



Grandparent Visitation Law¹

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February 2021

Statutes

Indiana grandparent visitation is governed by the Grandparent Visitation Act, IC 31-17-5-1 through 10, and the only circumstances under which a grandparent may seek visitation rights with a grandchild are those enumerated in this statute. **Cantu v. Cantu**, 562 N.E.2d 768 (Ind. Ct. App. 1990). Grandparent visitation is in derogation of common law and must be strictly construed. **In Re Visitation of J.P.H.**, 709 N.E.2d 44 (Ind. Ct. App. 1999).

Maternal or paternal grandparent, for purposes of IC 31-17-5-1 includes: (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. IC 31-9-2-77.

Only certain grandparents may request visitation rights. IC 31-17-5-1. The grandparents who are permitted to request grandparent visitation rights are: (1) grandparents of a child whose parent is deceased, IC 31-17-5-1(a)(1); (2) grandparents of a child whose parents' marriage was dissolved in Indiana, IC 31-17-5-1(a)(2); and (3) grandparents of a child who was born out of wedlock, subject to other provisions, IC 31-17-5-1(a)(3). If a grandparent is seeking visitation with a child who was born out of wedlock, the court may not grant visitation rights to a paternal grandparent of a child who is born out of wedlock under IC 31-17-5-1(a)(3) if the child's father has not established paternity in relation to the child. IC 31-17-5-1(b).

If a grandparent seeks visitation with a child, and the child's parents had their marriage dissolved in a state other than Indiana, then IC 31-17-5-10 applies. The child's maternal or paternal grandparent may seek visitation rights if the custody decree entered in the action for dissolution of marriage does not bind the grandparent under IC 31-21-3-1, and an Indiana court would have jurisdiction under IC 31-21-5-1, IC 31-21-5-2, or IC 31-21-5-3 to grant visitation rights to the grandparent in a modification decree. IC 31-17-5-10.

A grandparent seeking visitation rights must file a petition requesting reasonable visitation rights in the proper court. IC 31-17-5-4. If the grandparent is seeking grandparent visitation under IC 31-17-5-1(a)(1) [child whose parent is deceased], IC 31-17-5-1(a)(3) [child born out of wedlock], or IC 31-17-5-10 [marriage of child's parents dissolved in a state other than Indiana],

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the grandparent would file their petition for grandparent visitation in a circuit, superior, or probate court of the county in which the child resides. IC 31-17-5-4(1). If the grandparent is seeking grandparent visitation under IC 31-17-5-1(a)(2) [marriage of child's parents was dissolved in Indiana], the grandparent would file their petition for grandparent visitation in the court having jurisdiction over the dissolution of the parents' marriage. IC 31-17-5-4(2).

The petition for grandparent visitation must contain specified information. IC 31-17-5-3(a). The statute provides for the title of the petition, and states that the petition must be verified, filed by a grandparent entitled to receive visitation rights, and set forth the following:

- (1) The names and relationship of the petitioning grandparent or grandparents, each child with whom visitation is sought, and the custodial parent or guardian of each child
- (2) The present address of each person named above.
- (3) The date of birth of each child with whom visitation is sought.
- (4) The status under IC 31-17-5-1 upon which the grandparent seeks visitation.
- (5) The relief sought.

Certain individuals must receive a copy of the petition for grandparent visitation, and the summons to appear for a hearing. IC 31-17-5-5. A copy of the petition, along with a copy of a summons, must be served upon the custodial and noncustodial parent or guardian of each child with whom visitation is sought. IC 31-17-5-5. This must be done in the same way as service of summons in civil actions generally. IC 31-17-5-5.

Once evidence is hearing in support of and opposing a petition for grandparent visitation, the court must enter a decree that details the court's findings and conclusions about the case. IC 31-17-5-6. A court can modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. IC 31-17-5-7. In **In Re Guardianship of K.T.**, 743 N.E.2d 348, 353 (Ind. Ct. App. 2011), the Court concluded that Father, as custodial parent, had standing to seek modification of the Grandparent Visitation order and that the trial court properly modified Grandparents' visitation with the child.

Once awarded, grandparent visitation rights survive the establishment of paternity. IC 31-17-5-8. If a child is born out of wedlock, visitation rights that were granted under IC 31-17-5-1 or IC 31-17-5-10 survive the establishment of paternity of a child by a court proceeding other than an adoption proceeding. IC 31-17-5-8.

In some situations, grandparent visitation rights which have been previously awarded survive the adoption of the child. IC 31-17-5-9. Visitation rights that were granted under IC 31-17-5-1 or IC 31-17-5-10 survive the adoption of the child by any of the following people:

- (1) A stepparent.
- (2) A person who is biologically related to the child as a grandparent, a sibling, an aunt, an uncle, a niece, or a nephew.

In order for the qualifying grandparent visitation rights to survive the adoption, a petition for visitation must be filed prior to the date a decree of adoption is entered. IC 31-17-5-3(b).

Grandparents may be entitled to notice of a child's adoption if they also qualify for grandparent visitation which would survive an adoption. Adoption code now provides that the notice of adoption chapter of the Indiana Code applies to a grandparent who is the grandparent of a child sought to be adopted and has an existing right to petition for grandparent visitation under IC 31-17-5, and that right to visitation would not be terminated by the adoption. IC 31-19-4.5-1(3) (emphasis added). The right to petition for visitation must exist prior to the date of the filing of the adoption petition. IC 31-19-4.5-1(3). The notice given to the grandparent must be in a form and manner substantially similar to what is set forth in IC 31-19-4.5-3. IC 31-19-2.5-3(a).

Although grandparents may be entitled to notice of the adoption, the notice itself is limited to the issue of visitation and may not be used to contest an adoption. IC 31-19-4.5-1.5(1). This notice is also not required if the child to be adopted is in the care, custody, or control of the Department of Child Services. IC 31-19-4.5-1.5(2).

Case Law on Standing

In Sevilla v. Lopez, 150 N.E.3d 683, 686-87 (Ind. Ct. App. 2020) *trans. denied*, the Court held Grandparents' request for grandparent visitation was akin to a counterclaim or a crossclaim in the context of the paternity action; as such, the trial court's dismissal of the paternity action was improper. The child was born to Mother and Father, who were unmarried. Father died but after his death, his blood was submitted for a DNA test, which established that Father was the child's biological father. A paternity action was commenced but paternity was never legally established. Father's parents (Grandparents) filed a motion to intervene and requested grandparent visitation. The trial court granted the motion to intervene, and Mother filed a motion to dismiss the paternity action. The trial court granted Mother's motion to dismiss, which eliminated Grandparents' ability to seek grandparent visitation.

The Sevilla Court determined that the trial court erred in granting Mother's request to dismiss the paternity petition; Grandparents had already intervened in the case and to dismiss the paternity action would substantially prejudice their rights. Ind. Trial R. 41(A)(1)(a) provides that a plaintiff may dismiss their action without court order by filing a proper notice before the adverse party serves an answer or a motion for summary judgment. A trial court may enter an order dismissing an action at the plaintiff's request "upon such terms and conditions as the court deems proper. If a counterclaim or cross-claim has been pleaded by a defendant...the action shall not be dismissed against the defendant's objection unless the counterclaim or cross-claim can remain pending for independent adjudication by the court." Ind. Trial R. 41(A)(2). The Court noted that the Grandparents intervened and became part of the paternity case, and they then pursued a grandparent visitation claim to which Mother objected. Paternity actions do not generally include cross claims or counter claims, but that the substantive nature of Grandparents' request amounted to the same thing as a cross or counter claim. If Mother was permitted to dismiss her paternity

petition after Grandparent's had intervened, it would substantially prejudice and essentially extinguish their right to pursue grandparent visitation.

The Sevilla Court also concluded that the DNA evidence conclusively established Father as the biological father, and no one disputed that Father was the biological father. Based on this, the Court remanded the matter to the trial court to enter an order establishing Father as the legal father to the child, and to hold further proceedings on the petition for grandparent visitation.

