

Children's Law Center of Indiana



Grandparent Visitation

2/19/16

In **In Re Adoption of A.A.**, 51 N.E.3d 380 (Ind. Ct. App. 2016), the Court affirmed the trial court's order denying Parents' petition to termination grandparent visitation rights. *Id.* at 390. The children's birth father had murdered his wife, the children's birth mother, in the children's presence in 2008. At that time, the older child was almost five years old, and the younger child was an infant. The children's birth father pleaded guilty to murder and is serving a sixty year sentence. Adoptive Parents (Parents) adopted the children in 2012 and the trial court granted grandparent visitation rights to maternal Grandparents. At that time, Parents conceded that grandparent visitation was appropriate, but they preferred to leave Grandparents' visitation to their discretion. The trial court ordered a specific schedule for grandparent visitation including one weekend per month, two weeks in the summer, and certain special occasions. In May 2012, Parents filed a motion to correct error, challenging the order's validity. By June 2012, Parents were denying Grandparents visitation with the children. Grandparents filed an affidavit for citation and request for sanctions and fees. After a hearing, the trial court found that Parents intentionally violated the grandparent visitation order, found Parents in contempt, and as a sanction ordered Parents to pay \$2,000 of Grandparents' attorney fees. The court also ordered specific "make-up" visitation. In a memorandum decision on February 7, 2014, the Court of Appeals affirmed the trial court's order on grandparent visitation. Parents continued to deny visitation to Grandparents. Grandparents filed another affidavit for citation, motion to enforce order, and request for sanctions in June, 2014. In July 2014 Parents filed a verified petition to terminate Grandparents' visitation rights. In March 2015, the trial court found Parents in contempt for failure to permit visitation and failure to pay the previous sanction. The trial court awarded Grandparents an additional \$17,282.50 in attorney fees as a sanction, and denied Parents' request to terminate grandparent visitation. Parents appealed.

The Court held that, as a matter of first impression, the burden for modification of grandparent visitation rests on the party seeking modification. *Id.* at 390. Finding no statute directly on point, the Court observed that IC 31-17-4-2 states: "[t]he court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child." *Id.* at 389-90. Citing In Re Paternity of Snyder, 26 N.E.3d 996, 998 (Ind. Ct. App. 2015), the Court noted that when a parent seeks modification of a parenting time order, the petitioning parent bears the burden of demonstrating that modification is appropriate. A.A. at 390. The Court noted that IC 31-17-5-7 states that the court may modify an order granting or denying grandparent visitation rights whenever modification would serve the child's best interests. *Id.* at 389. The Court noted the similarity in statutory language between parenting time modification and modification of grandparent visitation and reasoned that this similarity

suggested that the burden for modification of grandparent visitation should likewise be placed on the petitioning party. Id. at 390. The Court opined that, as the moving party, Parents bore the burden of demonstrating that modification of the existing grandparent visitation order would serve the children's best interests. Id. at 390. Noting that Parents failed to present any new evidence to support termination of visitation, the Court opined that Parents' motion to terminate grandparent visitation was nothing more than an attempt to relitigate issues already brought before the court and affirmed on appeal. Id. The Court concluded that, where Parents did not present any evidence showing a change of circumstances to support modification, let alone termination, of the visitation order, the trial court did not abuse its discretion in denying Parents' petition to terminate Grandparents' visitation rights. Id. The Court disregarded Parents' argument that the children's lack of contact with Grandparents over the past three years constituted a substantial change in circumstances. Id. The Court observed that Parents had presented no evidence that the lapse in time alone would be detrimental to the children's well-being. Id. The Court noted that this absence of contact was a direct result of Parents' failure to comply with the previous order of the trial court. Id.

The Court held that the trial court did not abuse its discretion in awarding Grandparents \$17,282.50 in attorney's fees as a sanction for Parents' contempt of the court order. Id. at 388. The Court opined that contempt sanctions are well within the discretion of the trial court, and the trial court properly considered evidence in Grandparents' attorney's invoice to calculate the appropriate amount of sanctions, despite the presence of items included on the invoice that might not have been directly related to Grandparents' action for contempt. Id. The Court observed that the trial court did not award the full invoiced amount. Id.