

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 **BRANDEE M.,**

8 Respondent-Appellant,

9 and

10 **MARIO R.,**

11 Respondent,

12 **IN THE MATTER OF ELIAS B.,**
13 **ANTONIO B., and LOYALTY M.,**

14 Children.

15 **APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY**

16 **Michael Aragon, District Court Judge**

17 Children, Youth & Families Department
18 Mary McQueeney, Chief Children's Court Attorney
19 Santa Fe, NM
20 Kelly P. O'Neill, Children's Court Attorney
21 Albuquerque, NM

22 for Appellee

Court of Appeals of New Mexico
Filed 1/23/2023 10:46 AM



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No. A-1-CA-40706

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7 Guardian Ad Litem

8 **MEMORANDUM OPINION**

9 **BOGARDUS, Judge.**

10 {1} Respondent-Appellant (Mother) appeals from the district court’s judgment
11 terminating her parental rights to Children. This Court issued a notice of proposed
12 summary disposition, proposing to affirm. Mother filed a memorandum in
13 opposition (MIO) to the proposed summary disposition, which we have duly
14 considered. Unpersuaded that the calendar notice was in error, we affirm.

15 {2} Our notice proposed to affirm based on our suggestions that (1) the completion
16 of parts of Mother’s treatment plan, and no new allegations of abuse or neglect—
17 during, apparently, the time that Children were not in Mother’s custody—do not
18 demonstrate the district court erred in terminating her parental rights [CN 6-7]; (2)
19 Mother did not comply with drug screens, a factor that was a significant
20 consideration in the order terminating her parental rights, while whether or not
21 Mother visited Children in-person did not appear to be a basis for the termination of
22 parental rights [CN 7]; and (3) generally, Mother did not engage with the district

1 court's findings that she failed to participate in drug testing or treatment [CN 7-8].
2 We proposed to conclude that therefore, the district court did not err in terminating
3 Mother's parental rights. [CN 9]

4 {3} In her MIO, Mother continues to generally contend that the district court's
5 order lacked (1) clear and convincing evidence that Mother abused or neglected
6 Children, (2) clear and convincing evidence that Mother was unable or unwilling to
7 parent Children, and (3) substantial evidence that supported the judgment
8 terminating parental rights. [MIO 2] Mother's MIO continues to fail to address the
9 district court's findings that she failed to participate in drug testing or treatment, as
10 required by her treatment plan, during the pendency of the case, as well as our
11 proposed reliance on those district court findings. Mother appears to continue to
12 dismiss these findings by characterizing the evidence of her nonparticipation as a
13 lack of test results that were positive for drugs. [MIO 19]

14 {4} In general, the arguments contained in Mother's MIO on the issues initially
15 raised in her docketing statement do not sufficiently address the specific concepts
16 and authorities this Court proposed to rely on in our notice of proposed disposition,
17 do not persuade us that this Court's proposed summary disposition was in error, and
18 do not otherwise impact our analysis or our disposition of this case. Therefore,
19 regarding those issues, we affirm for the reasons stated in our notice of proposed
20 disposition and herein. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M.

1 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar
2 cases, the burden is on the party opposing the proposed disposition to clearly point
3 out errors in fact or law.”); *see also State v. Mondragon*, 1988-NMCA-027, ¶ 10,
4 107 N.M. 421, 759 P.2d 1003 (stating that the repetition of earlier arguments does
5 not fulfill this requirement), *superseded by statute on other grounds as stated in State*
6 *v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

7 {5} Although Mother appears to attempt to frame all of her arguments under the
8 same points raised in the docketing statement, we consider the following points to
9 be distinct contentions, which we consider as new issues and we deem to be brought
10 pursuant to a motion to amend the docketing statement. We deny motions to amend
11 the docketing statement if the issue that the appellant is seeking to raise is not viable.
12 *See State v. Munoz*, 1990-NMCA-109, ¶ 19, 111 N.M. 118, 802 P.2d 23 (stating that,
13 if counsel had properly briefed the issue, we “would deny defendant’s motion to
14 amend because we find the issue he seeks to raise to be so without merit as not to be
15 viable”).

