

# Children's Law Center of Indiana



## Custody and Parenting Time (Grandparent Visitation)

11/26/14

In **In Re Guardianship of C.R.**, 22 N.E.3d 657 (Ind. Ct. App. 2014), the Court reversed the trial court's order that a visitation evaluation be conducted on a pending grandparent visitation case. *Id.* at 662. The children's birth mother and birth father were divorced in May 2009, when the children were four and two years old. About one month after the divorce, the birth father went to the birth mother's house and attacked her with a hammer, killing her. The older child witnessed at least a portion of the attack. The children were then subjects of a CHINS proceeding that culminated in their being placed in the custody of their maternal grandfather, who later adopted the children. In the CHINS proceeding, the court determined that the paternal grandparents (Grandparents) would have visitation with the children one day each week, plus every other weekend.

In January 2010, the maternal grandfather sought guardianship of the children, and he was appointed guardian of the children. Grandparents sought to have the maternal grandfather removed as guardian, and to have themselves appointed as the children's guardians. The maternal grandfather observed that the children began to exhibit behavior problems after returning from visits with Grandparents. The problems included nightmares, night terrors, and the older child waking up screaming in the middle of the night. The maternal grandfather petitioned the court to reduce Grandparents' visitation to one visit per month. Following a hearing, the trial court denied the maternal grandfather's request and ordered that the existing visitation order remain in effect. Gloria Hood, a long-time therapist who worked at the Indiana Center for Children and Families, had been appointed by the court to work therapeutically with the children shortly after their mother's murder. Hood eventually diagnosed the older child as suffering from post-traumatic stress disorder (PTSD), and noted that the older child experienced post-traumatic stress in relationship to visits in Grandparents' home. Hood also consulted with psychiatrist Dr. David Crane, who opined that Hood was doing "a very adequate job."

Ultimately both the maternal grandfather and Grandparents sought separately to adopt the children. The trial court granted the adoption by the maternal grandfather (hereinafter Adoptive Father). In March 2012, after the children's adoption, Hood opined that for a period of at least six months, the children should visit with Grandparents an hour or two every week or every other week, and that the visits should be supervised. Dr. Crane believed that Hood's recommendation "should be given a lot of weight." On June 22, 2012, Adoptive Father filed a petition for modifying and supervising Grandparents' visitation. After a hearing, the trial court denied

Adoptive Father's motion. Adoptive Father appealed and the Court reversed the trial court ruling in a Memorandum decision issued on August 5, 2013. On remand, the Court instructed the trial court to determine how many times per week or month Grandparents should visit the children and how long each visit should last, but the Court said that the visitation must be supervised. The Court also instructed that the visitation schedule would last six months, after which Hood would evaluate the children's therapeutic progress and fashion her recommendation for future visitation.

On January 16, 2014, Grandparents filed a petition to resume visitation and requested a visitation evaluation. Grandparents' expert witness, Dr. Vanderwater-Piercy, testified that the requested evaluation would consist of clinical psychologists conducting several interviews with the parties, reviewing records, and consulting with other professionals, and would cost \$6,000 if performed by his office as Grandparents requested. Adoptive Father filed a response and a motion *in limine* requesting that the trial court not hear testimony from Grandparents' expert witnesses, who were called to testify on the potential benefits of a visitation evaluation. The trial court denied Adoptive Father's motion *in limine* and, after a hearing, entered an order that: (1) Grandparents were entitled to exercise supervised visitation up to twelve hours per month; (2) Adoptive Father must allow Grandparents visitation; (3) Grandparents may subject the children to and pay for a visitation study; and (4) Adoptive Father was not ordered to participate in the visitation study, but was advised that a decision to not participate might result in the neutral third party making findings that are not favorable to him. Adoptive Father appealed, contending that the trial court did not have the authority to order the visitation evaluation. Alternatively, Adoptive Father argued that the trial court abused its discretion by ordering the evaluation despite evidence that it would not be in the children's best interests. Adoptive Father did not contest the order on the terms of Grandparents' visitation.

**The Court opined that Grandparents did not have standing to petition the trial court for a visitation evaluation, and that the trial court did not have the authority to order such an evaluation *sua sponte*.** *Id.* at 662. The Court found that determining whether the trial court had the authority to order a visitation evaluation obliged the Court to render a statutory interpretation. *Id.* at 660. Quoting *In Re N.S.*, 908 N.E.2d 1176, 1180 (Ind. Ct. App. 2009), the Court said that “[s]tatutory interpretation is a question of law reserved for the court and is reviewed *de novo*... Our goal in statutory construction is to determine, give effect to, and implement the intent of the legislature.” *C.R.* at 660.

The Court observed that IC 31-17-2-12 provides the statutory basis for requesting and ordering a parenting time evaluation. *Id.* Quoting IC 31-17-2-12, the Court noted that, “[i]n custody proceedings after evidence is submitted upon the petition, *if a parent or the children's custodian so requests*, the court may order an investigation and report concerning custodial arrangements for the child.” *Id.* (emphasis in opinion). The Court also looked to IC 31-21-2-5, which defines a “child custody proceeding” as “a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue,” and to IC 31-9-3-31, which defines a “custodian” as “a person with whom a child resides.” *Id.* at 660-61. The Court observed that, under the express language of IC 31-17-2-12, Grandparents are not eligible to request a custody evaluation, as they

are neither the parents of nor the custodians of the children. Id. at 661. The Court opined that, under the plain language of the statute, the trial court does not have the authority to order such an evaluation in a visitation proceeding, absent a request to do so from a parent or custodian. Id.

The Court said that the law currently provides no authority for grandparents to request visitation evaluations and the Court found no reason to read IC 31-17-2-12 to provide as such. Id. Quoting Vanderburgh Cnty. Election Bd. v. Vanderburgh Cnty. Dem. Cent. Comm., 833 N.E.2d 508, 510 (Ind. Ct. App. 2005), the Court noted that “[t]he cardinal rule of statutory construction is that if a statute is unambiguous, then we need not and cannot interpret it; rather, we must apply its plain and clear meaning.” C.R. at 661.

The Court said that the Indiana legislature could have added grandparents with visitation rights to the list of individuals eligible to request a parenting time study under IC 31-17-2-12; however, it chose not to do so. Id. at 661-62. The Court did not believe this exclusion was unintentional. Id. at 662. The Court noted that, in other Indiana family law statutes, the legislature has limited the power of the trial court when determining grandparent’ visitation rights, as opposed to rights of a parent or custodian. Id. The Court observed that IC 31-17-6-1, the authorizing statute for court appointment of Guardians ad Litem and Court Appointed Special Advocates does not include proceedings in IC 31-17-5, the Grandparent Visitation Act, presumably because the legislature did not think it appropriate for courts to have such a potentially burdensome appointment in grandparent visitation cases. Id. The Court also noted that the Grandparent Visitation Act itself makes no mention of a grandparent’s ability to request or compel a visitation evaluation. Id. The Court observed that the Grandparent Visitation Act has been subject to strict interpretation, and the Court has staunchly limited the visitation rights of grandparents, especially when those rights are in conflict with the wishes of a fit parent. Id. Although the Court reversed the portions of the trial court’s order of March 20, 2014 concerning the visitation evaluation, the Court said that the other provisions of the order concerning Grandparents’ visitation were unaffected by this decision. Id.