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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of
R.D.H. and R.K.H.,
R.H. and J.H.,
Appellants-Petitioners,

v.

M.K. and L.M.,
Appellees-Intervenors.

December 15, 2021
Court of Appeals Case No.
21A-AD-1036
Appeal from the Jennings Superior
Court
The Honorable Ryan J. King,
Special Judge
Trial Court Cause Nos.
40D01-1612-AD-36
40D01-1612-AD-37

Weissmann, Judge.

[1] Almost 4 years after a stepmother adopted her twin stepdaughters, the trial court awarded visitation rights to the maternal grandmother. This order not only ran contrary to the wishes of the children's father and adoptive mother but also violated several statutes. We remand to the trial court to vacate the order for postadoption visitation while keeping the adoption decrees intact.

Facts

- [2] J.H. (Father) and L.M. (Birth Mother) never married. In 2014, Father gained custody of their 2-year-old twin daughters as part of a CHINS proceeding due to Birth Mother's drug addiction. Father and R.H. (Adoptive Mother) married two years later, and Adoptive Mother quickly filed petitions to adopt the twins.
- [3] Father consented to the stepparent adoption. Birth Mother did not. However, Birth Mother had not contacted the children for more than a year and had never paid court-ordered child support. Tr. Vol. III, pp. 15-17. A long-time illegal drug user, Birth Mother faced multiple drug-related criminal charges and outstanding warrants at the time of the final adoption hearing. *Id.* at 27-29.
- [4] Birth Mother failed to appear at the stepparent adoption hearing, but her mother (children's Maternal Grandmother), her grandfather (children's Maternal Great-Grandfather), and her counsel were present. At the beginning of the adoption hearing, the parties discussed postadoption contact between the twins and Maternal Grandmother and Maternal Great-Grandfather, the latter of whom had custody of the children's half sibling. Adoptive Mother was not

keen on the idea, and Father never specifically consented on the record to postadoption contact.

- [5] The trial court granted the adoptions on March 8, 2017, without mentioning any of Birth Mother’s extended family or any alleged postadoption contact agreement. Neither Birth Mother nor her relatives ever submitted to the trial court a written agreement on postadoption contact, and no one appealed the adoption decree.
- [6] Fourteen months after the adoptions were finalized, Birth Mother filed a “Motion to Establish a Postadoption Contract.” She alleged that at the final adoption hearing, Adoptive Mother’s counsel represented that “an agreement would be entered for a postadoption contract for the great-grandparents and grandmother of the minor child to start one year from the adoption being granted.” App. Vol. II, p. 45. She claimed that assertion induced her to not contest the adoption. *Id.* On November 1, 2018, the court ordered the parties to reach an agreement on postadoption contact within 30 days, but no one acted for more than a year.
- [7] In January 2020—nearly three years after the adoptions were finalized—Maternal Great-Grandfather and Maternal Grandmother again asked the court to aid their attempts to establish contact with the twins. The court found a postadoption agreement for visitation had been formed based on the following exchange during the adoption hearing:

[COUNSEL FOR ADOPTIVE MOTHER]: . . . [Birth Mother's counsel] and I spoke prior to the hearing and he's going to prepare a post adoption contact agreement that will actually be between my clients, [Father and Adoptive Mother,] and not . . . [Birth Mother], but [Birth Mother's] grandfather and grandmother and mother. So, great-grandparents and grandmother of the children. Uh, there will be some postadoption contract, or contact that will start um, within the next year . . . So, [Birth Mother's counsel] will, prepare that, all the parties will sign it and then we will submit that to the Court for approval. However, we would like to proceed [with] finalizing the adoption today . . .

[COUNSEL FOR BIRTH MOTHER]: Your Honor and the reason for the post-adoption contact . . . that one of these children's half siblings . . . is in the care of [Maternal Great-Grandfather] and he, he [sic] has this child, and there will be provisions in there that will make sure that the current mother does not [attend the visitations]... It's only going to be for the purpose of allowing these siblings to have a meaningful relationship and I appreciate the fact that these folks are respecting that and are allowing that to happen.

Exhs., pp. 11-12.

[8] However, during examination of Adoptive Mother by Birth Mother's counsel during the adoption hearing, Adoptive Mother testified:

[Q] . . . Uh, there were some terms that we discussed on a postadoption agreement which will be in conjunction with this adoption being granted by the Court that would allow these two

children to the home of [G.D.] once a month beginning in March of 2018.^[1]

[A] I mean, at the beginning, I'm not comfortable with them going there. No, I'm not. Like a mutual place like a park or somewhere like that.

