

**CHAPTER 15**  
**GRANDPARENT VISITATION**

**Table of Contents**

I.	DEFINITIONS	
A.	Statutory Definitions.....	15-3
1.	Grandparent Visitation Act.....	15-3
2.	Definition of Grandparent.....	15-3
B.	Case Law on Constitutionality.....	15-3
II.	STANDING AND JURISDICTION	
A.	Who May Seek Grandparent Visitation.....	15-4
1.	Statutes.....	15-4
2.	Case Law on Standing.....	15-5
B.	Burden of Proof and Jurisdiction .....	15-6
III.	PETITION FOR GRANDPARENT VISITATION	
A.	Contents of Grandparent Visitation Petition.....	15-7
B.	Service of Grandparent Visitation Petition.....	15-8
C.	Necessity of Hearing on Petition and Evidence on Child’s Best Interests.....	15-8
1.	In Chambers Interview of Child Permitted.....	15-9
2.	No Statutory Authority for Visitation Evaluation or GAL Appointment.....	15-9
3.	Counsel for Parents .....	15-9
D.	Necessity of Findings of Fact and Conclusions of Law.....	15-9
IV.	GRANDPARENT VISITATION FACTORS AND CASE LAW	
A.	Grandparent Visitation Factors the Court Must Consider.....	15-10
B.	Cases Where Visitation Was Granted and Affirmed on Appeal.....	15-12
C.	Cases Where Visitation Was Granted and Reversed on Appeal.....	15-13
D.	Cases Where Visitation Was Denied and Denial Affirmed on Appeal.....	15-14
V.	AMOUNT OF GRANDPARENT VISITATION AWARDED	
A.	Grandparent Visitation Not Indiana Parenting Time Guidelines.....	15-17
B.	Case Law on Permissible Amounts of Visitation.....	15-18
C.	Case Law on Impermissible Amounts of Visitation.....	15-18
VI.	GRANDPARENT VISITATION AND OTHER FAMILY LAW CASES	
A.	Grandparent Visitation and Paternity Cases.....	15-19
B.	Grandparent Visitation and Adoptions.....	15-19
C.	Grandparent Visitation and Relocation.....	15-20
VII.	MODIFICATION AND TERMINATION OF GRANDPARENT VISITATION	
A.	Statutes.....	15-20
B.	Case Law.....	15-20

Chapter 15 – Grandparent Visitation

## CHAPTER 15 GRANDPARENT VISITATION

### I. DEFINITIONS

#### I. A. Statutory Definitions

##### I. A. 1. Grandparent Visitation Act

The Grandparent Visitation Act is codified at IC 31-17-5-1 through 10. The only circumstances under which a grandparent may seek court ordered visitation rights with a grandchild are those enumerated in this statute. **Cantu v. Cantu**, 562 N.E.2d 768 (Ind. Ct. App. 1990).

##### I. A. 2. Definition of Grandparent

IC 31-9-2-77 defines a “maternal or paternal grandparent” as either an adoptive parent of the child’s parent; a parent of the child’s adoptive parent; or a parent of the child’s parent. IC 31-17-5-1(b) states that a court may not grant visitation rights to a paternal grandparent of a child born out of wedlock if the child’s father has not established paternity for the child.

#### I. B. Case Law on Constitutionality

Grandparent visitation is in derogation of common law and must be strictly construed. **In Re Visitation of J.P.H.**, 709 N.E.2d 44 (Ind. Ct. App. 1999).

In **Crafton v. Gibson**, 752 N.E.2d 78, 98-99 (Ind. Ct. App. 2001), the Court reversed and remanded the trial court’s denial of Mother’s motion for relief from a previous court order awarding visitation to Paternal Grandmother. *Id.* at 80. The Court remanded the case to the trial court, finding that a new evidentiary hearing was necessary. *Id.* at 98. The Court held that the trial court is obligated to apply special weight to Mother’s decision regarding Paternal Grandmother’s visitation request and some weight to any voluntary offer of grandparent visitation by Mother. *Id.* at 99. Mother and Father divorced in 1997, and Mother was awarded custody of the two children. Although Father did not exercise his visitation with the children, the children and Paternal Grandmother had a close relationship. Grandmother claimed that Mother had not permitted her to have meaningful contact with the children and filed her petition for grandparent visitation. The trial court granted Grandmother’s petition, finding that it would be in the children’s best interest to have visitation with Grandmother. In June 2000, the United States Supreme Court issued its ruling in **Troxel v. Granville**, 530 U.S. 57, 120 S.Ct. 2054 (2000). In **Troxel**, the U.S. Supreme Court found the Washington statute allowing for nonparent visitation to be unconstitutional. Based on this ruling, Mother filed a Motion for Relief from Judgment, arguing grandparent visitation was no longer equitable.

The **Crafton** Court discussed the **Troxel** case at length. The U.S. Supreme Court found the Washington statute to be “breathhtakingly broad” and thus unconstitutional as applied to the facts of the case. **Troxel** at 67. **Crafton** at 85. The Washington statute provided that:

“[a]ny person may petition the court for visitation rights at any time,”  
and the court may grant such visitation rights whenever “visitation may  
serve the best interest of the child.”

The Washington statute allowed any person to petition for visitation, and once the petition was filed, the court had the authority to determine what was in the best interest of the child. Under the Washington statute, the courts did not have to give any weight to a parent’s decision to deny

## Chapter 15 – Grandparent Visitation

visitation or determine a parent was unfit. The Supreme Court stated that there is a “presumption that fit parents act in the best interests of their child.” Troxel at 68. Crafton at 85 (citing Parham v. J.R., 442 U.S. 584, 602, 99 S.Ct. 2493 (1979)). The Supreme Court said that the problem with the Washington statute was that the court did not have to give any weight to a parent’s decision concerning the child’s best interest. Troxel at 70. Crafton at 85. The Court in Troxel stated that:

the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a ‘better’ decision could be made.

Troxel at 72-73. Crafton at 86.

The Crafton Court next discussed the constitutionality of the Indiana statute allowing for grandparent visitation. Citing Sights v. Barker, 684 N.E.2d 224 (Ind. Ct. App. 1997), *trans. denied*, the Court found the Indiana statute to be constitutional as applied to the facts of this case. Crafton at 92-95. The Court said the Indiana statute is much narrower than the Washington statute in that Indiana’s statute limited those who could file a petition for grandparent visitation to certain classes of grandparents and did not allow all third parties to petition for visitation. Id. at 95. Another difference between the statutes was that the Indiana statute required the trial court to give deference to a parent’s decision regarding visitation with a grandparent. Id. at 96. Under the Indiana statute, the grandparent had the burden of proving to the court that grandparent visitation is in the child’s best interest. Id. The Troxel decision requires courts to also “presume that a fit parent’s decision is in the best interest of the child.” Troxel at 67. Crafton at 96. Since there were no allegations made by Grandmother in Crafton that Mother was unfit, the trial court was required to give special weight to Mother’s decision denying grandparent visitation. Crafton at 96. The Troxel Court also stated that some weight must be given to the fact a parent has agreed to some visitation between the grandparent and child. Troxel at 71. Crafton at 97.

The Crafton Court found no weight was given to Mother’s decision concerning grandparent visitation. Id. at 98. The Court was unable to determine from the Record whether or not Mother had offered some form of visitation to Grandmother. Id. Because the record was undeveloped and three years had passed since the original order granting grandparent visitation had been entered, the Court remanded the case to the trial court to hear evidence regarding the current situation, Mother’s current decision with regard to grandparent visitation (assuming Mother’s fitness was not at issue), and whether or not Mother was willing to voluntarily allow Grandmother any access to the children. Id. The Court instructed the trial court

to apply special weight to [Mother’s] decision regarding [Grandmother’s] request for visitation...[and] to give some weight to any voluntary offer of visitation made by [Mother], if the trial court concludes that such an offer was made.

Id. at 99.

## II. STANDING AND JURISDICTION

### II. A. Who May Seek Grandparent Visitation

#### II. A. 1. Statutes

IC 31-17-5-1(a) states that a child’s grandparent may seek visitation of the child if: (1) the child’s parent is deceased; (2) the marriage of the child’s parents has been dissolved in

## Chapter 15 – Grandparent Visitation

Indiana; or (3) the child was born out of wedlock, if and only if the father has established paternity of the child. IC 31-17-5-10 explains that where a marriage dissolution took place in another state, a grandparent may still seek visitation with the child so long as the grandparent is not bound by the custody decree and the court hearing the petition would have jurisdiction to grant visitation to the grandparent in a modification decree. See IC 31-9-2-77 for the definition of “maternal or paternal grandparent”.

