

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 95-CA-00339 COA**

**CECIL MEDINA**

**APPELLANT**

**v.**

**TAMMY PARHAM MEDINA**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	03/01/95
TRIAL JUDGE:	HON. THOMAS L. ZEBERT
COURT FROM WHICH APPEALED:	RANKIN COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	J. DUDLEY WILLIAMS K. LEE MCENIRY
ATTORNEYS FOR APPELLEE:	RICHARD L. DUCOTE ELIZABETH ANN ODOM
NATURE OF THE CASE:	DOMESTIC RELATIONS - APPLICATION OF UNIFORM CHILD CUSTODY JURISDICTION ACT
TRIAL COURT DISPOSITION:	INVOKED JURISDICTION IN CHILD CUSTODY DISPUTE FIRST ADJUDICATED IN NORTH CAROLINA COURT PURSUANT TO UNIFORM CHILD CUSTODY JURISDICTION ACT
DISPOSITION:	AFFIRMED-11/18/97
MOTION FOR REHEARING FILED:	
12/03/1997	
CERTIORARI FILED:	
MANDATE ISSUED:	2/27/98

BEFORE THOMAS, P.J., COLEMAN, AND KING, JJ.

COLEMAN, J., FOR THE COURT:

On March 1, 1995, the Rankin County Chancery Court rendered its judgment by which it accepted jurisdiction over the issue of modification of the custody of Dakota Hunter Medina (Cody) pursuant to Section 93-23-5(1)(b) of the Mississippi Code of 1972, a part of the Uniform Child Custody Jurisdiction Act (UCCJA). Cody is the three-year-old son of the appellant, Cecil Medina, and the appellee, Tammy Parham Medina. Cecil Medina has appealed from this judgment to assert that the

chancery court improperly assumed jurisdiction in this case because Tammy Medina wrongfully brought Cody to Mississippi in violation of a valid custody order entered by a North Carolina court. Nevertheless, this Court affirms the judgment of the Rankin County Chancery Court.

## I. FACTS

Cecil Anthony Medina, a graduate of the United States Air Force Academy, met Tammy Parham, a resident of Amory, Mississippi, in 1986, when he was a student pilot stationed at Columbus Air Force Base. They married on January 16, 1988. The Air Force later assigned Captain Medina to Pope Air Force Base in North Carolina, where he flew drop missions for the 82nd Airborne Division at Ft. Bragg, North Carolina in C-30 Hercules aircraft. The Medinas' only child, a son whom they named Dakota Hunter Medina but nicknamed "Cody," was born on January 3, 1992, in North Carolina.

On April 28, 1992, less than four months after Cody was born, Tammy Medina filed for a divorce in Cumberland County, North Carolina, on the grounds of domestic abuse. The next day, April 29, the General Court of Justice in and for Cumberland County, North Carolina, awarded temporary custody of Cody to his mother. That same day, the Medinas separated. Tammy Medina's temporary custody of her four-month-old son Cody was continued by a later order of that same court dated May 19, 1992. On July 10, 1992, the North Carolina Court of General Justice entered an order by which it ordered "[t]hat [Tammy Medina] is restrained from permanently removing the minor child from the state of North Carolina until further orders of this Court."

On August 4, 1992, the North Carolina General Court of Justice conducted a hearing on an action filed for custody and support and temporary alimony. After both Medinas had rested, the trial judge recited in the transcript of the hearing that "[t]he parties [had] stipulated before the court that joint custody would be appropriate in this case, primary custody in the mother and secondary custody in the father." The trial judge then found as follows:

Thereafter, *since the mother and minor child are intending to live in the State of Mississippi*, [Cecil Medina] should be entitled to one weekend per month upon the giving of seventy-two hours notice, of eight hours on Saturday and eight hours on Sunday.

(emphasis added). The trial judge further provided visitation privileges for Captain Medina with his son during Thanksgiving, Christmas, and summer vacations.

On August 8 or 9, 1992, Tammy Medina moved to her grandmother and mother's home located at 208 Meadow Wood Court in Amory, Mississippi. Captain Medina visited with his son Cody in Amory in September, October, November, and December of 1992, and once in February and twice in April of 1993. He did not visit with Cody in Mississippi during the months of January, March, May, or June of 1993 because Tammy Medina denied him the right to visit with Cody during those months.

In May 1993 Captain Medina received orders to report to Frankfurt, Germany, no later than July 28, 1993, to begin a three-year tour of duty. Because Tammy Medina deprived him of his right to visit Cody in May and June of 1993 and because he was about to depart to Germany for three years, Cecil Medina filed a motion for emergency relief in the North Carolina court in which he asked for the right to visit with Cody in Mississippi before he transferred to Germany on July 28. Tammy Medina, by and through her North Carolina counsel, filed both a motion to dismiss her former husband's motion

for emergency relief and a motion to change venue to Monroe County, Mississippi, because she and her son Cody had been residents of Monroe County, Mississippi for more than six months.<sup>(1)</sup>

After it heard these motions on May 25, 1993, the North Carolina court entered an order in which it found as a matter of fact that while Tammy Medina was not present at the hearing, attorney John Blackwell, Jr., represented her at the hearing. The court further found that Cecil Medina, who was both present and represented by counsel at the hearing, had been allowed unsupervised visitation with Cody every month since the entry of the August 9, 1992 order without any problems. The court then ordered that Cecil Medina have thirteen days of visitation with Cody beginning at twelve noon on any one of the following days: June 25, 26, or 27, 1993. The court further directed Tammy Medina to advise Cecil Medina of her choice for his visitation in a reasonable amount of time so that he might make the appropriate travel arrangements for himself and Cody. When Captain Medina arrived in Amory on June 27, neither Tammy Medina nor Cody were to be found. Instead, Opal Parham, Tammy Medina's mother, told Cecil Medina that Tammy would not allow him to visit his son.

