

Children's Law Center of Indiana



Grandparent Visitation

1/30/2019

In **Walker v. Knight**, 119 N.E.d 573 (Ind. Ct. App. 2019), *clarified and rehearing denied*, the Court reversed and remanded the trial court's determination that grandparents' action for visitation rights did not survive the adoption of their grandchildren.

When Father died, he had established paternity for two children, C.W. (with Mother named Knight) and J.W. (with Mother named Carpenter). Both Mothers married other people, who sought to adopt the child of their wife. The Walkers, the Paternal Grandparents, filed a petition for grandparent visitation while the step-parent adoption petitions were still pending. Paternal Grandparents and Mothers agreed and stipulated that the grandparent visitation issues would be heard after the adoptions were finalized. Paternal Grandparents allowed the adoptions to be heard without contesting them.

However, once the adoptions were finalized, the Mothers filed motions for summary judgment in their respective grandparent visitation cases. The Mothers stated that because Paternal Grandparents did not have established grandparent visitation rights at the time of the adoptions being finalized, they lacked standing to pursue visitation. The trial court agreed and granted the motions for summary judgment. Paternal Grandparents appealed, noting that "(1) the Mothers should be equitably estopped from arguing that the Walkers lack standing; and (2) the Walkers preserved their rights to grandparent visitation by filing the petitions before the adoptions were finalized." *Id.* at 576.

The agreement between Paternal Grandparents and the Mothers was clear and enforceable, and summary judgment should not have been granted to the Mothers; the agreement explicitly provided that at a minimum, Paternal Grandparents were entitled to proceed with a hearing on the merits of their grandparent visitation petitions. *Id.* at 577. Paternal Grandparents first argued that the Mothers were equitably estopped from claiming that after the adoptions were granted, Paternal Grandparents had no right to seek grandparent visitation. *Id.* at 576. However, the Court noted that while the Mothers agreed to delay the grandparent visitation matter until after the adoptions were finalized there was no evidence of fraud, and as such, the Court would analyze whether the agreement the Mothers and Paternal Grandparents struck was enforceable. *Id.* The relevant portions of the agreement were that Paternal Grandparents would allow the adoptions of the children to conclude before proceeding with matters regarding grandparent visitation, and the mothers agreed to allow Paternal Grandparents to make their case for grandparent visitation following the adoptions. *Id.* at 577. The Court also noted that the "Mothers do not contest the contents of the agreement nor do they

deny that they were given more time after the children's adoptions were finalized to respond to the Walkers' petitions. It is undisputed that all parties understood and accepted the terms as written at the time the agreement was made." Id. After stipulating to the contrary, the Mothers could not preclude Paternal Grandparents from having a hearing on the merits of the grandparent visitation petition. Id.

The Court noted that absent the agreement, the law would support the Mothers' position, namely, that "visitation rights" means grandparent visitation rights which have already been established by court order before an adoption. Id. at 577. Paternal Grandparents argued that merely filing a petition for grandparent visitation preserved their visitation rights in such a way that their visitation rights would survive an adoption pursuant to IC 31-17-5-9(1). Id. The Court disagreed, citing both In re Visitation of M.L.B., 983 N.E.2d 583, 585 (Ind. 2013) and Jocham v. Sutliff, 26 N.E.3d 82, 87 (Ind. Ct. App. 2015). Walker at 577. The Court noted that this area of law was confusing for an average individual, who may interpret the phrase "visitation rights" to not require a court order, and encouraged the Indiana General Assembly to clarify what "visitation rights" actually means. Id.