



HOUSE BILL 413: Expand Grandparent Visitation Rights

2015-2016 General Assembly

Committee:	House Judiciary III	Date:	April 14, 2015
Introduced by:	Reps. Waddell, Iler, Horn, Presnell	Prepared by:	Janice Paul
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 413 would provide for an expansion of rights under existing law pertaining to grandparent visitation.*

BACKGROUND AND CURRENT LAW:

The United States Supreme Court has long held that parents have a fundamental constitutional right to make decisions concerning the care, custody and control of their children, including decisions regarding with whom they may associate, and there is a presumption that fit parents act in the best interests of their children. In Troxel v. Granville, 530 U.S. 57 (2000), the Court affirmed a Washington State Supreme Court ruling that declared the state’s third-party visitation statute invalid. The Court found that Washington’s statute was too broad and infringed on the parental right of autonomy in child rearing.

In Peterson v. Rogers, 337 N.C. 397 (1994), the N.C. Supreme Court held, "Absent a finding that parents are unfit or have neglected the welfare of their children, the constitutionally-protected paramount right of parents to custody, care and control of their children must prevail."

Under current North Carolina law, a grandparent may maintain an action for visitation of a minor child under limited circumstances. If the grandparent does not have standing under one of the following statutes, no action may be brought in court and no visitation order may be entered.

G.S. 50-13.2(b1) permits grandparents to intervene in an ongoing custody dispute and request visitation with the minor child. A grandparent may not initiate an action under this statute unless the question of custody is already before the court.

G.S. 50-13.5(j) permits a grandparent to petition for visitation, where custody has previously been determined, upon a showing of changed circumstances. The burden is on the grandparent to show the court that there has been a change of circumstances since the original custody order was entered and that the requested visitation is now in the child’s best interest.

G.S. 50-13.2A permits a biological grandparent to petition for visitation where the minor child has been adopted by a stepparent or relative of the child and a substantial relationship exists between the grandparent and the child.

G.S. 50-13.1(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 or proceeding for the

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custody of such child,” and custody is defined as custody or visitation or both. G.S. 50-13.1(a) does permit a grandparent to seek custody when the grandparent is alleging that the child's parent is unfit.

- In McIntyre v. McIntyre, 341 NC 629, 633, 461 S.E.2d 745, 748-49 (1995), the North Carolina Supreme Court held that grandparents do not have standing under G.S. 50-13.1(a) to seek visitation with their grandchildren when there is no ongoing custody proceeding and the child's family is intact.
- In Perdue v. Fuqua, 195 N.C. App. 583 (2009), the North Carolina Court of Appeals cited the holding in McIntyre, above, and specified that in order for a grandparent to initiate a proceeding for custody, there must be an allegation of unfitness of a parent due to neglect or abandonment. If there is a prior custody order, the grandparent must show that there has been a substantial change of circumstances that now makes the parents unfit.

If a grandparent has standing under any of the above-referenced statutes, then the grandparent may petition the court for visitation. Once the case is before the court, G.S. 50-13.2(a) requires the judge to look to the best interest and welfare of the child in making a determination, and the grandparent has the burden of proving to the judge that such visitation is in the best interest of the child.

During the 2014 legislative session, 24 states considered 48 bills dealing with grandparent or great-grandparent custody and visitation. States also considered legislation to support relative caregivers, particularly grandparents. The National Conference of State Legislatures' Children and Families Program tracks legislation dealing with grandparent and great-grandparent custody and visitation in the Child Support and Family Law Legislation Database in addition to publishing a report on State Legislative Enactments Supporting Relatives, Kinship Care Providers and Grandparents from 2007-2012.

BILL ANALYSIS: House Bill 413 would amend G.S. 50-13.2(b1) to allow a grandparent to institute an action or proceeding for visitation rights if there is not pending action regarding the custody of the child, and the court determines all of the following by clear and convincing evidence:

- There are compelling circumstances to overcome the presumption of the parent's right to determine what is in the child's best interest;
- A parent of the child is deceased, incapacitated due to physical or mental disability, or incarcerated.
- Visitation is in the best interest of the child. The bill lists five factors that the court can consider in determining whether visitation is in the best interest of the child.

EFFECTIVE DATE: This act becomes effective October 1, 2015, and applies to actions for visitation rights commenced on or after that date.

Wendy Graf Ray, staff attorney, substantially contributed to this summary.