Frustrated by his failure to locate either Cody or Tammy Medina, Cecil Medina employed counsel in Aberdeen to petition the Chancery Court of Monroe County to grant full faith and credit to the order of the North Carolina General Court of Justice rendered May 25, 1993. He further asked the court to issue a temporary restraining order or writ of assistance which would authorize the sheriff of Monroe County to assist Cecil Medina by physically removing Cody from the custody of Tammy Medina and delivering him to his father pursuant to the May 25, 1993 order rendered by the North Carolina court. The Monroe County Chancery Court granted full faith and credit to the North Carolina court order and, after Medina filed a separate petition for writ of habeas corpus, issued a writ of habeas corpus on June 29, 1993. The writ of habeas corpus commanded "any law enforcement officer in the State of Mississippi to locate and seize the body of [Cody] and deliver [him] to" his father's custody. The officers of Monroe County never found Tammy Medina or her son. More than one year later on July 27, 1994, Tammy Medina filed a motion to vacate the Monroe County Chancery Court's full faith and credit decrees and prior contempt and habeas corpus orders, which motion the Monroe County Chancery Court granted by its order rendered on November 22, 1994, "because of the failure on the part of [Cecil Medina] to go forward under the provisions of the laws of the State of Mississippi."

In the meantime, Cecil Medina had returned to North Carolina, where, on June 30, 1993, he filed for modification of the order which had granted custody of Cody to Tammy Medina. The North Carolina court rendered yet another order on July 14, 1993, two weeks before Captain Medina was scheduled to report to Frankfurt, Germany, in which it recited that Tammy Medina was not present when the court heard the matter but that she was represented by attorney Charles S. Fox. In this order the court found that Tammy Medina was "in direct and willful contempt of the May 25, 1993, [o]rder," which had allowed Cody's father thirteen days of visitation with his son. The court then ordered Cody "into the temporary custody of his father . . . until the custody matter may be heard on its merits." Tammy Medina appealed this order to the North Carolina Court of Appeals, which dismissed her appeal because she was absent from the State of North Carolina. On September 8, 1994, the North Carolina Supreme Court denied Tammy Medina's petition for review of the Court of Appeals' decision which had dismissed her appeal.

The record indicates that Cecil Medina was awarded a divorce from Tammy Medina on August 15,

1993, "in another cause," but the record does not contain a copy of the judgment which awarded the divorce to him.

On December 5, 1994, the North Carolina court heard Cecil Medina's action for modification of custody of his son Cody and entered an order on the same date in which it recited that Tammy Medina was neither present nor represented by counsel. Among the trial judge's findings of fact were the following:

7. That the Cumberland County Trial Court Administrator received on the morning of December 5, 1994, a fax from attorney Elizabeth A. Odom from Amory, Mississippi, with a copy of a Complaint which had been filed in the Mississippi Courts on or about November 28, 1994, with a letter requesting a delay in the hearing which is before the Court today.

....

13. That the Plaintiff [Tammy Medina] has filed in the State of Mississippi her Affidavit alleging that she moved to the State of Mississippi with the approval of the North Carolina Courts.

14. That the Plaintiff [Tammy Medina] moved to the State of Mississippi without the approval of the North Carolina Courts.

Based on all twenty-eight of her findings of fact contained in the order, the trial judge concluded "as a matter of law" that "there [was] sufficient and just cause to modify prior child custody orders, and there ha[d] been a substantial change of circumstances to warrant a change in custody." The court awarded "permanent sole care, custody and control of the minor child, Dakota Hunter Medina" to his father. Nowhere in this order did the trial judge adjudicate that a change in the custody of Cody was "in the child's best interest." It ordered that Tammy Medina should have no visitation rights whatsoever with Cody "until such time as she presents herself to this Court in person and requests visitation." The Court concluded its order by retaining the matter "for further orders."

More than two months later, on the 23rd day of February, 1995, the trial judge signed an amended order which it entered as of December 5, 1994. In this amended order, the trial judge amended her former second conclusion of law to read as follows:

2. That there is sufficient and just cause to modify prior child custody Orders and there has been a substantial change of circumstances to warrant a change in custody *and it is in the best interests of [Cody] that his custody be transferred to the Defendant [Cecil Medina]*.

(Emphasis added). It appears that the North Carolina court entered the amended order *sua sponte* for the sole purpose of adding as a conclusion of law that it was in Cody's best interest to transfer his custody to his father, Captain Cecil Medina.

