



Grandparent Visitation

3/29/2019

In **In the Matter of the Paternity of E.H.**, 121 N.E.3d 594 (Ind. Ct. App. 2019), the Court held that the biological maternal grandparents did not have standing to seek grandparent visitation of Father's adopted children, and that the children did not fit within the definition of children covered by the grandparent visitation statutes. Id. at 595.

The children of biological mother and biological father were determined to be CHINS, and eventually, the parental rights of both biological mother and biological father were terminated. Adoptive Father, who was formerly the maternal uncle of the children and the brother of the biological mother, adopted the children along with his significant other. Adoptive Father and his significant other were not married. The biological maternal grandparents ("Grandparents") filed a petition for grandparent visitation as the maternal grandparents. Adoptive Father objected that Grandparents had no standing as maternal grandparents to seek visitation because they had not filed a petition for grandparent visitation and received an order granting grandparent visitation before the adoption was finalized. Grandparents then refiled their petition for grandparent visitation as the children's paternal grandparents, since Grandparents were the parents of both the biological mother and Adoptive Father (formerly the maternal uncle). Adoptive Father again argued that Grandparents had no standing to seek grandparent visitation. After a hearing, the trial court determined that Grandparents had standing to seek grandparent visitation because when Adoptive Father and his significant other adopted the children, they were not married, and this made the children "children born out of wedlock", which granted Grandparents standing.

Grandparents' argument was an attempt to circumvent the strict interpretation of the statute, and they did not have standing to seek grandparent visitation. Id. at 597. Because the Grandparent Visitation Act was passed in derogation of common law, the statutes must be strictly construed. Id. at 596. When statutes are interpreted, the Court must seek to give effect to legislative intent, to give words their common and ordinary meaning, and to not emphasize a strict, literal, or selective reading of the statute. Id. at 596-97. IC 31-17-5-1 provides that a child's grandparent may seek visitation rights if "(1) the child's parent is deceased; (2) the marriage of the child's parents has been dissolved in Indiana; or (3) subject to subsection (b), the child was born out of wedlock." Subsection (b) then provides that "A court may not grant visitation rights to a paternal grandparent of a child who is born out of wedlock under subsection (a)(3) if the child's father has not established paternity in relation to the child." The Court noted prior case law in coming to its conclusion; in In re Guardianship of A.J.A., 991 N.E.2d 110, 113-14 (Ind. 2013), the paternal grandmother sought grandparent visitation under sections (1) or (2) of the Grandparent Visitation Act, "because her son should be considered deceased based on his sixty-year prison sentence and the marriage was technically dissolved due to father murdering mother." E.H. at 597. The Indiana Supreme Court in A.J.A. concluded this would produce an absurd result and was an attempt to circumvent the strict interpretation of the statute. E.H. at 597.

The E.H. Court opined that the A.J.A. decision applied in this case, as Grandparents' theory would produce an absurd result that he legislature surely did not intend. Id. Grandparents' argument that because Adoptive Father was unmarried when he adopted the children, the children were considered born out of wedlock was an attempt to circumvent the strict interpretation of the statute. Id. Consequently, the trial court erred when it concluded that Grandparents had standing to seek grandparent visitation. Id.

The Grandparent Visitation Act is only intended to apply when the parent who is not their child is the custodial parent. Id. at 598. It is a long recognized tradition that parents have the right to raise their children as they see fit, and unless a compelling government interest is established, the government will not intervene in private family matters. Id. at 597-98. The Court opined that he legislature did not intend the Grandparent Visitation Act to apply where grandparents seek visitation over the objection of a custodial parent who is their own child. Id. at 598. This is consistent with prior case law, where the Court held that IC 31-17-5-1(a) only gives standing to grandparents who are the parents of the child's deceased parent, as those grandparents have lost the ability to seek visitation through their own deceased child. Id. citing In Re Visitation of C.R.P., 909 N.E.2d 1026, 1028 (Ind. Ct. App. 2009). The statute does not provide a means for court intervention when the dispute is between the grandparents and a custodial parent who is their own child. E.H. at 598.

The children in this case do not meet the statutory definition of "child" under the Grandparent Visitation Act. Id. at 598. IC 31-9-2-13 defines child for the purposes of the Grandparent Visitation Act as a child of both parties to a marriage, as a child born out of wedlock to the parties, and children born or adopted during the marriage of the parties. Id. The children in this case were adopted, but the adoption did not occur during a marriage. Id. The statutory definition of a child under the Grandparent Visitation Act does not include children adopted by single unmarried persons, and thus, the Grandparents had no standing to seek visitation with the children. Id.