

# Children's Law Center of Indiana



## Grandparent Visitation

1/11/2019

In D.G. v. W.M., 118 N.E.3d 26 (Ind. Ct. App. 2019), the Court affirmed the trial court's decision and held that the trial court had not erred by deny Mother's motion to terminate grandparent visitation, and that the trial court had not abused its discretion by issuing a contempt order.

The children lived with Grandparents, and after they returned to Mother, Grandparents were awarded an unspecified amount of visitation with the children. Mother filed a motion to reconsider, which the trial court treated as a motion to correct error, and revised the order to specify that visitation was to take place once per month. Almost none of the ordered visits happened. Grandparents filed multiple rule to show cause motions for the missed visits, and the trial court entered coercive orders, including an award of attorney's fees to Grandparents and an order for Mother to be jailed for several days. However, the visits did not resume, Mother did not serve jail time, and the attorney's fees were never paid. Mother eventually filed a motion to terminate grandparent visitation, and the trial court appointed a GAL. At the hearing, counsel for Grandparents and Mother each summarized their clients' testimony, and the GAL submitted a written report and testified. The GAL opined that the grandparent visitation should continue until Father's visitation became unsupervised and consistent with the Indiana Parenting Time Guidelines. The trial court denied Mother's motion to terminate grandparent visitation, found Mother in contempt, ordered Mother to pay attorney's fees to Grandparents, and ordered Mother to serve 100 days of incarceration, which would be stayed if Grandparents counsel notified the trial court that visitation had occurred as ordered.

**The trial court did not abuse its discretion in denying Mother's motion to terminate grandparent visitation; the person seeking the modification of the grandparent visitation order is the person who bears the burden of proof, and Mother's alleged change in circumstances was traceable to her own conduct. Id. at 30-31.** IC 31-17-5-7 provides that a trial court may modify an order granting or denying grandparent visitation rights whenever modification would serve the best interests of the child. Trial courts have abused their discretion when their decisions are against the logic of the facts and circumstances of the case, or are contrary to law. Id. at 29. Mother argued that Grandparents should have the burden of proof of showing that visitation was still in the children's best interests. Id. at 30. The Court noted that prior case law involved an almost identical claim, and the Court had already held that the party who wishes to modify a grandparent visitation order is the party who bears the burden of proof. Id., citing In re Adoption of A.A., 51 N.E.3d 380, 389-90 (Ind. Ct. App. 2016). Mother offered no persuasive argument that prior case law was wrongly decided, and the GAL's testimony spoke to the children's best interests and needs. Id. at 30-31. The Court further noted that this was not a child custody dispute, a guardianship dispute, or an initial petition for grandparent visitation, where Grandparents would bear a heavy burden of proof. Id. at 30. Mother's

arguments that there had been a change in circumstances in the children's relationship with Grandparents, in her relationship with Grandparents, and in the children's best interests was due mostly to her own behavior. Id. at 31. Mother's description of the evidence supporting the trial court's order as "stale" was also a result of her own behavior and actions. Id. Mother was inviting the Court to reward her persistent noncompliance, and the Court declined to do so. Id.

**The trial court did not abuse its discretion in finding Mother in contempt, and the trial court gave Mother a reasonable opportunity to purge herself of contempt.** Id. at 32. Finding a party to be in contempt is within the trial court's discretion and is reviewed under an abuse of discretion. Id. at 31. A party may be held in contempt when (1) there is an order commanding the accused to do or refrain from doing something, and (2) the party acted with willful disobedience; even erroneous orders must be obeyed. Id. Mother bears the burden of showing their her disobedience was not willful. Id. The Court noted that Grandparents were routinely denied their visitation, Mother made only token efforts at compliance, and the trial court was not required to give full credit to Mother's evidence as to what she alleged she did to comply. Id. at 31-32. Mother's noncompliance resulted in protracted, expensive litigation, and Mother did not argue that the fees awarded were unreasonable. Id. at 32. Mother alleged that her ability to purge herself of contempt was contingent on Grandparents' goodwill, but the Court observed that the notification requirement was placed upon Grandparents' counsel, who is an officer of the court. Id. That, combined with Mother's own ability to follow the trial court's orders, was a sufficient opportunity for Mother to purge herself of contempt. Id.