

Children's Law Center of Indiana



Grandparent Visitation

2/6/2015

In **Jocham v. Sutliff**, 26 N.E.3d 82 (Ind. Ct. App. 2014), *trans. denied*, the Court reversed the trial court's decision granting Maternal Grandmother's grandparent visitation request. The Court held that Maternal Grandmother was no longer a grandparent with standing to seek grandparent visitation under IC 31-17-5-1, and the visitation rights referenced in the grandparent visitation statutes refer to already established visitation rights, not the mere right to seek visitation.

Mother and Father had one child in 2004 and divorced in 2008. Father married Stepmother on March 12, 2011, and Mother passed away on June 2, 2011. On September 20, 2012, Stepmother's petition to adopt the child was granted. On July 16, 2013, Maternal Grandmother filed a petition to intervene in the dissolution matter so that she could file a petition for grandparent visitation. The petition to intervene was granted over Father's objection, and the petition for grandparent visitation was set for hearing. The trial court, with a senior judge hearing the case, issued an order denying the petition for grandparent visitation, finding that: (1) IC 31-17-5-1 provides that grandparents may seek visitation rights if the child's parent is deceased, or if the marriage of the child's parents has been dissolved; (2) IC 31-17-5-9 provides that visitation rights provided for in IC 31-17-5-1 or 10 survive the adoption of a child by a stepparent; (3) The visitation rights must be acquired by a grandparent by court order prior to an adoption petition by a stepparent being granted; (4) an adoption by a stepparent eliminates the right of the grandparent of the deceased biological parent to later petition the court for grandparent visitation rights; and (5) The trial court was without authority to grant Maternal Grandmother's petition for grandparent visitation rights, even though it may have been in the best interests of the child to do so. Maternal Grandmother filed a motion to correct error, alleging the trial court erred in finding that she was without standing to pursue her petition. The sitting judge, having returned from medical leave, then ruled on the motion to correct error and granting it, finding as follows: (1) Mother remained and will always remain the child's biological mother, and accordingly, Maternal Grandmother was a biological grandparent; (2) IC 31-17-5-1 allowed Maternal Grandmother to seek visitation rights because she is the biological parent of the child's deceased biological parent; and (3) The right provided in IC 31-17-5-1 is the *right to seek* grandparent visitation rights, and it is that right which survived the child's adoption. *Id.* at 85 (emphasis in opinion). The trial court granted Maternal Grandmother's petition for grandparent visitation, and set forth a schedule for grandparent visitation. Father appealed.

Since Stepmother was now the child's legal parent, and Maternal Grandmother no longer qualified as a grandparent under the definitions of grandparent provided at IC 31-9-2-77, Maternal Grandmother had no standing to pursue grandparent visitation after the adoption was granted. *Id.* at 87. Maternal Grandmother argued that IC 31-17-5-1(a) gave her standing to seek grandparent visitation rights, since grandparent visitation rights survive the adoption of a child by a stepparent. *Id.* at 86. The Court agreed that Mother was in fact the child's biological mother, and in turn, Maternal Grandmother was the child's biological grandmother; however, the Court also noted that it was not contested that Mother and Father had divorced in 2008, that Mother had passed away, and that Stepmother had adopted the child, all of which occurred before Maternal Grandmother filed her petition for grandparent visitation. *Id.* at 86. The Court opined that if Maternal Grandmother had filed her petition for grandparent visitation anytime between the divorce and the day the adoption was granted, her right to seek grandparent visitation would have been preserved. *Id.* (citing *Bailey v. Menzie*, 542 N.E.2d 1015 (Ind. Ct. App. 1989) (holding adoption did not extinguish established grandparent visitation rights, and the legislature intended to extend protection to grandparents with established visitation in the context of stepparent adoptions); *Sightes v. Barker*, 684 N.E. 224 (Ind. Ct. App. 1997) (holding that grandmother was still the child's legal grandmother at the time she filed her petition for grandparent visitation; therefore, the subsequent stepparent adoption did not extinguish her visitation rights); *Baker v. Lee*, 901 N.E.2d 1107 (Ind. Ct. App. 2009) (holding that since grandfather got a court order for visitation through a guardianship case, and because that order predated the child's adoption, there was a sufficient existing right to visitation to allow for the filing of a grandparent visitation petition). The Court noted that Maternal Grandmother had no existing established grandparent visitation rights, and she had not filed a petition to pursue these rights. *Id.* at 86. At common law, there was no right to grandparent visitation; therefore the grandparent visitation statutes do not protect an existing right, but rather confer a right upon a person who is statutorily entitled to ask for it. *Id.* Since Stepmother became the child's legal parent, occupying the same position that the child's mother formerly occupied, Maternal Grandmother no longer legally qualified as the child's maternal grandmother. *Id.* at 87. IC 31-9-2-77 defines a grandparent for purposes of the grandparent visitation statutes as "(1) the adoptive parent of the child's parent; (2) the parent of the child's adoptive parent; and (3) the parent of the child's parent... Therefore, on July 16, 2013, [Maternal Grandmother] had no standing to bring her petition." *Id.*

Although the Court sympathized with the potentially inequitable result in this case, fairness and best interests could not translate into standing; the Court further made observations of a potential way for the legislature to remedy this situation. *Id.* at 88-89. The Court noted that results such as this one may be inequitable, and may not serve the purpose of the Grandparent Visitation Act, which is to "strengthen familial bonds and promote inter-generational contact" when the original family unit is no longer intact. *Id.* at 88. The Court sympathized with Maternal Grandmother's plight, and noted that the trial court had also found that Father's conduct was unreasonable and that visitation was in the child's best interests. *Id.* However, fairness and the best interests of the child do not provide for standing, and it was not within the Court's purview to judicially expand the grandparent visitation statutes beyond their explicit terms, or to craft exceptions for special circumstances such as these. *Id.* at 88 n.3; 88-89.

The Court also opined that Maternal Grandmother was not statutorily entitled to notice of the adoption petition, which ultimately cut off her chance at grandparent visitation. Id. at 88. However, the Court noted that she was clearly aware that she needed to protect her visitation rights, and she had ample time to do so. Id. In a footnote, the Court opined that one way to remedy situations such as these would be to amend the adoption statutes to require notice of a petition for adoption to be given to anyone who would be eligible under the grandparent visitation statutes to seek grandparent visitation rights. Id. at 88 n.2.