

IN THE COURT OF APPEALS 01/14/97

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00639 COA

JACQUELINE P. FALLS (GREENAWALT)

APPELLANT

v.

JAMES D. GREENAWALT

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:

RICHARD W. HAMILTON

ATTORNEY FOR APPELLEE:

WILLIAM E. TISDALE

NATURE OF THE CASE: DOMESTIC RELATIONS/CHILD CUSTODY

TRIAL COURT DISPOSITION: JUDGMENT MODIFYING FORMER DIVORCE JUDGMENT
ENTERED

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

BRIDGES, P.J., FOR THE COURT

Jacqueline P. Falls appeals the judgment of the Jackson County Chancery Court, wherein the chancellor awarded child support until the age of majority and medical support for her minor son. On appeal, Falls argues that the Jackson County Chancery Court erred by exercising jurisdiction over the case, and that at the very least, the court should have declared itself a *forum non conveniens*. We disagree.

FACTS

James D. Greenawalt ("Greenawalt") and Jacqueline P. Greenawalt Falls ("Falls") were granted a divorce on the ground of irreconcilable differences in Jackson County in June of 1991. From their marriage, came the births of John Greenawalt on October 5, 1974, James Greenawalt on September 23, 1976, and Jason Greenawalt on November 24, 1978. When the couple separated prior to the divorce, Falls moved to Maryland without the children in January of 1990. Pursuant to the 1991 divorce decree, Greenawalt was given custody of the three boys and Falls was required to pay support. In July of 1992, Greenawalt moved to Atlanta, Georgia with the three boys.

Subsequently, in April of 1993, Greenawalt filed a Complaint for Contempt, Modification and Other Relief in the Jackson County Chancery Court. Falls made a special appearance to contest jurisdiction, and her Motion to Dismiss was later overruled. Falls then filed a counter action seeking custody of all three children, as well as other support and fees. In the May 1994 judgment, the chancellor found that John was emancipated, left Jason with Greenawalt, and placed James with Falls, adjusting support accordingly.

In September of 1994, Greenawalt filed a Complaint for Modification and Other Relief in the same Jackson County Chancery Court seeking other support for Jason, who was still a minor. Falls once again made a special appearance to contest jurisdiction, and her motion to dismiss was once again overruled. Thereafter, Falls neglected to file any responsive pleadings, and a hearing was held in May of 1995. The final judgment left Jason with Greenawalt and provided for other changes in support. It is from that judgment that Falls appeals.

ARGUMENT AND DISCUSSION OF LAW

I. WHETHER THE CHANCERY COURT ERRED IN EXERCISING JURISDICTION OVER THE CASE OR BY REFUSING TO AT LEAST DECLARE ITSELF A FORUM NON CONVENIENS.

Falls appeals from the denial of her Motion to Dismiss for Lack of Jurisdiction in response to Greenawalt's September of 1994 Complaint for Modification. She alleges that the chancery court did not have jurisdiction pursuant to sections 93-23-5 and 93-23-13 (parts of the Uniform Child Custody Jurisdiction Act) of the Mississippi Code of 1972. We feel that the Uniform Child Custody Jurisdiction Act ("UCCJA") is not applicable to the case *sub judice* and that the chancery court properly exercised jurisdiction over this matter.

The Supreme Court of Mississippi has established a three-step process for determining whether the

court should assume jurisdiction pursuant to the UCCJA:

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) (citing *Hobbs v. Hobbs*, 508 So. 2d 677, 680 (Miss. 1987)). We feel that the chancery court cannot clear the first hurdle.

In his Complaint for Modification in September of 1994, Greenawalt sought only to modify the support Falls was required to pay for their only remaining minor son, Jason. He was not seeking to relinquish custody, and Falls did not file any counter measure requesting a change in custody. The portion of section 93-23-5 of the Mississippi Code of 1972 which is pertinent to our inquiry reads as follows:

(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
(emphasis added)

Miss. Code Ann. § 93-23-5 (1972). In determining if the chancery court was being asked to make a child custody determination, we look to section 93-23-3 of the Mississippi Code of 1972, which reads in pertinent part:

(c) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it *does not include* a decision relating to child support or any other monetary obligation of any person.

Miss. Code Ann. § 93-23-3 (1972).

It is the opinion of this Court that the Complaint in question involved exclusively child support and monetary issues and did not involve any matters relating to custody. In light of this, the chancery court could not have exercised jurisdiction pursuant to 93-23-5(1) as this section is not applicable to the facts that were before the court.

We hold, however, that the chancery court did have continuing jurisdiction to modify its final decree of divorce. It is well settled that chancery courts may modify their final decrees regarding matters such as alimony, custody, and child support. This authority exists pursuant to statute, as well as

independently by virtue of the inherent power of the chancery court. Miss. Code Ann. § 93-5-23 (Supp. 1996); *Campbell v. Campbell*, 357 So. 2d 129, 130 (Miss. 1978). Based on the above, we affirm the judgment and order of the Jackson County Chancery Court.

THE JUDGMENT OF THE JACKSON COUNTY CHANCERY COURT MODIFYING THE CHILD SUPPORT PROVISIONS OF ITS ORIGINAL DIVORCE DECREE IS HEREBY AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

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