

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaints 16-004 and 16-036

Judge: Celé Hancock

Complainants: Matthew Wilcox; Commission on Judicial Conduct

ORDER

The complainant in Case No. 16-004 alleged a superior court judge engaged in inappropriate courtroom demeanor, conducted a hearing without notice to him and his ex-wife, and was prejudiced against them. In Case No. 16-036, the commission initiated an investigation into the judge’s demeanor as a result of an appellate court decision.

Rule 2.8(B) of the Code of Judicial Conduct requires that a judge “shall be patient, dignified, and courteous to litigants” Additionally, Rule 1.2 states that “a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary”

In Case No. 16-004, the maternal grandparents of Mr. Wilcox’ children filed a petition to establish custody by a non-parent. Mr. Wilcox and his ex-wife moved to continue the initial hearing, however, that motion was denied as being untimely filed, and the hearing went forward in their absence. The maternal grandparents obtained custody. At a return hearing approximately one month later, all parties were present. During this hearing, Judge Hancock’s tone and demeanor toward Mr. Wilcox and his ex-wife became considerably elevated. She stated to them, “I don’t know what the hell you two are thinking, but get it together. All of you.” She also advised Mr. and Mrs. Wilcox, “I don’t give a crap about any of you.” After reviewing the complaint, the recording of the hearing, and the judge’s response, the commission found that Judge Hancock’s tone and demeanor toward the Wilcoxes was not “patient, dignified, and courteous.” The commission also found that Judge Hancock’s conduct did not promote confidence in the independence, integrity, and impartiality of the judiciary.

The commission found no evidence to support the remaining allegations of the complaint.

Concerning Case No. 16-036, the commission found that Judge Hancock had made a statement similar to the one she used toward the Wilcoxes. In a severance hearing, she told litigants that “I honestly don’t give a crap about either one of these

This order may not be used as a basis for disqualification of a judge.

people.” The commission found that Judge Hancock was not “patient, dignified, and courteous” by the use of this language and that it did not promote confidence in the independence, integrity, and impartiality of the judiciary.

Accordingly, Superior Court Judge Celé Hancock is hereby publicly reprimanded for her conduct as described above and pursuant to Commission Rule 17(a). The record in these cases, consisting of the complaint, the appellate court decision, the judge’s responses, and this order shall be made public as required by Rule 9(a).

Commission members Margaret Downie and J. Tyrrell Taber did not participate in the consideration of this matter.

Dated: May 12, 2016

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on May 12, 2016.

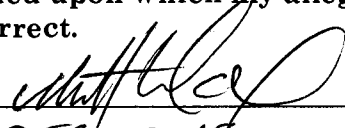
This order may not be used as a basis for disqualification of a judge.

JAN 06 2016

2016-004

I understand the commission cannot reverse court orders or assign a new judge to a case.

I declare, under penalty of perjury, that the foregoing information and the facts I have provided upon which my allegations of judicial misconduct are based are true and correct.

Signature: 

Date: 31 DEC 2015

INSTRUCTIONS

Use the following space or plain paper of the same size to explain your complaint. Explain why you believe what the judge did constitutes judicial misconduct. Be specific and list the names, dates, times, and places relevant to your allegations. Additional pages may be used and relevant copies of documents may be sent with your complaint (please do not send original documents). Use one side of each page only and write legibly or type your complaint. Please keep a copy of your complaint for your records.

*Letter explaining complaint attached.

JAN 06 2016

Comp

Matthew Wilcox

December 31, 2015

Dear To Whom it may Concern,

My name is Matthew R. Wilcox, I'm writing this letter on behalf of my ex-wife Nicole Wilcox and myself. Nicole and I are currently involved in a dispute regarding custody of our children with Nicole's parents, Mario and Donna Gabaldon. CASE number is P1300DO201500703 in Division 5 with Judge Hancock. Nicole's parents filed for emergency custody, after Nicole and our three children decided to move into my residence. At that time Mario Gabaldon had called into Child Protective Services to report neglect and child endangerment on, Nicole and I. Which was investigated and proven to be a false report and our children were left in our care. Mario previously worked for Child Protective Services locally for around thirty years and has made relationships with many of the Judges in the county. due to his former profession. This leverage has been brought up to Nicole time and time again by Mario which is concerning to us. due to the favoritism within this counties judicial system. Further background can be provided upon request, but I feel writing it is of little use being a neutral position on your behalf.

