



Grandparent Visitation
2/18/21

In **Welbourne v. Mays**, 165 N.E.3d 117 (Ind. Ct. App. 2021), the Court reversed and remanded the trial court decision and held that remand was required for more particularized findings relative to the child and the particular relationship between the child, maternal grandparents and paternal grandmother. The Court determined that the trial court did not commit clear error in applying an incorrect standard in awarding visitation.

Guardians who are permanent guardians have authority over a child that is akin to parental authority; as such, the trial court should have made more particularized findings to align itself with the McCune analysis. Id. at 124-125. Guardians argued that they should be considered to be parents for the purposes of the McCune factor analysis, and that the trial court was required to consider and address each factor. Id. at 123-4. Paternal Grandmother argued that while Guardians have parental rights and duties as delegated by the guardianship code, they are not parents with fundamental constitutional rights regarding the child; this the trial court correctly found some of the McCune factors to be inapplicable. Id. The trial court's order recited the factors from McCune v. Frey. Id. The Court noted that the trial courts must address these factors and the visitation contemplated is only supposed to be occasional temporary visitation. The trial court ultimately concluded that Guardians were not the equivalent of parents and thus made no explicit findings on the degree of weight to be given to Guardians' wishes. The Court noted that a guardianship "is not a mechanism for preserving the rights of a guardian but is born of the necessity of intervention to provide for the essential needs of the protected person." Id. at 124. The Court examined the rights and responsibilities that are part of being a guardian and found that while there are parental-like rights and duties, parental status is never conferred upon a guardian. Id. The Court noted that ultimately, the trial court did not state that Guardians' wishes were being given great weight but did accord their wishes at least some weight; as a practical matter, "Guardians' wishes were accorded some weight by the placement of the burden of proof upon Grandmother." Id. Given that the trial court did not address all the factors, and did not give much weight to the Guardian's wishes, the Court remanded the matter for more particularized findings with respect to the facts of this case. Id. at 125.

While there was evidence to support the trial court's judgment that visitation was in the child's best interests, the trial court failed to make the specific findings required to support the amount of visitation awarded. Id. at 126. Grandmother argued that the trial court applied as many of the McCune factors as was possible, but the Court disagreed, finding that some of the trial court's findings and conclusions were conclusory. Id. at 125. The Court noted that: (1) the trial court did not make explicit findings detailing the outcome or benefits of the visitations that Guardians had allowed; (2) the trial court only noted that Guardians had hindered visits which hindered the relationship, without acknowledging the visitation that had occurred; (3) the trial court almost exclusively focused on best interests. Id. at 125026. The Court noted that the generous award of visitation was supported only by cursory language that visits were in the child's best interests and did not make findings regarding the specific amount awarded. Id.