LEGISLATIVE RESEARCH COMMISSION

GRANDPARENT VISITATION RIGHTS

REPORT TO THE

1997 GENERAL ASSEMBLY

OF NORTH CAROLINA

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
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January 3, 1996

TO THE MEMBERS OF THE 1997 GENERAL ASSEMBLY (REGULAR SESSION 1997):

The Legislative Research Commission herewith submits to you for your consideration its final report on Grandparent Visitation Rights. The report was prepared by the Legislative Research Commission's Committee on Grandparent Visitation Rights pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Harold J. Brubaker
Speaker of the House

Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission

1995-1996

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of
the Senate
Marc Basnight, Cochair

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Senator R. L. Martin
Senator Henry McKoy
Senator J. K. Sherron, Jr.
Senator Ed N. Warren

Speaker of the House
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Rep. Jerry C. Dockham
Rep. Larry Linney
Rep. Edd Nye
Rep. Gregory J. Thompson
Rep. Constance K. Wilson

PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1995 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Grandparent Visitation Rights was authorized by Part II, Section 2.1 of Chapter 542 of the 1995 Session Laws. Part II of Chapter 542 allows for studies authorized by that Part for the Legislative Research Commission to consider House Joint Resolution 872 and Senate Bill 841 in determining the nature, scope and aspects of the study. Section 1 of House Joint Resolution 872 and Section 1 of Senate Bill 841 read in part:

"(1) Whether grandparents should have a right of action for court-ordered visitation with grandchildren independent of whether a divorce or custody action has been filed;

(2) Whether there should be a rebuttable presumption in the law that visitation with grandparents promotes the best interest of the grandchild;

(3) What remedies other than contempt should be established to ensure that court-ordered grandparent visitation is enforced;

(4) Whether there should be established in each judicial district an expedited process for enforcing visitation orders; and

(5) Any other issues related to grandparent visitation matters."

The relevant portions of Chapter 542, as well as House Joint Resolution 872 and Senate Bill 841, are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Family and Juvenile Law area under the direction of Representative Edd Nye. The Committee was chaired by Senator James Forrester and Representative Gene Wilson. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Grandparent Visitation Rights met eight times to study issues relating to grandparent visitation matters. The Committee minutes are on file in the Committee notebook in the Legislative Library.

December 13, 1995

The Committee met for the first time. Ms. Lynn Marshbanks, legal counsel to the Committee, explained to the Committee its charge and the Legislative Research Commission reporting requirements. The Committee then adopted its budget.

Sixteen members of the public spoke to the Committee on the topic of grandparent visitation. Some people advocated strengthening the current grandparent visitation laws. Others spoke either for or against allowing grandparents to sue for visitation with their grandchildren where the grandchildren are in an intact family.

Ms. Marshbanks explained the current statutory and case law on grandparent visitation, including two cases handed down by the North Carolina Supreme Court: McIntyre v. McIntyre, an opinion issued in September 1995, and Peterson v. Rogers, a 1994 case. In Peterson, the court held that parents have the constitutional right to care, custody, and control of their children. That holding was echoed in McIntyre; also, the court specifically held that North Carolina's statutes do not allow grandparents to petition for visitation with grandchildren who are part of an intact family. She reviewed statutes from other states and cited cases where state courts had ruled on the constitutionality of grandparent visitation laws. She also explained Senate Bill 842, introduced during the 1995 Session by Senators Forrester and Kerr, which was in the Senate Judiciary II Committee.

Representative Decker asked on what provisions of the state and/or federal constitutions the North Carolina Supreme Court and other state courts had based their holdings. Representative Culpepper

requested that all the state's grandparent visitation laws be brought to the next meeting. He commented that the best interest of the minor child should be the most important consideration, and brought up the following ideas: requiring a guardian ad litem to be appointed for children in grandparent visitation disputes; requiring mediation; maybe making a presumption that favors the parents; maybe tax costs of a frivolous lawsuit to the grandparents. He brought up the possible legal implications of a decision to allow grandparents to have visitation rights, such as responsibility for medical, psychological, and other bills.

January 10, 1996

Fifteen members of the public addressed the Committee. Two of the speakers brought specific proposals to the Committee. Mr. Loring McIntyre brought a bill drafted by his attorney, Michael Drye, which would affirm the rights of parents to raise their own children where there is an intact family situation. Mr. Mark Sullivan, an attorney, asked the Committee to consider changing the law so that a change of circumstances is not necessary for grandparents to ask for visitation where there has already been a custody order. He asserted that the standard should be the best interest of the child.

Ms. Jan Hood, Court Management Specialist in the Administrative Office of the Courts, and Mr. Scott Bradley, Executive Director of the Mediation Network of North Carolina, spoke about mediation. The custody and visitation mediation program started in 1983. It is in ten of the thirty-nine judicial districts and will be in sixteen districts by the end of the year. In divorce cases where custody is at issue, there is a mandated orientation, then mediation sessions. If the parties come to an agreement, the mediator drafts a parenting agreement, then it goes to the parties' attorneys. It is signed in the mediation office, then goes to the chief district court judge, where it is made a court order. There are very few grandparent mediation programs in the country. They explained the training process for mediators and said that the success rate for mandatory mediation is 55 to 59%. In dispute settlement centers, where mediation is voluntary, there is about a 90% success rate.