### II. A. 2. Case Law on Standing

Case law has clarified that there is no standing under the Grandparent Visitation Act for persons who have acted in a grandparent role, but who do not meet the legal definition of a grandparent. See Maser v. Hicks, 809 N.E.2d 429, 433 (Ind. Ct. App. 2004) (Court reversed trial court’s order granting visitation to Maternal Stepgrandfather, holding that he was not a “grandparent” and therefore lacked standing); and Hammons v. Jenkins-Griffith, 764 N.E.2d 303, 306 (Ind. Ct. App. 2002) (Court declined to expand the definition of “grandparents” under the statute to include great-grandparents who had served as legal custodians of child for sixteen months and as unofficial custodians for much longer).

In In Re Visitation of G.S. v. M.S., 69 N.E.3d 500 (Ind. Ct. App. 2017), the Court reversed the portions of the trial court’s order which related to visitation for the child with persons other than the paternal grandmother (Grandmother). Id. at 502. Mother and Father were married, and one child was born of their marriage. After Father’s death when the child was eleven years old, Grandmother petitioned the court for grandparent visitation. After hearing evidence on Grandmother’s petition, the trial court ordered: (1) at least one visit per month for at least six hours was to take place between Grandmother and the child; (2) Grandmother was entitled to overnight visits with the child during the summer months; (3) visitation might take place at Grandmother’s residence or at another location selected by Grandmother; (4) other members of Father’s extended family could be present during Grandmother’s visits with the child; (5) the child was entitled to participate in paternal family reunions and functions which were scheduled during her visits with Grandmother; and (6) Grandmother was entitled to weekly telephone conversations with the child, and other members of the extended paternal family were permitted to join in the conversations. Mother appealed only the portions of the order mandating that the child be permitted to visit and have contact with her paternal relatives other than Grandmother. Citing In Re Guardianship of A.J.A., 991 N.E.2d 110, 113 (Ind. 2013), the Court observed that the Grandparent Visitation Act (GVA) was enacted in derogation of the common law, and must be strictly construed. G.S. at 501. The Court found it “undeniable” that Grandmother is a “grandparent” for the purpose of the GVA, Grandmother had standing to seek visitation with the child, and the trial court acted within its authority in granting her petition. Id. at 502. The Court also found it “undeniable” that the child’s other paternal relatives are *not* “grandparents” (emphasis in opinion). Id. The Court said “[t]he General Assembly has seen fit to carve out a narrow, limited exception to a parent’s right to raise her children for grandparents” (emphasis in opinion). Id. The Court noted that, except for grandparents who qualify under the terms of the GVA, no other individuals can trump a parent’s right to determine with whom her child associates. Id. The Court opined that the trial court erred by ordering that Mother permit the child to visit and maintain telephone contact with anyone other than Grandmother. Id.

In In Re Guardianship of A.J.A., 991 N.E.2d 110, 115 (Ind. 2013), the Indiana Supreme Court affirmed the trial court’s order which vacated its prior award of visitation to Paternal Grandmother. Id. at 112. Father had murdered his wife (the children’s mother) in their presence and was sentenced to sixty years in the Department of Correction. The Court held that Paternal Grandmother had not met any of the strict statutory definitions by which she

could seek grandparent visitation. Id. at 114. The Court was not persuaded by Paternal Grandmother’s arguments that: (1) Father was for all intents and purposes dead due to his sixty-year incarceration; and (2) the marriage of Father and Mother had been dissolved when Father murdered Mother. Id. at 113-14. The Court opined that the trial court’s original order granting Grandparent Visitation was void, and that Grandmother never had any standing to file a Guardianship Visitation action. Id. at 115.

Case law has also addressed the standing of grandparents to seek or to continue court ordered visitation rights after the child has been adopted. In **Jocham v. Sutliff**, 26 N.E.3d 82, 84 (Ind. Ct. App. 2014), *trans. denied*, the Court reversed the trial court’s order granting visitation to Maternal Grandmother after the child had been adopted by Stepmother. Parents were divorced, but Mother, the custodial parent, died shortly after Father married Stepmother. Maternal Grandmother filed her petition for grandparent visitation about nine months after Stepmother adopted the child. The Court opined that, since Stepmother was now the child’s legal parent, Maternal Grandmother no longer qualified as a grandparent under the definitions of grandparent and thus had no standing to pursue grandparent visitation. Id. at 87. See also In re Marriage of J.D.S. and A.L.S., 953 N.E.2d 1187, 1190 (Ind. Ct. App. 2011) (Court found Paternal Grandmother lacked standing when her visitation rights had been terminated before children’s adoption by Stepfather), *trans. denied*; **In Re Visitation of C.R.P.**, 909 N.E.2d 1026, 1028 (Ind. Ct. App. 2009) (Court affirmed trial court’s ruling that Paternal Grandmother lacked standing to seek visitation when Mother was deceased, Father’s parental rights had been terminated and he was incarcerated for voluntary manslaughter in death of Mother, and child had been adopted by Aunt and Uncle; Paternal Grandmother was not the parent of the child’s deceased parent), *trans. denied*; **Baker v. Lee**, 901 N.E.2d 1107, 1109-10 (Ind. Ct. App. 2009) (Maternal Grandfather’s visitation rights, which were granted in guardianship case, survived adoption of the three children by Paternal Grandmother and Stepgrandfather despite Stepgrandfather’s lack of biological relationship to children); **In Re Visitation of J.D.G.**, 756 N.E.2d 509, 510 (Ind. Ct. App. 2001) (Court affirmed denial of grandparent visitation for parents of child’s deceased Mother after child’s adoption by Mother’s former live-in male companion because grandparents’ visitation rights do not survive adoption by person who is not stepparent or a relative designated in IC 31-17-5-9 (grandparent, sibling, aunt, uncle, niece, or nephew)); **In Re Groleau**, 586 N.E.2d 726, 729 (Ind. Ct. App. 1992) (Court found Paternal Grandmother “acted to perfect” her visitation rights, petitioning for and being granted preliminary visitation rights before child’s adoption by Stepfather; Court reversed trial court’s order dismissing Grandmother’s petition and remanded for hearing on the merits).

## II. B. Burden of Proof and Jurisdiction

The grandparent has the burden of proving that grandparent visitation is in the child’s best interests. **Crafton v. Gibson**, 752 N.E.2d 78, 96 (Ind. Ct. App. 2001). The trial court is also required to presume that a fit parent’s decision to deny visitation is in the child’s best interests. Id. at 96. Although the trial court may consider the relationship between the child and grandparents, evidence of the relationship is not dispositive. **Daugherty v. Ritter**, 646 N.E.2d 66, 68 (Ind. Ct. App. 1995) (adopted and incorporated at 652 N.E.2d 502 (Ind. 1995)). See also In Re Visitation of L-A.D.W., 24 N.E.3d 500, 514 (Ind. Ct. App. 2015) (adopted and incorporated at 38 N.E.3d 993, 997 (Ind. 2015)) (trial court did not error in determining Grandparents had rebutted presumption that Father’s decisions regarding grandparent visitation were in child’s best interests); **In Re Visitation of A.D.**, 18 N.E.3d 304, 310-11 (Ind. Ct. App. 2014) (Grandmother made no showing that trial court erred in denying her petition for grandparent visitation; Grandmother was unable to satisfy heightened standard of proof to rebut presumption that Mother’s decision about contact with Grandmother was in children’s best interests); **In Re**

**Visitation of C.S.N.**, 14 N.E.3d 753, 761 (Ind. Ct. App. 2014) (Court noted it was *Grandparents'* significant burden to prove that Mother's decision to restrict their visitation to supervised visitation once per month was contrary to the child's best interests (emphasis in opinion)); **In Re Visitation of C.L.H.**, 908 N.E.2d 320, 328 (Ind. Ct. App. 2009) (Grandparents bore the burden of rebutting presumption that fit parent's decision to deny visitation was in child's best interests); **Spaulding v. Williams**, 793 N.E.2d 793 N.E.2d 252, 262 (Ind. Ct. App. 2003) (trial court did not err in concluding that Grandparents met their burden of proof overcoming the presumption that Father's decisions to restrict visitation was in the child's best interests). When grandparent visitation has been ordered and modification of grandparent visitation is sought, the burden rests on the moving party. See **In Re Adoption of A.A.**, 51 N.E.3d 380, 390 (Ind. Ct. App. 2016).