After the report with CPS was not in favor of Mario Gabaldon, he then proceeded to file false allegations with the court against myself and Nicole which landed us here in the first place. When September 2 2015 date for the case was received by Nicole and I, we decided to put in a request for a EXPEDITE motion to change Judge due to Nicole's knowledge of her father knowing the original Judge appointed to the case. Within days later, Judge Cele Hancock was appointed and a new hearing was set three days later. After further discussion between Nicole and I, we had requested a continuance which was submitted with EXPEDITE written on top. Nicole and I have school schedules that flip flop in order for us to watch our children and needed to find a sitter. so we could both attend the court scheduled hearing. The EXPIDITE motion to continue paperwork was "lost" according to a staff member. because it was said. "That there was a high volume of paperwork and limited staff". Nicole and I then spoke to the supervisor to find out why the answer we were given was considered, "okay". The supervised then had explained to us that the answer we were given was the wrong answer and not a correct answer, that she would look into the situation. Needless to say, our paper work was not filed correctly and our paper work should have been walked over to Judge Hancock's division. as soon as it left our hands, since EXPEDITE was written on it. This resulted in a "failure to appear" on our behalf and Mario and Donna Gabaldon were granted temporary custody of our three children that day in court. That evening with a police escort our children were removed from our home by the Gabaldon's. At that time we were given paper work by the PV police explaining the situation. Later on that same week we had received the same paperwork from the court which provided us with our next court date September 28 2015.

On September 28 2015, Nicole and I appeared in court. We had submitted evidence to the court and also to Mr. and Mrs. Gabaldon prior to this court date. Our submitted evidence was in response to the Gabaldon's false allegations, which provided all information needed to disprove all of the Gabaldon's false allegations. Our submitted paper work was not used in court on this date because Mrs. Gabaldon had stated that she did not receive it via mail yet, which resulted in Judge Hancock, saying that we submitted our evidence too late. During this court hearing Judge Hancock's conduct was as a prosecutor, very one sided. I was rarely allowed to speak and only was told of my bad attitude, or facial expressions. I was told to "SHUT UP" by Hancock and "TO GET MY SHIT TOGETHER". Upon asking Judge Hancock, "What I didn't have together" I was told "EVERYTHING". I do not understand the hostility presented by Judge Hancock. I do not understand the lack of professionalism or why our evidence, was to be said "to be seemingly irrelevant". Mario and Donna Gabaldon provided no evidence of their false allegations, yet they were granted temporary custody of our children. Judge Hancock ordered mediation with no further date and Nicole and I were

ordered to report to TASC within fifteen minutes of court being dismissed. Judge Hancock also ordered Nicole and I to take two urine tests weekly until further notice. This test would then result in an extra \$400.00 a month in which we could not provide.

At the moment I and Nicole are both fulltime students living off of my GI Bill and disability compensation from the VA. Nicole wrote a letter to Judge Hancock explaining our financial situation. Nicole had stated in her letter that we were unable to take the urine test unless there was some other way that would result in a cheaper amount. This letter was hand delivered to Judge Hancock's division 5 at the court house on the first floor by Nicole Wilcox. Nicole left our address along with our phone number, in case there would be any questions, but we have not heard anything in response. On September 28 2015, Nicole and I took a panel 9 urine test under direct observation and a sample hair test which was also provided at the same time. After our results came back negative, Judge Hancock then ordered an emergency hearing of which, the Gabaldon's were only notified.

During a visit Nicole had with our children at the Gabaldon's, Donna told Nicole, that "We had failed to appear in court" in which we were never notified of. This court date was set for October 12 2015 and during that court session Judge Hancock had stated, that the reason for this court date was in response of Nicole and Matthew's negative test results from TASC. Nicole's mom then continued to tell Nicole that, Judge Hancock stated "Nicole and Matthew cheated the drug tests".

The Gabaldon's have been in guardianship of our children for over two months now, resulting in two missed birthdays with our children. No notification for a mediation date has been received. I do not understand why we did not receive any notification to appear for the "Emergency" hearing, but we did receive notification for every other court date along with papers stating that we have failed to appear. I also do not understand why passing a drug screening is grounds for an emergency hearing and how we are accused of cheating a hair and urine test under direct observation. I do not understand why Mario and Donna Gabaldon are in guardianship of my children, yet no evidence of their accusations exist, yet our evidence disproving their claims is seemingly irrelevant, according to Judge Hancock. One question comes to mind, does Judge Hancock know Mario Gabaldon and does this have anything to do with the seemingly unjust display on her behalf?

