IN THE ARIZONA SUPREME COURT

In re Termination of Parental Rights as to B.W.	No. CV-24-0079-PR Court of Appeals No. 1 CA-JV 23-0202 Maricopa County Superior Court No. JS520409

BRIEF OF *AMICI CURIAE* PIMA COUNTY PUBLIC DEFENDER'S OFFICE AND MARICOPA COUNTY OFFICE OF THE PUBLIC ADVOCATE (INDIGENT DEFENSE AGENCIES) IN SUPPORT OF APPELLANT

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The Pima County Public Defender's Office and Maricopa County Office of the Public Advocate are indigent defense agencies in Arizona tasked with representing parents in juvenile court in dependency, guardianship, and termination proceedings. Some of those parents are respondents to private petitions that allege they have abandoned their children. *Amici* offer this brief because the issues presented concern the constitutional right of parents to parent their natural children and to have that fundamental parent-child bond broken only in appropriate cases.

What makes cases involving private petitioners stand out is the frequency that such cases bleed over from family court proceedings. In this case, Appellant/Father alleges that Appellee/Mother has weaponized the judicial system. Although the facts of this case are extreme and unusual, the story is similar to many other cases. The formula is: 1) a noncustodial parent, who has been out of the picture for a period of time, goes to family court and seeks custody and/or visitation; 2) the custodial parent asks the family court to maintain the status quo, but the family court orders that the other parent is entitled to visitation (at least); and 3) the custodial parent then goes to juvenile court with a private severance petition for the purpose of overriding the family court's orders.

Amici are concerned that parents who are prosecuted for serious crimes and are advised by counsel to avoid family court proceedings (wisely or unwisely) are

later punished by the juvenile court for following expert professional advice. As *amici* will explain, the leading case from the court of appeals, *Calvin B. v. Brittany B.*, 232 Ariz. 292 (App. 2013), has been misapplied by lower courts to require a parent to go so far as to violate court orders in order to prove "just cause" for failing to have contact with their child. Additionally, in this case, the court of appeals mistakenly shifted the burden of proof regarding "without just cause" from the petitioner to the respondent. It made no effort to explain what constitutes "just cause" beyond citing some cases involving the abandonment ground. It should have recognized that the phrase "just cause" was deserving of further explanation. At its core, this case requires this Court to explain what the legislature means by "without just cause" in A.R.S. § 8-533(B)(1).

Just as it did in *Timothy B. v. DCS*, 252 Ariz. 470 (2022), regarding the legislative term "normal home," this Court should provide standards and factors for juvenile courts to consider when determining whether a petitioner can show that the respondent lacks just cause for failing to maintain a parent-child relationship. Those factors should capture the petitioner's conduct to prevent the relationship, as well as the respondent's efforts to maintain it. The factors should include the respective parents' knowledge and use (or, in some cases, abuse) of the judicial system. Finally, this Court should consider the impact of attorney advice upon a parent's decisions.

ARGUMENTS

I. This Court should stress that a petitioner must prove abandonment by showing that the respondent's lack of contact with a child was "without just cause."

It is self-evident that a parents who have abandoned their children have demonstrated their unfitness. But what does it mean to have "abandoned" a child? There are cases that are black and white, such as the parent who moves across country without providing a means of contact and without making any effort to know about the children for years. Many more cases, however, are "shades of gray."

A. The burden of proving "without just cause" is on the petitioner.

The legislature has given some guidance by providing that "[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." A.R.S. § 8-531(1). Thus, to make the *prima facie* case for abandonment, a petitioner must establish not only that there was no normal parent-child relationship for at least six months, but also that there was no "just cause" for that failure.

The court of appeals' decision in this case quoted the statute, *Decision* ¶ 15, but then turned the statute on its head by relieving the petitioner of the duty to prove "without just cause" and improperly shifting the burden of proof to the respondent to show "just cause," *id*. ¶ 18. First, the court of appeals violated the fundamental principle of statutory construction: to apply a statute as written. Second, by shifting

the burden of proof, it denied the respondent the due process protection that the Fourteenth Amendment guarantees: the right to parent one's natural child will only be severed on proof of a ground for termination by clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745 (1982). *See also Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 153 ¶ 25 (2018) (Bolick, J., concurring in the judgment) (the right to raise one's own child "is perhaps the oldest of the fundamental liberty interests recognized by" the United States Supreme Court.") (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)). Idaho, whose abandonment statute is nearly identical to Arizona's, places the burden squarely on the petitioner:

> The petitioner holds and retains the burden of persuasion to show that abandonment has occurred. This includes a showing that the defendant parent is without just cause for not maintaining a normal relationship with the child. If the petitioning party makes the prima facie case, then the defendant parent holds the burden of production to present evidence of just cause. If the trier of fact finds that there are no valid defenses or "just causes," then the petitioning party has met the burden of persuasion.

