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1       **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **IN THE MATTER OF THE WRONGFUL**  
3 **DEATH ESTATE OF BRANDON LUCERO,**  
4 **Deceased.**

5 **CRYSTAL LUCERO,**

6       Petitioner-Appellee,

7 **v.**

**No. 31,625**

8 **TYLER ARAGON,**

9       Respondent-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

11 **Nan G. Nash, District Judge**

12 Duhigg, Cronin, Spring & Berlin P.A.

13 Nancy Cronin

14 Albuquerque, NM

15 for Appellee

16 Will Ferguson & Associates

17 Jesse Quackenbush

18 Albuquerque, NM

19 for Appellant



1 **MEMORANDUM OPINION**

2 **BUSTAMANTE, Judge.**

3 Tyler Aragon (Father) appeals from the district court’s order granting Crystal  
4 Lucero’s (Mother’s) motion to declare rights, status, and other legal relations of Father  
5 under the wrongful death act and for declaratory relief. [RP 182] The order is  
6 supported by the district court’s findings and conclusions. [RP 174] Father contests  
7 several of the district court’s findings and conclusions and claims that the district  
8 court erred in failing to enter other findings he had requested. [DS 4-18] Father raises  
9 one issue, contending that the district court erred in concluding that Father was not  
10 eligible as a statutory beneficiary to settlement proceeds from the wrongful death  
11 claim. [DS 18]

12 The calendar notice proposed summary affirmance. [Ct. App. File, CN1]  
13 Mother filed a memorandum in support [MIS], and Father filed a memorandum in  
14 opposition [MIO]. [Ct. App. File] Upon due consideration, we affirm.

15 **DISCUSSION**

16 As we discussed in the calendar notice, we are deferential to facts found by the  
17 trial court, but review conclusions of law de novo. *Perry v. Williams*,  
18 2003-NMCA-084, ¶ 12, 133 N.M. 844, 70 P.3d 1283 (citing *Strata Prod. Co. v.*  
19 *Mercury Exploration Co.*, 1996-NMSC-016, 121 N.M. 622, 627, 916 P.2d 822, 827).

1 “[P]roof of natural-parent status is not necessarily sufficient for recovery under the  
2 wrongful death statute.” *Dominguez v. Rogers*, 100 N.M. 605, 609, 673 P.2d 1338,  
3 1342 (Ct. App. 1983). In *Dominguez*, we warned future litigants that this Court  
4 “would take a narrow view of a self-interested individual who chooses to assert a  
5 parental status only when it becomes financially profitable to him following the death  
6 of a small child.” *Williams*, 2003-NMCA-084, ¶ 16 (internal quotation marks and  
7 citation omitted).

8 “Abandonment is defined by the outward behavior of the parent as perceived  
9 and interpreted by others; there is no inquiry into the parent’s concealed and  
10 unexpressed intentions.” *Roth v. Bookert*, 119 N.M. 638, 648, 894 P.2d 994, 1004  
11 (1995). “Abandonment consists of conduct on the part of the parent which implies a  
12 conscious disregard of the obligations owed by a parent to the child, leading to the  
13 destruction of the parent-child relationship.” *Id.* (internal quotation marks and citation  
14 omitted). “No specific intent to disregard parental obligations is involved.” *In re*  
15 *Adoption of Doe*, 100 N.M. 764, 767, 676 P.2d 1329, 1332 (1984) (internal quotation  
16 marks omitted). “The only intent involved is the purposely engaging in conduct  
17 which implies a conscious disregard of parental obligations.” *Id.* (internal quotation  
18 marks and citation omitted). “The typical kinds of conduct which constitute  
19 abandonment are the withholding of parental presence, love, care, filial affection and

1 support and maintenance.” *Id.* (internal quotation marks and citations omitted).

2  
3 “Because we are dealing with the extinguishment of [the f]ather’s property  
4 interest in a statutory right of recovery that was not a traditional incident of the  
5 parent-child relationship, there is no reason to employ the heightened burden of proof  
6 applicable to formal termination of parental rights proceedings.” *Williams*,  
7 2003-NMCA-084, ¶ 11. Thus, in this case, Mother bears the burden to establish the  
8 facts that support Father’s abandonment by a preponderance of the evidence. *See*,  
9 *generally* UJI 13-304 NMRA.

10 In the memorandum, Father continues to argue that since he and Mother were  
11 young when she became pregnant, he thought Mother would put the twins up for  
12 adoption or terminate the pregnancy. [RP 158-62; MIO 3] When they were born  
13 medically fragile, Father continues to argue that when the twins were born medically  
14 fragile, he never intended to abandon them if they lived and if they were his children.  
15 [MIO 3-4] He contends that he stayed away because he did not want to get attached  
16 if they died. [Id.] Father also continues to claim that he stayed away because he could  
17 feel that Mother and Mother’s family were hostile to him. [Id.] Father points out that  
18 he mentally prepared himself for fatherhood and faithfully paid child support after his  
19 paternity was established and he was ordered to do so. [MIO 5] Father also points

1 out that he visited the twins in the hospital after they were born, and that he visited  
2 Brandon in the hospital before Brandon died. [Id.]

