


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

Court of Appeals of New Mexico
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2 **PERLA A. MONTES,**



Ramon J. Maestas
Chief Clerk

3 Petitioner-Appellant,

4 v.

No. A-1-CA-40700

5 **LUIS URIEL MANRIQUEZ,**

6 Respondent-Appellee.

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

8 **Michael H. Stone, District Court Judge**

9 Law Office of Ross R. Bettis

10 Ross R. Bettis

11 Hobbs, NM

12 for Appellant

13 The Sawyers Law Group, LLC

14 Melissa A. Sawyers

15 Hobbs, NM

16 for Appellee

17 **MEMORANDUM OPINION**

18 **YOHALEM, Judge.**

19 {1} In this divorce case, Petitioner Perla A. Montes (Mother) appeals from the

20 district court's initial custody determination and the parenting plan concerning the

21 parties' two children (collectively, Children). Mother filed for divorce from

22 Respondent Luis Uriel Manriquez (Father) in October 2021. Because custody of

23 Children was contested, the district court appointed a guardian ad litem (GAL) in

1 January 2022, under Rule 1-053.3 NMRA, to conduct an investigation and to
2 provide the court with recommendations on custody and a parenting plan that would
3 be in Children’s best interest. The GAL recommended that the parties share joint
4 legal custody of Children, with Father having primary physical custody and Mother
5 having substantial periods of responsibility for Children’s care. In August 2022, the
6 district court held an evidentiary hearing to consider the parties’ objections to the
7 GAL’s recommendations. Both parents and the GAL testified at that hearing and the
8 GAL’s report and recommendations were introduced into evidence. At the
9 conclusion of the hearing, the district court made oral findings, explaining the court’s
10 reasons for adopting the GAL’s recommendations, and issued a written decree of
11 dissolution that included a parenting plan and child support. Mother appeals. She
12 challenges the district court’s award of primary physical custody of Children to
13 Father, arguing that (1) the district court erred in failing to make particularized
14 findings on each of the factors the Legislature has found to be relevant to Children’s
15 best interests in NMSA 1978, Sections 40-4-9(A) (1977) and -9.1(B) (1999); (2) the
16 district court’s finding that it was in Children’s best interest that Father have primary
17 physical custody of Children was not supported by substantial evidence in the record
18 at the hearing; and (3) the court abused its discretion in adopting the GAL’s
19 recommendations, with only a few changes, rather than preparing its own findings
20 of facts and conclusions. Not persuaded by Mother’s arguments, we affirm.

1 **BACKGROUND**

2 {2} Mother and Father have two children, a son and a daughter. At the time of the
3 hearing in August 2022, their son was six years old and had started school, and their
4 daughter was five years old and about to begin kindergarten. The parties were
5 married in late June 2017. Mother and Father relocated several times between
6 Hobbs, New Mexico, and Odessa, Texas both before their marriage and in the year
7 following their marriage, from April 2016 until they separated in May 2018. When
8 they separated, Father stayed in Odessa where the couple had been living with
9 Children prior to the separation. Mother and Children moved to Mother’s parents’
10 home in Hobbs, which is an hour and a half drive from Odessa.

11 {3} Mother’s minor half-brother lived in the home, along with Mother’s parents,
12 Mother, and Children. In September 2021, Father reported to the police that his
13 daughter had disclosed that Mother’s half-brother had sexually abused her. The
14 Children, Youth, and Families Department (CYFD) investigated and substantiated
15 the allegation. Finding that Mother had delayed reporting the incident for six months,
16 while she and Children continued to live in her parents’ home with her half-brother,
17 CYFD issued a temporary custody order placing Children in Father’s home in
18 Odessa.

19 {4} Mother moved out of her parents’ home shortly after Children were placed in
20 Father’s temporary custody. She filed for divorce on October 15, 2021, and sought

1 visitation with Children by motion. After a hearing on Mother's motion, the district
2 court issued an order outlining an interim visitation schedule in which Children
3 stayed with Mother in Hobbs every other weekend. Mother was forbidden to allow
4 any contact between Children and Mother's half-brother. The district court
5 appointed a GAL, pursuant to Rule 1-053.3, to assist the court in determining
6 Children's best interests for purposes of a permanent custody order and parenting
7 plan. On July 28, 2022, the GAL submitted his recommendation that the district
8 court award the parties joint legal custody of Children, with Father having primary
9 physical custody and Mother having substantial periods of responsibility on
10 weekends, school holidays, and during school vacations.

