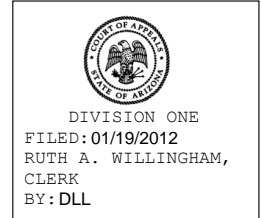


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

BRIAN M. , ) No. 1 CA-JV 11-0140  
 )  
 Appellant, ) DEPARTMENT A  
 )  
 v. ) MEMORANDUM DECISION  
 )  
 ARIZONA DEPARTMENT OF ECONOMIC ) (Not for Publication -  
 SECURITY, and SEAN D., ) Ariz. R.P. Juv. Ct. 103(G);  
 ) ARCAP 28)  
 Appellees. )  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. JD507774

The Honorable Peter A. Thompson, Judge

**AFFIRMED**

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Robert D. Rosanelli, Attorney at Law Phoenix  
By Robert D. Rosanelli  
Attorney for Appellant

Thomas C. Horne, Attorney General Phoenix  
By Amanda Holguin, Assistant Attorney General  
Attorneys for Appellees

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**T I M M E R**, Judge

¶1 Brian M. ("Father") appeals the juvenile court's order terminating his parental rights to Sean D. Father argues the

court erred because the evidence did not support its finding of abandonment under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (Supp. 2010). We disagree and therefore affirm.

¶2 From September 2008 through March 2009, Child Protective Services ("CPS") received several complaints that Father had physically abused and neglected then-eight-year-old Sean. According to reports, Sean had unexplained bruising, and Father and his live-in girlfriend were using methamphetamine and had engaged in domestic violence in front of Sean and the couple's infant son. The Arizona Department of Economic Security ("ADES") offered the family services, but incidents of drug use and domestic violence continued.

¶3 In early April 2009, Sean reported that Father became angry that Sean had communicated with CPS, called him a derogatory name, and sent him to live with Father's parents. A few days later, ADES took custody of Sean and placed him with his maternal grandparents, where he has remained. When Sean expressed fear of Father, ADES disallowed supervised visitation; the ADES family reunification plan, however, presented Father a pathway toward visitation contingent on progressive participation in individual sessions with Sean's therapist, joint therapeutic visits, and finally supervised visitation. Approximately two years later, after Father had failed to progress to joint therapy with Sean, ADES filed a petition for

termination of Father's parental rights on the ground of abandonment.

¶4 The court held a contested severance hearing on June 9, 2011, and then terminated Father's parental rights to Sean, finding that Father had abandoned Sean and that severance would be in Sean's best interests. Father timely appealed.

#### DISCUSSION

¶5 The juvenile court may terminate the parent-child relationship only upon finding that clear and convincing evidence demonstrates at least one statutory ground for severance and that a preponderance of the evidence shows severance is in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We will accept the juvenile court's findings unless those findings are clearly erroneous, *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 190, ¶ 25, 971 P.2d 1046, 1051 (App. 1999), and we will affirm a severance order if reasonable evidence supports the court's factual findings. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). Further, we view the evidence in the light most favorable to affirming the judgment. *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994).

¶16 Pursuant to A.R.S. § 8-533(B)(1), the juvenile court is authorized to terminate a parent's rights upon a finding "[t]hat the parent has abandoned the child." Under A.R.S. § 8-531(1) (2007), "abandonment" is

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. 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.

Abandonment is measured objectively by examining the parent's conduct, not the parent's subjective intent. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249-50, ¶ 18, 995 P.2d 682, 685-86 (2000); see *Anonymous v. Anonymous*, 25 Ariz. App. 10, 12, 540 P.2d 741, 743 (1975). The key consideration for the court when deciding whether a parent has abandoned a child is whether that parent, under the unique circumstances of the case, "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." *Michael J.*, 196 Ariz. at 249-50, ¶¶ 18, 20, 995 P.2d at 685-86; A.R.S. § 8-531(1).

¶17 Father does not dispute that severance is in Sean's best interests. Rather, Father argues the court improperly

terminated his parental rights because insufficient evidence supports the finding that he abandoned Sean. Specifically, he contends he did not abandon Sean because, despite ADES' interruption of Father's relationship with Sean by removing him from Father's care and denying visitation, Father maintained sufficient contact via telephone, e-mail, and an online social network. We disagree.

¶8 First, as the juvenile court recognized, although ADES initially prevented Father from visiting Sean because of Sean's fear, ADES provided Father with a pathway for resuming in-person contact and achieving reunification, but he failed to take it. Father admitted he knew the progressive steps necessary to resume in-person contact with Sean: individual therapy, joint therapeutic visits, then supervised visitation. Father attended some sessions with Sean's therapist from August until November 2009, when Sean began to see a new counselor. Despite consistent written reminders from the ADES case worker, Father failed to attend any sessions after that time. Father does not explain his failure to contact Sean's second therapist, and his claim that he was "play[ing] phone tag" does not adequately explain his failure to attend any appointment with Sean's third and current counselor over the course of the next year. As the court found, "[s]ome initial delay can be attributed to a change in counselor . . . . [but] that single setback does not account

for the continued failure to act despite numerous written and verbal reminders and encouragements to do so."

¶19 "[W]hen 'circumstances prevent the . . . father from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship however possible . . . .' The message to a parent remains . . . 'do something, because conduct speaks louder than words or subjective intent.'" *Michael J.*, 196 Ariz. at 250, ¶ 22, 995 P.2d at 686 (first alteration in original) (citation omitted). Father failed to "do something" to reestablish in-person contact with Sean and, as a result, Father never progressed to joint therapeutic sessions with Sean. Thus, Father never resumed normal, in-person contact with Sean, seeing him only once, by happenstance, since mid-2009. Given this evidence, the court did not err by finding Father bore fault for failing to maintain regular contact with Sean and foster a normal parent-child relationship.

¶10 Second, the evidence supports the juvenile court's finding that Father's telephonic and electronic communications with Sean were too sporadic and the gaps between them too great to qualify as regular contact, constituting "a minimal effort at best." See A.R.S. § 8-531(1) (defining abandonment as "failure . . . to maintain regular contact" and "includes a judicial finding that a parent has made only minimal efforts to support

