



Grandparent Visitation

6/26/20

In **Sevilla v. Lopez**, 150 N.E.3d 683 (Ind. Ct. App. 2020) *trans. rqst. pending*, the Court held Grandparents' request for grandparent visitation was akin to a counterclaim or a crossclaim in the context of the paternity action; as such, the trial court's dismissal of the paternity action was improper.

The child was born to Mother and Father, who were unmarried. Father died but after his death, his blood was submitted for a DNA test, which established that Father was the child's biological father. A paternity action was commenced but paternity was never legally established. Father's parents (Grandparents) filed a motion to intervene and requested grandparent visitation. The trial court granted the motion to intervene, and Mother filed a motion to dismiss the paternity action. The trial court granted Mother's motion to dismiss, which eliminated Grandparents' ability to seek grandparent visitation.

The trial court erred in granting Mother's request to dismiss the paternity petition; Grandparents had already intervened in the case and to dismiss the paternity action would substantially prejudice their rights. Id. at 686. Grandparents argued that the trial court erroneously dismissed the paternity action and denied their request for grandparent visitation; the Court reviewed this under a *de novo* standard, as it was a question of law. Id. at 686. Ind. Trial R. 41(A)(1)(a) provides that a plaintiff may dismiss their action without court order by filing a proper notice before the adverse party serves an answer or a motion for summary judgment. A trial court may enter an order dismissing an action at the plaintiff's request "upon such terms and conditions as the court deems proper. If a counterclaim or cross-claim has been pleaded by a defendant...the action shall not be dismissed against the defendant's objection unless the counterclaim or cross-claim can remain pending for independent adjudication by the court." Ind. Trial R. 41(A)(2). The Court noted that the purpose of these rules was to prevent a plaintiff from being able to dismiss a lawsuit at any point after a defendant has already incurred significant expense or gained substantial rights; the Court also noted that generally, dismissal should be granted unless the defendant will suffer a legal prejudice. Id. at 686.

The Court noted that the Grandparents intervened and became part of the paternity case, and they then pursued a grandparent visitation claim to which Mother objected. Id. The Court noted that paternity actions do not generally include cross claims or counter claims, but that the substantive nature of Grandparents' request amounted to the same thing as a cross or counter claim. Id. If Mother was permitted to dismiss her paternity petition after Grandparent's had intervened, it would substantially prejudice and essentially extinguish their right to pursue grandparent visitation. Id.

The Court opined that the DNA conclusively established Father as the biological father, and no disputed that Father was the biological father. Id. at 687. The Court addressed the matter of paternity establishment and noted that no one disputed that Father was the father of the child, and DNA evidence indicated Father was the father. Id. Based on this, the Court remanded the matter to the trial court to enter an order establishing Father as the legal father to the child, and to hold further proceedings on the petition for grandparent visitation. Id.