

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CA-01065 COA**

**LAURIE JO WARD (SCALLY)**

**APPELLANT**

**v.**

**KENNETH WAYNE WARD**

**APPELLEE**

DATE OF JUDGMENT:	SEPTEMBER 5, 1996
TRIAL JUDGE:	HONORABLE J. N. RANDALL, JR.
COURT FROM WHICH APPEALED:	HANCOCK COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	WOODROW W. PRINGLE III
ATTORNEY FOR APPELLEE:	PATRICIA C. CHAMPAGNE
NATURE OF THE CASE:	CIVIL - DOMESTIC RELATIONS
TRIAL COURT DISPOSITION:	THE CHANCELLOR REDUCED THE AMOUNT OF CHILD SUPPORT TO BE PAID BY KENNETH WAYNE WARD FROM \$900 PER MONTH TO \$324 PER MONTH.
DISPOSITION:	AFFIRMED - 02/24/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/7/98

BEFORE BRIDGES, C.J., COLEMAN, DIAZ, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Laurie Jo Ward Scally appeals from the judgment of the Hancock County Chancery Court that modified the amount of child support paid by her ex-husband, Kenneth Wayne Ward. The chancellor also made specific visitation orders because of clashes over the "reasonable visitation" agreed to at the time of divorce. The parties had three children from their marriage. Scally asserts that since Ward was in substantial arrears for child support, the complaint should have been dismissed under the doctrine of unclean hands. In the alternative, Scally argues that the court should have transferred the cause to Washington State where she and the children lived. We agree with the chancellor's resolution of these issues and affirm.

**FACTS**

Scally and Ward were divorced on November 2, 1992. The mother, Scally, was awarded custody of the three minor children. Ward agreed to pay child support of \$300 per month per child and periodic alimony in the amount of \$200 per month. After the divorce decree, Scally moved with the children to the State of Washington. Ward remarried in October 1993. He and his current wife also moved to Washington. Ward testified that he moved in an effort to be closer to his children. After working several odd jobs and having difficulty finding better employment, the Wards returned to Mississippi.

On May 31, 1994, Ward filed a motion for modification of the final judgment, requesting the court to reduce the amount of child support and to terminate the obligation of spousal support based upon a material change in his circumstances. Scally responded by filing a motion seeking to dismiss the cause, or alternatively, to transfer the cause to the State of Washington. Scally asserted that Ward was in substantial arrears in child support payment, and therefore, he was not entitled to any relief from the original judgment under the doctrine of unclean hands. Additionally, Scally contended that the State of Washington was a more convenient forum.

During a hearing on the matter, Ward testified that he was unable to pay \$900 per month in child support based on his current income. Scally, who did not appear at the hearing, was represented by her attorney. The chancellor required Ward to pay the past-due support but reduced the future support obligations to \$324 per month. That amount was based upon the child support award guidelines, applied to Ward's current income. Although the chancellor found that Ward owed Scally a substantial amount in overdue child support and alimony, the chancellor concluded that Ward's arrearage was not the result of "willful, obstinate and rebellious intent." The chancellor granted Scally a judgment for the arrearage of child support and alimony, giving Ward credit for payments made on the homestead property. Scally appeals to this Court, requesting review of the modification of child support.

## DISCUSSION

### I. JURISDICTION

The Uniform Child Custody Jurisdiction Act provides that a "court which has jurisdiction . . . 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 . . . and that a court of another state is a more appropriate forum." **Miss. Code Ann. § 93-23-13 (1) ( Rev. 1994)**. Although Scally contends that the chancellor improperly failed to transfer jurisdiction to a court in Washington, Section 93-23-3 specifically provides that a "custody determination . . . does not include a decision relating to child support or any other monetary obligation of any person." **Miss. Code Ann. § 93-23-3 (c) (Rev. 1994)**. Consequently, Section 93-23-13 applies to issues relating to the initial award or modification of child custody rather than child support.

Regardless of the apparent inapplicability of Section 93-23-11 of the Uniform Child Custody Jurisdiction Act, the supreme court has held that "[a]s a matter of state law, a court that enters the original custody decree has jurisdiction to subsequently modify the decree separate and apart from the jurisdictional section of the UCCJA." **Jones v. Starr, 586 So. 2d 788, 790 (Miss. 1991)**. Because the chancery court entertained the original divorce proceedings between Scally and Ward, the court had continuing jurisdiction to modify the provisions of the original decree.

## **II. DOCTRINE OF CLEAN HANDS**

If a party is unable to pay child support, "the proper action for him to take is to promptly file for a modification of support." *Shelton v. Shelton*, 653 So. 2d 283, 286 (Miss. 1995). Ward filed a motion for modification of child support and presented his financial status to the chancellor. In addressing Scally's contention that Ward had unclean hands because of his substantial arrearage in child support and alimony, the chancellor found that Ward's delinquency was not the result of a "willful, obstinate and rebellious intent." The chancellor concluded that the arrearage resulted from a practical impossibility of Ward's ability to pay the amount of child support ordered on time.

Scally's position in essence is that if a former spouse is delinquent in making child support payments, he or she cannot apply for a modification in the amount of future payments until first paying the delinquencies. That has not been the law, nor should it be. Absent contumacious conduct, there is no reason to prevent an application for modification. The chancellor's finding that no such egregious conduct occurred here is supported by credible evidence.

## **III. MODIFICATION OF CHILD SUPPORT**

In order to justify the modification of the child support provisions of a divorce decree, the moving party must show that there has been a material or substantial change in the circumstances of one of the parties. *Shiple v. Ferguson*, 638 So. 2d 1295, 1298 (Miss. 1994); *McEachern v. McEachern*, 605 So. 2d 809, 813 (Miss. 1992). The chancellor is afforded broad discretion in the modification of child support, and we will reverse "only when he is manifestly wrong in his finding of facts or has abused his discretion." *Bruce v. Bruce*, 687 So. 2d 1199, 1202 (Miss. 1996).

During the hearing, Ward testified that his adjusted gross income decreased from \$40,853.99 to approximately \$17,700 due to a change in employment. The court set the new child support amount according to the statutory guidelines, as applied to that new income. Scally's attorney did not present any evidence, other than the age of the children, to overcome the presumption that the child support award guidelines were appropriate in this case. Additionally, the record does not reveal any evidence that Ward changed employment to reduce his child support payments.

Under the guidelines of Section 43-19-101, Ward was ordered to pay 22% of his adjusted gross income, or \$324 per month. While the chancellor recognized that there was not a finding of a reduction in the needs of the children, he noted that there was a substantial reduction in Ward's ability to pay which warranted a modification of the child support. There was no abuse of discretion.

**THE JUDGMENT OF THE CHANCERY COURT OF HANCOCK COUNTY IS  
AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J. AND McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING,  
AND PAYNE, JJ., CONCUR.**

**THOMAS, P.J., NOT PARTICIPATING.**