



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4564/1
SWB:amn&emw

2017 ASSEMBLY BILL 778

December 27, 2017 - Introduced by Representatives DOYLE, KATSMA, SUBECK, NEYLON, KITCHENS, NOVAK, RODRIGUEZ, BALLWEG, PRONSCHINSKE, SNYDER, ANDERSON, BERCEAU, BORN, BRANDTJEN, E. BROOKS, R. BROOKS, CONSIDINE, FELZKOWSKI, KOLSTE, KRUG, KULP, MURSAU, OHNSTAD, PETERSEN, PETRYK, QUINN, RIPP, ROHRKASTE, SCHRAA, SINICKI, STEINEKE, SWEARINGEN, THIESFELDT, TITTL, TRANEL, VANDERMEER and VRUWINK, cosponsored by Senators OLSEN, DARLING, RINGHAND, L. TAYLOR, VINEHOUT and WANGGAARD. Referred to Committee on Judiciary.

1 **AN ACT to amend** 808.04 (7m), 809.107 (6) (am) and 809.82 (2) (b); and **to create**
2 809.107 (2) (bm) 6. of the statutes; **relating to:** appellate procedure in
3 proceedings related to termination of parental rights.

Analysis by the Legislative Reference Bureau

This bill makes changes to the appellate procedures applicable in proceedings related to the termination of parental rights.

First, the bill changes certain requirements relating to the notice of intent to pursue postdisposition or appellate relief in proceedings related to the termination of parental rights. Under current law, in order to initiate an appeal in a termination of parental rights matter, a person must file a notice of intent to pursue postdisposition or appellate relief. This bill creates a requirement that the notice of intent must include the signature of the person on whose behalf the notice is filed. The person's counsel, if any, must sign the notice, but may not do so in lieu of the signature of the person on whose behalf the notice is filed. The bill also expands the authority of the court to grant an extension of time to file the notice of intent.

Second, the bill establishes an additional requirement for filing a motion to remand for postjudgment fact-finding on appeal of a judgment or order related to the termination of parental rights. Under current law, an appellant who intends to appeal on any ground that may require postjudgment fact-finding must file a motion in the court of appeals raising the issue and requesting that the court of appeals retain jurisdiction over the appeal and remand to the circuit court to hear and decide the issue of possible additional fact-finding. This bill establishes a requirement that

ASSEMBLY BILL 778

counsel who files the motion for remand or, if the appellant seeking the remand is unrepresented, the appellant, must file an affidavit in support of the motion for remand which states with specificity the reasons why postjudgment fact-finding is necessary. The bill also extends the deadline for filing the motion for remand if the appellant is not represented by counsel.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 808.04 (7m) of the statutes is amended to read:

2 808.04 (**7m**) An appeal from a judgment or order terminating parental rights
3 or denying termination of parental rights shall be initiated by filing the notice
4 required by s. 809.107 (2) within 30 days after the date of entry of the judgment or
5 order appealed from. ~~Notwithstanding s. 809.82 (2) (a), this time period may not be~~
6 ~~enlarged unless the judgment or order was entered as a result of a petition under s.~~
7 ~~48.415 that was filed by a representative of the public under s. 48.09.~~

8 **SECTION 2.** 809.107 (2) (bm) 6. of the statutes is created to read:

9 809.107 (**2**) (bm) 6. For an appellant other than the state, the signature of the
10 appellant on whose behalf the notice of intent is filed. Appellant's counsel, if any,
11 shall also sign the notice, but may not sign in lieu of the appellant.

12 **SECTION 3.** 809.107 (6) (am) of the statutes is amended to read:

13 809.107 (**6**) (am) *Motion for remand.* If the appellant intends to appeal on any
14 ground that may require postjudgment fact-finding, the appellant shall file a motion
15 in the court of appeals, within 15 days after the filing of the record on appeal, raising
16 the issue and requesting that the court of appeals retain jurisdiction over the appeal
17 and remand to the circuit court to hear and decide the issue. If the appellant is not
18 represented by counsel, the appellant shall file any motion under this paragraph
19 within 45 days after the filing of the record on appeal. The appellant's counsel or, if

ASSEMBLY BILL 778

1 the appellant is not represented by counsel, the appellant, shall file an affidavit in
2 support of the motion stating with specificity the facts the appellant reasonably
3 anticipates will be established at a fact-finding hearing upon remand. If the court
4 of appeals grants the motion for remand, it shall set time limits for the circuit court
5 to hear and decide the issue, for the appellant to request transcripts of the hearing,
6 and for the court reporter to file and serve the transcript of the hearing. The court
7 of appeals shall extend the time limit under par. (a) for the appellant to file a brief
8 presenting all grounds for relief in the pending appeal.

9 **SECTION 4.** 809.82 (2) (b) of the statutes is amended to read:

10 809.82 (2) (b) Notwithstanding par. (a), the time for filing a notice of appeal or
11 cross-appeal of a final judgment or order, other than in an appeal under s. 809.107
12 of a judgment or order that was entered as a result of a petition under s. 48.415 that
13 was filed by a representative of the public under s. 48.09 or an appeal under s. 809.30
14 or 809.32, may not be enlarged.

15 (END)