



This Case Law Update Provided by:

## The Children's Law Center of Indiana

---

### Adoption

8/29/01

#### **In Re Visitation of J.D.G., 756 N.E.2d 509 (Ind. Ct. App. 2001)**

In **In Re Visitation of J.D.G.**, 756 N.E.2d 509 (Ind. Ct. App. 2001), the Court affirmed the trial court's judgment that the visitation rights with the child awarded to the maternal grandparents as part of a guardianship stipulation did not survive the adoption of the child by Gaunt, a non-relative who had been excluded as the child's biological father. The mother and child lived with Gaunt, who had not established paternity from the time of the child's birth until the mother's death six years later. When the mother died, Gaunt initiated a paternity action to establish his paternity of the child. However, DNA tests excluded Gaunt as the biological father. The maternal grandparents and Gaunt both sought guardianship of the child. By stipulation, Gaunt was awarded sole guardianship and grandparents were given visitation privileges. Gaunt then adopted the child, and the grandparents sought post-adoption visitation.

**Under the Grandparent Visitation Statute, the grandparents did not have legal standing to pursue visitation after the child's adoption by a non-relative.** Under I.C. 31-17-5-9, grandparent visitation rights survive the adoption of the child by a stepparent or a person biologically related to the child as a grandparent, a sibling, an aunt or uncle, or a niece or nephew. Because Gaunt, the adoptive father, did not fall into any of these categories, visitation rights in the grandparents did not survive the adoption of the child. In order to be given visitation rights with grandchildren, grandparents must have standing to seek those rights under the Grandparent Visitation Statute. See *In re the Visitation of J.P.H.*, 709 N.E.2d 44, 46 (Ind. Ct. App. 1999). The Grandparent Visitation Statute was enacted to strengthen familial bonds and to promote inter-generational contact when the nuclear family is dissolved. *J.D.G.* at 512 (quoting *Collard v. Enyeart*, 718 N.E.2d 1156, 1159 (Ind. Ct. App. 1999)). However, "the only circumstances in which a grandparent may seek visitation rights are those enumerated in the Act." *Id.* (quoting *Sightes v. Barker*, 684 N.E.2d, 224, 226 (Ind. Ct. App. 1997)). Because the Grandparent Visitation Statute creates rights in derogation of common law, the statute must be strictly construed. *Id.* (quoting *In re J.P.H.* at 47.) The Court noted, regrettably, that despite the fact that the grandparents had a long standing relationship with the child, they had no substantive rights under I.C. 31-17-5-9 to post-adoption visitation. The Court noted that the inequitable result in this case stands in stark contrast to the objective and purpose of the Indiana Grandparent Visitation Statute.