

**ARIZONA SUPREME COURT**

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

Supreme Court  
No. CV-24-0079-PR

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

Maricopa County Superior  
Court No. JS520409

**BRIEF OF *AMICUS CURIAE***  
**DEPARTMENT OF CHILD SAFETY**  
**IN SUPPORT OF APPELLEE/MOTHER, JESSICA W.**

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## **INTEREST OF *AMICUS CURIAE***

As an “agency of the State of Arizona,” the Department of Child Safety is entitled to file an amicus brief under [ARCAP 16\(b\)\(1\)\(B\)](#). The Department has a statutory duty to assist the parents of dependent children and to pursue the dual goals of preserving families while protecting the welfare of Arizona’s children. The Department alleges and litigates the abandonment ground more often than any individual party and therefore has an interest in this Court’s interpretation of the abandonment ground. Consistent with these goals, DCS has an interest in advocating for a sound legal interpretation of the “just cause” rebuttal to abandonment under [A.R.S. § 8-531\(1\)](#).

## **PREFATORY COMMENT**

The Department has neither reviewed nor requested the transcripts or full Index of Record on Appeal (IRA) in this matter but has instead discerned the relevant case-specific facts from the court of appeals’ Memorandum Decision ([Decision](#)), the juvenile court’s order (Ruling) terminating Appellant Jason M.’s parental rights (IRA 70 according to the parties’ citations), and limited additional details from the parties’ arguments on appeal. The Department accepts the juvenile court’s determination that “[t]he essential facts are not in dispute” and that the issue before the courts has always been the legal question of whether those

facts established “just cause” for Jason’s years-long absence from his child’s life. (Ruling at 4.)

Nevertheless, the Department notes that throughout the appellate proceedings, Jason has made a number of serious accusations against Appellee Jessica W. (Mother), claiming that she engaged in theft and other “illegal” activity motivated by desire for “revenge” and that she was “the but-for cause” of Jason’s indictment for murder after he fatally shot the husband of the woman with whom he was having a secret affair. (*See* Opening Brief [OB] at 24, 28, 34; Petition for Review [PFR] at 5, 15, 17; Appellant’s Supplemental Brief [ASB] at 8-10.)

Although Jason suggests that his acquittal lends credibility to these accusations, there is a vast difference between the reasonable doubt required to acquit a criminal defendant and ascribing dishonesty or ill intent to an adverse witness, and the mere fact that a jury acquitted Jason of murder lends little if any support to his accusations against Mother. Regardless, because the juvenile court did not even mention most of the details in Jason’s accusations, it appears that to whatever extent Jason asserted them below, the juvenile court rejected them. (*See* Answering Brief [AB] at 29-30.) Because it is not the role of this Court to weigh evidence or redetermine disputed facts, the Court should either disregard Jason’s accusations or presume that the juvenile court rejected them.

## INTRODUCTION

Jason M. is the unwed biological father of nine-year-old B.W. (Ruling at 2.) It was undisputed that Jason took “no legal action” to establish paternity or otherwise establish a relationship for nearly seven years after B.W.’s birth and that Jason had only limited involvement with B.W. during the first four months of his life. (*Id.* at 4-5.) When B.W. was a newborn and Jason should have been establishing a parent-child relationship, he instead engaged in a covert affair with a married woman and fatally shot that woman’s husband in August 2015. (*Id.* at 4; *see also* OB at 8.) Mother was on the phone with the decedent during the shooting and became a key prosecution witness when Jason was charged with first-degree murder. (Ruling at 8.) Meanwhile, Jason ceased his already limited efforts to establish a parent-child relationship with B.W., claiming that he relied on his attorney’s advice not to have any contact with Mother because it could be construed as an attempt to influence or intimidate her. (*Id.* at 8-9.)

Several years later, a jury acquitted Jason of murder, and in March 2022, he petitioned to establish paternity, limit Mother to supervised visitation, and become the primary residential parent of B.W., who was almost seven years old and considered Jason to be a “stranger.” (*Id.* at 5; [Decision](#), ¶ 9.) Mother then petitioned to terminate Jason’s parental rights to B.W. based on abandonment. ([Decision](#), ¶ 10.) The juvenile court granted Mother’s petition, rejecting Jason’s

argument that his unresolved murder charges and related prohibition against contacting Mother established “just cause” for his years of complete lack of effort to support or establish a relationship with B.W. or even to establish his paternity of him. (Ruling at 8-11.) The court expressly reasoned that restrictions on Jason’s ability to contact Mother could not establish “just cause” for abandoning B.W. when Jason had multiple “untried legal avenues available” to establish contact with B.W. and “no good reasons were offered” to explain “why the available legal options were not explored.” (*Id.* at 10-11.) Jason appealed, the court of appeals affirmed in a memorandum decision, and this Court granted review on the issue of whether the court of appeals “misinterpreted and misapplied the just cause rebuttal under [A.R.S. § 8-531\(1\)](#).” (*See* PFR at 12.)