IC 31-17-5-4 states that a grandparent seeking visitation rights shall file a petition in a circuit, superior, or probate court of the county in which the child resides when (1) the child's parent is deceased; (2) the child is born out of wedlock, or (3) the circumstances listed in IC 31-17-5-10 apply. IC 31-17-5-4 states that a grandparent seeking visitation rights shall file a petition in the court having jurisdiction over the parents' dissolution of marriage when grandparent visitation is being sought on the grounds that parents' marriage has been dissolved. IC 31-17-5-10 states that if the parents' marriage was dissolved in another state, the grandparent may seek visitation rights in an Indiana circuit, superior, or probate court of county in which the child resides if the custody decree entered in the out-of-state dissolution did not bind the grandparent and an Indiana court would have jurisdiction under the provisions of IC 31-17-5-10 (Uniform Child custody Jurisdiction Act) to grant visitation rights to the grandparent in a modification decree. In **In Re Visitation of P.V.D.**, 954 N.E.2d 988 (Ind. Ct. App. 2011), Maternal Grandmother (Grandmother) petitioned for visitation rights pursuant to the GVA. The parents were unwed when the children were born, but subsequently married and relocated to Illinois. The trial court granted a default judgment, awarding visitation to Grandmother. Mother petitioned for relief from the judgment, which was denied by the trial court, and filed an appeal. The Court reversed and remanded with instructions, noting that, under the Indiana statute, the Lake County court was not the proper venue to entertain Grandmother's petition for grandparent visitation. *Id.* at 991-92. The Court considered IC 31-17-5-4 and noted: (1) parents were not and had never been divorced in any Indiana court; and (2) the children did not reside in any county in Indiana. *Id.* at 991. The Court said that any future requests for visitation by Grandmother should be filed in the county in which the children reside in Illinois. *Id.* at 992.

### III. PETITION FOR GRANDPARENT VISITATION

#### III. A. Contents of Grandparent Visitation Petition

IC 31-17-5-3 sets out the format for a grandparent's petition seeking visitation:

(a) A proceeding for grandparent's visitation must be commenced by the filing of a petition entitled, "In Re the visitation of \_\_\_\_\_". The petition must:

- (1) be filed by a grandparent entitled to receive visitation rights under this chapter;
- (2) be verified; and
- (3) set forth the following:
  - (A) The names and relationship of:
    - (i) the petitioning grandparent or grandparents;
    - (ii) each child with whom visitation is sought; and
    - (iii) the custodial parent or guardian of each child.
  - (B) The present address of each person named in clause (A).
  - (C) The date of birth of each child with whom visitation is sought.
  - (D) The status under section 1 of this chapter upon which the grandparent seeks visitation.

## Chapter 15 – Grandparent Visitation

(E) The relief sought.

IC 31-17-5-3(b) provides that the grandparent visitation petition must be filed prior to the date an adoption decree for the child is entered.

### III. B. Service of Grandparent Visitation Petition

IC 31-17-5-5 states that:

Whenever a petition is filed, a copy of the petition, together with a copy of a summons, shall be served upon the custodial and noncustodial parent or guardian of each child with whom visitation is sought in the same manner as service of summons in civil actions generally.

See Indiana Rules of Trial Procedure 4.1 through 4.15.

### III. C. Necessity of Hearing on Petition and Evidence on Child’s Best Interests

IC 31-17-5-2(a) states the court may grant grandparent visitation rights if the court determines that visitation rights are in the best interests of the child. IC 31-17-5-2(b) states that, in determining the best interests of the child, the court may consider whether a grandparent has had or has attempted to have meaningful contact with the child. IC 31-17-5-6 states that “[u]pon hearing evidence in support of and opposition to a petition filed under this chapter, the court shall enter a decree setting forth the court's findings and conclusions.”

For examples of grandparent visitation case law which discussed the child’s best interests, see Wilder-Newland v. Kessinger, 967 N.E.2d 558, 560-62 (Ind. Ct. App. 2012) (Court affirmed denial of Grandmother’s visitation petition in light of trial court’s findings on children’s best interests, noting: (1) the children misbehaved more after visiting with Grandmother; (2) Grandmother apparently blamed Mother because Mother had been stabbed in the face by Father, which resulted in his conviction and incarceration; (3) Mother expressed concerns that visitation with Grandmother would result in children’s reunification with Father, which Mother deemed not in their best interests); Ramsey v. Ramsey, 863 N.E.2d 1232, 1238-39 (Ind. Ct. App. 2007) (Court reversed and remanded trial court’s order which granted grandparent visitation, noting that:(1) findings of fact failed to acknowledge that Father as fit parent had presumption that he acted in children’s best interests; (2) findings of fact failed to address whether grandparent visitation would cause children psychological harm, since Grandparents had facilitated abduction of child, accused Father of molesting child, and disobeyed multiple court orders; and (3) trial court’s order did not acknowledge the animosity between Father and Grandparents); Spaulding v. Williams, 793 N.E.2d 252, 260-62 (Ind. Ct. App. 2003) trial court was not required to take fit parent’s explanation for denying visitation to Grandparents at face value; fit Father’s decision to restrict visitation was not in child’s best interests when Grandparents were four-year-old child’s primary caregivers and babysitters while Mother worked); Woodruff v. Klein, 762 N.E.2d 223, 229 (Ind. Ct. App. 2002) (although Grandmother had meaningful contact with child in the past before the death of the child’s Mother, this consideration is not the touchstone for determining the child’s best interests); Kennedy v. Kennedy, 688 N.E.2d 1264, 1270 (Ind. Ct. App. 1997) (Court affirmed denial of visitation for Grandmother, finding no need for separate hearing on her mental health, and opined that a “dysfunctional relationship” with Father was sufficient reason to deny visitation); Daugherty v. Ritter, 646 N.E.2d 66, 68 (Ind. Ct. App. 1995) (adopted and incorporated at 652 N.E.2d 502 (Ind. 1995)) (Court affirmed denial of Grandparent visitation, despite Grandparents’ relationship with child in early childhood; although trial court could consider relationship between child and Grandparents, evidence of relationship was not dispositive; abrogating Moses v. Cober, 641 N.E.2d 668 (Ind. Ct. App. 1994)).



## Chapter 15 – Grandparent Visitation

### III. C. 1. In Chambers Interview of Child Permitted

IC 31-17-5-2 states:

(c) The court may interview the child in chambers to assist the court in determining the child's perception of whether visitation by a grandparent is in the best interests of the child.

(d) The court may permit counsel to be present at the interview. If counsel is present:

(1) a record may be made of the interview; and

(2) the interview may be made part of the record for purposes of appeal.

### III. C. 2. No Statutory Authority for Visitation Evaluation or Guardian ad Litem Appointment

In **In Re Guardianship of C.R.**, 22 N.E.3d 657 (Ind. Ct. App. 2014), the trial court granted twelve hours of supervised visitation per month to Paternal Grandparents, and permitted them at their expense to have a forensic visitation evaluation conducted by psychologists at Grandparents' expense. Adoptive Father appealed, arguing that the trial court did not have authority to order a visitation evaluation in a grandparent visitation case. The Court agreed with Adoptive Father's argument, reasoning that the express language of IC 31-17-2-12 permits a trial court to order such an evaluation only at the request of the child's parent or custodian. *Id.* at 661. Therefore, the Court concluded that Grandparents lacked standing to request the evaluation and the trial court erred in ordering it. *Id.* at 662. The Court found that, because there was no authority to order the evaluation, it need not address whether the evaluation was in the children's best interest. *Id.* at 662. The Court also noted that IC 31-17-6-1, the statute which authorizes court appointment of guardians ad litem and court appointed special advocates in custody, parenting time, and foster care sibling visitation cases, does not include IC 31-17-5, the Grandparent Visitation Act (GVA). *Id.* The Court said the authorization for guardians ad litem/court appointed special advocates in the GVA was not included "presumably because the legislature did not think it appropriate for courts to have such a potentially burdensome appointment power in cases of grandparent visitation." *Id.*

### III. C. 3. Counsel for Parents

In **J.P. v. G.M.**, 14 N.E.3d 786 (Ind. Ct. App. 2014), at the grandparent visitation hearing, Father requested a continuance to secure counsel, which the trial court denied. The trial court heard evidence and granted substantial visitation to Grandparents, nearly following the Indiana Parenting Time Guidelines. The Court reversed the trial court's order and remanded for a new hearing. *Id.* at 791. The Court reasoned that: (1) Father's request to secure counsel demonstrated good cause for a continuance; (2) Father's fundamental rights were implicated by the proceeding; (3) Father was prejudiced by the trial court's denial of his request for continuance; (4) Grandparents would not have been substantially prejudiced by a brief continuance to allow Father to obtain counsel; and (5) the case involved at least some complexity as well as Father's fundamental rights. *Id.*

### III. D. Necessity of Findings of Fact and Conclusions of Law

IC 31-17-5-6 states:

Upon hearing evidence in support of and opposition to a petition filed under this chapter, the court shall enter a decree setting forth the court's findings and conclusions.

