

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

---

CARLOS R.,  
*Appellant,*

*v.*

MARISELLA B., C.B.-R., AND L.B.-R.,  
*Appellees.*

No. 2 CA-JV 2021-0092  
Filed January 3, 2022

---

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NOT FOR PUBLICATION  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).*

---

Appeal from the Superior Court in Graham County  
No. SV202000021  
The Honorable Travis W. Ragland, Judge Pro Tempore

**AFFIRMED**

---

COUNSEL

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

Channen Day P.C., Safford  
By Channen Day  
*Counsel for Appellee Marisella B.*

Rebecca R. Johnson, Safford  
*Guardian ad litem for Minors*

**MEMORANDUM DECISION**

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

---

E P P I C H, Presiding Judge:

¶1 In this private severance proceeding, Carlos R. appeals from the juvenile court’s July 2021 ruling terminating his parental rights to C.B.-R., born in December 2016, and L.B.-R., born in April 2018, based on abandonment. *See* A.R.S. § 8-533(B)(1). He challenges the sufficiency of the evidence to support the court’s abandonment and best-interests findings. We affirm.

**Factual and Procedural Background**

¶2 We view the evidence in the light most favorable to affirming the juvenile court’s ruling. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 2 (2016). Carlos and Marisella B. began dating in 2016. When Marisella gave birth to C.B.-R. in December of that year, Carlos was listed on his birth certificate as the biological father, but both Marisella and Carlos knew he was not. According to Marisella, Fredrick D., with whom she had previously been in a romantic relationship, is C.B.-R.’s biological father. Carlos and Marisella lived together in Phoenix with C.B.-R., and Marisella later gave birth to L.B.-R. Carlos was also listed as the biological father on her birth certificate.

¶3 In November 2018, Carlos and Marisella had a fight that resulted in the police being called to their apartment. Marisella collected her belongings and moved out with the children. Marisella and the children returned to Safford, where Marisella’s family lived, and she resumed her relationship with Fredrick. Marisella, Fredrick, and the children moved in together as a family, and both children began treating Fredrick as their father. Marisella and Fredrick later married.

¶4 In October 2020, Marisella filed a petition for termination of Carlos’s parental rights to C.B.-R. and L.B.-R. in Graham County. She alleged as the ground for termination that Carlos had abandoned the children, reasoning that his “last contact with [them] was on approximately November 7, 2018, when the police arrived for a domestic violence call.” Marisella also asserted that she was unable to locate Carlos, and the juvenile

CARLOS R. v. MARISELLA B.

Decision of the Court

court gave her leave to serve him by publication. However, Carlos learned about the proceeding and appeared at the initial severance hearing. Carlos had filed a petition to establish paternity, legal decision making, parenting time, and child support as to L.B.-R. in September 2020, in Maricopa County, and at the hearing he asserted that Marisella had evaded service of his petition and initiated this severance proceeding instead. Carlos learned of Marisella's severance proceeding from the deputy who had tried to serve Marisella with Carlos's petition and had talked to Frederick at their home. Marisella countered that she had hired an attorney in June and had spent four months trying to locate Carlos before filing her petition in October. Despite the service issues, both parties accepted copies of the other party's filings during the hearing. The Maricopa matter was later transferred to Graham County, where the severance proceeding continued.<sup>1</sup>

¶5 During the two-part severance hearing, Carlos did not contest the termination of his parental rights to C.B.-R. but he did to L.B.-R. Carlos testified that the last time he saw L.B.-R. was in January 2019, when he had driven to Safford and had met Marisella and his daughter at a fast-food restaurant for a visit. He also maintained that he had phone and video contact with L.B.-R. until shortly thereafter when Marisella "blocked" him and stopped responding to his messages. Carlos provided social media messages showing that he had reached out to Marisella's grandmother and stepfather in an attempt to see L.B.-R. but was unsuccessful. He further maintained that for much of the time until he filed his petition he did not know where Marisella and the children were living. Marisella denied that L.B.-R. had any contact with Carlos after the night of their fight in November 2018. She also asserted that Carlos had provided no financial support, birthday cards, or gifts for L.B.-R. since that night.

¶6 In its subsequent ruling, the juvenile court noted that Carlos was not contesting the termination of his parental rights to C.B.-R. As to L.B.-R., the court found that Carlos "did make efforts to see [her]" but Marisella "did not make the child available to [him]." It explained that "while [Marisella] certainly posed an impediment to [Carlos's] relationship with the child, [Carlos] did not sufficiently assert his parental rights" and "did not act persistently to establish his relationship with the child." The court further explained that Carlos "has not provided reasonable support,

---

<sup>1</sup>Although Carlos claims that throughout 2020 he lived in the same apartment he had shared with Marisella, he used a protected address in both proceedings.

