

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Adoptions of  
T.F.C., M.N.C., and T.P.C.,  
Minor Children,

C.M.,  
*Appellant-Intervenor,*

v.

K.J. and R.J.,  
*Appellees-Petitioners.*

March 30, 2021

Court of Appeals Case No.  
20A-AD-1644

Appeal from the  
Spencer Circuit Court

The Honorable  
Jonathan A. Dartt, Judge

Trial Court Cause Nos.  
74C01-1911-AD-329  
74C01-1911-AD-330  
74C01-1911-AD-331

**Kirsch, Judge.**

[1] K.J. and R.J. (“Foster Parents”) filed petitions to adopt T.P.C., T.F.C., and M.N.C., the grandchildren of C.M. (“Grandmother”). Foster Parents did not

formally serve Grandmother a copy of the petitions to adopt. Grandmother filed a motion to intervene in the adoption matters and a motion to continue the final adoption hearing, which were both denied by the trial court. On appeal, Grandmother raises two issues, which we consolidate and restate as: whether Grandmother was entitled to notice of the adoption proceeding and whether the trial court abused its discretion in denying Grandmother's motions to intervene in the adoption matter to continue the final adoption hearing.

[2] We affirm.

### **Facts and Procedural History**

[3] L.C. ("Mother") had three biological children, all born in Evansville, Indiana: T.P.C. (born January 13, 2014), T.F.C. (born February 6, 2012), and M.N.C. (born November 3, 2009) (together, "Children"). *Appellees' App. Vol. 2* at 69, 72, 75. In October of 2015, the Indiana Department of Child Services ("DCS") removed Children from Mother and filed petitions alleging that each child was a Child in Need of Services ("CHINS"). *Appellant's App. Vol. II* at 34, 36, 38. On June 6, 2017, Grandmother, who resided in Crystal Rover, Florida, filed petitions for guardianships over Children in the Warrick Circuit Court; on July 21, 2017, that court granted Grandmother's petitions for guardianship. *Id.* at 12, 40-45. In early June of 2017, Grandmother brought Children to her Florida home. *Appellees' App. Vol. 2* at 51.

[4] Within a matter of weeks, no later than August 7, 2017, Grandmother returned Children to Mother as Grandmother was bed-ridden with back problems, but

despite returning Children to Mother, Grandmother did not file to terminate the guardianships. *Id.* at 12-33, at 51. Grandmother has not had physical custody of Children since August 7, 2017. *Tr. Vol. 2* at 11; *Appellees' App. Vol. 2* at 51. On March 27, 2018, Children were placed with Foster Parents. *Appellant's App. Vol. II* at 95. Mother's parental rights were terminated on September 17, 2019. *Appellees' App. Vol. 2* at 9, 10, 11, 18. On November 26, 2019, Foster Parents filed petitions to adopt the children in the Spencer Circuit Court. *Id.* at 69-77.

[5] At some point before March 9, 2020, DCS filed a request with the Florida Department of Children and Families to place Children with Grandmother. *Id.* at 40, 51-55. Because Children were born in Indiana, and Grandmother wanted Children to live with her in Florida, Indiana Code section 31-19-1-1 required that the placements conform to the terms of the Interstate Compact on the Placement of Children ("ICPC"). The purpose of the ICPC is to ensure that "[e]ach child requiring placement shall receive the maximum opportunity to be placed in a suitable environment . . . ." Ind. Code s § 31-28-4-1(a). A child shall not be sent into the receiving state "until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, [that] the proposed placement does not appear to be contrary to the interests of the child." Ind. Code § 31-28-4-1(d).

[6] On March 9, 2020, the Spencer Circuit Court held a CHINS permanency hearing, which both Grandmother and Foster Parents attended. *Appellees' App. Vol. 2* at 11, 20, 30. During that hearing, DCS advised the trial court that both Grandmother and Foster Parents wanted to adopt Children, but only Foster

Parents had filed petitions to adopt. *Id.* at 40-41. Grandmother argued that she should have custody of Children because she was their guardian. *Id.* at 43. At the conclusion of the permanency hearing, Foster Parents' counsel provided Grandmother copies of Foster Parents' motions to intervene in the Warrick County guardianships and to close the guardianships, which Foster Parents had filed on March 7, 2020. *Id.* at 56-61. Both motions contained the following language: "Petitioners/Interveners filed petitions to adopt the sisters in Spencer County Circuit Court on November 26, 2019, cause #'s 74C01-1911-AD-329, 330, and 331." *Appellant's App. Vol. II* at 96; *Appellees' App. Vol. 2* at 60.

