

Children's Law Center of Indiana



Grandparent Visitation

1/17/17

In **In Re Visitation of G.S. v. M.S.**, 69 N.E.3d 500 (Ind. Ct. App. 2017), the Court reversed the portions of the trial court's order which related to visitation for the child with persons other than the paternal grandmother (Grandmother). *Id.* at 502. Mother and Father were married, and one child was born of their marriage. Throughout her life, the child had a close and loving relationship with Grandmother, her paternal aunt (Aunt), and other paternal relatives. Mother and Father divorced when the child was ten years old, and Father committed suicide the following year. After Father died, Mother curtailed the time which the child spent with her paternal relatives. Mother and Aunt have a particularly acrimonious relationship, and Mother did not wish for the child to spend time with Aunt. Aunt and Grandmother live together, which made the child's visitation with Grandmother increasingly complicated. Mother required that visits occur outside of Grandmother's home, which was difficult for Grandmother, who is elderly and has medical concerns. On June 5, 2015, Grandmother filed a petition for grandparent visitation. In September 2015, Mother and the child moved to Tennessee because Mother received a job promotion which necessitated the move. Following the move, the child's contact with Grandmother and other paternal relatives decreased significantly.

The trial court heard evidence on Grandmother's petition in June 2016. On August 1, 2016, the court ordered: (1) at least one visit per month for at least six hours was to take place between Grandmother and the child; (2) Grandmother was entitled to overnight visits with the child during the summer months; (3) visitation might take place at Grandmother's residence or at another location selected by Grandmother; (4) other members of Father's extended family could be present during Grandmother's visits with the child; (5) the child was entitled to participate in family reunions and functions which were scheduled during her visits with Grandmother; (6) Grandmother was entitled to weekly telephone conversations with the child, and other members of the extended paternal family were permitted to join in the conversations. Mother appealed only the portions of the order mandating that the child be permitted to visit and have contact with her paternal relatives other than Grandmother.

The Court found that the trial court erred by ordering that Mother permit the child to visit and maintain telephone contact with anyone other than Grandmother. *Id.* at 502. The Court applied a de novo standard of review to the trial court's order, citing In Re Visitation of C.R.P., 909 N.E.2d 1026, 1028 (Ind. Ct. App. 2009). G.S. at 501. Citing In Re Guardianship of A.J.A., 991 N.E.2d 110, 113 (Ind. 2013), the Court explained that the Grandparent Visitation Act was enacted in derogation of the common law, and, as such, it must be strictly construed. G.S. at 501. The Court said it is "undeniable" that Grandmother is a "grandparent" for the purpose of the Grandparent Visitation Act, that she had standing to seek visitation with the child, and that the

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trial court acted within its authority in granting her petition. Id. at 502. The Court found it “likewise undeniable” that the child’s other paternal relatives are *not* grandparents (emphasis in opinion). Id. The Court said that the General Assembly has seen fit to carve out a narrow, limited exception to a parent’s right to raise her children for grandparents. Id. The Court opined that there is no exception for anyone else, including other relatives. Id. The Court observed that, “except for grandparents who qualify under the terms of the GVA [Grandparent Visitation Act], no other individuals can trump a parent’s right to determine who her child does, and does not, associate with.” Id.