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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



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FILED: 09/11/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

WARREN L., ) 1 CA-JV 12-0091  
)  
Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
CHRISTOPHER M., AMBER M., WARREN ) 103(G) Ariz.R.P. Juv.  
L., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
)  
)

Appeal from the Superior Court in Mohave County

Cause No. S8015AD201100056

The Honorable Richard Weiss, Judge

**AFFIRMED**

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Diane S. McCoy, Mohave County Appellate Defender Kingman  
Attorneys for Appellant/Father William L.

Matthew J. Smith, Mohave County Attorney's Office Kingman  
Attorneys for Appellees

Whitney & Whitney PLLC Kingman  
By Andraya Whitney  
Attorneys for Appellee Child

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**G O U L D**, Judge

¶1 Warren L. III ("Father") appeals the juvenile court's order terminating his parental rights to Warren L. IV ("Child").

Father argues that Petitioners, Amber M. ("Mother") and Christopher M. ("Stepfather"), failed to prove he abandoned Child by clear and convincing evidence and that the court erred in finding the severance was in Child's best interests. For the reasons set forth below, we affirm.

***Facts and Procedural Background***

¶2 Child was born in October 2007. Father was not present at the birth; he was sentenced to jail as a condition of his probation after pleading guilty to burglary charges. While in jail, Father was on work release, and occasionally Mother would take Father to work or he would visit Mother and Child after work before returning to the jail. Because Mother was a minor and Father was an adult, Father was not permitted to have contact with Mother as a condition of his probation and work release program. To avoid violating his work release and probation terms, Father would only visit Mother late at night after work or after his surveillance officer had come over to check on him. As a result, the Child was usually asleep during Father's visits.

¶3 Father was released from jail in December 2007. During this time period, Father bought Child presents and provided items such as diapers and baby wipes. He provided food a few times and saw Child once or twice a week from May 2008 to

August 2008. Toward the end of 2008, however, Father rarely visited Child.

¶4 Ultimately, Father's probation was revoked when he was convicted of a DUI on August 21, 2008. On December 9, 2008, Father was sentenced to 4.5 years in prison on the burglary charges. He remained incarcerated until March 9, 2012. After Father was sentenced in December, he did not provide any financial support for Child. At the beginning of his prison term, Father wrote Mother approximately five letters asking about Child; however, by late 2009, after the first year of Father's incarceration, Mother stopped hearing from him. Mother had no communication with Father in 2010.

¶5 Mother married Stepfather in August 2010. Before her marriage, Mother had been living with her parents. However, in September 2010, Mother and Stepfather moved to California. Mother did not tell Father that she was moving, but Mother's parents knew where she was living, and Mother did not direct them to keep this information from Father's family. After about a year, Mother and Stepfather moved back to Mohave Valley.

¶6 In July 2011, Mother and Stepfather petitioned to terminate Father's parental rights. Petitioners alleged Father had abandoned Child and had made no effort to maintain a normal parental relationship with Child since Child's birth. In

addition, Stepfather petitioned to adopt Child. Father contested both petitions and the juvenile court held a severance trial. At the trial, the court considered testimony of Mother, Father, and other witnesses, and a social study that recommended the court grant both the petition to terminate Father's parental rights and the petition to adopt. At the conclusion of the trial, the juvenile court found that Petitioners had carried their burden to show Father abandoned Child. The court held Father had failed to maintain a normal parental relationship with Child without just cause for a period greater than six months, Father had made minimal efforts to contact Child, and that severance was in Child's best interests. Father timely appealed.

#### ***Discussion***

¶7 On appeal, Father challenges the juvenile court's findings in support of severance. Father argues the court failed to consider his efforts at communication and support prior to being incarcerated. Father also argues Mother intentionally interfered with his relationship with Child when she stopped responding to his letters.

¶8 "We view the evidence in a severance case in the light most favorable to sustaining the juvenile court's findings." *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 234,

¶ 13, 256 P.3d 628, 631 (App. 2011). The juvenile court is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings; we will only reject the court's findings if no reasonable evidence supports them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002); *In re Appeal in Maricopa County, Juvenile Action No. JS-4130*, 132 Ariz. 486, 488, 647 P.2d 184, 186 (App. 1982) (“[T]he finding of the trier of fact should be sustained if the evidence furnishes reasonable or substantial support therefor.”).

¶ 19 Under Arizona Revised Statute (“A.R.S”) section 8-533(B)(1) abandonment is measured “not by a parent’s subjective intent, but by the parent’s conduct.” *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 18, 995 P.2d 682, 685 (2000). A court must examine whether “a parent has provided reasonable support, maintained regular contact, made more than minimal efforts to support and communicate with the child, and maintained a normal parental relationship.” *Id.* at 249-50, ¶ 18, 999 P.2d at 685-86. “Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.” A.R.S. § 8-531(1).

¶10 The juvenile court did not abuse its discretion in finding Father abandoned Child. Although Father may have initially made efforts to establish a parent-child relationship immediately following Child's birth, the record supports the court's finding that beginning in June 2010 Father ceased to provide any support and did not have any contact with Child. Mother testified Father would see Child and bought gifts and items, such as diapers and baby wipes, prior to his being sentenced to prison in December 2008. During the first year of his prison sentence, Father wrote letters to Mother a few times; however, Mother stopped hearing from Father by the end of 2009. Father testified he continued to write Mother letters until June 2010. However, Father admits that he did not provide any support for Child after he was sentenced to prison; specifically, he did not contribute any financial support for 2009, 2010, and 2011. Father's statement that he sent a Christmas card every year is evidence of only a minimal effort at best. See *In re Maricopa County Juvenile Action No. JS-6520*, 157 Ariz. 238, 242, 756 P.2d 335, 339 (App. 1988) (stating that the sum of father's visits with son - four times in the first year and once a year for the next two years - "does not demonstrate any participation by or presence of" the father in the child's life).

¶11 The evidence supports the juvenile court's implied finding that Mother did not, as Father contends, intentionally interfere with Father's relationship with Child. Initially, Mother wrote to Father with news about Child and sent pictures he colored. When Father was in jail and on work release, Mother brought Child with her when she drove Father to work so he could see his son. Although Mother moved to California for a period of time and eventually discontinued her efforts to communicate with Father and his family, the record does not indicate that Father or Father's family were unaware of Mother and Child's location. Furthermore, Father has the burden to "act persistently to establish the relationship however possible and . . . vigorously assert his legal rights to the extent necessary." *Michael J.*, 196 Ariz. at 250, ¶ 22, 995 P.2d at 686.

¶12 Father also challenges the juvenile court's finding that severance is in Child's best interests. In addition to finding one of the grounds for severance by clear and convincing evidence, the juvenile court must also find, by a preponderance of the evidence, that severance is in the best interests of the child. *In re Appeal in Maricopa County, Juvenile Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994).

¶13 The record supports the juvenile court's finding that terminating Father's parental rights serves Child's best interests. Child is tightly bonded to Mother, Stepfather, and his step-brother; and Stepfather is seeking to adopt Child. See *Juvenile Action No. JS-8490*, 179 Ariz. at 108, 876 P.2d at 1143 (stating that the child is well cared for and loved by the foster family she has lived with for six years so that the potential "benefit from a similar relationship with her natural father" is outweighed by "the risk of harm").

**Conclusion**

¶14 For the reasons above, we affirm the juvenile court's ruling terminating Father's parental rights to Child.

/S/  
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ANDREW W. GOULD, Judge

CONCURRING:

/S/  
\_\_\_\_\_  
JOHN C. GEMMILL, Presiding Judge

/S/  
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RANDALL M. HOWE, Judge