11 {s} The merits hearing occurred on August 8, 2022. Mother, Father, and the GAL
12 testified. The district court admitted into evidence the GAL's report of his
13 investigation, which included interviews with both parents and observations of
14 Children. According to Father, son was excelling academically in school and
15 daughter was going to start school soon. Because Father was working forty to sixty
16 hours a week as a flatbed truck driver, he shared caregiving responsibilities with his
17 mother (paternal grandmother), who lives in Odessa, twenty minutes from him.
18 Father's son would take the bus to paternal grandmother's residence after school,
19 where Children remained until Father picked them up after work, and Father and
20 Children stayed there overnight once or twice a week.

1 {6} Mother had begun working in April 2022 for a sports bar in Carlsbad, New
2 Mexico, doing advertising and marketing. That job required her to commute from
3 her home in Hobbs, which was approximately an hour away, two to three times a
4 week. She worked remotely from home on the other days. Mother testified that she
5 had not provided child support to Father even though Children were in his primary
6 physical custody. Mother admitted on cross-examination that she received
7 government benefits on Children's behalf, even though they were no longer in her
8 custody.

9 {7} The GAL testified positively about both Mother and Father, stating that he
10 likely would have recommended equally shared physical custody if Mother and
11 Father lived in the same city. With both Children in school and the drive between
12 Odessa and Hobbs nearly an hour and a half, the GAL did not find fifty-fifty physical
13 custody to be in Children's best interest. The GAL explained that his
14 recommendation to award primary physical custody to Father rather than Mother,
15 was influenced by Mother's response to daughter's sexual abuse. Mother knew of
16 the abuse in March 2021, but did not report it to CYFD until September 2021 and
17 did not move out of her parents' home until after CYFD removed Children to
18 Father's home. Mother relocated to Roswell, New Mexico for four months, and then
19 moved to her own apartment in Hobbs, where she was living at the time of the
20 hearing.

1 {8} The GAL testified that he had drafted his recommendations believing that
2 Father did not know about daughter’s abuse until late August 2021. Father’s
3 testimony at the hearing revealed that he had been told about the abuse by Mother
4 in March 2021, and had delayed reporting the abuse waiting for Mother to act. The
5 GAL was concerned about Father’s delay, admitting that this new information made
6 his recommendation as to which parent would have primary physical custody a
7 “closer call.”

8 {9} At the conclusion of the three-hour long hearing, the district court gave a
9 lengthy explanation of its decision to adopt the GAL’s recommendations as to legal
10 and physical custody, granting parents joint legal custody of Children, and awarding
11 primary physical custody to Father. The district court found that both Mother and
12 Father “care greatly” for Children, emphasizing that primary physical custody was
13 a close call. The court suggested that if both parents lived in the same city, it would
14 likely have awarded joint legal and equal physical custody and indicated a
15 willingness to reconsider the custody arrangement if parents’ locations changed.

16 {10} The district court’s oral ruling described the following facts as dispositive of
17 the court’s custody determination: (1) “Mother allowed the alleged sexual predator
18 victim to remain in the home with no report,” and even though Father also waited
19 several months to report the abuse, the court credited Father’s testimony that he
20 waited, expecting Mother and her family would act; and (2) “[Mother’s]

1 untruthfulness . . . [about] where Children resided” for the purpose of continuing to
2 receive government assistance on behalf of Children even though they were not in
3 her custody.

4 {11} The district court found that both Mother and Father would require assistance
5 from grandparents in caring for Children while they work—Mother because she
6 commuted from her home in Hobbs to her job in Carlsbad several times a week and
7 Father because he worked long hours. Mother presented testimony at the hearing
8 that Children slept on the floor in their paternal grandparents’ home during the week,
9 and claimed that Mother’s situation with help from her parents was superior to
10 Father’s, and in Children’s best interest because Mother had an apartment where
11 each child has their own room, and her job was flexible and allowed Children to be
12 at home when they were not in school. The district court indicated it weighed both
13 parents’ circumstances equally as to the arrangements they made for substitute care.

14 {12} The district court added to the parenting plan a requirement that Children
15 receive all vaccinations because (1) Mother and Father could not reach agreement,
16 (2) Children would attend public school, and (3) there was no reason to believe
17 vaccinations would harm Children. The district court’s ruling was memorialized in
18 the decree of dissolution, which is the final order from which Mother appeals.

