



Factsheet: *Conover v. Conover* and De Facto Parenthood

What is *Conover v. Conover* about?

In 2009, Michael Conover, a transgender man, and his partner decided to have a child together. Michael's partner became pregnant through artificial insemination and gave birth to their child in 2010. Michael and his partner raised their child together for two years—but their relationship ended. After their breakup, the lower courts in Maryland held that Michael's partner could legally deny him visitation with their son because the courts in Maryland did not view a non-biological, non-adoptive parent like Michael as a legal parent of his child. At that time, Maryland did not recognize de facto parenthood. De facto parenthood gives legal recognition to a parent-child relationship when the parent lacks a biological or adoptive connection to the child. Maryland's refusal to recognize de facto parenthood made it nearly impossible for a non-biological or non-adoptive parent to obtain custody or visitation of their child when the biological or adoptive parent did not consent. FreeState Justice represented Michael in appealing the lower courts' decisions to Maryland's highest court, the Court of Appeals.

What was the outcome of *Conover v. Conover*?

On April 5, 2016, the Maryland Court of Appeals heard arguments for and against the legal recognition of de facto parenthood. On July 7, 2016, the Court unanimously held that de facto parents must be given legal recognition, meaning that children's relationships with their parents are entitled to legal protection—even if their parents are not parents by blood or adoption. A non-biological, non-adoptive parent who qualifies as a de facto parent now stands on equal footing with a biological or adoptive parent when it comes to visitation and custody of their child.

Who qualifies as a de facto parent?

To be a de facto parent, a person must be able to prove the following:

1. The biological or adoptive parent approved of and fostered the formation of a parental relationship between the child and non-adoptive/non-biological parent;
2. The non-adoptive/non-biological parent lived with the child;
3. The non-adoptive/non-biological parent assumed responsibility for the child's care and well-being, without the expectation of financial compensation; and
4. The non-adoptive/non-biological parent developed a long-lasting, bonded, dependent, parental relationship with the child.

What does this mean for LGBTQ+ parents in Maryland?

LGBTQ+ parents in Maryland now have legal standing to request and obtain visitation with or custody of their child, regardless of the existence of a biological or adoptive relationship. So long as the non-biological/non-adoptive parent can show the four requirements above, they have the same ability to seek child custody and visitation as biological/adoptive parents.



Does de facto parenthood fully secure legal recognition for LGBTQ+ families?

No. Although it is a very important legal protection for LGBTQ+ families, de facto parenthood does not protect all LGBTQ+ families, and may not provide full legal protection to all aspects of a parent-child relationship. For instance, if a couple chooses to conceive a child by artificial insemination but breaks up before the child is born, the non-biological/non-adoptive parent would not be able to demonstrate that they are a de facto parent of the child (because the test for de facto parenthood requires having lived with the child and having raised the child after the child's birth). And, the decision in *Conover* only addresses child custody and visitation, and only governs how those issues will be decided in Maryland—the decision does not establish whether a de facto parent is considered a full legal parent for other purposes, such as whether the de facto parent is legally obligated to support the child financially; whether the child will be able to access health insurance, Social Security, and other benefits as a beneficiary of the de facto parent; whether the child will inherit after the de facto parent's death; or whether the de facto parent's relationship with their child will be legally recognized in states other than Maryland.

Therefore, LGBTQ+ families should still take additional steps to ensure their family relationships will be legally recognized, such as seeking a judicial declaration of parentage or a second-parent adoption.

Is de facto parenthood limited to LGBTQ+ families?

No. The decision in *Conover* is particularly impactful for LGBTQ+ families because most LGBTQ+ families include at least one non-biological parent. However, step-parents in opposite-sex relationships, or other people who are not biological or adoptive parents but meet the requirements to be a de facto parent, could qualify as de facto parents.

How should LGBTQ+ parents protect their parental rights?

If you are a non-biological or non-adoptive parent, the recommended way to protect your rights as a parent is to obtain a judicial declaration of parentage or a second-parent adoption. If you would like more information or assistance regarding your rights as an LGBTQ+ parent, you can contact FreeState Justice.

- Website: <https://freestate-justice.org/need-help/>
- Phone: (410) 625-5428

This factsheet gives general information about the Conover v. Conover decision and its impact on LGBTQ+ families generally. It is not a substitute for legal advice from a lawyer about your particular situation. If you need specific legal advice about how the Conover decision and the recognition of de facto parenthood apply to you, please contact FreeState Justice for a legal intake, or contact another attorney familiar with LGBTQ+ family law matters.