## II. LITIGATION

On November 28, 1994, Tammy Medina filed a complaint for modification of child custody, change of jurisdiction, and protective orders in the Rankin County Chancery Court, in which she asked that court to "exercise its home state and significant connection jurisdiction over the custody of the minor child Dakota Medina, and that it issue the following orders in the child's best interests . . . ." Included

in Tammy Medina's various requests for relief was "[t]hat this Court order temporary sole physical and legal custody of [Cody] to Tammy Parham Medina until a trial on the merits can be had to determine the best interest of [Cody] as regards his custody and visitation."

On December 5, 1994, the same day that the North Carolina court awarded Cecil Medina sole custody of Cody and terminated Tammy Medina's visitation rights until she presented herself before the court, the Rankin County Chancery Court issued an *ex parte* protective order against Cecil. Near the end of December, the Rankin County Chancery Court received a copy of North Carolina's court file in this case, which was subsequently filed in the case *sub judice*.

On January 4, 1995, the chancellor appointed the Honorable Jane Purdue guardian ad litem for Cody. On February 27, 1995, Cecil Medina filed a petition for full faith and credit of foreign decree and order in which he requested the chancery court to grant full faith and credit to the original order of the North Carolina General Court of Justice signed the 10th day of December, 1994, and entered effective December 5, 1994, a copy of which he attached as an exhibit to his petition. Cecil Medina did not refer to the amended order which the North Carolina judge had signed on February 23, 1995, but also entered effective as of December 5, 1994.

On February 27, 1995, the chancellor of the Rankin County Chancery Court held a hearing to determine whether that court could assume jurisdiction over the matter of the custody of Cody pursuant to Section 93-23-5 of the Mississippi Code of 1972. Section 93-23-5, a part of Mississippi's Uniform Child Custody Jurisdiction Act, prescribes the conditions under which a court of this state has jurisdiction to make a child custody determination, whether by initial or modification decree. Section 93-23-5(1)(b) specifically provides:

(1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

....

(b) It is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one (1) contestant, have a significant connection with the state, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships . . . .

Cecil Medina, Earnest L. Medina, the father of Cecil Medina,<sup>(2)</sup> Tammy Medina, and Jane A. Purdue, Cody's guardian ad litem, all testified at the hearing on February 27. During the course of the hearing, the chancellor announced that he was conducting the hearing solely to determine whether to assert jurisdiction in this case. We reserve discussion of the testimony and evidence which the Medinas adduced at the hearing for our review and resolution of the issues. The record indicates that an FBI agent waited during the hearing to arrest Tammy Medina on a warrant issued from the State of North Carolina on charges related to her having brought Cody to Mississippi.

The following Wednesday, March 1, the chancellor entered a judgment in which he found, *inter alia*, that the North Carolina court "at the very minimum acknowledged that they were aware that Tammy [Medina] would be moving to the State of Mississippi," that Tammy Medina had been a resident of the State of Mississippi prior to her marriage to Cecil Medina, that Tammy Medina and her son Cody

had moved to the State of Mississippi, where they had taken up residence in Monroe County on May 21, 1992, and that Tammy Medina had lived in Mississippi with her son Cody since that date. The chancellor then opined:

[N]ow before this Court is only the issue of jurisdiction, and that this Court points to the Uniform Child Custody Act, Section 93-23-5, in particular, Section (1)(b), which states: (Here he quotes Section 93-23-5(1)(b)).

The chancellor concluded that based on the evidence submitted, the Rankin County Chancery Court was authorized to take jurisdiction of the case *sub judice*, "denying full faith and credit by doing so, and this Court, in fact, does accept jurisdiction of the issue in this matter as they relate to the issue of modification of child custody." The chancellor further found that "it is in the best interest of the minor to do so." In the judgment, he set the case for a trial on the merits at ten o'clock in the morning on April 4, 1995, and further ordered all parties to be present at nine o'clock in the morning on March 1, 1995, to allow Cecil Medina to visit with Cody.

On March 1, two women, identified as April and Jennifer Crosby, appeared in the Rankin County Chancery Court at 10:30 that morning with Cody so that he might begin his visitation with his father. One of them told the chancellor that they had not left Hattiesburg with Cody until 8:38 that morning. They were an hour and a half late when they brought him to the courtroom. The record indicates that Tammy Medina was already present in court when they arrived. Cecil Medina filed a motion for new trial and relief from judgment, but the chancellor never ruled on it. Thus, Cecil Medina appeals from the judgment which the Rankin County Chancery Court entered on March 1, 1995.

