

Grandparent Practice Guide¹

THE STATUTES

- a. **Third party custody: 50-13.1(a)** Action or proceeding for custody of minor child*
- b. **Visitation (as part of an order for custody): 50-13.2(b1)** Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State; consideration of parent's military service
- c. **Visitation (after a motion to modify): 50-13.5(j)** Procedure in actions for custody or support of minor children
- d. **Visitation (an action following a stepparent or relative adoption): 50-13.2A.**—Action for visitation of adopted grandchild

*Grandparent custody and visitation are different claims. A grandparent seeking custody must address the Constitutional parental preference under *Price v. Howard*, just like any third party. A grandparent seeking only visitation does not have to prove parental unfitness or conduct inconsistent with parental rights. However, the fit parent's visitation decision is entitled to the rebuttable presumption discussed in *Alexander*, below.

THE PROCESS

- a. **Motion to Intervene in an existing custody action—when a grandparent is requesting visitation (not an adopted grandchild):** For an ordinary grandparent visitation claim, the grandparent should seek intervention while the parents' custody claim or a parent's motion to modify is pending. File a motion to intervene under Rule 24 in the custody case and attach the proposed pleading stating the grandparent's visitation claim. The question at intervention is whether the grandparent has a proper path into the case, not whether visitation should ultimately be awarded.
- b. **When a grandparent is requesting visitation for a child adopted by a relative or stepparent:** File a new action for visitation for a child adopted by a stepparent or relative so long as a substantial relationship exists between grandparent and child (no need to intervene in the adoption filing).
- c. **When a grandparent is requesting custody:**
 - i. If no existing custody lawsuit, file a third-party custody complaint and allege facts to overcome parental preference.
 - ii. If there is an existing custody action with no permanent order, file a motion to intervene (attach a proposed pleading requesting custody and alleging facts sufficient to overcome parental preference).
- d. If there is an existing custody action with a permanent order, file a motion to intervene (as set out above) if there is a pending motion to modify filed by one of the parents. If no parent has filed a motion to modify, file a separate complaint seeking modification of custody, alleging facts supporting third-party standing and overcoming the parental preference, and request consolidation with the existing custody action.
- e. *** Grandparents can't create the custody dispute to request visitation*** If a family is "intact," a grandparent cannot file a claim for visitation or file their own motion to modify to create the ongoing dispute in which to intervene.

