

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 10/10/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

PEDRO G. ) No. 1 CA-JV 13-0161  
)  
Appellant, ) Department S  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC, ) 103(G) Ariz. R.P. Juv.  
SECURITY, A.R., A.R., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JS12259

The Honorable Jay R. Adelman, Judge

**REVERSED AND REMANDED**

Denise L. Carroll  
Attorney for Appellant

Scottsdale

Thomas C. Horne, Arizona Attorney General Phoenix  
By Nicholas Chapman-Hushek, Assistant Attorney General  
Attorneys for Appellees

**J O H N S E N**, Chief Judge

¶1 Pedro G. ("Father") appeals the superior court's order terminating his parental rights to his two children. We accept the confession of error by the petitioner, the Arizona

Department of Economic Security ("ADES"), and reverse the order of termination.

¶12 Father is incarcerated and last saw his children in person two years ago. While in prison, however, he has maintained regular contact with his children, calling them once or twice a week and sending them letters, cards and artwork. The superior court terminated his parental rights on the ground of abandonment, pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (2013).<sup>1</sup> The statute defines "abandonment" to mean

the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child.

A.R.S. § 8-531(1) (2013).

¶13 Our supreme court has held that "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). ADES confesses error, acknowledging the record demonstrates that Father "supervised and regularly contacted the children," and that although he "did not financially support the children while in

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<sup>1</sup> Absent material revision after the relevant date, we cite a statute's current version.

prison, the abandonment ground cannot stand alone on that fact." See *Pima County Severance Action No. S-1607*, 147 Ariz. 237, 239, 709 P.2d 871, 873 (1985).

¶4 We agree the record does not contain evidence sufficient to support a finding by clear and convincing evidence that Father abandoned his children pursuant to A.R.S. § 8-533(B)(1). See *Michael J.*, 196 Ariz. at 249, 995 P.2d at 685 (clear and convincing evidence required to support termination of parental rights).

¶5 Accordingly, we reverse the superior court's order.<sup>2</sup>

\_\_\_\_\_/S/\_\_\_\_\_  
DIANE M. JOHNSEN, CHIEF JUDGE

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
MARGARET H. DOWNIE, JUDGE

\_\_\_\_\_/S/\_\_\_\_\_  
KENT E. CATTANI, JUDGE

<sup>2</sup> We need not address Father's arguments on appeal that he was deprived of due process when trial went forward in his absence and that termination of his rights is not in the children's best interests.