d 908 (1983).

Whether credit is allowed for time spent in visitation with the noncustodial parent depends on the facts of the particular case and is a matter within the court's discretion, as the fact that a **child** spends a certain amount of time with one parent does not necessarily mean that his reasonable and necessary living expenses are incurred proportionally. *Gibson v. Gibson*, 68 N.C. App. 566, 316 S.E.2d 99 (1984).

TRIAL COURT'S USE OF ONE-THIRD OF MOTHER'S TOTAL FIXED EXPENSES TO ESTABLISH REASONABLE NEEDS OF CHILD was neither unfair nor impermissible where the expense figures in mother's affidavit of financial status included expenses only for herself and the **child**, as she had not remarried, and furthermore, where the trial court not only found that mother's living expenses were reasonable, but also reduced several of the figures on the affidavit before making that finding, and where, with the exception of the amount of scheduled visitation, father presented no evidence on which the court could have based other findings regarding the **child's** expenses and needs. *Gibson v. Gibson*, 68 N.C. App. 566, 316 S.E.2d 99 (1984).

PARTIES CANNOT CONSENT TO IMPROPERLY BASED ORDER. --The parties, by their consent, cannot enable a trial judge to enter an order not based upon consideration of the several factors listed in subsection (c) of this section and G.S. 50-16.5(a). *Williamson v. Williamson*, 20 N.C. App. 669, 202 S.E.2d 489 (1974).

METHOD OF PAYMENT IS WITHIN DISCRETION OF COURT. --In utilizing the provision in subsection (e) of this section that payment for the **support** of a minor **child** shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein as the court may order, the trial court is vested with broad discretion, and is not limited to ordering any one of the designated methods of payment. In keeping with the court's powers, an order under this section will be upheld barring an abuse of that discretion. *Weaver v. Weaver*, 88 N.C. App. 634, 364 S.E.2d 706, cert. denied, 322 N.C. 330, 368 S.E.2d 875 (1988).

TRIAL COURT'S CREATION OF A TRUST consisting of certain real and personal property owned by the parties in order to secure payment of alimony and **child support** was a proper exercise of its discretion in applying the provisions of subsection (e) of this section and G.S. 50-16.7(a) and (c) and would be affirmed. *Weaver v. Weaver*, 88 N.C. App. 634, 364 S.E.2d 706, cert. denied, 322 N.C. 330, 368 S.E.2d 875 (1988).

AMOUNT NOT EXCESSIVE. --Where defendant earned one hundred thirty-two dollars (\$132.00) a week and had monthly expenses in the amount of fifty-two dollars (\$52.00), the court's order for defendant to pay one hundred dollars (\$100.00) per month in **child support** was not an abuse of discretion; defendant had been paying plaintiff one hundred dollars (\$100.00) per week voluntarily for several months prior to the hearing, had testified that he would continue to do so, and the court had made extensive findings regarding the **child's** needs, the parents' estates and earnings, etc. *Rawls v. Rawls*, 94 N.C. App. 670, 381 S.E.2d 179 (1989).

Yearly **support** payment of \$37,871.89 held not excessive where payor earned about \$200,000.00 per year and where family enjoyed very high standard of living prior to dissolution of marriage and where court found, based on payor's testimony, that payor could pay any amount court might order up to and including \$71,318.04. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

IMPROPER REDUCTION OF **CHILD SUPPORT** PAYMENTS. --Reducing **child support** payments by subtracting amount of money calculated to represent what custodial parent saves in expenses while the **child** is visiting with noncustodial parent was improper. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

CONSIDERATION OF SHARED CUSTODY JUSTIFIED. --Fact that defendant had sole custody of one of the children and furnished the **child's** sole **support**, while defendant contributed to the **support** of the two children in plaintiff's custody, clearly justified the trial court's consideration of the shared custody factor; trial court was not required to make findings as to how or why this custody arrangement rendered **guidelines** adopted pursuant to subsection (c1) inapplicable where the **guidelines** provided for **support** payments to be based upon the noncustodial parent's gross income. *Morris v. Morris*, 92 N.C. App. 359, 374 S.E.2d 441 (1988).

IMPUTED INCOME. --Where there was no evidence that defendant, who worked for a school system as a psychologist, intentionally depressed his income or otherwise engaged in bad faith, the trial court erred by imputing income to defendant for four weeks during the school district summer recess. *Ellis v. Ellis*, 126 N.C. App. 362, 485 S.E.2d 82 (1997).

Trial court erred in calculating a father's **child support** obligation under G.S. 50-13.4(c) by imputing to the father income based solely on a statement of income made to a bankruptcy court 18 months earlier under circumstances in which the trial court's order was devoid of findings that the father was deliberately depressing his income or indulging in excessive spending to avoid **support**. *State v. Williams*, 179 N.C. App. 838, 635 S.E.2d 495 (2006).

Trial court's determination that a husband, who worked as a school teacher, could continue to earn a minimum amount each month from a grading business was reasonably based on the court's findings of fact regarding the husband's actual earnings during the year prior to the hearing. *Hartsell v. Hartsell*, 189 N.C. App. 65, 657 S.E.2d 724 (2008).

SUFFICIENT FINDINGS BY THE COURT. --In spite of trial court's failure to make finding as to husband's net income, court's findings regarding gross income of husband and wife along with wife's net income and children's expenses was sufficient to satisfy requirement under this section that court give due regard to parties' estates, earnings, conditions and standard of living in setting **child support**. *Sikes v. Sikes*, 98 N.C. App. 610, 391 S.E.2d 855 (1990), aff'd, 330 N.C. 595, 411 S.E.2d 588 (1992).

INCOME OF BUSINESS IN WHICH DEFENDANT HELD CONTROLLING INTEREST. --Court neither abused its discretion nor imputed income to defendant when it allocated to him the amount of income earned by the business in which he held 51% and controlled disbursement of corporate funds. *Cauble v. Cauble*, 133 N.C. App. 390, 515 S.E.2d 708 (1999).

USE OF ACCRUAL FIGURES. --Use of accrual figures in the trial court's calculations was reflective of an appropriate level of gross income available to the defendant and not manifestly unsupported by reason. *Cauble v. Cauble*, 133 N.C. App. 390, 515 S.E.2d 708 (1999).

FINANCIAL AFFIDAVITS. --On appeal from a motion to modify **child support**, the court would not consider information outside a father's financial affidavit, i.e., expert testimony, to determine his expenses for the children; the father had sworn to the truthfulness and completeness of his affidavit, and the parties' affidavits were competent evidence on which the trial court was allowed to rely in determining the expenses of the parties' children. *Row v. Row*, 185 N.C. App. 450, 650 S.E.2d 1 (2007), review denied, 362 N.C. 238, 659 S.E.2d 741 (2008), cert. denied, -- U.S. --, 129 S. Ct. 144, 172 L. Ed. 2d 39 (2008).

COURT'S FINDINGS WERE INSUFFICIENT to **support** awarding no **support** under subsection (c) since the court failed to determine what were the reasonable needs of the minor **child** for health, education, and maintenance. *McLemore v. McLemore*, 89 N.C. App. 451, 366 S.E.2d 495 (1988).

In an action seeking an increase in **child support** over the amount set forth in separation agreement, order which contained no specific findings with respect to the actual past or present expenses incurred for the **support** of the children was insufficient to **support** the court's conclusion that the reasonable needs of the children amounted to \$2,800.00 per month. *Holderness v. Holderness*, 91 N.C. App. 118, 370 S.E.2d 602 (1988).

Where the trial court made no findings whatsoever with respect to the parties' "estates, earnings, conditions, [and] accustomed standard of living" for the year 1984, its award of retroactive **child support** would be vacated since it was not based on sufficient findings pertaining to the year 1984. *Napowsa v. Langston*, 95 N.C. App. 14, 381 S.E.2d 882, cert. denied, 325 N.C. 709, 388 S.E.2d 460 (1989).

TRIAL COURT ERRED IN RULING IT HAD NO AUTHORITY TO MODIFY THE INCOME TAX DEDUCTION PROVISION OF THE PARTIES' SEPARATION AGREEMENT as they requested a recalculation of **child support**, obliging the trial court to apply the entirety of the **guidelines**, including not only the worksheets, but also the commentary. *Ticconi v. Ticconi*, 161 N.C. App. 730, 589 S.E.2d 371 (2003).

REFUSAL TO CONSIDER REDUCTION IN INCOME. --Trial court erred in concluding that reduction in income of father, the custodial parent, due to leaving employment to return to school, could not be considered on motion to increase plaintiff's **child support** obligations. *Fischell v. Rosenberg*, 90 N.C. App. 254, 368 S.E.2d 11 (1988).

REMAND TO ALLOW COURT TO MAKE FINDINGS. --Appellate court remanded case to allow trial court to make findings concerning the reasonable needs of **child**, the relative ability of the parents to **support the child**, and a determination of whether a variation from the **Guidelines** was appropriate on these grounds. *Brooker v. Brooker*, 133 N.C. App. 285, 515 S.E.2d 234 (1999).