In Campbell v. Eary, 132 N.E.3d 413, 417 (Ind. Ct. App. 2019), the Court reversed the trial court's order, and held that a grandparent visitation order does not 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 Court held that 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. 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. 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". "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."

In Walker v. Knight, 119 N.E.3d 573, 577 (Ind. Ct. App. 2019), *clarified and rehearing denied* at 120 N.E.3d 1157 (Ind. Ct. App. 2019), 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 and they sought to adopt the child of their respective wives. The Walkers (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 judgement. 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.”

The Walker Court held that 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. 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. The Mothers did not contest that this was the agreement. After stipulating to the contrary, the Mothers could not preclude Paternal Grandparents from having a hearing on the merits of the grandparent visitation petition. 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. 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). The Court disagreed, citing prior case law. 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.

The Walker Court declined to rehear the matter but did issue a clarification at Walker v. Knight and Carpenter, 120 N.E.3d 1157 (Ind. Ct. App. 2019). The Court granted the Mother’s petition for clarification on what it meant for the Walkers to have a hearing “on the merits”. The Court clarified “we are simply enforcing the agreement signed by the Mothers and the Walkers by specifying that the trial court should hear the Walkers’ argument on why they are entitled to grandparent visitation.” The Mothers’ petition for rehearing was denied in all other respects.

In In Re Paternity of S.A.M., 85 N.E.3d 879, 888-89 (Ind. Ct. App. 2017), the Court vacated the trial court’s order which enforced the mediated agreement for grandparent visitation; the Court held that since the trial court had no authority to allow M.H. to file a petition to establish paternity, the Mediated Settlement was also void *ab initio*. Although Mother and Father established paternity in Father, all the parties to the case came to believe that B.H. was the child’s father. M.H. was B.H.’s father. B.H. died, and M.H. sought to establish paternity in B.H. and to seek grandparent visitation. At a court ordered mediation, Father and M.H. agreed to allow M.H. to have grandparent visitation and agreed that B.H. was the father of the child. M.H. was not permitted to tell the child that B.H. was the child’s father, but M.H. violated this provision. The trial court ultimately denied Father’s motion to set aside the Mediated Agreement and found that M.H. had standing and allowed the visitation to continue. The Court found that the trial court had no authority to allow M.H. to file a petition to establish paternity; M.H. did not qualify as a next friend. The Court noted that the term void *ab initio* means “void from the beginning” and “denotes an act or action that never had any legal existence at all because of some infirmity in the action or process.” The Court clarified that in the S.A.M. case: (1) the trial court lacked authority to order the parties into mediation because M.H. lacked standing to bring the paternity action; and (2) because a lack of standing cannot be cured, the trial court’s order for

the parties to conduct mediation, the resulting Mediated Agreement granting visitation rights to M.H., and the trial court's order approving the agreement, were void. The Court opined that Father's and Mother's agreement to allow M.H. and his wife visitation with the child was not a basis for enforcing an otherwise void agreement.

The Court in **Jocham v. Sutliff**, 26 N.E.3d 82, 85, 8-9 (Ind. Ct. App. 2014), *trans. denied*, 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 and divorced. Father married Stepmother, and Mother passed away shortly afterwards. In September 2012, Stepmother's petition to adopt the child was granted. In July 2013, Maternal Grandmother filed a petition to intervene in the dissolution matter so that she could file a petition for grandparent visitation. The trial court, with a senior judge hearing the case, issued an order denying the petition for grandparent visitation due to Maternal Grandmother's lack of standing. The sitting judge ruled on the motion to correct error and granted it, finding that since Maternal Grandmother remained a biological grandparent, 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 that 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. The Court held that 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. 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. 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. *Please Note*: Since this case was issued, new statutes will become effective in July 2017 providing for notice of an adoption to be given to grandparents in this situation for purposes of grandparent visitation matters. See IC 31-19-4.5-1(3); IC 31-19-2.5-3(a); IC 31-17-5-3(b).

The Court in **In Re Guardianship of A.J.A.**, 991 N.E. 2d 110, 113-5 (Ind. 2013), affirmed the trial court's order vacating its original order which had granted grandparent visitation to Paternal Grandmother. Father murdered his wife, the children's mother, in 2008 in the presence of the two children, who were five years old and one year old at that time. Father was sentenced to sixty years of incarceration. Guardians took immediate custody of the children, filed a petition for guardianship, and the guardianship was granted. Paternal Grandmother filed a petition to intervene and sought grandparent visitation. Guardians agreed to temporary weekly supervised visitation for Paternal Grandmother, but she violated order's terms by taking the children to the jail to visit Father. The trial court issued an Amended Order Approving Petition for Grandparent Visitation. Guardians subsequently requested the trial court to terminate Paternal Grandmother's visitation, and the trial court issued an order that declared its earlier grandparent visitation order void. The Indiana Supreme Court said that it could not construe any scenario where the General Assembly intended the Grandparent Visitation Act to potentially require grandparent visitation

by the mother of an individual who shot and killed the grandchildren's other parent. The Court was not persuaded by Paternal Grandmother's theories that: (1) Father could be deemed dead due to his sixty year incarceration; and (2) the marriage of Father and Mother had been dissolved when Father murdered Mother. The Court held that Grandmother did not meet one of the three strict statutory definitions by which she could seek grandparent visitation rights and that the trial court's order which had granted her grandparent visitation was void.

The Court in **In Re Marriage of J.D.S. and A.L.S.**, 953 N.E.2d 1187, 1188, 1190 (Ind. Ct. App. 2011), affirmed the trial court's order dismissing Paternal Grandmother's Petition to Modify Visitation. Grandmother intervened in the parents' dissolution of marriage and an agreed order granting Grandmother visitation with the children was approved by the trial court. Grandmother soon filed a petition to modify the agreed order on visitation, and the trial court modified visitation with the restriction that Grandmother would not allow the children to have contact with Father during her visitation time under any circumstances. Grandmother was specifically advised that her visitation could be terminated upon Mother's petition if she violated the no contact provision. Grandmother's visitation rights were subsequently terminated because Grandmother allowed Father to be present with the children during a weekend visit when Father was serving home detention at Grandmother's home. Father's parental rights to the children were terminated, and Stepfather adopted the children. Grandmother filed a "Petition to Modify Grandparental Visitation," and Mother moved to dismiss, arguing that Grandmother's visitation rights did not survive the adoption and failed to state a claim. Following a hearing, the trial court entered an order granting Mother's motion to dismiss and denying Grandmother's petition. The Court said that Grandmother established visitation rights when she had standing to do so, but her visitation rights were later terminated. As in **In Re G.R.**, 863 N.E.2d 323 (Ind. Ct. App. 2007), Grandmother no longer had visitation rights when Father's parental rights were terminated, and there were no rights to survive the children's adoption by Stepfather. Because the trial court had specifically terminated her visitation, Grandmother would have had to petition for those rights and establish standing anew before Father's parental rights were terminated.

