



Grandparent Visitation

8/15/2019

In **Campbell v. Eary**, 132 N.E.3d 413 (Ind. Ct. App. 2019), the Court reversed the trial court's order, and held that a grandparent visitation order does not terminate the marriage of the biological parents of a child born out of wedlock. The biological parents were unmarried when their two children were born in 2008 and 2010; Father was listed on both birth certificates, but he did not file paternity affidavits. Maternal Grandmother filed for grandparent visitation in 2011, which was granted. Biological parents married in 2013, and subsequently moved to have the visitation order dismissed. The trial court denied their joint motion to dismiss, and Parents appealed.

The plain language of the Grandparent Visitation Act does not provide for the survival of an existing grandparent visitation order when previously unmarried biological parents subsequently marry; as such, the trial court erred, and the matter must be remanded to dismiss the visitation order. *Id.* at 417. The Court noted that “[h]istorically, grandparents had no special common-law right to have visitation with a grandchild.” *K.J.R. v. M.A.B. (In re Visitation of M.L.B.)*, 983 N.E.2d 583, 585 (Ind. 2013). However, “by enacting the Grandparent Visitation Act, our General Assembly has recognized that a child’s best interest is often served by developing and maintaining contact with his or her grandparents.” *McCune v. Frey*, 783 N.E.2d 742, 755 (Ind. Ct. App. 2003) (quotation marks omitted). The Act thus seeks “to balance two competing interests: the rights of parents to raise their children as they see fit and the rights of grandparents to participate in the lives of their grandchildren.” *Id.*” **Campbell** at 415. Since the legislature carved out two very specific instances in which grandparent visitation survives a court order, neither of which is the marriage of the biological parents. *Id.* at 416. Indiana Code “does not speak to whether existing grandparent visitation orders survive the subsequent legitimation by marriage of a child born out of wedlock,” but because the legislature identified specific circumstances in which visitation orders DO survive, the Court “will not disregard the words actually chosen by our General Assembly to strike the balance between allowing for grandparent visitation while also protecting a fit biological parent’s rights over his or her children”. *Id.* at 415-16. “Here, the Act does not include the subsequent marriage of a child’s natural parents as a circumstance in which an existing grandparent visitation order survives. Thus, we conclude that a grandparent visitation order does not survive the subsequent marriage of the natural parents of a child born out of wedlock.” *Id.* at 417.