

Intervention in Custody and Child Support Cases

It is not uncommon for third parties to assert rights or claims against parents litigating child custody and child support. For example, grandparents frequently want the court to grant them visitation rights as part of a custody order resolving a dispute between the child's mother and father. Similarly, the IV-D child support enforcement agency or a non-parent who has been caring for a child often need to assert rights or claims in child support cases pending between the child's parents.

Before these people can assert claims or rights in an existing case, they must become parties to the case through the process of intervention.

What is intervention?

The NC Supreme Court explained intervention as follows:

"Only parties of record to a suit have a standing therein which will enable them to take part in or control the proceedings. If they desire to seek relief with respect to the matters involved they must either obtain the status of parties in the suit or, in proper instances, institute an independent action. Thus a person not originally a party may be permitted to become a party by his own intervention. 'In legal terminology, 'intervention' is the proceeding by which one not originally a party to an action is permitted, on his own application, to appear therein and join one of the original parties in maintaining the action or defense, or to assert a claim or defense against some or all of the parties to the proceeding as originally instituted. Stated in another way, 'intervention' is the admission by leave of court of a person not an original party to the pending legal proceeding, by which such person becomes a party thereto for the protection of some right or interest alleged by him to be affected by such proceeding." (citations omitted)

Strickland v. Hughes, 273 NC 481 (1968).

Once allowed to intervene, a person "has the same right to participate in the lawsuit as any other party." G. Gray Wilson, *North Carolina Civil Procedure*, p. 24-2. See also *Warner Inc. v. Nissan Motor Co.*, 66 NC App 73 (1984)("[a]fter intervention, an intervener is as much a party to the action as the original parties are").

Procedure for intervention

[Rule 24 of the Rules of Civil Procedure](#) provides the process for intervention. As common as intervention is in family law matters, practitioners and litigants often fail to follow that process when asking to intervene. [Rule 24](#) states:

"Intervention.

.....

(c) Procedure. - A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and *shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought*. The same procedure shall be followed when a statute gives a right to intervene, except when the statute prescribes a different procedure." (emphasis added).

Very frequently, litigants file motions to intervene without including the required pleading. The court of appeals has held that a motion to intervene filed without an appropriate pleading is defective. *State Employees' Credit Union v. Gentry*, 75 NC App 260 (1985). The type of pleading required is the type of pleading necessary to assert the claim or right that is the basis for the request to intervene. *Id.* The court should deny the motion to intervene if the pleading fails to state a claim giving the intervener the right for the relief requested. See e.g., *Eakett v. Eakett*, 157 NC App 550 (2003)(grandparent's motion to intervene denied where the accompanying motion in the cause requesting visitation did not allege child was not living in an in-tact family).

The party seeking to intervene must serve the motion to intervene and the pleading on the other parties to the action by [Rule 5](#) service. The intervener is not required to have a summons issued or to effect service of the pleading by [Rule 4](#), *Kahan v. Longiotti*, 45 NC App 367 (1980), unless required by [Rule 5\(a\)](#)(when new claim is asserted against a party in default for failure to appear, the new claim must be served by Rule 4 service).

Timeliness of request to intervene

The court of appeals has stated that the timeliness of the motion to intervene in relation to the existing litigation is "a threshold issue" for a court determining whether to grant a motion to intervene. *State Employees' Credit Union v. Gentry*, 75 NC App 260 (1985). In determining whether a motion to intervene is timely, the trial court should consider:

"...the status of the case; the unfairness or prejudice to the existing parties; the reason for the delay in moving for intervention; the resulting prejudice to the applicant if the motion is denied; and any unusual circumstances. [NAACP v. New York, 413 U.S. 345, 93 S.Ct. 2591, 37 L.Ed.2d 648 \(1973\).](#)"

Id.

The court of appeals also has stated that motions to intervene made before final judgment in a civil

case “are seldom denied” and that interventions after final judgment are appropriate only in extraordinary circumstances. *Id.* However, unlike other types of civil cases, requests for relief after a final adjudication are common and often appropriate in custody and child support cases. See *eg. Robbins v. Hunt*, 784 SE2d 219 (2016)(child support enforcement agency has statutory right to intervene in child support case at any time as long as the court retains jurisdiction to address child support).

The trial court cannot allow a party to intervene in an action after the court has lost jurisdiction over the case. See *Price v. Breedlove*, 138 NC App 149 (1995)(a party cannot intervene in a custody case between child’s parents following the death of one of the parents because the death of the parent terminated the jurisdiction of the trial court). *But cf. Sloan v. Sloan*, 164 NC App 190 (2004)(where grandparents had been awarded visitation rights in custody case between parents before the death of one of the parents, trial court retained jurisdiction to hear grandparents’ motion to modify).

Hearing on the motion to intervene

The only issue to be determined at an intervention hearing is whether the court should allow intervention and it generally is not appropriate to litigate factual issues relating to the substance of the intervener’s claim at that stage of the proceeding. See *e.g., Eakett, supra* (grandparent motion to intervene in custody case dismissed based on allegations in the pleadings); *Perdue v. Fuqua*, 195 NC App 583 (2009)(grandparent motion to intervene decided on allegations in the pleadings); and *Pender Country Child Support Enforcement Agency ex. rel. Crews v. Parker*, 319 NC 354 (1987)(grandmother’s motion to intervene in child support case decided on the basis of the allegations in her motion and pleading).

The NC Supreme Court has held that the trial court is not required to make specific findings of fact and conclusions of law to support an order allowing or denying intervention. *Virmani v. Presbyterian Health Services Corp.*, 350 NC 449 (1999)(reversing court of appeals decision that trial court erred by resolving a request for intervention summarily, without making written findings of fact and conclusions of law).

Who can intervene in a custody or child support case? The topic for my next post.

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