The Court in **In Re Visitation of P.V.D.**, 954 N.E.2d 988, 992 (Ind. Ct. App. 2011), concluded that the trial court erroneously denied Mother's request for relief from the default judgment granting Maternal Grandmother visitation with the children. The Court reversed and remanded the matter to the trial court with instructions to vacate its previous order granting grandparent visitation. The two children were born before the parents' marriage, but paternity was established for them in the trial court. Father, Mother, and the children then moved, and were living in Antioch, Illinois. On August 13, 2009, Maternal Grandmother filed a petition for visitation under the Grandparent Visitation Act in the Lake Superior Court. Mother requested a continuance of the hearing on Maternal Grandmother's petition because Mother was recently injured in a car accident, and was unable to drive from her home in Illinois to the trial court in Indiana. The trial court denied Mother's request for continuance, and conducted a hearing on Maternal Grandmother's petition in the absence of Mother and Father. The trial court ordered visitation for Maternal Grandmother, and later conducted a hearing on Maternal Grandmother's contempt motion and found Mother and Father in contempt for failing to permit visitation. The trial court ordered Mother and Father to pay Maternal Grandmother's attorney's fees and ordered double visitation in the next three months to "make up for the time that grandparents lost." The trial court denied Mother's subsequently filed motion to dismiss the proceedings and Mother's

motion for relief from the default judgment under Trial Rule 60(B). The Court concluded that the trial court abused its discretion in denying Mother's motion for relief from the default judgment because the Lake County trial court is not the proper venue to consider Maternal Grandmother's request for visitation under the Grandparent Visitation Act, which states that the action should be filed in the county where the children reside. The Court stated that any future requests for visitation by Maternal Grandmother should be filed in the county in Illinois where the children reside.

The Court in **In Re the Visitation of C.R.P.**, 909 N.E.2d 1026, 1027-8 (Ind. App. 2009), *trans. denied*, affirmed the trial court's ruling that Paternal Grandmother lacked standing to petition for grandparent visitation when Mother was deceased and Father's parental rights had been voluntarily terminated. The child was the subject of a CHINS petition and was placed with Maternal Aunt and Uncle. Paternal Grandmother petitioned for grandparent visitation. In December 2008, Father pled guilty to manslaughter in the death of the child's mother and was sentenced to twenty years in DOC. In January 2009, Father voluntarily terminated his parental rights to the child, and Maternal Aunt and Uncle adopted the child. The trial court dismissed Grandmother's petition for visitation due to lack of standing, and the Court affirmed. The Court stated that the Grandparent Visitation Act "was enacted in derogation of the common law and must be strictly construed." (citing **In re Visitation of J.P.H.**, 709 N.E.2d 44, 46 (Ind. Ct. App. 1999)). Grandmother did not have standing because she was not the parent of the child's deceased parent.

The Court in **Baker v. Lee**, 901 N.E.2d 1107, 1109-10 (Ind. Ct. App. 2009), affirmed the trial court's order granting grandparent visitation to the three children's Maternal Grandfather. The children's parents were incarcerated on multiple occasions due to substance abuse. Paternal Grandmother and her husband were appointed guardians of the children, and an order giving grandparent visitation to Maternal Grandfather was entered by the Scott Circuit Court in the guardianship case. Paternal Grandmother and her husband then adopted the children by order of the Jackson Circuit Court. Maternal Grandfather petitioned for grandparent visitation in Jackson Circuit Court three months after the children's adoption. Paternal Grandmother and her husband moved to dismiss Maternal Grandfather's petition, contending that he lacked standing because (1) he was no longer a "grandfather" and (2) he had not previously established visitation rights under the Grandparent Visitation Act, IC 31-17-5-1 et seq. The trial court denied the motion to dismiss, heard evidence and granted visitation to Maternal Grandfather. Paternal Grandmother argued that Maternal Grandfather's visitation rights should not survive the children's adoption because, although she is a biological grandparent, her husband, the other adoptive parent, is not biologically related to the children. The Court found that IC 31-17-5-9 clearly permits grandparent visitation to survive adoption of the child by another biological grandparent. The Court opined that the legislature did not require that every party to the adoption be biologically related to the children. The Court said that the visitation order from the guardianship court, grounded in Maternal Grandfather's statutory right to seek grandparent visitation, predated the adoption. The Court noted that grandparent visitation rights are survivable, and the Court found that the Jackson Circuit Court did not err in its recognition that Maternal Grandfather's visitation could continue after the biological relative adoption.

The Court in **In the Matter of G.R.**, 863 N.E.2d 323, 326-7 (Ind. Ct. App. 2007), affirmed the trial court's ruling that Maternal Grandmother lacked standing to pursue her petition for grandparent visitation rights. The child was found to be a CHINS and placed in foster care. Mother's parental rights to the child were terminated, and on that same day, Maternal Grandmother and Step-Grandfather filed a petition for grandparent visitation rights. The Court held that Maternal Grandmother did not have standing to seek grandparent visitation rights because she did not have standing pursuant to the Grandparent Visitation Act. IC 31-17-5-1 sets forth circumstances in which grandparent visitation rights may be sought. A maternal or paternal grandparent is defined at IC 31-9-2-77 to include (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. The Court found that Maternal Grandmother did not fall into any of the three categories listed at IC 31-9-2-77. The Court stated that after Mother's parental rights were terminated, Maternal Grandmother lost her status as the parent of the child's parent. Therefore, the Court held that "at the moment Mother's rights were terminated, Grandmother no longer had standing to pursue visitation rights as to [the child]." The Court also found that Step-Grandfather did not have standing to petition for grandparent visitation because he did not fall within the definition of "maternal or paternal grandparent."

The Court in **Maser v. Hicks**, 809 N.E.2d 429, 433 (Ind. Ct. App. 2004), reversed the trial court's decision granting visitation to Maternal Step-grandfather. IC 31-17-5-1(a) states that a child's grandparent may seek visitation if: (1) the child's parent is deceased; (2) the marriage of the child's parents has been dissolved in Indiana; or (3) the child was born out of wedlock and the child's father has established paternity. In this case, Step-grandfather is the step-father of the child's mother. The Court held that Step-Grandfather was not a "grandparent" under the Grandparent Visitation Act and therefore lacked standing to obtain post-adoption visitation rights.

The Court in **Hammons v. Jenkins-Griffith**, 764 N.E.2d 303, 306 (Ind. Ct. App. 2002), declined to expand the definition of "grandparents" under the Grandparent Visitation Statute to include Great-grandparents who had served as formal custodians of the child for sixteen months and as unofficial custodians of the child for much longer. The Court stated that it was not without sympathy for Great-grandparents, but was bound by the plain language of the statute.

The Court in **In Re Visitation of J.D.G.**, 756 N.E.2d 509, 512 (Ind. Ct. App. 2001), held that visitation rights awarded to Grandparents during Mother's male companion's guardianship of the child did not survive the child's adoption by the male companion. In order for grandparent visitation rights to survive an adoption, the adoptive parent must be a stepparent, grandparent, sibling, aunt, uncle, niece, or nephew. IC 31-17-5-9. Because the adoptive parent was not one of the relatives listed in the statute, Grandparents did not have standing to petition for grandparent visitation.

The Court in **In Re Groleau**, 585 N.E.2d 726, 729 (Ind. Ct. App. 1992), concluded that the trial court erred in dismissing Paternal Grandmother's petition for grandparent visitation without a full hearing on the merits. Paternal Grandmother petitioned for visitation with the child and received a preliminary order pending a further hearing with Mother present. Father later voluntarily terminated his rights, and the child was adopted by Stepfather. The Court found that,

by filing her petition, Paternal Grandmother “acted to perfect” her visitation rights during the time she was a “grandparent” within the meaning of the Grandparent Visitation Act and had preserved her right to visitation.

Case Law on What Court Must Find to Grant Grandparent Visitation

The Court **McCune v. Frey**, 783 N.E.2d 752, 753, 757, 759-60 (Ind. Ct. App. 2003) remanded the trial court’s decision in order for the trial court to enter findings of fact and conclusions of law on the grandparent visitation petition. The trial court granted grandparent visitation without entering findings of fact and conclusions of law; however, under the Grandparent Visitation Act and Trial Rule 52(A)(3), the trial court is required to issue findings of fact and conclusions of law when issuing a decree granting or denying grandparent visitation. Findings of fact and conclusions of law are necessary in grandparent visitation cases to provide a clear understanding of how the trial court made its decision. This is because of the balancing act between a parent’s fundamental right to control the upbringing of his or her child, and the fact that a child’s best interests are “often served by developing and maintain contact with his or her grandparents.” The Court then noted four items the trial court should address in its findings of facts and conclusions of law. They are:

- (1) The presumption that a fit parent acts in his or her child’s best interests;
- (2) The special weight that must be given to a fit parent’s decision to deny or limit visitation;
- (3) Whether the grandparent has established that visitation is in the child’s best interests; and
- (4) Whether the parent has denied visitation or has simply limited visitation.