Mother admitted that clearly, the trial court did not use all of the expenses listed in the parties' financial affidavits; without more explanation, it was impossible to determine on appeal where the figures used by the trial court came from at all. Moreover, although the trial court's **child support** order did contain certain historical costs associated with the children, it included no findings as to the individual costs and expenses the trial court expected to be associated with each **child** in the future, and, while the trial court did make findings regarding the parents' particular estates, earnings, conditions, and accustomed

standard of living, those were insufficient to remedy the absence of findings explaining the reasonable needs of the children; accordingly, the case was remanded for further findings of fact regarding the amount of **child support** awarded. *Diehl v. Diehl*, 177 N.C. App. 642, 630 S.E.2d 25 (2006).

FINDINGS UNSUPPORTED BY EVIDENCE. --Judge erred by ordering mother to pay four hundred eighty dollars (\$480.00) per month in **child support**; the figures of five hundred dollars (\$500.00) and four hundred eighty dollars (\$480.00) were not supported by any evidence in the record on appeal and, despite the absence of mother's financial records, the judge could have determined the **child's** reasonable needs through evidence offered by father; however, the figures the judge arrived at were unsupported by father's testimony, and were not supported by any of the previous orders entered in the case. *Correll v. Allen*, 94 N.C. App. 464, 380 S.E.2d 580 (1989).

REDUCTION OF INCOME ON RETURN TO SCHOOL. --Trial court erred in concluding reduction in income of father, custodial parent, due to leaving employment to return to school, could not be considered on motion to increase plaintiff's **child support** obligations. *Fischell v. Rosenberg*, 90 N.C. App. 254, 368 S.E.2d 11 (1988).

ACCUSTOMED STANDARD OF LIVING. --Where the trial court unequivocally disregarded the principle that the accustomed standard of living is a factor to be considered and, instead based alimony on the standard of living the parties maintained after the divorce there was prejudicial error. *Barham v. Barham*, 127 N.C. App. 20, 487 S.E.2d 774 (1997), *aff'd*, 347 N.C. 570, 494 S.E.2d 763 (1998).

CHANGE IN CIRCUMSTANCES NOT SHOWN. --Where the trial court found that defendant voluntarily quit his job, willfully and intentionally depressed his income, and failed to meet his burden of proof in showing a substantial change of circumstances, the court entered a judgment against defendant denying his motion to reduce **child support** by reason of substantial change of circumstances. *Askew v. Askew*, 119 N.C. App. 242, 458 S.E.2d 217 (1995).

B. EFFECT OF SEPARATION AGREEMENTS, CONSENT JUDGMENTS AND ARBITRATION AWARDS.

SEPARATION AGREEMENTS ARE NOT BINDING ON THE COURT. --Valid separation agreements, including consent judgments with respect to marital rights based on such agreements, are not final and binding as to the amount to be provided for the **support** and education of minor children. *Hinkle v. Hinkle*, 266 N.C. 189, 146 S.E.2d 73 (1966), decided under former § 50-13.

Valid separation agreements relating to marital and property rights of the parties are not final and binding as to the custody of minor children or as to the amount to be provided for the **support** and education of such minor children. *Perry v. Perry*, 33 N.C. App. 139, 234 S.E.2d 449, cert. denied, 292 N.C. 730, 235 S.E.2d 784 (1977).

AND CANNOT DEPRIVE THE COURT OF ITS AUTHORITY. --Separation agreement dealing with the custody and the **support** of the children of the parties cannot deprive the court of its inherent as well as statutory authority to protect the interests of and provide for the welfare of minors. *McKaughn v. McKaughn*, 29 N.C. App. 702, 225 S.E.2d 616 (1976).

While the court cannot relieve parent of any contractual obligation he assumed to **support his child** in excess of what the law would require, it can, in the exercise of its inherent and statutory authority to provide for the welfare of minors, order payment of an amount either larger or smaller than that provided for in separation agreement. *Bottomley v. Bottomley*, 82 N.C. App. 231, 346 S.E.2d 317 (1986).

ARBITRATION AWARDS ALSO REMAIN REVIEWABLE AND MODIFIABLE. --Just as parents cannot by agreement deprive the courts of their duty to promote the best interests of their children, they cannot do so by arbitration. Hence those provisions of an arbitration award concerning custody and **child support**, like those provisions in a separation agreement, will remain reviewable and modifiable by the court. *Crutchley v. Crutchley*, 306 N.C. 518, 293 S.E.2d 793 (1982).

COURT RETAINS JURISDICTION DESPITE **SUPPORT** PROVISIONS OF SEPARATION AGREEMENT OR ARBITRATION AWARD. --While the amount of **child support** agreed on by the parties to a separation agreement is presumed, in the absence of evidence to the contrary, to be just and reasonable, it remains within the authority of the courts pursuant to this Chapter to order payments for **support** in such amounts as will meet the reasonable needs of the **child** for health, education and maintenance, having due regard to the estates, earnings, conditions, and accustomed standard of living of the **child** and the parties, the **child** care and homemaker contributions of each party, and other facts of the particular case. The same reasoning applies to an arbitration award concerning **child support**. *Crutchley v. Crutchley*, 306 N.C. 518, 293 S.E.2d 793 (1982).

BUT SEPARATION AGREEMENTS AND CONSENT JUDGMENTS CANNOT BE IGNORED. --Provisions of a valid separation agreement, including a consent judgment based thereon, cannot be ignored or set aside by the court without the consent of the parties. *Hinkle v. Hinkle*, 266 N.C. 189, 146 S.E.2d 73 (1966), decided under former § 50-13.

A valid separation agreement cannot be ignored or set aside by the court without the consent of the parties. *Winborne v. Winborne*, 41 N.C. App. 756, 255 S.E.2d 640, cert. denied, 298 N.C. 305, 259 S.E.2d 918 (1979).

LEVEL OF **SUPPORT** IN SEPARATION AGREEMENT IS ONLY ONE FACTOR IN DECISION. --When a trial court is called upon for the first time to determine the appropriate level of **child support** payments agreed upon in separation agreements, the "presumption" of reasonableness of the agreed upon level of **support** in such cases is one of evidence only; that is, the agreed upon level of **support** constitutes some evidence of the appropriate level of **support**, but that this evidence must be weighed and considered by the trial court together with all other relevant and competent evidence bearing upon the statutory factors set out in subsection (c) of this section; in other words, the trial court is writing upon a clean slate, and the previously agreed upon level of **support** is but one factor to be considered. *Morris v. Morris*, 92 N.C. App. 359, 374 S.E.2d 441 (1988).

WHEN AGREEMENT MAY BE MODIFIED. --A separation agreement is a contract between the parties, and the court is without power to modify it except (1) to provide for adequate **support** for minor children, and (2) with the mutual consent of the parties thereto where rights of third parties have not intervened. *McKaughn v. McKaughn*, 29 N.C. App. 702, 225 S.E.2d 616 (1976).

AMOUNT SET BY AGREEMENT IS PRESUMPTIVELY JUST AND REASONABLE. --Where parties to a separation agreement agree upon the amount for the **support** and maintenance of their minor children, there is a presumption, in the absence of evidence to the contrary, that the amount mutually agreed upon is just and reasonable. *Fuchs v. Fuchs*, 260 N.C. 635, 133 S.E.2d 487 (1963); *Winborne v. Winborne*, 41 N.C. App. 756, 255 S.E.2d 640, cert. denied, 298 N.C. 305, 259 S.E.2d 918 (1979).

AND MAY NOT BE CHANGED ABSENT CHANGE IN CONDITIONS. --Where parties to a separation agreement agree concerning the **support** and maintenance of their minor children, there is a presumption, in the absence of evidence to the contrary, that the provisions mutually agreed upon are just and reasonable, and the court is not warranted in ordering a change in the absence of any evidence of a change in conditions. *McKaughn v. McKaughn*, 29 N.C. App. 702, 225 S.E.2d 616 (1976).

OR ABSENT NEED FOR INCREASE. --Where parties to a separation agreement agree upon the amount for the **support** and maintenance of their minor children, there is a presumption, in the absence of evidence to the contrary, that the amount mutually agreed upon is just and reasonable. Upon motion, a trial court may not order an increase in the absence of any evidence of a change in conditions or of the need for such increase, particularly when the increase is awarded solely on grounds that the father's income has increased so that he is able to pay a larger amount. *Dishmon v. Dishmon*, 57 N.C. App. 657, 292 S.E.2d 293 (1982).

CHILD REFERRED TO IN CONSENT JUDGMENT IS UNDER PROTECTIVE CUSTODY OF COURT. --Even though an order requiring father to make payments for the **support of his child** was entered by consent of the parents, the **child** was under the protective custody of the court. *Smith v. Smith*, 247 N.C. 223, 100 S.E.2d 370 (1957), rev'd on other grounds, 248 N.C. 298, 103 S.E.2d 400 (1958).

THE EFFECT OF AN ORDER SETTING A LESSER AMOUNT OF **CHILD SUPPORT** THAN THAT PROVIDED FOR BY SEPARATION AGREEMENT is not to deprive the custodial parent of her contractual right to recover the sums provided for in the agreement, but to limit her contempt remedy to the sums provided for by the court order. *Bottomley v. Bottomley*, 82 N.C. App. 231, 346 S.E.2d 317 (1986).