Mr. Matt Epstein, Director of the Center for Child Protection, spoke next. He served in the New Hampshire Legislature when they were adopting their grandparent visitation law, and he has been involved in mediation. He spoke about family breakdown and when the state should get involved. He said that the Committee should decide what an intact family really means, because other states have different definitions. He was concerned that the Committee address the legal relationship between grandparents and grandchildren in a way to get the benefit without the harm. He said that often grandchildren are the only stable people in their grandchildren's lives when the family has broken apart. However, there are also grandparents who are abusive or want to dominate their children. He was concerned that parents might not want to raise in court issues of abuse by their parents. He recommended to the Committee that it go slowly and cautiously. He believed that mediation is a very good approach, except where there is abuse, and he recommended voluntary mediation first. Second, he recommended narrowly-tailored laws concerning unfitness and abuse. Third, he recommended that the Committee look at intermediate changes first. Fourth, he recommended that a mechanism be in place to evaluate what happens. He said that in New Hampshire, where there is an intact family, the grandparents must show unfitness to get custody; it depends on the child's best interest.

Ms. Marshbanks answered questions from the last Committee meeting. She addressed the questions of whether there was any law governing the placement of abused or neglected children with relatives and whether the local department of social services could make an order contrary to a judicial order. Ms. Marshbanks explained that DSS may not overrule a judge's order. She also reviewed G.S. 7A-574(a), which concerns placing a child into nonsecure custody. One of the requirements is that the judge first consider releasing the child to a parent, relative, guardian, custodian, or other adult. Ms. Marshbanks also explained that the North Carolina Supreme Court had held that parents have a constitutionally-protected paramount right to the care, custody, and control of their children. The Court cited cases from the United States Supreme Court that based that right on the Fourteenth Amendment to the United States Constitution. There is a similar provision in the North Carolina Constitution, in Article 1, Section 19.

Ms. Marshbanks then distributed a chart outlining the statutory and case law in all fifty states concerning grandparent visitation rights. She pointed out the states that had specific mediation provisions and the states where there had been supreme court decisions on the constitutionality of grandparent visitation statutes. She distributed copies of laws from several other states to show the Committee some of the different types of grandparent visitation statutes. Representative Decker asked whether it is possible to make people mediate without going into the court system. Ms. Marshbanks responded that in our present court system, people cannot be required to mediate until a case is filed.

February 20, 1996

Six members of the public addressed the Committee.

Mr. Chuck Harris, Chief of the Children Services Section in the Division of Social Services, was the first speaker on the agenda. He responded to several questions that the Committee asked at its January meeting. He explained the procedures that DSS must follow when doing an investigation into alleged child abuse or neglect. During an investigation, DSS interviews anyone who can speak to the situation; in most cases, at least one relative is interviewed. At the dispositional phase, the judge decides what the best plan for the child is. DSS presents its recommendations, as does the guardian ad litem and anyone else with standing. Twenty-two percent of DSS placements are with relatives. The hearing is in juvenile court, so it is closed to members of the public. However, it is open to people with direct information about care of the child; they are notified of the court hearing. There is no duty under law, policy, or rule to notify grandparents or other relatives. However, DSS has the duty to present to the court information about relatives that might be able to take custody of the child and must recommend a relative if there is one willing.

Ms. Shirley Hassell, Committee member, spoke next about her own experience of raising her grandson for several years, after which her daughter did not allow her to see him. She asked that the committee address the term "substantial relationship" in its legislation and said that there needs to be an

expedited process for grandparent visitation. She told the Committee that she did not understand why allowing a grandparent and grandchild to have a meaningful relationship interferes with parental rights. She then played a tape made by her grandson about his feelings on the issue.

Ms. Lauren Cole, an instructor in the Child Development Department at Southeastern Community College, spoke about the role of grandparents in the lives of their grandchildren, including the feeling that they must come to the child's rescue at times. She talked about the acceptance grandparents can demonstrate toward their grandchildren. Then she discussed how conflicts can build between parents and grandparents, and how both parties should compromise. She told the Committee that children have a right to know their grandparents. She recommended the book The New American Grandparent to the Committee.

Ms. Cheryl Howell, faculty member at the Institute of Government, explained to the Committee that there are generally three types of grandparent visitation statutes: (1) where there is disruption of a family by death or divorce; (2) where it is in the best interest of the child; and (3) where there is a substantial relationship between the grandparent and the child. She reviewed decisions from other state supreme courts that had addressed the issue of constitutionality of grandparent visitation statutes. The question is one of Fourteenth Amendment substantive due process: parents' liberty interest vs. government interest in intervening into the family. The United States Supreme Court has held that parents have the fundamental right to raise their children with minimal interference. Generally, states that have declared their statutes unconstitutional have found a substantial level of interference with parental rights and have applied a strict scrutiny standard requiring that the government have a compelling interest to intervene. States that have found the statutes constitutional have held that the level of interference with parental rights is insignificant. Those states did not apply strict scrutiny; they merely required that there be a "reasonable relationship" between the law and the governmental interest.

March 6, 1996

The Committee heard from one member of the public before hearing from the speakers on the agenda.

The first speaker was Ms. Judy Auman, Executive Assistant, North Carolina Child Advocacy Institute. She read a statement from the Institute, giving its position on grandparent visitation rights. The Institute believes that legislation would not be the most effective or appropriate means of resolving disputes between parents and grandparents and that litigation would not be in the best interest of the child. The Institute is concerned that legislation would strain the court system and encourage society's tendency to be overly-litigious. Ms. Auman further stated that if the General Assembly chooses to pass new legislation, the Institute would advocate that no presumption be made that either parent or grandparent is able and willing to act in the child's best interest, that the best interest of the child should be the court's primary consideration, that any involvement by children in conflict resolution should be age-appropriate and non-traumatic, and that both parties should demonstrate that they have exhausted other means of resolving the dispute before having access to formal legal proceedings.

At the request of Senator Forrester, Ms. Marshbanks explained that the presumption in the law now is that parents will act in the best interest of their child.

