

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

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GABRIEL O.,  
*Appellant,*

*v.*

JESSICA J. AND A.O.,  
*Appellees.*

No. 2 CA-JV 2021-0110  
Filed December 13, 2021

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);  
Ariz. R. P. Juv. Ct. 103(G).

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Appeal from the Superior Court in Graham County  
No. SV202100002  
The Honorable Travis W. Ragland, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

E.M. Hale Law, Lakeside  
By Elizabeth M. Hale  
*Counsel for Appellant*

Law Office of Jeremy J. Waite P.C., Safford  
By Jeremy J. Waite  
*Counsel for Appellee Jessica J.*

Rebecca R. Johnson, Safford  
*Counsel for Minor*

**MEMORANDUM DECISION**

Presiding Judge Eppich authored the decision of the Court, in which Chief Judge Vásquez and Judge Brearcliffe concurred.

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E P P I C H, Presiding Judge:

¶1 Gabriel O. appeals from the juvenile court’s order in a private severance action terminating his parental rights to his daughter, A.O., born June 2008, on the ground of abandonment under A.R.S. § 8-533(B)(1). He argues his conduct did not constitute abandonment and that severance was not in A.O.’s best interests. We affirm.

¶2 To sever a parent’s rights, the juvenile court must find clear and convincing evidence establishing at least one statutory ground for termination and a preponderance of the evidence that terminating the parent’s rights is in the child’s best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41 (2005); *see also* A.R.S. § 8-863(B). We do not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to its factual findings because it “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, 14 (App. 2004). If the order is not clearly erroneous, we will affirm if the findings upon which it is based are supported by reasonable evidence. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002). We view that evidence in the light most favorable to upholding the ruling. *See Christy C. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007).

¶3 Gabriel did not have regular contact with A.O. after she was approximately three years old, leaving her in the care of her mother, Jessica J. He renewed contact with her when she was eight or nine years old, ultimately formalizing parenting time and child support via a court order in 2018. In August 2019, while A.O. was visiting Gabriel, he called Jessica to inform her that A.O. had inappropriate material on her phone, that he had confiscated it, and that he would not return A.O. to Jessica’s home per their usual arrangement. Accompanied by a deputy sheriff, Jessica retrieved A.O. from Gabriel’s home. A.O. told the deputy that, earlier that day, Gabriel had been drinking and driving with her and Gabriel’s other children in the vehicle. She also described incidents in which Gabriel had

GABRIEL O. v. JESSICA J.  
Decision of the Court

abused his girlfriend. Gabriel later denied the allegations, and no charges were filed.

¶4 Jessica, however, demanded that Gabriel and A.O. attend counseling together, threatening to seek an order of protection if Gabriel failed to participate. Although Gabriel initially participated, he later cut off contact with A.O. Gabriel continued to pay child support but did not initiate or respond to calls or texts from her and ignored her during several encounters in public. He has sent no cards or presents for Christmas or A.O.'s birthday since August 2019.

¶5 In January 2021, Jessica filed a petition to terminate Gabriel's parental rights, alleging he had abandoned A.O. after "an incident in August 2019 where [he] was believed to have [been] driving with [A.O.] while impaired" by having "virtually no contact with" her, failing to pay child support "for several months," and failing to provide "other means of support." At a termination hearing in August 2021, Gabriel claimed he had cut off contact with A.O. on the advice of an attorney due to the allegations of abuse and driving under the influence. Gabriel testified he had planned to resume his relationship with A.O. after she became more mature. Jessica testified at the hearing that Gabriel's behavior left A.O. feeling "unloved" and that A.O. was in counseling. Jessica's husband testified he would like to adopt A.O., although Jessica noted A.O. was "back and forth" about whether she wished to be adopted despite her good relationship with Jessica's husband.

¶6 The juvenile court terminated Gabriel's parental rights to A.O., finding he had abandoned A.O. by failing to provide support or "maintain a normal parent child relationship, all without good cause." It further found termination in A.O.'s best interests, citing her adoptability and that Jessica's husband wished to adopt her, but noting A.O. "has gone back and forth the regarding whether she wants to be adopted." This appeal followed.

¶7 On appeal, Gabriel first argues his conduct does not constitute abandonment and, instead, characterizes his conduct as a "perhaps misguided . . . attempt to restore harmony in the relationship." He contends, as we understand his argument, that his intent to reunite with A.O., coupled with his having continued to pay child support, precludes the court from finding abandonment.

¶8 A parent abandons a child if the parent failed "to provide reasonable support and to maintain regular contact with the child,

GABRIEL O. v. JESSICA J.  
Decision of the Court

including providing normal supervision” and “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). “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.” *Id.* “[A]bandonment 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, ¶ 18 (2000), and “depend[s] on the circumstances of the particular case,” *Kenneth B. v. Tina B.*, 226 Ariz. 33, ¶ 19 (App. 2010).

¶9 Gabriel has not established on appeal that the juvenile court erred. He has cited no authority suggesting that a court may not find abandonment merely because a parent has continued to make obligatory child-support payments. *Cf. Kenneth B.*, 226 Ariz. 33, ¶ 18 (“minimal efforts” finding not required for abandonment finding; court “should consider each of the stated factors”). Nor has he cited authority suggesting his claimed desire to later reconcile with A.O. precludes an abandonment finding. Moreover, even if the court found credible his claim that a lawyer had advised him to cut off all contact with his daughter, he has cited no authority suggesting that would constitute just cause—which in turn would still not preclude an abandonment finding, instead merely rebutting the presumption of abandonment. *See* § 8-531(1).

¶10 Gabriel next asserts termination of his parental rights was not in A.O.’s best interests. He cites A.O.’s uncertainty about being adopted and Jessica’s testimony that she was hesitant to allow A.O. to have a relationship with Gabriel in any event. But, the court found that Jessica’s husband was willing to adopt A.O.—a factor favoring a finding of best interests. *See Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 19 (App. 2004) (evidence child adoptable and current placement meeting child’s needs sufficient to find termination in child’s best interests). Nor do we agree with Gabriel that Jessica’s hesitation to allow Gabriel to have a relationship with A.O. weighs against a best-interests finding, given his hurtful conduct. Gabriel’s argument on appeal is nothing more than a request that we reweigh that evidence. We will not do so. *Oscar O.*, 209 Ariz. 332, ¶ 14. We affirm the juvenile court’s order terminating Gabriel’s parental rights to A.O.