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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,**

Court of Appeals of New Mexico  
Filed 1/4/2023 11:25 AM



Mark Reynolds

5 Petitioner-Appellee,

6 v.

**No. A-1-CA-40371**

7 **PETER P.,**

8 Respondent-Appellant,

9 and

10 **ANGEL K.,**

11 Respondent,

12 **IN THE MATTER OF PETER K-P Jr.,**

13 Child.

14 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

15 **Marie C. Ward, District Court Judge**

16 Children, Youth & Families Department

17 Mary McQueeney, Chief Children's Court Attorney

18 Robert Retherford, Children's Court Attorney

19 Santa Fe, NM

20 for Appellee

21 Cravens Law LLC

22 Richard H. Cravens, IV

23 Albuquerque, NM

24 for Appellant

1 The Law Office of Ramsey & Hoon, LLC  
2 Mark A. Ramsey  
3 Albuquerque, NM

4 Guardian Ad Litem

5 **DECISION**

6 **DUFFY, Judge.**

7 {1} Father appeals the judgment terminating his parental rights to Child. He  
8 argues that the district court’s determinations that (1) the Children, Youth and  
9 Families Department (CYFD), made reasonable efforts to assist Father, and (2) the  
10 causes and conditions of the neglect that brought Child into custody are unlikely to  
11 change in the foreseeable future are not supported by clear and convincing evidence.

12 We affirm.

13 **DISCUSSION**

14 {2} A court shall terminate parental rights when a child “has been a neglected or  
15 abused child as defined in the Abuse and Neglect Act and the court finds that the  
16 conditions and causes of the neglect and abuse are unlikely to change in the  
17 foreseeable future despite reasonable efforts by [CYFD] . . . to assist the parent in  
18 adjusting the conditions that render the parent unable to properly care for the child.”  
19 NMSA 1978, § 32A-4-28(B)(2) (2005, amended 2022); *see also State ex rel. Child.,*  
20 *Youth & Fams. Dep’t v. Patricia H.*, 2002-NMCA-061, ¶ 21, 132 N.M. 299, 47 P.3d  
21 859 (same). “It is the state’s burden to prove the statutory grounds for termination

1 by clear and convincing evidence.” *See State ex rel. Child., Youth & Fams. Dep’t v.*  
2 *Tammy S.*, 1999-NMCA-009, ¶ 13, 126 N.M. 664, 974 P.2d 158.

3 For evidence to be clear and convincing, it must instantly tilt the scales  
4 in the affirmative when weighed against the evidence in opposition and  
5 the fact finder’s mind is left with an abiding conviction that the  
6 evidence is true. The function of the appellate court is to view the  
7 evidence in the light most favorable to the prevailing party, and to  
8 determine therefrom if the mind of the factfinder could properly have  
9 reached an abiding conviction as to the truth of the fact or facts found.

10 *State ex rel. Child., Youth & Fams. Dep’t v. Michelle B.*, 2001-NMCA-071, ¶ 12,  
11 130 N.M. 781, 32 P.3d 790 (internal quotation marks and citation omitted). “This  
12 Court will uphold the termination if, viewing the evidence in the light most favorable  
13 to the judgment, a fact finder could properly determine that the clear and convincing  
14 [evidence] standard was met.” *Tammy S.*, 1999-NMCA-009, ¶ 13. “We employ a  
15 narrow standard of review and do not re-weigh the evidence.” *State ex rel. Child.,*  
16 *Youth & Fams. Dep’t v. Amanda H.*, 2007-NMCA-029, ¶ 19, 141 N.M. 299, 154  
17 P.3d 674.

18 **I. Clear and Convincing Evidence Supports the District Court’s Conclusion**  
19 **That CYFD Made Reasonable Efforts**

20 {3} Father first contends that CYFD failed to present clear and convincing  
21 evidence that it made reasonable efforts to assist Father in adjusting the causes and  
22 conditions of neglect. “What constitutes reasonable efforts may vary with a number  
23 of factors, such as the level of cooperation demonstrated by the parent and the  
24 recalcitrance of the problems that render the parent unable to provide adequate

1 parenting.” *Patricia H.*, 2002-NMCA-061, ¶ 23. On appeal, “our job is not to  
2 determine whether CYFD did everything possible; our task is limited by our  
3 statutory scope of review to whether CYFD complied with the minimum required  
4 under law.” *Id.* ¶ 28.

