

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

2 **IN THE MATTER OF THE ADOPTION**
3 **PETITION OF NICHOLAS WAYNE M.,**

Court of Appeals of New Mexico
Filed 6/28/2023 10:06 AM

4 **NICHOLAS WAYNE M.,**



Mark Reynolds

5 Petitioner-Appellee,

6 v.

No. A-1-CA-40394

7 **ARTURO DEREK D.,**

8 Respondent-Appellant.

9 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**

10 **Jane Shuler Gray, District Court Judge**

11 Lane Martin
12 Carlsbad, NM

13 for Appellee

14 Cravens Law LLC
15 Richard H. Cravens, IV
16 Albuquerque, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **DUFFY, Judge.**

20 {1} Respondent appeals from an order of the district court terminating his parental
21 rights to Child. We issued a notice of proposed summary disposition proposing to
22 affirm, and Respondent has responded with a timely memorandum in opposition,

1 which we have duly considered. We remain unpersuaded that our initial proposed
2 disposition was incorrect, and we therefore affirm.

3 {2} Respondent continues to assert that the evidence was insufficient to support
4 the district court’s finding that he abandoned Child. [MIO 4-5] Specifically,
5 Respondent argues that he rebutted the presumption of abandonment with his
6 testimony at the hearing on the petition for adoption. [MIO 3, RP 10-11] Respondent
7 acknowledges that he had not seen Child in five years; however, he points to his
8 testimony that he was prevented from seeing Child by Mother and Petitioner. [MIO
9 3; RP 10-11] *See In re Adoption of J.J.B.*, 1995-NMSC-026, ¶ 47, 119 N.M. 638,
10 894 P.2d 994 (recognizing that the presumption of abandonment may be “rebutted
11 by showing that a parent lacks responsibility for the destruction of the parent-child
12 relationship”).

13 {3} However, the district court was not required to credit Respondent’s testimony,
14 and on appeal we do not substitute our judgment for that of the district court on
15 matters of credibility. *See State ex rel. Child., Youth & Fams. Dep’t v. Vanessa C.*,
16 2000-NMCA-025, ¶ 24, 128 N.M. 701, 997 P.2d 833 (stating that we do not reweigh
17 the evidence or substitute our judgment for that of the district court on factual matters
18 or on matters of credibility); *see also State ex rel. Child., Youth & Fams. Dep’t v.*
19 *Cosme V.*, 2009-NMCA-094, ¶ 19, 146 N.M. 809, 215 P.3d 747 (“The district court

1 is in a better position to assess the testimony and credibility of witnesses, and our
2 scope of review is a narrow one.” (internal quotation marks and citation omitted)).

3 {4} Rather, our task is to view the evidence in the light most favorable to the
4 district court’s judgment in determining whether the State has met the clear and
5 convincing standard. *See Vanessa C.*, 2000-NMCA-025, ¶ 24 (“The standard of
6 proof in cases involving the termination of parental rights is clear and convincing
7 evidence.”); *State ex rel. Child., Youth & Fams. Dep’t v. Patricia H.*, 2002-NMCA-
8 061, ¶ 22, 132 N.M. 299, 47 P.3d 859 (stating that on review of an order terminating
9 parental rights, “[w]e must determine whether substantial evidence supports the trial
10 court’s decision”). In this case, there was evidence contradicting Respondent’s
11 assertions, including the guardian ad litem (GAL) report and testimony from the
12 GAL and Petitioner. [RP 39-50; 3/28/2022 Tape Log 4-8] *See Patricia H.*, 2002-
13 NMCA-061, ¶ 22 (“Our role is to determine whether the fact[-]finder could properly
14 conclude that the proof requirement below was met.”).

15 {5} To the extent Respondent continues to argue that the district court improperly
16 relied on the fact of his incarceration to find that he abandoned Child, we disagree.
17 [MIO 6-7] We recognize that a parent’s incarceration alone is insufficient to support
18 a finding of abandonment. *See State ex rel. Child., Youth & Fams. Dep’t v. Melvin*
19 *C.*, 2015-NMCA-067, ¶¶ 11-15, 350 P.3d 1251 (recognizing that abandonment
20 cannot be supported “by simply a finding that a parent was incarcerated during the

1 period of alleged abandonment” (internal quotation marks and citation omitted)).
2 However, in this case, there was also evidence before the district court that
3 Respondent had only sporadic contact with Child throughout her life, owed Mother
4 approximately \$30,000 in back child support, and had not had contact with Child in
5 the past five years. [DS 2] Additionally, there was evidence that Child had
6 continuously resided with Petitioner and Mother since 2009, Petitioner and Child
7 formed a parent-child relationship, and Petitioner and Child both desired that the
8 adoption take place. [RP 70-71] *See State ex rel. Child., Youth & Fams. Dep’t v.*
9 *Christopher B.*, 2014-NMCA-016, ¶ 12, 316 P.3d 918 (stating that multiple factors
10 may indicate abandonment, including an absence of financial support and purposely
11 declining opportunities to remain in contact with the child); *In re Adoption of Doe*,
12 1982-NMCA-183, ¶ 26, 99 N.M. 278, 657 P.2d 134 (“Abandonment rests upon
13 incarceration coupled with other factors such as parental neglect, lack of affection
14 shown toward the child, failure to contact the child, financially support the child if
15 able to do so, as well as disregard for the general welfare of the child.”); *see also*
16 NMSA 1978, § 32A-5-15(B)(3) (2022) (listing factors that give rise to a rebuttable
17 presumption of abandonment).

18 {6} For these reasons and those set out in our notice of proposed summary
19 disposition, we reject Respondent’s assertions of error, and we affirm the district
20 court.

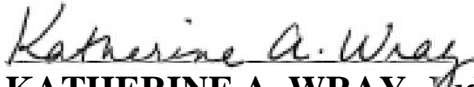
1 {7} IT IS SO ORDERED.

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3


MEGAN P. DUFFY, Judge

4 WE CONCUR:

5 
6 KRISTINA BOZARDUS, Judge

7 
8 KATHERINE A. WRAY, Judge