Ms. Celia O'Briant, a family mediator and licensed counselor, explained to the Committee the mediation process and the theory behind mediation. She explained how, if agreement is reached, the parties sign a memorandum of understanding, which is not enforceable in court until a judge approves a legal document incorporating the understanding between the parties. The question arose as to the constitutionality of requiring mediation before a suit may be filed.

Ms. Marshbanks distributed a map showing which counties in the state now have custody and visitation mediation programs. She then presented to the Committee a list of issues that the Committee could use to assist it in making its decision.

April 10, 1996

Three members of the public addressed the Committee.

Afterwards, Mr. Ray Berryhill of Indiana was the first speaker. He and his wife founded Grandparent Rights in New Strength (GRINS). Mr. Berryhill talked about how many grandparents are raising their grandchildren. He advocated that North Carolina adopt a law similar to that of Kentucky, which has a provision that when parental rights are terminated, grandparent rights are not. He also talked about court decisions from other states that upheld their grandparent visitation laws. He talked about the importance of grandparents in grandchildren's lives, and said that he believes the law should give a grandparent or great-grandparent the right to go to court after being denied reasonable visitation after sixty days.

Ms. Marshbanks then explained to the Committee the court decision in the four states whose supreme courts have made decisions on the constitutionality of grandparent visitation where there is an intact family. Kentucky and Missouri's courts held that the statutes were constitutional, and Georgia and Tennessee's courts held that the statutes were unconstitutional. She commented that there was no particular language in those state's statutes that seemed to make a difference in whether they were constitutional, rather that it was whether the courts found substantial interference with the intact family.

Ms. Cheryl Howell addressed the Committee again. She reviewed the North Carolina laws on custody and visitation and explained the role that mediation has in custody and visitation actions.

Senator Forrester asked that any Committee member who wants to propose statutory changes to get his or her proposal to Ms. Marshbanks before the next meeting.

Ms. Shellie Bellairs, Committee member, told the Committee that they should start drafting a proposed bill now. She referred to laws from several other states. She believed that the Committee should draft a simple bill that would allow grandparents to petition a court for visitation with their grandchildren, even where the grandchildren live in an intact family.

Ms. Marshbanks responded to questions about mediation asked in the March meeting. She told the Committee that mediation cannot be forced, unless it is by the court. In our present system, a case would have to be filed to be referred to mediation. She suggested that the Committee look at what the Futures Commission is recommending as it concerns family courts and mediation, since they will be recommending comprehensive changes to the state's court system.

September 25, 1996

Six members of the public spoke to the Committee.

Dr. Richard Keelor, President of Health Designs International and an expert in health and fitness, was the first speaker on the agenda. He spoke to the Committee about the importance of relationships between grandparents and grandchildren and encouraged the Committee to adopt legislation that would allow grandparents and grandchildren to develop positive, meaningful relationships.

Mr. Alan Hooper, grandson of Ms. Shirley Hassell, Committee member, spoke next. He talked about his personal experience of being raised by his grandparents for years, then not being allowed to visit with them. He talked about the strength of his relationship with his grandparents and urged the Committee to recommend a bill that would allow grandparents to go to court to seek visitation, even where there is an intact family.

Mr. David Parker, attorney from Statesville who represented the McIntyre grandparents in the McIntyre v. McIntyre case, explained the proceedings in the McIntyre case and distributed copies of a proposed bill that he drafted that would expand grandparent visitation rights. He asked the Committee to consider such questions as whether grandparents should have the standing to come to court and ask for visitation, what is a substantial relationship between a grandparent and a grandchild, and whether attorney fees should be provided for a prevailing party who has no financial resources. He said that Rule 11 of the Rules of Civil Procedure would guard against harassment lawsuits by grandparents. He advocated that the court's discretion to make a determination not be limited.

Mr. Bill Brooks, President of the North Carolina Policy Council, spoke next. His organization believes that forcing grandparent visitation on an intact family would be an unprecedented expansion of governmental authority. The problems that his organization sees in such legislation would be: (1) the state could intrude in the family for any reason, even absent evidence of abuse or neglect; (2) it would open family wounds in a public forum; (3) visitation would be logistically unenforceable, carving up the family's time; (4) it would encourage litigation; and (5) it would not likely survive constitutional challenge. He also asked the questions of who would pay for the cost of the visits, whether the grandparents would acquire any financial responsibilities along with rights, and whether the state should force unwilling grandparents to visit grandchildren.

Mr. Wiley Wooten, Chair of the North Carolina Bar Association's Family Law Council, gave some observations, noting that the Bar Association has no official position on grandparent visitation yet. He referred to the constitutionally-protected rights of parents, and commented that the district courts are overworked already and that mediation is not state-wide yet.

Ms. Marshbanks gave the Committee an update on state laws concerning grandparent visitation and explained again the constitutional questions concerning grandparent visitation. She then reviewed for the Committee three bills that she had drafted at the request of Committee members Representative Beall, Representative Culpepper, and Ms. Shirley Hassell. Senator Forrester asked the Committee members to review those drafts and follow up with Ms. Marshbanks on further ideas or different language.

December 4, 1996

Before the meeting, Ms. Louise McIntyre presented to the Committee petitions signed by people in support of grandparent visitation rights.

The Committee met to discuss what its recommendation would be. Ms. Marshbanks reviewed two bills that Committee members had requested since the September meeting. The first draft, suggested by Representative Beall, would allow a grandparent to bring an action for visitation regardless of whether the

child's family is intact and says that the judge shall determine whether visitation is in the best interest of the child, based on all the circumstances of the case. The second draft, by Representative Culpepper, would also allow a grandparent to bring a visitation action even if the grandchild lives in an intact family. His draft also attempted to address the constitutional questions that had arisen by doing the following: (1) establishing a presumption in favor of the parents, and (2) requiring a court to determine before awarding visitation that there is such a bond between the grandparent and grandchild that visitation would be in the grandchild's best interest and that the visitation would not substantially interfere with parental rights.