In **K.L. v. E.H.**, 6 N.E.3d 1021 (Ind. Ct. App. 2014), Grandfather sought court-ordered visitation with his deceased son's child. Although Mother had permitted Grandfather to

## Chapter 15 – Grandparent Visitation

visit the child twice during the child's first two months of life, Mother was no longer permitting visitation and had declined to send Grandfather a picture of the child. Grandfather's petition to establish his deceased son's paternity of the child was granted, and Grandfather petitioned for grandparent visitation when the child was ten months old. The trial court ordered two hours of visitation for Grandfather twice a month at Grandfather's home. Mother appealed, but the Court affirmed the trial court's visitation order. *Id.* at 1034. The Court opined that the trial court had properly enumerated and addressed the four factors required in a grandparent visitation order, namely: (1) the presumption that a fit parent's decisions regarding the child's upbringing are in the child's best interests; (2) the "special weight" that must be afforded a fit parent's decision regarding grandparent visitation; (3) the distinction in weight between whether the parent has denied all visitation or just limited visitation; and (4) whether the grandparent has demonstrated that visitation is in the child's best interests. *Id.* at 1033. The Court further noted the following evidence supporting the trial court's decision: (1) Mother invited Grandfather and members of his family to the hospital when the child was born and took the child to visit Grandfather at his home on one occasion; (2) Mother had ignored or denied Grandfather's other requests to see the child; (3) Grandfather had experience caring for and raising two children; (4) Grandfather had a close-knit family; (5) there was no evidence that the child would be unsafe in Grandfather's care; and (6) Grandfather and his family could and would provide meaningful family relationships that are in the child's best interest. *Id.* at 1033-34. The trial court afforded little to no weight to Mother's concerns as to why she desired Grandfather to have no contact with the child, which included that Grandfather showed no interest in learning about Mother's values, Grandfather did not present any evidence that he had the ability to cope with the tubes which had been implanted in the child's ears to rectify a series of ear infections, and that injecting Grandfather into the child's life would prematurely raise the subject of the child's father and force Mother to discuss it with the child earlier than Mother deemed best. *Id.*

See also **In Re Visitation of M.L.B.**, 983 N.E.2d 583 (Ind. 2013), in which the Indiana Supreme Court remanded for the required findings and conclusions

### IV. GRANDPARENT VISITATION FACTORS AND CASE LAW

#### IV. A. Grandparent Visitation Factors the Court Must Consider

In **In Re Visitation of M.L.B.**, 983 N.E.2d 583 (Ind. 2013), the Indiana Supreme Court remanded the case for the trial court to enter new findings and conclusions consistent with the opinion. *Id.* at 584. The child's paternity was established, but Father did not pursue parenting time and had essentially no contact with the child. Mother generally allowed the child to have frequent contact with Grandfather and his wife and to attend paternal extended family functions, typically for a few hours in the afternoon. Mother married Stepfather, and, when the child reached the age of three years, Mother required that Father not be present as a condition of the visits with Grandparents. The voluntary grandparent visitation arrangement continued uneventfully until Stepfather initiated a stepparent adoption of the child, and Mother curtailed Grandfather's visits. Grandfather intervened in the adoption proceedings to petition for a grandparent visitation order. At the consolidated hearing on both the visitation and adoption petitions, Mother testified that the child interacted well with Grandfather and the extended paternal family, and that she had no objection to allowing continued visitation between the child and Grandfather. The trial court granted Grandfather visitation one weekend per month from Friday evening to Sunday evening; a "summer family vacation of up to ten (10) days duration" in lieu of that month's regular weekend; ten hour visits for Easter, Thanksgiving, and Christmas; and a ten hour visit within the

## Chapter 15 – Grandparent Visitation

week of the child’s birthday. The order also imposed no restrictions on Father’s contact with the child, even though his parental rights were terminated by the order granting Stepfather’s adoption petition. Because the visitation order had been issued first, it survived the termination of Father’s rights pursuant to IC 31-17-5-9. Mother appealed the visitation order, arguing that it violated her fundamental parental rights.

The Court opined that, in grandparent visitation cases, the trial court must address four factors, all of which must be included in the court’s findings of fact and conclusions of law. *Id.* at 586. The Court said that the Indiana Court of Appeals distilled the four factors which a grandparent visitation order “should address”:

- (1) A presumption that a fit parent’s decision about grandparent visitation is in the child’s best interests (thus placing the *burden* of proof on the petitioning grandparents);
- (2) The “special weight” that must therefore be given to a fit parent’s decision regarding nonparental visitation (thus establishing a heightened *standard* of proof by which a grandparent must rebut the presumption);
- (3) “some weight” given to whether a parent has agreed to some visitation or denied it entirely (since a denial means the very *existence* of a child-grandparent relationship is at stake, while the question otherwise is merely *how much* visitation is appropriate); and
- (4) Whether the petitioning grandparent has established that visitation is in the child’s best interests.

(Emphasis in opinion.) *M.L.B.* at 586, citing *McCune v. Frey*, 783 N.E.2d 752, 757-59 (Ind. Ct. App. 2003). The Court approved the four *McCune* factors, and took the additional step of declaring that a grandparent visitation order “*must* address” those factors in its findings and conclusions. *M.L.B.* at 586, citing *In Re K.I.*, 903 N.E.2d at 462 (emphasis in *M.L.B.* opinion). The Court observed that, despite the trial court’s ample “best interests” findings, the lack of findings on the other three factors, both standing alone and as compounded by the extensive visitation awarded to Grandfather without those necessary findings, violated Mother’s fundamental right to direct the child’s upbringing. *Id.* at 588. The Court addressed the third factor in light of the extensive amount of visitation awarded, namely, whether the parent has denied visitation or has simply limited visitation. *Id.* The Court said that this factor defines what interest of the child’s is at stake. *Id.* at 587. The Court explained that the case for judicial intervention is strengthened if visitation has been denied unreasonably, because the stakes are whether the child will have *any* relationship with the grandparents (emphasis in opinion). *Id.* The Court said that when a parent has offered visitation voluntarily, albeit within reasonable limits, it is not the existence of a relationship at stake, but only *on whose terms* it will be (emphasis in opinion). *Id.*

The Court observed that, although the trial court was within its discretion to order some degree of visitation to ensure that the child’s relationship with Grandfather would continue, the amount of visitation awarded far exceeded the parties’ earlier pattern, and the visitation order gave no consideration to Mother’s previously imposed “limit” that Father not be present during grandparent visits, a condition that seemed particularly important since Stepfather’s adoption of the child had been completed so that his rights as a legal parent must also be protected. *Id.* at 587. The Court opined that ordering such extensive visitation without the required findings to indicate why Mother’s prior limitations on duration of visitation and Father’s presence were unreasonable, or how the sudden increase in visitation would affect the child risked “infring[ing] on the fundamental right of parents to make child rearing decisions” by substituting a court’s own judgment of what would be “a ‘better’ decision,” which was forbidden by the U.S. Supreme Court in *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). *M.L.B.* at 586.

## Chapter 15 – Grandparent Visitation

### IV. B. Cases Where Visitation Was Granted and Affirmed on Appeal

In In Re Visitation of K.M., 42 N.E.3d 572 (Ind. Ct. App. 2015), the Court affirmed the trial court's award of grandparent visitation to Paternal Grandmother (Grandmother) despite Mother's objection to visitation. Id. at 580. Grandmother had returned the child two to three hours late from a visit, and the child was crying, covered in vomit, and wearing only a diaper. The Court noted the trial court found the following: (1) Grandmother encouraged Father to establish paternity and to maintain a relationship with the child despite Father's significant substance abuse problem; (2) Mother cut off the child's contact with Grandmother because Mother felt disrespected as a result of Grandmother's failure to return the eighteen-month-old child on time; (3) Mother testified that her fiancé's family was sufficient family for the child, and that the child did not need to know or have a relationship with Father's family; (5) there was inconsistent evidence on whether the child had been ill before her visit with Grandmother or whether she had vomited solely because Grandmother disregarded Mother's instructions about giving the child dairy products. Id. at 578-79. The Court affirmed the award of grandparent visitation, but found that the trial court abused its discretion by ordering a visitation schedule that was excessive and unduly burdensome on both Mother and the child. Id. at 583. See this Chapter at V.C. on the amount of visitation ordered.