### III. REVIEW, ANALYSIS, AND RESOLUTION OF THE ISSUE

We quote verbatim Cecil Medina's one issue from his brief:

**1. Whether pursuant to the Uniform Child Custody Jurisdiction Act the Chancery Court of Rankin County, Mississippi, improperly assumed jurisdiction in this case when the child was brought to Mississippi and retained in Mississippi in violation of a valid North Carolina Custody Decree.**

The appellee, Tammy Parham Medina, included two issues in her brief, but because she perfected no cross-appeal, this Court declines to review them. *See Beck Enterprises, Inc. v. Hester*, 512 So. 2d 672, 678 (Miss. 1987) (holding that "[t]his Court will not consider issues not raised . . . on cross-appeal by an appellee"). Pursuant to Mississippi Rule of Appellate Procedure 29(a), the State of Mississippi has filed a brief as amicus curiae, in which it urges this Court to affirm the judgment from which Cecil Medina has appealed.<sup>(3)</sup>

#### A. Standard of Review

A chancellor's decision in a domestic relations case will only be reversed where it is found to be "manifestly wrong, clearly erroneous, or [where] an erroneous legal standard was applied." *Pannell*

*v. Guess*, 671 So. 2d 1310, 1313 (Miss. 1996). Where the law is erroneously interpreted or applied, the standard of review for questions of law is *de novo*. *Pannell*, 671 So. 2d at 1313; *Brooks v. Brooks*, 652 So. 2d 1113, 1117 (Miss. 1995). When necessary, this court will reverse the lower court's decision. *Pannell*, 671 So. 2d at 1313; *Brooks*, 652 So. 2d at 1117.

Where a chancellor makes findings of fact, those findings are given great deference. *Brooks*, 652 So. 2d at 1117. These findings will not be reversed unless they are manifestly wrong. *Lenoir v. Lenoir*, 611 So. 2d 200, 203 (Miss. 1992). If this Court finds that the chancellor's findings of fact were supported by substantial evidence, they will not be overturned. *Lenoir*, 611 So. 2d at 203.

## **B. The Uniform Child Custody Jurisdiction Act**

Before the UCCJA was enacted in 1982, states were under no obligation to recognize custody decrees issued by other states. *Laskosky v. Laskosky*, 504 So. 2d 726, 729 (Miss. 1987). Thus, it was possible for the non-custodial parent to retain the child in or take him to another state and obtain custody through a modification of the original decree. *Owens, ex. rel. Mosley v. Huffman*, 481 So. 2d 231, 243 (Miss. 1985). This created the problem of the "interstate children" -- children who are pulled back and forth across state lines only to become victims of the system that is supposed to protect them. *Walker v. Luckey*, 474 So. 2d 608, 611 (Miss. 1985). Out of concern for these children, the UCCJA was adopted to ensure that the best interests of these children were served by any custody modification sought. *Laskosky*, 504 So. 2d at 729.

## **C. Analysis and Resolution of Cecil Medina's one issue**

The Mississippi Supreme Court has fashioned a three part test for deciding whether a Mississippi court should assume jurisdiction over a custody dispute:

A court must first determine if it has authority, or jurisdiction, to act following the guidelines of § 93-23-5. If a court determines that it does not have jurisdiction the process stops there. However, if that hurdle is cleared, a determination is made as to which court is the more appropriate and convenient forum under the guidelines of § 93-23-13. A court may decline to exercise jurisdiction if it is not the most appropriate or convenient forum. If the court accepts jurisdiction as the more convenient forum, the court must determine if the action to be taken is foreclosed by an order or judgment of the other state court.

*Stowers v. Humphrey*, 576 So. 2d 138, 140 (Miss. 1991); *Hobbs v. Hobbs*, 508 So. 2d 677, 680 (Miss. 1987). See e.g., *In re Custody of Jackson*, 562 So. 2d 1271, 1275 (Miss. 1990); *Johnson v. Ellis*, 621 So. 2d 661, 665 (Miss. 1993).

In the case *sub judice* the chancellor asserted jurisdiction of the issue of the custody of Cody Medina pursuant to Section 93-23-5(1)(b). In the judgment of the chancery court, the chancellor opined that "based on the evidence submitted," the Rankin County Chancery Court was authorized to take jurisdiction of the issue of Cody's custody. Our standard of review requires that unless we find the chancellor's decision to take jurisdiction to be "manifestly wrong, clearly erroneous, or [that he applied] an erroneous legal standard . . ." this Court must affirm that decision.

Section 93-23-5(1)(b) is separated from both its predecessor section, 93-23-5(1)(a), and its successor

section, 93-23-5(1)(c), by the disjunctive "or." Thus, no requirement found in either 93-23-5(1)(a) or 93-23-5(1)(c) need be considered when Section 93-23-5(1)(b) is employed by the court to invoke its jurisdiction pursuant to Section 93-23-5. *See Commonwealth v. New York & Pennsylvania Co.*, **79 A.2d 439, 448 (Penn. 1951)** (holding that the general rule is that the word "or" when joining two clauses precludes carrying over into the first clause provisions found in the last clause, which is to say that the word "or" prevents the second clause from being construed as a limitation of the first).

Section 93-23-5(1)(b) contains two prerequisites for a chancery court's invoking its jurisdiction of a child custody issue pursuant to the UCCJA. The first is that "the child and at least one (1) contestant, have a significant connection with the state . . . ." The "significant connection with [Mississippi]" to which Section 93-23-5(1)(b)(1) refers must have existed before the petition for modification of custody was filed in this state. *Curtis v. Curtis*, **574 So. 2d 24, 30 (Miss. 1990)**. The physical presence of the child in this state is insufficient to authorize the courts of this state to assume jurisdiction. **Miss. Code Ann. § 93-23-5(2) (Rev. 1994); Curtis, 574 So. 2d at 30.**

The evidence in this case establishes that Tammy Medina and her son Cody had lived in Mississippi since August 8, 1992. Cody's medical cards from Columbus Air Force Base were introduced into evidence. Because these cards were necessary for Cody to receive health care as his father's dependent, the cards indicated that Cody's connection with Mississippi was significant. Cody's mother had received surgery at Keesler Air Force Base since her return to Mississippi, and she introduced into evidence her Mississippi hunting and fishing license which Wal-Mart had issued to her and a Jackson Zoo visitor's card to establish her presence in and connection with Mississippi.