3 Father further argues that he did not fully bond with Brandon because the time  
4 period between Brandon's birth and death at sixteen months was too short, shorter  
5 than the factual scenarios presented in the cases relied upon in the calendar notice.  
6 [MIO 10] He asserts that he "made efforts" to establish a parent/child relationship in  
7 pre-birth family meetings and that his mother and sister assisted and visited Mother  
8 before and after the twins were born. [Id.] Father reiterates that after the twins were  
9 born, he was repeatedly advised that the twins would die, and therefore he did not  
10 fully bond within months of their birth in the face of such "emotionally and  
11 psychologically devastating facts." [MIO 11] Father asserts that he held his son in  
12 the hospital when it became less likely that the child would die. [Id.] He paid child  
13 support after paternity was established. [Id.] Mother harassed Father and his new  
14 girlfriend after the twins were born, which caused Father to remove himself from  
15 Mother's proximity and the situation. [Id.] Father argues, essentially, that Mother is  
16 not blameless since CYFD temporarily removed the twins from Mother's custody for  
17 unsafe conditions there and without his knowledge or consent. [Id.] He also points  
18 out that Mother was arrested for DWI. [MIO 11-12] Father further asserts that he  
19 went to the hospital when he heard the news of the accident, comforted Brandon, but

1 left due to Mother's family's hostility. [MIO 13] Father points out that he went to  
2 Brandon's funeral and grieved by the casket. [Id.] Father argues that his own young  
3 age and his contentious and litigious relationship with Mother during Brandon's brief  
4 life provided obstacles to his fully bonding with Brandon prior to his death at sixteen  
5 months. [Id.]

6 In contrast, however, Mother presented evidence that Father broke off contact  
7 with her shortly after she discovered that she was pregnant; Father and his family did  
8 not attend the baby shower; Father did not help with any arrangements for the birth;  
9 and Father did not visit Mother during her medically complicated pregnancy. [RP  
10 164-170] After the twins were born, Father never requested visitation, never held the  
11 twins, and he was never involved in their care in any way. [Id.] Mother further  
12 presented evidence that after paternity was established almost a year after the twins  
13 were born, Father never signed the birth certificates of the twins although ordered to  
14 do so; Father never established a relationship with either twin; Father never held  
15 Brandon; Father visited Brandon for twenty minutes before he died; Father did not  
16 help pay for Brandon's funeral; and Father never demonstrated a willingness to  
17 establish or accept a loving responsibility for Brandon. [Id.]

18 The district court found that Father had provided no evidence that he fulfilled  
19 any of the legal obligations of a parent except for paying child support once ordered

1 to do so. [RP 174-81] The district court noted that there was no evidence that Father  
2 was prevented from performing any of the acts by anything beyond his control. [Id.]  
3 The district court further found, from the time Brandon was born until his death at  
4 sixteen months, Father chose not to seek custody of him at any time, chose not to  
5 provide any meaningful level of care for his son, chose not to perform any form of  
6 emotional or voluntary financial support for his son, chose not to accept any legal  
7 responsibility, chose not to give any type of moral or spiritual guidance for his son,  
8 and chose not to provide a home or any other form of shelter and security for his son.  
9 [Id.] Because Father consciously disregarded the obligations owed to Brandon, he  
10 never developed any type of parent-child relationship and therefore no disintegration  
11 of the relationship was possible. [Id.] The district court concluded that because  
12 Father consciously failed to meet the responsibilities of a father during Brandon's  
13 lifetime, he is not entitled to claim that status in the wrongful death proceedings, and  
14 he is not entitled to receive any of the wrongful death proceeds of the settlement. [Id.]

15 While Father contends that Mother's evidence merely concentrated on his  
16 deficiencies as a father in areas not required by the statute [MIO 9], the district court's  
17 findings and conclusions clearly focus on how the evidence presented showed  
18 Father's abandonment of the essential attributes of parental responsibility for  
19 Brandon. While Father argues that the district court should have resolved the parties'



1 conflicting assertions in his favor [DS 15-18], we defer to the fact finder, here the  
2 district court judge presiding over a bench trial, to resolve the conflicts in the  
3 evidence, to weigh the facts, and to determine the credibility of the witnesses.  
4 *Buckingham v. Ryan*, 1998-NMCA-012, ¶ 10, 124 N.M. 498, 953 P.2d 33 (“[W]hen  
5 there is a conflict in the testimony, we defer to the trier of fact.”); *see also Las Cruces*  
6 *Prof’l Fire Fighters v. City of Las Cruces*, 1997-NMCA-044, ¶ 12, 123 N.M. 329, 940  
7 P.2d 177 (stating that, “[t]he question is not whether substantial evidence exists to  
8 support the opposite result, but rather whether such evidence supports the result  
9 reached”); *and see id.* (“Additionally we will not reweigh the evidence nor substitute  
10 our judgment for that of the fact finder.”).

## 11 **CONCLUSION**

12 We hold that Mother sustained her burden of showing that Father abandoned  
13 Brandon prior to his death by a preponderance of the evidence. Moreover, we hold  
14 that the district court’s findings are supported by substantial evidence and that the  
15 district court’s findings support the district court’s conclusion that Father is not  
16 entitled to receive any of the proceeds of the wrongful death settlement. Accordingly,  
17 we affirm.

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**IT IS SO ORDERED.**

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**MICHAEL D. BUSTAMANTE, Judge**

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**WE CONCUR:**

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**JAMES J. WECHSLER, Judge**

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**JONATHAN B. SUTIN, Judge**