Nicole and I have done nothing wrong, yet we are being punished as well as our children. This whole case is due to petty family nonsense between Nicole and her parents which has escalated to this point. Judge Hancock told us that having a witness from Child Protective Services who conducted an investigation after Mario Gabaldon accused us of being unfit parents, was a witness "Whose relevance was of question". Please take my concerns under consideration; I would like to have a clear understanding of what is going on. I also would like to know when Nicole and I will be getting our children back. I am not a lawyer or well versed in the courtroom, but all I have encountered from Judge Hancock is strange behavior and unjust actions.

Lastly, Judge Hancock has shared information, about myself, Matthew Wilcox, with Mario and Donna Gabaldon that is irrelevant to this case. audio transcripts prove this. After hearing of this, I went online to better understand Judge Hancock and I came across information which brought up her ethical violation in regards to a case she was a prosecutor in. I read how she has ties between the lawyers and Judges in this town which is alarming. The article I read on examiner.com explains all of the ties. It seems to be an obvious network of small town politics in which my family is being held victim to. I have absolutely NO confidence in Judge Hancock's position in this case and would like to request an investigation into the procedure being conducted on her behalf as well on this matter. Please allow me some clarity as to when Nicole and I will have our children back, for we have not committed any crime.

Sincerely,



Matthew Wilcox

CELÉ HANCOCK
JUDGE
DIVISION 5



RESA
2016-004
MAR 01 2016
TELEPHONE
(928) 771-3307
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Arizona Superior Court

YAVAPAI COUNTY COURTHOUSE
120 SOUTH CORTEZ STREET
PRESCOTT, ARIZONA 86303

February 25, 2016

Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

Re: Case No. 16-004

Dear Members of the Commission on Judicial Conduct:

Attached please find my response to complaint No. 16-004. I believe that I have responded as thoroughly as possible, but if there are any concerns or additional questions, please do not hesitate to contact me.

PROCEDURAL HISTORY

On May 19, 2015, Ms. Nicole Wilcox petitioned the Prescott Valley Municipal Court for an Order of Protection against Mr. Matthew Wilcox. The Honorable Keith Carson granted the Order of Protection in favor of Ms. Wilcox. The allegations in the petition were very serious, alleging that Mr. Wilcox had "committed a sexual act towards her daughter". All three of the Wilcox children were included in the Order of Protection. Attached as EXHIBIT A is the Order of Protection issued by Judge Carson in favor of Ms. Wilcox against Mr. Wilcox. At approximately that time, Ms. Wilcox moved into the Gabaldons' home with the three children.

On August 5, 2015, Mario and Donna Gabaldon, the grandparents of the three children, filed a Petition to Establish Non-Parent Legal Decision Making, with all related documents. They also filed a Motion for Temporary Orders for Legal Decision Making, expedited, without advance notice. The case was assigned to the Honorable Joseph P. Goldstein, Family Law Commissioner.

Judge Goldstein held an ex parte, expedited hearing, declined to enter temporary orders and set the matter for evidentiary hearing on August 28, 2015 in his division. On August 13, 2015, the Gabaldons filed a "Request Change in Judge/Emergency Custody Review". In the pleading, the Gabaldons alleged abuse to the minor children by Mr. Wilcox, much as Ms. Wilcox had alleged in her Petition for Order of Protection. In addition, Mr. Gabaldon alleged that Ms. Wilcox was going back and forth between their house and Mr. Wilcox's home. On August 24, 2015, the Wilcox's *joined* in the motion for change of judge and requested a continuance of the August 28, 2015 hearing. Judge Goldstein recused himself. The presiding judge assigned the

case to this division on August 18, 2015, noting the pending matters. Since both parties had joined in the motion for change of judge, the Court granted the motion to continue the August 28, 2015 hearing filed by the Wilcox's. The Wilcox's also cited in their motion to continue that they had a legal appointment and did not have child care. This court then set an evidentiary hearing regarding Temporary Orders: Non-Parent Custody and Legal Decision Making. The date set for hearing was Wednesday September 2, 2015 at 11:00 a.m. The minute entry required that both parties submit exhibits for marking to the clerk five business days prior to the hearing. *See* EXHIBIT B.

On August 28, 2015, the Friday before the hearing on September 2, 2015, the Wilcox's filed another motion to continue, alleging that they both had "classes" and could not miss those classes because of a test. There was no indication as to whether the Gabaldons agreed to the continuance or not. The Wilcox's contacted the division on the morning of September 2, 2015 inquiring as to whether the hearing had been continued. This division's judicial assistant noted that the motion was untimely, that the motion had to be held for response and that the hearing would go forward. *See* Rule 35 (B), ARFLP. On September 2, 2015, the same date as the hearing, the Wilcox's filed a Response to Petition to Establish Non-Parent Legal Decision-Making.

