COURT OF APPEALS DECISION DATED AND RELEASED

DECEMBER 27, 1996

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.

NOTICE

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

No. 96-2572-NM

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

In re the Termination of Parental Rights of Tyler B., a child under the age of 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

TRACY O.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Langlade County: JAMES P. JANSEN, Judge. *Affirmed*.

CANE, P.J. Tracy O. appeals a trial court order that terminated her parental rights to Tyler B. It is undisputed that counsel filed a timely notice of intent to appeal. However, the notice of appeal was not filed timely. Her counsel has filed a no merit report under ***Anders v. California***, 386 U.S. 738 (1967), after missing the fifteen-day deadline for filing a TPR notice of appeal under RULE 809.107(5), STATS. Consequently, this court required her counsel to

file a memorandum on whether the late notice of appeal deprived this court of appellate jurisdiction under ***Gloria A. v. State***, 195 Wis.2d 268, 536 N.W.2d 396 (Ct. App. 1995). Tracy O. has not responded to her counsel's no merit report and jurisdictional memorandum. After reviewing the record, this court concludes that further proceedings in this appeal would have no merit.

Although this court has misgivings about the validity of the analysis in ***Gloria A.*** denying this court the authority to extend the time to file a notice of appeal in a TPR appeal, it is binding precedent. *See* § 752.41(2), STATS.[1]

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[1] ***Gloria A. v. State,*** 195 Wis.2d 268, 536 N.W.2d 396 (Ct. App. 1995), holds the appellate court has no power to extend the deadline for filing a TPR notice of appeal under RULE 809.107(5), STATS. The court in ***Gloria A.*** applied a rule promulgated in 1978 and 1981 by the Wisconsin Supreme Court to the new TPR procedure enacted by the legislature in 1993. RULE 809.82(2)(b), promulgated by the court in 1978 and 1981, provides that this court may not extend the time to file notices of appeal, except for appeals under RULES 809.30 and 809.40. From 1978 until 1993, TPR appeals proceeded under RULES 809.30 and 809.40, and the time to file a TPR notice of appeal was extendable. In 1993, however, the legislature created a new TPR appeals procedure. *See* RULE 809.107, STATS. In ***Gloria A.***'s view, the new enactment removed TPR notices of appeal from RULES 809.30 and 809.40, and their deadlines were therefore no longer extendable.

The l993 legislative enactment altered several aspects of the former supreme court created TPR appellate procedure. As part of these changes, the enactment expressly denied this court the authority to extend the time to file a notice of intent to appeal. *See* § 808.04(7m), STATS. At the same time, the enactment made the notice of intent the document that initiated the appeal. *See* § 808.04(7m) and RULE 809.107(2), STATS. This heightened status for TPR notices of intent is unique in this state's appellate procedure. *See* RULE 809.10(1), STATS. Further, the 1993 enactment did not expressly deny this court the power to extend the time to file a notice of appeal, which the notice of intent had displaced as the appeal initiating document. Under these circumstances, this court is persuaded that the legislature may have intended to remove the new RULE 809.107 TPR notice of appeal deadline not only from RULES 809.30 and 809.40, but also from the former reach of the supreme court promulgated RULE 809.82(2)(b), limiting the extendibility of various deadlines for notices of appeal.

This court may construe provisions enacted together to form a consistent statutory scheme, independent of related enactments passed at another time. *See* ***State ex rel. Van Dyke Ford, Inc. v. Cane***, 70 Wis.2d 777, 784, 235 N.W.2d 672, 676 (1975). The more recent and specific enactment often prevails. *See* ***Green Bay Educ. Ass'n v. DPI***, 154 Wis.2d 655, 663-64, 453 N.W.2d 915, 918 (Ct. App. 1990). Here, the legislature established a new specific and comprehensive scheme for TPR appeals. It made the notice of intent the jurisdictional document and specifically denied this court the power to extend the deadline for the notice of intent. The enactment did not expressly bar extension of the now nonjurisdictional RULE 809.107(5), STATS., notice of appeal deadline. Under the circumstances, this court doubts the continuing validity of the ***Gloria A.*** analysis applying a

Therefore, this court must follow the holding in ***Gloria A.*** and conclude it has no authority to extend the time for filing the notice of appeal. However, in spite of the holding in ***Gloria A.,*** this court has considered the merits of Tracy O.'s appeal. Here, counsel's no merit report raises four basic arguments: (1) the State did not prove abandonment; (2) the ending of Tracy O.'s parental rights did not serve her child's best interests; (3) the Langlade County Department of Social Services violated its duty to help Tracy O. reunite with her child; and (4) the child no longer qualifies as a CHIPS child. Upon review of the record, this court is satisfied that the no merit report properly analyzes these issues and that the appeal has no arguable merit. Accordingly, this court also adopts the no merit report, affirms the dispositional order, and discharges Tracy O.'s counsel of his obligation to represent her further in this appeal. This court notes that the same basic result is reached under either approach. Accepting the holding in ***Gloria A.***, the appeal must be dismissed, thereby leaving the TPR order unabated. If this court rejects the holding in ***Gloria A.,*** the no merit is considered and adopted, thereby affirming the TPR order.

By the Court.—Order affirmed.

(..continued)
supreme court rule from 1978 and 1981 to a new legislatively enacted procedure from 1993. Under the holding in ***Gloria A.,*** both the notice of intent to appeal and the notice of appeal must be filed timely to establish jurisdiction in the appellate court. This is unique in the appellate system and certainly not intended by the legislature.