Because both courts below correctly applied the plain language of the statute, this Court should affirm. Moreover, although the juvenile court and court of appeals do not, as Jason insists, routinely interpret [A.R.S. § 8-531\(1\)](#) in a manner that renders the just-cause provision “meaningless” (*see* ASB at 19-20), the Court should still issue an Opinion clarifying the “just cause” provision. The Court should specifically endorse a plain-text interpretation of “just cause” under [A.R.S. § 8-531\(1\)](#) that requires a parent attempting to rebut prima facie evidence of abandonment to establish “just cause” for the full scope of the parent’s inaction and provides that “just cause” does not exist when there is no reasonable causal

relationship between the purported justification and the specific parental responsibilities the parent failed to perform.

## ARGUMENT

### **I. The Court of Appeals Did Not Misinterpret or Misapply the Term “Just Cause” Under A.R.S. § 8-531(1).**

The juvenile court may terminate a parent’s parental rights if it finds that “the parent has abandoned the child.” A.R.S. § 8-533(B)(1). Abandonment is measured by a parent’s conduct, not his intent, *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249-50, ¶ 18 (2000), and 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). Abandonment occurs when a parent makes “only minimal efforts to support and communicate with the child,” and a parent’s “[f]ailure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.” *Id.*

Where “circumstances prevent the . . . father from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary.” *Michael J.*, 196 Ariz. at 250, ¶ 22 (quoting *Pima Cty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 97 (1994)). The parent’s efforts must also be timely; belated attempts to establish or reestablish a relationship do

not negate a parent's abandonment of his child and may be considered only under the court's best-interests inquiry. *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 8 (1990).

With respect to just-cause rebuttal of prima facie evidence of abandonment, the statute specifically refers to “[f]ailure to maintain a *normal* parental relationship” for six months. A.R.S. § 8-531(1) (emphasis added). It does not necessarily follow that a parent who fails to make any effort whatsoever to maintain *any* sort of parental relationship for *several years* can defeat an abandonment claim by establishing “just cause.” However, assuming for the sake of argument that the statutory text contemplates rebuttal of complete abandonment for years at a time, justice (which is implicit in the term “just cause”) should require extraordinary circumstances, not of the parent's own making, that completely prevented the parent from establishing or maintaining the relationship.

Determining what constitutes “just cause” under A.R.S. § 8-531(1) is a question of statutory interpretation. An appellate court reviews issues of statutory interpretation *de novo*, looking to the statutory language as the best indicator of the Legislature's intent when that language is “subject to only one reasonable meaning.” *Brenda D. v. Dep't of Child Safety*, 243 Ariz. 437, 442, ¶ 15 (2018); *cf. Maricopa Cty. Juv. Action No. JS-5209*, 143 Ariz. 178, 183 (App. 1984) (holding that a statute is not rendered unconstitutionally vague by undefined terms so long

as “any reasonable and practical consideration can be given to its language”). That said, it is well-settled that in applying the statute, the appellate court defers to the juvenile court’s factual findings—even when the facts are “sharply disputed”—unless there is a complete lack of supporting evidence or the reviewing court determines that no reasonable fact-finder could conclude that the evidence and reasonable inferences to be drawn from it satisfied the applicable burden of proof. *Alma S. v. Dep’t of Child Safety*, 245 Ariz. 146, 151-52, ¶¶ 18-19 (2018) (citations omitted); *Brionna J. v. Dep’t of Child Safety*, 255 Ariz. 471, 478-79, ¶¶ 30-31 (2023).