TEMPORARY ORDERS HEARING

On September 2, 2015, the Court held the Evidentiary Hearing regarding the emergency request from the Gabaldons. Neither Mr. nor Ms. Wilcox appeared. The Court made a record of the procedural process of the case and denied the motion to continue. During the hearing, the Court heard evidence from the Gabaldons and nine exhibits were offered into evidence. A copy of the exhibits are attached and a brief summary follows:

January 2010 – Prescott Valley Police Department – Report of D.V. by Mr. Wilcox who was cited for one count of criminal damage per domestic violence.

May 26, 2014 – Prescott Police department – Reporting party Nicole Wilcox concerning suicidal threats made by Mr. Wilcox. Ms. Wilcox reported that when she entered the home there was a gun lying in Mr. Wilcox's lap.

December 20, 2013 – At approximately 3:31 p.m., Mr. Wilcox was arrested for Aggravated DUI with a blood alcohol of .176 and .175.

December 21, 2013 at approximately 2:40 a.m. police were called to do a welfare check on Mr. Wilcox. During this check, Mr. Wilcox indicated to the police officer that he had thoughts of suicide, depression and PTSD.

On May 8, 2015, the Prescott Valley Police Department was called to investigate a possible child molestation. Ms. Wilcox reported that Mr. Wilcox had sexually molested their daughter.

On May 19, 2015, an Order of Protection was issued in favor of Ms. Wilcox against Mr. Wilcox. The children were included in the order and Ms. Wilcox made very disturbing allegations in her Petition for Order of Protection.

See EXHIBIT C.

From August 7 through August 9, 2015, the Gabaldons reported that Mr. and Mrs. Wilcox were having contact, in violation of the Order of Protection obtained by Ms. Wilcox. The police were unable to find Mr. or Mrs. Wilcox or the children and spent two days looking for them. Eventually Mr. and Mrs. Wilcox and the children were located. By the time they were located, Mrs. Wilcox had moved to quash the Order of Protection.

SEPTEMBER 28, 2015 HEARING

On September 28, 2015, all parties appeared for a return hearing on the temporary orders. See FTR recording attached as EXHIBIT D. On September 23, 2015 at approximately 4:45 p.m., Mr. Wilcox submitted a list of witnesses and exhibits. The Court noted at the list of witnesses and exhibits was untimely, the Gabaldons had not yet received a mailed copy of the list of witness and exhibits, and the Court precluded the witnesses and exhibits. It is of note that none of Mr. Wilcox's witnesses were present for the hearing, nor did he bring any of the exhibits to Court. After denying the request to continue the hearing, the Court heard testimony, reviewed admitted exhibits and affirmed the temporary orders. Because of the history of the case, the demeanor of all the participants in Court and the evidence, the Court also ordered that Mr. and Mrs. Wilcox be drug tested at TASC immediately following the hearing. The Court also ordered Mr. and Mrs. Wilcox to submit to random drug and alcohol testing twice per week. The Court also ordered that if either party tested positive for any drug, including alcohol, that all parenting time would cease and the Court would set an emergency hearing. Mr. Wilcox tested positive for alcohol on September 28, 2015 and had a negative test on October 1, 2015. See EXHIBIT E. Mr. Wilcox then stopped testing altogether. Ms. Wilcox tested negative on three drug tests and then also stopped testing in violation of the Court order. On October 1, 2015, after receiving the positive test for alcohol from Mr. Wilcox, the Court set a hearing regarding the results of the TASC testing. The order setting hearing was mailed to Mr. Wilcox's last known address. Both the Gabaldons were present. Mr. and Ms. Wilcox did not appear at the hearing. As a result of the hearing, the temporary orders were affirmed and the parties were referred to mediation.

The parties attended mediation on December 9, 2015 and did not reach an agreement.

JUDICIAL Demeanor

As stated above, although Mr. Wilcox submitted an untimely list of witnesses and exhibits which had not been received by the Gabaldon's, even *had* the Court accepted the untimely disclosure, there were no witnesses present to testify.

The Court has received the recording of the hearing from September 28, 2015 several times. At no time did this Court tell Mr. Wilcox "TO GET MY SHIT TOGETHER". At the end of the recording, the Court did become frustrated with both parties. As the commission will note, the Court ordered all parties to get it together for the sake of the children. The Court's demeanor and tone were certainly elevated. The review of the recording has been educational to this Court regarding judicial demeanor. This Court intends to regularly review recordings of hearings in order to best improve on any issue regarding judicial demeanor.