[Q] Okay. And having contact with [G.D.]?

[A] Yes.

[Q] Having a visit with [G.D.], having a visit with [G.D.], and [half-sibling], being the half-sibling of these two children, the biological half-sibling and my understanding is that you are agreeable to that. As far as dialing in whether it is an exact Saturday or Sunday of where it is going to take place, obviously that's to be dealt with. But you are agreeable to that as part of this, am I correct?

[A] Yes.

[Q] Okay, and there was also a conversation about if [G.D.] wanted to send you letters or communication and you could send the same to him and if he would provide you with an address that that could occur.

[A] Yes.

Tr. Vol. III, pp. 20-21.

[9] On May 3, 2021, the court ordered monthly contact with Maternal Grandmother, excluding Birth Mother, but stayed the exercise of that visitation

¹ Father and Adoptive Mother do not identify G.D., although their brief suggests that G.D. is someone different from Maternal Great-Grandfather. Appellants' Br., p. 8. Yet, a review of the transcript and the filings in this case suggests "G.D." may be a mistaken reference to Maternal Great-Grandfather, whose name sounds much like that of G.D. *See, e.g.*, App. Vol. II, p. 69. Identification of G.D., who is not a party to this case, is not essential to our resolution of this case, so we need not resolve that apparent conflict.

pending this appeal. The twins are now 8 years old and have not seen Maternal Grandmother for about 6 ½ years.

Discussion and Decision

[10] Father and Adoptive Mother challenge the trial court’s order granting Maternal Grandmother visitation with the twins. Maternal Grandmother has not filed a brief nor even entered an appearance in this appeal. Under such circumstances, the standard of review changes. *Romero v. McVey*, 167 N.E.3d 361, 365 (Ind. Ct. App. 2021). Father and Adoptive Mother need only prove prima facie error to prevail. *See id.* Prima facie error is error “at first sight, on first appearance, or on the face of it.” *Riggen v. Riggen*, 71 N.E.3d 420, 422 (Ind. Ct. App. 2017). Father and Adoptive Mother have more than met their burden here.

I. Overview of Postadoption Contact Statutes

[11] Indiana has constructed the following three narrow avenues for postadoption contact by: 1) birth parents (who have consented to the adoption or voluntarily terminated the parent-child relationship) (Indiana Code § 31-19-16-1 *et seq.*); 2) birth siblings (Indiana Code § 31-19-16.5-1 *et seq.*); 3) certain grandparents who have established a visitation order prior to the adoption (Indiana Code § 31-17-5-1 *et seq.*). Each of these three sets of statutes has unique requirements, as summarized below, and none of these requirements were met in this case.

	Birth Parents I.C. § 31-19-16-1 <i>et seq.</i>	Birth Siblings I.C. § 31-19-16.5-1 <i>et seq.</i>	Grandparents I.C. § 31-17-5-1 <i>et seq.</i>
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Who May Seek Visitation?	Birth parent who consents to the adoption or voluntarily terminate parental rights.	Adoptive parent, pre-adoptive sibling, or adoptive child.	Adoptive child's "grandparent" where child's parent has died, divorced, or child born out of wedlock with paternity established.
When Sought and Granted	Filed before adoption decree.	Ordered at time of adoption decree.	Filed before adoption decree. ²
Requirements	Child is at least 2. Best interests of child. Consent by both adoptive parents and adopted child 12 or older. Additional specific findings required by statute.	Child is at least 2. Best interests of child. Consent by both adoptive parents. Additional specific findings required by statute.	Best interests of child. Court may consider meaningful contact. Additional specific findings required by statute.
Revision or Enforcement	Birth parent or adoptive parent.	Only the adoptive parent(s) and the pre-adoptive sibling or adopted child may seek to enforce or modify.	Once visitation is granted or denied, court may modify it "whenever modification would serve the best interests of the child."