Because the trial court failed to issue findings of fact and conclusions of law, the case was remanded. The trial court was ordered to review the evidence and enter the findings of fact and conclusions of law based on the four items listed above. Without the findings of fact and conclusions of law, the Court was not clear whether the trial court applied the Troxel case appropriately, or whether or not the trial court applied, and gave deference to, the presumption that a parent acts in the child’s best interests.

The Court in **In Re Visitation of L-A.D.W.**, 24 N.E.3d 500, 502-3, 508, 511, 514 (Ind. Ct. App. 2015) concluded that the trial did not err in granting visitation to Grandparents, who were the parents of the child’s deceased Mother. The Indiana Supreme Court summarily affirmed the portion of the Court of Appeals opinion which addressed the issue of the trial court’s award of grandparent visitation at In Re Visitation of L-A.D.W., 38 N.E.3d 993, 997-1001 (Ind. 2015); the Supreme Court had accepted transfer only to address the amount of visitation. The Court determined that the trial court did not err in concluding that it had granted Father’s decisions special weight. In making the determination on whether grandparent visitation is in the child’s best interests, the trial court is to “presume that a fit parent’s decision is in the best interests of the child,” but that presumption is rebuttable, and the court must also give “special weight” to a parent’s decision to deny or limit visitation and “some weight” to the fact that a parent has agreed to some visitation the Court noted the following four factors that a trial court must address when ruling on a petition for grandparent visitation: (1) the presumption that a fit parent

acts in his or her child's best interests; (2) the special weight that must be given to a fit parents' decision to deny or limit visitation; (3) whether the parent has denied visitation or simply limited visitation; and (4) whether the grandparent has established that visitation is in the child's best interests. In light of the evidence supporting the trial court's finding that Grandparents had not undermined Father, the trial court's finding was not erroneous; the Court also characterized Father's other arguments as attempting to relitigate the evidence. The special weight requirement "does not require a trial court to take at face value any explanation given by a parent". As long as a trial court affords a parent's decision regarding visitation special weight, the trial court may still find that a parent's reasons for denying visitation are not credible or that other factors in the record outweigh the parent's decision. The Court found that the trial court afforded appropriate weight to the fact that Father had allowed some visitation in the past. The trial court expressly concluded that the existence of a relationship between Grandparents and the child was at stake because the evidence demonstrated that, without a court order, Father would likely deny Grandparents visitation. The Court concluded the trial court did not err in determining that Grandparents had rebutted the presumption that Father's decisions regarding Grandparents' visitation were in the child's best interests. It was undisputed that a relationship with Grandparents was in the child's best interests and the trial court concluded "as a matter of law that absent a Court order, the Father [would] not consistently allow for such regular and meaningful contact." There was evidence to support the trial court's conclusion that Father's intention to deny the child a relationship with Grandparents was not in her best interests.

The Court in **In Re Visitation of K.M.**, 42 N.E.3d 572, 579, 583 (Ind. Ct. App. 2015), the Court affirmed the trial court's order awarding visitation with the child to Grandmother. The Court could not say that the trial court clearly erred in awarding visitation to Grandmother. To protect a parent's fundamental right to direct her child's upbringing, the trial court is required to issue findings of fact and conclusions thereon that address the following four factors: (1) a presumption that a fit parent's decision is in the child's best interests (thus placing the burden of proof on the petitioning grandparents); (2) the "special weight" that must therefore be given to a fit parent's decision regarding grandparent visitation (thus establishing a heightened standard of proof by which a grandparent must rebut the presumption); (3) "some weight" given to whether a parent has agreed to some visitation or denied it entirely (since a denial means the very existence of a child-grandparent relationship is at stake, while the question otherwise is merely how much visitation is appropriate; and (4) whether the petitioning grandparent has established that visitation is in the child's best interests. The Court noted it was not incumbent upon Mother to prove that she acted in the child's best interests; this fact is presumed and "deserves special weight under the law." Mother was also not obligated to prove misconduct by Grandmother to justify discontinuing visitation. The Court found it was clear that the trial court did not simply ignore this evidence as Mother contended, but a review of the record showed at there was inconsistent evidence and conflicting testimony regarding drug use and threatening behavior. The Court observed it was evident that the trial court found Grandmother's testimony was more credible, and it was well within the trial court's discretion to discredit Mother's explanation for terminating visitation. The trial court properly acknowledged that Mother had initially facilitated visits, but at some point, cut off contact between Grandmother and the child, and expressed her desire to prevent visits in the future. While the fact that Grandmother never made consistent attempts to be a part of the child's life was a factor that could be considered, whether

Grandmother attempted to have meaningful contact with the child “is not a touchstone for determining the child’s best interests.”

The Court in **In Re Visitation of A.D.**, 18 N.E.3d 304, 310-11 (Ind. Ct. App. 2014) affirmed the trial court’s order denying grandparent visitation, determining that Grandmother made no showing that the trial court made any error in denying her petition for grandparent visitation based on the evidence presented. The Court noted the four factors that must be considered and addressed by a trial court, and stated that Grandmother did not make any argument that she had met the burden of showing that grandparent visitation was in the children’s best interests, nor did she argue that she had shown that Mother was unfit. The Court observed that there was very little preexisting relationship between Grandmother and the children before Mother permitted Grandmother to have supervised contact with the children. Given the evidence, Grandmother had been unable to satisfy the heightened standard of proof to rebut the presumption that Mother’s decision about contact with Grandmother was in the children’s best interests.

The Court in **In Re Visitation of H.B.**, 21 N.E.3d 867, 871-3 (Ind. Ct. App. 2014) reversed the trial court’s order granting Grandparents court ordered visitation with the six-year-old child and restored Father’s discretion to determine the level of Grandparents’ visitation in accordance with Father’s parental rights and the child’s best interests. The Court held that the “scant evidentiary showing” did not overcome a fit parent’s decision about Grandparents’ visitation and was insufficient to vitiate Father’s constitutional right to direct his child’s upbringing. There was no evidence to support the trial court’s finding that Father would entirely deny Grandparents visitation absent a court order. Father had encouraged Grandparents to attend the child’s extracurricular activities at their convenience, he would “not have a problem” with Grandparents phoning and talking to the child, and he had accommodated their request to spend extra time with the child after a soccer game to celebrate Mother’s birthday. Neither Father’s words nor his actions demonstrated that he was unwilling to accommodate Grandparents’ visitation requests absent a court order. The Court found Grandparents’ other arguments to be a mischaracterization of the record.

The Court in **K.L. v. E.H.**, 6 N.E.3d 1021, 1033-4 (Ind. Ct. App. 2014) affirmed the trial court’s order which granted visitation with Mother’s child to the Grandfather. The Court noted the four factors that a trial court must address and observed that the trial court here acknowledged the presumption that a fit parent acts in his or her child’s best interests, as well as the other three required factors. The Court also noted the following evidence in support of its order affirming the trial court’s decision: (1) members of Father’s family attended a baby shower for the child; (2) Mother invited Grandfather and members of his family to the hospital after the child’s birth; (3) Mother brought the child to Grandfather’s home to visit in early June; (4) Grandfather had made multiple requests to have further contact with the child, which Mother ignored or denied; (5) there was no evidence that the child would be unsafe in Grandfather’s care; (6) Grandfather and his family could and would provide the child with meaningful familial relationships and experiences that are in the child’s best interests.

