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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,**

5 Petitioner-Appellee,

6 v.

7 **JASMINE T.,**

8 Respondent-Appellant,

9 and

10 **GERALDO G.,**

11 Respondent,

12 **IN THE MATTER OF ISAIAH G.,**

13 **OLIVIA G., and NOAH T.,**

14 Children.

15 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**

16 **Lee A. Kirksey, 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  
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Mark Reynolds

**No. A-1-CA-40536**

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2 Nancy L. Simmons  
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4 for Appellant

5 Laura K. Castillo  
6 Hobbs, NM

7 Guardian Ad Litem

8 **MEMORANDUM OPINION**

9 **IVES, 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. After filing her first memorandum in  
13 opposition, and pursuant to the orders of extension granted by this Court, Mother  
14 filed an amended memorandum in opposition to the proposed summary disposition,  
15 which we have duly considered. Unpersuaded that the calendar notice was in error,  
16 we affirm.

17 {2} Our notice proposed to affirm based on our suggestions that the Children,  
18 Youth, and Families Department (CYFD) made reasonable efforts in making  
19 appropriate referrals consistent with the seriousness of Mother’s substance abuse  
20 issue [CN 7]; and Mother did not develop or identify any other particular manner in  
21 which CYFD’s efforts were unreasonable [CN 8-9]. We proposed to conclude

1 therefore, that the district court did not err in terminating Mother’s parental rights.  
2 [CN 9]

3 {3} In her amended memorandum in opposition, Mother continues to generally  
4 contend that CYFD did not demonstrate by clear and convincing evidence that the  
5 causes and conditions of neglect were not likely to change in the foreseeable future,  
6 and that CYFD had not made reasonable efforts to assist Mother. [Am. MIO 8, 10]  
7 Mother also makes a handful of new, specific assertions. Mother now contends that  
8 the fact that CYFD moved to terminate her parental rights after only ten months  
9 “shift[ed] the burden to Mother to find her own resources,” and did not constitute  
10 reasonable efforts. [Am. MIO 15] Mother argues, based on her own testimony, that  
11 she was unable to contact her caseworker and was “left on her own to access care.”  
12 [Am. MIO 16] However, Mother does not identify how, apart from her own  
13 testimony and the date of the filing of the motion to terminate, the record supports  
14 this contention, and we reiterate that the district court found that Mother’s testimony  
15 was generally contradictory and not credible. [3 RP 753; CN 6] *See N.M. Tax’n &*  
16 *Revenue Dep’t v. Casias Trucking*, 2014-NMCA-099, ¶ 23, 336 P.3d 436 (“It is the  
17 sole responsibility of the trier of fact to weigh the testimony, determine the  
18 credibility of the witnesses, reconcile inconsistencies, and determine where the truth  
19 lies, and we, as the reviewing court, do not weigh the credibility of live witnesses.”  
20 (alteration, internal quotation marks, and citation omitted)).

1 {4} Mother also contends in her amended memorandum in opposition that the  
2 district court erred in determining that Mother was unlikely to recover from her  
3 substance abuse issues and in overlooking Mother’s explanation that, due to her  
4 recent placement at a rehabilitation facility at the time of the termination hearing,  
5 she was unable to provide negative drug tests due to her isolation, but that she must  
6 have not been using any drugs at that time, as she had not been dismissed from the  
7 facility. [Am. MIO 18-19] We see no basis for concluding that the district court  
8 erred. Importantly, by the time of the permanency hearing, Mother had already had  
9 several unsuccessful attempts at recovery, and Mother has not demonstrated that the  
10 district court erred in considering the time that had already elapsed during which she  
11 was not making progress on her case plan. Despite Mother’s focus on her recent  
12 progress at the time of the termination hearing, she acknowledged to the district court  
13 that she had done more in the month prior to the last day of the termination hearing  
14 “than she had in the prior three years that the case has been pending.” [3 RP 743]

15 {5} We therefore are not persuaded that Mother has demonstrated failure by  
16 CYFD or error by the district court. *See State ex rel. Human Servs. Dep’t v. Dennis*  
17 *S.*, 1989-NMCA-032, ¶ 7, 108 N.M. 486, 775 P.2d 252 (“When balancing the  
18 interests of parents and children, the court is not required to place the children  
19 indefinitely in a legal holding pattern, when doing so would be detrimental to the  
20 children’s interests.”). We remind Mother that

1 [t]he Abuse and Neglect Act requires the treatment plan to be  
2 reasonable, not a guarantee of family reunification and even with a  
3 parent’s reasonable efforts, . . . the parent may not be able to make the  
4 changes necessary to rectify the causes and conditions of the neglect  
5 and abuse so as to enable the court to conclude that the parent is able to  
6 properly care for the child.

7 *State ex rel. Child., Youth & Fams. Dep’t v. Athena H.*, 2006-NMCA-113, ¶ 9, 140  
8 N.M. 390, 142 P.3d 978 (internal quotation marks omitted).

9 {6} In general, the arguments contained in Mother’s amended memorandum in  
10 opposition do not persuade us that this Court’s proposed summary disposition was  
11 in error. Therefore, we affirm for the reasons stated in our notice of proposed  
12 disposition and herein. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M.  
13 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar  
14 cases, the burden is on the party opposing the proposed disposition to clearly point  
15 out errors in fact or law.”).

16 {7} To the extent that Mother dedicates a portion of her amended memorandum  
17 in opposition to continuing to challenge this Court’s calendaring process [Am. MIO  
18 1-3], we note that our case law is clear that, “[i]t is the duty of the appellant to provide  
19 a record adequate to review the issues on appeal.” *Sandoval v. Baker Hughes Oilfield*  
20 *Operations, Inc.*, 2009-NMCA-095, ¶ 65, 146 N.M. 853, 215 P.3d 791. In addition,  
21 to the extent that Mother generally argues that, in CYFD cases, district courts may  
22 wrongly weigh placement between a parent and state custody [Am. MIO 11-14], we  
23 note that Mother has not demonstrated—nor even truly asserts—that the district

1 court in the present case applied an erroneous legal standard in this abuse and neglect  
2 proceeding, and we are unpersuaded she has demonstrated any error by the district  
3 court.

4 {8} Accordingly, for the reasons stated in our notice of proposed disposition and  
5 herein, we affirm the termination of Mother's parental rights.

6 {9} **IT IS SO ORDERED.**

7  
8   
**ZACHARY A. IVES, Judge**

9 **WE CONCUR:**

10   
11 **J. MILES HANISEE, Judge**

12   
13 **KRISTINA BOCARDUS, Judge**