

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 11, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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

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

**Appeal No. 2005AP2251**

**Cir. Ct. No. 2004CV1221**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**MICHAEL GIAMBRONE AND SUE GIAMBRONE,**

**PLAINTIFFS-APPELLANTS,**

**v.**

**STATE OF WISCONSIN DEPARTMENT  
OF HEALTH & FAMILY SERVICES,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Outagamie County:  
MARK J. McGINNIS, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Michael and Sue Giambrone appeal a circuit court order dismissing their appeal from an administrative decision regarding their

attempted adoption of their nephew and niece, Dustin and Sarabeth. They claim the court erred when it dismissed their petition for review.

¶2 After termination of parental rights dispositions, the Giambrones filed an application to adopt Dustin and Sarabeth. Apparently, the children's foster parents also filed an application to adopt them. At some point, the department notified the Giambrones that Dustin and Sarabeth would be placed for adoption with the foster parents. The Giambrones attempted to appeal the department's decision, but an administrative law judge for the Division of Hearings and Appeals dismissed their petition for review. By the time of the administrative law judge's decision, the children had already been adopted by the foster parents. The Giambrones then appealed to the circuit court, which dismissed their appeal on two grounds. First, it concluded that the Giambrones had failed to comply with the service requirements of WIS. STAT. § 227.53(1)(c).<sup>1</sup> Second, it concluded that their claims were moot because another circuit court had finalized the foster parents' adoption of the children.

¶3 On appeal, the department makes a number of arguments in response to the Giambrones' claims. One of those arguments is that the Giambrones' claims are moot because Dustin and Sarabeth have already been adopted. We agree. Once Dustin and Sarabeth were adopted by the foster parents, any decision in the Giambrones' favor could have no practical legal effect. See *Elgin & Carol W. v. Wisconsin DHFS*, 221 Wis. 2d 36, 41, 584 N.W.2d 195 (Ct. App. 1998). The children are simply no longer available for adoption, and the department is incapable of nullifying adoptions finalized in a circuit court.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Further, the Giambrones fail to reply to the department's argument that their claims are moot and, as a result, they concede that argument. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

