

IN THE SUPREME COURT OF MISSISSIPPI  
Cause No. 2007-CA-01628

DANA M. SHADDEN

APPELLANT

VS.

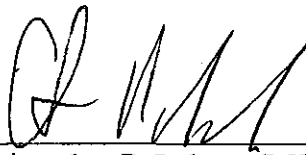

KEITH A. SHADDEN

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Dana M. Shadden
2. Keith A. Shadden
3. James G. McIntyre
4. Christopher P. Palmer
5. John S. Grant, Chancellor

  
\_\_\_\_\_  
Christopher P. Palmer (MSB )

### **STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to M.R.A.P. 34, the Appellee respectfully suggests that oral argument is not necessary in this matter and would not benefit this Court in its consideration of this cause.

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## **I. INTRODUCTION**

This matter involves two adult citizens of different states that litigated a post-divorce child custody action in the state of California. Keith Shadden sought enforcement of the California judgment in the state of Mississippi and Dana Shadden sought to divest the California Court of jurisdiction by initiating an action in Mississippi while the California litigation was pending.

Keith Shadden and Dana Shadden were residents of the state of California at the time the California Court entered a judgment divorcing the parties. After the parties divorced, Keith Shadden moved to the state of Wyoming and Dana Shadden moved to the state of Mississippi, in the middle of October, 2006. Keith Shadden filed an action in California against Dana Shadden to address issues affecting his visitation rights. Dana Shadden participated in a telephonic temporary hearing and the Court issued an Order to Show Cause, setting the matter for trial. Dana Shadden was personally served with the Order to Show Cause and Affidavit for Contempt, which required her to personally appear for the California trial. However, Dana Shadden did not show up for trial. The California Court entered a judgment transferring custody of the parties' two children to Keith Shadden. The judgment was not appealed and Dana sought no post-trial relief in California.

After being served with the Order to Show Cause, but six days before the California trial, Dana filed a Petition to Confirm Jurisdiction of Minor Children in Rankin County Chancery Court. At the time Dana Shadden initiated the Mississippi action, the California action was pending, Dana had submitted to California jurisdiction, Dana had participated in a telephonic hearing in California from which the Order to Show Cause originated, had been served with the Order to Show Cause and had been a resident of the state of Mississippi for less than six months.

Shortly after receiving the judgment transferring custody, Keith Shadden registered the California judgment for enforcement in Rankin County Chancery Court in compliance with the Uniform Child Custody Jurisdiction and Enforcement Act in order to obtain his children. The Rankin County Chancery Court entered an Order Confirming Registration of Foreign Custody Order and Confirming Judgment for Enforcement and Dana Shadden did not appeal.

Dana Shadden continued to pursue her request to have Mississippi take jurisdiction of the minor children, despite the California judgment that was entered and not appealed. When the matter came to hearing in Rankin County Chancery Court, the Chancellor held that the Court had no jurisdiction and dismissed Dana Shadden's Petition. At the time the matter came to hearing, the California Court had already lawfully transferred custody to Keith Shadden.

Also at the hearing in Rankin County Chancery Court, Dana Shadden asked the Rankin County Chancery Court to set aside the California judgment pursuant to Mississippi Rule of Civil Procedure 60. However, the Court found, as it did on Dana's initial Petition, that the Court had no jurisdiction. Interestingly, Dana Shadden never filed any post-trial motions in California to seek relief from the judgment and did not appeal, despite her efforts to have the Rankin County Chancery Court set aside the California judgment.

After receiving the Rankin County Chancery Court's decision, Dana Shadden sought to reopen the record to take additional testimony. The Court granted the motion and Dana's testimony revealed that she participated in the telephonic hearing in California, that she was personally served with the Order to Show Cause, that the Order to Show Cause scheduled the trial for March 28, 2007 in California, that Dana was required to personally appear for the trial, that she believed that she

would receive a telephone call rather than having to personally appear in California, that she took no efforts in California to set aside, revise or appeal the California judgment, that she had no ties to the state of Mississippi and that she had been in Mississippi for less than six months at the time she filed her Mississippi Petition. Up to that point, Dana's pleadings and legal arguments all sought to persuade the Court that Dana had been in Mississippi for more than six months at the time she sought to invoke Mississippi jurisdiction. After considering the additional testimony and evidence, the Court affirmed its previous rulings finding no jurisdiction and it is from that decision that Dana Shadden has appealed.

