

Understanding Grandparents' Rights to Custody and Visitation of a Child in North Carolina

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Grandparents may seek custody of, or visitation with, a minor child.

However, custody and visitation, although often used interchangeably, are not synonyms under North Carolina law. The distinction is important, especially as it relates to the rights of a grandparent, since the two terms require completely different legal standards to bring your case

before the court.

Who is considered a 'grandparent'?

According to North Carolina General Statutes § 50-13.5(j), in addition to the standard definition of "grandparent," the term "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the relative and the child.

Visitation Rights for Grandparents

North Carolina law provides that a trial court may include in a custody order terms providing visitation rights for a grandparent as the court, in its discretion, deems appropriate. The practical implication is that grandparents only have the ability to seek visitation rights when the custody of a child is "in issue" or "being litigated" by the parents. In other words, North Carolina law does not allow grandparents to *initiate* a lawsuit against parents whose "family is intact and where no custody proceeding is ongoing."

Issues often arise when one parent passes away, and a grandparent is prevented by the surviving parent from having visitation with the minor child. In this scenario, the grandparent seeking visitation would need to have previously intervened, asserted their claim for visitation, or have previously been awarded visitation in a custody action initiated by the parents prior to the parent's death. Otherwise, the grandparent will have no right to seek visitation after the death of one parent.

However, just because a grandparent is successful in becoming a party to a lawsuit, does not mean they are guaranteed visitation rights. The United States Supreme Court recognizes a *presumption* that a fit parent will make decisions that are in the best interest of their child, including with whom the child associates. Therefore, a trial court must *presume* that the parent's determination as to how much time, if any, a child spends with a grandparent is correct. This presumption may be overcome by carefully considering the facts of each case.

For example, if a child has a significant relationship with the grandparent, yet a parent is restricting visitation without cause, a grandparent may be successful in securing visitation with the child.

When a court determines that grandparent visitation is appropriate, any visitation schedule should not adversely interfere with the parent-child relationship as *fit* parents have a constitutionally protected right to parent their own children. Even if the court is inclined to award grandparent visitation, the visitation must be limited. By way of example, the North Carolina Court of Appeals has held that a trial court order granting every other Christmas and Thanksgiving, along with every other weekend, to the grandparents impermissibly interfered with the parent-child relationship.

Custody Rights for Grandparents

In cases where parents are unfit, or have abandoned or neglected the child, a grandparent may need to seek more than limited visitation with the child. In such cases, it may be appropriate for a grandparent to seek custody of a child. Pursuant to North Carolina General Statutes § 50-13.1, "any parent, relative, or other person...claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child [in accordance with the statute]."

Unlike the statutes relating to visitation, grandparents need not wait for the parents to initiate a custody suit to seek custody of a child. Rather, grandparents can bring an initial suit for custody, or seek to intervene in an existing custody suit, where there are allegations showing that BOTH parents have waived their constitutional right to exclusive custody by being unfit, neglecting or abandoning the child, or having otherwise acted inconsistently with their protected constitutional right to parent their own child. Although grandparents have the right to bring an initial suit for custody, they must still overcome the "constitutionally-protected paramount right of parents to custody, care, and control of their children." Finally, any order awarding grandparent visitation, or custody of a child, must set forth findings that the visitation/custody arrangement contemplated by the order is in the best interest of the child.

The laws surrounding grandparent visitation and custodial rights are complex, and oftentimes, the circumstances surrounding such rights become urgent. Consultation with an experienced family law attorney is crucial to securing grandparents' rights to visitation and custody of a child.

This is a part of our July series: "Rights, Responsibilities, and Regulations." For more insights, click here.

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