[7] On March 24, 2020, Grandmother's request for placement of Children with her pursuant to the ICPC was denied. *Appellees' App. Vol. 2* at 51-55. On June 22, 2020, the Warrick Circuit Court held a hearing on Foster Parents' motions to intervene in Grandmother's guardianships and to terminate Grandmother's guardianships. *Appellant's App. Vol. II* at 15, 22 and 29. The Warrick Circuit Court heard argument by the parties and then stated that the matter would be continued until the Spencer County final adoption hearing had concluded. *Id.*

[8] At approximately 5:00 p.m. on June 22, 2020, Grandmother's counsel e-filed his appearance in the adoption causes and filed a petition to intervene in the adoption causes and a motion to continue the final hearing scheduled for the next day. *Id.* at 49-50, 67-68. Grandmother's attorney did not attend the June 23, 2020 final hearing for the adoption, so Grandmother objected to moving forward. *Tr. Vol. 2* at 13-14. The Spencer Circuit Court first addressed Grandmother's motions to intervene in the adoption causes and motion to

continue the final adoption hearing. *Id.* at 3-22. Grandmother acknowledged that she received copies of Foster Parents’ motions to intervene in the Warrick County Guardianships on March 9, 2020, which had included information about Foster Parents’ intent to adopt Children. *Id.* at 15. Later in the adoption hearing, Grandmother stated: “I didn’t find out about the adoption until yesterday at one o’clock (1:00).” *Id.* at 19. Grandmother also said she thought the adoption hearing would occur in August of 2020. *Id.* She also claimed she had not received notice of the ICPC denial, but DCS’s counsel stated that Grandmother had, in fact, received notice of the denial. *Id.* at 17. After a brief recess, the trial court reconvened and after hearing testimony, it granted Foster Parents’ petitions to adopt Children. *Appellant’s App. Vol. II* at 3, 6, 9.

[9] On July 23, 2020, Grandmother filed a motion to correct error and set aside the adoption decrees. *Id.* at 69-71. Grandmother alleged, inter alia, that she was not given notice of Foster Parents’ petitions to adopt Children. *Id.* at 69-70. On August 7, 2020, Foster Parents filed a response to Grandmother’s motion to correct error and set aside the adoption decrees. *Id.* at 72-76. On August 7, the trial court denied Grandmother’s motion to correct error and set aside the adoption decrees. *Id.* at 95-97. The trial court stated, in part:

1. [Grandmother] was not entitled to notice of the adoptions . . . pursuant to IC 31-19-4.5-1.5 since there were open CHINS causes and [Children] were wards of DCS.
  
2. [Grandmother] was not entitled to notice of the adoptions as “guardian” of [Children] because although there were open guardianships, she had of her own choice returned [Children] to

[Mother] in late 2017 and had not acted as guardian to [Children] since that time. [Grandmother] cannot benefit from her unclean hands now by asserting she was entitled to notice of the adoptions when she returned [Children] to [Mother] and did not timely close the guardianships.

3. Although this Court orders that [Grandmother] was not legally entitled to notice of the adoptions either as maternal grandmother or as “guardian” of [Children], [Grandmother] did in fact receive notice of the adoptions on March 9, 2020 by in-hand service and an affidavit of the service was filed in the Warrick County guardianships. Additionally, [Grandmother] knew of the petitions from attending one or more DCS CHINS hearings for the children in Rockport[,] Indiana.

4. The Court notes that [Children] have lived with [Foster Parents] for more than two years and during this time, [Children] have bonded closely with [Foster Parents] and are thriving. Prior to placement with [Foster Parents], Children had multiple out-of-home placements with the oldest girl, [M.N.C.], having had ten or more placements. It is in the best interest that [Children] remain with [Foster Parents].

*Id.* at 97. Grandmother now appeals.

## **Discussion and Decision**

[10] Grandmother argues that the trial court abused its discretion by denying her motion to intervene in Foster Parents’ adoption proceeding and motion to continue that proceeding. These rulings were an abuse of discretion, Grandmother contends, because she was entitled to notice of the adoption proceeding but did not receive such notice. Grandmother contends these actions of the trial court denied what she considers her right to consent or object

to Foster Parents' petition for adoption. Thus, Grandmother asks us to remand this matter and direct the trial court to grant her motions to intervene and continue the adoption matter.

[11] We review a trial court's ruling on a motion to intervene for an abuse of discretion. *City of New Haven v. Chem. Waste Mgmt. of Ind., L.L.C.*, 701 N.E.2d 912, 922 (Ind. Ct. App. 1998), *trans. denied*. We accept the facts alleged in the motion as true. *Id.* A trial court abuses its discretion when its ruling is clearly against the logic and effect of the facts and circumstances before it or the reasonable and probable inferences drawn from those facts and circumstances. *Id.* Likewise, we review a trial court's ruling on a motion for continuance for an abuse of discretion. *J.P. v. G. M.*, 14 N.E.3d 786, 789 (Ind. Ct. App. 2014).