Doe v. Doe, 234 P.3d 716, 720 (Idaho 2010). Other states similarly place this burden on the petitioner.[1] The legislature is within its rights to place the burden on the

[1] *E.g.*, *C.C. v. L.J.*, 176 So.3d 208, 211 (Ala. Civ. App. 2015) (interpreting "without just cause or excuse" in Ala. Code § 12-15-301(1) to mean that "a juvenile court may premise a finding of abandonment only upon evidence indicating that a parent voluntarily, intentionally, and unjustifiably committed the actions or omissions."); *Sherman B. v. State, Dep't of Health & Soc. Servs., Off. of Child.'s Servs*, 310 P.3d 943, 950 (Alaska 2013) ("Abandonment may also be found if the parent, without justifiable cause, 'failed to participate in a suitable plan or program designed to reunite the parent ... with the child.'") (quoting Alaska Stat. § 47.10.013(a)(4)).

petitioner to prove the absence of "just cause," not unlike its requirement that the State to prove beyond a reasonable doubt in criminal cases that the defendant's conduct was not justified. *See State v. Carson*, 243 Ariz. 463, 466 ¶ 11 (2018) ("In effect, once sufficient self-defense evidence is admitted, the absence of self-defense becomes an additional element the state must prove to convict.").

B. This Court's abandonment jurisprudence requires clarification.

In the process of explaining the law of abandonment in *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250 ¶ 20 (2000), this Court made some questionable statements whose vitality now is in doubt. For example, the majority felt that it was not enough for the imprisoned father to merely send a letter to Child Protective Services (DCS's predecessor agency) in response to CPS's letter, because he was obligated to write to the court. *Id*. at 250-51 ¶¶ 23-24. Chief Justice Zlaket appropriately challenged that assertion, finding not only that CPS and the court owe more to an imprisoned parent, but also that recent court changes now do more to accommodate parents. *Id*. at 253-54 ¶¶ 36-40 & n.3 (Zlaket, C.J., concurring in part and dissenting in part).

In fact, Arizona law now requires that "[t]he court … assign an attorney in a dependency proceeding to persons who are entitled to representation by law[.]" Ariz. R. P. Juv. Ct. 303(a)(1).[2] Rule 307(a) states: "The parent's attorney must

[2] This Court abrogated and replaced the Arizona Rules of Procedure for Juvenile

communicate with the parent before the preliminary protective hearing or as soon thereafter as possible." Rule 307(d) requires that the attorney of an incarcerated client "must ensure that the proper notice or motion is filed to enable the parent to participate in the hearing." Because the court and counsel are responsible for ensuring an incarcerated parent's appearance in court, much of *Michael J.* has been overruled by statute, rule, and practice. As *Michael J.* is this Court's foundational case on abandonment, these subsequent changes in law require this Court to rethink and reconstruct those foundations.

Another concern is the notion that intent is irrelevant, with the focus solely upon conduct. The line of cases on this point fails to distinguish intent as expressed by words from intent expressed by conduct. *Michael J.* states that "[u]nder the revised statute, abandonment is measured not by a parent's subjective intent, but by the parent's conduct[.]" 196 Ariz. at 249 ¶ 18. The adage "actions speak louder than words," which is seemingly at the core of *Michael J.*, is a sensible view. However, the Court's divorcing of intent and conduct has led lower courts (such as in this case) to misapply "without just cause."

In criminal law, both the legislature and this Court widely recognize that intent may be proven by circumstantial evidence related to one's conduct. Additionally, a

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Court effective July 1, 2022. This brief refers to the current rules unless otherwise stated.

person's denial of that intent receives little weight in the face of overwhelming evidence of intent as demonstrated by conduct. In *Pool v. Superior Court*, 139 Ariz. 98, 108 n.9 (1984), this Court explained how conduct can prove the intent element of a prosecutor's misconduct:

> The trial judge is to measure what the prosecutor "intends" and "knows" by objective factors, which include the situation in which the prosecutor found himself, the evidence of actual knowledge and intent and any other factors which may give rise to an appropriate inference or conclusion. He may also consider the prosecutor's own explanations of his "knowledge" and "intent" to the extent that such explanation can be given credence in light of the minimum requirements expected of all lawyers.