Cecil Medina argues in his brief that Cody's medical cards and Tammy Medina's license and Jackson Zoo card are insufficient to establish that Mississippi is Cody's home state, but Mississippi's being Cody's "home state" is a requirement of 93-23-5(1)(a) -- not 93-23-5(1)(b). This Court finds that there was substantial evidence to support the chancellor's finding that Cody and his mother had "a significant connection with the state." This finding satisfied the first requirement of 93-23-5(1)(b).

The second requirement of Section 93-23-5(1)(b) is that "there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships . . . ." Tammy Medina called Jane Perdue, a youth court judge whom the chancery court had appointed as guardian ad litem for Cody, to testify. Ms. Perdue testified that she had investigated whether there was evidence in the State of Mississippi concerning Cody's "protection, . . . welfare, . . . health, and other issues that affect the best interest determination." Ms. Perdue testified that Cody's pediatrician practiced in Amory. She opined that there was ample evidence concerning the child's best interest in this state and that it was in Cody's best interest for the Rankin County Chancery Court to take jurisdiction of the issue of who should have custody of Cody. The testimony and opinion of Cody's guardian ad litem was substantial evidence to support the chancellor's finding that "there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships . . . ."

However, Cecil Medina argues that Tammy Medina wrongfully brought Cody into Mississippi because bringing him into this state violated the order which the North Carolina court had issued on July 10, 1992. That order restrained Tammy Medina from permanently removing Cody from the state of North Carolina "until further orders of this Court." Although the main purpose of the UCCJA is to



determine what forum is in the child's best interest, *Owens*, 481 So. 2d at 242, the UCCJA was also adopted to discourage the abduction of children for the purpose of obtaining custody. *Id.* at 239. The UCCJA provides that Mississippi courts must decline to assume jurisdiction where a non-custodial parent<sup>(4)</sup> wrongfully brings her child to or retains him in this state only to seek a custody modification which would circumvent the laws of another state. **Miss. Code Ann. § 93-23-15(2) (Rev. 1994); *Owens*, 481 So. 2d at 243; *Curtis*, 574 So. 2d at 29. See also *Hill v. Hill*, 481 So. 2d 227, 230 (Miss. 1985)** (holding that chancellor should not have assumed jurisdiction over the modification of a Wisconsin custody decree where the children were wrongfully detained in the state by their grandparents). A parent cannot create jurisdiction in Mississippi where it does not exist by retaining a child in the state in violation of a valid decree of custody from a foreign state. *Siegal v. Alexander*, 477 So. 2d 1345, 1347 (Miss. 1985). However, "[a]bsent a custody decree prohibiting it, a parent has done nothing *illegal* in removing a child to another state." *Owens*, 481 So. 2d at 243 (emphasis in original).

We have noted that the order restrained Tammy Medina from permanently removing the child from North Carolina until further orders of the court. However, on August 4, 1992, the North Carolina General Court of Justice awarded Cody's parents joint custody of Cody with Tammy having primary custody. The trial judge also found that Tammy Medina intended to live with Cody in the State of Mississippi. The order recites that "since the mother and minor child are intending to live in the state of Mississippi, [Cecil Medina] should be entitled to one weekend per month upon the giving of seventy-two hours notice, of eight hours on Saturday and eight hours on Sunday." This Court interprets that recitation to be a change in the father's visitation rights with Cody which the North Carolina court made to accommodate Tammy Medina's move to Mississippi.

At the hearing conducted in the case *sub judice* Cecil Medina acknowledged that Tammy Medina's moving to Mississippi was discussed during the hearing on August 4 in the North Carolina Court. During his cross-examination of Cecil Medina at the hearing in the Rankin County Chancery Court, Tammy Medina's attorney asked him if he objected to Tammy Medina's moving to Mississippi. Cecil Medina replied, "No, Sir. Why should I object to her moving?"

This Court finds that the order entered on August 4, 1992, constituted a "further order[]" of that court which modified the order entered on July 10 so as to allow Tammy Medina to move to Mississippi. This Court, therefore, concludes that there was substantial evidence to support the proposition that Tammy Medina, to whom the North Carolina court had awarded primary custody of Cody, did not bring her son wrongfully into Mississippi to seek a custody modification in order to circumvent the July 10 order of the North Carolina court. Therefore, we reject Cecil Medina's contention that Tammy Medina wrongfully brought Cody into Mississippi and conclude that Section 93-23-15(2) of the Mississippi Code did not preclude the Rankin County Chancery Court's assertion of jurisdiction over the issue of Cody's custody.