RIGHT OF PARTY TO SEPARATION AGREEMENT TO BRING ACTION. --When a case is properly before it, the court has the duty to award custody in accordance with the best interests of the **child**, and no agreement, consent or condition between the parents can interfere with this duty or bind the court. Thus, the existence of a valid separation agreement containing provisions relating to the custody and **support** of minor children does not prevent one of the parties to the agreement from instituting an action for a judicial determination of those same matters. *Winborne v. Winborne*, 41 N.C. App. 756, 255 S.E.2d 640, cert. denied, 298 N.C. 305, 259 S.E.2d 918 (1979).

The existence of a valid separation agreement relating to **child support** or custody does not prevent one of the parties from instituting an action for a judicial determination of those same matters. *Powers v. Parisher*, 104 N.C. App. 400, 409 S.E.2d 725 (1991), appeal dismissed, 331 N.C. 286, 417 S.E.2d 254 (1992).

AS TO EFFECT OF RECONCILIATION AND RESUMPTION OF COHABITATION ON A SEPARATION AGREEMENT, see *Hand v. Hand*, 46 N.C. App. 82, 264 S.E.2d 597, cert. denied, 300 N.C. 556, 270 S.E.2d 107 (1980).

NO OBLIGATION TO **SUPPORT CHILD** PAST MAJORITY DESPITE DISABILITY. --Where mother's testimony offered at the hearing showed that son was 18 years old, had graduated from high school, had a part-time job, and was attempting to raise money to go to college, and mother further testified that son was not a normal 18 year old since he was involved in a wreck, trial court was without authority to order father to pay **child support** arrearages of five hundred dollars (\$500.00); the evidence showed that pursuant to subdivision (c)(2) of this section, defendant was relieved of any obligation to **support** his son after his graduation from high school on June 5, 1988, and even if mother's evidence was sufficient to show that son was physically or mentally incapable of self-**support**, there was no longer a statutory obligation for parents to **support** their disabled adult children. *State v. Benfield*, 95 N.C. App. 451, 382 S.E.2d 776 (1989).

OBLIGATION TO PAY IS INDEPENDENT OF COMPLIANCE WITH UNRELATED PROVISIONS IN AGREEMENT. --The duty of a parent to pay **child support** as agreed to in a separation agreement will not be excused because the other parent does not comply with other provisions of the separation agreement unrelated to the financial **support** of the children. *Nisbet v. Nisbet*, 102 N.C. App. 232, 402 S.E.2d 151, cert. denied, 329 N.C. 499, 407 S.E.2d 538 (1991).

Defendant's obligation to pay **child support** as provided in the separation agreement is not dependent upon plaintiff's compliance with visitation, nonharassment, or noncohabitation provisions in the same agreement. To hold otherwise would punish the children for the misbehavior of a parent. *Nisbet v. Nisbet*, 102 N.C. App. 232, 402 S.E.2d 151, cert. denied, 329 N.C. 499, 407 S.E.2d 538 (1991).

IV. TERMINATION OF OBLIGATION.

A. IN GENERAL.

WHEN LEGAL OBLIGATION TO **SUPPORT CHILD** ENDS. --The statutes concerning **child support** all use the term "minor," "minor **child**" or "minor children," never referring to age 21. Therefore, in substituting the new meaning of "minor" provided by Chapter 48A into the statutes, the legal obligation to **support** one's **child** ends at age 18, absent a showing that the **child** is insolvent, unmarried and physically or mentally incapable of earning a livelihood as contemplated by G.S. 50-13.8. *Crouch v. Crouch*, 14 N.C. App. 49, 187 S.E.2d 348, cert. denied, 281 N.C. 314, 188 S.E.2d 897 (1972).

In the absence of an enforceable contract otherwise obligating a parent, North Carolina courts have no authority to order **child support** for a **child** who has attained the age of majority, unless the **child** has not completed secondary schooling, or, pursuant to G.S. 50-13.8, the **child** is mentally or physically incapable of self-**support**. *Bridges v. Bridges*, 85 N.C. App. 524, 355 S.E.2d 230 (1987); *Pieper v. Pieper*, 90 N.C. App. 405, 368 S.E.2d 422, aff'd, *Ellinwood v. Ellinwood*, 88 N.C. App. 119, 362 S.E.2d 584 (1987).

EFFECT OF ONE OF SEVERAL CHILDREN REACHING AGE 18. --While **child support** obligations ordered by a court terminate upon the **child** reaching age 18, unless the **child** is otherwise emancipated prior to reaching age 18 or the trial court in its discretion continues to enforce the payment obligation after the **child** reaches age 18 and while the **child** is in primary or secondary school, when one of two or more minor children for whom **support** is ordered reaches age 18, and when the **support** ordered to be paid is not allocated as to each individual **child**, the supporting parent has no authority to unilaterally modify the amount of the **child support** payment. The supporting parent must apply to the trial court for modification. *Craig v. Craig*, 103 N.C. App. 615, 406 S.E.2d 656 (1991).

Cases holding that where one of two minor children reaches the age of 18, a trial court may retroactively modify **child support** arrearages when equitable considerations exist which would create an injustice if modification is not allowed were decided before G.S. 50-13.10 became effective on October 1, 1987. Under this statute, if the supporting party is not disabled or incapacitated, a past due, vested **child support** payment is subject to divestment only as provided by law, and if, but only if, a written motion is filed and due notice is given to all parties before the payment is due. *Craig v. Craig*, 103 N.C. App. 615, 406 S.E.2d 656 (1991).

SUPPORT IMPROPERLY TERMINATED. --Where father unilaterally terminated **child support** payments after his son reached the age of 18 and had failed to make satisfactory progress towards graduation from high school, the **support** payments were improperly terminated. *Leak v. Leak*, 129 N.C. App. 142, 497 S.E.2d 702 (1998), cert. denied, 348 N.C. 498, 510 S.E.2d 385 (1998).

"MINOR **CHILD**" UNDER PRIOR LAW. --Before the enactment of Chapter 48A, it was evident that the meaning of "minor **child**" within the purview of the custody and **support** statutes contemplated the common-law age of majority, age 21. *Shoaf v. Shoaf*, 14 N.C. App. 231, 188 S.E.2d 19, rev'd on other grounds, 282 N.C. 287, 192 S.E.2d 299 (1972).

✚B. EFFECT OF SEPARATION AGREEMENT, CONSENT JUDGMENT, ETC.

A PARENT MAY CONTRACT TO **SUPPORT** HIS OR HER CHILDREN PAST THE AGE OF MAJORITY, and the court has power to enforce such a contract just as it would any other. *Harding v. Harding*, 46 N.C. App. 62, 264 S.E.2d 131 (1980).

BUT COURT CANNOT ENLARGE ON SUCH OBLIGATION. --Since the duty to **support** after the age of majority arises in contract, the court may not enlarge upon the obligation agreed to by the parties. *Harding v. Harding*, 46 N.C. App. 62, 264 S.E.2d 131 (1980).

Any attempt by the court to enlarge upon the obligation arising under contract by extending the duty of **support** beyond the age of majority would be void for lack of subject matter jurisdiction. *Harding v. Harding*, 46 N.C. App. 62, 264 S.E.2d 131 (1980).

CONSENT JUDGMENT PROVIDING FOR **SUPPORT** UNTIL MAJORITY. --A father's legal liability for the **support** of his son born on January 13, 1953, by reason of a consent judgment dated June 11, 1970, providing that payments for **child support** should continue until such time as said minor **child** reached his majority or was otherwise emancipated, would not continue until his son became 21 years of age. *Shoaf v. Shoaf*, 282 N.C. 287, 192 S.E.2d 299 (1972).

✚VI. SEPARATE IDENTIFICATION OF ALLOWANCES.

ALLOWANCES TO BE SEPARATED. --The allowances to be separated in the order, as required by subsection (e) of this section, are the **support** payments for the minor **child** or children and the amounts ordered for alimony or alimony pendente lite. *Brooks v. Brooks*, 12 N.C. App. 626, 184 S.E.2d 417 (1971).

COURT NEED NOT DESIGNATE AMOUNTS FOR EACH **CHILD**. --Subsection (e) of this section does not require the trial court to designate the amount of **support** payments for each **child**, although such designation may prove helpful to simplify any future adjustments or modifications. *Brooks v. Brooks*, 12 N.C. App. 626, 184 S.E.2d 417 (1971).

FAILURE TO IDENTIFY PURPOSE OF **SUPPORT** AS HEALTH, EDUCATION AND MAINTENANCE IS NOT ERROR. --The better practice is for the court's order to relate that the payment ordered under this section is the amount necessary to meet the reasonable needs of the **child** for health, education, and maintenance, but the failure of the court to do so does not constitute reversible error. *Andrews v. Andrews*, 12 N.C. App. 410, 183 S.E.2d 843 (1971); *Martin v. Martin*, 35 N.C. App. 610, 242 S.E.2d 393, cert. denied, 295 N.C. 261, 245 S.E.2d 778 (1978).

FAILURE TO SEPARATE ALLOWANCES HELD ERROR. --The trial court erred in failing to separately state and identify the allowances for alimony pendente lite and **child support** as required by subsection (e) of this section. *Manning v. Manning*, 20 N.C. App. 149, 201 S.E.2d 46 (1973).

✚VII. FINDINGS AND CONCLUSIONS.

JUDGE MUST MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW. --In setting amounts for **child support**, where the trial court sits without a jury, the judge is required to find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment. *Dishmon v. Dishmon*, 57 N.C. App. 657, 292 S.E.2d 293 (1982); *Gibson v. Gibson*, 68 N.C. App. 566, 316 S.E.2d 99 (1984).