In *State v. Thompson*, 204 Ariz. 471, 478 ¶ 27 (2003), this Court explained that the statutory definition of premeditation that "proof of actual reflection is not required" would be unconstitutional unless the legislature's intent was only "to relieve the state of the burden of proving a defendant's thought processes by direct evidence. It intended for premeditation, and the reflection that it requires, to mean more than the mere passage of time."

It is more sensible to define abandonment in terms of intent as expressed by conduct. Otherwise, parents can be punished for conduct that is not their fault—as the facts of this case show. "Without good cause" necessarily implicates intent, because it requires the court to consider the reasons for failing to maintain a normal parent-child relationship. This Court should clarify that a petitioner should prove the respondent's intent to abandon through objective facts, such as the respondent's

conduct. *Amici* urge this Court to adopt the language of the Alaska Supreme Court for proving abandonment:

> Whether or not there has been an abandonment within the meaning of the statute is to be determined objectively, taking into account not only the verbal expressions of the natural parents but their conduct as parents as well. The subjective intent standard often focuses too much attention on the parent's wishful thoughts and hopes for the child and too little on the more important element of how well the parents have discharged their parental responsibility.

D.M. v. State, 515 P.2d 1234, 1236-37 (Alaska 1973). Like *Michael J.*, Alaska now uses the shorthand: "This test is objective, focusing on the parent's demonstrated actions rather than subjective intent." *Sherman B.*, 310 P.3d at 950. But its shorthand is not intended to replace the *D.M.* standard; on the contrary, *D.M.* remains good law in Alaska. This Court need not change its law, merely clarify it.

II. In determining whether a responding parent's failure to maintain a normal parental relationship was "without just cause," this Court should hold that a parent is not required to ignore an attorney's advice, file futile pleadings, or violate court orders.

This Court needs to provide guidance and standards for juvenile courts to apply in determining factors related to what constitutes "just cause." The Idaho Supreme Court has published an outline that includes several defenses and factors related to just cause. Idaho Child Protection Committee, Termination of Parental Rights Outline, § (III)(H)(1)-(4) (last updated May 29, 2022), ep 32-35.[3] The facts

[3] Available at https://isc.idaho.gov/cp/TerminationOfParentalRights-Outline-2022.pdf (last visited September 24, 2024).

of this case are unlikely to be replicated, but this Court can provide guidance for parents who are facing criminal charges.

A. Violation of court orders should not be a prerequisite to a showing of "just cause."

The court of appeals' decision in this case indicates that, in order to avoid an abandonment-based termination, some parents must ignore the advice of their attorneys. *Decision* ¶ 18 (citing *Calvin B.*, 232 Ariz. at 298 ¶ 27). *Calvin B.* suggests that, at least under some circumstances, a parent should commit a crime by violating court orders to avoid subsequent termination of parental rights for abandonment. 232 Ariz. at 298 ¶ 27. This is bad public policy. While the violation of court orders for the purpose of contacting one's child certainly proves conduct that invalidates abandonment, it does not follow—nor should it—that the absence of such conduct means a parent cannot show "just cause" for the lack of contact.

In *Calvin B.*, the court of appeals reversed an abandonment-based termination because the mother had restricted the father's ability to interact with the child. 232 Ariz. at 293-94 ¶ 1. There, while the father had not always been proactive, the appellate court deemed his efforts adequate. *Id.* at 297 ¶ 25. As an example, the appellate court highlighted the father's arrest for violating an order of protection after he contacted the mother in an attempt to arrange visitation. *Id.* at 298 ¶ 27.

A reasonable reading of *Calvin B.* is that, in order to vigorously pursue a relationship with one's child, it is necessary to violate any law that happens to pose

an obstacle. 232 Ariz. at 298 ¶ 27. It is bad policy to send a message that, in order to assert one's parental rights, it may be necessary to commit a crime. *Wagenseller v. Scottsdale Memorial Hosp*., 147 Ariz. 370, 380 (1985) (it offends public policy to encourage people to violate the law). Clarification that one must never commit a crime, not even to avoid an abandonment outcome, will deter the unintended consequence of a slippery slope. Without clarification, people will wonder which crimes they should or should not commit in order to vigorously pursue relationships with their children. Some parents might deem it advisable to commit the crime of custodial interference, in violation of A.R.S. § 13-1302(A).