The Court in **In Re Visitation of C.S.N.**, 14 N.E.3d 753, 759-61 (Ind. Ct. App. 2014) reversed the trial court’s order, holding that the trial court erred in granting grandparent visitation to Grandparents. The trial court’s findings did not reflect consideration of the totality of the

circumstances when it made its determination that Mother's restriction of visitation privileges was unreasonable; this was error in light of Grandparents' burden to show that Mother's decision was not in the child's best interests, along with other evidence in the record. The trial court had impermissibly shifted the burden to Mother by requiring her to prove misconduct on the part of Grandparents. The Court further noted that the trial court's failure to mention certain evidence in its findings "shakes our confidence that it actually afforded [Mother] the presumption' and found that Grandparents presented sufficient evidence to overcome it." The Court noted multiple items of evidence which the trial court omitted from its findings, which supported Mother's arguments. The Court concluded that in light of this evidence, and Grandparents', and not Mother's, burden to prove that Mother's decision was contrary to the child's best interests, the trial court erred in finding that Mother's decision to restrict visitation was unreasonable.

The Court in **In Re Visitation of M.L.B.**, 983 N.E.2d 583, 588-9 (Ind. 2013) remanded for new findings and conclusions without hearing new evidence. The trial court entered an order granting Grandfather visitation one weekend per month from Friday evening to Sunday evening; a "summer family vacation of up to ten (10) days duration" in lieu of that month's regular weekend; ten-hour visits for Easter, Thanksgiving, and Christmas; and a ten-hour visit within the week of the child's birthday. The order also imposed no restrictions on the biological father's contact with the child, even though biological father's parental rights were terminated the next day by a separate adoption order granting Stepfather's adoption petition. Because the visitation order had been issued first, it survived termination of Father's rights pursuant to IC 31-17-5-9. The Court opined that, despite the trial court's ample "best interests" findings, the lack of findings on the three other factors, set out in **McCune v. Frey**, 783 N.E.2d 752, 757-59 (Ind. Ct. App. 2003), both standing alone and as compounded by the extensive visitation awarded to Grandfather without those findings, violated Mother's fundamental right to direct the child's upbringing. The Court concluded that the trial court's grandparent visitation order is voidable and requires remand to correct its defects through new findings and conclusions.

The Court in **Wilder-Newland v. Kessinger**, 967 N.E.2d 558, 559-62 (Ind. Ct. App. 2012), affirmed the trial court's conclusion that denial of grandparent visitation was in the best interests of the children and consistent with the fit parent's decision. The Court held that the evidence supported the trial court's findings, which in turn supported the judgment that Grandmother failed to rebut the presumption that Mother was acting in the children's best interests. The Court opined that Grandmother did not carry her burden of proof showing that grandparent visitation was in the children's best interests and this failure is sufficient reason to uphold the order denying visitation. The trial court denied Grandmother's petition for visitation. The Court opined that the following evidence supported the trial court's finding that Mother voiced concerns about the effects on the children from contact with Grandmother: (1) the children had difficulty in adjusting to visitation with Grandmother in the past; (2) there were possible risks in allowing Grandmother's visitation which included health risks and a risk that Grandmother may attempt to reunite the children with Father; (3) Mother did not believe that any of these possible risks and actions were in the children's best interests. The Court also noted that the trial court's finding that Grandmother blamed Mother for "making" Father violently attack Mother. The Court also said that the trial court found that there was no evidence presented indicating that Mother was an unfit parent, and consequently the trial court gave "special weight to [Mother's] position to oppose Court ordered visitation."

The Court in **Hicks v. Larson**, 884 N.E.2d 869, 872, 876 (Ind. Ct. App. 2008), *trans. denied*, reversed and remanded the trial court's order awarding visitation to Grandparents. Grandparents petitioned for visitation, which was granted by the trial court. Father appealed, and the Court concluded that, because the caseworker and an investigating police detective opined that the younger child was touched inappropriately and in a sexual manner by Grandfather, Grandparents failed to rebut the presumption that Father's decision to deny visitation to Grandparents was in the children's best interests.

The Court in **Ramsey v. Ramsey**, 863 N.E.2d 1232, 1238-41 (Ind. Ct. App. 2007), reversed and remanded the trial court's grandparent visitation order because the Court concluded that the trial court did not issue sufficient findings of fact and conclusions of law to support granting grandparent visitation. The trial court's findings of fact and conclusions of law were insufficient because they failed to indicate the presumption that Father's decision was in the best interests of the child when he denied grandparent visitation; it was not enough that the trial court indicated it gave special weight to Father's denial of visitation. The trial court did not comply with the requirement established in **McCune v. Frey**, 783 N.E.2d 752 (Ind. Ct. App. 2003) of making findings about the appropriate factors. Further, based on the record, the trial court's findings indicated that the trial court did not actually find that Grandparents overcame the presumption that Father was acting in the best interests of the child. The Court noted two specific reasons for this concern. First, the Court noted it was important that the trial court did not mention the animosity, which was clear existed from the record, between Father and Grandparents. Second, the trial court did not enter any findings of how Grandparents addressed Father's concern that they would remove of the child out of state again. The Court disagreed with the trial court's conclusion that unsupervised visitation for Grandparents was proper because there was not sufficient evidence for the trial court to grant unsupervised grandparent visitation.

The Court in **Megyese v. Woods**, 808 N.E.2d 1208, 1214-6 (Ind. Ct. App. 2004) affirmed the trial court's grant of grandparent visitation. The trial court found Mother's allegations of unsecured weapons, threats, and drug use to be unsupported by the evidence and awarded grandparent visitation. Mother appealed, arguing that the trial court had not accorded proper weight to the presumption that parents act in the best interests of their children, and that the trial court failed to make specific findings of fact and conclusions of law. The Court found Mother's arguments to be without merit. The Court noted that the trial court recognized that a presumption exists that Mother's decision is in the children's best interests, but still found that Grandparents met their burden of rebutting the presumption. The trial court had weighed the evidence and concluded that Mother's reasons for denying visitation were unfounded. It is the trial court's right and duty to weigh evidence and judge credibility of witnesses. The Court noted there were specific findings of fact and conclusions of law, and that the trial court had complied with the standards set out in **McCune v. Frey**, 783 N.E.2d 752 (Ind. Ct. App. 2003).

The Court in **In Re Visitation of C.H.**, 792 N.E.2d 608, 609-10 (Ind. Ct. App. 2003), *trans. denied*, held that where Mother and Grandparents simply disagreed as how frequently visitations should occur with the child, and the parents are not shown to be unfit, the trial court did not abuse its discretion in declining to order visitation between Grandparents and the child. The Court noted that IC 31-17-5-2(a) provides that the trial court "may" grant visitation rights to

grandparents “if the court determines that visitation rights are in the best interests of the child.” Because the statute uses the permissive term “may,” a trial court is not required to order grandparent visitation but may do so within its discretion.

The Court in **Woodruff v. Klein**, 762 N.E.2d 223, 226-9 (Ind. Ct. App. 2002), *trans. denied*, affirmed the trial court’s holding which denied Grandmother’s visitation petition. The trial court denied Grandmother’s petition, and found Grandmother failed to present evidence that Father was an unfit parent. Father did not deny visitation to Maternal Grandmother but merely limited when and where the visitations took place. Also, the trial court held that the dysfunctional relationship between Father and Grandmother prevented the type of visitation that Grandmother wanted from being in the child’s best interests. The Court affirmed the trial court’s ruling. The Court found that the trial court had applied the correct standard set out in **Troxel**. The trial court is to “presume that a fit parent’s decision is in the best interests of the child”, and the trial court “should give some weight to the fact that a person has agreed to some visitation.” While a trial court can consider the past contact in order to determine a child’s best interests, it is not the sole basis for determination.