After the Committee decided to recommend legislation, they concentrated on Representative Culpepper's draft. The Committee voted to make several changes to the draft, one of which would allow grandparents to show that they had made a substantial effort to establish a bond with a grandchild, then the Committee asked that Ms. Marshbanks prepare the final draft of the Committee's report for approval at its final meeting.

December 19, 1996

The Committee met and approved its final report to the 1997 General Assembly.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATION: The General Assembly should enact the bill providing for the expansion of grandparent visitation rights that is found in Appendix D.

The Committee finds that relationships between grandparents and grandchildren are valuable and should be encouraged. Present North Carolina law does not allow a grandparent to go to court to seek visitation with a grandchild if the grandchild lives in an intact family, where the parents are married and living together, and there has been no determination of custody. The Committee believes that the current law should be amended to allow a grandparent of a grandchild living in an intact family to ask a court to grant visitation. The Committee recognizes that there are constitutional issues involved in expanding the law, and to address those concerns, the bill provides protections for the intact family, while allowing those grandparents to be heard in court.

APPENDIX A

CHAPTER 542

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO MAKE VARIOUS STATUTORY CHANGES, AND TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 507 OF THE 1995 SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1995".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the 1995 bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

. . .

(11) Grandparent visitation rights (S.B. 841 - Forrester, Kerr, and Carpenter; H.J.R. 872 - Mitchell)

. . .

PART XXVI.-----EFFECTIVE DATE

Sec. 26.1. This act is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H 1

HOUSE JOINT RESOLUTION 872

Sponsors: Representatives Mitchell; Culpepper, Buchanan, and Gardner.

Referred to: Rules, Calendar & Operations of the House.

April 12, 1995

A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ISSUE OF GRANDPARENT VISITATION.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Legislative Research Commission may study the issue of grandparent visitation rights. In conducting this study, the Commission may consider the following:

(1) Whether grandparents should have a right of action for court ordered visitation with grandchildren independent of whether a divorce or custody action has been filed;

(2) Whether there should be a rebuttable presumption in the law that visitation with grandparents promotes the best interest of the grandchild;

(3) What remedies other than contempt should be established to ensure that court ordered grandparent visitation is enforced;

(4) Whether there should be established in each judicial district an expedited process for enforcing visitation orders; and

(5) Any other issues related to grandparent visitation matters.

Sec. 2. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S 1

SENATE BILL 841

Short Title: Study Grandparent Rights. (Public)

Sponsors: Senators Forrester, Kerr, and Carpenter.

Referred to: Appropriations

April 26, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE STUDY COMMISSION ON GRANDPARENT RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. (a) There is established the Legislative Study Committee on Grandparent Rights. Membership on the Commission shall be as follows:

(1) Four members of the Senate appointed by the the President Pro Tempore of the Senate;

(2) Four members of the House of Representatives appointed by the Speaker of the House;

(3) Six public members, three of whom shall be appointed by the President Pro Tempore of the Senate and three of whom shall be appointed by the Speaker of the House of Representatives.

Vacancies shall be filled by the original appointing authority.

(b) The Committee shall study the following:

(1) Whether grandparents should have a right of action for court-ordered visitation with grandchildren independent of whether a divorce or custody action has been filed;

(2) Whether there should be a rebuttable presumption in the law that visitation with grandparents promotes the best interest of the grandchild;

(3) What remedies other than contempt should be established to ensure that court-ordered grandparent visitation is enforced;

(4) Whether there should be established in each judicial district an expedited process for enforcing visitation orders; and

(5) Any other issues related to grandparent visitation matters.

(c) The Committee shall have its first meeting at the call of the cochairs. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate one of its appointees to the Committee as cochair.

(d) Committee members shall receive no salary as a result of serving on the Committee but shall receive necessary subsistence and travel expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

(e) The Committee may contract for clerical and professional assistance or for any other services it may require during the course of its study. The Committee may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building.

(f) The Committee shall report to the General Assembly the results of its study and recommendations. The Committee may make an interim report on its progress to the General Assembly not later than May 1, 1996. The Committee shall make its final report, including recommendations and proposed legislation, on or before the convening of the 1997 General Assembly. Upon issuance of its final report the Committee shall expire.

Sec. 2. There is appropriated from the General Fund to the General Assembly the sum of twenty-five thousand dollars ($25,000) for the 1995-96 fiscal year and the sum of twenty-five thousand dollars ($25,000) for the 1996-97 fiscal year to implement the study authorized under Section 1 of this act.

Sec. 3. This act becomes effective July 1, 1995.

APPENDIX B

GRANDPARENT VISITATION RIGHTS COMMITTEE MEMBERSHIP 1995 - 1996

LRC Member: Rep. Edd Nye
209 Ben Street
Elizabethtown, NC 28337
(910) 862-3679

President Pro Tempore Appointments

Sen. James Forrester, Cochair
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Ms. Shellie Bellairs
6417 Lakeway Drive
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Ms. Roxanne Bragg-Cash
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Louisburg, NC 27549

Ms. Shirley Hassell
PO Box 149
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Sen. Jeanne H. Lucas
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Sen. James D. Speed
Route 6, Box 542
Louisburg, NC 27549
(919) 853-2167

Speaker's Appointments

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881 Queen Street
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(704) 264-5365

Rep. Charles M. Beall
Route 3, Box 322
Clyde, NC 28721-9542
(704) 627-2423

Rep. William T. Culpepper, III
PO Box 344
Edenton, NC 27932
((919) 482-3818

Rep. Michael P. Decker
5105 Yorkwood Drive
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(910) 595-3008

Rep. Cynthia B. Watson
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Rep. Michael S. Wilkins
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Ms. Lynn Marshbanks
Research Division
(919) 733-2578

Clerk:

Ms. Rebecca Jones
(919) 733-7727

Up Right to Change Name. — Nothing in the law states that by marriage a woman gives up her right as a person to change her name as anyone else might change his or hers. In re Mohlman, 26 N.C. App. 220, 216 S.E.2d 147 (1975).