Guidance ought to clarify that illegal conduct is neither necessary nor encouraged to avoid an abandonment-based termination of parental rights. The focus ought to be upon the lawful conduct that is available to pursue a parent-child relationship. Therefore, guidance is necessary to clarify that illegal conduct is not expected of those wishing to maintain relationships with their children.

B. It is reasonable to rely upon the advice of one's licensed attorney.

Just as *Calvin B.* seems to endorse criminal conduct, the court of appeals here penalized the father for following the advice of his licensed attorney. *Decision* ¶¶ 18-19. In this case, upon the advice of his criminal-defense attorney, the father refrained from contacting the mother (the key prosecution witness) to attempt to arrange visits with his child. *Id.* ¶¶ 6-7. In upholding the abandonment-based

termination, the court of appeals indicated that abiding by his attorney's advice did not excuse the father's "inaction." *Id*. ¶ 19. Hence, the lesson this case teaches is that a parent must ignore the advice of his licensed attorney if he ever wants to see his child again.

Providing legal advice is a primary attorney function. Ariz. R. Sup. Ct. 42, Rules of Prof. Conduct, ER 2.1. Every attorney must exercise professional judgment when providing competent legal advice. ER 1.1, 2.1. Any attorney who fails to do so faces sanctions. *In re Phillips*, 226 Ariz. 112, 117 ¶ 27 (2010). One purpose of sanctions is to protect the public from receiving incompetent legal advice. *Id*. at 117 ¶ 28. Another purpose is "to instill public confidence in the Bar's integrity." *Id*.

Given that lawyers have an enforceable duty to provide competent advice, it is reasonable for clients to rely upon the advice. Otherwise, there would be little utility in having attorneys, and people might as well represent themselves in legal actions about which they may know virtually nothing. And, since it is reasonable to rely upon the advice of one's attorney, it is unreasonable and bad public policy to penalize a parent for relying upon the advice of his attorney. Guidance from this Court is necessary to protect parents who act in reliance upon legal advice, only to be penalized by forever losing their children.

C. Litigating futile claims should not be required.

The court of appeals suggested that, in order to avoid an abandonment-based

permanent loss of one's child, a parent should litigate every possible claim. *Decision* ¶ 19. Reasoning that the father had not established just cause for his conduct, the court wrote that the father had "failed to pursue legal action to establish his parental rights and obligations[.]" *Id*. ¶ 18. This reference was to the father's conduct at a time that he was facing a murder charge, of which he subsequently was acquitted. *Id*. ¶¶ 6-8.

While facing the murder charge, B.W.'s father repeatedly told his criminal-defense attorney that he wanted visitation with his son. *Decision* ¶ 7. However, a criminal-court order forbade the father from having contact with the mother (a prosecution witness) to arrange visitation. *Id*. ¶¶ 6-7. The father's attorney advised him that to seek modification of the criminal-court order would be futile. *Id*. ¶ 7. Despite the legal advice, the appellate court deemed "entirely speculative" the father's assertion that to seek modification would have been futile. *Id*. ¶ 19.

It flies in the face of common sense to encourage a party to litigate a claim that his own attorney has deemed futile. Furthermore, litigation of futile claims wastes public resources and undermines judicial economy. Hence, litigants are discouraged from pursuing futile claims. An attorney can be sanctioned for bringing such a claim under ER 3.1.[4] For example, in criminal cases, motions for

[4] Although it is doubtful that a judge would ever refer an attorney to the State Bar for discipline merely for pursuing parental rights for a client, it is well known that family law has a higher degree of conflict than every other area of practice, and it is

reconsideration are highly disfavored. Ariz. R. Crim. P. 16.1(d). In appellate proceedings, a motion for rehearing or reconsideration is not a prerequisite to filing a petition for review. Ariz. R. Crim. P. 31.20(a), 32.14(d), 33.14(d); ARCAP 22(a). And such motions are expressly disallowed in juvenile appeals. Ariz. R. P. Juv. Ct. 608(c). Similarly, lawyers are forbidden from pursuing unmeritorious claims. *In re Alexander*, 232 Ariz. 1, 5, ¶ 12 (2013) (citing ER 3.1). Likewise, the government is excused from its obligation to provide family-reunification services in dependency actions in which the superior court properly determines that do so would be futile. A.R.S. § 8-846(D)(1). Thus, the judicial system aims to prevent futile actions.