The Court in **Crafton v. Gibson**, 752 N.E.2d 78, 85-6, 96, 98-99 (Ind. Ct. App. 2001), reversed and remanded the trial court’s denial of Mother’s motion for relief from a previous court order awarding visitation to Grandmother. The Court remanded the case to the trial court for a new evidentiary hearing, and said that the trial court must apply special weight to Mother’s decision regarding Grandmother’s visitation request and some weight to any voluntary offer of grandparent visitation by Mother. The trial court had granted Grandmother’s petition, finding that it would be in the children’s best interest to have visitation with Grandmother. In June 2000, the United States Supreme Court issued its ruling in **Troxel v. Granville**, 530 U.S. 57 (2000). In **Troxel**, the U.S. Supreme Court found the Washington statute allowing for nonparent visitation to be unconstitutional. Based on this ruling, Mother filed a Motion for Relief from Judgment, arguing grandparent visitation was no longer equitable. The **Crafton** Court discussed the **Troxel** case and its broad statute at length. The United States Supreme Court stated that there is a “presumption that fit parents act in the best interests of their child”, and the problem with the Washington statute was that the court does not have to give any weight to a parent’s decision of what is in the child’s best interest. **Troxel** at 68, 70. The “Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a ‘better’ decision could be made.” **Troxel** at 72-73. The **Crafton** Court reiterated prior case law that had found the Indiana Grandparent Visitation Act to be constitutional, and noted in light of **Troxel**, it still was; the Indiana statutes were much narrower, required the trial court to give deference to a parent’s decision regarding visitation with a grandparent, and placed the burden of proving to the court that grandparent visitation is in the child’s best interest. The **Troxel** decision requires courts to also “presume that a fit parent’s decision is in the best interest of the child.” **Troxel** at 67. Since there were no allegations made by Grandmother in **Crafton** that Mother was unfit, the trial court was required to give special weight to Mother’s decision denying grandparent visitation. The **Crafton** Court found no weight was given to Mother’s decision concerning grandparent visitation. The Court was unable to determine from the record whether or not Mother had offered some form of visitation to Grandmother. Because the record was undeveloped and three years had passed since the original order granting grandparent visitation had been entered, the Court remanded the case to the trial

court to hear evidence regarding the current situation, Mother's current decision with regard to grandparent visitation (assuming Mother's fitness is not at issue), and whether or not Mother was willing to voluntarily allow Grandmother any access to the children.

Grandparent Visitation is Not Indiana Parenting Time Guideline Visitation

The Court in **In Re Visitation of K.M.**, 42 N.E.3d 572, 573, 580-3 (Ind. Ct. App. 2015) affirmed the trial court's order awarding visitation with the child to Grandmother, but reversed the trial court's ordered visitation schedule, and remanded with instructions for the trial court to craft a new visitation schedule. The Court concluded that the trial court abused its discretion by ordering a visitation schedule that was excessive and unduly burdensome on both Mother and the child. Mother would soon be relocating across the country due to her fiancée's military employment, yet the trial court awarded grandparent visitation that started as the Indiana Parenting Time Guidelines. After relocation, the trial court ordered that the visitation include electronic and telephonic communication, as well as monthly airplane travel for the toddler child. Requiring the parties to follow the Indiana Parenting Time Guidelines until Mother relocated was unreasonable. Grandmother had never been a caregiver for the child and had only every enjoyed sporadic visits. The Court observed that, in general, the parties' earlier pattern of visitation suggested an amount of visitation that might be awarded without unduly interfering in Mother's fundamental right to direct the child's upbringing. Furthermore, the trial court did not take into consideration the logistics of requiring a visitation schedule that would involve cross-country or trans-Atlantic travel for a toddler every month. Mother also challenged the order requiring Grandmother and the child to engage in live videoconferencing two times each month. Noting that the order did not restrict Mother's authority to set reasonable limits on these interactions, the Court found no abuse of discretion regarding the order on twice-monthly video chatting.

The Court in **In Re Visitation of L-A.D.W.**, 38 N.E.3d 993, 997-1001 (Ind. 2015) accepted transfer to solely address the amount of grandparent visitation awarded, and otherwise, summarily affirmed the Court of Appeals opinion at 24 N.E.3d 500 (Ind. Ct. App. 2015) on the issue of the trial court's award of grandparent visitation. **L-A.D.W.**, 38 N.E.3d at 997. The Court of Appeals had reversed the amount of grandparent visitation awarded, opining that it was too similar to Indiana Parenting Time Guidelines. The Supreme Court opined that trial courts should be able to consider the various circumstances presented in each individual case to determine the amount of permissible grandparent visitation which is in the child's best interests. The amount awarded is within a trial court's discretion, and neither the Grandparent Visitation Act nor the Supreme Court has specifically set a standard for determining what amount of visitation is appropriate for a trial court to award. A parent's constitutional protection of their rights regarding their child do not require the crafting of visitation schedules by trial courts that in no way resemble visitation under the Parenting Time Guidelines, even though sole reliance upon the Guidelines is impermissible. The Court said it remains confident in the ability of the trial courts to determine when grandparent visitation would substantially infringe upon the custodial parent's constitutional right to guide the upbringing of the child. The Supreme Court was not persuaded that similarity to the parenting time guidelines alone would require finding an abuse of the trial court's discretion. The Court observed that the trial court considered the extensive role that

Grandparents played in the child's life from the time she was born, which far exceeded the "traditional" role of a grandparent. The Court also observed that the current court order on visitation in the instant case was not permanent, and the Grandparent Visitation Act contemplates that the best interests of the child may change over time.

The Court in **In Re Visitation of C.S.N.**, 14 N.E.3d 753, 760 (Ind. Ct. App. 2014), reversed the trial court's order granting grandparent visitation, and held in part that Grandparents were not automatically entitled to the amount of visitation which they desired. The Court opined that the trial court's findings did not reflect a consideration of the reasons that Paternal Grandparents filed the petition. Paternal Grandparents testified during trial that a primary reason for filing for visitation was because they wanted overnight visits, and the Court determined that they filed their petition at least in part to override Mother's parental-decision making regarding overnight visits. The Court noted that case law holds that grandparents are not automatically entitled to have the type of visitation which they desire. The Court stated that it has repeatedly held that courts may not "infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a 'better' decision could be made."

The Court in **K.I. ex rel. J.I. v. J.H.**, 903 N.E.2d 453, 461-3 (Ind. 2009), held that the trial court correctly modified the custody of the child from Grandmother to Father but erred in awarding visitation consistent with the Indiana Parenting Time Guidelines to Grandmother. The child was born out of wedlock. The Court found that it is not proper for the trial court to award visitation to Grandmother in accordance with the Indiana Parenting Time Guidelines. The Court stated that the guidelines' title made it clear it applied to parents, not to other family members. The Indiana Parenting Time Guidelines are premised on the idea that it is in a child's best interests to have frequent and meaningful contact with each parent, not other individuals. Even though Grandparents did not seek visitation by filing a petition for grandparent visitation, which is the only way to seek grandparent visitation, the Court remanded this case to the trial court to decide the decision of visitation. Noting that the parties have already expended substantial time and resources litigating this matter, the Court concluded that for the sake of judicial economy the filing of a separate petition for grandparent visitation is unnecessary in this case.

The Court in **In Re Visitation of C.L.H.**, 908 N.E.2d 320, 328-9 (Ind. Ct. App. 2009), reversed the trial court's order granting visitation to Maternal Grandparents. The Court found that Grandparents did not meet their burden of overcoming the presumption that Mother's denial of visitation to Grandparents is in the best interests of the child. The child was born out of wedlock, and for several years, Mother and the child lived with Maternal Grandparents. Grandparents were the primary caregivers of the child. Mother began dating a woman, which caused discord between Grandparents and Mother. For several months, Grandparents and the child had very little contact. An incident occurred between Mother and Grandparents, which effectively ended communication between them. Grandparents filed their petition for grandparent visitation and the trial court granted visitation for Grandparents with the child, including ten hours of visitation per month, birthday, holiday and overnight visitation. The trial court noted two reasons why having visitation was in the child's best interests: Grandparents were the primary caregivers of the child during his first five years of life, and because Mother does not have a relationship with any family members, visitation with Grandparents is the only way to allow the child to have a relationship with his extended family. The Court opined it did not believe the trial court

considered the totality of the circumstances. From the record, it was clear there was discord between Grandmother and Mother. It was also clear from the record, and undisputed, that Mother was a reasonable person who had very valid reasons for her decision to deny visitation. The Court found that “Grandparents have failed to meet their burden and to rebut the presumption accorded to Mother.”

