

## Father did not "abandon" his child, where the mother restricted visitation

Written by Australian Business

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In certain circumstances, one parent may make an attempt to terminate the parental rights of the other parent based on grounds such as "abandonment." However, a claim of abandonment in a petition to terminate parental rights cannot be proven solely by the failure to pay child support.

A recent Arizona Court of Appeals case, Calvin B. v. Brittany B., provides an example.

### Sporadic visitation

In this case, the couple had a son about a year after getting married, and were divorced a few months later. The divorce decree granted the mother sole legal and physical custody of the child and allowed the father some visitation (parenting time) rights.

Over the course of several years thereafter, the father petitioned for a modification to the decree requesting joint custody, while the mother alleged the father's substance abuse as well as domestic abuse and petitioned for orders of protection which were granted twice. Despite this, the mother continued to allow the father some parenting time, though the visits were brief and sporadic.

However, eventually, the mother ended the visits and two months before the second order of protection was to expire, the mother filed a petition to terminate the father's parental rights in juvenile court based on the grounds of abandonment, which is defined by ARS 8-531 as "the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision." The statute goes on to say that 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." In this case, the mother alleged the father had failed to complete a required parenting class, failed to pay child

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support or required surgery costs, and that the father's contact had been limited and sporadic. The lower court granted the mother's petition for termination.

Mother's conduct was the key

In reviewing the case, the Court of Appeals stated that a claim of abandonment could not be proven solely by the failure to pay child support, and instead the court must consider the conduct of the parent and pursuant to ARS 8-533, whether the termination of the parent's right would be in the child's best interests.

The record showed that for much of the period after the divorce, the mother had interfered with the father's opportunity and ability to develop a normal parental relationship with their son. Throughout the child's life, the father had actively sought more involvement with their son than the mother had allowed. Having herself curtailed the father's ability to develop a relationship with his son, the mother did not prove that the father had abandoned the child.

Day-to-day actions have legal consequences

With the combination of high emotions and the complexity of divorce and child custody proceedings, parents need to be aware that the actions they take day-to-day may have significant legal implications.

Whether you are just entering divorce proceedings, or trying to make modifications to your prior court order, it's important that you are represented by attorneys experienced in family law, who can advise you to make the best choices for yourself and your children.