In In Re Visitation of L-A.D.W., 38 N.E.3d 993 (Ind. 2015), the Indiana Supreme Court summarily affirmed the Court of Appeals' decision in In Re Visitation of L-A.D.W., 24 N.E.3d 500 (Ind. Ct. App. 2015) on the issue of the trial court's award of visitation to Maternal Grandparents (Grandparents). The facts indicated that Grandparents had lived with Parents and cared for the child when she was born. Later, Grandparents provided primary care for the child for three years during Mother's battle with cancer. Mother died when the child was eight years old, and Mother and Father were in the process of dissolution of marriage. The trial court ordered visitation for Grandparents despite Father's objections. The Court of Appeals determined that the trial court: (1) did not err in concluding that it had granted Father's decisions special weight; (2) afforded appropriate weight to the fact that Father had allowed some visitation in the past; and (3) did not err in determining Grandparents had rebutted the presumption that Father's decisions on Grandparents' visitation were in the child's best interests. L-A. D.W., 24 N.E.3d at 511, 514. See this Chapter at V.B. for the Supreme Court's opinion on the amount of grandparent visitation ordered.

Other cases in which the trial court's award of grandparent visitation was affirmed on appeal include: K.L. v. E.H., 6 N.E.3d 1021 (Ind. Ct. App. 2014) (trial court had acknowledged the presumption that a fit parent acts in her child's best interests as well as the other three required factors; Court affirmed the order granting visitation to Paternal Grandfather where adjudicated Father had commit suicide before child's birth); Megyese v. Woods, 808 N.E.2d 1208 (Ind. Ct. App. 2004) (Paternal Grandparents' visitation affirmed; trial court recognized presumption that Mother's decisions were in children's best interests, found that Mother had completely terminated contact with Grandparents after Father's death, and concluded that Mother's reasons for denying visitation were unfounded); Wilson v. Cloum, 797 N.E.2d 288 (Ind. Ct. App. 2003) (Court affirmed trial court's order granting visitation to Paternal Grandmother despite challenge by Maternal Grandparents who had adopted child after Mother's death for which Father pled guilty to voluntary manslaughter; adoptive Maternal Grandparents had not challenged trial court's finding that visitation would be in child's best interests), *trans. denied*; Spaulding v. Williams, 793 N.E.2d 252 (Ind. Ct. App. 2003) (Maternal Grandparents' monthly weekend visitation affirmed; trial court not required to take parent's explanation for denying visitation at face value; otherwise fit Father's decision to restrict visitation was not in child's best interests).

## Chapter 15 – Grandparent Visitation

### IV. C. Cases Where Visitation Was Granted and Reversed on Appeal

In **In Re Visitation of H.B.**, 21 N.E.3d 867 (Ind. Ct. App. 2014), the Court reversed the trial court's order granting Maternal Grandparents court-ordered visitation with the six-year-old child. *Id.* at 873. The Court restored Father's discretion to determine the level of Grandparents' visitation in accordance with Father's parental rights and the child's best interests. *Id.* The child was born to unmarried parents and was five years old at the time of the trial court's order on grandparent visitation. At the time of the order, Father had been awarded sole custody of the child, Mother's visitation was supervised by Father or Paternal Grandparents on the first, second, and third Sundays of the month from 3:00 p.m. until 5:00 p.m. at a restaurant, and Maternal Grandparents visited the child once per month during Mother's visitation. The Court held that the "scant evidentiary showing" did not overcome a fit parent's decision about Maternal Grandparents' visitation, and was insufficient to vitiate Father's constitutional right to direct his child's upbringing. *Id.* at 873. The Court noted the following evidence which failed to support the trial court's finding that Father would entirely deny Grandparents visitation absent a court order: (1) Father encouraged Grandparents to attend the child's extracurricular activities at their convenience and did not object to Grandparents' phone calls to the child; (2) Father had accommodated Grandparents' request to spend extra time with the child after a soccer game to celebrate Mother's birthday; (3) Grandparents had not requested other visitation with the child; (4) Father failed to respond to one text message and one phone call. *Id.* at 871-73.

In **J.P. v. G.M.**, 14 N.E.3d 786 (Ind. Ct. App. 2014), the Court reversed and remanded for a new hearing the trial court's order awarding visitation to Maternal Grandparents, parents of the child's deceased Mother. *Id.* at 791. The Court concluded that the trial court abused its discretion in denying Father's request for a continuance in order to obtain a lawyer to represent him. *Id.* See this Chapter at III.C.3. for further discussion.

In **In Re Visitation of C.S.N.**, 14 N.E.3d 753 (Ind. Ct. App. 2014), the Court reversed the trial court's order granting visitation to Paternal Grandparents, who were the parents of the child's deceased Father. *Id.* at 762. Mother had maintained close ties between herself, the child, and Paternal Grandparents for the first three years of the child's life. Mother began noticing changes in the child's behavior, including that the child was crying more often, acting out, and being more aggressive. Mother discontinued Grandparents' visitation when, after a visit with Grandparents, the child cried for an hour and a half, acted terrified, was hitting, had multiple potty-training accidents the next day, and had several bruises on his back. Mother's therapist advised Mother to stop Grandparents' visits. The Court concluded that the trial court erred in finding that Mother's decision to restrict Grandparents' visitation to supervised visitation once per month for four to six hours, with no overnight stays, was unreasonable. *Id.* at 761-62. The Court noted that it was *Grandparents'* significant burden to prove Mother's decision was contrary to the child's best interests (emphasis in opinion). *Id.* at 761. The Court opined that grandparents are not automatically entitled "to have the type of visitation they want", quoting Swartz v. Swartz, 720 N.E.2d 1219, 1222-23 (Ind. Ct. App. 1999). C.S.N. at 760.

In **In Re Visitation of C.L.H.**, 908 N.E.2d 320 (Ind. Ct. App. 2009), Mother had a child out of wedlock. Mother lived with Grandparents for more than five years, and they cared for the child while Mother worked. Mother moved out of Grandparents' home and began a dating relationship with a woman (Partner). Grandparents disapproved of the homosexual relationship, and blamed Mother's homosexuality for Grandmother's later stroke. Grandparents did not welcome Partner to family functions and continually scolded Mother for engaging in a homosexual relationship. Meanwhile, Partner became the primary caregiver of the child, and the child began referring to her as "Mom." Grandparents invited Mother, Partner, and the child to a large family gathering at Grandparents' home, the child visited Grandparents at their home by himself, and Mother and

## Chapter 15 – Grandparent Visitation

Partner hosted a dinner for Grandparents. Mother agreed that her family would go to Grandparents' house for Christmas Eve, but, after Grandfather became angry with Mother during a telephone call when Mother denied Grandparents' overnight visitation with the child, Mother decided not to take the child to Grandparents' house for Christmas Eve. Grandparents then came to Mother's home and Grandfather made Mother feel physically threatened after yelling at her. Thereafter, Mother refused to permit Grandparents any visitation with the child. Grandparents petitioned the court to order visitation with the child, and, after a hearing during which the parties agreed that Mother was a fit parent, the trial court granted visitation for ten hours each month, and additional birthday and holiday visitation. The Court reversed the trial court's visitation order, reasoning that although Grandparents had been a substantial part of the child's early life, this was not the touchstone for determining the child's best interests, and Grandparents bore the burden of rebutting the presumption that a fit parent's decision to deny visitation was in the child's best interests. *Id.* at 328. The Court concluded that the trial court's findings did not support the conclusion that visitation was in the child's best interests. *Id.* at 329.

In **Hicks v. Larson**, 884 N.E.2d 869 (Ind. Ct. App. 2008), the Court reversed the trial court's order awarding visitation to Maternal Grandparents. *Id.* at 872. Because the child protection caseworker and the investigating police detective opined that Maternal Grandfather had touched the younger child in an inappropriate sexual manner, Grandparents failed to rebut presumption that Father's decision to deny visitation to Grandparents was made in children's best interests. *Id.* at 876.

In **Ramsey v. Ramsey**, 863 N.E.2d 1232 (Ind. Ct. App. 2007), the Court reversed and remanded the trial court's award of unsupervised visitation to Grandparents. *Id.* at 1233. The Court agreed with Father that the trial court had issued insufficient findings and conclusions which did not indicate that the court had afforded Father the presumption that he was acting in the child's best interests when he denied visitation to Grandparents. *Id.* at 1238. The Court noted that an order on a petition for grandparent visitation must issue findings and conclusions, IC 31-17-5-6; and these findings and conclusions must specifically address the four factors set forth in **McCune v. Frey**, 783 N.E.2d 752, 755 (Ind. Ct. App. 2003). *Ramsey* at 1238. The Court said that in addition to the trial court's failure to specifically identify the presumption that Father acted in the child's best interest in denying visitation, the remainder of the trial court's findings left the Court with substantial concern as to whether the trial court properly assigned the burden of proof. *Id.* at 1240. The Court concluded that insufficient evidence existed to support the trial court's award of unsupervised visitation. *Id.* at 1241. The Court found that Father's concerns with Grandparents having unsupervised visitation, namely that the child might be abducted again as Mother had previously done and that Grandparents would say things to the child condemning Father, were legitimate, and the trial court's order granting the Grandparents unsupervised visitation was an abuse of discretion. *Id.*

In **Swartz v. Swartz**, 720 N.E.2d 1219 (Ind. Ct. App. 1999), the Court reversed the trial court's order granting overnight visitation to Paternal Grandfather, Paternal Grandmother, and Paternal Great-Grandmother, every other weekend, alternating among the Grandparents' three households. *Id.* at 1222. The Court found that the trial court abused its discretion in awarding such substantial visitation, and noted that Mother had never denied Grandparents access to the child. *Id.* See this Chapter at V.A. for further discussion.

