COURT OF APPEALS
DECISION
DATED AND RELEASED

MAY 21, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 97-0907
97-0908

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

NO. 97-0907

IN THE INTEREST OF KATHERINE M.B., A CHILD UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-APPELLANT,

V.

PATRICK B.,

RESPONDENT-RESPONDENT.

NO. 97-0908

IN THE INTEREST OF AMBER L.B., A CHILD UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-APPELLANT,

V.

PATRICK B.,

RESPONDENT-RESPONDENT.

APPEALS from an order of the circuit court for Sheboygan County: L. EDWARD STENGEL, Judge. *Affirmed.*

ANDERSON, J. The State appeals from the trial court's order dismissing its petition to terminate the parental rights of Patrick B., the biological father of Katherine M.B. and Amber L.B.[1] Even though Patrick failed to contact his children through cards or gifts, the trial court held that the State's petition incorrectly included a period of time when Patrick was ordered not to visit the children in its abandonment calculation under § 48.415(1)(b), STATS.[2] We affirm.

In 1991, both Katherine and Amber were found to be children in need of protection or services because their parents were unable, for reasons other

---

[1] Although we granted the assistant district attorney's motion to extend the time to file its brief in this case, in an unpublished order dated April 29, 1997, we again remind the parties that the deadlines in RULE 809.107, STATS., are to be met. It seems unnecessary to mention that part of the decision on whether to appeal requires a determination of the appellant's ability to comply with rules, expedited or not. This court has previously noted that in TPR cases "the rights of the parents and the child are so significant that an expedited appeals process is desirable, both to restore parental rights … [or] to allow a prompt adoption or other placement of the child if termination is proper." ***Rhonda R.D. v. Franklin R.D.***, 191 Wis.2d 680, 699, 530 N.W.2d 34, 41 (Ct. App. 1995). Although we have the authority to extend or waive time limits for briefs under RULE 809.82(2), STATS., we will be less generous in the future. If sanctions could be imposed against the State, they would be.

[2] Numerous legislative changes have been made to § 48.415, STATS., by 1995 Wis. Act 77, § 336-337; 1995 Wis. Act 108, § 1; 1995 Wis. Act 225, §§ 115-116; and 1995 Wis. Act 275, §§ 70-89. All references are to the 1993-94 version of the statutes.

than poverty, to provide necessary shelter so as to seriously endanger their physical health.[3] At that time, Patrick was incarcerated.

Once released from prison, Patrick moved for reinitiation of visitation rights. The court, the Honorable Gary Langhoff presiding, ordered that Patrick's visitation with the children be reinstated provided Patrick comply with several conditions. If Patrick failed to satisfy the conditions, then his visitation rights would be suspended until "there has been a 90 day period of compliance." On December 29, 1995, Patrick's visitation was suspended until March 18, 1996, for violations of the court's order. On February 9, 1996, Patrick's suspended vistitation was extended to April 30, 1996, due to another violation of the court's order. While under the court's orders not to visit his children, Patrick failed to contact them by mailing cards or letters or by arranging phone calls.[4]

On August 6, 1996, the State filed its petition for involuntary termination of parental rights for abandonment by Patrick pursuant to § 48.415(1)(a)2, STATS.[5] The petition charged that Patrick "has had no contact with Katherine or Amber [] since December 19, 1995." Patrick filed a motion to dismiss the State's petition. The trial court, the Honorable L. Edward Stengel presiding, initially denied the motion. However, the court held another hearing to

[3] Both Katherine's and Amber's CHIPS orders have been extended each year from 1991 to the present. Each extension has provided both parents with the requisite notice of the grounds for termination of parental rights. *See* § 48.356(2), STATS.

[4] On June 26, 1996, Patrick contacted the social worker about setting up phone contact with the children. The social worker informed him on July 3, 1996, that before visitation would be allowed, he needed to provide the requisite releases from the treatment program he was participating in at his new residence in California.

[5] Rebecca T., Katherine and Amber's biological mother, voluntarily consented to terminate her parental rights to the children.

review its denial. At the hearing, the parties moved to amend the petition to incorporate the December and February suspension letters, as well as the social worker's log. With this additional information in hand, the trial court found that the petition did not adequately set forth a cause of action to terminate Patrick's parental rights because the State included in its six-month period of time, time in which a court order prohibited Patrick from visiting his children. The State appeals.

The State argues that the word "or" between visit or communicate in § 48.415(1)(b), STATS., should be read in the conjunctive, not the disjunctive. The State complains that a disjunctive reading would render the language of the statute "dubious," encourage instability in family relations and result in an absurd and unreasonable interpretation.

This issue involves the interpretation of § 48.415(1)(b), STATS. The interpretation of a statute is a question of law which this court reviews independently of the trial court. *See* ***Jerry M. v. Dennis L.M.***, 198 Wis.2d 10, 16-17, 542 N.W.2d 162, 165 (Ct. App. 1995).

Section 48.415(1), STATS., provides in relevant part:

> ABANDONMENT. (a) Abandonment may be established by a showing that:
>
> ….
>
> 2. The child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356(2) and the parent has failed to visit or communicate with the child for a period of 6 months or longer; or
>
> ….

> (b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a) 2. or 3.
> *The time periods under par. (a)2. or 3. shall not include any periods during which the parent has been prohibited by judicial order from visiting* ***or*** *communicating with the child.* [Emphasis added.]

When interpreting a statute, we first look to the plain language of the statute. *See* ***Jerry M.***, 198 Wis.2d at 17, 542 N.W.2d at 165. If a statute is clear and unambiguous, we need not look beyond its plain language in order to ascertain its meaning. *See* ***id.***

We conclude that § 48.415(1)(b), STATS., is unambiguous. It specifically precludes court ordered interference with parenting to be used as evidence of parental abandonment. The disjunctive use of "or" also eliminates potential confusion over whether contact via the phone or mail constitutes parenting. If we read the statute the way the State suggests, then litigation would ensue over how much contact via phone and mail is necessary to avoid a finding of abandonment. What constitutes abandonment in Sheboygan county may be sufficient contact to avoid a finding of abandonment in Waukesha county. In construing a statute, we must interpret it in such a way as to avoid an absurd or unreasonable result. *See* ***Jerry M.***, 198 Wis.2d at 18, 542 N.W.2d at 166.

Moreover, the legislature has set up '"a panoply of substantive rights and procedures to assure that the parental rights will not be terminated precipitously, arbitrarily, or capriciously, but only after a deliberative, well considered, fact-finding process utilizing all the protections afforded by the statutes ….'" ***D.F.R. v. Juneau County, Dep't of Social Servs.***, 147 Wis.2d 486, 495, 433 N.W.2d 609, 612 (Ct. App. 1988) (quoted source omitted). The time constraints of § 48.415(1)(b), STATS., provide one such protection.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.