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); Ariz. R. Crim. P. 31.24

DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ROBERT R., MARGARET R., Appellants,	No. 1 CA-JV 10-0065
v.	DEPARTMENT A
EDWARD C., Appellee.	**MEMORANDUM DECISION** (Not for Publication - 103(G) Ariz. R.P. Juv. Ct.; Rule 28 ARCAP)

Appeal from the Superior Court in Yuma County

Cause No. J-09-023

The Honorable Kathryn E. Stocking-Tate, Judge

AFFIRMED

Mary Katherine Boyte, P.C. — Yuma
Attorney for Appellant

Law Office of Jerrold F. Shelley, P.C. — Yuma
By Jerrold F. Shelley
Attorneys for Appellee

D O W N I E, Judge

¶1 Robert R. and Margaret R. ("appellants") appeal from the denial of their petition to terminate the parental rights of Edward C. ("father"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 Father and R.M., who were both on probation and registered sex offenders, met at a twelve-step meeting and were later members of the same sex offender treatment group.[2] They secretly maintained an intimate relationship for four years. R.M. became pregnant and went to prison in 2004. She asked appellants--her brother and sister-in-law--to become her unborn child's guardians.

¶3 Father, who was also incarcerated prior to the child's birth, initially would not consent to the guardianship. After appellants explained that they wanted a "temporary guardianship" so CPS would not become involved, father's concern that his rights were being taken away was eased, and he gave his "cautious signature" consenting to the guardianship. The child was born September 10, 2004. The birth certificate listed no father, but R.M. named the boy after father "as a junior."

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[1] We view the facts in the light most favorable to affirming the juvenile court's findings. *Maricopa County Juv. Action No. JS-8490,* 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994).

[2] R.M. is not a party to this appeal; we include references to her only as necessary to develop the relevant issues.

Appellants took physical custody of the child three days after his birth.

¶4 While incarcerated, father sent letters, cards, and poems to the child and appellants. Appellants never responded. In one letter, father asked appellants to allow the child to visit him in prison. Father, however, never completed necessary paperwork to add the child to his visitor list. During father's prison term, the child occasionally saw his paternal relatives.

¶5 Father was released from prison in June 2006. His terms of probation prohibited contact with his son or appellants. Father participated in sex offender treatment; his "primary concern" in individual sessions was reunification with his son. Father's mother and brother attended some of the treatment sessions and discussed how the family might reach out to appellants to "facilitate the child's involvement with his paternal extended family."

¶6 At some point after his release from prison, father contacted legal aid about pursuing "visitation rights" and ensuring that his name was on the birth certificate. In 2007, father received a copy of the birth certificate from R.M. and saw that he was not listed. Father signed an "acknowledgment" to add his name and returned it to R.M, believing she would "take care of it."

¶7 In January 2008, father completed sex offender treatment. In February, his probation was terminated, and the prohibition against contact with the child was lifted. In the summer of 2008, father contacted appellants and asked to see his son. Father's brother also wrote to appellants, explaining father had completed probation and that there was no legal impediment to visitation. In October, father called appellants, asking to "reestablish ties" with his son. Appellants said they would consider father's request and get back with him, but they did not do so. Father called appellants approximately ten times. In December 2008, Father threatened legal action.

¶8 The next month, appellants filed a petition to terminate father's parental rights based on abandonment. Father responded in opposition. Appellants also filed for *in loco parentis* custody and sought an order of temporary custody. Father objected and filed a cross-motion for custody. At a March 2009 hearing, the court awarded appellants temporary custody. Father did not object and dismissed his cross-petition.[3] In April, Father requested *pendente lite* parenting time, which appellants opposed.

¶9 The court conducted a two-day severance trial in January 2010. In a written ruling filed February 19, 2010, the

[3] Father also advised the court he had filed a separate paternity action. An order of paternity was issued on June 1, 2009, naming father the "natural and biological father."

court denied the severance petition. Appellants timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

DISCUSSION

1. Statutory Grounds for Severance

¶10 The right to custody of one's children is fundamental, but not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.,* 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). Termination of parental rights "is a serious matter and courts should bend over backwards, if possible, to maintain the natural ties of birth." *Anonymous v. Anonymous,* 25 Ariz. App. 10, 11, 540 P.2d 741, 742 (1975). To justify severance, "the trial court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child." *Michael J.,* 196 Ariz. at 249, ¶ 12, 995 P.2d at 685 (citing A.R.S. § 8-533(B)). Clear and convincing evidence is "proof that will produce in the mind of the trier of facts a firm belief or conviction as to the issue sought to be proved." *State v. Canez,* 202 Ariz. 133, 156, ¶ 76, 42 P.3d 564, 587 (2002) (quoting *State v. Turrentine,* 152 Ariz. 61, 68, 730 P.2d 238, 245 (App. 1986)).

¶11 Appellants alleged only one statutory basis for terminating Father's parental rights: abandonment. Our review

is thus confined to the juvenile court's determination that appellants failed to prove abandonment by clear and convincing evidence. This appeal neither involves nor disturbs the existing order of the superior court granting *in loco parentis* custody of the child to appellants. Similarly, we express no opinion about the nature and degree of contact that Father should be allowed to have with the child, if any.

