

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

Court of Appeals of New Mexico  
Filed 1/9/2024 11:31 AM


2 **THELONIKA MCCOLLUM,**

3 Petitioner-Appellant,

4 v.

5 **JASON SHOBERG,**

6 Respondent-Appellee.



Mark Reynolds  
**No. A-1-CA-40342**

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **Robert Lara, District Court Judge**

9 Thelonika McCollum

10 Santa Fe, NM

11 Pro Se Appellant

12 McElhinney Law Firm LLC

13 C.J. McElhinney

14 Las Cruces, NM

15 for Appellee

16 **DECISION**

17 **DUFFY, Judge.**

18 {1} Thelonika McCollum (Mother) appeals from a district court order granting

19 Jason Shoberg (Father) a modified period of custody as a temporary amendment to

20 the parties' joint custody agreement. We affirm.

1 **BACKGROUND**

2 {2} The parties underwent divorce and custody proceedings in the Third Judicial  
3 District Court beginning in 2016. In the course of those proceedings, Mother and  
4 Father agreed to a joint custody arrangement where they would exchange custody of  
5 the children at the end of each semester of school.

6 {3} On December 6, 2021, Mother filed a motion to amend or modify the custody  
7 order, and another motion to enforce the current custody order. Mother’s motion to  
8 modify requested that going forward, she be granted custody of the children during  
9 the school year. She also alleged that Father had allowed the children to spend four  
10 nights a week at his mother’s house, where criminal activity had occurred, and that  
11 he had failed to ensure the children received adequate dental care. In her motion to  
12 enforce, Mother asked the court to hold Father in contempt for various violations of  
13 the current custody order, including that Father allegedly interfered with Mother’s  
14 ability to communicate with the children’s doctor.

15 {4} Mother had physical custody of the children at the time she filed the motions.  
16 Later that month, at the conclusion of the fall semester on December 28, 2021, Father  
17 drove from Las Cruces to Santa Fe to pick up the children. Mother refused to transfer  
18 custody of the children to Father. The following day, on December 29, 2021, Mother  
19 filed a domestic violence petition in the First Judicial District Court in Santa Fe and

1 was granted a temporary order of protection against Father. The order gave Mother  
2 temporary physical custody of the children.

3 {5} On January 11, 2022, Father filed an expedited motion to enforce the custody  
4 agreement in the Third Judicial District Court, seeking an order requiring Mother to  
5 return the children to him immediately. Mother responded by stating her reasons for  
6 refusing to transfer custody of the children to Father and for seeking the protective  
7 order, and went on to restate the concerns noted in her motion to modify the custody  
8 order, i.e., that when the children were in Father's custody, he would leave them in  
9 the care of relatives who were convicted of drug-related and violent felonies and that  
10 Father had failed to schedule or keep the children's dental appointments. Mother  
11 later filed an additional motion for temporary order asking the district court in this  
12 case to grant Mother custody of the children through the end of the spring semester  
13 and change the venue for the custody proceedings to the First Judicial District Court.  
14 Finally, Mother filed a motion for sanctions after Father's attorney wrote a letter to  
15 the chief judge of the Third Judicial District, advising that there were expedited  
16 motions pending that had not been set for hearing due to the retirement of the  
17 presiding judge, and asking that the case be reassigned to another district judge or a  
18 pro tem judge.

19 {6} The case was reassigned, and the district court heard all of the pending  
20 motions on March 23, 2022. The district court ultimately granted the majority of the

1 relief requested by Mother, ordering that Father must undergo drug testing; that  
2 Father refrain from drinking alcohol while the children are with him; and that  
3 childcare no longer be conducted at his mother's house, where the alleged criminal  
4 activity was occurring. The district court also ordered that both parents must ensure  
5 that the children attend all dental, orthodontic, and medical appointments.

6 {7} Regarding custody, the district court ordered that both parents "shall continue  
7 to have joint legal custody of minor children," but that Father "shall be allowed to  
8 make up his days that were missed during his designated period of responsibility."  
9 The court determined that the children would stay with Mother until the end of May,  
10 and after that, Father would have physical custody through the end of the fall  
11 semester. The district court declined to make any permanent changes to the custody  
12 order, concluding that "[t]here has been no substantial change in circumstances to  
13 justify a modification in the parties' current timeshare." The court set another  
14 hearing later in the year "to determine a future timeshare schedule if the parties are  
15 unable to reach an agreement." Mother appeals.

## 16 **DISCUSSION**

17 {8} Mother asks that this Court (1) reverse the district court's order and remand  
18 for a new evidentiary hearing, and (2) transfer the case to a new venue with a family  
19 court clinic. As an initial matter, this Court is not authorized to change the venue of  
20 an active, pending case, and we are therefore unable to grant Mother's second

1 request for relief. *See* NMSA 1978, § 40-10A-202 (2001) (providing that the court  
2 that has made the custody determination retains exclusive, continuing jurisdiction  
3 over the determination).

