

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO ex rel.**
3 **CHILDREN, YOUTH & FAMILIES**
4 **DEPARTMENT,**

5 Petitioner-Appellee,

6 v.

7 **JEFFREY S.,**

8 Respondent-Appellant,

9 and

10 **RAYTODRICK H.,**

11 Respondent,

12 **IN THE MATTER OF AZAYLAH S.,**
13 **JALAYAH S., KAIIDENCE S., and**
14 **NIAZHUA S.**

15 Children,

16 and

17 **IN THE MATTER OF KAIIDEN H.,**

18 Child.

19 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**
20 **Lee A. Kirksey, District Court Judge**

Court of Appeals of New Mexico
Filed 8/9/2023 10:53 AM



Mark Reynolds

No. A-1-CA-40949

1 Children, Youth & Families Department
2 Mary McQueeney, Chief Children’s Court Attorney
3 Santa Fe, NM
4 Kelly P. O’Neill, Children’s Court Attorney
5 Albuquerque, NM

6 for Appellee

7 Susan C. Baker
8 El Prado, NM

9 for Appellant

10 Laura K. Castillo
11 Hobbs, NM

12 Guardian Ad Litem

13 **MEMORANDUM OPINION**

14 **HENDERSON, Judge.**

15 {1} Father appeals from the district court’s judgment terminating his parental
16 rights as to Children. We issued a calendar notice proposing to affirm. Defendant
17 has filed a memorandum in opposition, which we have duly considered.
18 Unpersuaded, we affirm.

19 {2} Our notice proposed to affirm based on our suggestions that (1) Children,
20 Youth & Families Department (CYFD) presented sufficient evidence to support the
21 termination of Father’s parental rights, and Father had not demonstrated, and the
22 record did not otherwise reflect, that CYFD failed to make reasonable efforts to
23 assist him [CN 2-7], and (2) the district court did not err in determining that the cause

1 and conditions that brought Children into CYFD custody are not going to change in
2 the foreseeable future [CN 8-9].

3 {3} In his memorandum in opposition, Father continues to assert that CYFD failed
4 to make reasonable efforts to assist him. Specifically, he argues the CYFD “failed
5 him by not transporting him to get a psychological evaluation while he was
6 incarcerated” and that CYFD should have made efforts to allow him “to participate
7 in other components of the treatment plan while he was in jail.” [MIO 11] He also
8 continues to maintain that CYFD did not present clear and convincing evidence to
9 terminate his parental rights because CYFD “did not provide him with reasonable
10 efforts during the time he was in jail.” [MIO 13]

11 {4} Father’s response to our notice does not specifically dispute any of the facts
12 or law upon which our proposed analysis relied. *See Hennessy v. Duryea*, 1998-
13 NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held
14 that, in summary calendar cases, the burden is on the party opposing the proposed
15 disposition to clearly point out errors in fact or law.”). In fact, Father’s response does
16 not address the district court’s determination the CYFD made reasonable efforts,
17 based on the totality of the circumstances, including CYFD’s statutory obligation,
18 Father’s efforts, and Children’s health and safety. *See State ex rel. Child., Youth &*
19 *Fams. Dep’t v. Keon H.*, 2018-NMSC-033, ¶¶ 40-41, 421 P.3d 814. Rather, Father’s
20 response focuses on CYFD’s perceived failures, but he does not address how these

1 failures establish error in the district court’s termination of his parental rights. “[W]e
2 have traditionally considered the totality of the circumstances when reviewing the
3 district court’s determination.” *Id.* ¶ 41. As we stated in our calendar notice, CYFD
4 reviewed Father’s treatment plan with him more than ten times, but had difficulty
5 maintaining contact with Father; CYFD had almost no contact with Father for
6 approximately a year and a half. [CN 5] When CYFD did locate Father in jail it made
7 monthly visits, brought pictures of Children, and encouraged Father to write letters
8 to Children. [CN 5] When CYFD was unable to locate Father, it reached out to his
9 family members and encouraged them to have Father contact CYFD, which Father
10 never did. [CN 5]

11 {5} Father does not persuade us that more was required of CYFD under the
12 circumstances. Father does not explain why he could not work toward completing
13 his treatment plan while he was out of jail, and why the limitations of his
14 incarceration and perceived failures of CYFD require reversal when balanced with
15 all the other factors and efforts CYFD made to assist Father. *See State ex rel. Child.,*
16 *Youth & Fams. Dep’t v Patricia H.*, 2002-NMCA-061, ¶ 23, 132 N.M. 299, 47 P.3d
17 859 (“What constitutes reasonable efforts may vary with a number of factors, such
18 as the level of cooperation demonstrated by the parent and the recalcitrance of the
19 problems that render the parent unable to provide adequate parenting.”); *Keon H.*,

1 2018-NMSC-033 ¶ 48 (“Both [CYFD] and [a f]ather are responsible for making
2 efforts toward reunification of the family.”).

3 {6} To the extent that Father maintains that he should be allowed more time to
4 focus on his treatment plan requirements, including treatment for substance abuse
5 [MIO 11], we are unpersuaded. Father continues to provide no reason why giving
6 him additional time to alleviate the causes and conditions that brought Children into
7 CYFD custody would be successful, in Children’s best interests, or consistent with
8 the statutory requirement that “a reunification plan to be maintained for a maximum
9 of fifteen months.” *State ex rel. Child., Youth & Fams. Dep’t v. Maria C.*, 2004-
10 NMCA-083, ¶ 21, 136 N.M. 53, 94 P.3d 796; *see id.* ¶¶ 21, 53 (observing that
11 “[p]arents do not have an unlimited time to rehabilitate and reunite with their
12 children” and that “the district court need not place children in a legal holding
13 pattern, while waiting for the parent to resolve the issues that caused their children
14 to be deemed neglected or abused”).

15 {7} Because Father has not addressed his assertions of error within the totality of
16 the circumstances and under the requirements of our statute and case law, Father has
17 not established error in our proposed disposition. *See State v. Mondragon*, 1988-
18 NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003, *superseded by statute on other*
19 *grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374 (explaining
20 that a party responding to a summary calendar notice must come forward and

1 specifically point out errors of law and fact, and the repetition of earlier arguments
2 does not fulfill this requirement). We remain persuaded that CYFD made reasonable
3 efforts to assist Father, and that sufficient evidence supports the termination of
4 Father's parental rights.

5 {8} For the reasons stated in our notice of proposed disposition and herein, we
6 affirm the district court's order terminating Father's parental rights.

7 {9} **IT IS SO ORDERED.**

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9 _____
SHAMMARA H. HENDERSON, Judge

10 **WE CONCUR:**

11 
12 _____
MEGAN P. DUFFY, Judge

13 
14 _____
JANE B. VOHALEM, Judge