

IN THE COURT OF APPEALS 3/12/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00957 COA

DANA JAMES BURCHETT

APPELLANT

v.

SHELLE NELLA ALLEN

APPELLEE

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

TRIAL JUDGE: HON. WILLIAM H. MYERS

COURT FROM WHICH APPEALED: JACKSON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

DONALD P. SIGALAS, SR.

ATTORNEY FOR APPELLEE:

GARY L. ROBERTS

NATURE OF THE CASE: CIVIL: CHILD SUPPORT AND VISITATION

TRIAL COURT DISPOSITION: DISMISSED THIRD PARTY COMPLAINT

BEFORE BRIDGES, P.J., KING, AND PAYNE, JJ.

KING, J., FOR THE COURT:

The Chancery Court of Jackson County, Mississippi dismissed Burchett's third party complaint against Shelle Nella Allen, and Burchett appealed. We affirm.

FACTS

The Jackson County Department of Human Services filed a petition on behalf of the Idaho Department of Health and Welfare and Shelle Nella Allen in the Jackson County Chancery Court pursuant to the Uniform Reciprocal Enforcement of Support Act (URESA). The petition named Dana James Burchett as a defendant and alleged that Burchett was the natural father of Allen's son, Joshua Dean Allen. The petition requested that the court establish paternity and enter an order for support, unreimbursed public assistance, medical coverage, and other costs. Subsequent to being served with a summons and a copy of the petition, Burchett filed a Motion To Name a Third Party Defendant. The court granted Burchett's motion, and on September 30, 1993, Burchett filed a third party complaint naming Allen as the defendant. Burchett's third party complaint requested that the court award unto him reasonable and liberal visitation with Joshua Dean Allen. In response to Burchett's third party complaint, Allen moved the court to dismiss the complaint for lack of personal and subject matter jurisdiction. The court granted Allen's motion to dismiss the third party complaint.

ANALYSIS OF THE ISSUE AND LAW

The primary issue presented on appeal is whether a defendant may assert a third party claim for visitation rights within a URESA action. In *Mississippi Department of Human Services v. Marquis*, the Mississippi Supreme Court interpreted our state's URESA statute and stated that only actions for support were enforceable under URESA. *Mississippi Dep't of Human Serv. v. Marquis*, 630 So. 2d 331, 334 (Miss. 1993). Burchett argues that the *Marquis* decision is not applicable in the instant case because unlike the defendant in *Marquis*, he did not file a counterclaim requesting modification of an existing custody order. In essence, Burchett suggests that URESA's prohibition regarding custody and visitation contests applies only when a URESA defendant seeks modification of an "existing" custody or visitation order. The Mississippi Supreme Court has not determined whether visitation rights may be defined for the first time in or ancillary to a URESA action. Therefore, our decision today is guided by URESA's aim. Examination of the language of URESA indicates that it is intended only as an auxiliary or supplemental remedy in the courts of a sister state for the enforcement of orders of support. *Howard v. Howard*, 191 So. 2d 528, 531 (Miss. 1966). Limiting URESA proceedings to issues of support, reasonably relates to the Act's objective. *Brown v. Texas*, 808 S.W.2d 628, 632 (Tex. Ct. App. 1991). Thus, the trial court correctly determined that URESA prohibited litigation of the visitation issue. Accordingly, we affirm the trial court's dismissal of Burchett's complaint.

THE JUDGMENT OF DISMISSAL OF THE JACKSON COUNTY CHANCERY COURT IS

AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ,
McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**