

NOTICE: NOT FOR PUBLICATION.  
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

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

---

KRISTOPHER B., *Appellant*,

*v.*

LORI B., N.B., *Appellees*.

No. 1 CA-JV 13-0162  
FILED 12-10-2013

---

Appeal from the Superior Court in Maricopa County  
No. JS507260  
The Honorable James P. Beene, Judge

**AFFIRMED**

---

COUNSEL

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

*Counsel for Appellant*

Lori B., Mesa

*Appellee In Propria Persona*

**MEMORANDUM DECISION**

Judge Michael J. Brown delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Donn Kessler joined.

---

**B R O W N**, Judge:

¶1 Kristopher B. (“Father”) appeals the juvenile court’s order terminating his parental rights to his daughter (“the child”). For the following reasons, we affirm the trial court’s severance order.

**BACKGROUND**

¶2 Father and Lori B. (“Mother”) are the unmarried parents of the child, who was born in 2005. Father was present at the birth, and he and Mother and the child lived in California together for about two months before moving to Arizona, where they lived with Mother’s relatives for three months. Father and Mother ended their relationship in 2006. Afterwards, Father remained in Arizona for approximately two and a half years, visiting the child every two weeks for about eighteen months.

¶3 Father’s visitation with the child ended in 2008 when Mother obtained an order of protection arising out of an incident at an Easter church service.<sup>1</sup> On that day, Mother had arranged for Father to visit with the child. However, when Father did not arrive on time, Mother decided to take the child to an Easter service at her church. Father then came to Mother’s church looking for her and “screaming” her name. When Mother prepared to leave, Father attempted to pursue her. From this incident, Mother was able to obtain the order of protection, which prohibited Father from contacting her or the child.

¶4 Roughly a year later, Father left Arizona to assist his ailing mother in California. During the same year, Mother married Christopher

---

<sup>1</sup> Father acknowledges that the protective order is not part of the record on appeal. Despite conflicting testimony on whether the child was included in the protective order, the court found that she was covered by the order.

KRISTOPHER B. v. LORI B., N.B.  
Decision of the Court

P. In September 2012, Mother filed a petition seeking to terminate Father's parental rights based on abandonment of the child. Following a contested severance hearing, the court found that "Father ha[d] not seen or visited with the minor child in four and one-half (4.5) years, . . . Father did not attempt to obtain legal custody or parenting time with the minor child," nor did he "attempt to locate Mother or the minor child by contacting [Mother's relatives]." The court therefore concluded that due to Father's lack of contact and failure to financially provide for the child since 2008, Mother had proven by clear and convincing evidence that Father abandoned the child. The court also determined it was in the best interests of the child to sever Father's parental rights. Father timely appealed.

### DISCUSSION

¶5 We review an order terminating a parent's relationship with his or her child for an abuse of discretion and will affirm if it is supported by sufficient evidence in the record. *Kenneth B. v. Tina B.*, 226 Ariz. 33, 36, ¶ 12, 243 P.3d 636, 639 (App. 2010). "A juvenile court as the trier of fact in a termination proceeding 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, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). Therefore, we view the evidence in the light most favorable to sustaining the juvenile court's ruling. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000).

¶6 The juvenile court may terminate a parent-child relationship if it finds the petitioner has established one of the statutory grounds by clear and convincing evidence. Ariz. Rev. Stat. ("A.R.S.") § 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 281-82, ¶ 7, 110 P.3d 1013, 1015-16 (2005). The court must also find by a preponderance of the evidence that termination would be in the child's best interests. *Kent K.*, 210 Ariz. at 288, ¶ 41, 110 P.3d at 1022 (interpreting A.R.S. § 8-533(B)).

¶7 To prevail on her severance petition, Mother was required to prove that Father abandoned the child under A.R.S. § 8-533(B)(1), which defines "abandonment" as

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*

KRISTOPHER B. v. LORI B., N.B.

Decision of the Court

*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) (emphasis added). “[A]bandonment is measured not by a parent’s subjective intent, but by the parent’s conduct[.]” *Michael J.*, 196 Ariz. at 249, ¶ 18, 995 P.2d at 685. Additionally, in determining whether the abandonment standard has been met, “a court should consider each of the stated factors—whether a parent has provided reasonable support, maintain[ed] regular contact with the child and provided normal supervision.” *Kenneth B.*, 226 Ariz. at 37, ¶ 18, 243 P.3d at 640 (quoting A.R.S. § 8-531(1) (internal quotations omitted)). 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.” *Michael J.*, 196 Ariz. at 250, ¶ 22, 995 P.2d at 686 (quotation omitted). “Nonsupport alone is not enough to establish abandonment.” *In re Yuma County Juv. Ct. Action No. J-87-119*, 161 Ariz. 537, 539, 779 P.2d 1276, 1278 (App. 1989).

¶8 Here, although Father testified he sent “MoneyGrams” to Mother, she denied receiving any financial support from Father and he failed to provide any documentation to the contrary. More importantly, despite the fact that Father lived with the child during the first six months of her life, and then visited her sporadically for the next two to three years, he admitted having no contact with her for the past four and a half years. Father testified that his reason for never enforcing his parental rights was because of the order of protection filed against him and that he did not want to bring any “confrontation” in his daughter’s life. However, despite Father’s misunderstanding of the protection order, it expired in 2009. Father was free to initiate contact with Mother and the child after that time but never did. Father claimed he attempted to contact mother several times in 2010 through phone numbers, email, social media, and mutual friends, but was unable to get in touch with her. Mother provided evidence that her contact information has not changed and Father could have contacted her to arrange for visitation.

¶9 In sum, because “abandonment is measured not by a parent’s subjective intent, but by the parent’s conduct,” *Michael J.*, 196 Ariz. at 249, ¶ 18, 995 P.2d at 685, we conclude there was sufficient evidence to support the juvenile court’s finding that Father abandoned the child.

KRISTOPHER B. v. LORI B., N.B.  
Decision of the Court

¶10 In addition to abandonment, the court must also determine whether severance would be in the child's best interests. *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 4, 804 P.2d 730, 733 (1990). In doing so, "the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the parental relationship." *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 288, ¶ 26, 257 P.3d 1162, 1168 (App. 2011) (citation omitted). In making this determination, the court may consider evidence that the child is adoptable or that an existing placement is meeting the needs of the child. See *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004).

¶11 The juvenile court in this case determined that severance would be in the child's best interests, reasoning as follows:

Mother and [Christopher P.] provide the minor child with a stable, safe and loving living environment. The minor child has accepted [Christopher P.] as her father and has a strong and close bond with him. [Christopher P.] would like to adopt the child once she is legally free for adoption. Conversely, the minor child does not have a relationship with Father and has not had contact with him since 2008.

These findings are supported by the record. Christopher P. has been substantially involved in the child's life since she was a year and a half old and the child recognizes him as her father. Christopher P. is willing to adopt the child and intends to continue to provide her with a safe, stable, and loving environment she currently enjoys. Accordingly, Mother presented sufficient evidence to sustain her burden of showing that severance is in the best interests of the child.

### CONCLUSION

¶12 We affirm the juvenile court's order terminating Father's parental rights to the child.



Ruth A. Willingham - Clerk of the Court  
FILED: mjt