The requirements for findings of fact applicable to orders for alimony are also applicable to the determination of reasonable and adequate **child support**. *Gebb v. Gebb*, 77 N.C. App. 309, 335 S.E.2d 221 (1985).

THE PURPOSE OF THE REQUIREMENT THAT THE COURT MAKE FINDINGS of those specific facts which **support** its ultimate disposition of the case is to allow a reviewing court to determine from the record whether the judgment, and the legal conclusions which underlie it, represent a correct application of the law. *Gibson v. Gibson*, 68 N.C. App. 566, 316 S.E.2d 99 (1984).

Effective appellate review of an order entered by a trial court sitting without a jury is largely dependent upon the specificity by which the order's rationale is articulated. Evidence must **support** findings; findings must **support** conclusions; conclusions must **support** the judgment. *Gibson v. Gibson*, 68 N.C. App. 566, 316 S.E.2d 99 (1984).

REMAND FOR FURTHER FINDINGS. --The findings of fact in a case for **child support**, were insufficient to determine whether the trial court gave due regard to the estates of the parties and the case must be remanded for further findings on this matter, even though there was ample evidence contained in the record about the estates of both parties. *Sloan v. Sloan*, 87 N.C. App. 392, 360 S.E.2d 816 (1987).

Case was remanded for additional fact-finding where the district court failed to identify the presumptive amount of **support** due under the **Guidelines** and where there was no analysis of the reasonable needs of the two minor children, other than a finding that plaintiff's **child** care costs for one of the children was reasonable. *Rowan County DSS v. Brooks*, 135 N.C. App. 776, 522 S.E.2d 590 (1999).

Trial court erred by failing to explain in its findings of fact why it did not award **child support** from the time of the filing of the paternity and **child support** complaint; judgment was reversed and case was remanded to trial court for further findings. *State ex rel. Miller v. Hinton*, 147 N.C. App. 700, 556 S.E.2d 634 (2001).

Trial court was required to conduct a hearing when the trial court neither made findings related to the needs of the children at the time of a modification hearing nor concluded whether the presumption of reasonableness in a separation agreement was rebutted. *Pataky v. Pataky*, 160 N.C. App. 289, 585 S.E.2d 404 (2003), *aff'd*, 359 N.C. 65, 602 S.E.2d 360 (2004).

A case involving a motion to modify **child support** under G.S. 50-13.7, was remanded for further findings of fact because, in entering an order deviating from the North Carolina **Child Support Guidelines**, the trial court did not make sufficient findings of fact regarding the reasonable needs of the children; the order only made findings regarding health insurance and the fact that the children did not need private schooling. *Beamer v. Beamer*, 169 N.C. App. 594, 610 S.E.2d 220 (2005).

CONTENTS OF FINDINGS. --There are no set **guidelines** as to what the findings of fact concerning the needs of the minor children must contain. The appellate courts of this State require only that the findings be based on competent evidence as to what the needs of the children are, and that such findings sustain the conclusion that the **support** payments ordered are in such amount as to meet the reasonable needs of the **child**. *Byrd v. Byrd*, 62 N.C. App. 438, 303 S.E.2d 205 (1983).

FINDINGS MUST BE SPECIFIC. --Where the trial court sits without a jury, the judge is required to make factual findings specific enough to indicate to the appellate court that due regard was taken of the factors enumerated in this section. *Byrd v. Byrd*, 62 N.C. App. 438, 303 S.E.2d 205 (1983).

In orders of **child support**, the court should make findings of specific facts (e.g. incomes, estates) to **support** a conclusion as to the relative abilities of the parties to provide **support**. *Steele v. Steele*, 36 N.C. App. 601, 244 S.E.2d 466 (1978).

Without findings relating to the parties' reasonable expenses, there is no basis for a determination as to the parties' relative abilities to provide the **support** necessary to meet the reasonable needs of the children. *Holderness v. Holderness*, 91 N.C. App. 118, 370 S.E.2d 602 (1988).

In order to determine the reasonable needs of the **child**, the trial court must hear evidence

and make findings of specific fact on the **child's** actual past expenditures and present reasonable expenses. *Holderness v. Holderness*, 91 N.C. App. 118, 370 S.E.2d 602 (1988).

Case would be remanded for additional findings regarding the income or loss, if any, of one of defendant's businesses where the trial court's order failed to reflect its treatment of these figures. *Cauble v. Cauble*, 133 N.C. App. 390, 515 S.E.2d 708 (1999).

AND MUST COVER FACTORS IN SUBSECTION (C). --The trial court must hear evidence on each of the factors listed in subsection (c) of this section and substantiate its conclusions of law by making findings of specific facts on each of the listed factors. *Newman v. Newman*, 64 N.C. App. 125, 306 S.E.2d 540, cert. denied, 309 N.C. 822, 310 S.E.2d 351 (1983).

Conclusions of law must be based upon factual findings specific enough to indicate to the appellate court that the judge below took due regard of the particular estates, earnings, conditions, and accustomed standard of living of both the **child** and the parents. *Dishmon v. Dishmon*, 57 N.C. App. 657, 292 S.E.2d 293 (1982); *Newman v. Newman*, 64 N.C. App. 125, 306 S.E.2d 540, cert. denied, 309 N.C. 822, 310 S.E.2d 351 (1983); *In re Botsford*, 75 N.C. App. 72, 330 S.E.2d 23 (1985); *Boyd v. Boyd*, 81 N.C. App. 71, 343 S.E.2d 581 (1986).

To **support** an award of payment for **support**, the judgment of the trial court should contain findings of fact which sustain the conclusion of law that the **support** payments ordered are in such amount as to meet the reasonable needs of the **child** for health, education and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the **child** and the parties, and other facts of the particular care. *Montgomery v. Montgomery*, 32 N.C. App. 154, 231 S.E.2d 26 (1977); *Poston v. Poston*, 40 N.C. App. 210, 252 S.E.2d 240 (1979); *Grimes v. Grimes*, 78 N.C. App. 208, 336 S.E.2d 664 (1985).

The trial court must make specific findings on each of the factors specified in subsection (c) of this section. In addition, the case law may require certain findings, as when the award is based on earning capacity rather than present income. Once the trial court has made such findings, they are conclusive if supported by any evidence, even if there is evidence contra. *Sloop v. Friberg*, 70 N.C. App. 690, 320 S.E.2d 921 (1984).

The trial judge must at least make findings sufficiently specific to indicate proper consideration of each of the factors established by subsection (c) of this section for a determination of **child support**. *Spencer v. Spencer*, 70 N.C. App. 159, 319 S.E.2d 636 (1984).

Orders for **child support** must be based upon the interplay of the trial court's conclusions of law as to the amount of **support** necessary to meet the reasonable needs of the **child** and the relative abilities of the parents to provide that amount. These conclusions must, in turn, be based upon factual findings sufficiently specific to indicate to the appellate court that the trial court took due regard of the estates, earnings, conditions and accustomed standard of living of both **child** and parents. *Little v. Little*, 74 N.C. App. 12, 327 S.E.2d 283 (1985).

To comply with subsection (c) of this section, the order for **child support** must be premised upon the interplay of the trial court's conclusions of law as to the amount of **support** necessary to meet the reasonable needs of the **child** and the relative ability of the parties to provide that amount. To **support** these conclusions of law, the court must also make specific findings of fact so that an appellate court can ascertain whether the judge below gave due regard to the facts of the particular case. Such findings are necessary to an appellate court's determination of whether the judge's order is sufficiently supported by competent evidence. Where the record discloses sufficient evidence to **support** the findings, it is not the Supreme Court's task to determine de novo the weight and credibility to be given the evidence contained in the record on appeal. *Plott v. Plott*, 313 N.C. 63, 326 S.E.2d 863 (1985).

Conclusions must be based upon factual findings sufficiently specific to indicate that the trial court took "due regard" of the factors enumerated in the statute. *Atwell v. Atwell*, 74 N.C. App. 231, 328 S.E.2d 47 (1985).

The trial court must hear evidence and make findings of fact on the parents' income, estates and present reasonable expenses to determine the parties' relative ability to pay. *Bottomley v. Bottomley*, 82 N.C. App. 231, 346 S.E.2d 317 (1986).

To comply with subsection (c), the trial court is required to make findings of fact with respect to the factors listed in the statute. *Holderness v. Holderness*, 91 N.C. App. 118, 370 S.E.2d 602 (1988).

FINDINGS MUST BE BASED UPON COMPETENT EVIDENCE, and it is not enough that there may be evidence, in the record sufficient to **support** findings which could have been made. The trial court must itself determine what pertinent facts are actually established by the evidence before it. *Atwell v. Atwell*, 74 N.C. App. 231, 328 S.E.2d 47 (1985).

ACTUAL PAST EXPENDITURES MUST BE FOUND. --To determine the amount of **support** necessary to meet the reasonable needs of the **child** for health, education and maintenance, the court must make findings of specific facts as to what actual past expenditures have been. *Warner v. Latimer*, 68 N.C. App. 170, 314 S.E.2d 789 (1984).

To determine the amount of **support** necessary to meet the reasonable needs of the **child** for health, education and maintenance (which are conclusions of law), the court must make findings of specific facts as to what actual past expenditures have been. Where past expenditures are below subsistence, due regard, of course, must be given to meeting the reasonable needs of the **child**. *Steele v. Steele*, 36 N.C. App. 601, 244 S.E.2d 466 (1978).

