

JURISDICTION IN CUSTODY ACTIONS

Most actions involving custody of children are governed by a Uniform Act designed to provide uniformity among states in custody decisions. Mississippi adopted this Act, the Uniform Child Custody Jurisdiction Act, in 2004. It governs jurisdiction in all actions discussed in this program except adoption actions, which are governed by separate jurisdictional grounds.

I. Scope of the UCCJEA

The UCCJEA applies to both initial custody actions and modifications, and to permanent as well as temporary orders. It also applies to actions dealing solely with visitation. In addition to custody orders in divorce and independent custody actions, the Act applies to proceedings involving separation, guardianship, neglect, abuse and dependency, paternity, termination of parental rights, and protection from domestic violence. The Act does not apply to proceedings involving juvenile delinquency, petitions for adoption, or authorization for a child's emergency medical care. MISS. CODE ANN. § 93-27-102 (2004).

II. Jurisdiction over original order

[A] Jurisdiction based on the child's "home state"

The UCCJEA places jurisdiction to make an initial determination of custody in the child's home state. A child's home state is the state in which the child has lived for the six months prior to the filing of the action. If the child has not lived in the current state of residence for six months, jurisdiction is in the state that was the child's home state within the last six months, if a parent remains in the state. MISS. CODE ANN. § 93-5-5 (2004). In effect, if one parent moves with a child

from the family's home state, the parent who remains has six months to exercise home state jurisdiction. Temporary absences are counted as part of the six month period.

[B] Jurisdiction based on wrongful conduct

Courts should refuse to hear a case in which home state or other jurisdiction is based on a petitioner's "unjustifiable conduct," unless (1) all parties consent to jurisdiction, (2) the proper court to have jurisdiction determines that the court is a more appropriate forum, or (3) no other state has jurisdiction. MISS. CODE ANN. § 93-27-208(1) (2004).

[C] Significant connections jurisdiction

If a child has no home state or the home state declines jurisdiction, a state with significant connections to the child and the action may take jurisdiction. MISS. CODE ANN. § 93-27-201(2) (2004).

[D] Emergency jurisdiction

Under the UCCJEA, a state in which the child is physically located can take jurisdiction on a temporary basis over a child who has been abandoned or needs protection because of an emergency related to mistreatment or abuse of the child or other family member, including domestic violence against one parent. MISS. CODE ANN. § 93-27-201, 204(1) (2004).

[E] Jurisdiction under forum non conveniens

A second state may take jurisdiction if the child's home state declines under the doctrine of forum non conveniens.

[F] Personal jurisdiction

In most cases, a court must have personal jurisdiction over the parties, which requires that the defendant have minimum contacts with the state. However, when a court adjudicates status rather

than rendering a personal judgment, minimum contacts with the forum state are not required. In these actions, historically referred to as “in rem,” the defendant need only be properly served. Adjudication of marital status and custody are considered to be in rem actions. A court with subject matter jurisdiction may enter a divorce or custody decree without personal jurisdiction over the defendant.

III. Jurisdiction over modification of custody

Under the UCCJEA, the court issuing an initial custody decree has continuing exclusive jurisdiction to modify the order. Exclusive jurisdiction continues until both parties and the child move from the state. MISS. CODE ANN. § 93-27-202(1) (2004). When all parties have moved, jurisdiction lies in the child’s new home state or, if there is no home state, in a state with significant connections. A court without home state jurisdiction may also exercise jurisdiction to enter temporary modification orders in emergencies. A state may also modify another state’s order that was not entered in compliance with the Act. For example, under the Act’s predecessor, the UCCJA, a Texas order was not entitled to full faith and credit because the court did not have jurisdiction to enter the order under the UCCJA. *Mosley v. Huffman*, 481 So. 2d 231, 239 (Miss. 1985) (no jurisdiction because child was wrongfully taken into state).

A state may modify another state’s order even though one party remains in the issuing state if the issuing court determines that the state has no continuing significant connection with the action and that substantial evidence related to the child is not available in the state. This determination may be made only by the state issuing the order. MISS. CODE ANN. §§ 93-27-202, -203 (2004). The court with exclusive jurisdiction also has discretion to decline jurisdiction under the doctrine of forum non conveniens. MISS. CODE ANN. § 93-27-203(a) (2004). Furthermore, a second state can proceed if the

first state's assumption of jurisdiction or proceeding does not comply with the UCCJEA. *See* MISS. CODE ANN. § 93-27-202 (2004); *Jundoosing v. Jundoosing*, 826 So. 2d 85, 90 (Miss. 2002) (Mississippi could proceed in spite of California action to which mother did not receive notice); *Mosley v. Huffman*, 481 So. 2d 231, 243 (Miss. 1985) (Arizona decision did not prevent Mississippi from proceeding; petitioners in action had abducted child).

IV. Jurisdiction within a state

[A] The proper court

Chancery courts are vested with jurisdiction over most actions involving family law matters under the Mississippi Constitution as well as by statute. *See* MISS. CODE ANN. § 93-5-7 (2004). Chancery courts have subject matter jurisdiction in divorce and annulment actions to order property division, award alimony and child support, and award custody of children. In addition, their authority extends to orders of separate maintenance. Chancery courts are also authorized by statute to hear custody and child support cases apart from divorce. MISS. CODE ANN. § 93-11-65 (2004). Jurisdiction over adoption is also vested exclusively in the chancery courts of Mississippi. MISS. CODE ANN. § 93-17-3(1) (2004);

Cases involving allegations of child abuse create a potential conflict between chancery and youth court jurisdiction. The state's youth courts are vested with exclusive jurisdiction in actions involving abused children, while chancery courts have jurisdiction over custody actions, including those in which abuse or neglect is alleged. MISS. CODE ANN. § 43-21-151 (2004). A chancery court may take jurisdiction over a custody action based in part on alleged abuse unless there is a prior youth court proceeding concerning the child. *E.J.M. v. A.J.M.*, 846 So. 2d 289, 293 (Miss. Ct. App.