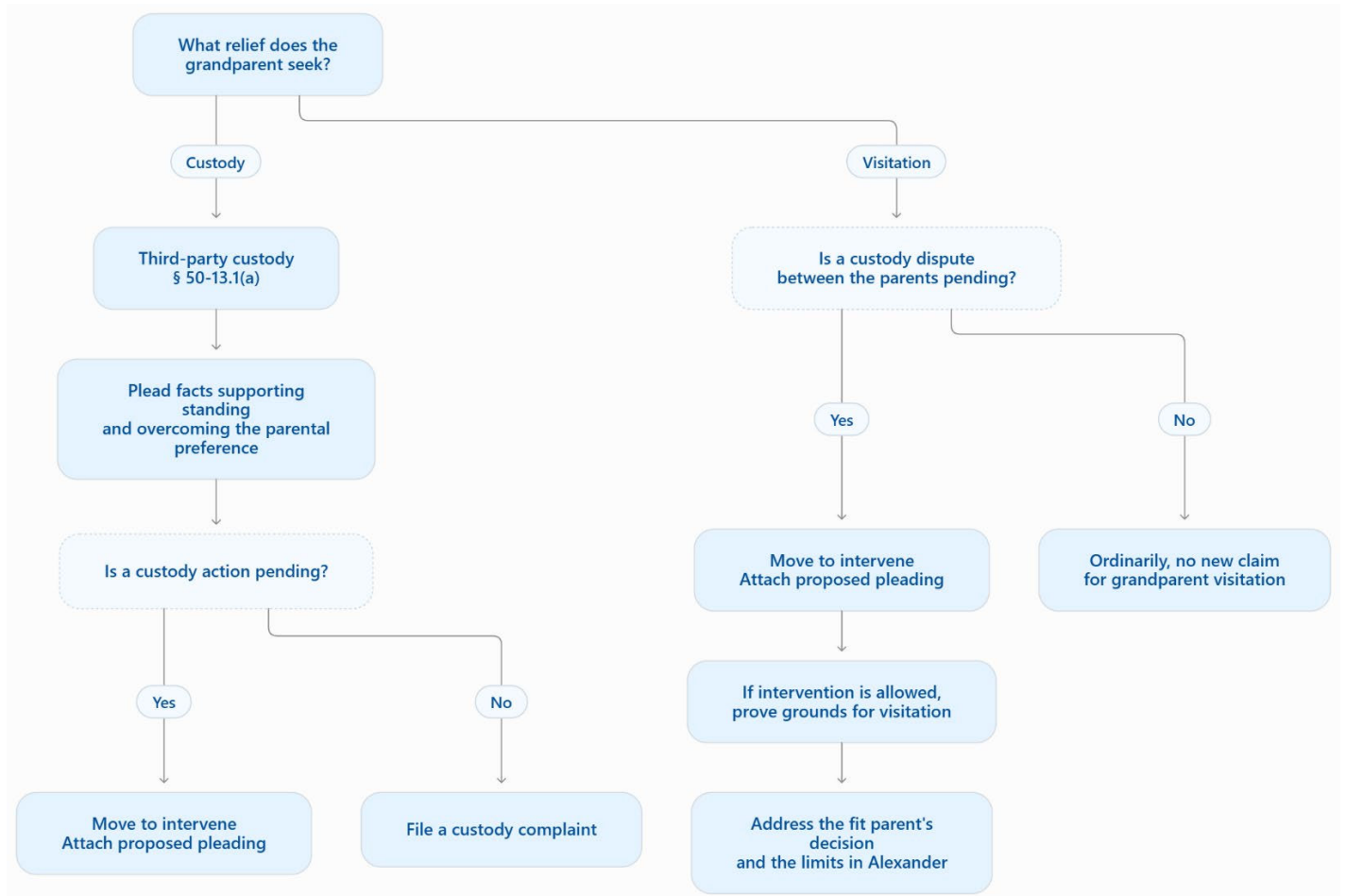
WHAT IF A PARENT DIES OR PARENTS' CASE ENDS?

- a. The court does not lose jurisdiction to award visitation if parents settle their custody case after intervention is allowed. *Quesinberry v. Quesinberry*, 196 N.C. App. 118, 674 S.E.2d 775 (2009). Likewise, once the grandparents are parties, the court retains jurisdiction over their pending visitation claim even if the underlying custody claim abated because of a parent's death.
- b. A grandparent seeking visitation for the first time generally cannot wait until after a parent's death to seek intervention in the parents' custody action (since the underlying custody action abates at death). BUT if there was a motion to intervene pending at the time of death, the death of the parent doesn't prevent the court from later ruling on the motion to intervene and allowing the visitation claim to proceed. *McDuffie v. Mitchell*, 155 N.C. App. 587, 573 S.E.2d 606 (2002);

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Linker v. Linker (COA23-328).

- c. Where grandparents had been made *de facto* parties (awarded visitation in a custody order despite not being parties), the death of the parent did not end their right to file a motion to modify or request visitation. *Sloan v. Sloan*, 164 N.C. App. 190, 595 S.E.2d 228 (2004).
- d. A termination of parental rights or a stepparent adoption does not end a grandparent's previously court- ordered visitation. *Adams v. Langdon*, 264 N.C. App. 251, 826 S.E.2d 236 (2019); N.C.G.S. 48-4-105(a).



GRANDPARENT VISITATION AND THE ALEXANDER CASE

Citing *Troxel v. Granville*, 530 U.S. 57 (2000), the Court held in *Alexander v. Alexander*, 276 N.C. App. 148, 856 S.E.2d 136 (2021), that a fit parent's decision regarding grandparent visitation is presumed to be in the child's best interests. Although that presumption is rebuttable, any visitation awarded must not "impermissibly interfere with the parent-child relationship."

1. Should visitation be ordered?	2. If so, how much?
The court must presume that a fit parent's decision about grandparent visitation is in the child's best interests. Has the grandparent rebutted that presumption?	Even if the presumption is rebutted, the visitation award must not impermissibly interfere with the parent-child relationship. Does the proposed schedule respect that limit?