CARLOS R. v. MARISELLA B.  
Decision of the Court

has sent no cards, gifts or letters, [and] has had no contact with the child for over six (6) months” and that he has had no “visits with the child since at least January 8, 2019.” The court thus concluded Marisella had met her burden of establishing the ground of abandonment by clear and convincing evidence. The court further found that the children were adoptable and that Fredrick intended to adopt them. It therefore also concluded Marisella had met her burden of establishing that termination of Carlos’s parental rights was in the children’s best interests by a preponderance of the evidence. Accordingly, the court granted the petition for termination. This appeal followed.

### Discussion

¶7 On appeal, Carlos challenges the sufficiency of the evidence to support the termination ruling.<sup>2</sup> The juvenile court may terminate a parent’s rights if it finds by clear and convincing evidence that at least one of the statutory grounds for termination exists and by a preponderance of the evidence that termination of the parent’s rights is in the child’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We review a termination ruling 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, ¶¶ 12-13 (App. 2010). “Because the juvenile court is in the best position to weigh evidence and assess witness credibility, we accept the juvenile court’s findings of fact if reasonable evidence and inferences support them . . . .” *Demetrius L.*, 239 Ariz. 1, ¶ 9.

### Abandonment

¶8 Carlos first argues that the juvenile court erred by terminating his parental rights “due to abandonment because the ruling is not supported by sufficient evidence.” He maintains that Marisella “persistently obstructed [his] attempts to contact and support his daughter” and that he

---

<sup>2</sup>Although Carlos discusses the service issues in his opening brief, he did not challenge sufficiency of the service below or on appeal. We therefore do not address it. *See Snow v. Steele*, 121 Ariz. 82, 85 (1978) (“The failure to raise the . . . insufficiency of service of process constitutes a waiver thereof.”).

CARLOS R. v. MARISELLA B.  
Decision of the Court

made “consistent attempts to maintain his relationship” with her, which he suggests “militates against a finding that he abandoned his daughter.”<sup>3</sup>

¶9 Section 8-533(B)(1) provides, as a ground for termination, “That the parent has abandoned the child.” Abandonment is defined as “the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision.” A.R.S. § 8-531(1); *see also In re Pima Cnty. Juv. Action No. S-1182*, 136 Ariz. 432, 433 (App. 1983) (describing test for abandonment as “whether there has been conduct on the part of the parent which implies a conscious disregard of the obligations owed by a parent to his child, leading to the destruction of the parent-child relationship”). “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.” § 8-531(1).

¶10 In support of his argument, Carlos relies on *Calvin B. v. Brittany B.*, 232 Ariz. 292 (App. 2013). In *Calvin B.*, we held that “a parent who has persistently and substantially restricted the other parent’s interaction with their child may not prove abandonment based on evidence that the other has had only limited involvement with the child.” *Id.* ¶ 1. We reversed the termination order in that case, explaining that, throughout the child’s life, Calvin had “actively sought more involvement with their son than [Brittany] would allow.” *Id.* ¶¶ 22, 33. Because Brittany had obtained multiple orders of protection against Calvin and at times refused him any contact with their son, we concluded that she had “curtailed Calvin’s ability to develop a relationship with [their] son.” *Id.* ¶¶ 22-24.

---

<sup>3</sup>Although his notice of appeal suggested that he was challenging the juvenile court’s ruling as to both children, his argument on appeal—consistent with his position at the severance hearing—seems to be limited to L.B.-R. We therefore deem any argument as to C.B.-R. waived and focus our analysis on the termination of Carlos’s parental rights to L.B.-R. *See* Ariz. R. Civ. App. P. 13(a)(7) (argument in brief must contain issues presented, “with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record”); Ariz. R. P. Juv. Ct. 106(A) (with limited exceptions not applicable here, Rule 13, Ariz. R. Civ. App. P., applies “in appeals from final orders of the juvenile court”); *cf. State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (claims waived for insufficient argument).

