

**ARIZONA SUPREME COURT**

In re Termination of Parental Rights  
as to B.W.

Arizona Supreme Court  
No. CV-24- -PR

Court of Appeals  
Division One  
No. 1 CA-JV 23-0202

Maricopa County  
Superior Court  
No. JS520409

**APPELLANT JASON M.'S PETITION FOR REVIEW**

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## TABLE OF CONTENTS

TABLE OF CITATIONS.....	3
INTRODUCTION.....	5
ISSUES PRESENTED FOR REVIEW .....	6
MATERIAL FACTS.....	6
REASONS WHY THE COURT SHOULD GRANT REVEIW.....	12
I.    The appeals court misinterpreted and misapplied the just cause rebuttal under A.R.S. § 8-531(1). .....	12
II.   The appeals court misinterpreted and misapplied best interests under A.R.S. § 8-533(B).....	18
CONCLUSION.....	21

## TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<i>Alma S. v. Dep't of Child Safety,</i> 245 Ariz. 146 (2018).....	18, 19
<i>Calvin B. v. Brittany B.,</i> 232 Ariz. 292 (App. 2013).....	15, 16
<i>Demetrius L. v. Joshlynn F.,</i> 239 Ariz. 1 (2016).....	18, 19
<i>In Re Termination of Parental Rights as to B.W.,</i> 2024 WL 1172862 (Ariz. App. March 19, 2024).....	5
<i>In Re Termination of Parental Rights as to C.R.,</i> 256 Ariz. 170 (App. 2023).....	16
<i>Kent K. v. Bobby M.,</i> 210 Ariz. 279 (2005).....	13
<i>Michael J. v. Ariz. Dep't of Econ. Sec.,</i> 196 Ariz. 246 (2000).....	16
<i>Minh T. v. Ariz. Dep't of Econ. Sec.,</i> 202 Ariz. 76 (App. 2001).....	14, 15
<i>Pima Cnty. Juv. Severance Action No. S-114487,</i> 179 Ariz. 86 (1994).....	13, 14
<i>Seiler v. Whiting,</i> 52 Ariz. 542 (1938).....	13, 17
<i>Smith v. Smith,</i> 253 Ariz. 43 (App. 2022).....	13
<i>State v. Razo,</i> 195 Ariz. 393 (App. 1999).....	13

<u>Cases</u>	<u>Page</u>
<i>Titus S. v. Dep't of Child Safety</i> , 244 Ariz. 365 (App. 2018).....	18

<u>Statutes</u>	<u>Page</u>
A.R.S. § 8-105(A) .....	19
A.R.S. § 8-105(N).....	19
A.R.S. § 8-531(1) .....	5, 6, 12, 13, 16, 17, 21
A.R.S. § 8-533(B).....	5, 6, 18
A.R.S. § 8-533(B)(1) .....	12

<u>Secondary Source</u>	<u>Page</u>
Black's Law Dictionary Online, <a href="https://thelawdictionary.org/just-cause/">https://thelawdictionary.org/just-cause/</a> (December 14, 2023) .....	12

## INTRODUCTION

This case presents an issue of first impression: can mother's involvement as a key prosecution witness in a first-degree murder case against father – where (1) mother's vengeful actions were the but-for cause of father's first-degree murder charge, (2) father's criminal attorney advised him not to contact mother during the 6-year criminal case, and (3) father was acquitted – demonstrate just cause for father's failure to maintain contact with his child? It also presents a continuing issue of statewide importance regarding when termination is in a child's best interests.

The memorandum decision should be vacated because it misinterpreted and misapplied A.R.S. § 8-531(1)'s just cause rebuttal and A.R.S. § 8-533(B)'s best interests finding. Allowing this record to support permanent termination of father Jason M.'s parental rights open the floodgates for revenge tactics in family and juvenile cases; condones one parent seeking revenge against the other; and ignores Jessica W. (Mother)'s role as the but-for cause of Jason's 6-year first-degree murder case. Therefore, this Court should grant review, vacate [\*In re Termination of Parental Rights as to B.W.\*](#), 1 CA-JV 23-0202, 2024 WL 1172862 (Ariz. App. March 19, 2024) (Appendix [App.] A), and reverse the termination of Jason's parental rights.

## ISSUES PRESENTED FOR REVIEW

1. Did the court misapply A.R.S. [§ 8-531\(1\)](#)'s just cause rebuttal?
2. Did the court misapply A.R.S. [§ 8-533\(B\)](#) by affirming the juvenile court's best interests finding?