In order to determine the reasonable needs of the **child**, the trial court must hear evidence and make findings of specific fact on the **child's** actual past expenditures and present reasonable expenses. *Boyd v. Boyd*, 81 N.C. App. 71, 343 S.E.2d 581 (1986); *Bottomley v. Bottomley*, 82 N.C. App. 231, 346 S.E.2d 317 (1986).

CONCLUSION AS TO REASONABLENESS OF PERSONAL EXPENSES. --In a **child support** case, the trial court should be satisfied that personal expenses itemized in the parties' balance sheets are reasonable under all the circumstances before making a determination of need or liability, and though absence of a specific conclusion as to reasonableness will not necessarily be held for error, the better practice is for the order to contain such a conclusion. *Coble v. Coble*, 300 N.C. 708, 268 S.E.2d 185 (1980).

The determination of what portion of claimed expenses is reasonable, and what portion is unreasonable, in arriving at an amount necessary to meet the reasonable needs of the **child**, requires an exercise of judgment and is therefore not a question of fact but a conclusion of law. *Boyd v. Boyd*, 81 N.C. App. 71, 343 S.E.2d 581 (1986).

ERROR TO ORDER **SUPPORT** ABSENT APPROPRIATE FINDINGS. --Where the court does not make appropriate findings based on competent evidence as to what are the reasonable needs of the children for health, education and maintenance, it is error to direct payments for their **support**. *Hampton v. Hampton*, 29 N.C. App. 342, 224 S.E.2d 197 (1976); *Poston v. Poston*, 40 N.C. App. 210, 252 S.E.2d 240 (1979).

In a **child support** action, where the trial court failed to make findings as to the actual needs of the parties' minor **child** or the expenses of the parties, its order directing **child support** payments was erroneous. *Ingle v. Ingle*, 53 N.C. App. 227, 280 S.E.2d 460 (1981).

Appellate court reversed the trial court's judgment ordering a father who was in college to pay \$95 per month in **child support** because the trial court based its order on the father's earning capacity but did not find that the father was deliberately suppressing his income to avoid family responsibilities. *State v. Williams*, 163 N.C. App. 353, 593 S.E.2d 123 (2004).

WITHOUT FINDINGS RELATING TO THE PARTIES' REASONABLE EXPENSES, THERE IS NO BASIS FOR A DETERMINATION as to the relative abilities of the parents to provide the **support** necessary to meet the reasonable needs of the children. *Boyd v. Boyd*, 81 N.C. App. 71, 343 S.E.2d 581 (1986).

WHERE **CHILD SUPPORT** FOR DEFENDANT'S FIVE CHILDREN BY THREE DIFFERENT MOTHERS, set pursuant to the **guidelines**, amounted to 66% of his gross income, the trial court's duty was to determine whether this **support** exceeded the reasonable needs of each **child**, whether it was unjust or inappropriate, and whether defendant had "sufficient income

to maintain a minimum standard of living based on the 1997 federal poverty level for one person." *Buncombe County ex rel. Blair v. Jackson*, 138 N.C. App. 284, 531 S.E.2d 240 (2000).

AWARD OF REIMBURSEMENT FOR PAST SUPPORT. --The trial court must make specific factual findings to **support** not only an award of future **support** but also to **support** an award of reimbursement for past **support of the child**. *Buff v. Carter*, 76 N.C. App. 145, 331 S.E.2d 705 (1985).

FINDINGS AS TO SUPPRESSION OF INCOME. --The trial court erred in awarding **child support** based upon each party's "earning capacity" without any findings as to whether either party deliberately suppressed his or her income to avoid his or her **support** obligation. *Bowers v. Bowers*, 141 N.C. App. 729, 541 S.E.2d 508 (2001).

FINDING AS TO INCOME OF SUPPORTING SPOUSE. --Although a proper finding pertaining to the income of the supporting spouse must be based on present, as opposed to past, income, there is no rule that requires a specific finding as to the income of the supporting spouse on the precise date of the hearing. *Patton v. Patton*, 78 N.C. App. 247, 337 S.E.2d 607 (1985), rev'd in part on other grounds, 318 N.C. 404, 348 S.E.2d 593 (1986).

FINDINGS HELD INSUFFICIENT. --Where the trial did not make an assessment of the **child's** needs, and found that plaintiff's expenses exceeded her income and that her unwieldy credit card obligations were caused by defendant's failure to pay \$220 in **support** to her in a timely manner when she had custody of both children, the findings of fact were insufficient to **support** the conclusion that plaintiff should not be required to **support** her minor children; defendant's \$220 delinquency in **child support** payments did not mean that plaintiff's expenses were reasonable, and the trial judge made no findings upon which to conclude that defendant had the ability to **support** both children. *Payne v. Payne*, 91 N.C. App. 71, 370 S.E.2d 428 (1988).

Appellate court would remand case where the trial court failed to make findings as to what the **child support** amount would be under the applicable **Guidelines, as to the child's** reasonable needs, and as to whether the greater weight of the evidence established that application of the presumptive **Guidelines** amount would be "unjust or inappropriate." *Sain v. Sain*, 134 N.C. App. 460, 517 S.E.2d 921 (1999).

Trial court's finding that a husband was not under any other **child support** obligation pursuant to a court order or other written obligation flew in the face of the uncontroverted evidence presented at trial by both parties that was under a district court order to provide **child support** payments for a **child** born from his subsequent marriage; thus, the trial court's finding was not supported by competent evidence in the record, was not sufficient to establish that the trial court took due regard of defendant's estates, earnings, conditions and other facts of the particular case as required under G.S. 50-13.4(c), and the **child support** order was reversed. *Zaliagiris v. Zaliagiris*, 164 N.C. App. 602, 596 S.E.2d 285 (2004), cert. denied, 359 N.C. 643, 617 S.E.2d 662 (2005).

VIII. APPELLATE REVIEW.

STANDARD FOR REVIEWING CHILD SUPPORT ORDERS resembles that for reviewing awards of custody, in that the amount of **child support** allowed by the trial judge will be disturbed only when there is an abuse of discretion. *Dixon v. Dixon*, 67 N.C. App. 73, 312 S.E.2d 669 (1984).

SUPPORT AWARD WILL NOT BE DISTURBED ABSENT ABUSE OF DISCRETION. --The amount of **child support** awarded is in the discretion of the trial judge and will be disturbed only on a showing of abuse of that discretion. *Coggins v. Coggins*, 260 N.C. 765, 133 S.E.2d 700 (1963); *Swink v. Swink*, 6 N.C. App. 161, 169 S.E.2d 539 (1969); *Sawyer v. Sawyer*, 21

N.C. App. 293, 204 S.E.2d 224, cert. denied, 285 N.C. 591, 205 S.E.2d 723 (1974); Gibson v. Gibson, 24 N.C. App. 520, 211 S.E.2d 522 (1975); Wyatt v. Wyatt, 32 N.C. App. 162, 231 S.E.2d 42, aff'd, 35 N.C. App. 650, 242 S.E.2d 180 (1977); Minges v. Minges, 53 N.C. App. 507, 281 S.E.2d 88 (1981); Peters v. Elmore, 59 N.C. App. 404, 297 S.E.2d 154 (1982), cert. denied, 307 N.C. 577, 299 S.E.2d 651 (1983); Plott v. Plott, 65 N.C. App. 657, 310 S.E.2d 51 (1983); Warner v. Latimer, 68 N.C. App. 170, 314 S.E.2d 789 (1984).

The trial court's consideration of the factors contained in subsection (c) of this section is an exercise in sound judicial discretion, and if its findings are supported by competent evidence in the record, its determination as to the proper amount of **support** will not be disturbed on appeal. Boyd v. Boyd, 81 N.C. App. 71, 343 S.E.2d 581 (1986).

EVEN IF EVIDENCE IS CONFLICTING. --An order for **child support** is a question of fairness to all parties involved. It will not be disturbed on appeal absent an abuse of discretion by the trial judge, even if there is conflicting evidence. Evans v. Craddock, 61 N.C. App. 438, 300 S.E.2d 908 (1983).

In determining the amount of alimony and **child support** to be awarded, the trial judge must follow the requirements of this section. The amount is a reasonable subsistence, to be determined by the trial judge in the exercise of a judicial discretion from the evidence before him. His determination is reviewable, but it will not be disturbed in the absence of a clear abuse of discretion. Beall v. Beall, 290 N.C. 669, 228 S.E.2d 407 (1976).

FINDING OF ABILITY TO PAY IS CONCLUSIVE WHEN SUPPORTED BY EVIDENCE. --The trial court's discretion as to the amount of **child support** awarded is not absolute and unreviewable. The order must be based not only on the needs of the **child**, but also on the ability of the father to meet the needs. But where there is a finding of ability to pay, supported in the record by competent evidence, that finding will be conclusive. Wyatt v. Wyatt, 32 N.C. App. 162, 231 S.E.2d 42, aff'd, 35 N.C. App. 650, 242 S.E.2d 180 (1977).