Clearly the chancellor applied the correct law, *i.e.*, Section 93-23-5 of the Mississippi Code, to determine whether he could invoke the jurisdiction of the Rankin County Chancery Court pursuant to the UCCJA. There was substantial evidence to support the chancellor's findings of fact required by section 93-23-5(1)(b) to invoke the jurisdiction of the chancery court. Thus, we affirm the chancellor's decision to invoke the jurisdiction of the Rankin County Chancery Court over the issue of the custody of Cody Medina.

## 2. Full Faith and Credit

As the Mississippi Supreme Court explained in *Stowers*, if the hurdle of deciding to invoke the court's jurisdiction is cleared, the court must then determine "which court is the more appropriate and convenient forum under the guidelines of § 93-23-13." *See Stowers*, 576 So. 2d at 140. Section 93-23-13(1) is the portion of that statute which is relevant to our review of this issue. It reads:

(1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

**Miss. Code Ann. § 93-23-13(1) (Rev. 1994).** Section 93-23-13 requires the court to make specific findings only if the court finds that it is an inconvenient forum. *See Miss. Code Ann. § 93-23-13(3) (Rev. 1994)*. Thus, implicit in the chancellor's extension of the jurisdiction of the Rankin County Chancery Court to the issue of Cody's custody was his finding that the court was the more appropriate and convenient forum when compared to the North Carolina forum.

When the chancellor accepted jurisdiction as the more convenient forum, he then had to determine if his acceptance of jurisdiction was foreclosed by any of the orders of the North Carolina General Court of Justice. On December 5, 1994, the same North Carolina court issued an order by which it awarded Cecil Medina the permanent sole custody of Cody and denied Tammy Medina any visitation rights until she presented herself before that court. The courts of Mississippi are bound by Art. IV, § 1, of the United States Constitution to grant full faith and credit to judgments issued by courts of foreign states. *Lee v. Swain Bldg. Materials Co.*, 529 So. 2d 188, 190 (Miss. 1988). This includes child custody decrees which fall under the UCCJA. *Sollitt v. Robertson*, 544 So. 2d 1378, 1381 (Miss. 1989); *Jackson*, 562 So. 2d at 1275. However, pursuant to the UCCJA, Mississippi may decline to enforce a foreign decree and assume jurisdiction when doing so would be in the best interests of the child. *Laskosky*, 504 So. 2d at 729.

Cecil Medina asserts that Mississippi cannot assume jurisdiction in this case as the North Carolina court which entered the original custody decree has continuing jurisdiction over the custody of Cody. Tammy Medina counters that argument with several of her own. First, she asserts that 28 U.S.C. § 1738A(g) preempts any conflicting state law, including the UCCJA, and that 28 U.S.C. § 1738A(d) has terminated the North Carolina court's jurisdiction of this case because neither Cecil Medina, Tammy Medina, nor Cody remains a resident of North Carolina.<sup>(5)</sup> She points out that Cecil Medina has resided in Germany since July 28, 1993, and that she and Cody have lived in Mississippi since August 8, 1992. Therefore, pursuant to 28 U.S.C. § 1738A(d), North Carolina has lost jurisdiction of the issue of the custody of Cody. Second, she argues that the December 5, 1994, order which gave Cecil Medina custody of Cody was obtained without adequate notice to her, which violated North Carolina's own notice rules and denied her an opportunity to be heard. Third, she asserts that the orders of the North Carolina court cannot be recognized in Mississippi because they were issued solely to punish her and were not based on determinations of Cody's best interest. To support her third argument, she emphasizes that the first order which the North Carolina court entered on December 5, 1994, omitted any reference to Cody's best interest, but that the trial judge entered an amended order on February 23, 1995, in which for the first time she stated that it was in the best

interest of Cody for his father to have his custody.

While this Court might find one or more of Tammy Medina's three reasons persuasive, the resolution of whether the North Carolina court can no longer assert jurisdiction of the issue of Cody's custody is not an integral part of resolving the issue of whether the Rankin County Chancery Court can invoke its jurisdiction. This is true because the Mississippi Supreme Court has interpreted the UCCJA to allow for concurrent jurisdiction between states over custody modifications. **Johnson, 621 So. 2d at 665; Cooley v. Cooley, 574 So. 2d 694, 697 (Miss. 1991), overruled in part by Powell v. Powell, 644 So. 2d 269, 274 n.4 (Miss. 1994)** (holding that a Rule 81 summons must be served for matters proceeding under Rule 81). **See also In re Marriage of Smith, 555 So. 2d 73, 75 (Miss. 1989)** (holding Mississippi and Alabama had concurrent jurisdiction over child custody modification). "Typically, the two states sharing concurrent jurisdiction will be the state which issued the original divorce or custody decree, and the state to which the custodial parent and children have moved." **Johnson, 621 So. 2d at 665.**

