

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 4, 2009

David R. Schanker
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 Nos. 2008AP2151
2008AP2152
2008AP2553
2008AP2554**

**Cir. Ct. Nos. 2008AD15
2008AD16**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**Nos. 2008AP2151
2008AP2553**

IN THE MATTER OF THE ADOPTION OF ELIZABETH A.K.:

SANDRA R. K.,

PETITIONER,

ELIZABETH K.,

JOINT PETITIONER-APPELLANT,

AUGUST K.,

JOINT PETITIONER,

v.

WINNEBAGO COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

RESPONDENT.

**NOS. 2008AP2152
2008AP2554**

IN THE MATTER OF THE ADOPTION OF BRETT A.K.:

SANDRA R. K.,

PETITIONER,

ELIZABETH K.,

JOINT PETITIONER-APPELLANT,

AUGUST K.,

JOINT PETITIONER,

v.

WINNEBAGO COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES,

RESPONDENT.

APPEAL from orders of the circuit court for Winnebago County:
SCOTT C. WOLDT, Judge. *Affirmed.*

¶1 ANDERSON, P.J.¹ In appeal Nos. 2008AP2151 and 2008AP2152, Elizabeth K. is appealing from orders of the circuit court dismissing her petition to adopt her grandchildren Elizabeth A.K. and Brett A.K. In appeal Nos.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

2008AP2553 and 2008AP2554, Elizabeth is appealing from the orders of the circuit court denying her request that transcripts be prepared and released to her to permit her to prosecute the underlying appeals. Because we affirm the dismissal of the adoption petitions, we need not address the court's refusal to release the transcripts.²

¶2 On April 23, 2008, amended petitions for adoption of Elizabeth and Brett were filed in the circuit court, the petitions were signed by Sandra R.K., August K. and Elizabeth K. As paternal aunt of the children, Sandra sought to adopt them and August and Elizabeth, as paternal grandparents, joined in the petitions.³ A hearing was held on May 14, 2008. According to the minute sheet, the circuit court found that Sandra, August and Elizabeth had “no standing to file Pet.” Only Elizabeth appeals.

¶3 Winnebago County Department of Health and Human Services asserts that this appeal is untimely because Elizabeth never filed a notice of intent to pursue postdisposition relief, WIS. STAT. RULE 809.30(2)(b), and her notice of appeal was not filed within sixty days of the May 14, 2008 in-court dismissal of

² If a decision on one point disposes of the appeal, we will not decide the other issues raised. *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938).

³ The children's father died on July 18, 2006. The parental rights of the biological mother were terminated on May 9, 2008.

the adoption petitions,⁴ WIS. STAT. RULE 809.30(2)(h). Although we could dismiss these appeals on this technical ground, we choose to address the merits.

¶4 While this court is a grandparent and has empathy for Elizabeth, who it believes to be a loving grandmother, it is required to follow the statutes, *Hamilton v. Hamilton*, 2003 WI 50, ¶45, 261 Wis. 2d 458, 661 N.W.2d 832 (an appellate court is bound by clear language of a statute), and precedent, *State v. Lee*, 157 Wis. 2d 126, 130 n.4, 458 N.W.2d 562 (Ct. App. 1990) (court of appeals is bound by its published precedents), and must affirm. We addressed grandparents' right to adopt in *L.P. v. B.G.*, 177 Wis. 2d 424, 428, 501 N.W.2d 908 (Ct. App. 1993), where we held that persons have the right to petition for adoption if they qualify as adoption petitioners under WIS. STAT. § 48.90.

48.90. Filing of adoption petition; preadoption residence. (1) A petition for adoption may be filed at any time if:

(a) One of the petitioners is a relative of the child by blood or by adoption, excluding parents whose parental rights have been terminated and persons whose relationship to the child is derived through such parents.

(b) The petitioner is the child's stepparent.

(c) The petition is accompanied by a written approval of the guardian.

⁴ The notice of appeal was received by this court on August 28, 2008, 106 days after dismissal of the petitions. In adoption cases, appeals are commenced by first filing a notice of intent to pursue postdisposition relief and then by a notice of appeal. *See* WIS. STAT. RULE 809.30(2). Because no notice of intent has been filed in this case, the purported notice of appeal is premature. We will, however, construe Elizabeth's notice of appeal as the notice of intent to pursue postdisposition relief. *Juneau County Dep't of Human Servs. v. James B.*, 2000 WI App 86, ¶4, 234 Wis. 2d 406, 610 N.W.2d 144.

(d) The petitioner is the proposed adoptive parent with whom the child has been placed under s. 48.839.

(2) Except as provided under sub. (1), no petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months or more.

(3) No petition for adoption may be filed unless the petitioners have complied with all applicable provisions of this chapter relating to adoptive placements.

¶5 Elizabeth fails to qualify as an adoption petitioner because the petitions she filed did not state that the children had resided in her home for six months preceding the filing of the petitions as required by WIS. STAT. § 48.90(2). The record is devoid of any facts which would enlighten this court as to the residence of the children before Elizabeth filed the petitions.⁵

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

⁵ Elizabeth included letters in her appendix purporting to establish that the children were in the custody of Winnebago County DHSS. These letters are not in the record, and facts in the brief or appendix that are not part of the record will not be considered on appeal. *Nelson v. Schreiner*, 161 Wis. 2d 798, 804, 469 N.W.2d 214 (Ct. App. 1991).