REMAND FOR FURTHER FINDINGS. --Where the trial judge found that the reasonable expenses of **child** were "in excess of \$500," while the **child's** mother claimed that the **child's** expenses were \$855.16, and found the reasonable living expenses of the **child's** father to be \$800, rejecting his claimed figure of \$1,196.80, lack of findings as to what claimed expenses of the **child** or the father the court considered unreasonable would require the appellate court to vacate the order and remand the cause for further findings. Patterson v. Patterson, 81 N.C. App. 255, 343 S.E.2d 595 (1986).

FAILURE TO ASSIGN ERROR TO TRIAL COURT'S FINDINGS. --Trial court's consideration of a **child's** needs, the mother's share of those needs, and the father's contribution to those needs was found to have been reasonable and adequate under circumstances in which the father did not assign error to the trial court's findings; the trial court's finding that the amount in the parties' agreement was inadequate and thus did not influence the trial court's decision, or the trial court's total calculated reasonable expenses. Pascoe v. Pascoe, 183 N.C. App. 648, 645 S.E.2d 156 (2007).

PRESUMPTION ALLOWING MODIFICATION. --The presumption, created in a 1994 revision, allowing modification of a **child support** order which is at least three years old, when there is a disparity of 15% or more between the amount of **support** payable under the original order and the amount owed based on the parties' current income and expenses, is within the scope of the legislative mandate to ensure adequate **child support** awards over time. Garrison v. Connor, 122 N.C. App. 702, 471 S.E.2d 644 (1996).

IX. REMEDIES.

A. IN GENERAL.

COURT HAS BROAD DISCRETION UNDER SUBSECTION (E). --The court is not limited to ordering one method of payment, to the exclusion of the others provided in subsection (e) of this section. The legislature's use of the disjunctive and the phrase "as the court may order" shows that the court is to have broad discretion in providing for payment of **child support** orders. *Moore v. Moore*, 35 N.C. App. 748, 242 S.E.2d 642 (1978).

AND ITS REMEDIES HAVE BEEN EXPANDED. --The broad language of this statute suggests that the legislature intended to expand, not limit, the trial court's remedies in enforcing payment of **child support**. *Griffin v. Griffin*, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

THE ENFORCEMENT PROVISIONS UNDER SUBSECTION (F) OF THIS SECTION ARE NOT MUTUALLY EXCLUSIVE. *Griffin v. Griffin*, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

NOR ARE THE PAYMENT PROVISIONS. --The methods of payment listed in this section are not mutually exclusive. *Warner v. Latimer*, 68 N.C. App. 170, 314 S.E.2d 789 (1984).

The trial court has broad discretion under subsection (e) of this section in providing for payment of **child support**. *Griffin v. Griffin*, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

CREATION OF SAVINGS ACCOUNT FOR USE OF CHILDREN. --In an action for **child support**, the court was without the power to, in effect, attempt to create a savings account for the use of the children after they reached the age of 18. *Parrish v. Cole*, 38 N.C. App. 691, 248 S.E.2d 878 (1978).

RECEIPT OF **SUPPORT** MAY NOT BE CONDITIONED ON VISITATION. --A trial judge does not have authority to condition a minor **child's** receipt of **support** paid by the noncustodial parent on compliance with court-ordered visitation allowed the noncustodial parent by ordering that **child support** paid by defendant be placed in escrow if minor **child** fails or refuses to abide by the visitation privileges allowed defendant. *Appert v. Appert*, 80 N.C. App. 27, 341 S.E.2d 342 (1986).

CHILD SUPPORT MAY NOT BE OFFSET BY EQUITABLE DISTRIBUTION JUDGMENT OR OTHER OBLIGATIONS. --Defendant was not entitled to a "credit" against his future **child support** payments for the \$12,435.50 he paid over and above his court-ordered obligation or for the \$500.00 plaintiff owed him as a result of an equitable distribution judgment; **child support** obligations may not be offset by other obligations. *Brinkley v. Brinkley*, 135 N.C. App. 608, 522 S.E.2d 90 (1999).

COURT HAD NO AUTHORITY TO ORDER PAYMENT OF SOCIAL SECURITY BENEFITS DIRECTLY TO MOTHER. --A North Carolina district court had no authority to order the Social Security Administration and defendant father, a representative payee receiving Social Security disability payments for the benefit of his children, to pay those benefits directly to plaintiff mother. *Brevard v. Brevard*, 74 N.C. App. 484, 328 S.E.2d 789 (1985).

DEFENDANT DID NOT WAIVE HIS RIGHT TO **SUPPORT** by failing to schedule notice of a hearing on the issue prior to **child's** emancipation; trial court was incorrect in its presumption that because the issue of custody had become moot, it could not address the issue of **support**. *Freeman v. Freeman*, 103 N.C. App. 801, 407 S.E.2d 262 (1991).

B. SECURITY.

NONRESIDENT DEFENDANT MAY BE REQUIRED TO POST BOND. --Under subsection (f)(1) of this section and G.S. 50-16.7(b), the court properly required supporting spouse to post a security bond to secure his compliance with a judgment requiring him to make monthly payments for the **support** of his wife and children, where the court found that defendant no

longer resided within the State and that he had no attorney of record in the case. *Parker v. Parker*, 13 N.C. App. 616, 186 S.E.2d 607 (1972).

C. AWARD OF PROPERTY.

AWARD OF HOME. --The award of the homeplace does not constitute a writ of possession within the meaning of G.S. 50-17, and the trial judge may award exclusive possession of the homeplace, even though it is owned by the entirety, as a part of the **support** under this section. *Arnold v. Arnold*, 30 N.C. App. 683, 228 S.E.2d 48 (1976); *Rogers v. Rogers*, 39 N.C. App. 635, 251 S.E.2d 663 (1979).

The General Assembly has made statutory provisions in subdivision (f)(2) of this section for awarding possession of a home as a part of **child support**. This is true without regard to whether the parties are divorced. To the extent that the General Assembly's will, as expressed in this section, conflicts with the common-law principle that the husband is entitled to exclusive possession of entirety property, the common law has been abrogated and supplanted. *Martin v. Martin*, 35 N.C. App. 610, 242 S.E.2d 393, cert. denied, 295 N.C. 261, 245 S.E.2d 778 (1978).

D. ATTACHMENT AND GARNISHMENT.

FOR CASE UPHOLDING GARNISHMENT OF FATHER'S INCOME FROM ALLEGED "SPENDTHRIFT" TRUST created in another jurisdiction and administered by a trustee bank in this State to satisfy judgment of mother against father for alimony, **child support** and counsel fees, see *Swink v. Swink*, 6 N.C. App. 161, 169 S.E.2d 539 (1969).

IT WAS NOT ERROR FOR TRIAL COURT TO ENTER ORDER TO WITHHOLD PLAINTIFF'S WAGES to collect **child support** arrearages that had been reduced to judgment. *Griffin v. Griffin*, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

E. RECOVERY OF PAST DUE PAYMENTS.

THE SOLE LIMITATION ON A PARTY'S RIGHT TO REIMBURSEMENT for documented past **support** expenditures is imposed by G.S. 1-52(2), which limits recovery to those expenditures incurred within three years before the date the action for **support** is filed. *Freeman v. Freeman*, 103 N.C. App. 801, 407 S.E.2d 262 (1991).

EFFECT OF SUBDIVISION (F)(8). --The portion of subdivision (f)(8) of this section following the semicolon does not constitute an election of remedies. Nor it is true that once arrearages are reduced to judgment the party attempting to collect the judgment is limited to the execution procedures provided by G.S. 1-302. *Griffin v. Griffin*, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

REDUCTION TO JUDGMENT. --A parent having custody of a minor **child** may institute an action for the **support of such child**, and once an order for **support** has been obtained, the past due payments may be reduced to judgment by motion in the cause. *Griffith v. Griffith*, 38 N.C. App. 25, 247 S.E.2d 30, cert. denied, 296 N.C. 106, 249 S.E.2d 804 (1978).

AFTER **CHILD** REACHES MAJORITY. --The fact that a **child** becomes 18 years of age does not prevent the parent having custody from having the past due payments which accrued while the **child** was a minor reduced to judgment. *Griffith v. Griffith*, 38 N.C. App. 25, 247 S.E.2d 30, cert. denied, 296 N.C. 106, 249 S.E.2d 804 (1978).

NOTICE. --The defendant in an action for unpaid **child support** could not complain of

inadequate notice of the plaintiff's motion to reduce to judgment **support** payments alleged to be in arrears where the defendant's attorney of record was properly served with notice. *Griffith v. Griffith*, 38 N.C. App. 25, 247 S.E.2d 30, cert. denied, 296 N.C. 106, 249 S.E.2d 804 (1978).

F. RETROACTIVE **SUPPORT** AND REIMBURSEMENT.

RETROACTIVE DISTINGUISHED FROM PROSPECTIVE. --**Child support** awarded prior to the time a party files a complaint is properly classified as retroactive **child support** and is determined by considering reasonably necessary expenditures made on behalf of the **child** by the party seeking retroactive **child support** and the defendant's ability to pay during the period in the past for which reimbursement is sought; **child support** awarded from the time a party files a complaint for **child support** to the date of trial is not "retroactive **child support**," but is in the nature of prospective **child support** representing that period from the time a complaint seeking **child support** is filed to the date of trial. *Taylor v. Taylor*, 118 N.C. App. 356, 455 S.E.2d 442 (1995), rev'd on other grounds, 343 N.C. 50, 468 S.E.2d 33 (1996).