[12] Grandmother first argues that Foster Parents were required to give her notice of the adoption proceeding because "notice must be given to a: . . . (3) grandparent described in IC 31-19-4.5-1(3) . . . ." Ind. Code § 31-19-2.5-3(a)(3). A grandparent fits the criteria of Indiana Code section 31-19-4.5-1(3) if the grandparent: . . . "(B) has: (i) an existing right to petition for visitation under IC 31-17-5; and (ii) a right to visitation that will not be terminated after the adoption under IC 31-17-5-9." Ind. Code § 31-19-4.5-1(3)(B). Under Indiana Code section 31-17-5-1(a)(2),(3), "A child's grandparent may seek visitation rights if: . . . (2) the marriage of the child's parents has been dissolved in Indiana; or (3) subject to subsection (b), the child was born out of wedlock." Indiana Code section 31-17-5-9(2)(A) provides that "visitation rights . . . survive the adoption of the child by . . . [a] person who is biologically related to the

child as . . . a grandparent.” We agree with Grandmother that she fits these criteria.

[13] As to Grandmother’s claim that she has the right to consent or object to Foster Parents’ petition to adopt Children, Grandmother relies on Indiana Code section 31-19-9-1. In relevant part, that statute provides: “a petition to adopt a child . . . may be granted only if written consent to adoption has been executed by . . . (3) each person, agency, or local office having lawful custody of the child whose adoption is being sought.” Ind. Code § 31-19-9-1(a)(3).

[14] Here, we conclude Grandmother was not entitled to notice of Foster Parents’ adoption action for two reasons. First, because Children were in the care of DCS, Grandmother was not entitled to notice. “A notice to a grandparent required under IC 31-19-2.5-3(a)(3) is: . . . (2) not required if the child to be adopted has been placed in the care, custody, or control of the department.” Ind. Code § 31-19-4.5-1.5. *See Appellant’s App. Vol. II* at 97 (trial court’s finding that Children “were wards of DCS). Here, Children were removed from Mother on March 27, 2018, and Mother admitted Children were CHINS on May 16, 2018. *Id.*; *Appellees’ App. Vol. 2* at 4, 14, 24. After that, Children were wards of DCS. *See In re N.H.*, 866 N.E.2d 314, 315 (Ind. Ct. App. 2007) (“All three [children] were determined to be CHINS and made wards of [the Marion County Office of Family and Children].”).

[15] Second, Grandmother was not entitled to notice of Foster Parents’ adoption action because Grandmother did not have custody of Children when Foster



Parents filed their petitions to adopt Children, and Foster Parents had de facto custody of Children. See *In re Adoption of B.C.H.*, 22 N.E.3d 580, 586-87 (Ind. 2014). “Lawful custody” of a child includes “de facto custodianship” of a child. *Id.* at 585. In *B.C.H.*, our Supreme Court wrestled with the definition of “lawful custody” and, in doing so, explored the parameters of “de facto custodianship,” and found that de facto custodianship entitled the grandparents in *B.C.H.* to notice of the stepfather’s petition to adopt B.C.H. *Id.* at 584-88. The Supreme Court found that the following facts established that the grandparents had de facto custody of B.C.H. and were thus entitled to notice of the petition to adopt:

[Grandparents] were B.C.H.’s primary caregivers for the first forty-five months of her young life, until Mother took her from their home. Day in and day out, they were the ones who housed her, financially supported her, and met her needs. More importantly, they were the only adults in her life who, on a daily basis, cared for her, nurtured her, and formed strong bonds of attachment with her. And they continued to do so even after Stepfather filed a petition to adopt her and even after the adoption petition - which they had no voice in - had been granted. Mother may have had legal custody of B.C.H. at the relevant time, but she ceded physical custody of her newborn daughter to her parents. In time, as the caretaking arrangement became permanent, the Grandparents’ physical custody of B.C.H. became lawful custody.

*Id.* at 586-87 (emphasis in original). The Supreme Court found that expanding the term “lawful custody” to include de facto custody would allow those who

are in the best position to provide helpful testimony to a judge considering a petition to adopt.