## MATERIAL FACTS

Jason and Mother are the parents of nine-year-old B.W. born in April 2015. (App. C.) After B.W.'s birth, Mother and Jason had an informal parenting agreement where B.W. spent time with each parent. (App. D at 59; App. E at 217.) As of early-August 2015, their relationship was contentious. (App. G.)

On August 13, 2015, a fatal shooting occurred (the Incident) that embroiled Jason in a 6-year criminal case where Mother was the prosecution's key fact witness in first-degree murder charge against Jason that resulted in Jason's acquittal in December 2021. (App. E at 218, 232-35; App. H.)

In early-August 2015, Mother was aware Jason had a married girlfriend (Simona). (App. G; App. H; App. E at 234.) Mother started communicating with Simona's husband, William, and informed William about Simona's affair. (App. H; App. E at 222, 233-34.) Mother obtained William's contact

information from Jason's cell phone she had **stolen** from Jason's home. (App. E at 222, 232-34.)

On August 13, 2015, Jason and Simona tried to obtain an order of protection against William because they knew Mother contacted him and he was violent. (App. H.) Later that day, William unlawfully entered Jason's home with a knife, Jason shot William in self-defense, and Jason called 911. (App. E at 219.) The police contacted Mother because she was on an active call with William during the Incident. (App. D at 128.)

The police seized Mother's cell phone. (App. H.) Mother's internet searches on that phone – prior to the Incident – included:

- “how to get revenge on baby father”
- “how to pull off the greatest revenge on the person that did you wrong”
- “the vengeful mother who tear[s] fathers from their children's lives”

(*Id.* at 491.)

In October 2015, Jason hired DM Cantor Law Firm. (App. E at 263.) Attorney Joey Hamby, a certified criminal law specialist, was involved in the criminal case. (*Id.* at 225-26.) Within less than a week of being retained, Hamby confirmed charges would be filed and Mother was a vital witness. (*Id.* at 241.) He never practiced dependency law and was unaware of the

abandonment severance ground. (*Id.* at 254-56.) He did not anticipate the case taking 6 years. (*Id.* at 250.)

From the investigation to Jason's acquittal, Jason persistently spoke to Hamby about wanting to be in B.W.'s life and Mother not allowing contact. (*Id.* at 239-42, 250-52.) Throughout the representation, Hamby advised Jason to have **NO** contact with Mother because:

the genesis of this dispute between Jason and [Mother] was B[.W.] . . . The night before [Mother] started making calls to Will[iam], Jason and [Mother] had a fight about B[.W.] At the end of that fight, [Mother] started doing internet searches on her phone. And again, these are things that were proven in court by her internet search history. . . . And within less than ten hours of doing multiple searches for how to get revenge on Jason, she started calling Will[iam], and less than 12 hours later, Will[iam]'s dead in Jason's house.

(*Id.* at 240-41, 251, 260-61.)

Hamby opined that any contact Jason had with Mother would be viewed as an attempt to threaten, harass, intimidate, influence, bribe, or coerce a witness and could result in serious trouble. (*Id.* at 240-41, 269-70.) Once charges were filed, Jason was under a May 2017, court release order to not initiate contact with Mother. (*Id.* at 241, 247-49.) Hamby did not request to modify that release condition because to him it was "a non-starter." (*Id.* at

252-53.) Hamby explained any efforts to see B.W. were futile because he could not think of a case where the court allowed modification of release conditions to allow a criminal defendant contact with a child over the other parent's objection. (*Id.*)

Following Jason's acquittal, he retained attorney Bruce Blumberg and initiated a family court case in March 2022. (*Id.* at 283, 286.) Blumberg was familiar with the criminal case because he represented co-defendant, Simona. (*Id.* at 248.) Blumberg had "a reason to believe why [an interventionalist or third-party provider] could not occur during the criminal case." (*Id.* at 306.) He explained Mother "was a material witness in the criminal action, and contact with her would be deleterious to his matter." (*Id.* at 296.) When asked about a court order preventing contact between Jason and B.W., he responded, "[i]ndirectly, there would be" and that would be the order that said do not have any contact with witnesses. (*Id.* at 302.)

Four months after Jason initiated a family court case, Mother filed a Petition to Terminate Jason's parental rights on abandonment and best interests. (App. C; App. H.) Mother's Termination petition stayed the family court proceedings. (App. E at 290.) The juvenile court held a four-day severance trial from March to June 2023. (App. B.)