### IV. D. Cases Where Grandparent Visitation Was Denied and Denial Was Affirmed

In **T.H. v. R.J.**, 23 N.E.3d 776 (Ind. Ct. App. 2014), Maternal Grandparents filed a motion to establish custody and de facto custodian status of their four-year-old grandchild, who had spent a significant amount of time living with Grandparents. The juvenile court entered an order

## Chapter 15 – Grandparent Visitation

adjudicating Grandparents as de facto custodians, but left the child in the custody of Parents and ordered that Grandparents would have visitation with the child pursuant to the Indiana Parenting Time Guidelines. The court also ordered a custody evaluation and required Grandparents and Parents to participate in mediation pending a contested hearing to determine permanent custody. After hearing evidence, and considering reports from two psychologists, the juvenile court granted sole legal and physical custody of the child to Parents and ended the court ordered visitation for Grandparents. The Court found that the juvenile court did not err in concluding that Grandparents failed to overcome the presumption in favor of granting custody of the child to Parents. Id. at 787. Grandparents asked that the Court expand the de facto custodian statute to give third parties visitation rights with children after the children were removed from their care. The Court declined to do so because the Supreme Court had clearly spoken on this issue in K.I. Ex Rel J.H., 903 N.E.2d 453, 459 (Ind. 2009). T.H. at 787. Quoting K.I. at 461-62, the Court observed that:

[De facto custodian status] bears only on the question of custody. The apparent intent of the de facto custodian statute is to clarify that a third party may have standing in certain custody proceedings, and that it may be in a child's best interests to be placed in that party's custody. The statute is silent on the question of visitation.

T.H. at 787. The Court declined Grandparents' request to expand the de facto custodian statute to include visitation rights. Id.

In In Re Visitation of A.D., 18 N.E.3d 304 (Ind. Ct. App. 2014), Paternal Grandmother sought visitation with her two grandchildren, born to Mother out of wedlock. Grandmother had no contact with the children until after the first hearing, when the trial court granted an agreed order permitting Grandmother to have visitation with the children supervised by Great-Grandparents. After Grandmother's visitation, Mother found pictures of her son riding a four-wheeler without a helmet, and her son used curse words that Mother alleged were never used in her own home. The trial court, addressing the four factors designated by In Re Visitation of M.L.B., 983 N.E.2d 583 (Ind. 2013), found that Grandmother had failed to meet her burden for a petition for visitation and denied Grandmother's request for court-ordered visitation. On appeal, Grandmother argued that the trial court had erred in treating her petition as a request for visitation rather than one for modification of visitation, since the trial court had already granted Grandmother visitation in its earlier Agreed Order. The Court disagreed and affirmed the trial court. Id. at 311. The Court reasoned that the agreed order was provisional, pending the final hearing; therefore, the trial court properly applied the required factors in its analysis and reasonably reached its conclusion that Grandmother had failed to overcome the heightened burden upon her. Id. at 310.

In Wilder-Newland v. Kessinger, 967 N.E.2d 558 (Ind. Ct. App. 2012), Father stabbed Mother in the face repeatedly and was subsequently arrested. Father's mother (Grandmother) attended Father's supervised visitation with the three children, but had no other contact with the children. Finding that Grandmother did not have an extensive relationship with the children, that she was likely to reunify the children with Father, and that she apparently blamed Mother for the stabbing incident, the trial court explicitly found that visitation with the children would be contrary to their best interests. On appeal, Grandmother argued that the trial court erred in denying visitation and should instead have limited visitation with the children. The Court affirmed the trial court's denial of visitation with Grandmother. The Court specifically noted the trial court's findings with respect to the children's best interests: (1) the children misbehaved more after visiting with Grandmother; (2) Grandmother apparently blamed Mother for Father having stabbed Mother in the face with a knife; and (3) Mother expressed concerns that visitation with

## Chapter 15 – Grandparent Visitation

Grandmother would result in reunification with Father, which Mother deemed not in their best interests. *Id.* at 562. The Court further opined that Grandmother failed to meet her burden to show that Mother’s wishes were contrary to the children’s best interests. *Id.* at 564.

In ***In Re Visitation of C.H.***, 792 N.E.2d 608 (Ind. Ct. App. 2003), Grandparents sought visitation with the child, born to their son (Father) and his girlfriend (Mother) out of wedlock. Grandparents had been denied visitation for two weeks after fighting with Mother, but afterwards regular Grandparent visitation continued. At trial, no evidence was produced that either of the parents was unfit. The trial court denied Grandparents’ petition, and they appealed. The Court affirmed the trial court’s denial, reasoning that the parents were fit and were allowing Grandparents to visit with the child regularly. *Id.* at 610. The Court opined that Grandparents had not been denied the opportunity to have a relationship with the child. *Id.*

In ***Woodruff v. Klein***, 762 N.E.2d 223 (Ind. Ct. App. 2002), Mother died, leaving the child in the sole custody of Father. Maternal Grandmother (Grandmother) wanted to visit with the child, and Father insisted that half of this visitation take place at his and the child’s home, since he was concerned about Grandmother’s behavior around the child, including that she smoked around the child. Grandmother petitioned for visitation, and the trial court denied her petition. The Court affirmed the trial court’s ruling, reasoning that: (1) Grandmother’s contact with the child earlier in the child’s life was not dispositive as to his best interests; (2) Father was a fit parent and had demonstrated reasons for limiting Grandmother’s visitation with the child; and (3) Father was amenable to visitation but only on his own terms. *Id.* at 228.

In ***Kennedy v. Kennedy***, 688 N.E.2d 1264 (Ind. Ct. App. 1997), Father denied unsupervised visitation between Grandmother and the child. Father argued that Grandmother had a history of psychological problems, had attempted to commit suicide, and had been hospitalized for mental health issues. The trial court heard evidence, ordered Grandmother and Father to attend counseling and later received a report from the counselor regarding Father’s and Grandmother’s participation and progress. Based on information from the report that no progress had been made in resolving the differences between Father and Grandmother and that Grandmother had adopted an unyielding position, the trial court denied Grandmother’s petition for visitation. Grandmother appealed, arguing that the trial court’s failure to hold a hearing on the counseling report violated her due process rights, and that the trial court erred in considering the relationship between Grandmother and Father while not making findings regarding the relationship between Grandmother and the child. The Court affirmed the trial court’s denial of grandparent visitation, reasoning that grandparent visitation is not a fundamental right so the trial court’s failure to hold a hearing on the counseling report did not violate due process rights. *Id.* at 1269. The Court opined that the trial court had properly concluded that the acrimony between Father and Grandmother was unhealthy for the child, regardless of the meaningful contact the child may have had with Grandmother in the past. *Id.* at 1270.

In ***In Re Walker***, 665 N.E.2d 586 (Ind. 1996), Father’s parental rights were terminated and Mother thereafter married Stepfather. Paternal grandparents (Grandparents) petitioned for visitation with the child. The trial court determined that visitation was not in the child’s best interest, based on a long list of findings, including the concern that Grandparents might reunite the child with Father; Mother and Grandparents did not have a good relationship; and Grandparents had not made substantial efforts to have visitation with the child based on the totality of the circumstances. Grandparents appealed, and the Court of Appeals affirmed the trial court’s denial of visitation for Grandparents. The Indiana Supreme Court granted transfer and also affirmed the trial court. *Id.* at 589. The Court reasoned that the trial court was correct in considering the strained relationship between Grandparents and Mother, as well as the stress



which the implementation of grandparent visitation would place on the child. *Id.* The Court opined that the ultimate question was whether grandparent visitation in the face of family discord was in the child’s best interests, citing *Daugherty v. Ritter*, 646 N.E.2d 66 (Ind. Ct. App. 1995), adopted and incorporated in *Daugherty v. Ritter*, 652 N.E.2d 502 (Ind. 1995). *Walker* at 589.

