

# The Intervening Variable

Grandparental Intervention in Juvenile Court Proceedings

by Christine Costantakos

It sometimes happens that persons other than parents become parties to a juvenile court proceeding. Because juvenile proceedings are essentially civil in nature, intervention in juvenile cases is governed by Neb. Rev. Stat. §§25-328-330. The interest required as a prerequisite to intervention is a direct and legal interest in the controversy, which is an interest of such character that the intervener will lose or gain by the direct operation and legal effect of the judgment which may be rendered in the action.<sup>1</sup> Independent of statute, Nebraska courts have also recognized “equitable” or “permissive” intervention where, in the exercise of judicial discretion, intervention may be granted to further the interests of justice, or to grant complete relief to the parties.<sup>2</sup> Because the polestar of juvenile court proceedings is the “best interest of the child,” that would also appear to be a threshold consideration where intervention is sought.

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Even though not described as a “party” in Neb. Rev. Stat. §43-245(15), grandparents, for example, have been recognized as persons whose interest in the outcome of the case regarding their biological or adopted grandchildren is so significant that they may intervene in juvenile dependency proceedings as a matter of legal right prior to final disposition in the case.<sup>3</sup> Sometimes the juvenile court may exercise its discretion to grant party status to others who---although they cannot predicate intervention upon a direct legal right---are nevertheless able to demonstrate an interest in the child’s health, safety and welfare of such significance that their entry into the case is warranted on the basis of permissive or equitable intervention.<sup>4</sup> These determinations typically turn upon the specific demonstration of facts and circumstances sufficient to support such entry into the case as a party.

But once having intervened, when does the status of intervener end? Clearly, when the juvenile court terminates its jurisdiction in a case, the status of an intervener ceases. Also, where the factual basis supporting the intervention ceases to exist *before* an individual seeks to intervene, the request to intervene may be denied. But when events transpire *after* a person has intervened in the juvenile court proceeding but *prior* to the court’s termination of its jurisdiction over the case, their impact upon the intervention is less than clear.

In two unpublished cases, the Nebraska Court of Appeals held that the status of grandparents who had properly intervened as parties *ceased automatically* upon the termination of the parental rights of the child of that grandparent, because the grandparent no longer had a legal interest in the juvenile court proceeding.<sup>5</sup> This reasoning was based primarily upon the case of *In re Interest of Ditter*, 212 Neb. 855, 326 N.W. 2d 675 (1982), [reiterated in *In re Interest of Destiny S.*, 263 Neb.


## THE INTERVENING VARIABLE

255,639 N.W. 2d 400 (2002)] in which the Nebraska Supreme Court held that once parental rights have been terminated to a natural parent, “the natural parents of the parent whose rights have been terminated are not entitled to continue visitation with their grandchildren *as a matter of right*.” But the holding in *Ditter* itself raises questions. While it is true that grandparents may enter the case as a matter of legal right, it has *never* been the case in juvenile proceedings that they may claim visitation with their grandchildren *as a matter of legal right*. On the contrary, the matter of visitation with children under the jurisdiction of the juvenile court has always been left to the exercise of the juvenile court’s sound discretion.<sup>6</sup>

The termination of the rights of the parent is not dispositive of the issue of whether it is in the child’s best interest for the grandparent to have continuing involvement in the juvenile court case as a party. While termination of parental rights destroys the derivative legal status and therefore, all legal rights that flow between a grandparent and a grandchild, termination of parental rights does not erase *the social relationship* that has been established between the grandparent and grandchild prior to termination. That relationship could well hold significant implications bearing on the child’s best interests and permanency. Indeed, notwithstanding the termination of the parent’s rights, the juvenile court retains authority to make an order committing the juvenile to a grandparent as “a reputable citizen of good moral character,” or as “a suitable family” under §43-284, or to exercise its jurisdiction over adoption of the child by a grandparent under §43-247(10).

Building upon that fact, along with the fact that the juvenile court obviously deemed it to be in the child’s best interests for the grandparent to intervene in the first place, one must ask why the party status of a grandparent who has properly intervened should automatically cease upon the termination of

the rights of the parent. This “sudden-death” approach sells the child short by skirting a judicial determination of an issue that bears upon the child’s best interests. Would it not be better practice for the juvenile court to exercise its discretion to make an independent determination as to whether a grandparent who has properly intervened should continue involvement as a party upon the basis of permissive intervention, if such continued participation were shown to be in the child’s best interests?

This would seem to be particularly compelling in those situations where there *are* no prospects for the child’s adoption, or the grandparents themselves, or other family members connected to the grandparents present the best option for the child’s permanency. 

## Endnotes

- <sup>1</sup> *Koch v. Aupperle*, 274 Neb. 52, 737 N.W.2d 869 (2007)
- <sup>2</sup> *In re Interest of Destiny S.*, 263 Neb. 255,639 N.W. 2d 400 (2002); *Department of Banking v. Stenger*, 132 Neb. 576, 577, 272 N.W. 403, 404 (1937).
- <sup>3</sup> *In re Interest of Kayle C. & Kylee C.*, 253 Neb. 685, 574 N.W. 2d 473 (1998)
- <sup>4</sup> This author is aware of juvenile proceedings in which courts have exercised their discretion to grant permissive intervention to uncles, aunts, adult siblings, minor siblings appearing by and through a parent, and foster parents, based upon the interest established under the specific facts and circumstances of the case.
- <sup>5</sup> *In re Interest of Carlos R.*, A-09-089; *In re Interest of Crystal W.*, et. al., A-08-445.
- <sup>6</sup> *In re Interest of Dylan W.*, 8 Neb. App. 1039, 606 N.W.2d 847(2000)
- <sup>7</sup> Even in *Ditter*, while explaining that it is important to terminate the continuing relationship between the grandparents and the child so that the child can become free for adoption, the Nebraska Supreme Court acknowledged: “In so holding we do not in any way say or intimate that in appropriate circumstances and after appropriate legal consents and pursuant to proper court hearings and orders grandparents may not legally adopt their grandchildren.”