CARLOS R. v. MARISELLA B.  
Decision of the Court

¶11 This case, however, is distinguishable from *Calvin B.* In *Calvin B.*, starting in May 2008, pursuant to the parties' divorce decree, Calvin had "liberal visitation as his schedule allow[ed]," but, in July 2009, "he petitioned for joint custody, complaining that Brittany did not allow him enough time with his son." *Id.* ¶¶ 2-3, 22. Calvin then sought and received an order establishing a fixed amount of parenting time in November 2009. *Id.* ¶ 22. Calvin continued to "pursue[] visitation (to the point of being arrested for texting Brittany to arrange visits) in spite of the orders of protection" over the next few years until the severance hearing. *Id.* ¶¶ 23-24, 27. Despite "the hurdles that Brittany erected to his ability to parent," Calvin "managed as many as ten visits with his son a year." *Id.* ¶ 25.

¶12 Here, by contrast, when Carlos and Marisella separated in November 2018, Marisella moved to Safford with L.B.-R. and Carlos had no established parenting time with her. Aside from one possible visit in January 2019, which Marisella maintains did not occur, Carlos had no visitation with L.B.-R. over the next twenty-two months, at which point Carlos sought to establish parenting time by filing his petition to establish paternity, legal decision making, parenting time, and child support. Even after filing his petition in September 2020, however, Carlos took no further steps to establish parenting time with L.B.-R.<sup>4</sup> Thus, unlike the father in *Calvin B.*, Carlos did not take prompt and persistent action to obtain visitation with L.B.-R.

¶13 Carlos nevertheless asserts, "The evidence clearly shows that he had every intention of providing material support and maintaining his relationship with L.B.-R., but Marisella refused to allow him to do so." But abandonment is measured by a parent's conduct, not his or her subjective intent. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 18 (2000). Even accepting Carlos's testimony that Marisella had "blocked" him and that he did not know where she was living, Carlos took no legal action for twenty-two months after their separation. Carlos therefore did not "vigorously assert[] his legal rights." *Calvin B.*, 232 Ariz. 292, ¶ 29 (quoting *Michael J.*, 196 Ariz. 246, ¶ 22).

¶14 Admittedly, the parties presented very different versions of Carlos's contact with L.B.-R. and the support he provided. See *Demetrius L.*, 239 Ariz. 1, ¶ 9 (questions of credibility reserved for juvenile court). But it is undisputed that Carlos provided no support, gifts, or cards and had no

---

<sup>4</sup>As part of this proceeding, Carlos offered to provide support in exchange for visitation to settle the matter.

contact or supervision with L.B.-R. for well over six months. *See* § 8-531(1). Because sufficient evidence supports the juvenile court's finding of abandonment, no abuse of discretion occurred. *See Kenneth B.*, 226 Ariz. 33, ¶ 12.

### **Best Interests**

¶15 Carlos next challenges the sufficiency of the evidence to support the juvenile court's finding that termination of his parental rights was in L.B.-R.'s best interests. He maintains that "L.B.-R. has a biological father [who] loves her and wants to have a relationship with her" and that "[s]evering [his] parental rights based on the bad acts of Marisella will permanently deprive L.B.-R[.] of the love and care of her real father and his family."

¶16 Termination of the parent-child relationship is in the child's best interests if either the child will benefit from severance or the child will be harmed if the relationship is continued. *Demetrius L.*, 239 Ariz. 1, ¶ 16. This inquiry "focuses primarily upon the interests of the child, as distinct from those of the parent." *Kent K.*, 210 Ariz. 279, ¶ 37. Potential benefits of severance include that the child is adoptable or more stable in an existing placement. *Demetrius L.*, 239 Ariz. 1, ¶¶ 16-17, 19. When considering best interests, "we can presume that the interests of the parent and child diverge because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence." *Kent K.*, 210 Ariz. 279, ¶ 35. Accordingly, we "must balance the unfit parent's 'diluted' interest 'against the independent and often adverse interests of the child in a safe and stable home life.'" *Demetrius L.*, 239 Ariz. 1, ¶ 15 (quoting *Kent K.*, 210 Ariz. 279, ¶ 35).

¶17 Three-year-old L.B.-R. is adoptable, and Fredrick would like to adopt her. Fredrick has been the only "father figure[]" in L.B.-R.'s life for the past two and a half years, and she is bonded to him. She calls him "Dad," and he regards her as "my daughter." By contrast, L.B.-R. has no recollection of Carlos. Fredrick can financially support L.B.-R. and, upon adoption, would also be able to provide health and dental insurance for her. Because sufficient evidence supports the juvenile court's best-interests finding, no abuse of discretion occurred. *See Kenneth B.*, 226 Ariz. 33, ¶ 12.

### **Disposition**

¶18 We affirm the juvenile court's ruling terminating Carlos's parental rights to C.B.-R. and L.B.-R.