OPINIONS OF ATTORNEY GENERAL

Wife Must Have Filed Complaint or Counterclaim. — The court, in the divorce decree, may not grant authorization for the wife to resume her maiden name unless the wife filed complaint for divorce or a counterclaim (cross bill) for divorce. See opinion of Attorney General to the Honorable John H. Parker, District Court Judge, 10th Judicial District, 50 N.C.A.G. 16 (1980).

§ 50-13: Repealed by Session Laws 1967, c. 1153, s. 1.

Cross References. — As to actions or proceedings for custody of minor children, see § 50-13.1 et seq.

§ 50-13.1. Action or proceeding for custody of minor child.

(a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both.

(b) Whenever it appears to the court, from the pleadings or otherwise, that an action involves a contested issue as to the custody or visitation of a minor child, the matter, where there is a program established pursuant to G.S. 7A-494, shall be set for mediation of the unresolved issues as to custody and visitation before or concurrent with the setting of the matter for hearing unless the court waives mediation pursuant to subsection (c). Issues that arise in motions for contempt or for modifications as well as in other pleadings shall be set for mediation unless mediation is waived by the court. Alimony, child support, and other economic issues may not be referred for mediation pursuant to this section. The purposes of mediation under this section include the pursuit of the following goals:

(1) To reduce any acrimony that exists between the parties to a dispute involving custody or visitation of a minor child;

(2) The development of custody and visitation agreements that are in the child's best interest;

(3) To provide the parties with informed choices and, where possible, to give the parties the responsibility for making decisions about child custody and visitation;

(4) To provide a structured, confidential, nonadversarial setting that will facilitate the cooperative resolution of custody and visitation disputes and minimize the stress and anxiety to which the parties, and especially the child, are subjected; and

(5) To reduce the relitigation of custody and visitation disputes.

(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include,

but is not limited to, the following: a showing of undue hardsh... a party; an agreement between the parties for voluntary mediat... subject to court approval; allegations of abuse or neglect of the mi... child; allegations of alcoholism, drug abuse, or spouse abuse... allegations of severe psychological, psychiatric, or emotional p... lems. A showing by either party that the party resides more t... fifty miles from the court shall be considered good cause.

(d) Either party may move to have the mediation proceed... dismissed and the action heard in court due to the mediator's... undue familiarity with a party, or other prejudicial ground...

(e) Mediation proceeding shall be held in private and shall... confidential. Except as provided in this Article, all verbal or wr... communications from either or both parties to the mediat... between the parties in the presence of the mediator made... proceeding pursuant to this section are absolutely privileged... inadmissible in court. The mediator may assess the needs... interests of the child, and may interview the child or others who... not parties to the proceedings when he or she thinks appropri...

(f) Neither the mediator nor any party or other person involv... mediation sessions under this section shall be competent to testi... communications made during or in furtherance of such mediat... sessions; provided, there is no privilege as to communications... in furtherance of a crime or fraud. Nothing in this subsection... be construed as permitting an individual to obtain immunity... prosecution for criminal conduct or as excusing an individual... the reporting requirements of G.S. 7A-543 or G.S. 108A-102.

(g) Any agreement reached by the parties as a result of... mediation shall be reduced to writing, signed by each party... submitted to the court as soon as practicable. Unless the court... good reason not to, it shall incorporate the agreement in a c... order and it shall become enforceable as a court order. If some o... of the issues as to custody or visitation are not resolved by medi... tion, the mediator shall report that fact to the court.

(h) If an agreement that results from mediation and is incorp... rated into a court order is referred to as a "parenting agreement"... called by some similar name, it shall nevertheless be deemed to... a custody order or child custody determination for purposes... Chapter 50A of the General Statutes, G.S. 14-320.1, G.S. 110-139... or other places where those terms appear. (1967, c. 1153, s. 2; 198... c. 795, s. 15(b).)

Local Modification. — Gaston: 1983, c. 761, s. 162; 1987 (Reg. Sess., 1988), c. 1036, s. 2; 1989, c. 547, s. 2; Mecklenburg: 1983, c. 761, s. 162; 1985, c. 698, s. 18(a); 1987, c. 524, s. 5; 1987, c. 703, s. 3; 1987 (Reg. Sess., 1988), c. 1036, s. 2; 1989, c. 547, s. 2.

Cross References. — As to jurisdiction of proceedings for child support and child custody, see § 7A-244.

Editor's Note. — This section was amended by Session Laws 1989, c. 795, s. 15(b), in the coded bill drafting format provided by § 120-20.1. Subsection (a) of this section has been set out in the form above at the direction of the Revisor of Statutes.

Legal Periodicals. — For case... survey on custody of children, see... N.C.L. Rev. 464 (1963); 44 N.C.L. R... 1000 (1966).

For survey of 1981 family law, see... N.C.L. Rev. 1379 (1982).

For article, "Equating a Stepparent... Rights and Liabilities Vis-A-Vis Custod... Visitation and Support upon Dissolution... of the Marriage with Those of the Natu... ral Parent — An Equitable Solution to... Growing Dilemma?", see 17 N.C. Cen... L.J. 1 (1988).

For comment, "An End to Settlement... on the Courthouse Steps? Mediated Set... tlement Conferences in North Carolina...