A. Birth Parent Contact

[15] One angle used by Maternal Grandmother in seeking visitation with the twins is the Postadoption Agreement Statutes. This path is not available to her

² Indiana Code § 31-17-5-3 was amended effective July 1, 2017, to require the filing of the grandparent visitation request prior to the entry of the decree of adoption. P.L. 16-2017, § 1 (effective July 1, 2017). The previous version of that statute, enacted in 1997 and applicable here, did not contain that temporal limitation. P.L. 1-1997, § 9 (effective July 1, 1997).

because this law applies only to “a birth parent” who has consented to the adoption or voluntarily terminated the parent-child relationship. I.C. § 31-19-16-1. Maternal Grandmother is not the twins’ birth parent, and the type of contact discussed at the adoption hearing concerned extended relatives and specifically excluded Birth Mother. Tr. Vol. III, pp. 11-12. These types of arrangements with extended family do not fall within the meaning of the postadoption contract statutes. I.C. §§ 31-19-16-1, -2.³

B. Birth Siblings

[16] Although the discussion at the adoption hearing concerned contact with the twins’ half-sibling, the parties and the court appear to have ignored the requirements of the Birth Siblings Postadoption Contact Statutes. *See* I.C. § 31-19-16.5 *et seq.* These agreements must be filed before entry of the adoption decree. I.C. § 31-19-16.5-1. The trial court purported to enter a visitation order 4 years after the adoption decree in contravention of the statute. Additionally, the trial court must expressly determine that the postadoption contact between the sibling and the adopted children would serve the best interests of the children. Indiana Code § 31-19-16.5-1(1). The trial court’s visitation order does not even

³ Birth Mother’s claim that she was induced not to contest the adoption by promises of postadoption contact is irrelevant. Birth Mother failed to demonstrate her consent was required given her alleged lack of contact with the children for more than a year and her total lack of support. Ind. Code § 31-19-9-8 (negating the need for consent to adoption from a parent with a child in another person’s custody who, under certain circumstances, fails for at least a year to communicate significantly with or support a child without justifiable cause).

mention the twins' half-sibling. It only grants visitation to Maternal Grandmother, who is not the one with custody of the half-sibling.

- [17] Finally, the motions to establish contact were filed by Birth Mother and, later, by Maternal Grandmother and Maternal Great-Grandfather. They are not among the people who may enforce a sibling postadoption contact agreement. *See* I.C. § 31-19-16.5-4 (only sibling, adopted child, or adoptive parent may file petition seeking to vacate, modify, or enforce postadoption contact order between sibling and adopted child).

C. Grandparent Visitation Act

- [18] The Grandparent Visitation Act is the sole means for a grandparent to obtain court-ordered visitation with a grandchild. *See In re Visitation of M.L.B.*, 983 N.E.2d 583, 585 (Ind. 2013). Only grandparent visitation rights existing at the time of a stepparent adoption survive it. *Marriage of J.D.S. & A.L.S.*, 953 N.E.2d 1187, 1190 (Ind. Ct. App. 2011), *trans. denied*; *see also* Ind. Code § 31-17-5-9(1). Maternal Grandmother had not established visitation rights prior to the adoption and thus had no visitation rights to enforce. *See* I.C. § 31-9-2-77; *In re Adoption of P.A.H.*, 992 N.E.2d 774, 775-76 (Ind. Ct. App. 2013) (ruling that trial court lacked authority to grant postadoption visitation right to person not within any statutory category of persons entitled to visitation rights).
- [19] Grandparent visitation rights must be established before entry of the adoption decree. I.C. §§ 31-17-5-3(b), -9. But the trial court's order of visitation was entered 4 years after entry of the adoption decree, in contravention of Indiana

Code §§ 31-17-5-3(b) and -9. Additionally, the trial court did not issue findings of fact and conclusions of law or expressly determine that Maternal Grandmother's visitation with the twins was in the twins' best interests, as required by Indiana Code § 31-17-5-2(a) and Indiana Code § 31-17-5-6. Nor did the trial court consider whether Maternal Grandmother has had or has attempted to have meaningful contact with the child, as allowed by Indiana Code § 31-17-5-2(b).

[20] For these reasons, all avenues to an order of postadoption visitation—either between the twins and their half-sibling or between the twins and Maternal Grandmother—were effectively blocked. The trial court therefore abused its discretion in purporting to reopen the adoption and ordering postadoption visitation of any type. *See P.A.H.*, 992 N.E.2d at 776 (ruling that an award of postadoption visitation to a person without a cognizable right to visitation constitutes an abuse of discretion).

[21] The judgment of the trial court authorizing postadoption visitation is reversed and this case remanded with directions to vacate the order of postadoption visitation.⁴

Mathias, J., and Tavitas, J., concur.

⁴ In light of our disposition, we need not address the challenge of Father and Adoptive Mother to the trial court's decision to allow Maternal Grandmother and Maternal Great-Grandfather to intervene.