## **II. STATEMENT OF THE ISSUES**

- A. Dana Shadden's Issue Statement: The lower court failed to take jurisdiction of the minor children after the Superior Court of California had entered a Judgment of Divorce, and subsequently, the Defendant, (father) moved to the state of Wyoming and the Plaintiff, (wife) moved to the state of Mississippi and had been living in the state of Mississippi for more than six (6) months next preceding the date of her Petition for the Court to assume jurisdiction of the minor children and a Final Judgment for Modification had been entered on March 28, 2007 and there were no pending matters before the Superior Court of California.

## **III. STATEMENT OF THE CASE AND FACTS**

### **Course of the Proceedings**

Keith A. Shadden (hereinafter "Keith") and Dana M. Shadden (hereinafter "Dana") were divorced by order of the Superior Court of California, County of Kern (hereinafter "California Court"), on May 12, 2005. (Record p. 11). On March 2, 2007, the California Court entered an Order to Show Cause on a petition involving child custody, filed by Keith, in which both parties stipulated



to the terms and agreed that the trial of the case would be held on March 28, 2007 in California. (Trial Exhibit D-3). (Keith's Record Excerpts p. 000003). On March 14, 2007, Dana was personally served with process to appear in the California Court on March 28, 2007 to participate in the custody hearing. (Trial Exhibit D-2). (Keith's Record Excerpts p. 000001). On March 22, 2007, eight days after being served with process in the California action and six days before the California trial, Dana filed her Petition to Confirm Jurisdiction of Minor Children in Rankin County, Mississippi, which was assigned Cause Number 60993. (Record p. 3). On March 28, 2007, the California Court issued an order transferring custody of the parties' two minor children to Keith. (Record p. 102). (Keith's Record Excerpts p. 000021). Dana M. Shadden did not appear, seek post-trial relief or appeal. (Transcript pp. 56, 63-67).

On April 10, 2007, Keith registered the California Court order for enforcement in Rankin County, Mississippi, in Rankin County Cause Number 61070, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act and Miss. Code Ann. § 93-27-305 (Supp. 2006). On May 7, 2007, the Chancery Court of Rankin County, Mississippi entered an Order Confirming Registration of Foreign Custody Order and Confirming Judgment for Enforcement (hereinafter "Registration Order") allowing enforcement of the California Order in the State of Mississippi as if it were an original Mississippi judgment. (Record p. 107). (Keith's Record Excerpts p. 000028). The Registration Order further ordered that the California Court had jurisdiction over the matter under Article 2 of the Uniform Child Custody Jurisdiction and Enforcement Act when it issued the underlying Judgment; that the child custody determination sought to be registered had not been vacated, stayed or modified by a Court having jurisdiction to do so; that Dana M. Shadden was

properly before the Court in California; that there were no underlying defects in service of process in the California matter; and that the confirmation of the California judgment precluded any further contest of the California judgment with respect to any matter that could have been asserted at the time of registration. Dana did not appeal the May 7, 2007 Registration Order in Cause Number 61070. (Record p. 150). (Keith's Record Excerpts p. 000036).

On June 8, 2007 the Rankin County Chancery Court entered a Judgment confirming the above facts and finding that the Court did not have jurisdiction and dismissed the Plaintiff's Petition to Confirm Jurisdiction. The Court also denied Plaintiff's Motion for Relief from Judgment, finding again that the Court had no jurisdiction. (Record p. 124). (Keith's Record Excerpts p. 000030).

Dana filed a Motion to Reopen the Record, for Reconsideration, and for Clarification and on August 31, 2007, the Chancellor entered an order denying Dana's motion and took under advisement Keith's request for attorney fees so as to give the parties an opportunity to present briefs to the Court on the attorney fee issue. (Record p. 147). (Keith's Record Excerpts p. 000033). On September 12, 2007, the Court entered an Order denying Keith's request for attorney fees and again confirming that the Motion to Reopen Record, for Reconsideration, and for Clarification was not well taken. (Record p. 149). (Keith's Record Excerpts p. 000035). On September 18, 2007, Dana filed a Notice of Appeal, designating therein that she was appealing, "the decision of the Court and Order entered in the within cause on the 30<sup>th</sup> day of May, 2007, and other Orders and Judgments . . . ." (Record p. 150). (Keith's Record Excerpts p.000030).

