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Editorials

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Editorial: State Supreme Court should take care when defining parenting

The state Supreme Court's expanded definition of "de facto parent" is a powerful legal tool that should be wielded very carefully.

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NEARLY one-third of the child-rearing households in Washington look like something other than the ma-pa-two-kids-and-a-dog traditional nuclear families of old.

Social and legal conventions have stretched to accommodate them. For example, it took years to stretch the law to fully accept same-sex couples as married partners and equal parents.

Recently, the state Supreme Court, in a pair of little-noticed rulings, stretched the definition of parentage in ways both welcoming and potentially unsettling. Both 5-4 decisions broadened the court's own novel doctrine of "de facto parentage."

The court created this doctrine in the 2005 ruling *In re Parentage of L.B.* to allow the nonbiological mother in a long-term lesbian relationship to petition for full parental rights, and potentially for custody of a child she had co-raised for years. In an era before legal same-sex marriage, it was an equitable and courageous step by the court.

The rulings, both written by Justice Steven González and signed by Justices Susan Owens, Mary Fairhurst and Justice Pro Tem Tom Chambers, are more complicated.

In one, *In re Custody of A.F. J.*, the court awarded de facto parentage to the on-again-off-again lesbian partner, Mary Franklin, of a crack-addicted biological mother. Just months after their infant son was born, Franklin called Child Protective Services when she found a broken crack pipe, along with the baby, in her partner's bed. She became the boy's foster parent before seeking full custody.

In the second case, *In re Custody of B.M.H.*, the court allowed a stepfather, Michael Holt, to petition for de facto parentage for his ex-wife's son by another man, who had died. Holt played a strong and steady paternal role for the boy and sought custody when his ex-wife planned to take the boy far away, to start a new relationship.

At issue in these cases, and in the de facto parenting doctrine, is how much deference should be given to biology. In the 2005 case, the court crafted a narrow test, requiring a nonbiological parent to prove "a permanent, unequivocal, committed and responsible parent role." Expanding that test to include short-term partners and stepparents potentially undermines a biological parent's fundamental right.

But shared DNA does not assure a parent's fitness. The state routinely seeks extended family and family friends when trying to find suitable foster care or adoptive placement for a child.

Had the court denied Franklin, a nurse, she could have lost parenting rights to a boy she has raised for eight years.

A broader definition of de facto parentage is a powerful legal tool capable of accommodating today's elastic definition of family. But judges hearing these complicated cases should wield it with the utmost care.