2003); *cf. Chrissy F. v. Mississippi Dep't of Pub. Welfare*, 780 F. Supp. 1104, 1123 (S.D. Miss. 1991) (chancellor has discretion to transfer to youth court).

Under a new set of Youth Court Rules adopted in 2009, a chancery court hearing a case involving allegations of abuse and neglect must follow the procedures set out in the Youth Court Rules. These rules are discussed in the “Special Topics” written materials.

[B] Venue

[1] Fault-based divorces. In fault-based divorces in which the defendant is a Mississippi resident, venue lies in the defendant’s county of residence, the county where the defendant may be found, or the county in which the parties resided at the time of separation, if the plaintiff is still a resident of that county at the time of filing suit. If the defendant is a non-resident or absent, venue for fault-based divorce lies in the county where the plaintiff resides. *E.J.M. v. A.J.M.*, 846 So. 2d 289, 293 (Miss. Ct. App. 2003).

[2] Irreconcilable differences divorces. In an irreconcilable differences divorce between two Mississippi residents, suit may be filed in either party’s county of residence. Otherwise, venue lies in the county in which the resident party lives. *E.J.M. v. A.J.M.*, 846 So. 2d 289, 293 (Miss. Ct. App. 2003).

[3] Independent custody and child support actions. In actions for custody or child support under MISS. CODE ANN. § 93-11-65, venue lies in the child’s county of residence, the county where the party with actual custody resides, or the county in which the defendant resides. MISS. CODE ANN. § 93-11-65 (2004).

[C] More than one court with jurisdiction

If more than one state court has jurisdiction in a family law matter, the court in which suit is first filed has jurisdiction. The second action should be abated. *See Lee v. Lee*, 232 So. 2d 370, 373 (Miss. 1970) (wife who filed a divorce in Forrest County, then lured her husband to Hancock County under the pretext of reconciliation, could not dismiss the Forrest County action and file in Hancock County) (second action based on the same cause should be abated if case is already pending in court with jurisdiction).

[D] Modification within a state

Within a state, a petition to modify or enforce a divorce decree or custody or support order must be filed in the court that issued the decree. As between the parties to the original action, the issuing court's jurisdiction is exclusive, precluding any other court in the state from exercising jurisdiction over the case. *Ladner v. Ladner*, 206 So. 2d 620, 624-25 (Miss. 1968) (family court had no authority to modify custody established in Hinds County chancery proceedings); *Reynolds v. Riddell*, 253 So. 2d 834, 837 (Miss. 1971); *Tollison v. Tollison*, 841 So. 2d 1062, 1065 (Miss. 2003) (petition to terminate parental rights should have been filed in court with continuing exclusive jurisdiction). However, if an issuing court finds that adjudication in another court would be more efficient, the court may transfer jurisdiction to that court. *Reynolds v. Riddell*, 253 So. 2d 834, 837 (Miss. 1971) (transferring custody modification does not conflict with statute barring transfer of divorce case).

V. Enforcement across state lines

[A] Registration

The UCCJEA added provisions for enforcement and registration of custody orders. One state's custody order may be registered in another state by sending a request and two copies of the

order to the chancery clerk's office, accompanied by an affidavit that, to the best of the petitioner's knowledge, the order has not been modified. The respondent is notified that he or she may contest the order's validity within twenty days. If a hearing is not requested within twenty days of service of notice, the order is confirmed, precluding further contest with respect to issues that could have been asserted at that time. Grounds for contest include a claim that the issuing court lacked jurisdiction, that the order has been modified or stayed, or that the contestor did not receive required notice of the proceedings in which the order was entered. MISS. CODE ANN. § 93-27-305 (2004).

[B] Enforcement

The Act provides for expedited enforcement of registered orders, allowing a parent entitled to custody or visitation to obtain a hearing on the next judicial day after service "unless that date is impossible. MISS. CODE ANN. § 93-27-311 (2004). The order for appearance must state the time and place of the hearing and that the petitioner may take immediate custody of the child at the hearing, unless the respondent proves that an order has not been registered, and that the issuing court lacked jurisdiction, the order has been modified or stayed, or that the contestor did not receive required notice of the proceedings in which the order was entered. MISS. CODE ANN. §§ 93-27-306, -308 (2004). At the hearing, the court may order that the petitioner be given immediate physical custody. MISS. CODE ANN. § 93-27-310 (2004). A court may also issue a warrant to take physical custody of a child prior to the hearing if the court finds that the child is in imminent danger of serious physical harm or removal from the state. MISS. CODE ANN. § 93-27-311 (2004). Furthermore, a court without jurisdiction to modify a custody order may nonetheless issue a temporary order enforcing visitation, even if the order does not include a specific visitation schedule. The court should provide a specific

reasonable period for the petitioner to obtain an order from the court with jurisdiction. MISS. CODE ANN. § 93-27-304 (2004).