Although prospective **child support** based upon the presumptive **guidelines** requires no factual findings regarding the **child's** reasonable needs or the supporting parent's ability to pay, the trial court must set out specific findings of fact in a reimbursement award for retroactive **support**. *Biggs v. Greer*, 136 N.C. App. 294, 524 S.E.2d 577 (2000).

Trial court's award of **child support** was not retroactive in nature because prior consent order was not intended as a final determination on the issue of **child support**; thus, under G.S. 50-13.4(c), the trial court properly followed the **guidelines** in awarding prospective **child support**. *Cole v. Cole*, 149 N.C. App. 427, 562 S.E.2d 11 (2002).

CLAIM FOR RETROACTIVE **CHILD SUPPORT**. --Not only may an action be brought to collect **child support** payments in arrears, but a claim for retroactive **child support** may be brought under this section. *Warner v. Latimer*, 68 N.C. App. 170, 314 S.E.2d 789 (1984).

RETROACTIVE **CHILD SUPPORT** IS BASED SOLELY on amount actually expended for **support** of minor children during time period in question. *Cohen v. Cohen*, 100 N.C. App. 334, 396 S.E.2d 344 (1990).

"EMERGENCY SITUATION" MUST BE SHOWN. --**Child support** reimbursement, or **child support** governing a period prior to a motion to increase an existing **child support** order, would constitute retroactive **child support** and would not be based on the presumptive **guidelines**. Therefore, a **child support** payment order may not be retroactively increased without evidence of some emergency situation that required the expenditure of sums in excess of the amount of **child support** paid. *Biggs v. Greer*, 136 N.C. App. 294, 524 S.E.2d 577 (2000).

REASONABLE NECESSITY AND ABILITY TO PAY MUST BE CONSIDERED. --When a trial court is faced with calculating a retroactive **child support** award, it must consider, among other things, whether what was actually expended was "reasonably necessary" for the **child's support** and the defendant's ability to pay during the time for which reimbursement is sought. *Buff v. Carter*, 76 N.C. App. 145, 331 S.E.2d 705 (1985).

RETROACTIVE **SUPPORT** FOR PRIVATE SCHOOLING DENIED. --Award of additional retroactive **child support** for private schooling was denied where the trial court's limited findings failed to set forth the existence of a "sudden emergency" so unusual or extraordinary as to require plaintiff to expend sums in excess of defendant's existing **support** obligation, and the court's order contained no findings reflective of defendant's ability to pay during the period the emergency expenses were allegedly incurred. *Biggs v. Greer*, 136 N.C. App. 294, 524 S.E.2d 577 (2000).

MEASURE OF LIABILITY FOR REIMBURSEMENT OF **SUPPORT** FUNDS EXPENDED. --Where there was no evidence or finding as to the actual amount expended by plaintiff for the **support** of the children for which she was entitled to reimbursement from defendant, what the defendant "should have paid" was not the measure of his liability to plaintiff. The measure of defendant's liability to plaintiff was the amount actually expended by plaintiff which represented the defendant's share of **support**. Hicks v. Hicks, 34 N.C. App. 128, 237 S.E.2d 307 (1977); Rawls v. Rawls, 94 N.C. App. 670, 381 S.E.2d 179 (1989).

NO REIMBURSEMENT FOR SHARE OF **SUPPORT** PAID BY COURT ORDER. --In an action by a mother for **child support**, mother was not entitled to be reimbursed for sums expended by her for the **support** of the children which represented her share of **support** as determined by the trial judge, considering the relative ability of the parties to provide **support**. Hicks v. Hicks, 34 N.C. App. 128, 237 S.E.2d 307 (1977).

MOTHER'S HOMEMAKING SERVICES CONSIDERED. --In determining father's share of the reasonable actual expenditures made by mother during the period for which retroactive **child support** is sought, the trial court must consider her **child** care and homemaking services rendered during this period. Lawrence v. Tise, 107 N.C. App. 140, 419 S.E.2d 176 (1992).

MOTHER NOT ENTITLED TO COMPENSATION FOR **SUPPORT** BY OTHERS. --In an action by a mother for **child support**, she was not entitled to be compensated for **support** for the children which was provided by others. Hicks v. Hicks, 34 N.C. App. 128, 237 S.E.2d 307 (1977).

EXTENT OF RECOVERY FOR PAST EXPENDITURES. --Assuming adequate proof of the expenditures under subsection (c) of this section, the plaintiff-mother could recover reimbursement for her past **support** expenditures (1) to the extent she paid the father's share of such expenditures, and (2) to the extent the expenditures occurred three years or less before August 8, 1986, the date she filed her claim for **child support**. Napowsa v. Langston, 95 N.C. App. 14, 381 S.E.2d 882, cert. denied, 325 N.C. 709, 388 S.E.2d 460 (1989).

ERROR WHERE COURT USED **GUIDELINES** INSTEAD OF ACTUAL EXPENDITURES. --Where, although the trial court made a finding on mother's actual expenditures during the period for which retroactive **support** was sought, the court instead based the retroactive **support** award on the **guidelines** in effect at the time the expenses were incurred by mother, this was error requiring reversal of the order of retroactive **support**. Lawrence v. Tise, 107 N.C. App. 140, 419 S.E.2d 176 (1992).

THE TRIAL COURT WAS UNDER NO OBLIGATION TO RENDER FINDINGS OF FACT where it did not deviate from the presumptive **guidelines**, but rather adjusted the **guideline** amounts to account, prospectively, for the extraordinary expense of private schooling. Biggs v. Greer, 136 N.C. App. 294, 524 S.E.2d 577 (2000).

WHERE THE TRIAL COURT ABUSED ITS DISCRETION IN CALCULATING PLAINTIFF'S INCOME and in failing to value plaintiff's estate, and erred in using the "retroactive **child support**" test for calculating prospective **child support**, case would be remanded. Taylor v. Taylor, 118 N.C. App. 356, 455 S.E.2d 442 (1995), rev'd on other grounds, 343 N.C. 50, 468 S.E.2d 33 (1996).

EVIDENCE HELD SUFFICIENT TO **SUPPORT** AWARD. --Where trial court specifically found that prior to filing action plaintiff expended at least four hundred dollars (\$400.00) per month for the **support** of the parties' **child** and that defendant had the capacity to pay one-half of this amount toward the **child's support** during this time, the findings were supported by the evidence and were binding on appeal; the trial court correctly awarded plaintiff

reimbursement for past **child support**. Rawls v. Rawls, 94 N.C. App. 670, 381 S.E.2d 179 (1989).

After the father had been found to be in contempt due to his failure to pay **child support**, the trial court made sufficient findings of fact to **support** an award of attorney's fees to the mother under G.S. 50-13.6, despite the fact that there was no finding that the mother was an interested party with insufficient means to defray the cost of the litigation; under G.S. 50-13.4(c), the children's ability to pay attorney's fees was at issue, not the mother's, and the mother was an interested party under G.S. 50-13.6, as she provided the financial **support** in the absence of the husband. Belcher v. Averette, 152 N.C. App. 452, 568 S.E.2d 630 (2002).

G. CONTEMPT.

EDITOR'S NOTE. --Some of the cases cited below were decided under subdivision (f)(9) of this section as it read prior to amendment in 1977. Prior to such amendment, subdivision (f)(9) provided for punishment as for contempt of the "willful disobedience" of an order for the payment of **child support**.

AGREEMENT OF PARTIES INCORPORATED IN JUDGMENT IS ENFORCEABLE BY CONTEMPT PROCEEDINGS. --Where, in wife's action for alimony and **child support**, the parties agreed to the terms of a judgment providing that husband would make specified monthly **support** payments, and the judgment entered by the court ordered husband to make the payments which he had agreed to make, husband's obligation to make the **support** payments could be enforced by contempt proceedings. Parker v. Parker, 13 N.C. App. 616, 186 S.E.2d 607 (1972).

WILLFULNESS IS REQUIRED UNDER SUBDIVISION (F)(9). --The element of willfulness is required for a finding of civil contempt under subdivision (f)(9) of this section and G.S. 5A-21. Jones v. Jones, 52 N.C. App. 104, 278 S.E.2d 260 (1981); Harris v. Harris, 91 N.C. App. 699, 373 S.E.2d 312 (1988).

PRIORITY OF G.S. 50-13.4(F)(8)-(9) OVER G.S. CH. 5A. --Because G.S. 50-13.4(f)(8)-(9) is more specific than the generalized contempt allowances set forth in G.S. ch. 5A, G.S. 50-13.4(f)(8)-(9) must control. Brown v. Brown, 171 N.C. App. 358, 615 S.E.2d 39 (2005), cert. denied, 360 N.C. 60, 621 S.E.2d 175 (2005).

AND ONLY WILLFUL DISOBEDIENCE MAY BE PUNISHED. --A failure to obey an order of a court cannot be punished by contempt proceedings unless the disobedience is willful, which imports knowledge and a stubborn resistance. Cox v. Cox, 10 N.C. App. 476, 179 S.E.2d 194 (1971).

TO CONSTITUTE WILLFUL DISOBEDIENCE THERE MUST BE AN ABILITY TO COMPLY with the court order and a deliberate and intentional failure to do so. Bennett v. Bennett, 21 N.C. App. 390, 204 S.E.2d 554 (1974).

