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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 **DA'ZHUA F.,**

8 Respondent-Appellant,

9 and

10 **JEFFREY S. and RAYTODRICK H.,**

11 Respondents,

12 **IN THE MATTER OF KAIIDEN H.,**  
13 **AZAYLAH S., JALAYAH S.,**  
14 **KAIIDENCE S., and NIAZHUA S.,**

15 Children.

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

17 **Lee A. Kirksey, District Court Judge**

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

23 for Appellee

Court of Appeals of New Mexico  
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Cynthia A. Hernandez-Madrid  
Acting Chief Clerk

**No. A-1-CA-40953**

1 Cravens Law LLC  
2 Richard H. Cravens, IV  
3 Albuquerque, NM

4 for Appellant

5 Laura K. Castillo  
6 Hobbs, NM

7 Guardian Ad Litem

8 **MEMORANDUM OPINION**

9 **HANISEE, Judge.**

10 {1} Appellant Da'Zhua F. (Mother) appeals the termination of her parental rights  
11 to four of her children, A.S., J.S., K.S., and N.S. (Children). We issued a calendar  
12 notice proposing to affirm. Mother has responded with a memorandum in  
13 opposition. We affirm.

14 {2} Mother continues to claim that the Children, Youth, & Families Department  
15 (CYFD) presented insufficient evidence to support the termination of her parental  
16 rights to Children. [MIO 22]

17 {3} Termination of parental rights is appropriate when  
18 the child has been a neglected or abused child as defined in the Abuse  
19 and Neglect Act and the court finds that the conditions and causes of  
20 the neglect and abuse are unlikely to change in the foreseeable future  
21 despite reasonable efforts by the department or other appropriate  
22 agency to assist the parent in adjusting the conditions that render the  
23 parent unable to properly care for the child.

1 NMSA 1978, § 32A-4-28(B)(2) (2005, amended 2022); *see also State ex rel. Child.,*  
2 *Youth & Fams. Dep't v. Patricia H.*, 2002-NMCA-061, ¶ 21, 132 N.M. 299, 47 P.3d  
3 859 (same). “It is the state’s burden to prove the statutory grounds for termination  
4 by clear and convincing evidence.” *State ex rel. Child., Youth & Fams. Dep't v.*  
5 *Tammy S.*, 1999-NMCA-009, ¶ 13, 126 N.M. 664, 974 P.2d 158.

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

13 *State ex rel. Child., Youth & Fams. Dep't v. Michelle B.*, 2001-NMCA-071, ¶ 12,  
14 130 N.M. 781, 32 P.3d 790 (internal quotation marks and citation omitted). “This  
15 Court will uphold the termination if, viewing the evidence in the light most favorable  
16 to the judgment, a fact[-]finder could properly determine that the clear and  
17 convincing [evidence] standard was met.” *Tammy S.*, 1999-NMCA-009, ¶ 13.

18 {4} In this case, our review of Mother’s pleadings and the record indicate that  
19 CYFD presented sufficient evidence to terminate Mother’s rights. Specifically,  
20 Children came into CYFD custody on August 20, 2020, after allegations were made  
21 that they were living in an inadequate shelter with no food, electricity, or water; of  
22 substance abuse by both Mother and the father; that the home is known as a “dope

1 house,” and that Mother and the father allowed two Children to be sexually abused  
2 in the home by a relative. [1 RP 21; 3 RP 558]

3 {5} On November 30, 2020, the district court adjudicated Children as abused and  
4 neglected under separate statutory definitions. [1 RP 103] *See* NMSA 1978, § 32A-  
5 4-2(B)(1) (2018, amended 2023) (defining “abused child” as one “who has suffered  
6 or who is at risk of suffering serious harm because of the action or inaction of the  
7 child’s parent, guardian or custodian”); § 32A-4-2(B)(4) (defining “abused child” as  
8 one whose parent “has knowingly, intentionally or negligently placed the child in a  
9 situation that may endanger the child’s life or health”); § 32A-4-2(G)(2) (defining  
10 “neglected child” as one “who is without proper parental care and control or  
11 subsistence, education, medical or other care or control necessary for the child’s  
12 well-being because of the faults or habits of the child’s parent, guardian or custodian  
13 or the failure or refusal of the parent, guardian or custodian, when able to do so, to  
14 provide them”); § 32A-4-2(G)(3) (defining “neglected child” as one “who has been  
15 physically or sexually abused, when the child’s parent, guardian or custodian knew  
16 or should have known of the abuse and failed to take reasonable steps to protect the  
17 child from further harm”). The district court adopted CYFD’s proposed treatment  
18 plan for Mother. [1 RP 105] The treatment plan outlined that Mother would  
19 participate in a psychological evaluation, attend a substance abuse program and  
20 maintain sobriety, take parenting classes, actively participate and cooperate with