4 {9} The remainder of Mother’s argument is directed at the district court’s  
5 temporary modification of the custody order. Mother makes several claims, two of  
6 which we address summarily: (1) that the district court did not give her pro se  
7 pleadings equal consideration, and (2) that she “was not granted any visitation or  
8 contact with the parties’ children in the resulting order.” On her first claim, we note  
9 that Mother prevailed on a number of the issues raised in her pro se pleadings, and  
10 she has neither directed us to any part of the record nor made any legal argument in  
11 support of her contention that her pleadings were not given due consideration. *State*  
12 *v. Gonzales*, 2011-NMCA-007, ¶ 19, 149 N.M. 226, 247 P.3d 1111 (stating that “this  
13 Court has no duty to review an argument that is not adequately developed”).  
14 Regarding her second claim, the district court stated it would set a judicial review to  
15 occur in June 2022 “to set [Mother’s] summer visitation schedule and to determine  
16 a future timeshare schedule if the parties are unable to reach an agreement.” This  
17 appeal was filed before the June 2022 proceedings and any issues arising therefrom  
18 are not presently before us. Regardless, Mother has not demonstrated error in the  
19 district court’s decision to allow the parties an opportunity to work out the summer  
20 timeshare before conducting further proceedings on the matter.

1 {10} Mother also argues that the district court demonstrated bias in its decision-  
2 making, failed to enforce the temporary order of protection against Father, and  
3 otherwise abused its discretion in its determination. Father argues that the issues  
4 raised in this appeal are moot, substantial evidence supported the district court’s  
5 order, and the district court did not abuse its discretion.

6 {11} First, Mother appears to argue that the district court’s decision to equalize the  
7 timeshare was motivated by bias and an intent to punish Mother for seeking the order  
8 of protection. To allege a cognizable claim of judicial bias, “[t]he alleged bias and  
9 prejudice to be disqualifying must stem from an extrajudicial source and result in an  
10 opinion on the merits on some basis other than what the judge learned from his  
11 participation in the case.” *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-  
12 094, ¶ 418, 96 N.M. 155, 629 P.2d 231 (internal quotation marks and citation  
13 omitted). “[A]dverse rulings against a party, without more, do not support a  
14 conclusion that a district judge is biased.” *State v. Gage*, \_\_\_-NMSC-\_\_\_, ¶ 17, \_\_\_  
15 P.3d \_\_\_ (S-1-SC-39142, May 22, 2023). We perceive no allegations of bias from  
16 Mother beyond the ruling itself, and this is insufficient to demonstrate that the  
17 district judge’s decision was affected by bias against Mother.

18 {12} Mother also appears to suggest that the temporary modification of the custody  
19 order was in error because the temporary protective order she obtained in the First  
20 Judicial District Court granted temporary custody to Mother and required Father to

1 stay away from the children. However, even when an order of protection is granted,  
2 the Family Violence Protection Act specifies that “the [district] court may enter an  
3 initial order of protection, but the portion of the order dealing with child  
4 custody . . . will then be transferred to the court that has or continues to have  
5 jurisdiction over the pending or prior custody or support action.” NMSA 1978, § 40-  
6 13-5(D) (2019). Mother conceded this at the hearing. Thus, the district court in this  
7 case had the authority to issue orders regarding custody of the children, even though  
8 the temporary protective order gave Mother temporary physical custody of the  
9 children.

10 {13} As for the district court’s substantive decision that Mother had willfully failed  
11 to return the children to Father and that Father shall be allowed to make up the days  
12 that were missed, Mother has not demonstrated that the district court’s decision was  
13 unsupported by substantial evidence or that the court abused its discretion. While  
14 Mother argues that the court’s order fails to uphold the best interest standard, fails  
15 to define the basic requirements of a custody plan, and fails to consider the factors  
16 relevant to a determination of joint custody, we note that the district court had  
17 already approved a joint custody plan in 2020 and the motions at issue in this appeal  
18 simply asked the court to enforce the existing plan. Mother has not otherwise shown  
19 how the district court’s effort to equalize the timeshare between parents who share

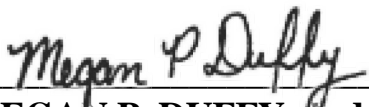
1 joint custody of the children amounts to an abuse of discretion under the  
2 circumstances.

3 {14} Mother’s briefing contains additional points of objection regarding her motion  
4 for sanctions, that the hearing was conducted telephonically, and that she “[was]  
5 unable to argue to admit evidence based on the fact she is not an attorney.” Other  
6 than to note her objection and intent to appeal, Mother has not offered any argument  
7 regarding these matters or indicated why they would require a reversal and  
8 rehearing. *See Gonzales*, 2011-NMCA-007, ¶ 19.

9 **CONCLUSION**


10 {15} For the foregoing reasons, we affirm.

11 {16} **IT IS SO ORDERED.**

12   
13 \_\_\_\_\_  
MEGAN P. DUFFY, Judge

14 **WE CONCUR:**

15   
16 \_\_\_\_\_  
ZACHARY A. IVES, Judge

17   
18 \_\_\_\_\_  
MICHAEL D. BUSTAMANTE, Judge,  
19 Retired, Sitting by designation