¶12 "Abandonment" is defined as:

> [T]he 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. 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) (2007). What constitutes reasonable support, regular contact, and normal supervision varies from case to case, and abandonment is a question of fact to be resolved by the juvenile court. *Michael J.,* 196 Ariz. at 250, ¶ 20, 995 P.2d at 686. We view the evidence in the light most favorable to affirming that court's findings, *see id.,* recognizing that, "as the trier of fact in a termination proceeding," a juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.,* 209

Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004) (citation and quotation omitted).

¶13 Imprisonment, in and of itself, does not warrant severance on the basis of abandonment. *Michael J.,* 196 Ariz. at 250, ¶ 22, 995 P.2d at 686. On the other hand, incarceration is not a defense and does not justify a parent's "failure to make more than minimal efforts to support and communicate with" a child. *Id.* at ¶ 21. "When 'circumstances prevent the . . . father from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary.'" *Id.* at ¶ 22 (citation omitted).

¶14 Appellants claim that the juvenile court erroneously focused on father's subjective intentions rather than his actual behaviors. *See, e.g., id.* at 249, ¶ 18, 995 P.2d at 685 (abandonment is not measured by a parent's subjective intent, but by a parent's conduct). The record, however, does not support this claim. Indeed, the juvenile court expressly recognized that "[t]he message sent to parents from the Court is: 'do something, because conduct speaks louder than words or subjective intent.'"

¶15 In its lengthy written ruling, the juvenile court applied the applicable legal standards to the facts that it

found from the often conflicting and vague evidence presented, stating, in pertinent part:

> Prior to February 2008, [father's] incarceration and the terms of his probation prohibited him from having contact with [appellants] and [the child]. . . . While incarcerated, [father] wrote poems for [the child] and sent them to [appellants] in an attempt to keep in contact. After his release from prison and termination of probation, [father] made several attempts to contact [appellants] to no avail. [Father] also sought advice from Dr. [H.] about how to best initiate contact with [the child] that would be as least disruptive to [the child], and presumably, the [appellants].
>
> . . . [Father] has made a sincere effort to initiate a parental relationship with his son, while attempting to mitigate the confusion to [the child] and disruption of [appellants'] household.[4]

¶16 Father admittedly could have taken additional steps to "vigorously assert his legal rights," including registering with the putative father registry, *see* A.R.S. § 8-106.01(A), (B) (2007), filing a prompt paternity action, seeking legal counsel at an earlier point in time, providing at least token financial support, and arranging for prison visitation.[5] How to weigh

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[4] We agree with appellants that the ruling erroneously states that they never requested child support. In fact, appellants requested support from the "natural parents" in their *in loco parentis* petition.

[5] Father testified he asked his probation officer "12 to 15" times to change the terms of probation to allow him to have supervised contact with his son and to send financial support, but his requests were denied. Moreover, the record suggests that, even if father had diligently pursued visitation logistics

father's actions and inactions, though, is the province of the juvenile court.[6] Even if we might have weighed the evidence differently, we cannot say that the juvenile court lacked any reasonable basis for finding that father acted "persistently" and "vigorously" under the circumstances. *Michael J.,* 196 Ariz. at 250, ¶ 22, 995 P.2d at 686. This is especially true given its finding that father balanced his "sincere effort to initiate a parental relationship" against "mitigat[ing] the confusion to [the child] and disruption of [appellants'] household."

2. Probation Records

¶17 Finally, appellants claim the juvenile court erred by refusing "to issue the court orders necessary for Appellants to review [father's] probation file . . . then allowed [father] to pick and choose the records he wished to admit" at the severance hearing. We decline to address this contention because appellants provide no legal argument or legal authority supporting it. A party must present significant arguments, set forth his or her position on the issues raised, and include citations to relevant authorities, statutes, and portions of the

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from his end, appellants would not have allowed the child to visit him in prison.

[6] We note that, faced with conflicting testimony, the juvenile court at times adopted father's version of events in its findings. "[T]he credibility of a witness is for the trier of fact not an appellate court." *State v. Gallagher,* 169 Ariz. 202, 203, 818 P.2d 187, 188 (App. 1991) (citation omitted).

record. *See* ARCAP 13(a)(6). The failure to present an argument in this manner usually constitutes abandonment and waiver of that issue. *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004) (citation omitted). *See also Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) (holding appellate courts "will not consider argument posited without authority.") (citation omitted).

CONCLUSION

¶18 For the foregoing reasons, we affirm the judgment of the juvenile court. Father cites no legal basis for an attorneys' fee award, and we therefore deny his request for fees. *See* ARCAP Rule 21(c)(1); *Ezell v. Quon,* 585 Ariz. Adv. Rep. 40, ¶ 31, 233 P.3d 645 (2010).

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
PETER B. SWANN, Presiding Judge

/s/
LAWRENCE F. WINTHROP, Judge