**V. AMOUNT OF GRANDPARENT VISITATION AWARDED**

**V. A. Grandparent Visitation Not Indiana Parenting Time Guidelines**

In *In Re Paternity of K.I.*, 903 N.E.2d 453 (Ind. 2009), the Indian Supreme Court affirmed the trial court’s order modifying custody of the child from Maternal Grandmother (Grandmother) to Father. *Id.* at 455. The Court reversed the trial court’s order in the custody modification case which granted visitation to Grandmother pursuant to the Indiana Parenting Time Guidelines. The Court remanded the case with instructions to enter appropriate findings and conclusions consistent with the Court’s opinion and the Grandparent Visitation Act. *Id.* at 462-63. The trial court granted Grandmother visitation with the child according to the Indiana Parenting Time Guidelines. The Court opined that Grandmother was not entitled to visitation pursuant to the Indiana Parenting Time Guidelines. *Id.* at 461. The Court also stated that the de facto custodian statute did not provide Grandmother any relief on the amount of visitation ordered, because the de facto custodian statute bears only on the question of custody. *Id.* The Court observed that, in a modification proceeding, once the trial court determines that it is in the child’s best interest that custody be granted to the natural parent, the Court must look elsewhere for guidance on whether and to what extent a third party may be granted visitation. *Id.* at 462. Citing *Hoeing v. Williams*, 880 N.E.2d 1217, 1221 (Ind. Ct. App. 2008), the Court observed that “[t]he Grandparent Visitation Act contemplates only ‘occasional, temporary visitation’ that does not substantially infringe on a parent’s fundamental right ‘to control the upbringing, education, and religious training of their children.’” *K.I.* at 462.

In *Hoeing v. Williams*, 880 N.E.2d 1217 (Ind. Ct. App. 2008), the Court reversed the trial court’s order granting paternal grandmother (Grandmother) grandparent visitation with the child according to the Indiana Parenting Time Guidelines. *Id.* at 1222. The child’s parents were divorced, Mother was awarded custody of the child, and Father had disappeared and was not visiting the child. Mother resumed the practice of the Jehovah’s Witness religion, which does not celebrate holidays or birthdays. At the hearing on Grandmother’s visitation petition, Mother testified that she did not want to deny Grandmother visitation with the child but was concerned about Grandmother’s willingness to respect Mother’s religious beliefs. The Court concluded that Mother had established prima facie error in the trial court’s decision to grant Grandmother, who had no constitutional liberty interest in visiting her grandchild, visitation rights nearly equivalent to those of a non-custodial parent. *Id.* at 1221. Quoting *Swartz v. Swartz*, 720 N.E.2d 1219, 1221 (Ind. Ct. App. 1999), the Court noted that the Grandparent Visitation Act contemplates only “occasional, temporary visitation” that does not substantially infringe on a parent’s fundamental right “to control the upbringing, education, and religious training of their children.” *Hoeing* at 1221. The Court observed that: (1) the visitation granted by the trial court is generally awarded to a non-custodial parent who has responsibilities in raising his/her child, but Grandmother received extensive visitation benefits and no responsibilities: and (2) *perhaps most importantly, the award of such extensive visitation to [Grandmother] clearly interferes with [Mother’s] constitutionally recognized fundamental right to control the upbringing, education, and religious training of [the child].* (Emphasis in opinion). *Id.* at 1222.

In *Swartz v. Swartz*, 720 N.E.2d 1219 (Ind. Ct. App. 1999), the Court reversed the trial court’s order granting overnight visitation to Paternal Grandfather, Paternal Grandmother, and Paternal Great-Grandmother (collectively Grandparents), every other weekend, alternating among the

## Chapter 15 – Grandparent Visitation

Grandparents' three households. *Id.* at 1222-23. The Court found that the trial court abused its discretion in awarding such substantial visitation, and noted that Mother had never denied Grandparents access to the child. *Id.* The Court also reasoned that the visitation schedule implemented by the trial court was akin to that between custodial and noncustodial parents, which is inappropriate for grandparents. *Id.* The Court further reasoned that Father might still exert his right to visitation time, which would conflict with the substantial visitation granted Grandparents at the trial level. *Id.*

### V. B. Case Law On Permissible Amounts of Visitation

In **In Re Visitation of L-A.D.W.**, 38 N.E.3d 993 (Ind. [July 30] 2015), Mother's parents (Grandparents) helped care for the child in the parents' home when she was an infant, maintained a strong relationship with the child, and lived in Parents' home for almost three years to take care of the child when Mother was diagnosed with and undergoing treatment for colon cancer. Mother initiated divorce proceedings but passed away before the divorce was granted. In accordance with Mother's testamentary wishes, Grandparents petitioned for visitation with the child. Grandparents and Father participated in counseling, along with the child, to determine what visitation schedule would serve the child's best interests after the child began living with Father. Father agreed to a visitation schedule but failed to comply with it. The trial court conducted a hearing and awarded Grandparents visitation with the child despite Father's objections. The trial court ordered the following amount of grandparent visitation: (1) one overnight on one weekend during even-numbered months; (2) two overnights on one weekend during odd-numbered months; (3) every Tuesday during the school year from after school until 7:00 P.M. and during the summer from 10:00 a.m. to 7:00 p.m.; (4) eight hours on Mother's birthday; (5) four hours on Grandparents' birthdays; (6) one overnight during the week of the child's birthday; and (6) five consecutive days during the summer. Father appealed. The Court of Appeals affirmed the trial court on the award of Grandparent visitation, but reversed the trial court on the amount of Grandparent visitation ordered, and the Indiana Supreme Court granted transfer. **L-A.D.W.**, 24 N.E.3d 500, 511-516. The Supreme Court adopted and incorporated the Court of Appeals opinion on the issue of the award of grandparent visitation, but granted transfer to address the trial court's order on the amount of grandparent visitation awarded. **L-A.D.W.**, 38 N.E.3d at 997. The Court opined that the similarity between the visitation schedule and the Guidelines was not sufficient on its own to demonstrate an abuse of discretion. *Id.* at 999. The Court reasoned that, because Grandparents had been heavily involved in the child's life before Mother's death, and because the visitation schedule was open to change if circumstances changed, the trial court did not abuse its discretion and the visitation schedule ordered by the trial court was affirmed. *Id.* at 1000-01. The Court opined that trial courts should be able to consider the various circumstances in each individual case to determine what is in the child's best interest and opined that it would be difficult to craft strict standards on the amount of permissible visitation under the Grandparent Visitation Act. *Id.* at 1001.

### V. C. Case Law On Impermissible Amounts of Visitation

In **In Re Visitation of K.M.**, 42 N.E.3d 572 (Ind. Ct. App. 2015), Father was deceased and Mother planned to marry and relocate with the child and Stepfather either to Italy or to Seattle, Washington, based on Stepfather's military assignment. The trial court granted Grandmother's petition for visitation and ordered a visitation schedule very similar to the Indiana Parenting Time Guidelines. Mother appealed, contending that the trial court did not give her the weight required in presuming her wishes were in the child's best interests, and that the trial court erred in the amount of parenting time awarded Grandmother. The Court held that the trial court's award of visitation was not clearly erroneous and affirmed the order granting Grandparent visitation. *Id.* at 580, 583. The Court reversed the court ordered visitation schedule, finding that the trial court had erred in awarding more visitation time than Grandmother had requested at trial and that the facts

## Chapter 15 – Grandparent Visitation

of this case did not warrant closely following the Indiana Parenting Time Guidelines. *Id.* at 582-83. The Court further noted that, although the trial court had placed the burden of expense on Grandmother, requiring that a very young child make monthly cross-country and trans-Atlantic trips for visitation with Grandmother placed an unreasonable burden on Mother and the child. *Id.* at 582. The Court found that the trial court did not abuse its discretion in ordering live video-conferencing with the child twice a month, and noted that the court order did not limit Mother’s ability to determine the circumstances of the video-conferencing. *Id.* at 583. The Court remanded with instructions that the trial court create a new visitation schedule consistent with the opinion. *Id.* at 582.

### VI. GRANDPARENT VISITATION AND OTHER FAMILY LAW CASES

#### VI. A. Grandparent Visitation and Paternity Cases

IC 3-17-5-8 reads:

- (a) This section applies to a child born out of wedlock.
- (b) Visitation rights provided for in section 1 or 10 of this chapter survive the establishment of paternity of a child by a court proceeding other than an adoption proceeding.