Dana does not challenge the validity of the Registration Order as a timely notice of appeal was not filed from said action and that cause was not consolidated with the cause identified in Dana's Notice of Appeal. (Record p. 150). (Keith's Record Excerpts p. 000030).

#### **IV. SUMMARY OF THE ARGUMENT**

The Uniform Child Custody Jurisdiction and Enforcement Act does not afford Mississippi Courts jurisdiction of the parties and subject matter because Mississippi is not the “home state” of the children, has never been the home state of the children, California had jurisdiction over the parties and chose to exercise that jurisdiction, there are no significant connections between Mississippi and the children and no substantial evidence concerning the children’s welfare is available in Mississippi. Moreover, the litigation in California proceeded to final judgment, transferring custody of the children to Keith Shadden, and Dana did not appear for trial in California, filed no post-trial motion in California and did not appeal the California judgment. The Chancellor was correct in finding that Rankin County had no jurisdiction and the judgments of the lower court should be affirmed.

#### **V. ARGUMENT**

##### **A. STANDARD OF REVIEW.**

“Jurisdiction is a question of law which this Court reviews *de novo*.” RAS Family Partners v. Onnam Biloxi, 968 So. 2d 926 (¶8) (Miss. 2007).

##### **B. THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.**

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), set forth in Miss. Code Ann. § 93-27-101 *et seq.*, governs the ability of Mississippi Courts to enforce, or modify, child custody judgments entered in another state. Miss. Code Ann. § 93-27-101 *et seq.* (Keith’s Record Excerpts p. 000039). “The primary purpose of the Uniform Child Custody Jurisdiction Act (UCCJA), [the previous enactment of the UCCJEA] is to prevent parents from obtaining competing orders of custody.” White v. Thompson, 822 So. 2d 1125 (¶ 6) (Miss. App. 2002). The actions

Dana took in attempting to ignore the California judgment by initiating a Rankin County legal action violate the fundamental purpose of the UCCJEA.

The UCCJEA sets forth the standard by which Mississippi Courts may modify a child custody determination of another state in Miss. Code Ann. § 93-27-203. The statute reads:

Except as otherwise provided in Section 93-27-204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under Section 93-27-201(1)(a) or (b); and

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 93-27-202 or that a court of this state would be a more convenient forum under Section 93-27-207; or

(b) A court of this state or a court of the other state determines that neither the child, the child's parents, nor any person acting as a parent presently does not reside in the other state.

Id. The UCCJEA defines certain terms that are used throughout the Act and are important to the meaning of the provisions. Child Custody Determination is defined as:

A judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

Miss. Code Ann. § 93-27-102(c) (Supp. 2008). Initial Determination is defined as, "the first child custody determination concerning a particular child." Miss. Code Ann. § 93-27-102(h) (Supp. 2008).

Before a Court of this state may modify a judgment of another state, Section 93-27-203 first requires that a Court of this state have jurisdiction to make an "initial determination" under Section 93-27-201(a) or (b). The Initial Determination Statute reads in relevant part:

Except as otherwise provided in Section 93-27-204, a court of this state has jurisdiction to make an initial child custody determination **only if:**

(a) This state is the home state of the child on the date of the commencement of the proceedings, or was the home state of the child within six (6) months before commencement of the proceedings and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

Miss. Code Ann. § 93-27-201(1)(a) (emphasis added). The UCCJEA defines “commencement” as the filing of the first pleading in a proceeding. Miss. Code Ann. § 93-27-102(e) (Supp. 2008). The first pleading in this matter was filed on March 23, 2007, as shown on the Clerk’s Docket. (Record p. 1) (Keith’s Record Excerpts p. 000026). Dana admitted in her testimony, despite the arguments to the contrary made herein by her attorney, that she had not been in the state of Mississippi for at least six months at the time she filed her first pleading, as she had moved from California “in the middle of October.” (Transcript pp. 68 - 69). Additionally, a letter from Steen’s Creek Elementary School admitted into evidence shows that the children were not removed from school in California until October, 2006. (Exhibit D-1). (Keith’s Record Excerpts p. 000038). Even giving Dana the benefit of the doubt, and assuming for this argument that she and the children moved to Mississippi October 1, 2006, they still would have only been in the state of Mississippi for approximately 5 months and 23 days. Therefore, Dana’s argument must fail against the clear requirements of Miss. Code Ann. § 93-27-102(g) and 93-27-201(1)(a) and the lower Court must be affirmed.