In *Johnson*, the chancellor declined to accept jurisdiction of the issue of child custody pursuant to the UCCJA because he found that the State of Arkansas was the proper forum. **Johnson, 621 So. 2d at 661.** The Mississippi Supreme Court affirmed the chancellor's decision and opined: "We cannot say that the chancellor abused his discretion in declining jurisdiction of this case." **Id. at 667-68.** In the case *sub judice*, the chancellor's decision had the opposite result, *i.e.*, he accepted jurisdiction of the child custody issue and denied full faith and credit to the orders of the North Carolina Court of General Justice. We cannot say that the chancellor "abused his discretion" in denying full faith and credit to those orders. Neither can we say that his denial of full faith and credit was "manifestly wrong, [or] clearly erroneous." Neither did he apply "an erroneous legal standard." We have affirmed the chancellor's decision to invoke the jurisdiction of the Rankin County Chancery Court pursuant to Section 93-23-5(1)(b) because his findings of fact by which he applied Section 93-23-5(1)(b) were supported by substantial evidence. The chancellor also found in the judgment that it was in Cody's best interest for the chancery court to assume jurisdiction of the issue of Cody's custody. This Court therefore affirms the judgment of the Rankin County Chancery Court in which it took jurisdiction of the issue of Cody's custody and denied full faith and credit to the orders of the North Carolina Court of General Justice.

#### IV. Summary

While the July 10, 1992 order of the North Carolina court restrained Tammy Medina from permanently removing Cody from the state of North Carolina "until further orders of this Court," the August 4, 1992, order constituted a "further order[]" of that court which modified the July 10 order to allow Tammy Medina to move to Mississippi on August 8, 1992. Thus, Tammy Medina had not brought her son Cody wrongfully into Mississippi contrary to Section 93-23-15 of the Mississippi Code, which authorizes a Mississippi court to decline to exercise jurisdiction for that reason. There was substantial evidence to support the chancellor's findings that both Tammy Medina and her son Cody had a significant connection with Mississippi and that there was available in Mississippi "substantial evidence concerning [Cody's] present or future care, protection, training and personal relationships," which Section 93-23-5(1)(b) requires to invoke the jurisdiction of a court of appropriate jurisdiction in this state. This is the first finding which *Stowers* requires. **See Stowers, 576 So. 2d at 140.**

The chancellor took the second and third steps which *Stowers* required. *Stowers'* second step is to comply with Section 93-23-13, which allows a court to decline to accept jurisdiction if that court "finds that it is an inconvenient forum . . . and that a court of another state is a more convenient forum." **Miss. Code Ann. § 93-23-13 (Rev. 1994)**. The third step was the chancellor's decision that invoking the jurisdiction of the Rankin County Chancery Court was not foreclosed by any of the orders of the North Carolina Court of General Justice. The Mississippi Supreme Court's interpretation of the UCCJA to allow concurrent jurisdiction between states of the issue of child custody supports our finding that the chancellor took this third step correctly both as a matter of fact and as a matter of law. In the absence of the concurrent jurisdiction concept, Tammy Medina's reliance on 28 U.S.C. 1738A to support her assertion that North Carolina had lost jurisdiction of this issue because both of Cody's parents and Cody were no longer residents of that state may well have persuaded this Court that the chancellor had correctly taken the third step required by *Stowers*. Of critical importance is the chancellor's specific finding that it was in Cody's best interest for the Rankin County Chancery Court to accept jurisdiction of the issue of his custody. Thus, this Court affirms the judgment of the Rankin County Chancery Court.

However, in the judgment which this Court has affirmed, the chancellor decided only the issue of whether to accept jurisdiction of the issue of Cody's custody. Because he did not resolve that issue, he set the case for trial at ten o'clock in the morning on April 4, 1995, "to be tried on the merits of said pleadings." Thus, it would appear that Cecil Medina's appeal at this stage of the litigation is interlocutory in nature. Mississippi Rule of Appellate Procedure 5 sets forth the conditions for making an interlocutory appeal, but Cecil Medina has complied with none of them. However, Tammy Medina has not objected to this appeal; neither has she moved to dismiss it because it violates Rule 5. The Comment to Rule 5 specifically allows an appellate court "to grant the appeal itself." If Cecil Medina's appeal is interlocutory in nature, our resolution of the issue which he presented in his appeal is tantamount to this Court's "grant[ing] the appeal itself." The comments in this paragraph are purely gratuitous dicta, but we think that we are obliged to offer them because we remand this case, the judgment in which we have affirmed, to the Rankin County Chancery Court so that it may proceed to adjudicate the issue of Cody's custody.

**THE JUDGMENT OF THE RANKIN COUNTY CHANCERY COURT IS AFFIRMED.  
COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**McMILLIN AND THOMAS, P.JJ., DIAZ, HINKEBEIN, KING, AND PAYNE, JJ.,  
CONCUR. HERRING, J., CONCURS WITH SEPARATE WRITTEN OPINION. BRIDGES,  
C.J., AND SOUTHWICK, J., NOT PARTICIPATING.**

HERRING, J., CONCURRING:

Although I agree with the result reached by the majority, I find it necessary to concur in this case. I do so because I disagree with the majority's conclusion that the Mississippi and North Carolina courts held concurrent jurisdiction in this case. This conclusion ignores Mississippi Code Annotated Section 93-23-11(1) (Rev. 1994), which states as follows:

A court of this state *shall not exercise its jurisdiction* under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reason.