1 therapy, maintain stable housing, keep in contact with a social worker at least once  
2 a week, attend supervised visits with Children, obtain employment, and participate  
3 in a urinalysis. [1 RP 136; 3 RP 559]

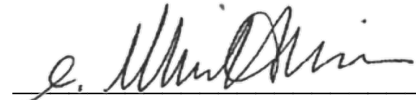
4 {6} In its findings of fact in support of its order terminating Mother's parental  
5 rights, the district court found that CYFD made multiple efforts to assist Mother in  
6 attending psychological evaluations. [3 RP 559-60] Mother never completed her  
7 psychological evaluation. [3 RP 559] Mother moved to Texas for a few months in  
8 2021, and did not participate in drug tests. [3RP 560] Mother tested positive for drug  
9 use at some point upon her return to New Mexico, and did not comply with testing  
10 during this time. [3 RP 561-62] Mother claimed, but provided no proof, that she was  
11 attending counseling remotely. [3 RP 562-63] Mother appeared to be under the  
12 influence during supervised visits with Children, and only attended 25 percent of  
13 scheduled sessions since March 2022 causing Children to be distraught. [3 RP 563]  
14 Although Mother made attempts to attend parenting classes and some other aspects  
15 of compliance, she is living with a friend in Texas and refuses to give the friend's  
16 address or name to CYFD. [3 RP 564] Children have been diagnosed with multiple  
17 behavioral issues, and their therapist believes termination of parental rights would  
18 be in their best interests. [3 RP 566-67]

19 {7} Mother continues to argue that CYFD should have made greater efforts to  
20 treat her substance abuse, and that it generally did not make reasonable efforts. [MIO

1 22] We disagree. Viewing the evidence in the manner most favorable to the decision  
2 below, we conclude that CYFD satisfied its burden to support termination. *See State*  
3 *ex rel. Child., Youth & Fams. Dep't v. Keon H.*, 2018-NMSC-033, ¶¶ 43-44, 48, 421  
4 P.3d 814 (concluding that substantial evidence supported the finding that CYFD  
5 made reasonable efforts when it prepared a treatment plan for the father, reviewed it  
6 with him, and scheduled appointments, but where the father did not show up,  
7 participate in any evaluations, and did not contact CYFD throughout the pendency  
8 of the proceedings despite CYFD's efforts); *Patricia H.*, 2002-NMCA-061, ¶ 23  
9 (“What constitutes reasonable efforts may vary with a number of factors, such as the  
10 level of cooperation demonstrated by the parent and the recalcitrance of the problems  
11 that render the parent unable to provide adequate parenting.”); *Tammy S.*, 1999-  
12 NMCA-009, ¶¶ 14-15 (explaining that where CYFD developed a treatment plan for  
13 a father that included counseling and alcohol treatment, the “[f]ather’s transience,  
14 failure to communicate, and lack of cooperation rendered [CYFD]’s efforts  
15 sufficient”); *State ex rel. Child., Youth & Fams. Dep't v. Maria C.*, 2004-NMCA-  
16 083, ¶¶ 21, 53, 136 N.M. 53, 94 P.3d 796 (observing that “[p]arents do not have an  
17 unlimited time to rehabilitate and reunite with their children” and that “the district  
18 court need not place children in a legal holding pattern, while waiting for the parent  
19 to resolve the issues that caused their children to be deemed neglected or abused”).

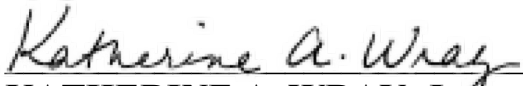
20 {8} For these reasons, we affirm.

1 {9} IT IS SO ORDERED.

2   
3 J. MILES HANISEE, Judge

4 WE CONCUR:

5   
6 KRISTINA BOGARDUS, Judge

7   
8 KATHERINE A. WRAY, Judge