In **K.I. Ex Rel. J.I. v. J.H.**, 903 N.E.2d 453 (Ind. 2009), a custody modification case, the Court opined that Grandmother was not entitled to visitation pursuant to the Indiana Parenting Time Guidelines and that the de facto custodian statute (IC 31-14-13-2.5), which speaks to custody rather than visitation, does not apply to the question of visitation. *Id.* at 461-63. The Court said that, although there is authority for the proposition that the only circumstance under which a grandparent may seek visitation rights is by filing a proper petition under the Grandparent Visitation Act, inasmuch as the parties had already expended substantial time and resources litigating the matter of visitation for Grandmother, for the sake of judicial economy, the filing of a separate petition under the Act was unnecessary in this case. The Court agreed with Father that Grandmother was not entitled to visitation pursuant to the Guidelines, and noted that (1) the Guidelines are based on the premise that it is usually in a child’s best interest to have frequent, meaningful and continuing contact with each parent; and (2) given this specificity and the repeated references to “parents” throughout the Guidelines, they have no mandatory application to grandparent visitation. *Id.* at 462. The Court observed that, although grandparents do not have the legal rights or obligations of parents and do not possess a constitutional liberty interest with their grandchildren: (1) IC 31-17-5-1, the Grandparent Visitation Act represents a Legislative recognition that a child’s best interest is often served by developing and maintaining contact with his or her grandparents; and (2) in drafting the Act, the Legislature balanced the two competing interests of the rights of the parents to raise their children as they see fit, and the rights of grandparents to participate in the lives of their grandchildren. The Court opined that, although the amount of visitation is left to the sound discretion of the trial court, the Act contemplates only occasional temporary visitation that does not substantially infringe on a parent’s fundamental right to control the upbringing, education, and religious training of their children. *Id.* The Court reversed the trial court’s order on Grandmother’s visitation and remanded with instructions to enter appropriate findings and conclusions consistent with this opinion and the Grandparent Visitation Act. *Id.* at 462-63.

#### VI. B. Grandparent Visitation and Adoptions

IC 31-17-5-9 states:

Visitation rights provided for in section 1 or 10 of this chapter survive the adoption of the child by any of the following:

## Chapter 15 – Grandparent Visitation

- (1) A stepparent.
- (2) A person who is biologically related to the child as:
  - (A) a grandparent;
  - (B) a sibling;
  - (C) an aunt;
  - (D) an uncle;
  - (E) a niece; or
  - (F) a nephew.

Two adoption statutes, IC 31-19-4.5-1(3) and IC 31-19-2.5-3(a) apply to a grandparent of a child sought to be adopted who has: (1) an existing right to petition for visitation under IC 31-17-5-1 (the Grandparent Visitation Act); and (2) a right to visitation that will not be terminated after the adoption pursuant to IC 31-17-5-9 [adoption by child’s stepparent or biological relative]. These statutes require that the grandparent be sent a notice of the filing of a petition for adoption in a form substantially similar to the form prescribed by IC 31-19-4.5-3. IC 31-19-4.5-1.5 states that the required notice is: (1) limited to the issue of visitation and may not be used to contest an adoption; and (2) not required if the child has been placed in the care, custody, or control of DCS.

See Jocham v. Sutliff, 26 N.E.3d 82 (Ind. Ct. App. 2015) (holding that IC 31-17-5-1 maintains a grandparent’s right to continue court ordered visitation, but not the right to petition for visitation, after adoption of the child by a stepparent); In Re the Marriage of J.D.S., 953 N.E.2d 1187 (Ind. Ct. App. 2011) (holding that Grandmother’s visitation rights to children were terminated by court order before stepfather’s adoption petition was granted; therefore, Grandmother had no visitation rights to survive Stepfather’s adoption); Baker v. Lee, 901 N.E.2d 1107 (Ind. Ct. App. 2009) (holding that a visitation order for Maternal Grandfather in a guardianship case, which was not issued pursuant to the GVA, was sufficient to establish visitation rights that survived child’s adoption by Paternal Grandmother and her husband); Wilson v. Cloum, 797 N.E.2d 288 (Ind. Ct. App. 2003) (holding that grandparent awarded visitation prior to child’s adoption by other grandparents was entitled to continue visitation with the child after adoption); In Re Visitation of J.D.G., 756 N.E.2d 509 (Ind. Ct. App. 2001) (holding that grandparent visitation rights granted during guardianship of the child did not survive child’s adoption by Mother’s live-in male companion who was not related to child); Sightes v. Barker, 684 N.E.2d 224 (Ind. Ct. App. 1997) (holding that Stepfather’s adoption of Mother’s out-of-wedlock child did not terminate biological Paternal Grandmother’s visitation under Grandparent Visitation Act).

### VI. C. Grandparent Visitation and Relocation

The Indiana relocation statutes (IC 31-17-2.2) do not apply to grandparent visitation rights. IC 31-9-107.5, the statute which defines “relocating individual” clearly states that the term does not apply to an individual granted visitation rights under IC 31-17-5 (the Grandparent Visitation Act).

## VII. MODIFICATION AND TERMINATION OF GRANDPARENT VISITATION

### VII.A. Statutes

IC 31-17-5-7 states that a “court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.”

### VII.B. Case Law

In In Re Adoption of A.A., 51 N.E.3d 380 (Ind. Ct. App. 2016), Adoptive Parents (Parents) filed a verified petition to terminate the court ordered grandparent visitation. The Court held that Parents, as the moving party, had the burden of demonstrating that modification of grandparent visitation was in the children’s best interests. Id. at 390. The Court distinguished the initial

determination of whether to grant grandparent visitation from questions of modification, and noted that the language in the modification statute is similar to that used in IC 31-17-4-2, the statute for modification of parenting time. *Id.* at 389-90. The Court concluded that, just as the burden in modification of parenting time rests on the moving party, so should the burden rest on the moving party when seeking modification of grandparent visitation. *Id.* at 390. The Court concluded that Parents' failure to present any new evidence amounted to a request that the issue of visitation be relitigated, which the Court declined to permit. *Id.* The Court held that the trial court did not abuse its discretion in denying Parents' petition to terminate grandparent visitation rights. *Id.*

In ***In Re Guardianship of J.E.M.***, 870 N.E.2d 517 (Ind. Ct. App. 2007), the child's maternal grandmother (Grandmother) was the guardian of the child for several years until the guardianship was eventually terminated. The child was returned to Mother, but the trial court granted visitation for Grandmother with the child one weekend per month. Mother was later adopted by her second cousins, and sought to terminate Grandmother's visitation rights with the child. The trial court terminated Grandmother's visitation and Grandmother appealed. The Court noted that, although Grandmother was not originally granted visitation in accordance with the Grandparent Visitation Act, no party had objected to the original order, and it could not later be challenged on the basis that it was not issued in compliance with the Act. *Id.* at 519. The Court held that Mother's adoption did not automatically and for purposes of the Grandparent visitation Act sever all of Grandmother's ties with her biological grandchild. *Id.* at 522. Remanding to the trial court, the Court instructed that the trial court consider Mother's motion for termination of Grandparent visitation in light of the best interests standard of the Grandparent visitation Act and the Court's holding in *McCune v. Frey*, 783 N.E.2d 752 (Ind. Ct. App. 2006). *J.E.M.* at 522.

In ***In Re Guardianship of K.T.***, 743 N.E.2d 348 (Ind. Ct. App. 2001), Mother and the child lived with Maternal Grandmother and Stepgrandfather (Grandparents) for nearly the first year of the child's life. Thereafter, Mother left Indiana, leaving the child with Grandparents, and consented to their petition for guardianship. Father's paternity was established in a court proceeding, and Grandparents sought a child support order against Father. When the child was two years old, the trial court terminated Grandparents' guardianship of the child, placed the child in Father's custody, and awarded monthly visitation rights with the child to Grandparents. The Court noted that Grandparents never petitioned for visitation with the child; the trial court gratuitously entered a grandparent visitation order when closing the guardianship. *Id.* at 352. Father later sought modification of Grandparents' visitation with the child, and the trial court reduced Grandparents' visitation time. Grandparents appealed, contending that Father lacked standing, since his modification request was based on Mother's re-entry into the child's life. The Court said that the trial court lacked jurisdiction of the case due to the termination of the guardianship, because there is no statutory provision for a trial court's continuing jurisdiction over a closed guardianship. *Id.* at 351. The Court added that, in this case, any objection to the trial court's initial lack of jurisdiction had been waived because no appeal was taken. *Id.* at 352. The Court said that the trial court erred in granting visitation privileges to Grandparents ancillary to a guardianship which was simultaneously closed. *Id.* at 351. The Court held that Father, as the child's custodial parent, did have standing to request modification of Grandparents' visitation. *Id.* at 350. The Court opined that the trial court properly modified Grandparents' visitation with the child, and affirmed the trial court's judgment. *Id.* at 353. The Court observed that the trial court did not err in reducing the number of hours of visitation to which Grandparents were entitled in order to facilitate the parents' establishing and/or maintaining a relationship with their child. *Id.* at 352-53.