

# Children's Law Center of Indiana



## Custody and Parenting Time

7/15/2014

In ***In Re Visitation of C.S.N.***, 14 N.E.3d 753 (Ind. Ct. App. 2014), a grandparent visitation case, the Court reversed the trial court's order, holding that the trial court erred in granting grandparent visitation to Paternal Grandparents.

Mother and Father conceived a child out of wedlock, but Father died before the child's birth. Before the child's birth, the trial court entered an order establishing Father's paternity, which was done by agreement of Mother and Paternal Grandparents. Mother gave birth to the child, and Maternal Grandparents were appointed as the child's guardians, since Mother was only seventeen years old. Mother and the child lived with Maternal Grandparents. Mother completed school and went to college. For the first three years of the child's life, Mother maintained close ties between herself, the child, and Paternal Grandparents; however, the child never spent the night with Paternal Grandparents. Paternal Grandmother heard a rumor that Mother intended to terminate their contact with the child. Paternal Grandmother confronted Mother, who denied any intention of doing so. Despite this denial, and because Paternal Grandparents wanted overnight visitation, they filed for grandparent visitation. Mother continued to allow visits even after the petition for grandparent visitation was filed. However, Mother began noticing changes in the child's behavior after visits. The child was crying more, acting out, and being aggressive. The last visit occurred in March 2013. After this visit, the child was hitting, crying, acting terrified, had several toilet training accidents, and had several bruises on his back. Mother discontinued visits between the child and Paternal Grandparents. In August 2013, the trial court issued its order granting Paternal Grandparents visitation with the child, concluding that visitation was in the child's best interests. The trial court specified a transition period from supervised to unsupervised visits. Mother appealed, and the Court of Appeals, in an unpublished opinion, found that the trial court had failed to issue proper findings of fact and conclusions of law, and instructed the trial court to do so. See *In re Grandparent Visitation of C.S.N.*, No. 19A05-1311-MI-542, 2014 WL 1356851 (Ind. Ct. App. Apr. 4, 2014). The trial court issued its revised order.

The Court noted that IC 31-17-5-2(a) provides that a trial court may grant grandparent visitation rights upon a determination that it would be in the best interests of the child; in determining these best interests, the trial court may consider whether a grandparent has had or has attempted to have meaningful contact with the child. *Id.* at 757. There are four factors that a trial court must consider in its decree granting or denying an award of grandparent visitation: (1) the presumption that a fit parent acts in his or her child's best interests; (2) the special weight that must be given

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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. Id. (citing McCune v. Frey, 783 N.E.2d 752,757 (Ind. Ct. App. 2003)). The Court noted that it was the trial court's initial failure to address these factors in its findings that resulted in the remand for clarification, and now that the Court had received the trial court's findings, it could address Mother's claim that, the trial court clearly erred in granting Paternal Grandparents visitation, in light of her constitutional rights as a fit parent. C.S.N. at 757.

**The trial court's findings did not reflect consideration of the totality of the circumstances when it made its determination that Mother's restriction of visitation privileges was unreasonable; this was error in light of Paternal Grandparents' burden to show that Mother's decision was not in the child's best interests, along with other evidence in the record.** Id. at 761. The Court opined that the trial court had impermissibly shifted the burden to Mother by requiring her to prove misconduct on the part of Paternal Grandparents. Id. at 759. The Court further noted that the trial court's failure to mention certain evidence in its findings "shakes our confidence that it actually afforded [Mother] the presumption' and found that [Paternal] Grandparents presented sufficient evidence to overcome it." Id. (citing Ramsey v. Ramsey, 863 N.E.2d 1232, 1239 (Ind. Ct. App. 2007)). The Court noted the follow evidence in record, which the trial court omitted from its findings: (1) Mother's decision to stop visitation was based on a rational concern and was made after consulting with a professional; (2) Mother's statements to her therapist that Mother noticed a change in the child's behavior around the date that Paternal Grandparents filed the petition; (3) Mother's statements to her therapist that Mother was concerned about the child's increased crying and aggressive behavior following visits with Paternal Grandparents; (4) the therapist's recommendation that Paternal Grandparents should have supervised visitation, because of Paternal Grandfather's past domestic violence and so that the therapist could observe the interactions between Paternal Grandparents and the child; (5) the therapist's testimony that Mother never accused Paternal Grandparents of mistreating the child, and only made observations about his changes in behavior after visits; (6) the therapist's testimony that she advised Mother to stop visits while the case was pending, due to her concern that something that may have disrupted the visits; (7) although the trial court had found that Mother's concerns were based on speculation, it validated Paternal Grandparents' decision to start litigation for grandparent visitation based on "an unverified, distant rumor and speculation that Mother might decrease their visits with the Child"; and (8) there was no consideration by the trial court of the fact that by filing a lawsuit, Paternal Grandparents increased the discord between the parties, and yet, despite this, Mother continued for some time to allow visits. C.S.N. at 759-760, 761. The Court concluded that in light of this evidence, and Paternal Grandparents', and not Mother's, burden to prove that Mother's decision was contrary to the child's best interests, the trial court erred in finding that Mother's decision to restrict visitation was unreasonable. Id. at 761.

**Paternal Grandparents were not automatically entitled to the amount of visitation which they desired.** Id. at 760. The Court opined that the trial court's findings did not reflect a consideration of the reasons that Paternal Grandparents filed the petition. Id. at 760. Paternal Grandparents testified during trial that a primary reason for filing for visitation was because they

wanted overnight visits, and the Court determined that they filed their petition at least in part to override Mother's parental-decision making regarding overnight visits. *Id.* The Court noted that case law holds that grandparents are not automatically entitled to have the type of visitation which they desire. *Id.* (citing *Swartz v. Swartz*, 720 N.E.2d 1219, 1222-23 (Ind. Ct. App. 1999)). The Court stated that it has repeatedly held that courts may not "infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a 'better' decision could be made." *C.S.N.* at 761 (citing *Crafton v. Gibson*, 752 N.E.2d 78, 96 (Ind. Ct. App. 2001)).

**Mother, as a fit parent, was entitled to make decisions about the amount of visitation which Paternal Grandparents could receive; the trial court erred when it found that Mother denied all contact between the child and Paternal Grandparents, and erred by giving no weight to Mother's decision to allow visits and her willingness to allow those visits to continue.** *Id.* at 762. The Court noted that a trial court must give some weight to a parent's decision to allow some visitation without court intervention, as this makes the dispute between the parent and the grandparents about the amount of visitation, rather than whether visitation will happen at all. *Id.* at 761 (internal citations omitted). There is a stronger case for judicial intervention when a parent has denied all visitation between grandparents and a child; however, when the disagreement is over the amount of visitation, it is more likely that judicial intervention will infringe on the parent's fundamental rights. *Id.* at 762 (internal citations omitted). The Court determined that the trial court had given no weight to Mother's allowance of regular contact between the child and Paternal Grandparents for the first three years of the child's life, and failed to credit Mother for initiating the contact without court intervention, allowing it to continue after litigation ensued, and continuing to maintain, even during trial, that she wanted Paternal Grandparents to maintain contact, although in a more restricted amount and manner. *Id.* The Court opined that "[h]ere, where the dispute 'is not whether [the Child] and [Grandparents] will have a relationship but *on whose terms* it will be, there is no need for court intervention into [Mother's] decision as a fit parent.'" *Id.* (emphasis in opinion).