



## **Grandparent Visitation**

4/8/21

In **Romero v. McVey**, 167 N.E.3d 361 (Ind. Ct. App. 2021), the Court held that the trial court erred in finding that court-ordered grandparent visitation would not be in the Child's best interest.

Mother and Father had a child together out of wedlock. Immediately following the Child's birth, the Child was placed in the care of Maternal Aunt because of Mother's drug abuse. The Aunt had already been taking care of the Child's half-sibling and filed a petition to adopt both children the day the Child was born. A week after the Child's birth, DCS alleged the Child was a CHINS citing Mother's drug use. One week later, Mother executed documents consenting to the adoption by Aunt and has since disappeared. Father is incarcerated following a child molesting conviction and consented to the adoption. Paternal Grandparents filed a petition for grandparent visitation and a motion to intervene in the CHINS proceedings. DCS and the CASA objected to the petition arguing visitation matters should be left to mutual agreement, since Aunt had already been allowing Grandparents visitation time since the Child's birth. Grandparents filed their petition out of concern that Aunt would stop allowing them visitation time once the adoption was finalized. The trial court denied the petition on the grounds that no evidence was presented suggesting Aunt would restrict visitation post-adoption; and because DCS and CASA believe the decision regarding grandparent visitation is best left to Aunt who would become the adoptive mother. Thus, the trial court found it was not in the best interest of the Child to issue an order for grandparent visitation.

**The evidence presented and the trial court's findings do not support the determination that court-ordered visitation would not be in the Child's best interest, thus the denial of Grandparents' petition for visitation was clearly erroneous. Id. at 367.** Grandparents may file a petition for visitation when a child was born out of wedlock and Father's paternity was established under I.C. §31-17-5-2(a). Grandparent visitation rights must be established prior to an adoption for a grandparent to have guaranteed contact with the child post-adoption. I.C. § 31-17-5-9(2)(A). The trial court relied on the *McCune* factors that traditionally apply to grandparent visitation cases; however, those factors do not apply to this case. Romero v. McVey at 365-366. *McCune* specifically applies to a child's fit parents deciding appropriate grandparent visitation whereas in this case this, Maternal Aunt is the caretaker, not the parents. Id. at 366. While Aunt is the Child's caretaker, she is not her legal parent and thus has no fundamental rights with respect to the Child until the adoption is finalized. Id. Father testified that he supported Grandparents' continued visitation, which is significant because "once a parent agrees to some visitation, the dispute is no longer over whether the grandparent will have any access to the child, but instead over how often and how much visitation will occur Id. quoting *Crafton*, 752 N.E.2d at 97. The evidence established Grandparents' desire and willingness to remain in contact with the Child as they would travel one hour and stay in a hotel on visitation days. Id. Aunt also acknowledged that the Child has a healthy relationship with Grandparents and that over time she has increased visitation periods allowing the Child to maintain stable and meaningful contact

with Grandparents. Id. Accordingly, the Court reversed and remanded with instructions that the trial court proceed to determine the appropriate amount of Grandparent visitation and enter a decree establishing said visitation. Id. at 367.