Jason stopped contacting Mother to request parenting time after Hamby advised him not to have any contact with Mother. (App. F at 371-72.) After the Incident, Jason asked Mother for contact with B.W., Mother did not respond to his requests, Jason did not have contact with B.W., and they did not have a normal parent-child relationship. (*Id.* at 370-71, 385-86, 431.)

Mother never told B.W. about Jason, B.W. did not know Jason, and Mother believed B.W. was too young to understand the situation. (App. D at 71, 84.) Mother was engaged to Carl. (*Id.* at 83.) B.W. did not call Carl “dad” (*id.*) and Carl did not live with them (*id.* at 187). Per Mother, Carl was willing to adopt B.W. (*Id.* at 86-87.)

Gail Olson conducted a social study and concluded termination was in B.W.’s best interests. (App. I.) Olson spent an hour and a half or less in Mother’s home speaking with Mother, Mother’s parents, B.W., and Mother’s then-17-year-old daughter. (App. D at 137.) While daughter lived with Mother and Jason when she was younger, she had not had contact with Jason for at least 8 years. (App. I; App. E at 212-13.) Olson’s conclusions relied on daughter’s statements about Jason. (App. I.) Olson did not have **any** contact with Carl. (App. D at 157, 162.) She did not conduct a background check on Carl because she said, “nothing at this time was imminent.” (*Id.* at 172.)

Olson interviewed Jason over the phone, did not go to Jason's home, and did not interview Jason's three children or Simona. (*Id.* at 137.) Olson understood Mother testified on behalf of the State and did not get any other information about Mother's role in Jason's criminal proceedings. (*Id.* at 166.) Olson opined a bond could be made between Jason and B.W. but "a bond in a case like this" would be traumatic and would need therapeutic intervention. (*Id.* at 148.)

Jason served in the United States Army. (App. E. at 211.) He has an adult son, a 12-year-old daughter, and a 4-year-old son. (*Id.* at 210.) His two minor children live with him and Simona. (*Id.*) Jason loved B.W., wanted to establish a relationship with B.W., and would contribute love, guidance, and support to B.W. (App. F at 381.)

On October 19, 2023, the juvenile court terminated Jason's parental rights, denied his just cause argument based on untried legal avenues, and found termination was in B.W.'s best interests. (App. B.) Jason timely appealed. (App. J.) On March 19, 2024, the court of appeals affirmed the juvenile court's order terminating Jason's parental rights. (App. A.)

## REASONS WHY THE COURT SHOULD GRANT REVIEW

### I. The appeals court misinterpreted and misapplied the just cause rebuttal under A.R.S. § 8-531(1).

The appeals court misinterpreted and misapplied A.R.S. [§ 8-531\(1\)](#) by ignoring Mother's actions, rejecting Jason's just cause argument, and affirming the juvenile court's order terminating Jason's parental rights on abandonment. (App. A.) Therefore, this Court should grant review, vacate the decision, and reverse the termination order.

Termination is justified under A.R.S. [§ 8-533\(B\)\(1\)](#) if a parent has abandoned a child. 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\(1\)](#).

The juvenile rules, statutes, and caselaw do not define "just cause." Just cause is defined as "a reason that is legally acceptable or sufficient." Black's Law Dictionary Online, <https://thelawdictionary.org/just-cause/> (April 18,

2024.) The primary goal of statutory interpretation is to find and give effect to legislative intent. [State v. Razo](#), 195 Ariz. 393, 394 ¶ 3 (App. 1999). The plain language of a statute is the best indication of that intent. [Kent K. v. Bobby M.](#), 210 Ariz. 279, 283 ¶ 14 (2005).

A.R.S. [§ 8-531\(1\)](#)'s plain language created a legal presumption of abandonment that Jason could rebut with "just cause." "A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption." [Smith v. Smith](#), 253 Ariz. 43, 46 ¶ 16 (App. 2022) (quoting Black's Law Dictionary (11th ed. 2019)). Once evidence contradicting the presumption is offered, the presumption disappears entirely. [Seiler v. Whiting](#), 52 Ariz. 542, 548 (1938). The application of just cause must be applied on a case-by-case basis. See [Pima Cnty. Juv. Severance Action No. S-114487](#), 179 Ariz. 86, 96 (1994).