One does not act willfully in failing to comply with a judgment if it has not been within his power to do so since the judgment was rendered. Cox v. Cox, 10 N.C. App. 476, 179 S.E.2d 194 (1971).

ABILITY TO PAY OR TO TAKE MEASURES TO DO SO REQUIRED. --Although an order for **child support** is enforceable by civil contempt proceedings, a supporting party cannot be held in contempt unless the party willfully failed to comply with the **support** order. A finding of willful failure to comply with the order requires evidence of the present ability to pay or to take reasonable measures to comply. Brower v. Brower, 75 N.C. App. 425, 331 S.E.2d 170 (1985).

CONTEMPT FOR VIOLATION BASED ON WILLFULNESS UPHELD. --Trial court acted correctly

when it exercised jurisdiction under this section and found defendant/husband in civil contempt, where he made a calculated and deliberate decision to pay a lower amount of **child support** than it had previously ordered. *Burnett v. Wheeler*, 133 N.C. App. 316, 515 S.E.2d 480 (1999).

TRIAL COURT MUST MAKE PARTICULAR FINDINGS OF ABILITY TO PAY. --In order to hold a parent in contempt for failure to pay **child support** in accordance with a decree, the failure must be willful. In order to find the failure willful, there must be particular findings of the ability to pay during the period of delinquency. *Goodson v. Goodson*, 32 N.C. App. 76, 231 S.E.2d 178 (1977).

In order to punish by contempt proceedings, the trial court must find as a fact that the defendant possessed the means to comply with orders of the court during the period when he was in default. *Cox v. Cox*, 10 N.C. App. 476, 179 S.E.2d 194 (1971).

There must be a specific finding of fact, supported by competent evidence, to the effect that defendant possesses the means to comply with the court order, before he can be incarcerated for contempt until compliance. *Bennett v. Bennett*, 21 N.C. App. 390, 204 S.E.2d 554 (1974); *Fitch v. Fitch*, 26 N.C. App. 570, 216 S.E.2d 734, cert. denied, 288 N.C. 240, 217 S.E.2d 679 (1975).

A DEFENDANT MAY NOT DELIBERATELY DIVEST HIMSELF OF HIS PROPERTY and in effect pauperize himself for appearance at a hearing for contempt and thereby escape punishment because he is at that time unable to comply with the court order. *Bennett v. Bennett*, 21 N.C. App. 390, 204 S.E.2d 554 (1974).

DEFENDANT'S VOLUNTARY PURGING OF ASSETS IN BANKRUPTCY was considered a deliberate divestment of assets; therefore, failure to comply with a **child support** order was willful and punishable by contempt proceedings. *Harris v. Harris*, 91 N.C. App. 699, 373 S.E.2d 312 (1988).

PAST CONTEMPT CANNOT BE IGNORED BY THE COURT even if at the exact time of the contempt hearing the defendant does not have the means to comply with the order for **child support**. *Bennett v. Bennett*, 21 N.C. App. 390, 204 S.E.2d 554 (1974).

CONTEMPT DECREE SET ASIDE FOR LACK OF FINDINGS. --Where the lower court had not found as a fact that defendant possessed the means to comply with the orders for payment of subsistence pendente lite at any time during the period when he was in default in such payments, the findings that defendant's failure to make the payments of subsistence was deliberate and willful was not supported by the record, and the decree committing him to imprisonment for contempt would be set aside. *Cox v. Cox*, 10 N.C. App. 476, 179 S.E.2d 194 (1971).

WHEN ORDER REDUCING **CHILD SUPPORT** ARREARS TO A MONEY JUDGMENT DOES NOT PROVIDE FOR PERIODIC PAYMENTS although the lower court's prior judgment reduced the father's **child support** arrearage to a money judgment, it did not provide for periodic payments so his failure to satisfy the arrearage was enforceable by execution under G.S. 1-302, and not civil contempt under G.S. 50-13.4(f)(8)-(9), so the lower court's judgment holding him in contempt was beyond its jurisdiction and was vacated. *Brown v. Brown*, 171 N.C. App. 358, 615 S.E.2d 39 (2005), cert. denied, 360 N.C. 60, 621 S.E.2d 175 (2005).

WHEN ORDER REDUCING **CHILD SUPPORT** ARREARS TO A MONEY JUDGMENT DOES NOT PROVIDE FOR PERIODIC PAYMENTS or other deadline for payment, it is not enforceable by contempt, and the trial court does not have jurisdiction to enter an order finding a defendant in contempt. *Brown v. Brown*, 171 N.C. App. 358, 615 S.E.2d 39 (2005), cert. denied, 360 N.C. 60, 621 S.E.2d 175 (2005).

FAILURE TO PAY COLLEGE EXPENSES. --Trial court properly found father in civil contempt

where he willfully failed to pay his daughters college expenses as he had contracted to do. *Ross v. Voiers*, 127 N.C. App. 415, 490 S.E.2d 244 (1997), cert. denied, 347 N.C. 402, 496 S.E.2d 387 (1997).

DEFENDANT NOT IN CONTEMPT. --Defendant was not in civil contempt of court in deducting from **child support** payments made to plaintiff amounts representing voluntary expenditures for needs of the parties' children while they were visiting him. *Jones v. Jones*, 52 N.C. App. 104, 278 S.E.2d 260 (1981).

REVIEW OF FACTS FOUND IN CONTEMPT PROCEEDINGS. --In proceedings for contempt, the facts found by the judge are not reviewable, except for the purpose of passing upon their sufficiency to warrant the judgment. *Cox v. Cox*, 10 N.C. App. 476, 179 S.E.2d 194 (1971).

PAYMENT OF COUNSEL FEES. --The court is vested with broad power when it is authorized to punish "as for contempt." This power includes the authority for a district court judge to require one whom he has found in willful contempt of court for failure to comply with a **child support** order to pay reasonable counsel fees to opposing counsel as a condition to being purged of contempt. *Blair v. Blair*, 8 N.C. App. 61, 173 S.E.2d 513 (1970).

INDEFINITE JAIL TERM. --When a defendant has the present means to comply with a court order and deliberately refuses to comply, there is a present and continuing contempt, and the court may commit such defendant to jail for an indefinite term, that is, until he complies with the order. *Bennett v. Bennett*, 21 N.C. App. 390, 204 S.E.2d 554 (1974); *Fitch v. Fitch*, 26 N.C. App. 570, 216 S.E.2d 734, cert. denied, 288 N.C. 240, 217 S.E.2d 679 (1975).

EFFECT OF DISMISSAL OF CONTEMPT ACTION WITHOUT EXPLANATION. --A dismissal of a contempt action, without explanation, at most signified that the supporting party was not in contempt as of that date and did not cancel the accrued **child support** debt; it merely forced the custodial parent or an authorized party to pursue one of the alternate remedies listed in subsection (f) to enforce the debt. *Brower v. Brower*, 75 N.C. App. 425, 331 S.E.2d 170 (1985).

AS TO EFFECT OF RECONCILIATION AND RESUMPTION OF COHABITATION ON A SEPARATION AGREEMENT, see *Hand v. Hand*, 46 N.C. App. 82, 264 S.E.2d 597, cert. denied, 300 N.C. 556, 270 S.E.2d 107 (1980).

FAILURE TO IDENTIFY PURPOSE OF SUPPORT AS HEALTH, EDUCATION AND MAINTENANCE IS NOT ERROR. --The better practice is for the court's order to relate that the payment ordered under this section is the amount necessary to meet the reasonable needs of the **child** for health, education, and maintenance, but the failure of the court to do so does not constitute reversible error. *Andrews v. Andrews*, 12 N.C. App. 410, 183 S.E.2d 843 (1971); *Martin v. Martin*, 35 N.C. App. 610, 242 S.E.2d 393, cert. denied, 295 N.C. 261, 245 S.E.2d 778 (1978).

APPEAL DID NOT DIVEST TRIAL COURT OF ENFORCEMENT JURISDICTION. --Notice of appeal from a trial court order requiring a husband to make payments pursuant to a **child support** order did not divest the trial court of jurisdiction to make an enforcement order finding the husband in contempt based on the exception to the divestment of the trial court's jurisdiction found in G.S.50-13.4(f)(9). *Guerrier v. Guerrier*, 155 N.C. App. 154, 574 S.E.2d 69 (2002).

OPINIONS OF THE ATTORNEY GENERAL

MEDICAL CHILD SUPPORT ENFORCEMENT PROVISIONS. --The medical **child support** enforcement provisions of House Bill 1563, 1993 (Reg. Sess., 1994), N.C. Session Laws c. 644, are inapplicable to the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan (now State Health Plan for Teachers and State Employees) and the

governmental entities whose employees and retirees, along with their dependents, are eligible for coverage under the Plan or its HMO option. Medical **child support** orders nonetheless may be enforced directly against State employees and retirees who fail to enroll, or maintain coverage for, their eligible dependent children under the State Health Plan in accordance with the provisions of G.S. 50-13.9, 50-13.11 and subsection (f) of this section. See opinion of Attorney General to Patricia Crawford, Associate General Counsel, University of North Carolina at Chapel Hill, -- N.C.A.G. -- (August 10, 1995).

USER NOTE: For more generally applicable notes, see notes under the first section of this subpart, part, article, or chapter.

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