

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHORS



[John Narron](#) is a Board Certified Family Law Specialist and has been practicing law in North Carolina since 1977, with a practice concentration in all manner of civil disputes that frequently involve complex equitable distribution proceedings, alimony trials, will caveats, employment disputes, personal injury trials and negotiations, and a wide variety of commercial business disputes. John has served as a mediator in more than 200 family law disputes in Wake County, Franklin County, Johnston County, Wayne County, Guilford County, Forsyth County, and Pender County.



[Rose Stout](#) is a Board Certified Family Law Specialist by the North Carolina State Bar Board of Legal Specialization. She concentrates her practice in the area of domestic law and represents clients in all aspects of family law, including divorce, custody, equitable distribution, child support and alimony. Rose has extensive trial experience at the district court level and has spoken at family law

## Custody and Visitation – Grandparents v. Parents

June 18, 2014 | by

Family law attorneys are seeing an increasing number of grandparents seeking visitation and custody with their grandchildren through the court system. Grandparents' concerns have been heightened by the U.S. Supreme Court decision in June that strengthened the rights of parents. In that case, a Washington state judge had awarded the parents of the deceased father regular weekend visits with their grandchildren. The Supreme Court overruled that decision and stated that under the Constitution, a state cannot be permitted to infringe on the fundamental rights of the parents to make child-rearing decisions.

There is a strong presumption that a fit parent will act in the best interests of his or her child, and that includes making decisions about the degree of contact a child may have with anyone, including a grandparent. However, this presumption can be overcome in cases involving abuse, neglect, unfitness, or where a parent has acted inconsistently with his or her parental obligation. A judge must respect the parents' fundamental right to make decisions concerning the care, custody and control over their children; at the same time, a judge's decision must reflect what is in the best interest of the child. In North Carolina, there are four statutes that allow a grandparent to file an action for custody or visitation:

1. **N.C.Gen.Stat.S50-13.2(b1)** permits a grandparent to intervene in an ongoing custody dispute and request visitation with a grandchild.
2. **N.C.Gen.Stat.S50-13.5(j)** allows a grandparent to petition for custody or visitation due to changed circumstances in those cases where custody has previously been terminated. In one case, grandparents were allowed to intervene when their visitation rights were arbitrarily terminated by the natural mother after the grandparents had established a continuing, substantial relationship with their grandchildren after an earlier custody order.
3. **N.C.Gen.Stat.S50-13.2A** permits a biological grandparent to file an action for visitation where the minor child has been adopted by a stepparent or relative of the child. To allow visitation where the minor child has been adopted by a stepparent or relative of the child. To allow visitation under this statute, the court must determine that a substantial relationship exists between the grandparent and the child, and that the visitation is in

the best interest of the child. This statute is applicable only when the grandparents' biological child's rights have been terminated through a stepparent adoption, not if they were terminated in juvenile court or when the child is adopted by a non-family member.

4. **N.C.Gen.Stat.550-13.1(a)** permits any parent, relative or other person, agency, organization or institution claiming the right to custody of a minor child to institute an action for custody. Although broadly worded, this statute does not give grandparents the right to file an action for visitation if there is no ongoing custody dispute between the parents and where the grandchild is living in an intact family (which includes a single parent living with his or her child and a natural parent married to a stepparent living with the child). Again, judges must give weight to the presumption in favor of the parents, so a grandparent seeking visitation or custody under this statute must prove that the parent has abandoned the child, was abusing or neglecting the child, or that the parent was otherwise unfit and not acting in the best interest of the child.

An important factor in either custody or visitation cases involving grandparents is the grandparents' level of involvement with their grandchildren, both before and after a divorce. Custody disputes can be traumatic for children who are put in the middle of a chaotic battle between their parents. Often, grandparents provide the stable nurturing children need as they learn to adjust to their parents living in separate households. This is especially true when the grandparents have had an ongoing close relationship with their grandchildren. Under the law, however, the presumption in favor of parental rights is strong and the courts will interfere with that right only in limited circumstances. Grandparents who have strong relationships with their grandchildren and their grandchildren's parents are more likely to continue having access to their grandchildren and to be a continuing influence in their lives.

---

#### CONTACT US

919.250.2000  
mail@smithdebnamlaw.com

#### RALEIGH OFFICE

The Landmark Center  
4601 Six Forks Road, Suite 400  
Raleigh, NC 27609  
Phone: 919.250.2000  
Fax: 919.250.2100

#### CHARLESTON OFFICE

171 Church Street  
Suite 120C  
Charleston, SC 29401  
Phone: 843.714.2530  
Fax: 843.714.2541