



## **Guardianship Custody and Parenting Time**

11/30/20

In **Prater v. Wineland**, 160 N.E.3d 540 (Ind. Ct. App. 2020), the Court held that the trial court erred in denying Mother's motion for visitation without a hearing; the Court remanded the matter with instructions for the trial court to grant Mother a hearing to consider the visitation petition.

Mother's eleven-year-old daughter was under a guardianship with Paternal Grandparents. The guardianship was put into place in November 2015, and Mother had consented to the guardianship. The trial court ordered that Mother should have reasonable visitation at reasonable times and places. In September 2016, while Mother was incarcerated, Mother wrote a letter to the trial court alleging that Paternal Grandparents had not allowed the child to speak on the phone to her. Mother asked the trial court for a hearing, which was scheduled but not held until May 2017. The trial court issued an order declining to modify the guardianship. Mother again wrote the trial court in August 2017, indicating that Paternal Grandparents were preventing her from seeing the child. Mother was incarcerated at the time, and the trial court took no action on the request. Mother filed additional requests for visitation in 2018 and 2019. The trial court took no action on these requests. In March 2020, Mother filed a pro se petition for visitation, and the trial court denied it without a hearing. The trial court stated, "As guardians of the child, the guardians may decide what is best for the child."

**The trial court's summary denial of Mother's petition for visitation in the guardianship case was contrary to law and policy; Mother should have received a hearing on her petition.** Indiana law recognizes the rights of parents to visit their children; it is a precious privilege for noncustodial parents. Noncustodial parents are generally entitled to parenting time, unless there is a finding after a hearing that the child's physical health is endangered by the parenting time, or their emotional development is significantly impaired by the parenting time. Since the statute IC 31-174-1 specifically requires a hearing, the trial court erred in denying Mother parenting time without a hearing. The Court noted recent prior case law as well; in **Manis v. McNabb**, 104 N.E.3d 611, 621 (Ind. Ct. App. 2018), the Court held that "a trial court has the authority to determine whether parenting time is warranted and order reasonable parenting time for a parent whose child is placed with a guardian." Furthermore, the trial court cannot allow a guardian to determine a parent's parenting time, as they often have a person agenda. The Court also looked to **Blankenship v. Duke**, 132 N.E.3d 410, 413 (Ind. Ct. App. 2019), which determined that by "making the parties agree upon parenting time, the trial court has essentially allowed the maternal grandparents to determine Father's parenting time with Children. It was error for the court to do so." The Court opined that the best practice was for trial courts to make specific findings in support of their parenting time orders.