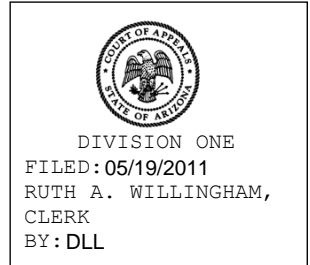


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



RUBEN C., ) 1 CA-JV 10-0234  
)  
Appellant, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
DEBRA L., RUBEN C., XAVIER P., ) 103(G) Ariz.R.P. Juv.  
) Ct.; Rule 28 ARCAP)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JS11510

The Honorable Colleen McNally, Judge

**AFFIRMED**

Robert D. Rosanelli  
Attorney for Appellant

Phoenix

**O R O Z C O**, Judge

¶1 Ruben C. (Father) appeals the juvenile court's order terminating his parental rights to his two minor children, Ruben C. and Xavier P., with Debra L. (Mother).

**FACTS AND PROCEDURAL HISTORY**

¶2 Ruben C. was born in 2001. Father and Mother lived together after Ruben C.'s birth for approximately six months

until Father was arrested and incarcerated for three and one half years. During his incarceration, Mother would visit Father and bring Ruben C. to visit every weekend.

¶13 In 2003, while incarcerated, Father and Mother were married at the Lewis prison. Father was released in April 2005 and lived with Mother briefly. During this time, Mother became pregnant with Xavier P. However, within six weeks of his release, Father returned to prison for a parole violation.

¶14 Father was incarcerated at the time Xavier P. was born in January 2006. Father and Mother divorced prior to Father's release from prison in 2008. After being released, Father "was caught driving again on a suspended license" and as a result, was found to be in violation of the terms of his parole for having police contact. Father returned to prison until his release in April 2009. In August 2009, Father was again incarcerated and remains in prison with an early release date in June 2013.

¶15 After Mother and Father's divorce, Father met resistance when attempting to visit the children. Mother acknowledged she resisted allowing Father visitation because Father would visit infrequently, without notice and would stop by the house for five minutes at a time just to say "hi." During these brief visits, Father would make promises to the children to take them to the zoo, take Ruben C. to meet his half-brother, and each time Ruben C. would be left waiting when Father did not

show, as promised. Mother witnessed a negative emotional impact on Ruben C. following the brief visits by Father, including sadness, anger and frustration due to Father's absences and inconsistencies. As a result of these negative effects Mother told Father that he should not send cards, visit the children, or make the children any promises.

¶16 At the severance hearing, Mother testified that the only financial support provided by Father was twenty dollars, which he gave directly to the children to split. She also testified Father did not give birthday gifts to the children. While Father would send Ruben C. a birthday card each year, Xavier P. did not receive any cards until the current lawsuit was filed. Once Mother filed her petition to terminate his parental rights, Father wrote two letters to the children, which Mother did not give to them. Mother stated that Father "would never call and ask for the boys . . . [but] would always ask for [Mother] and need money from [Mother], or need something from [Mother], but it was never [the children]".

¶17 In March 2010, Mother filed a petition to terminate Father's parent-child relationship alleging abandonment. Mother also alleged Father made minimal efforts to communicate with the children, he had prior felony convictions, and it was in the best interest of the children that Father's parental rights be terminated. At the time of the severance hearing Mother had been

married to her husband, Santiago, for almost one year. Santiago provided financial support for the children, would assist the children with their sports, and also disciplined the children. Mother testified the children saw Santiago as "Dad," and Santiago wanted to adopt the children. After the conclusion of the severance hearing, the juvenile court issued its findings of fact, conclusions of law and ordered termination of Father's parental rights.

¶18 Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 and - 2101.B (2003).

#### DISCUSSION

¶19 On appeal, Father raises the single issue of whether the court erred in finding he had abandoned the children.<sup>1</sup>

¶10 We accept a juvenile court's findings unless they are clearly erroneous. *Maricopa Cnty. Juv. Action No. JS-4374*, 137 Ariz. 19, 21, 667 P.2d 1345, 1347 (App. 1983). The juvenile court's findings will be upheld on appeal unless they are not supported by the evidence. *Maricopa Cnty. Juv. Action No. A-25525*, 136 Ariz. 528, 533, 667 P.2d 228, 233 (App. 1983). A

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<sup>1</sup> Mother did not file an answering brief in response to this appeal, which we may regard as a confession of error. We decline to do so, on this record. See *Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982) ("Although we may regard [the] failure to respond as a confession of reversible error, we are not required to do so.").

juvenile court has jurisdiction to terminate parental rights by finding the parent has abandoned the parental relationship. A.R.S. §§ 8-532.A (2007) and -533.B.1 (Supp. 2010).<sup>2</sup>

¶11 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). Under the statute, the question is “whether a parent has provided reasonable support, maintained regular conduct, made more than minimal efforts to support and communicate with the child, and maintained a normal parental relationship.” *Michael J. v. Ariz. Dept. of Econ. Sec.*, 196 Ariz. 246, 249-50, ¶ 18, 995 P.2d 682, 685-86 (2000). “Imprisonment, per se, neither ‘provide[s] a legal defense to a claim of abandonment’ nor alone justifies severance on the grounds of abandonment.” *Id.* at 250, ¶ 22, 995 P.2d at 686 (quoting *Pima Cnty. Juv. Action No. S-624*, 126 Ariz. 488, 490, 616 P.2d 948, 950 (App. 1980)). Instead, imprisonment is just

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<sup>2</sup> We cite to the current version of the applicable statutes when no revisions material to this decision have since occurred.

one factor to consider when evaluating a parent's ability to parent. *Id.*

¶12 The juvenile court made several findings of fact in regards to Father's ability to parent, including the fact that Father had "not been available to the children to establish a normal parent-child relationship" due to being incarcerated for most of the children's lives; Father did not regularly visit with the children during those times he was not incarcerated; Father and Xavier P. never developed a relationship; and at the time of the severance hearing, Father had not seen the children for over a year.

¶13 The juvenile court's findings are supported by the evidence and therefore we affirm its decision.

#### CONCLUSION

¶14 For the above mentioned reasons we affirm the juvenile court's order terminating Father's parental rights.

/S/

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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PATRICIA K. NORRIS, Presiding Judge

/S/

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JOHN C. GEMMILL, Judge