More recently, the court of appeals has interpreted *Calvin B.* to require a responding parent to engage in futile gestures like asking a court to modify a dissolution decree while that parent is incarcerated. *See In re C.R.*, 256 Ariz. 170 (App. 2023) (incarcerated father should have filed a motion to modify the dissolution decree). It offends public policy to encourage people to litigate futile claims simply so that they might subsequently assert that they "dotted their i's and crossed their t's." A parent ought not be required, or even encouraged, to litigate futile claims in order to avoid an abandonment-based termination. Therefore, guidance from this court is necessary.

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not uncommon for one party to file complaints with the State Bar against the other party's attorney.

III. This Court should state that a custodial parent's claim of abandonment may be barred by the equitable doctrines of laches and "unclean hands."

This Court has stated, "We recognize that a prima facie case of abandonment cannot automatically be considered rebutted merely by post-petition attempts to reestablish a parental relationship. Such an automatic rule would virtually eliminate any possibility of success for a petition in a contested termination action." *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 8 (1990). While this Court has discussed a responding parent's attempt to contest an abandonment claim with post-petition evidence, it has never announced any kind of rule regarding pre-petition evidence. As stated above, when the case originates in family court, there is ample pre-petition evidence that invalidates abandonment.

Amici have first-hand experience defending parents in juvenile court against private petitions for termination that began as family court proceedings. This is the modus operandi of such private petitioners:

- The noncustodial parent, often unrepresented, desires to come back into the child's life and files appropriate pleadings in family court.
- The family court judge conducts hearings and decides that the noncustodial parent is entitled to visitation, and perhaps to other rights as well.
- The custodial parent, represented by counsel, does not appeal any rulings of the family court.

- The custodial parent's counsel files in juvenile court a petition for termination of parental rights of the noncustodial parent, alleging abandonment (and any other potentially applicable ground).
- The juvenile court proceedings then take precedence, essentially hijacking the family court proceedings.
- Because some issues are different in the two proceedings, the family court judge's orders are not binding under the doctrine of collateral estoppel.
- The juvenile court judge often terminates the noncustodial parent's rights.

The juvenile court does not always terminate. *See* *In re Termination of Parental Rights as to A.V.A. and A.M.*, 2 CA-JV 2022-0079, 2022 WL 16945886 (Ariz. App. Nov. 15, 2022) (mem. decision)[5] (affirming juvenile court's finding that presumption of abandonment rebutted by responding parent's evidence). However, the overwhelming majority of the time, it does. *Alma S.*, 245 Ariz. at 153 ¶ 28 (Bolick, J., concurring).

Carlos N. v. Heather P., 2 CA-JV 2021-0038, 2022 WL 130825 (Ariz. App. Jan. 14, 2022) (mem. decision), presents an exceptionally troubling circumstance. There, while Carlos was incarcerated, Heather allowed him contact with their child initially, but she eventually changed her mind and cut off contact with Carlos's family. *Id.* ¶ 3. Shortly after his release from prison, Carlos filed a petition for legal

[5] Memorandum decisions cited pursuant to Ariz. R. Sup. Ct. 111(c)(1)(C).

decision making and parenting time in Cochise County Family Court. *Id*. ¶ 4. After a hearing several months later, the Cochise family court ordered gradual reinitiation of contact for Carlos and the child, and thus for months thereafter Carlos worked to rebuild the parent-child relationship. *Id*. ¶¶ 5-6. Heather waited nearly two years to file a petition for termination of parental rights based on abandonment in Cochise County Juvenile Court. *Id*. ¶ 7. When her counsel was elected as a judge several months later, Heather retained new counsel, who dismissed the Cochise petition and re-filed it in Pima County Juvenile Court. *Id*. ¶¶ 7-8. Because Carlos's appointed counsel failed to make the "slam-dunk motion for change of venue," the court found he waived that issue, which led to his rights being terminated in Pima County instead of the proper venue. *Id*. ¶ 15. On the merits of the abandonment question, the court rejected Carlos's argument that "parents are not required to take obviously futile actions" where the other parent "intended to thwart any attempt by [him] to be a father to his son." *Id*. ¶ 22. The court also relied on *Michael J.* in faulting Carlos for not "vigorously assert[ing] his legal rights" in a situation where a court order confused all the parties, but represented-by-counsel Heather received a free pass while only unrepresented Carlos suffered. *Id*. ¶ 23.

