

Children's Law Center of Indiana



Grandparent Visitation

7/30/15

In **In Re Visitation of L-A.D.W.**, 38 N.E.3d 993 (Ind. 2015), the Supreme Court accepted transfer and summarily affirmed the Court of Appeals opinion at 24 N.E.3d 500 (Ind. Ct. App. 2015) on the issue of the trial court's award of grandparent visitation. **L-A.D.W.**, 38 N.E.3d at 997. The Supreme Court granted transfer in order to address the *amount* of grandparent visitation that is permissible under the Grandparent Visitation Act (emphasis added). **Id.** The Court of Appeals opined at 24 N.E.3d 502-03, 516 that the trial court had not abused its discretion in ordering grandparent visitation, but concluded that the trial court had abused its discretion in its determination of the amount of visitation Grandparents would receive with the child. The grandparent visitation ordered by the trial court was: (1) one overnight on one weekend during even-numbered months; (2) two overnights on one weekend during odd-numbered months; (3) unless the parties otherwise agreed, all weekend visitation was to occur during Father's on-call weekends, and Father was to provide notice of the dates of those weekends; (4) if Father's employment changed and he was no longer on-call, visitation on the weekends would be held on the third weekend of the month; (5) every Tuesday during the school year from after school until 7:00 p.m., and during the summer from 10:00 a.m. until 7:00 p.m.; (6) eight hours on Mother's birthday; (7) four hours on Grandmother's and Grandfather's birthdays; (8) one overnight during the week of the child's birthday; (9) two overnights during the child's Christmas vacation; (10) five consecutive overnights during the child's summer vacation in addition to the already scheduled weekend overnights that month; and (11) Grandparents would continue to attend the child's extracurricular activities, and Father would provide notice of the activities.

The Supreme Court opined that trial courts should be able to consider the various circumstances presented in each individual case to determine the amount of permissible grandparent visitation which is in the child's best interests. **Id.** at 1001. Quoting **K.I. ex rel. J.I. v. J.H.**, 903 N.E.2d 453, 462 (Ind. 2009), the Court noted that, under the Grandparent Visitation Act, "the amount of visitation is left to the sound discretion of the trial court." **L-A.D.W.**, 38 N.E.3d at 997. The Court said that neither the Grandparent Visitation Act (IC 31-17-5-1 through 10) nor the Supreme Court has specifically set a standard for determining what amount of visitation is appropriate for a trial court to award after it has been determined that court-ordered grandparent visitation is merited. **Id.** Quoting **K.I. Ex. Rel. J.I. v. J.H.**, 903 N.E.2d at 462, the Court: (1) observed that "[t]he Grandparent Visitation Act contemplates only occasional, temporary visitation that does not substantially infringe on a parent's fundamental right to control the upbringing, education, and religious training of their children"; and (2) said this pronouncement recognizes that, while parents have a constitutional liberty interest in the

upbringing of their child(ren), grandparents do not have a constitutional liberty interest with their grandchildren. L-A.D.W., 38 N.E.3d at 998. The Court did not read the parents' constitutional protection to require the crafting of visitation schedules by trial courts that in no way resemble visitation under the Parenting Time Guidelines, even though sole reliance upon the Guidelines is impermissible. Id. The Court said it remains confident in the ability of the trial courts to determine when grandparent visitation would substantially infringe upon the custodial parent's constitutional right to guide the upbringing of the child. Id. at 998.

The Court examined the instant case, noting the Court of Appeals' concern that the visitation ordered by the trial court appeared similar to a parenting time schedule. Id. at 999. The Supreme Court was not persuaded that similarity to the parenting time guidelines alone would require finding an abuse of the trial court's discretion. Id. The Court observed that the trial court considered the extensive role that Grandparents played in the child's life from the time she was born, which far exceeded the "traditional" role of a grandparent. Id. at 1000. The Court noted: (1) while living in Mother and Father's home, Grandparents largely carried out parental duties, such as cooking meals, doing the child's laundry, taking the child to and from school, helping with homework, reading to the child before she went to sleep, and attending her extracurricular activities; (2) Grandparents cared for the child on a daily basis; (3) after Mother's death, Grandparents never missed the child's extracurricular activities; and (4) Grandparents serve as one of the child's only connections to her deceased Mother. Id. The Court found it reasonable that the trial court would view a more involved visitation schedule as appropriate for this family. Id. The Court opined that, given the uniqueness which pervades different family units, strict standards on the amount of permissible visitation under the Grandparent Visitation Act would be difficult to craft. Id. at 1001.

The Court also observed that the current court order on visitation in the instant case was not permanent, and the Grandparent Visitation Act contemplates that the best interests of the child may change over time. Id. at 1001. The Court said that, while the awarded visitation may be appropriate given the child's age and the extensive role Grandparents have played in her life, modification may be warranted as she becomes more involved in other activities and develops a closer relationship with Father. Id.