BIAS

Mr. Wilcox seems to suggest in his complaint that this Court is biased because this Court may have known Mr. Gabaldon from his prior work with DCS. This Court has had contact with Mr. Gabaldon only in regards to two cases before this division. Prior to the previous court case and this case, this Court did not know either of the Gabaldons. Mr. Wilcox also seems to indicate that there are audio recordings that indicate that the Court stated negative opinions about Mr. and Mrs. Wilcox with the Gabaldons. The Court is without sufficient information to address this allegation.

Mr. Wilcox refers to an internet search regarding the Court's former employment as prosecutor and allegations of unethical behavior. Without further information, this Court is unable to respond to this allegation.

This Court recused from this case at the direction of the Presiding Judge. I am without information as to the status of this case at this time.

The review of the case and ruling of the Court in addition to the record of the proceeds fail to indicate any bias or prejudice to support Mr. Wilcox's allegations.

CONCLUSION

The Court has endeavored to thoroughly and completely respond to Mr. Wilcox's complaint. If the Commission requires additional information or has additional inquiries, please let me know and I will respond accordingly.

Sincerely,



Hon. Cele Hancock

Judge of the Superior Court of Yavapai County
Division 5

16-036
Comp
2/9/16

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

SARAH R., *Appellant*,

v.

JEREMY R., C.R., *Appellees*.

No. 1 CA-JV 15-0270
FILED 2-9-2016

Appeal from the Superior Court in Yavapai County
No. P1300SV201400012
The Honorable Celé Hancock, Judge

REVERSED

COUNSEL

Law Office of Florence M. Bruemmer, PC, Anthem
By Florence M. Bruemmer
Counsel for Appellant

Prescott Law Group, PLC, Prescott
By J. Andrew Jolley
Counsel for Appellees

SARAH R. v. JEREMY R., C.R.
Decision of the Court

MEMORANDUM DECISION

Judge Margaret H. Downie delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge John C. Gemmill joined.

D O W N I E, Judge:

¶1 Sarah R. (“Mother”) appeals an order terminating her parental rights. For the reasons that follow, we reverse.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Jeremy R. (“Father”) are the parents of C.R., who was born in July 2010.¹ Father obtained an order of protection against Mother in November 2010 after she threatened to kill him during an argument.² The next month, the family court held a hearing regarding the order of protection and ordered that Father have temporary sole custody of C.R., with Mother having supervised access. The court found no evidence Mother had harmed or threatened C.R. and removed the child as a protected person from the order of protection.

¶3 Between December 2010 and January 2011, Mother appeared for every scheduled visit (approximately eight) with C.R. and arrived with appropriate items. At a February 2011 family court hearing, the court heard testimony from two individuals who supervised the visits that C.R. manifested extreme anxiety at Mother’s voice and presence. The family court ordered that Father have sole custody, with Mother having no contact, saying: “When any of the Parties can demonstrate that contact between [C.R.] and [Mother] is therapeutically recommended, contact

¹ Father established paternity in separate proceedings in Yavapai County Superior Court that we refer to as the “family court” proceedings in order to distinguish between them and the severance proceedings at issue in this appeal.

² Mother pled guilty to disorderly conduct/domestic violence as a result of that incident and was placed on probation, which she successfully completed.

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shall resume in accordance with the therapeutic recommendations.”³ The court recommended that Mother, “in an effort to develop and encourage a meaningful and positive parental relationship,” maintain participation in healthcare and counseling services, take actions to “ensure long-term mental health stability,” and participate in parenting classes. At a subsequent hearing in December 2012, the family court stated that Mother’s therapist should provide C.R.’s therapist, Ms. Phillips, with information “to assist in the reintroduction.”

¶4 In July 2014, Father filed a petition to terminate Mother’s parental rights on the grounds of abandonment and neglect under Arizona Revised Statutes (“A.R.S.”) section 8-533(B)(1) and (2). The juvenile court held a two-day severance hearing in February and April of 2015.

¶5 Hearing evidence established that C.R. lived with Father and his parents (“Grandfather” and “Grandmother”) in what everyone agreed was a stable environment. Mother had not seen C.R. since January 2011, when the child was six months old. Nor had Mother placed Ms. Phillips in contact with a satisfactory therapist, despite submitting multiple names and authorization forms. The juvenile court received evidence that C.R. had ongoing speech, physical, and occupational therapy issues. The child also had “issues with lots of different people,” would sometimes react violently during therapy sessions at home, and had several strong “melt downs” when meeting strangers – especially men.