Here, no party has argued that A.R.S. § 8-531(1) is incapable of a plain-text interpretation, and there is no indication that either of the courts below exceeded the scope of a plain-text interpretation. Indeed, the term “just cause” is defined in a widely accepted legal dictionary showing that the term is synonymous with “good cause,” which is specifically defined as “legally sufficient reason.” *See Cause*, Black’s Law Dictionary (12th ed. 2024). Considering the dictionary meanings of the two individual terms in isolation, “cause” in the context of A.R.S. § 8-531(1) implies a logical connection between the failure to maintain a normal parent-child relationship and the parent’s claimed justification, while “just” implies that the reason must be “fair” or “equitable” and that it may not be frivolous or unjust. *See id.*; *Just*, Black’s Law Dictionary (12th ed. 2024).

Under a reasonable plain-text interpretation of the just-cause provision, a court should consider not only the circumstances the parent claims justify his failure to establish or maintain a normal parent-child relationship, but the *extent* to which the purported justification hindered the parent’s ability to maintain the relationship. There can be no “just cause” absent a reasonable *causal* relationship between the parent’s specific omissions and his claimed excuse. The court also should not ignore the circumstances, including the parent’s own actions, that led to any conditions that hinder the relationship. If the juvenile court finds that a parent’s claimed justification for abandoning his child is a predictable consequence of the parent’s criminal behavior, misconduct, or *unreasonable decisions*, then the court should have the discretion to determine—and should arguably determine as a matter of law—that the purported “cause” is not “just” and that the parent has therefore not established “just cause” under A.R.S. § 8-531(1); cf. *Minh T. v. Ariz. Dep’t of Econ. Sec.*, 202 Ariz. 76, 80, ¶ 16 (App. 2001) (reasoning that the possibility that participating in recommended reunification services *might* result in self-incrimination did not excuse parents from the “difficult choices” they faced as “a consequence of their own actions”) (citation omitted).

Here, the juvenile court expressly agreed with portions of Jason’s argument that his pending criminal case hindered his ability to maintain a normal parent-child relationship and specifically reasoned that “any prosecutor inclined to see a

defendant trying to influence or intimidate a witness would” not see a meaningful distinction between contacting a child B.W.’s age and the child’s custodial parent. (Ruling at 9, n.10.) But the court expressed doubt and explicitly rejected Jason’s unsupported theory that “the prosecution could have successfully argued . . . that any filing [Jason] may have made in a family court matter was a nefarious attempt to influence or intimidate [Mother].” (Ruling at 10.) The court also “accept[ed]” for purposes of argument that Jason was advised not to initiate contact with Mother and agreed that it should consider the limitations inherent in Jason’s pending criminal prosecution as “one factor to be considered in evaluating [Jason’s] ability to perform his parental obligations.” (Ruling at 10 [quoting language from *Michael J.*, 196 Ariz. at 250, ¶ 22 that originally referred to incarceration].) Having expressly considered those inherent limitations, however, the court concluded that Jason had “not demonstrated just cause” in light of his complete lack of effort to maintain or even establish a parent-child relationship with B.W., including his failure to obtain competent legal advice, to seek clarification of the typical “no contact with witnesses” provision in the criminal court release order, or to explore several other specific legal measures that “might have allowed some contact with the infant child” but that Jason rejected “without even trying.” (Ruling at 8-11.)

In so rejecting Jason’s just-cause argument, the juvenile court made an appropriate ruling based on a reasonable plain-text interpretation of the statute and its own reasonably supported factual findings. The court of appeals’ analysis was admittedly less detailed, but inasmuch as it affirmed based primarily on the unusual scope and extended duration of Jason’s failure to maintain any sort of parental relationship with B.W. and the fact that his claim to be “[f]ollowing his counsel’s advice” did not explain the scope of his inaction, the court of appeals also appropriately applied the statute and did not err in affirming the order terminating Jason’s parental rights. ([Decision](#), ¶¶ 17-19.)

And although there is some merit to Jason’s argument that the Court should adopt a “reasonably prudent person standard” (*see* ASB at 22), given that the same standard is widely used in the context of excusable neglect to establish “good cause” to set aside a civil judgment, *see City of Phoenix v. Geyler*, 144 Ariz. 323, 331-32 (1985), doing so would not change the result in this case. Indeed, Jason’s prolonged inaction was not the behavior of a reasonably prudent person in the same circumstances for the reasons discussed at length above and in the [Ruling and Decision](#). Moreover, Jason’s belief that prohibitions on contacting Mother precluded *any* form of contact with B.W. and *any* possible legal action to establish paternity is an example of legal ignorance, which is not a basis for good cause—and therefore not a basis for the synonymous “just cause”—especially when it