Superior Courts," see... 1857 (1993).

For note, "Balancin... Children with the R...

Legislative Intent. ...ment of § 50-13.1 et se... has sought to elimina... inconsistent statutes v... pitfalls for litigants, a... the statutes relating to... support together into o... 1 N.C. App. 108, 160 S.... re King, 3 N.C. App. 4... (1969); Johnson v. Johr... 378, 188 S.E.2d 711 (1...

This and the follow... not alter basic legal... cerning custody. In... App. 251, 174 S.E.2d 1...

Broad Application. ...Had the legislature int... to apply to only those... involved in a divorce... would have expressly s... fore, the mere fact that... chapter of the General... ing divorce and alimon... to cause its application... custody disputes involv... or divorce. Oxendine v.... Dep't of Social Servs., ... S.E.2d 370 (1981).

This Section and... guished. — When this... 9.1 are construed togeth... that this section was in... statute, covering a myr... in which custody dispu... while § 48-9.1 is a narr... cable only to custody... surrendered by its natu... suant to § 48-9(a)(1... Catawba County Dep't... 303 N.C. 699, 281 S.E.2...

Section 48-9.1(1) a... Grant of Standing in... Section 48-9.1(1) was... exception to the genera... ing to contest custody... section. Oxendine v. ... Dep't of Social Servs., 3... S.E.2d 370 (1981).

Rights of Parents. ...ing that parents (i) are... neglected the welfare o... the constitutionally-p... mount right of parents... and control of their ch...

Chapters 49 through 50C

§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State.

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence. Such orders may include a designation of time and place for the exchange of children away from the abused party, the participation of a third party, or supervised visitation. If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. As used in this subsection, "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 grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights.

(c) An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court.

(d) If, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child. (1957, c. 545; 1967, c. 1153, s. 2; 1977, c. 501, s. 2; 1979, c. 967; 1981, c. 735, ss. 1, 2; 1985, c. 575, s. 3; 1987, c. 541, s. 2; c. 776; 1995 (Reg. Sess., 1996), c. 591, s. 5.)

§ 50-13.2A. Action for visitation of an adopte grandchild.

A biological grandparent may institute an action or proceeding visitation rights with a child adopted by a stepparent or a relativ the child where a substantial relationship exists between th grandparent and the child. Under no circumstances shall a biolo ical grandparent of a child adopted by adoptive parents, neither whom is related to the child and where parental rights of bi biological parents have been terminated, be entitled to visitati rights. A court may award visitation rights if it determines th visitation is in the best interest of the child. An order awardi visitation rights shall contain findings of fact which support determination by the judge of the best interest of the child. Pro dure, venue, and jurisdiction shall be as in an action for cust (1985, c. 575, s. 2.)

Editor's Note. — Session Laws 1985, c. 575, s. 5 made this section effective October 1, 1985, and applicable to pending litigation and actions or proceedings filed on or after that date, whethe adoption was final before or after 1 ber 1, 1985.

CASE NOTES

There is a reasonable basis for the classification elicited in this section, and therefore, the classification does not violate the equal protection guarantees of either the State or federal Constitutions. Hedrick v. Hedrick, 90 N.C. App. 151, 368 S.E.2d 14, cert. denied, 323 N.C. 173, 373 S.E.2d 108 (1988).

This section must be read in pari materia with § 50-13.7(a), which therefore requires a showing of a substantial change of circumstances. Hedrick v. Hedrick, 90 N.C. App. 151, 368 S.E.2d 14, cert. denied, 323 N.C. 173, 373 S.E.2d 108 (1988).

Trial court did not err in allowing grandparents to intervene in adoption proceeding pursuant to this section without holding a preliminary evidentiary hearing to determine whether a substantial relationship existed between the movants and grandchildren, where the trial judge addressed the issue of whether the grandparents had a right to intervene based on the pleadings before it, and without the necessity of a preliminary hearing the trial court made a preliminary determination that the grandparents had a right to intervene. Hedrick v. Hedrick, 90 N.C. App. 151, 368 S.E.2d 14, cert. denied, 323 N.C. 173, 373 S.E.2d 108 (1988).

Evidence held sufficient to support the trial court's conclusion that grandparents had established a substantial relationship with their grandchildren. Hedrick v. Hedrick, 90 N.C. App. 368 S.E.2d 14, cert. denied, 323 N.C 373 S.E.2d 108 (1988).

There existed substantial cha of circumstances when visita rights of grandparents arbitra terminated by the natural mo when the grandparents had establi a continuing substantial relationsh with their grandchildren since the en of earlier custody order, and based in that, the court found sufficient fact justify its conclusion that it was in best interest of the grandchildren maintain a continuing relationship w the grandparents through the grant of visitation privileges. Hedrick Hedrick, 90 N.C. App. 151, 368 S.E 14, cert. denied, 323 N.C. 173, 373 S.E 108 (1988).

Where adoption of two grandchil dren by stepfather not finalized un one month after the entry of the jud ment awarding grandparents visitati whatever rights he was to gain in becom ing an adoptive parent had not vested the time of the hearing, and therefo the adjudication of the issues before t court did not require his presence in th suit. Hedrick v. Hedrick, 90 N.C. App 151, 368 S.E.2d 14, cert. denied, 323 N.C 173, 373 S.E.2d 108 (1988).

Trial court's findings of fact held to establish fitness of the grandpar ents and that the welfare of the childre would be subserved by granting the

Payment of Counsel Fees. — The court is vested with broad power when it is authorized to punish "as for contempt." This power includes the authority for a district court judge to require one whom he has found in willful contempt of court for failure to comply with a child support order to pay reasonable counsel fees to opposing counsel as a condition to being purged of contempt. Blair v. Blair, 8 N.C. App. 61, 173 S.E.2d 513 (1970).