³ Evidence from the 2015 severance hearing called into question whether Mother was the cause of C.R.’s behaviors. One of the visitation observers posited in her 2011 family court testimony that C.R. was displaying “a trauma-based response” to Mother. The other observer expressed concern about C.R.’s reaction to Mother and opined that visits “trigger emotional memories.” At the 2015 hearing, however, the first observer testified that the majority of Mother’s visits were positive and that C.R.’s fussiness could have been related to nap times. More importantly, she conceded she would not have offered the same opinion if she knew C.R. would continue having such extreme reactions after not seeing Mother for an extended period of time. No witness, including C.R.’s therapist, could state with any degree of certainty that C.R.’s behaviors were attributable to Mother.

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¶6 The court terminated Mother's parental rights on the ground of abandonment, *see* A.R.S. § 8-533(B)(1), and did not address the additional grounds for severance Father had alleged.⁴ Mother timely appealed. We have jurisdiction pursuant to Arizona Rule of Procedure for the Juvenile Court 103(A) and A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1).

DISCUSSION

I. Grounds for Termination

¶7 To terminate parental rights, the court must find at least one statutory ground by clear and convincing evidence. A.R.S. § 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 281-82, ¶ 7 (2005). It must also find by a preponderance of the evidence that termination is in the child's best interests. *See* A.R.S. § 8-533(B); *Calvin B. v. Brittany B.*, 232 Ariz. 292, 296, ¶ 18 (App. 2013). We review a termination order for an abuse of discretion and will affirm if it is supported by sufficient evidence. *Kenneth B. v. Tina B.*, 226 Ariz. 33, 36, ¶ 12 (App. 2010). We view the evidence in the light most favorable to sustaining the superior court's ruling. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20 (2000).

II. Abandonment

¶8 A.R.S. § 8-531(1) defines "abandonment" as follows:

"Abandonment" means 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 a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

⁴ In the same line of the ruling, the court stated it was terminating Mother's parental rights based on A.R.S. § 8-533(B)(2) (neglect or willful abuse). However, because the court did not address anything other than abandonment and specifically stated it was *not* doing so, we presume it intended to refer only to A.R.S. § 8-533(B)(1).

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In its order terminating Mother's parental rights, the court stated, in pertinent part:

Although given the opportunity to establish a therapeutic relationship with the minor child through counseling, mother did not do so. Mother also did not take advantage of the opportunities to receive information about the minor child through the paternal grandparents.

Had mother taken advantage of the suggestions of the family law court, she could have then *returned* to the family law court, shown that court that she had taken advantage of their suggestions and requested modification of the court orders. Mother did nothing to assert her legal rights.

...

The Court FINDS that Mother has made minimal efforts to communicate with the child and that she has not had any contact with the child for more than six months.

¶9 Courts consider a parent's conduct, not subjective intent, in determining whether he or she "provided reasonable support, maintained regular contact, made more than minimal efforts to support and communicate with the child, and maintained a normal parental relationship." *Michael J.*, 196 Ariz. at 249-50, ¶ 18. Where circumstances prevent a parent from exercising traditional bonding methods, she "must act persistently to establish the relationship however possible and must vigorously assert [her] legal rights to the extent necessary." *Id.* at ¶ 22. This is because a parent generally carries the burden of asserting her legal rights at every opportunity. *Id.* at 251, ¶ 25. However, "[a] parent may not restrict the other parent from interacting with their child and then petition to terminate the latter's rights for abandonment." *Calvin B.*, 232 Ariz. at 297, ¶ 21. When so restricted, a parent is not necessarily expected to exhibit the same level of traditional parental conduct or to take every possible legal measure to reduce barriers to parenting. *See, e.g., id.* at ¶¶ 25-26 (reversing abandonment finding where, although father was not "a salutary parent" who diligently pursued his rights and fulfilled "his corresponding parental responsibilities," mother had erected barriers to his parenting).

¶10 Mother clearly did not maintain a normal parental relationship with C.R. for more than six months. But whether she failed to do so without just cause is far less clear. *See* A.R.S. § 8-531(1) (failure to maintain relationship must be without just cause to constitute *prima facie*

SARAH R. v. JEREMY R., C.R.
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evidence of abandonment). Mother's contact with her daughter was cut off by a court order that essentially delegated authority to C.R.'s therapist to determine its duration. Severance hearing evidence established that Mother had little ability to affect visitation because Ms. Phillips testified that regardless of any action or progress by Mother, C.R. had not progressed to a point where she would recommend reintroduction to Mother. Thus, nothing demonstrated that Mother's failure to provide the correct therapist's information to Ms. Phillips had any effect on her ability to see or maintain contact with C.R.