16 {6} In her new issues, Mother alleges that the Children, Youth, and Families
17 Department (CYFD) (1) did not prove that Mother was not able or willing to parent
18 Children; (2) did not prove that Mother failed to make progress in the period after
19 denial of a prior motion to terminate parental rights; and (3) relied on allegations

1 from the beginning of the case, rather than demonstrating that Mother was unable or
2 unwilling to parent Children during a planned transition period. [MIO 6]

3 {7} We note that, despite the quantity of general legal principles cited regarding
4 CYFD’s obligations, Mother’s new contentions misapprehend the standard for
5 terminating parental rights and continue to ignore the district court’s bases for
6 termination as stated in its order. We remind Mother that

7 [t]he Abuse and Neglect Act requires the treatment plan to be
8 reasonable, not a guarantee of family reunification” and “[e]ven with a
9 parent’s reasonable efforts, . . . the parent may not be able to make the
10 changes necessary to rectify the causes and conditions of the neglect
11 and abuse so as to enable the court to conclude that the parent is able to
12 properly care for the child.

13 *State ex rel. Child., Youth & Fams. Dep’t v. Athena H.*, 2006-NMCA-113, ¶ 9, 140
14 N.M. 390, 142 P.3d 978.

15 {8} The district court’s order states, among several other concerns, that evidence
16 was presented that Mother’s housing was not safe and appropriate for Children, that
17 Mother did not sign a release or provide her substance abuse treatment records to
18 CYFD, that Mother made “minimal efforts” to comply with her plan, apparently
19 only starting to comply in November 2021, and that Mother had not made behavioral
20 changes and was unable to provide for Children’s basic needs and safety. [3 RP 734]

21 We reiterate that the record reflects that Mother did not comply with drug screens, a
22 factor that was a significant consideration in the order terminating her parental
23 rights, and note that Mother has not identified any evidence in the record that

1 demonstrates that the district court’s findings regarding her noncompliance were
2 unsupported. [3 RP 735] Therefore, Mother’s insistence that she was willing and
3 able to parent Children is not supported by the district court’s findings or other
4 evidence in the record, and she has not demonstrated error by the district court.

5 {9} Mother’s new issues (2) and (3) appear make similar contentions that CYFD
6 only relied on allegations of abuse and neglect from the beginning of the case, and
7 that after an initial motion to terminate parental rights was denied, CYFD presented
8 no new evidence to support the termination of parental rights following another
9 motion to terminate. [MIO 6-7] Again, Mother does not identify any portion of the
10 record in support of her claims, particularly regarding her argument that no new
11 evidence was presented by CYFD at the hearing on the second motion to terminate
12 parental rights. As the record indicates that more than a year had passed since the
13 district court denied the first motion to terminate parental rights, and the district
14 court’s findings and conclusions supporting termination based on the second hearing
15 include references to evidence from that intervening year, Mother’s undeveloped
16 assertion that no new evidence was presented is not persuasive. [2 RP 338-39, 3 RP
17 728-37] We note that not only may “[a] motion to terminate parental rights . . . be
18 filed at any stage of the abuse or neglect proceeding,” but, barring certain exceptions,
19 “[w]hen a child has been in foster care for not less than fifteen of the previous

1 twenty-two months, the department shall file a motion to terminate parental rights.”

2 NMSA 1978, § 32A-4-29(A), (G) (2022).

3 {10} As to Mother’s contention that the only allegations of abuse or neglect of
4 Children stemmed from the beginning of the case, we note that this argument
5 continues to misapprehend the process followed and basis for termination of parental
6 rights, which, in Mother’s case, was largely based on her ongoing failures to comply
7 with drug treatment and testing as required by her treatment plan. [MIO 13] *See*
8 *Athena H.*, 2006-NMCA-113, ¶ 9. We deny the issues raised in her apparent motion
9 to amend the docketing statement as nonviable.

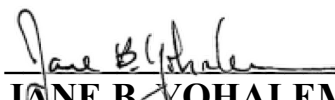
10 {11} Accordingly, for the reasons stated in our notice of proposed disposition and
11 herein, we affirm the termination of Mother’s parental rights.

12 {12} **IT IS SO ORDERED.**

13 
14 KRISTINA BOGARDUS, Judge

15 **WE CONCUR:**

16 
17 J. MILES HANISEE, Judge

18 
19 JANE B. YOHALEM, Judge