Based on these circumstances, we believe that the Grandparents were *exactly* the type of caregivers the General Assembly had in mind when they chose the term “lawful custody” over “legal custody” in Ind. Code § 31-19-9-1(a)(3). They were *exactly* who the legislature thought would be in the best position to tell a judge presiding over an adoption proceeding about the child in question and about the child’s best interests. Though only the trial court has the authority to ultimately decide whether the adoption is in the child’s best interests, lawful custodians like B.C.H.’s Grandparents have the right to present testimony to aid in the court’s often difficult decision.

*Id.* at 587 (emphasis in original).

[16] Here, even if Grandmother had legal custody of Children because she had been appointed guardian of Children, Grandmother relinquished physical custody of Children no later than August 7, 2017 when she returned Children to Mother. *Appellees’ App. Vol. 2* at 51. On March 27, 2018, Children were placed with Foster Parents, who have served as de facto custodians of Children since then. *Appellant’s App. Vol. II* at 95. Grandmother’s actions here fall far short of the actions of the grandparents in *B.C.H.* 22 N.E.3d at 586-87. While the grandparents in *B.C.H.* had physical custody of B.C.H. for forty-five months, Grandmother had physical custody of Children for, at most, seventeen days before she returned Children to Mother. *Appellees’ App. Vol. 2* at 51. Moreover, Grandmother points to no evidence in the record that, after she returned Children to Mother, she participated in the lives of Children, whether through

visits, phone calls, or financial support. Thus, because Grandmother did not have physical custody of Children, and Foster Parents were de facto custodians of Children, Grandmother was not entitled to notice of Foster Parents' adoption action. *See* Ind. Code § 31-19-9-1 (“a petition to adopt a child . . . may be granted only if written consent to adoption has been executed by . . . (3) each person, agency, or local office having *lawful custody* of the child whose adoption is being sought.”) (emphasis added). Grandmother was not entitled to notice of the Foster Parents' adoption proceeding.

[17] Even if Grandmother had been entitled to notice of Foster Parents' petitions to adopt Children, she was not entitled to intervene in the adoption matter. “It is . . . well-settled that ‘noncustodial grandparents’ are not entitled to intervene in adoption proceedings . . . .” *In re Adoption of Z.D.*, 878 N.E.2d 495, 498 (Ind. Ct. App. 2007) (quoting *In re Adoption of I.K.E.W.*, 724 N.E.2d 245, 249 n.6 (Ind. Ct. App. 2000)). Therefore, the trial court did not abuse its discretion by denying Grandmother's motion to intervene. *See City of New Haven*, 701 N.E.2d at 922. Similarly, because Grandmother was not entitled to notice of the adoption matter and had no right to intervene in the adoption matter, the trial court did not abuse its discretion in denying Grandmother's motion for continuance. *See J.P.*, 14 N.E.3d at 789.<sup>1</sup>

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<sup>1</sup> We also observe that even if Grandmother had been entitled to notice of the adoption matter, her rights would have been “limited to the issue of visitation and [could] not [have been] used to contest [the] adoption.” Ind. Code § 31-19-4.5-1.5(1).

[18] Finally, we observe that even though Foster Parents did not formally serve copies of their petitions to adopt on Grandmother, *see Appellees' App. Vol. 2* at 70-71, 73-74, 76-77, Grandmother had actual notice of the adoption matter. Actual notice is notice that has been directly given to the person to be notified. *Miller v. Culver Cmty. Sch. Corp.*, 493 N.E.2d 181, 182-83 (Ind. Ct. App. 1986). Actual notice is “provable by any competent evidence” and “is open to every species of legitimate evidence which may tend to strengthen or impair the conclusion.” *Id.*

[T]he evidence may be so direct, positive, and overwhelming as to establish the fact that the information was personally given and received in the most convincing and unequivocal manner, or it may be entirely indirect and circumstantial. Wherever, from competent evidence, either direct or circumstantial, the court . . . is entitled to infer . . . that the information was personally communicated to or received by the party, [then] the notice is actual.

*Id.* at 183 (quoting 2 Pomeroy's Equity Jurisprudence § 595, at 612).

[19] Here, at the March 9, 2020 permanency hearing, which Grandmother attended, DCS's counsel advised the trial court that Foster Parents had filed petitions for adoption and that DCS was waiting on Florida's ICPC response. *Appellees' App. Vol. 2* at 40-41. At the conclusion of the permanency hearing, Foster Parents' counsel handed Grandmother Foster Parents' motions to intervene in the Warrick County guardianship causes and motions to terminate those causes. *Id.* at 56-61. Both motions included the adoption cause numbers and the court in which the petitions had been filed. *Id.* at 60, 62. Under these

circumstances, we conclude that Grandmother had actual notice that Foster Parents had filed petitions to adopt Children.

[20] Affirmed.

Altice, J., and Weissmann, J., concur.