

Children's Law Center of Indiana



Guardianship/Third Party Custody

07/23/2007

In **In Re Guardianship of J.E.M.**, 870 N.E.2d 517 (Ind. Ct. App. 2007), the Court reversed and remanded the trial court's termination of Maternal Grandmother's visitation with the child. The child was born out of wedlock in November 2001. In June 2002, with Mother's consent, Maternal Grandmother was appointed guardian of the child who had resided with her since shortly after his birth. In February 2005, without appeal, the court ordered the guardianship terminated and granted Maternal Grandmother visitation privileges with the child, one weekend per month. In April 2005, when she was twenty-two years old, Mother was adopted in Michigan by her second cousins. In September 2006, Mother filed a motion to terminate Maternal Grandmother's visitation alleging that she was no longer the child's grandmother by virtue of Mother's adoption. She did not claim that visitation was no longer in the child's best interests. Maternal Grandmother objected to termination of visitation, but following a hearing the trial court terminated the visitation. The trial court also denied Maternal Grandmother's motion to correct error.

Any right to visitation with the child which Maternal Grandmother may have is provided by the Grandparent Visitation Act (GVA), IC 31-17-5. Although her visitation was not originally granted in accordance with the GVA, inasmuch as no party objected to the original order, it cannot now be challenged on the basis that it was not issued in compliance with the GVA. *Id.* at 519. The Court noted that in **In Re Guardianship of K.T.**, 743 N.E.2d 348, 351 (Ind. Ct. App. 2001), it had concluded that the GVA provided the exclusive method for grandparents to seek visitation with a grandchild. The Court held that, here, it would treat the original order as if it had been issued in accordance with the GVA inasmuch as the current dispute between the parties was governed by the GVA. **J.E.M.** at 519-20.

Mother's decision to legally sever ties with her biological mother does not automatically and for purposes of the GVA sever all of Maternal Grandmother's ties with the child, who himself has not been adopted by any third party. However, Mother's adoption certainly may be a valid and substantial consideration in deciding whether it is proper to allow Maternal Grandmother further visitation with the child. *Id.* at 522. The Court noted that, if grandparent visitation is established, it may later be modified or terminated upon a finding regarding the child's best interests; and to ensure compliance with the United States Constitution, a trial court considering a request for grandparent visitation must enter findings addressing: (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. The Court observed that this is a case of first impression in Indiana and that (1) the GVA lists a number of situations in which the adoption of a grandchild by a third party does not affect a grandparent's right to seek visitation, including adoption by a stepparent or by a person biologically related to the grandchild as a grandparent, a sibling, an aunt, an uncle, a niece, or a nephew; (2) if a person not included in this list adopts a grandchild, the grandparent no longer has a right to seek visitation; (3) here, Mother's adoptive parents do not fall within this list, either in relation to Mother or the child; but (4) the CVA is silent on the question of the effect of an adult parent's adoption on the ability of a biological grandparent to seek visitation with his or her grandchild. The Court examined a Florida case on the issue, Worley v. Worley, 534 So.2d 862 (Fla. Dist. Ct. App. 1988), and found it to be consistent with the GVA and Indiana law regarding adoption. Like the Florida court, the Court here rejected the notion that adoption of an adult automatically results in adoption of any of the adult's existing children for all purposes. J.E.M., at 520-22.