

Children's Law Center of Indiana



Adoption

7/30/13

In **In Re Adoption of P.A.H.**, 992 N.E. 2d 774 (Ind. Ct. App. 2013), the Court reversed the trial court's order which granted post-adoption visitation to the child's biological uncle. The child was born with drugs in her system and was placed with Foster Parents. The child's uncle (Uncle) learned of the child's existence in July 2011 and appeared at a CHINS permanency hearing on November 30 to request that the child be placed with him. The trial court ordered the child to be continued in placement with Foster Parents but granted visitation with the child to Uncle one day per week. The parental rights of the child's biological parents were terminated. Foster Parents and Uncle filed separate petitions to adopt the child, and the adoption petitions were consolidated into one cause. After a hearing, the trial court granted Foster Parents' petition to adopt the child, and granted visitation rights to Uncle. The trial court ordered visitation with Uncle for four hours every two weeks, until the child reached the age of three years, after which Uncle's visitation would increase to one thirty-hour period every four weeks.

The Court opined that the trial court lacked authority to grant post-adoption visitation rights to Uncle; thus, the order was void *ab initio*. *Id.* at 776. Citing M.S. v. C.S., 938 N.E. 2d 278 (Ind. Ct. App. 2010), the Court said that an order is void *ab initio* if the trial court lacks the authority to provide the relief ordered under any set of circumstances. Adoption of P.A.H. at 775. The Court found that Uncle was not within any statutory category of persons entitled to visitation rights. *Id.* at 775-76. The Court listed the following categories of persons who would be entitled to visitation rights: (1) birth parents of adopted children (I.C. 31-19-16-2); (2) siblings (I.C. 31-19-16.5-1); (3) grandparents (I.C. 31-17-5-9); (4) stepparents who had a "custodial and parental relationship" with a child (citing In Re Guardianship of J.E.M., 870 N.E. 2d 517, 519 (Ind. Ct. App. 2007)). Adoption of P.A.H. at 775-76. The Court quoted Tinsley v. Plummer, 519 N.E. 2d 752, 754-55 (Ind. Ct. App. 1988), which stated "[a] visitation award without a cognizable right to visitation constitutes an abuse of discretion." Adoption of P.A.H. at 776.