Indefinite Jail Term. — When a defendant has the present means to comply with a court order and deliberately refuses to comply, there is a present and continuing contempt, and the court may commit such defendant to jail for an indefinite term, that is, until he complies with the order. Bennett v. Bennett, 21 N.C. App. 390, 204 S.E.2d 554 (1974); Fitch v. Fitch, 26 N.C. App. 570, 216 S.E.2d 734, cert. denied, 288 N.C. 240, 217 S.E.2d 679 (1975).

Effect of Dismissal of Contempt Action Without Explanation. — A dismissal of a contempt action, without explanation, at most signified that the supporting party was not in contempt as of that date and did not cancel the accrued child support debt; it merely forced the custodial parent or an authorized party to pursue one of the alternate remedies listed in subsection (f) to enforce the debt. Brower v. Brower, 75 N.C. App. 425, 331 S.E.2d 170 (1985).

As to effect of reconciliation and resumption of cohabitation on a separation agreement, see Hand v. Hand, 46 N.C. App. 82, 264 S.E.2d 597, cert. denied, 300 N.C. 556, 270 S.E.2d 107 (1980).

Failure to Identify Purpose of Support as Health, Education and Maintenance Is Not Error. — The better practice is for the court's order to relate that the payment ordered under this section is the amount necessary to meet the reasonable needs of the child for health, education, and maintenance, but the failure of the court to do so does not constitute reversible error. Andrews v. Andrews, 12 N.C. App. 410, 183 S.E.2d 843 (1971); Martin v. Martin, 35 N.C. App. 610, 242 S.E.2d 393, cert. denied, 295 N.C. 261, 245 S.E.2d 778 (1978).

§ 50-13.5. Procedure in actions for custody or support of minor children.

(a) Procedure. — The procedure in actions for custody and support of minor children shall be as in civil actions, except as provided in this section and in G.S. 50-19. In this G.S. 50-13.5 the words "custody and support" shall be deemed to include custody or support, or both.

(b) Type of Action. — An action brought under the provisions of this section may be maintained as follows:

(1) As a civil action.

(2) Repealed by Session Laws 1979, c. 110, s. 12, effective July 1, 1979.

(3) Joined with an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.

(4) As a cross action in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.

(5) By motion in the cause in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.

(6) Upon the court's own motion in an action for annulment, or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.

(7) In any of the foregoing the judge may issue an order requiring that the body of the minor child be brought before him.

(c) Jurisdiction in Actions or Proceedings for Child Support and Child Custody. —

(1) The jurisdiction of the courts of this State to enter or... providing for the support of a minor child shall be ... actions or proceedings for the payment of money or ... transfer of property.

(2) The courts of this State shall have jurisdiction to ... orders providing for the custody of a minor child under ... provisions of G.S. 50A-3.

(3) to (6) Repealed by Session Laws 1979, c. 110, s. 12, ... tive July 1, 1979.

(d) Service of Process; Notice; Interlocutory Orders. —

(1) Service of process in civil actions for the custody of ... children shall be as in other civil actions. Motion ... support of a minor child in a pending action may be ... on 10 days notice to the other parties and compliance ... G.S. 50-13.5(e). Motions for custody of a minor child ... pending action may be made on 10 days notice to the ... parties and after compliance with G.S. 50A-4.

(2) If the circumstances of the case render it appropriate ... gaining jurisdiction of the minor child the court may ... orders for the temporary custody and support of the ... pending the service of process or notice as herein prov...

(3) A temporary order for custody which changes the ... arrangements of a child or changes custody shall ... entered ex parte and prior to service of process or ... unless the court finds that the child is exposed ... substantial risk of bodily injury or sexual abuse or ... there is a substantial risk that the child may be abduct... removed from the State of North Carolina for the purpo... evading the jurisdiction of North Carolina courts.

(e) Notice to Additional Persons in Support Actions and Proc... ings; Intervention. —

(1) The parents of the minor child whose addresses are rea... ably ascertainable; any person, agency, organization ... institution having actual care, control, or custody of ... minor child; and any person, agency, organization or in... tution required by court order to provide for the suppor... a minor child, either in whole or in part, not named ... parties and served with process in an action or proceedin... for the support of such child, shall be given notice by th... party raising the issue of support.

(2) The notice herein required shall be in the manner provide... by the Rules of Civil Procedure for the service of notices ... actions. Such notice shall advise the person to be notified ... the name of the child, the names of the parties to the actio... or proceeding, the court in which the action or proceedin... was instituted, and the date thereof.

(3) In the discretion of the court, failure of such service of notic... shall not affect the validity of any order or judgmen... entered in such action or proceeding.

(4) Any person required to be given notice as herein provide... may intervene in an action or proceeding for support of ... minor child by filing in apt time notice of appearance, o... other appropriate pleadings.

(f) Venue. — An action or proceeding in the courts of this State fo... custody and support of a minor child may be maintained in the ... county where the child resides or is physically present or in a count...

where a parent resides, except as hereinafter provided. If an action for annulment, for divorce, either absolute or from bed and board, or for alimony without divorce has been previously instituted in this State, until there has been a final judgment in such case, any action or proceeding for custody and support of the minor children of the marriage shall be joined with such action or be by motion in the cause in such action. If an action or proceeding for the custody and support of a minor child has been instituted and an action for annulment or for divorce, either absolute or from bed and board, or for alimony without divorce is subsequently instituted in the same or another county, the court having jurisdiction of the prior action or proceeding may, in its discretion direct that the action or proceeding for custody and support of a minor child be consolidated with such subsequent action, and in the event consolidation is ordered, shall determine in which court such consolidated action or proceeding shall be heard.