¶11 Moreover, there was substantial evidence that Mother *did* take actions within her control to address her own issues that might otherwise prevent contact once Ms. Phillips deemed C.R. ready for reintroduction. She took multiple parenting classes, remained enrolled in healthcare and counseling services, and completed a domestic violence program. Mother contacted Ms. Phillips on numerous occasions to inquire about C.R. and attempted to provide authorization forms and therapist information. Mother also emailed Grandfather to inquire about C.R. and her welfare.⁵

⁵ In one email to Grandfather, Mother wrote:

I am writing you in concern of my daughter [C.R.]. I would like to know how she has been doing and what has been going on in her life. I know that she has had some appointments recently and I want to know how everything has been going with all of them. My oldest daughter [K.] and I do love her and miss her so much with all my heart and would really like to be in and part of her life, also for her to know who her mother and older sister [K.] are. . . . I would also like to know what [C.R.] does everyday and what she likes and doesn't like. Does she have any favorite things that she really enjoys or likes to do? How is she doing with her talking, has she learned any new words or sentences? How has she been doing with her eating and feeding herself? Is there a favorite thing that she likes to eat or any foods that she really doesn't like? I know that she is getting bigger and growing so fast, how much does she weigh and how tall is she now? I really do love [C.R.] and miss her so much and think about her all day everyday. Could you please give her lots of hugs and kisses and let her

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¶12 Mother admitted she could have been more assertive in attempting to reintegrate into C.R.'s life. She gave up on sending clothing and gifts because she felt the items never reached C.R. She stopped emailing Grandfather for updates after his replies simply directed her to consult her attorney or court reports. When that avenue proved unproductive, Mother turned to Ms. Phillips for updates about C.R. She also sought alternative ways to bond with C.R. that would still comply with the family court's orders. For instance, Mother suggested one-way visitation, such that she could see her daughter without C.R. knowing she was present. She also pursued visits for C.R.'s half-sister, prepared a photo album for C.R., and suggested showing the child pictures as a means of reacquainting her with Mother and maternal relatives. And Mother testified that throughout the proceedings, she continuously tried to resolve the matter with Father.

¶13 Given the significant limitations imposed on Mother, and the high standard of proof required to terminate her rights, the evidence was insufficient to establish that Mother failed to maintain a normal parental relationship with C.R. without just cause.⁶

know that [K.] and I do love her and care about her and miss her so so much. Also could you please send me some pictures of her having fun doing what she does and likes everyday? I hope that everything goes well at her doctors appointment on Friday[,] I wish that I could be there for her. Hope that you have a very blessed and wonderful day! Thank you for your time and I look forward to hearing back from you soon on how my beautiful little girl is doing.

According to Father's termination petition, as of July 2014, Mother had emailed Grandfather "on approximately seven occasions" to inquire about C.R.

⁶ Though not strictly necessary to our holding, we have other concerns about the abandonment finding, including the juvenile court's refusal to permit Mother to make a record after it excluded testimony about Father's attempts to limit Mother's email communications. The court also refused to allow evidence that Mother had paid "thousands of dollars" for legal services relating to C.R. Additionally, after Father called Mother as an adverse witness at the outset of the severance hearing, the court warned Mother's attorney: "if you . . . don't ask all of the questions

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III. Best Interests Finding

¶14 Even if we were to affirm the abandonment finding, we would nevertheless reverse the severance order because there was inadequate proof that termination of Mother's parental rights was in C.R.'s best interests. See *Kent K.*, 210 Ariz. at 284, ¶ 22 (party seeking termination must prove best interests by a preponderance of the evidence). It is true that "in most cases, the presence of a statutory ground will have a negative effect." *Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, 350, ¶ 23 (App. 2013). However, a court cannot "assume that a child will benefit from a termination simply because he has been abandoned." *Demetrius L. v. Joshlynn F.*, ___ Ariz. ___ (2016). The petitioning party must instead prove that the child will derive an affirmative benefit from termination or incur a detriment without it. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 6 (App. 2004).

¶15 In its best interests finding, the superior court stated that C.R. "has several medical and emotional issues and mother has made little to no effort to establish communication, continue a relationship or support the child." But we cannot discern from the record what "affirmative benefit" C.R. will receive from terminating Mother's rights or what detriment she will incur without such an order. Mother poses no risk to the child, as family court orders currently prohibit her from seeing C.R. Mother testified she is willing to wait until interaction would be beneficial to C.R., and she accepts that her current role is limited. Mother also believes C.R. is in a stable home and has no intention of disrupting it.

that you want to ask now, you may not be allowed to ask them later." This required Mother to anticipate and defend against facts and allegations not yet presented and left counsel in a quandary over whether to cover certain issues that might or might not arise in Father's case-in-chief. When Mother's counsel politely objected and advised that going into matters such as mental health was stressful for Mother if unnecessary, the court responded, "Honestly I don't give a crap about either one of these people." The court went on to state that its only concern was C.R.'s best interests. The child's best interests are obviously important, and even paramount in the second step of the severance analysis. But when a court acts to terminate a parent's fundamental constitutional right to "the companionship, care, custody, and management of his or her children," *Stanley v. Illinois*, 405 U.S. 645, 651 (1972), it must necessarily be concerned with the parent's rights as well.