5 {4} The record indicates that Child was brought into custody in February 2019  
6 when he was approximately seven months old. On April 24, 2019, Father pleaded  
7 no contest to the charge of neglect, as defined by NMSA 1978, § 32A-4-2(G)(2)  
8 (2018), admitting that he “has unresolved substance abuse, domestic violence, and  
9 homelessness issues that negatively impact his ability to properly parent and care for  
10 [C]hild.” The district court ordered that Child remain in CYFD custody, approved a  
11 case plan, and ordered CYFD to “make reasonable efforts to implement the case plan  
12 adopted by the [c]ourt.”

13 {5} Father’s case plan required, among other things, that Father (1) complete and  
14 participate in parenting education classes; (2) secure a stable home that is free of  
15 drugs, clean, safe and free of hazards; (3) participate in random drug testing; (4)  
16 participate in psychosocial, psychological, domestic violence, anger management,  
17 and substance abuse assessments; (5) participate in an outpatient substance abuse  
18 group; (6) participate in individual therapy; and (7) attend visits and nonemergency  
19 medical appointments with Child.

1 {6} It appears that CYFD assisted Father by: (1) referring him to Dr. Christopher  
2 Alexander for neuropsychological evaluations; (2) referring him for substance  
3 abuse, domestic violence, anger management, life skills, and parenting services; (3)  
4 referring him for dialectical behavior therapy (DBT) and trauma informed therapy;  
5 (4) explaining DBT, the intake process for the DBT provider, and assisting with  
6 intake; (5) arranging visits and drug testing, and providing transportation assistance;  
7 (6) sending reminders about appointments; (7) taking Father to obtain a substance  
8 abuse assessment and a domestic violence assessment, and to obtain a Community  
9 Support Worker (CSW) to assist him with his case plan; (8) providing assistance  
10 with housing, counseling, and employment applications; (9) helping Father to secure  
11 shelter, food, and clothing in a period where he was not residing with Mother; (10)  
12 arranging virtual visitation when COVID began and ensuring that Father had video  
13 access; and (11) providing a portable washing machine.

14 {7} Father contends the testimony does not show, to a clear and convincing  
15 standard, that CYFD made reasonable efforts to assist Father. However, this Court  
16 does not reweigh the evidence on appeal and views the evidence in the light most  
17 favorable to the district court's judgment. Reviewing the totality of CYFD's efforts  
18 to assist Father, we conclude clear and convincing evidence supports the district  
19 court's conclusion that CYFD made reasonable efforts to alleviate the causes and  
20 conditions that brought Child into custody.

1 {8} Father additionally argues that CYFD did not direct reasonable efforts at the  
2 “correct causes and conditions or whether . . . Father’s ADHD and other mental  
3 health issues were unique factors requiring a more tailored approach to Father’s  
4 treatment plan.” The record provides no indication that Father sought assistance  
5 from CYFD with the difficulties he was experiencing, nor does it appear that Father  
6 argued at the termination hearing that he was denied assistance with these matters.  
7 *See Patricia H.*, 2002-NMCA-061, ¶ 28 (“[O]ur job is not to determine whether  
8 CYFD did everything possible; our task is limited by our statutory scope of review  
9 to whether CYFD complied with the minimum required under law.”). We note,  
10 however, that Dr. Alexander testified during the termination hearing that Father’s  
11 testing was typical for ADHD and that he recommended Father participate in a  
12 number of services after diagnosing Father with an unspecified neurocognitive  
13 disorder, a learning disorder, and with amphetamine and cannabis use disorders. Dr.  
14 Alexander’s testimony thus indicates that some of the services recommended for  
15 Father took his ADHD into account. Additionally we note that “CYFD is only  
16 required to make reasonable efforts, not efforts subject to conditions unilaterally  
17 imposed by the parent.” *Id.* ¶ 27; *see also id.* ¶ 23 (stating “[w]hat constitutes  
18 reasonable efforts may vary with a number of factors, such as the level of  
19 cooperation [and effort] demonstrated by the parent”). Based on the foregoing, we

1 affirm the district court’s conclusion that CYFD made reasonable efforts to assist  
2 Father.

