

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In re the Grandparent Visitation  
of E.A.N.

Rusty J. Neal,  
*Appellant-Petitioner,*

v.

Moriah Hali Neal and  
Kirt Mullins,  
*Appellees-Respondents*

November 30, 2021

Court of Appeals Case No.  
21A-MI-1112

Appeal from the  
Ripley Circuit Court

The Honorable  
Carl H. Taul, Sr. Judge

Trial Court Cause No.  
69C01-2001-MI-2

**Vaidik, Judge.**

## Case Summary

- [1] In this case, a grandparent filed a petition for grandparent visitation under Indiana Code section 31-17-5-1(a)(3), which provides a grandparent may seek visitation rights if the child was born out of wedlock. While the grandparent’s petition was pending but before the trial court ruled on it, the parents married. The parents moved to dismiss the petition, which the court granted. Because the grandparent-visitation statute does not allow for visitation if the parents are married, we affirm the trial court.

## Facts and Procedural History

- [2] E.A.N. (“Child”) was born to Moriah Hali Neal (“Mother”) and Kirt Mullins (“Father”) (collectively “Parents”) in September 2012. Parents were not married, but Father established paternity. From birth, Child lived with Mother’s father, Rusty J. Neal (“Grandfather”). At times, Parents lived at Grandfather’s home with Child. After a disagreement between Parents and Grandfather, Parents and Child moved out of Grandfather’s home in April 2019.
- [3] In January 2020, Grandfather filed a petition for grandparent visitation under Section 31-17-5-1(a)(3), which provides:

(a) A child’s grandparent may seek visitation rights if:

(1) the child’s parent is deceased;

(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.

(b) A court may not grant visitation rights to a paternal grandparent of a child who is born out of wedlock under subsection (a)(3) if the child's father has not established paternity in relation to the child.

After Grandfather filed his petition but before the trial court ruled on it, Parents married. Parents then moved to dismiss the petition, which the court granted.

[4] Grandfather now appeals.

## Discussion and Decision

[5] Grandfather appeals the trial court's dismissal of his petition for grandparent visitation. Parents did not file an appellees' brief. As such, we apply a less stringent standard and may reverse the trial court if Grandfather establishes *prima facie* error. *See Deckard v. Deckard*, 841 N.E.2d 194, 199 (Ind. Ct. App. 2006).

[6] Grandfather argues he is entitled to seek grandparent visitation because Child was born out of wedlock, notwithstanding that Parents later married. We have already addressed and rejected similar arguments. In *In re Visitation of J.P.H.*, 709 N.E.2d 44 (Ind. Ct. App. 1999), the child was born out of wedlock, but the father established paternity. After the parents married, the paternal

grandparents filed a petition for grandparent visitation under Section 31-17-5-1(a)(3). On appeal, we explained that “a child born out of wedlock, whose father establishes paternity and marries the child’s mother, will be treated as if he were born during the marriage.” *Id.* at 47. Accordingly, we held that because the parents were married, the grandparents were not entitled to seek visitation under Section 31-17-5-1(a)(3). *Id.*

[7] In *Campbell v. Eary*, 132 N.E.3d 413 (Ind. Ct. App. 2019), a grandparent was awarded grandparent visitation under Section 31-17-5-1(a)(3). When the parents later married, they moved to dismiss the grandparent-visitiation order, arguing it did not survive their marriage. We agreed with the parents, holding “a grandparent visitation order does not survive the subsequent marriage of the natural parents of a child born out of wedlock.” *Id.* at 416.

[8] According to these cases, a grandparent is not entitled to seek visitation if the parents marry after the birth of the child and is not entitled to continued visitation if the parents marry after the issuance of a grandparent-visitiation order. This case falls in the middle. Because Parents married after Grandfather filed his petition, Grandfather was no longer entitled to seek visitation under Section 31-17-5-1(a)(3). We therefore affirm the trial court’s dismissal of Grandfather’s petition for grandparent visitation.

[9] Affirmed.

Najam, J., and Weissmann, J., concur.