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There are no adoption plans. *Cf. Oscar O.*, 209 Ariz. at 334, ¶ 6 (current adoptive plan is a well-recognized benefit).

¶16 Father's suggestion that severing Mother's rights would allow him to "share joint-legal decision making with the paternal grandmother" has no discernible legal basis.⁷ *Cf. A.R.S. § 25-409(A)* (delineating third party rights to legal decision-making authority and requiring, *inter alia*, proof that it would be significantly detrimental to the child to remain or be placed in the care of *either* legal parent). Father also suggests that terminating Mother's parental rights will alleviate "stress and anxiety." He does not explain how severance will achieve this goal or whose "stress and anxiety" will be reduced. Father also argues, "Continuation of the parent-child relationship would be a detriment to [C.R.] because [Mother] has failed to establish and maintain a parental relationship with the child, [and] has consciously disregarded the obligations owed by a parent to a child[.]" But this merely restates the grounds for abandonment.

¶17 Mother, on the other hand, testified that C.R.'s half-sister and maternal grandmother desire a relationship with C.R. Father testified such relationships are unimportant, and he objects to visits. The court did not find that C.R.'s best interests would be advanced by not knowing or interacting with her maternal relatives. And C.R.'s therapist testified C.R. would suffer no harm from having a relationship with her older sister. Additionally, Mother receives disability benefits, and she testified that, as her daughter, C.R. may be entitled to Social Security benefits in the future.

¶18 Severance of Mother's parental rights will render C.R. an orphan on the maternal side, with no corresponding benefit apparent from the record. *Cf. Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 8 (1990) (despite abandonment finding, "[w]e cannot hold that there is sufficient evidence to terminate when the record is entirely devoid of any explanation of what [the child] will gain or lose"). Based on the record before us, we conclude the juvenile court's finding that terminating Mother's parental rights would be in C.R.'s best interests is not supported by substantial evidence.

⁷ When asked at the severance hearing why terminating Mother's rights was in C.R.'s best interests, Father stated that he liked "to coparent with my mom" and that he wanted "to have joint custody with my mom."

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CONCLUSION

¶19 For the foregoing reasons, we reverse the order terminating Mother's parental rights.

RESP

2016-036

MAR 07 2016

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CELÉ HANCOCK
JUDGE
DIVISION 5

Arizona Superior Court

YAVAPAI COUNTY COURTHOUSE
120 SOUTH CORTEZ STREET
PRESCOTT, ARIZONA 86303

March 2, 2016

Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

Dear Commission:

Please consider this as my response to the complaint in your case no. 16-036.

As you have indicated, the procedural and other errors found by the Court of Appeals will be handled, if necessary, during remand to my division.

During the severance trial, *Sarah R. v. Jeremy R., C.R.*, I did indeed indicate to the parties that "I honestly don't give a crap about either one of these people". I can certainly appreciate the Commission's concern regarding this statement. As I assume most severance trials are, this case was extremely contentious and emotional. The testimony in the case indicated that the child had experienced extreme trauma during her life having to do with mother. The testimony was both disturbing and emotional.

Sarah R. v. Jeremy R., C.R., was the first severance trial I have presided over. This does not excuse my inappropriate comment. My comment was made in an effort to impress upon the parties and the attorneys that the child was the most important issue to be considered by the Court, not the personal desires of the parties or their attempts to denigrate one another, which occurred throughout the trial. The Court of Appeals noted that even though the best interests of C.R. were of "obvious" importance, the Court should also be concerned with the rights of the parents.

I have now been made abundantly aware that I must work very hard to ensure that any comments made by myself as a Judge must be made in a thoughtful, responsible manner that assist the litigants in working through these difficult situations. To ensure that I continue to improve in this area, I intend to routinely review recordings of my hearings and to develop strategies such as recessing for a few moments in order to gather my thoughts and carefully considering my words before speaking to the litigants.

I hope that this correspondence has sufficiently addressed the Commission's concerns regarding this comment and my judicial demeanor. If the Commission would like additional information, please do not hesitate to contact me.

Sincerely,

Celé Hancock, Judge of the Superior Court