The Court in **In Re Guardianship of A.L.C.**, 902 N.E.2d 343, 344, 356, 359 (Ind. Ct. App. 2009), held that the trial court abused its discretion when it awarded visitation to Paternal Grandparents equivalent to that awarded to a non-custodial parent under the Indiana Parenting Time Guidelines. In this case, Mother died and Father was not an appropriate guardian of the child because of his substance abuse. Three sets of grandparents, Maternal Grandmother and Step-Grandfather, Maternal Grandfather and Step-Grandmother, and Paternal Grandparents petitioned to be guardians of the child. Maternal Grandmother and Step-Grandfather were awarded permanent guardianship of the child. The Paternal Grandparents were awarded visitation pursuant to the Indiana Parenting Time Guidelines. The Court held the trial court abused its discretion in awarding such extensive visitation. The Court also noted that the trial court did not state in its findings of fact or conclusions of law that it was in the best interests of the child to have Indiana Parenting Time Guideline visitation with Paternal Grandparents.

The Court in **Hoeing v. Williams**, 880 N.E.2d 1217, 1220-2 (Ind. Ct. App. 2008), held that the trial court committed prima facie error when it granted grandparent visitation nearly equivalent to that of a non-custodial parent. The trial court ordered that Paternal Grandmother would have reasonable visitation with the child, and if the parties could not agree to a visitation schedule, the Indiana Parenting Time Guidelines would apply. The Court reversed this order, finding that it was prima facie error to grant Paternal Grandmother visitation rights nearly equivalent to those of a non-custodial parent, especially since Paternal Grandmother had no constitutional liberty interest in visiting her grandchild. The Court opined that such extensive visitation interfered with Mother’s constitutionally recognized fundamental right to control the upbringing, education and religious training of the child.

The Court in **Spaulding v. Williams**, 793 N.E.2d 252, 258, 263-4 (Ind. Ct. App. 2003), affirmed the trial court’s conclusion that Grandparents successfully rebutted the presumption that Father’s denial of visitation was in the child’s best interest, and affirmed the trial court’s ruling granting grandparent visitation. The Court reversed the trial court’s order which contained provisions regarding written communication and travel arrangements for Grandparents and the child. Regarding the trial court’s order addressing written communications, packages, and travel, the Court stated that “any contact or communication ordered, other than visitation, should be applied narrowly to preserve and protect a parent’s rights.” Because the trial court liberally borrowed language from the Indiana Parenting Time Guidelines, Grandparents were erroneously treated as parents concerning written communications, packages and travel. The trial court should have modified the language in the Indiana Parenting Time Guidelines, in order to better acknowledge Father’s more important role as parent. The Court suggested the trial court insert language into the order which would allow Grandparents to send packages and written communications to the child without “unreasonable” interference from Father.

The Court in **Swartz v. Swartz**, 720 N.E.2d 1219, 1222-23 (Ind. Ct. App. 1999), reversed the trial court's decision which set the times and conditions of grandparent visitation. Grandparents were granted visitation every other weekend, alternating between the three households (Paternal Grandfather, Paternal Grandmother, and Paternal Great-Grandmother), and each Grandparent was awarded one week of visitation during the summer. Mother appealed. While Indiana recognizes that children often benefit from developing and maintain relationships with their grandparents, grandparents do not have the legal rights or obligations of parents. Grandparents do not possess a constitutional liberty interest in visitation with their grandchildren; the grandparent visitation statute is constitutional because it only allows for temporary, occasional visitation. However, the trial court awarded visitation to the Grandparents in a fashion that was similar to what is awarded to non-custodial parents. The result of the grandparent visitation order was that the nine-year-old child would live outside of Mother's home seventy-three days per year, and so, the trial court abused its discretion in making such an order.

Modifying Grandparent Visitation

In **D.G. v. W.M.**, 118 N.E.3d 26, 30-31 (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 Court determined that 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. 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. Mother argued that Grandparents should have the burden of proof of showing that visitation was still in the children's best interests. 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. 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. 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. 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. Mother's description of the evidence supporting the trial court's order as "stale" was also a result of her own behavior and actions. Mother was inviting the Court to reward her persistent noncompliance, and the Court declined to do so.

The Court in **In Re Adoption of A.A.**, 51 N.E.3d 380, 389-90 (Ind. Ct. App. 2016) affirmed the trial court's order denying Parents' petition to termination grandparent visitation rights. The Court held that, as a matter of first impression, the burden for modification of grandparent visitation rests on the party seeking modification. Finding no statute directly on point, the Court observed that IC 31-17-4-2 states: "[t]he court may modify an order granting or denying

parenting time rights whenever modification would serve the best interests of the child.” When a parent seeks modification of a parenting time order, the petitioning parent bears the burden of demonstrating that modification is appropriate. IC 31-17-5-7 states that a court may modify an order granting or denying grandparent visitation rights whenever modification would serve the child’s best interests. The similarity in statutory language between parenting time modification and modification of grandparent visitation suggested that the burden for modification of grandparent visitation should likewise be placed on the petitioning party. The Court opined that, as the moving party, Parents bore the burden of demonstrating that modification of the existing grandparent visitation order would serve the children’s best interests. Noting that Parents failed to present any new evidence to support termination of visitation, the Court opined that Parents’ motion to terminate grandparent visitation was nothing more than an attempt to relitigate issues. Where Parents did not present any evidence showing a change of circumstances to support modification, let alone termination, of the visitation order, the trial court did not abuse its discretion in denying Parents’ petition to terminate Grandparents’ visitation rights. The Court disregarded Parents’ argument that the children’s lack of contact with Grandparents over the past three years constituted a substantial change in circumstances. The Court observed that Parents had presented no evidence that the lapse in time alone would be detrimental to the children’s well-being, and this absence of contact was a direct result of Parents’ failure to comply with the previous order of the trial court.

The Court in **In Re Visitation of L-A.D.W.**, 38 N.E.3d 993, 1001 (Ind. 2015) accepted transfer to solely address the amount of grandparent visitation awarded, and otherwise, summarily affirmed the Court of Appeals opinion at 24 N.E.3d 500 (Ind. Ct. App. 2015) on the issue of the trial court’s award of grandparent visitation. L-A.D.W., 38 N.E.3d at 997. The current court order on visitation in the instant case was not permanent, and the Grandparent Visitation Act contemplates that the best interests of the child may change over time. The Court said that, while the awarded visitation may be appropriate given the child’s age and the extensive role Grandparents have played in her life, modification may be warranted as she becomes more involved in other activities and develops a closer relationship with Father.

The Court in **In Re Visitation of A.D.**, 18 N.E.3d 304, 309-11 (Ind. Ct. App. 2014) affirmed the trial court’s order denying grandparent visitation, holding that the trial court properly treated the case as a petition for grandparent visitation instead of a request to modify grandparent visitation, and that Grandmother did not meet her various burdens of proof regarding grandparent visitation. The Court held that the trial court properly ruled on Grandmother’s petition as a petition for grandparent visitation, and not as a petition to modify grandparent visitation to be determined under a different legal standard. Grandmother contended that the agreement which was ordered was a final order on her grandparent visitation, which established her right to grandparent visitation; therefore, the trial court should not have applied the difficult legal standard for establishing grandparent visitation, but instead, should have placed the burden on Mother to show that Grandmother’s visitation rights should have been modified. The Court observed that Grandmother had filed a petition for grandparent visitation, and the parties had come to an agreement allowing limited visitation during a trial period, pending a final hearing. The Court opined that this was an agreed provisional order pending a final outcome. A trial court must, in granting or denying grandparent visitation rights, issue findings; since the trial court did not issue findings until its final order from the hearing, that order denying grandparent visitation indicated

that it was the hearing on Grandmother's right to grandparent visitation. In a footnote, the Court opined that since it had decided that the trial court properly treated this petition as a request for grandparent visitation and not a modification of such visitation, it would not address the question of the allocation of burdens in a grandparent visitation modification actions.