The juvenile and appeals courts improperly relied on distinguishable cases to dismiss Jason's just cause argument. (App. A; B.) In [S-114487](#), this Court affirmed termination based on abandonment because it found father did not demonstrate good cause by arguing: (1) mother placed the child for adoption and (2) the attorneys pursuing the adoption case knew he did not want to lose his child. 179 Ariz. at 99. In [S-114487](#), father did not retain an

attorney, inquire about the child, or send any support for the child. *Id.* This Court found had he done so the result may have been different. *Id.* The [S-114487](#) case stated, “abandonment cannot turn on a bright line formula” and it applied the definition of abandonment in “common-sense” terms. *Id.* at 96. The decision provided the opportunity for a parent to defeat an abandonment finding by demonstrating “the statutorily required good cause.” *Id.* at 99.

Unlike the father in *S-114487*, Jason demonstrated good cause by hiring a criminal attorney, persistently inquiring about contact with B.W, following his attorneys advice to have no contact with Mother, and hiring a family law attorney after his acquittal to pursue contact with B.W. (App. E at 239-47.) Here, common-sense did not and could not support a finding that Jason abandoned B.W. based on the unique circumstances he faced – including the series of events set in motion by Mother’s vengeful and illegal actions.

The appeals and juvenile courts also improperly relied on [Minh T. v. Ariz. Dep’t of Econ. Sec.](#) to support abandonment. (App. A; B.) In [Minh T.](#), mother and father were charged with murdering their child, they refused to participate in reunification services based on advice from their criminal attorneys, and DCS sought termination based on a time-in-care ground. 202

Ariz. 76, 77, 79 ¶¶ 1, 11, 12 (App. 2001). In affirming termination, the appeals court held “that the parents had no constitutional right to refuse to participate in reunification services because there was no evidence that such services would have required them to incriminate themselves.” *Id.* at 78 ¶ 2.

Unlike in *Minh T.*, Jason was acquitted (App. E at 242) and initiated a family court case months before Mother’s Termination Petition (App. H; C). Mother’s actions were the but-for cause of the first-degree murder charge. (App E at 239-41; App. H.) Jason’s criminal and family law attorneys testified at his severance trial regarding their advice. (App. E at 225-81, 296.) And Mother’s role before, during, and after the Incident distinguish this case from *Minh T.* Unlike the parents’ actions in *Minh T.* that resulted in a criminal and DCS case, here Jason’s criminal case was based not only on his self-defense, but also Mother’s actions resulting in William unlawfully entering Jason’s home. Accordingly, it was unreasonable for the appeals and juvenile courts to compare the parents in *Minh T.* to Jason who was not accused of hurting a child and was acquitted before Mother filed the Termination Petition.

Arizona law is clear 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.” [Calvin B. v. Brittany B.](#), 232 Ariz. 292, 293 ¶ 1 (App. 2013). That principle was recently clarified to apply only “if the parent wrongfully restricts the other parent’s access to the child.” [In re Termination of Parental Rights as to C.R.](#), 256 Ariz. 170 ¶ 15 (App. 2023). Here, the record demonstrated Mother wrongfully restricted Jason’s contact with B.W. based on her internet searches (App. H) and actions in facilitating William going to Jason’s home (App. D at 128; App. E at 222, 232-34). Mother’s unclean hands cannot be ignored when assessing Jason’s just cause rebuttal and that is exactly what the lower courts did. (App. A; B.) Mother’s actions before, during, and after the Incident – including stealing Jason’s cell phone (App. D at 128), revenge-based internet searches, contacting William, being on an active call with William during the Incident, and testifying against Jason (App. H) – were just as, if not more harmful than the mother’s actions in [Calvin B.](#) preventing father from exercising parenting time, 232 Ariz. at ¶¶ 21-25.

While Arizona law requires a parent to act persistently to maintain a relationship with a child and vigorously assert legal rights to the extent necessary, [Michael J. v. Ariz. Dep’t of Econ. Sec.](#), 196 Ariz. 246, 250 ¶ 22 (2000), the plain language of A.R.S. [§ 8-531\(1\)](#) allowed for situations, like this, where

a parent had just cause for inaction. The juvenile and appeals courts improperly focused on Jason's actions and ignored his just cause argument for his inaction. (App. A; B.) His just cause argument was based not only on advice from his criminal attorney to have no contact with Mother (App. E at 225-81, 296), but also on Mother's desire to get revenge against him (App. H), Mother's role as the but-for cause of the Incident (*id.*), and the criminal court's release order prohibiting Jason from initiating contact with Mother (App. E at 241, 248-49).

