

Children's Law Center of Indiana



Custody and Parenting Time

7/28/2014

In **J.P. v. G.M. and R.M.**, 14 N.E.3d 753 (Ind. Ct. App. 2014), a grandparent visitation case, the Court reversed and remanded the trial court's order granting grandparent visitation to Grandparents, holding that the trial court abused its discretion in denying Father's motion to continue the hearing. The Court declined to address Father's other arguments, determining that the denial of the motion for continuance was the decisive issue.

Mother and Father had a child in 2011, and later married. Mother died in December 2012. The child and Mother's other child (Father's stepchild) continued to live with Father. In July of 2013, Grandparents filed a petition for grandparent visitation, alleging that Father had agreed to visitation on several occasions and then not allowed the child to visit with Grandparents. Grandparents retained an attorney, who filed a request for a continuance. In August 2013, the trial court held a hearing on the visitation petition, and also indicated that it would hear the case involving the guardianship of Father's stepchild. Father indicated to the trial court that he believed that the parties were going to proceed without an attorney, so he had not sought out the services of one; however, once he discovered that Grandparents had retained an attorney, he wished to seek out an attorney for himself. Father then requested a continuance. Grandparents objected, and the trial court decided to hear evidence on the grandparent visitation petition. The trial asked Father if he objected to grandparent visitation, and Father again said he preferred to have a lawyer. The trial court informed Father he now had proceed without a lawyer, and Father indicated that he did not wish for Grandparents to have visitation because of things the child had told him had occurred at Grandparents' residence. Grandmother testified, and answered questions from the trial court; Father did not ask Grandmother any questions. Father indicated to the trial court that he did not have witnesses, and he didn't know if he wanted to testify. In response to questioning from the trial court, Father indicated that he did not understand the legal process. Father eventually testified as follows: (1) Grandparents would show up late at night; (2) that they only suddenly wanted to be a part of the children's lives; (3) and he was just trying to do what he believed was right. The trial court allowed Father to obtain an attorney for purposes of the guardianship case, and set the case for hearing. The trial court entered an order granting Grandparents visitation, and in its findings noted that Father did not object to an award of appropriate grandparent visitation. Father filed a motion to correct errors, which the trial court denied.

The Court concluded that the trial court abused its discretion in denying Father's request for a continuance of the hearing, as Father demonstrated good cause for a continuance, and that a delay would not have prejudiced Grandparents. *Id.* at 791. The Court noted that the decision to grant or deny a motion for a continuance is within the discretion of the trial court, and will only be reversed on appeal for an abuse of discretion. In order to find an abuse of discretion in denying a motion for a continuance, the moving party must show good cause for granting the motion, and that the moving party was prejudiced by the denial of the motion. *Id.* at 789 (internal citations omitted). The Court noted several things that must be considered on an appeal of a denial of a motion to continue; they include whether the denial of the continuance resulted in deprivation of counsel at a crucial stage of the proceedings, whether the record demonstrates the moving party has engaged in dilatory tactics in coming to trial, and whether a delay would prejudice the opposing party. *Id.* at 790 (internal citations omitted).

In concluding that Father showed good cause for his motion for continuance, the Court noted the following: (1) Father stated to the trial court that he did not know that Grandparents would be represented by counsel until the day before the hearing; (2) Father indicated that he now wished to retain an attorney; (3) This was Father's first request for a continuance; (4) The case required comprehension of the law with respect to Grandparents' visitation rights and the rules of evidence and trial procedure; and (5) The case implicated Father's fundamental right to care, custody, and control of his child. *Id.* at 790-91.

In concluding that Father was prejudiced by the denial of motion for a continuance, and that the delay would not have prejudiced Grandparents, the Court noted the following evidence: (1) Father was required to proceed without counsel in a case that implicated his fundamental right to custody and control of his child; (2) Very little evidence was presented, and Father's testimony was only two pages long in large print; (3) Grandparents were granted visitation with the child based on the scant evidence; (4) The visitation awarded to Grandparents vastly exceeded the occasional visits contemplated by the grandparent visitation statutes, and came much closer to the Indiana Parenting Time Guidelines; (5) Grandparents had already been given a short continuance; and (6) Father was able to retain an attorney within a week, and only a short continuance was necessary. *Id.* at 790-91.