Custody Evaluations in Grandparent Visitation Cases

The Court in **In Re Guardianship of C.R.**, 22 N.E.3d 657, 660-2 (Ind. Ct. App. 2014), the Court reversed the trial court's order that a visitation evaluation be conducted on a pending grandparent visitation case. The Court opined that Grandparents did not have standing to petition the trial court for a visitation evaluation, and that the trial court did not have the authority to order such an evaluation *sua sponte*. The Court observed that IC 31-17-2-12 provides the statutory basis for requesting and ordering a parenting time evaluation. The Court noted that, "[i]n custody proceedings after evidence is submitted upon the petition, if a parent or the children's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child." The Court also looked to IC 31-21-2-5, which defines a "child custody proceeding" as "a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue," and to IC 31-9-3-31, which defines a "custodian" as "a person with whom a child resides." The Court observed that, under the express language of IC 31-17-2-12, Grandparents are not eligible to request a custody evaluation, as they are neither the parents of nor the custodians of the children. Since the law currently provides no authority for grandparents to request visitation evaluations, the Court found no reason to read IC 31-17-2-12 to provide as such. The Indiana legislature could have added grandparents with visitation rights to the list of individuals eligible to request a parenting time study under IC 31-17-2-12; however, it chose not to do so. The Court did not believe this exclusion was unintentional. In other Indiana family law statutes, the legislature has limited the power of the trial court when determining grandparent' visitation rights, as opposed to rights of a parent or custodian. The Court observed that IC 31-17-6-1, the authorizing statute for court appointment of Guardians ad Litem and Court Appointed Special Advocates does not include proceedings in IC 31-17-5, the Grandparent Visitation Act, presumably because the legislature did not think it appropriate for courts to have such a potentially burdensome appointment in grandparent visitation cases. The Court also noted that the Grandparent Visitation Act itself makes no mention of a grandparent's ability to request or compel a visitation evaluation.

The Court in **K.L. v. E.H.**, 6 N.E 3d 1021, 1030-1 (Ind. Ct. App. 2014) affirmed the trial court's order which granted visitation with Mother's one-year-old child to the Grandfather, and held in part that the trial court had not abused its discretion in excluding the testimony Mother wished to elicit from the counselor who was appointed by the court to act in the role of mediator. Mother asserted that: (1) the court made it clear that it did not order mediation subject to the Rules of Alternative Dispute Resolution; (2) evidence that Grandfather sabotaged the process ordered by the court was clearly relevant to whether Grandfather could be relied upon to put the child's best interests above his own; (3) even if the settlement proceedings were treated as mediation, neither the Rules of Alternative Dispute Resolution nor the Rules of Evidence would require excluding evidence of Grandfather's behavior in walking out of the therapy sessions; (4) any public policy served by keeping a party's behavior in settlement discussions confidential must give way to the

need to assess behavior and temperament of an adult who seeks to be put in charge of a child. However, the Court noted that the admission of evidence is entrusted to the sound discretion of the trial court. The Court looked to Ind. Evidence Rule 408, which provides that evidence of conduct or statements made in compromise negotiations is not admissible. The Court also noted Ind. Alternative Dispute Resolution Rule 2.11, which provides that: (1) mediation shall be regarded as settlement negotiations as governed by Ind. Evidence Rule 408; and (2) mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matter shall be considered confidential and privileged in nature. “Indiana policy strongly favors the confidentiality of all matters that occur during mediation.” The Court noted that the trial court made it clear to the parties that their statements made during mediation would be confidential and the mediator/counselor could not testify.

Other Grandparent Visitation Case Law

An award of fees as sanctions is possible. The Court in **In Re Adoption of A.A.**, 51 N.E.3d 380, 388 (Ind. Ct. App. 2016) affirmed the trial court’s order denying Parents’ petition to termination grandparent visitation rights. The Court held that the trial court did not abuse its discretion in awarding Grandparents \$17,282.50 in attorney’s fees as a sanction for Parents’ contempt of the court order. The Court opined that contempt sanctions are well within the discretion of the trial court, and the trial court properly considered evidence in Grandparents’ attorney’s invoice to calculate the appropriate amount of sanctions, despite the presence of items included on the invoice that might not have been directly related to Grandparents’ action for contempt. The Court observed that the trial court did not award the full invoiced amount.

Courts may not require parents to permit visitation with anyone other than a qualified grandparent, even as part of a proper grandparent visitation order. In **In Re Visitation of G.S. v. M.S.**, 69 N.E.3d 500, 502 (Ind. Ct. App. 2017), the Court reversed the portions of the trial court’s order which related to visitation for the child with persons other than Grandmother. The Court found that the trial court erred by ordering that Mother permit the child to visit and maintain telephone contact with anyone other than Grandmother. The Court applied a de novo standard of review to the trial court’s order, and noted the Grandparent Visitation Act was enacted in derogation of the common law, and, as such, it must be strictly construed. Grandmother was a “grandparent” for the purpose of the Grandparent Visitation Act, she had standing to seek visitation with the child, and the trial court acted within its authority in granting her petition. The Court found it “undeniable” that the child’s other paternal relatives are not grandparents. The General Assembly has seen fit to carve out a narrow, limited exception to a parent’s right to raise her children for grandparents, and there is no exception for anyone else, including other relatives. The Court observed that, “except for grandparents who qualify under the terms of the GVA [Grandparent Visitation Act], no other individuals can trump a parent’s right to determine who her child does, and does not, associate with.”

Courts should carefully consider the circumstances and the fundamental rights involved before denying a parent’s request for a continuance to obtain counsel. In **J.P. v. G.M. and R.M.**, 14 N.E.3d 753, 789-91 (Ind. Ct. App. 2014), a grandparent visitation case, the Court reversed and remanded the trial court’s order granting grandparent visitation to Grandparents,

holding that the trial court abused its discretion in denying Father's motion to continue the hearing. Father had demonstrated good cause for a continuance, and a delay would not have prejudiced Grandparents. The decision to grant or deny a motion for a continuance is within the discretion of the trial court, and will only be reversed on appeal for an abuse of discretion. The Court noted several things that must be considered on an appeal of a denial of a motion to continue; they include whether the denial of the continuance resulted in deprivation of counsel at a crucial stage of the proceedings, whether the record demonstrates the moving party has engaged in dilatory tactics in coming to trial, and whether a delay would prejudice the opposing party. In concluding that Father showed good cause for his motion for continuance, the Court noted the following: (1) Father did not know that Grandparents would be represented by counsel until the day before the hearing; (2) Father now wished to retain an attorney; (3) This was Father's first request for a continuance; (4) The case required comprehension of the law with respect to Grandparents' visitation rights and the rules of evidence and trial procedure; and (5) The case implicated Father's fundamental right to care, custody, and control of his child. In concluding that Father was prejudiced by the denial of motion for a continuance, and that the delay would not have prejudiced Grandparents, the Court noted the following evidence: (1) Father was required to proceed without counsel in a case that implicated his fundamental right to custody and control of his child; (2) Very little evidence was presented, and Father's testimony was only two pages long in large print; (3) Grandparents were granted visitation with the child based on the scant evidence; (4) The visitation awarded to Grandparents vastly exceeded the occasional visits contemplated by the grandparent visitation statutes, and came much closer to the Indiana Parenting Time Guidelines; (5) Grandparents had already been given a short continuance; and (6) Father was able to retain an attorney within a week, and only a short continuance was necessary.