

**IN THE COURT OF APPEALS 12/17/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-01318 COA**

**EDWIN MACK NAIL, JR.**

**APPELLANT**

**v.**

**VICKY AILEEN (TACKETT) NAIL MCCULLUM**

**APPELLEE**

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

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

TRIAL JUDGE: HON. MELVIN MCCLURE

COURT FROM WHICH APPEALED: GRENADA COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

MITCHELL M. LUNDY, JR.

ATTORNEY FOR APPELLEE:

A.E. GENE HARLOW, SR.

NATURE OF THE CASE: DOMESTIC RELATIONS-CHILD CUSTODY

TRIAL COURT DISPOSITION: CHANCELLOR RULED THE COURT DID NOT HAVE  
JURISDICTION UNDER UCCJA

BEFORE BRIDGES, P.J., BARBER, AND DIAZ, JJ.

PER CURIAM:

This appeal arises as a result of the chancellor's decision that the trial court did not have jurisdiction over a petition for modification of custody pursuant to the Uniform Child Custody Jurisdiction Act ("UCCJA"). Edwin Nail, Jr. appeals claiming that the chancellor's order was barred by the doctrine of res judicata. Mr. Nail only designated three items for the record on appeal: the motion to dismiss for lack of jurisdiction, the chancellor's order denying the motion to dismiss, and the subsequent order dismissing for lack of jurisdiction. It is from these three documents that this Court is to ascertain the facts and to decide this appeal. We feel this to be grossly inadequate.

In 1991, the Nails were divorced in Grenada County with custody of the child going to Mrs. McCullum (formerly Nail). Mr. Nail filed a petition for modification of custody in January of 1995, and Mrs. McCullum filed a motion to dismiss or transfer jurisdiction to the same court where the divorce was entered. In an order entered by Chancellor Dennis M. Baker in June of 1995, the court decided that it did have jurisdiction over the matter and assigned it to Chancellor Melvin McClure for hearing and then trial. In October of 1995, on the morning of trial, Chancellor McClure expressed grave concerns as to whether the court had jurisdiction pursuant to the UCCJA. Even though neither party's counsel was able to convince the chancellor that jurisdiction was proper, a two-day trial was held.

At the conclusion of the testimony by nineteen witnesses, the chancellor took the matter under advisement, instructing the attorneys to submit proposed findings of fact and conclusions of law along with briefs on the jurisdiction issue. None of the above was included in the record. Chancellor McClure remained unconvinced that the court had jurisdiction and dismissed the cause without prejudice.

We are now asked to overturn Chancellor McClure's order. A court retains plenary jurisdiction to modify all interlocutory orders and decisions until entry of final judgment, and that is what occurred in this case. *See Banks v. Banks*, 511 So. 2d 933 (Miss. 1987). Accordingly, we affirm.

**THE ORDER OF THE GRENADA COUNTY CHANCERY COURT DISMISSING WITHOUT PREJUDICE THE PETITION FOR MODIFICATION OF CUSTODY IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

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