3 **II. Clear and Convincing Evidence Supports the District Court’s Conclusion**  
4 **That the Conditions and Causes of Neglect Were Unlikely to Change in**  
5 **the Foreseeable Future**

6 {9} Father also argues that clear and convincing evidence was not presented to  
7 support the district court’s conclusion that the conditions and causes of the neglect  
8 were unlikely to change in the foreseeable future. Section 32A-4-28(B)(2). “We  
9 have interpreted the term ‘foreseeable future’ to refer to corrective change within a  
10 reasonably definite time or within the near future. We have also noted that in  
11 balancing the interests of the parents and children, the [district] court is not required  
12 to place the children indefinitely in a legal holding pattern.” *Patricia H.*, 2002-  
13 NMCA-061, ¶ 34 (internal quotation marks and citations omitted).

14 {10} At trial, CYFD presented evidence that while Father had made progress on  
15 some aspects of his treatment plan, he had failed to complete DBT and other therapy,  
16 and Father continued to have verbal conflicts with Mother throughout the case.  
17 Alexandra Ortiz, parents’ permanency planning worker until July 2019, testified that  
18 Father’s treatment plan included a requirement that he participate in a DBT  
19 evaluation. Ortiz stated that Father had a DBT referral to a provider, she discussed  
20 DBT with him, and she discussed the intake process with him, but Father stated he  
21 wouldn’t be able to go because he was looking for a job. An intake coordinator for

1 the DBT provider testified that Father was referred for DBT again in February 2021  
2 but did not complete the intake process. Maurita Armijo, another permanency  
3 planning worker, testified that Father was referred for DBT again in April 2021. The  
4 DBT provider testified that Father missed three appointments in July and was  
5 discharged. Both Amrijo and the DBT provider testified that DBT takes between  
6 nine and twelve months to complete.

7 {11} CYFD called Ashley Martinez, a clinical social worker, to testify about her  
8 work with Child, Father, and Mother. Martinez testified that the family was  
9 discharged from family counseling after fifteen months due to lack of progress.  
10 Multiple witnesses testified that Father failed to attend scheduled appointments, he  
11 was disengaged during appointments, and that Father and Mother would engage in  
12 verbal altercations and emotionally abuse each other during joint sessions. During a  
13 recent visit, Father was observed teasing Child, making Child upset and cry.

14 {12} The district court found that DBT was recommended as necessary to address  
15 the issues in this case, but Father had failed to complete DBT despite multiple  
16 referrals. The district court also found that domestic violence—verbal conflicts—  
17 were an ongoing issue throughout the pendency of the case, and that real concerns  
18 about the interpersonal relationship between the parents and their parenting abilities  
19 remain. The district court also noted that Father had not made sufficient progress in  
20 his ability to parent Child. Based on the foregoing evidence, the district court’s



1 conclusion that the conditions and causes of the neglect were unlikely to be  
2 alleviated in the foreseeable future appears to be adequately supported.

3 {13} While Father asks for another chance to complete his treatment plan, he has  
4 not provided evidence demonstrating that he might be able to safely care for Child  
5 within the near future. Indeed, the record shows that at least one important aspect of  
6 his treatment plan—DBT—would take an additional nine to twelve months to  
7 complete. Although Father did participate in some aspects of his treatment plan, his  
8 efforts to comply over the course of two-and-one-half years do not equate to  
9 improvement in alleviating the conditions that caused Child’s neglect and abuse and  
10 do not demonstrate that the district court’s conclusion was in error. *See State ex rel.*  
11 *Hum. Servs. Dep’t v. Dennis S.*, 1989-NMCA-032, ¶ 7, 108 N.M. 486, 775 P.2d 252  
12 (“When balancing the interests of parents and children, the court is not required to  
13 place the children indefinitely in a legal holding pattern, when doing so would be  
14 detrimental to the children’s interests.”); *see also State ex rel. Child., Youth & Fams.*  
15 *Dep’t v. Nathan H.*, 2016-NMCA-043, ¶ 41, 370 P.3d 782 (noting that the father’s  
16 past conduct was relevant to his current parental abilities and foreseeable events in  
17 light of evidence that he had not changed his situation in any meaningful way). In  
18 light of the evidence presented during the termination proceedings, we conclude that  
19 clear and convincing evidence supports the district court’s conclusion that the causes  
20 and conditions of Child’s neglect were unlikely to change in the foreseeable future.

1 **CONCLUSION**

2 {14} We affirm.

3 {15} **IT IS SO ORDERED.**

4   
5 MEGAN P. DUFFY, Judge

6 **WE CONCUR:**

7   
8 ZACHARY A. IVES, Judge

9   
10 KATHERINE A. WRAY, Judge