If there were ever a case to support just cause for failure to maintain a parent-child relationship, it would be this one where Mother's actions set in motion a series of events that led William to unlawfully enter Jason's home with a knife, resulting in the shooting, and a 6-year criminal case where Mother was the prosecution's key witness. And once Jason rebutted the abandonment presumption, the presumption disappeared and left no ability to find, by clear and convincing evidence, Jason abandoned B.W. [Seiler](#), 52 Ariz. at 548. Based on the unique circumstances of this case and plain language of A.R.S. [§ 8-531\(1\)](#), no reasonable factfinder could conclude Jason failed to demonstrate a just cause rebuttal to abandonment. Accordingly, this Court should grant review, vacate the memorandum decision, and reverse

the termination order.

**II. The appeals court misinterpreted and misapplied best interests under A.R.S. § 8-533(B).**

The appeals court also misinterpreted and misapplied Arizona's best interests law under A.R.S. [§ 8-533\(B\)](#). Therefore, this Court should accept review, vacate the memorandum decision, and reverse the termination order.

"[T]ermination is in the child's best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." [Alma S. v. Dep't of Child Safety](#), 245 Ariz. 146, 150 ¶ 13 (2018). In conducting the best-interests inquiry, the court must "consider the totality of the circumstances existing at the time of the severance determination[.]" [Id.](#) at 150-51 ¶¶ 12-16. An adoption must be legally possible and likely. [Demetrius L. v. Joshlynn E.](#), 239 Ariz. 1, 4 ¶ 12 (2016); [Titus S. v. Dep't of Child Safety](#), 244 Ariz. 365, 370 ¶ 22 (App. 2018) (finding adoptability only has meaning when "adoption is not only possible, but likely.")

The appeals and juvenile courts misapplied Arizona's best-interest law to the unusual circumstances, and reasonable evidence and inferences did not support a best-interests finding. First, the record did not support a finding that B.W. was adoptable. Carl's willingness to adopt B.W. was based

only on Mother's hearsay statements to Olson and the juvenile court. (App. D at 86-87, App I.) The record did not demonstrate Carl was eligible to adopt because he was not married to Mother, and he did not have a preadoption certification. A.R.S. [§ 8-105](#)(A), (N). Arizona law is clear that an adoption must be legally possible and likely. [Demetrius L.](#), 239 Ariz. at 4 ¶ 12. This record did not support a finding that B.W.'s adoption was legally possible and likely.

Second, no credible evidence supported a finding that reintroducing Jason to B.W. would "damage B.W.'s stability and security." (App. A at 7; B at 22.) Instead, the record demonstrated B.W. did not call Carl dad, did not live with Carl, and Mother never told him about Jason. (App. D at 83-84, 187.) The record did not support the appeals court finding that Jason "voluntarily made himself a complete stranger to the child." (App. A at 8.) Instead, the record demonstrated Mother's vengeful and illegal actions were the but-for cause of the Incident that ripped Jason away from B.W. for years. (App. E at 222, 232-34; App. H.)

Finally, the appeals and juvenile courts failed to consider the totality of circumstances, [Alma S.](#), 245 Ariz. at 150-51 ¶¶ 12-16, including Mother's illegal and vengeful behavior. (App. H.) The record demonstrated Mother

stole Jason's cell phone (App. E at 222, 232-34); prior to the Incident, Mother searched the internet for revenge tactics against Jason (App. H); she was on an active call with William during the Incident (App. D at 128); and Mother pled guilty to an extreme DUI in 2021 (App. H). Additionally, Olson's social study did not include any information directly from Carl and heavily relied on then-seventeen-year-old's statements about Jason when that child had not had contact with Jason for more than 8 years. (App. I, App. E at 212-13.) Although a social study can be an important tool, it is useless if it does not accurately present the circumstances of the parents' situation, fails to interview relevant people, and disregards the petitioning party's harmful actions/behaviors.

While it is undisputed that B.W. was living with Mother from the Incident to the present, that fact alone does not automatically mean B.W. was provided stability or security. Based on the unique circumstances of this case – including Mother's illegal actions, vengeful behavior, and relevant information lacking from the social study – the record was wholly insufficient to support the juvenile court's best interests finding. Arizona law cannot let Mother, with unclean hands, get away with a revenge scheme that effectively prevented Jason from seeing his son and then rubber stamp the

permanent termination of Jason's parental rights. Accordingly, this Court should accept review, vacate the memorandum decision, and reverse the termination order.

### CONCLUSION

For the foregoing reasons, Jason respectfully asks this Court to grant review of an issue of first impression regarding A.R.S. § 8-531(1)'s just cause rebuttal and a recurring issue of statewide importance regarding best interest, vacate the memorandum decision, and reverse the order terminating Jason's parental rights on abandonment and best interests.

Respectfully submitted this 18th day of April 2024.

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