An additional concern is that custodial parents with "unclean hands" are rewarded in termination hearings for succeeding in their goal of preventing the other parent from having any contact with the children. Other states recognize such

interference acts as a barrier to an abandonment claim. *In re Jacob W.*, 200 A.3d 1091, 1101-02 (Conn. 2019); *N.A.G. v. J.L.G.*, 198 So.3d 1025, 1028 (Fla. App. 2016); *In re Adoption of Youngpeter*, 583 N.E.2d 360, 363-64 (Ohio App. 1989).

A textbook example of such misconduct by a petitioner was presented in *Anthony O. v. Nora R.*, 2 CA-JV 2022-0016, 2022 WL 2348526 (Ariz. App. June 29, 2022) (mem. decision), where the court of appeals affirmed termination of an incarcerated father where the mother went to extreme lengths to prevent contact. It found *Calvin B.* "distinguishable":

> Even crediting the facts on which Anthony relies—that Nora had moved and changed her phone number without informing him, blocked his family members on social media, and did not want the children to have contact with Anthony after 2016—the record does not establish Nora interfered in a manner similar to the interference in the "unusual" case of *Calvin B.* Nora did not seek orders of protection against Anthony or affirmatively reject any efforts by him to have contact with the children.

Id. ¶ 14. Relying on *Anthony O.* as persuasive, the court then found in *C.R.* that there was nothing "wrongful" about the mother's blocking of all contact with the father "because her actions were consistent with the decree." *C.R.*, 256 Ariz. at 302-03 ¶ 19. It is bad enough that the court had been requiring parents to violate court orders to see their children. Now it is rewarding parents for violating court orders.

Allowing such conduct is an abuse of judicial process, plain and simple. This Court should hold that, going forward, once a noncustodial parent appears in family court seeking adjustment of custody, legal decision making, or visitation, the

custodial parent must litigate the claim in that court, with any subsequent petition for termination alleging abandonment based on conduct occurring prior to the family court filing barred by laches. To the extent that the abandonment claim is supported, the custodial parent should bring such claims in a timely manner, rather than waiting until the other parent files in a different venue. Juvenile courts should also cease rewarding custodial parents' unethical or illegal conduct in abandonment cases.

As this problem occurs only in private severance cases, this solution would similarly apply only in private cases and not to dependency petitions filed by DCS. Laches would not apply since DCS was not involved in family court proceedings. To the extent that a custodial parent who is "losing" in family court files a report with DCS in the hopes that DCS will "do their dirty work," presumably DCS would investigate the claim and discover the family court proceedings and stay out of the way. Unsurprisingly, *amici* are aware of no case where DCS was so easily manipulated into interfering in family court proceedings. *Amici* are aware, however, that in cases where the court substitutes DCS for the custodial parent as petitioner, DCS's investigation uncovered safety concerns related to the custodial parent, and DCS began reunification efforts where the custodial parent previously thwarted such efforts.

Amici have seen a downtick in the granting of private severances in cases that originated in family court; possibly this is because judges are becoming wise to the

modus operandi of family lawyers as described above. As long as there are cases where it is allowed, however, the lesson that family law attorneys learn is that it is worth a try. Disallowing the process is the only way to deter such abuse of process.

There is also a concern that one parent could use family court proceedings to impose undue financial burdens on the other as a precondition to seeing the child, with the result that, when the other parent's indigency serves as a barrier to contact with the child, abandonment is proven. This was the case in *Calvin B.* 232 Ariz. at 295 ¶ 13, 298 ¶ 30. *See also A.V.A.*., 2 CA-JV 2022-0079, ¶ 13, 2022 WL 16945886 (the father's "inability to afford Soberlink services, which led to the court-ordered end of visitation with the children well before the petition for termination was filed, is uncontradicted in the record."). Family courts should be loath to impose such onerous financial burdens on parents as a price to see their child. To the extent that such orders are in place, however, inability to pay money cannot be the basis for an abandonment claim. If "[n]onsupport alone is not enough to establish abandonment," *Calvin B.*, 232 Ariz. at 296 ¶ 20 (quoting *In re Yuma County Juv. Ct. Action No. J-87-119*, 161 Ariz. 537, 539 (App. 1989)), then neither should inability to pay for a court-ordered service.

The time has come for this Court to apply the equitable doctrines of laches and unclean hands to parents who abuse the advantage of having full custody of the children by preventing access to the children.

CONCLUSION

Amici ask this Court to reverse the juvenile court's termination order and remand to that court to reconsider the case under standards suggested in this brief.

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