(g) Custody and Support Irrespective of Parents' Rights Inter Partes. — Orders for custody and support of minor children may be entered when the matter is before the court as provided by this section, irrespective of the rights of the wife and the husband as between themselves in an action for annulment or an action for divorce, either absolute or from bed and board, or an action for alimony without divorce.

(h) Court Having Jurisdiction. — When a district court having jurisdiction of the matter shall have been established, actions or proceedings for custody and support of minor children shall be heard without a jury by the judge of such district court, and may be heard at any time.

(i) District Court; Denial of Parental Visitation Right; Written Finding of Fact. — In any case in which an award of child custody is made in a district court, the trial judge, prior to denying a parent the right of reasonable visitation, shall make a written finding of fact that the parent being denied visitation rights is an unfit person to visit the child or that such visitation rights are not in the best interest of the child.

(j) Custody and Visitation Rights of Grandparents. — In any action in which the custody of a minor child has been determined, upon a motion in the cause and a showing of changed circumstances pursuant to G.S. 50-13.7, the grandparents of the child are entitled to such custody or visitation rights as the court, in its discretion, deems appropriate. As used in this subsection, "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 grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights. (1858-9, c. 53, s. 2; 1871-2, c. 193, ss. 39, 46; Code, ss. 1292, 1296, 1570, 1662; Rev., ss. 1567, 1570, 1854; 1919, c. 24; C.S., ss. 1664, 1667, 2242; 1921, c. 13; 1923, c. 52; 1939, c. 115; 1941, c. 120; 1943, c. 194; 1949, c. 1010; 1951, c. 893, s. 3; 1953, cc. 813, 925; 1955, cc. 814, 1189; 1957, c. 545; 1965, c. 310, s. 2; 1967, c. 1153, s. 2; 1971, c. 1185, s. 24; 1973, c. 751; 1979, c. 110, s. 12; c. 563; c. 709, s. 3; 1981, c. 735, s. 3; 1983, c. 587; 1985, c. 575, s. 4; 1987 (Reg. Sess., 1988), c. 893, s. 3.1.)

APPENDIX D

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S/H **D**

Senate/House 97-RSZ-001.53
THIS IS A DRAFT 9-DEC-96 12:39:48

Short Title: Grandparent Visitation (Public)

Sponsors: Senator/Representative

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN EXPANSION OF RIGHTS UNDER EXISTING LAW PERTAINING TO GRANDPARENT VISITATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-13.1(a) reads as rewritten:

" (a) Any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as hereinafter provided. Unless a contrary intent is clear, the word "custody" as it applies to parents of a minor child shall be deemed to include custody or visitation or both."

Sec. 2. G.S. 50-13.2(b1) reads as rewritten:

"(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. ~~As used in this subsection, "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 grandparent and the child.~~ Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related

to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights."

Sec. 3. G.S. 50-13.2A reads as rewritten:

"**§50-13.2A. Action for visitation ~~of an adopted grandchild.~~** by grandparent.

A ~~biological~~ grandparent may institute an action or proceeding for visitation rights with a grandchild ~~child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child.~~ under the provisions of this section. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights. A court may award such visitation rights ~~if~~ as it determines ~~that visitation is~~ to be in the best interest of the ~~child.~~ grandchild. ~~An order awarding visitation rights shall contain findings of fact which support the determination by the judge of the best interest of the child.~~ An order awarding or denying visitation under this section shall contain findings of fact supporting the award or denial of visitation based on the grandchild's best interest. If the grandchild's legal parents are married and living together, the court shall not award visitation unless the court determines the following by clear and convincing evidence: (1) either that there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond, or that the grandparent has made a substantial effort to establish a bond, such that visitation is in the best interest of the grandchild, and (2) that the amount and circumstances of the visitation awarded will not substantially interfere with the right of the parents to exercise their parental authority. Where the grandchild's legal parents are married and living together, there is a presumption that may be rebutted by clear and convincing evidence that visitation by a grandparent is not in the best interest of the grandchild if the grandchild's legal parents agree that the grandparent should not be granted visitation rights. Where the grandchild's legal parents either are not married or are not living together, or both, there is no presumption on behalf of any party to the action. Procedure, venue, and jurisdiction ~~shall be~~ are the same as in an action for custody."

Sec. 4. G.S. 50-13.5(j) is repealed.

Sec. 5. This act becomes effective October 1, 1997.

Summary of Legislation

This proposal does the following:

Section 1: Inserts language in G.S. 50-13.1(a) stating that "custody" only includes visitation where the word "custody" applies to parents of a minor child.

Section 2: Deletes language in G.S. 50-13.2(b1) that defines "grandparent" as including a biological grandparent of a child adopted by a stepparent or relative where a substantial relationship exists.

Section 3: Rewrites G.S. 50-13.2A to allow a court to award grandparent visitation if it finds that it would be in the best interest of the grandchild. Where the child's parents are married and living together, there would be a presumption, that could be rebutted by clear and convincing evidence, that visitation was not in the child's best interest if the parents were married and living together and if they opposed visitation. The court would not award visitation unless it determined by clear and convincing evidence that there was a preexisting relationship between the grandparent and grandchild that had engendered a bond, or that the grandparent had made a substantial effort to establish a bond, such that visitation would be in the best interest of the grandchild. Also, the court would have to determine by clear and convincing evidence that the amount and circumstances of visitation would not substantially interfere with the parents' right to exercise their parental authority. Where the child's parents were not married or living together, there would not be any presumption.

Section 4: Repeals G.S. 50-13.5(j), which states that in a case where custody has been determined, a grandparent must show changed circumstances in order to get custody or visitation rights.

Section 5: The effective date would be October 1, 1997.