

## Grandparent visitation: termination of parent's rights does not terminate grandparent's court ordered visitation

The court of appeals recently reversed a trial court decision that a judgment terminating a mother's parental rights voided a court order entered five years earlier granting her mother visitation with her grandchild. In [Adams v. Langdon, \(NC App March 19, 2019\)](#), the court of appeals held that the termination of the mother's rights had no impact on the visitation rights the trial court ordered for grandmother before mother's rights were terminated.

### [Adams v. Langdon, \(NC App March 19, 2019\)](#)

Plaintiff father (Adams) filed an action for custody against defendant mother (Landon) and a temporary order was entered granting custody to father and limiting mother to supervised visitation due to her alleged mental illness and substance abuse. The order provided that maternal grandmother (Malone) would supervise mother's visitation. A second temporary order was entered terminating mother's visitation until she completed substance abuse testing and assessments. After the second temporary order, maternal grandmother filed a motion to intervene asking for visitation with her grandchild. The trial court granted her motion, concluding that she had standing to intervene pursuant to [Rule 24 of the Rules of Civil Procedure](#) and [GS 50-13.2\(b1\)](#) and [GS 50-13.5\(j\)](#) because there was an on-going custody dispute between the parents of the child. The parties entered into a consent judgment granting permanent custody to father, no visitation to mother and visitation to intervenor grandmother. The court subsequently modified that order to allow mother visitation supervised by intervenor but left all other provisions of the previous order intact.

Five years later, father filed a separate proceeding seeking the termination mother's parental rights and the court terminated mother's parental rights. Thereafter, maternal grandmother intervenor filed a motion for contempt in the custody action, alleging father refused to allow grandmother to exercise her visitation time with the child. At the contempt hearing, the trial court determined that "the custody action does not survive the termination of [mother's] parental rights, therefore, the grandparent rights of [intervenor] do not survive [mother's] rights being terminated and that [intervenor's] grandparent visitation rights are terminated along with the custodial and parental rights of her daughter [defendant mother]."

Grandmother appealed and the court of appeals held that the termination of mother's rights had no impact on grandmother's court ordered visitation rights. The court of appeals explained:

"As a general rule, grandparents are only granted standing to intervene in a case seeking visitation under N.C. Gen. Stat. § 50-13.2(b1) "when custody of the minor children is an ongoing issue." *Smith v. Barbour*, 195 N.C. App. 244, 251, 671 S.E.2d 578, 584 (2009). This requires the

custody of a child being “in issue” or “being litigated.” *Id.* (citation and quotation marks omitted). Thus, for example, this Court has recognized where one parent dies in the midst of a custody action, but before the grandparent seeks to intervene, there was no ongoing custody action in which the grandparent could intervene, nor could the grandparent initiate a separate action. *McDuffie v. Mitchell*, 155 N.C. App. 587, 590, 573 S.E.2d 606, 608 (2002). Likewise, this Court has held grandparents could not *initiate* an action for visitation where the child was living with one parent after the other parent’s parental rights had been terminated because there was no ongoing custody dispute. *Fisher v. Gaydon*, 124 N.C. App. 442, 445, 477 S.E.2d 251, 253 (1996).

However, “once grandparents have become parties to a custody proceeding—whether as formal parties or as *de facto* parties—then the court has the ability to award or modify visitation even if no ongoing custody dispute exists between the parents at the time.” *Quesinberry v. Quesinberry*, 196 N.C. App. 118, 122, 674 S.E.2d 775, 778 (2009) (citation omitted). This is because once a grandparent intervenes in a case, they are “as much a party to the action as the original parties are and [have] rights equally as broad. . . . Once an intervenor becomes a party, he should be a *party for all purposes.*” *Id.* at 124, 674 S.E.2d at 779 (citations and quotation marks omitted). Thus, there, the trial court retained jurisdiction over a pending grandparental visitation claim even where the parents resolved their own custody claims via consent order. *Id.*

Consequently, we conclude, here, where Intervenor had not only intervened in the case but also obtained visitation rights via a permanent custody order, the termination of Defendant’s parental rights did not extinguish Intervenor’s court ordered visitation rights.”

### **TPR has the same effect as the death of a parent**

The court of appeals also reasoned that a termination of parental rights is analogous to the death of a parent and held that the decision in [Sloan v. Sloan, 164 NC App 190 \(2004\)](#), supported the conclusion that a TPR has no impact on a grandparent *after* the grandparent has been awarded custody or visitation in a court order. In [Sloan](#), the trial court entered a custody order in a case between the parents of the child that included an order for visitation time with the paternal grandparents of the child. When father died suddenly, the grandparents requested that the trial court allow them to formally intervene in the custody case, and requested modification of the existing custody order and contempt for mother for her refusal to allow grandparents to exercise the visitation provided in the earlier court order. Mother argued that the trial court lost jurisdiction in the custody case when father died and that the court lost the ability to award visitation to grandparents because there was no on-going dispute between the parents.

The court of appeals in [Sloan](#) disagreed with the mother and held that once the trial court awarded visitation to grandparents, they became *de facto* parties to the action and father’s death did not affect their court ordered rights. Acknowledging that the result would be different had father died *before* the trial court entered an order awarding visitation rights to the grandparents, the court held that after the court order, grandparents’ “visitation rights existed independently of [father’s]

parental and custodial rights.”