(emphasis added). A plain reading of this statute indicates that a Mississippi court has no jurisdiction to proceed in a custody matter where a similar action is already pending in another state. *See also Owens v. Huffman*, 481 So. 2d 231, 242-43 (Miss. 1985). Only where the sister state court has not exercised its jurisdiction to hear the pending action in conformity with the provisions of our Uniform Child Custody Jurisdiction Act (UCCJA) can a Mississippi court exercise jurisdiction. North Carolina's Uniform Child Custody Jurisdiction Act (N.C. Gen. Stat. § 50A-3) is similar to Mississippi's UCCJA and both were designed to "define and stabilize the right to custody in the best interest of the child." *Owens*, 481 So. 2d at 244.

Applying our UCCJA to the facts before us, it is clear that at the time Mrs. Medina filed her Mississippi petition on November 28, 1994, seeking to modify the North Carolina custody order, there was already an action pending in the North Carolina court, which was filed by Cecil Medina seeking to modify the North Carolina custody order. The North Carolina modification action was filed on June 10, 1994. Thus, the Rankin County Chancery Court was precluded by Section 93-23-11(1) from asserting jurisdiction, unless the North Carolina court failed to exercise its jurisdiction substantially in conformity with Mississippi's UCCJA. *See In re Custody of Jackson*, 562 So.2d 1271, 1275 (Miss. 1990), where the Mississippi Supreme Court held that "the UCCJA precludes a court from exercising jurisdiction over a child custody matter when there is a simultaneous proceeding in another state."

Notwithstanding the provisions of Section 93-23-11(1), I agree with the majority that the Mississippi court correctly asserted jurisdiction. As stated above, Section 93-23-11(1) does not apply if the pending proceeding in the other State is not in substantial conformity with Mississippi's UCCJA. As stated in *Brokus v. Brokus*, 420 N.E. 2d 1242, 1248 (Ind. App. 1981), the second State may assume jurisdiction notwithstanding the pending proceeding when the first State lacked jurisdiction under the UCCJA. *Id.* "When, as here, there is an action already pending in another state, the trial court must answer the threshold question of whether the other state was 'exercising jurisdiction substantially in conformity with this Chapter . . .'" *Davis v. Davis*, 281 S.E.2d 411, 416 (N.C. App. 1981). *See also Section 93-23-11(1) of the Mississippi Code of 1972 (Rev. 1994).*

Section 50A-3 of the General Statutes of North Carolina, which is substantially identical to Mississippi Code Annotated § 93-23-5, determines when a court of that State may take jurisdiction to make an initial child custody order or when it may take jurisdiction to modify an existing child custody order. Pursuant to Section 50A-3, North Carolina has jurisdiction when it is the home state of the child, or was the home state of the child within six months of the filing of the motion for modification. Furthermore, North Carolina may assert jurisdiction when to do so would be in the best interest of the child because, "the child and the child's parents, or the child and at least one contestant, have a significant connection with this State, and there is available in this State substantial evidence relevant to the child's present or future care, protection, training, and personal relationship . . ." *Id.* As shown by the record, Mr. Medina filed his motion to modify the original custody order in North Carolina

more than six months after the child had moved to Mississippi. Thus, the only manner in which North Carolina could assert jurisdiction would be under a "best interest" analysis. On this issue, I would hold that the child no longer had a significant connection with North Carolina which would allow the North Carolina court to invoke jurisdiction. The father, Cecil Medina, was overseas when the North Carolina motion to modify was filed. The child and his mother were in Mississippi and had been for an extended period of time. Thus, I would rule that the North Carolina court improperly exercised jurisdiction in violation of the provisions of Mississippi's UCCJA and in violation of its own Uniform Child Custody Jurisdiction Act. Thus, I would affirm the decision of the chancellor to take jurisdiction, not on the basis that the Mississippi court had concurrent jurisdiction, but on the basis that the North Carolina court had no jurisdiction under the UCCJA to entertain a motion to modify the custody decree.

1. A copy of Tammy Medina's motion to dismiss and motion to change venue is a part of the record via a separate exhibit, but a copy of Cecil Medina's motion for emergency relief is not included in the record.

2. In response to Tammy Medina's cross-examination about whether he had ever been convicted of murder, Earnest L. Medina testified that he was the company commander for Company C, 1st Battalion, 21st Infantry in Vietnam. He further testified that as company commander, he had stood general court martial for murdering 102 people in the My Lai massacre, but the court martial had acquitted him of all charges. He was later awarded the Silver Star for his service in Vietnam.

3. Mississippi Rule of Appellate Procedure 29(a) reads in relevant part:

A brief of an amicus curiae may be filed only by leave of the appropriate appellate court, except that leave shall not be required when the brief is presented by the state and sponsored by the Attorney General . . . .

4. Jurisdiction, however, is discretionary where there has been no determination of custody before the parent wrongfully removed the child to this state. **Miss. Code Ann. § 93-23-15(1) (1994); Owens, 481 So. 2d at 243.**

5. 28 U.S.C. 1738A(g) reads:

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

28 U.S.C. 1738A(d) reads:

The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of

subsection (c)(1) of this section continues to be met and *such State remains the residence of the child or of any contestant.* (emphasis added).