The Court may also consider whether it has jurisdiction by utilizing Section 93-27-201(1)(b) of the Initial Determination Statute which reads:

Except as otherwise provided in Section 93-27-204, a court of this state has jurisdiction to make an initial child custody determination **only if:**

(b) A court of another state does not have jurisdiction under paragraph (a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 93-27-207 or 93-27-208; **and;**

(i) The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

Miss. Code Ann. § 93-27-201(1)(b) (emphasis added). Clearly, and without contradiction, the California Court had jurisdiction over the parties as it was the Court that entered the parties' divorce, both parties participated in a hearing and the California Court's orders clearly reflect that it has jurisdiction and it exercised that jurisdiction rather than declining to do so. (Record p. 11 and 102) (Trial Exhibits D-3 and D-2) (Keith's Record Excerpts pp. 000003, 000021). Moreover, Dana's connection with the state of Mississippi was sparse, at best. Dana testified that she moved to Mississippi to be with her boyfriend, who is a resident of Mississippi. (Transcript p. 67). She testified that she has an aunt and uncle in Mississippi, but that she grew up in California and lived in California her entire life and that the only time she has lived in Mississippi has been the period of time since the middle of October, 2006. (Transcript pp. 67 - 68). Dana's testimony confirms that Mississippi is not the home state of the children, that California had jurisdiction, California did not decline to exercise jurisdiction, that she does not have a significant connection with Mississippi beyond her mere physical presence and that there is no substantial evidence in Mississippi concerning the children's care, protection, training and personal relationships. (Transcript pp. 67-68).

The lower Court was correct in finding that it had no jurisdiction and the lower Court should be affirmed.

If the assumption is made that Rankin County Chancery Court did have jurisdiction to make an initial custody determination, the Court was nevertheless correct in dismissing Dana's Petition because at the time it was filed, litigation concerning custody of the children was pending in the state of California. Miss. Code Ann. § 93-27-206(1), reads in relevant part:

[A] court of this state **may not exercise its jurisdiction** under this act if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated, or is stayed by the court of the other state because a court of this state is a more convenient forum . . . .

Miss. Code Ann. § 93-27-206(1) (emphasis added). It is undisputed that the California matter was pending at the time Dana commenced her action in Mississippi, and that Dana was ordered to appear in California for trial. Therefore, even if Mississippi could have had jurisdiction, the Chancellor was correct in dismissing Dana's petition because there was active litigation concerning custody of the children pending in a California Court at the time the matter was filed in Mississippi.

Dana also argues that since the California judgment was final at the time this matter was heard in Rankin County, Rankin County had jurisdiction. In making this argument, Dana ignores the use of the word "commencement" as defined by the Act. Miss. Code Ann. § 93-27-102(e) (Supp. 2008). However, assuming that Dana's argument is correct, and that there was nothing pending in California at the time she commenced the Mississippi action, her argument is still without merit because the California Court divested Dana of custody and placed the children with their father, who

is a resident of the state of Wyoming. Therefore, the children would not have been in Mississippi lawfully, as Dana had them in Mississippi in violation of the clear terms of the March 28, 2007, California judgment. A litigant may not seek to invoke the jurisdiction of a Court by engaging in unjustifiable conduct. Miss. Code Ann. § 93-27-208. Taking Dana's argument at face value shows that she is actually asserting that the California judgment should be ignored because she was able to file a petition in Mississippi before the California trial date. This is exactly the type of behavior that the legislation sought to prevent in adopting the UCCJEA. Owens, by & through, Mosley v. Huffman, 481 So. 2d 231, 239 (Miss 1985). Since the California child custody determination was a final judgment, Mississippi is required to enforce the judgment both pursuant to the UCCJEA and Article IV, § 1 of the United States Constitution. Schwartz v. Hynum, 933 So. 2d 1039 (¶9) (Miss. App. 2006); Miss. Code Ann. § 93-27-303 (Supp. 2008); Miss. Code Ann. § 93-27-313 (Supp. 2008). Dana's argument is completely without merit and the judgments of the lower court should be affirmed.

Finally, the California judgment was registered for enforcement in Mississippi, in which Order the Court determined that the California Court had jurisdiction over the matter under Article 2 of the Uniform Child Custody Jurisdiction and Enforcement Act when it issued the underlying Judgment; that the child custody determination sought to be registered had not been vacated, stayed or modified by a Court having jurisdiction to do so; that Dana M. Shadden was properly before the Court in California; that there were no underlying defects in service of process in the California matter; and that the confirmation of the California judgment precluded any further contest of the California judgment with respect to any matter that could have been asserted at the time of registration. (Record p. 107). (Keith record except p. 000028). Dana did not appeal the May 7, 2007 Registration Order in Cause Number 61070. (Record p. 150). (Keith's Record Excerpts p.



000036). Dana should be precluded from raising any of the issues addressed in the Registration Order on the basis of *res judicata*. Aetna Cas. & Surety Co., 669 So. 2d 56, 67 (Miss. 1996). “The rule of law known as *res judicata* holds that when a court of competent jurisdiction enters a final judgment on the merits of an action, the parties or their privies are precluded from relitigating claims that were decided or could have been raised in that action.” *Id.* Dana should also be collaterally estopped from raising any issues in this appeal that were resolved in the Registration Order, which was rendered in a different cause from which there was no appeal taken. (Record p. 150). (Keith’s Record Excerpts p. 000036). “When collateral estoppel is applicable, the parties will be precluded from relitigating a specific issue actually litigated, determined by, and essential to the judgment in a former action, even though a different cause of action is the subject of the subsequent action.” *Id.* The Registration Order was clear in its terms, Dana did not appeal the Registration Order and is therefore bound by its terms. Dana should be barred, based on *res judicata* and collateral estoppel, from alleging or arguing anything that contradicts the terms of the Registration Order, including her entire contest of the California judgment. The Registration Order was clear that the confirmation of the California judgment precluded any further contest of the California judgment with respect to any matter that could have been asserted at the time of registration. (Keith’s Record Excerpts p. 000028). (Record p. 107).

Dana also argues that the California judgment was a default judgment and asserts Mississippi law as a basis to set aside the default judgment. Nothing in the California judgment indicates that it is a “default judgment” but even if it were, the place to address setting aside a default judgment is the court that rendered the judgment. Without jurisdiction, the Court has no authority to entertain and proceed with a case. Choctaw v. Campbell-Cherry-Harrison, 965 So. 2d 1041 (¶20) (Miss. 2007). Dana sought no post-trial relief in California and did not appeal the California judgment,

despite being fully aware of the judgment. (Transcript pp. 65-67). Mississippi had no jurisdiction in this matter and the Chancellor's judgment should be affirmed.

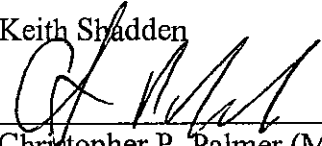

### CONCLUSION

The Uniform Child Custody Jurisdiction and Enforcement Act, codified in Miss. Code Ann. § 93-27-101 through § 93-27-402, does not afford the Rankin County Chancery Court jurisdiction over the children or Keith Shadden for any purpose other than enforcement of the March 28, 2007 California judgment and accordingly, the Court has no jurisdiction to provide any relief to Dana M. Shadden from the March 28, 2007 California judgment. The judgments of the Rankin County Chancery Court should be affirmed and Dana Shadden's appeal should be dismissed with all costs assessed to the Appellant.

Respectfully submitted,

Keith Shadden

BY:

  
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Certificate of Service

I certify that I mailed a copy of this document by First Class mail, postage prepaid, to:

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Rankin County Chancery Clerk  
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Honorable John S. Grant, III  
Chancery Court of Rankin County  
Post Office Box 1437  
Brandon, MS 39043

This the 14<sup>th</sup> day of October 2008.

A handwritten signature in black ink, appearing to read 'C. Palmer', written over a horizontal line.

Christopher P. Palmer