1 **DISCUSSION**

2 **Standard of Review**

3 {13} “We review a district court’s child custody determination for abuse of
4 discretion.” *Hough v. Brooks*, 2017-NMCA-050, ¶ 18, 399 P.3d 387; *see Ridgway*
5 *v. Ridgway*, 1980-NMSC-055, ¶ 10, 94 N.M. 345, 610 P.2d 749 (“The determination
6 of the trial judge, who saw the parties, observed their demeanor and heard the
7 testimony will not be overturned absent a manifest abuse of discretion.”). “An abuse
8 of discretion occurs when a ruling is clearly contrary to the logical conclusions
9 demanded by the facts and circumstances of the case.” *Hough*, 2017-NMCA-050,
10 ¶ 18 (internal quotation marks and citation omitted).

11 {14} In child custody cases, the paramount concern is the best interests of the
12 children. *See id.* ¶ 28. Under the best interests analysis, the district court possesses
13 “considerable discretion” as long as it is “consistent with the evidence and statutory
14 requirements.” *Id.* ¶ 30 (internal quotation marks and citation omitted). “[District]
15 courts are vested with broad discretion and great flexibility in fashioning custody
16 arrangements and parenting plans that will serve *the best interests of the children.*”
17 *Rhinehart v. Nowlin*, 1990-NMCA-136, ¶ 47, 111 N.M. 319, 805 P.2d 88.

1 **I. The District Court Made Particularized Findings Supporting Its Best**
2 **Interests Analysis and Did Not Abuse Its Discretion in Granting Primary**
3 **Physical Custody to Father**

4 {15} Mother first argues that the district court abused its discretion when it failed
5 to make particularized findings “related to the statutorily mandated factors relevant
6 to a determination of [C]hildren’s best interest” under Sections 40-4-9(A)
7 and -9.1(B). We disagree and explain.

8 {16} Section 40-4-9(A) and -9.1(B) respectively require the district court to
9 consider “all relevant factors” in its best interests analysis, and to consider nine
10 additional factors when deciding whether to award joint legal custody. The court is
11 not required to “make point-by-point findings to correspond to the statutory factors,”
12 but it must “sufficiently track[] the factors, indicating that the court considered them
13 in making its decision.” *Thomas v. Thomas*, 1999-NMCA-135, ¶ 16, 128 N.M. 177,
14 991 P.2d 7. When the district court makes verbal findings, “the reviewing court may
15 consider [them] . . . in order to clarify or discern the basis for the order or action of
16 the court below.” *Jeantete v. Jeantete*, 1990-NMCA-138, ¶ 11, 111 N.M. 417,
17 806 P.2d 66; *see Burris-Awalt v. Knowles*, 2010-NMCA-083, ¶ 10, 148 N.M. 616,
18 241 P.3d 617 (holding that failure to enter findings of fact and conclusions of law in
19 writing with the final order is “not fatal if the findings and conclusions are part of
20 the transcript on appeal”).

1 {17} The applicable statutory factors under Section 40-4-9(A) are the following

2 (1) the wishes of the child's parent or parents as to his
3 custody;

4 (2) the wishes of the child as to his custodian;

5 (3) the interaction and interrelationship of the child with his
6 parents, his siblings and any other person who may significantly affect
7 the child's best interest;

8 (4) the child's adjustment to his home, school and community;
9 and

10 (5) the mental and physical health of all individuals involved.

11 The applicable statutory factors under Section 40-4-9.1(B) are the following

12 (1) whether the child has established a close relationship with
13 each parent;

14 (2) whether each parent is capable of providing adequate care
15 for the child throughout each period of responsibility, including
16 arranging for the child's care by others as needed;

17 (3) whether each parent is willing to accept all responsibilities
18 of parenting, including a willingness to accept care of the child at
19 specified times and to relinquish care to the other parent at specified
20 times;

21 (4) whether the child can best maintain and strengthen a
22 relationship with both parents through predictable, frequent contact and
23 whether the child's development will profit from such involvement and
24 influence from both parents;

25 (5) whether each parent is able to allow the other to provide
26 care without intrusion, that is, to respect the other's parental rights and
27 responsibilities and right to privacy;

1 (6) the suitability of a parenting plan for the implementation
2 of joint custody, preferably, although not necessarily, one arrived at
3 through parental agreement;

4 (7) geographic distance between the parents' residences;

5 (8) willingness or ability of the parents to communicate,
6 cooperate or agree on issues regarding the child's needs; and

7 (9) whether a judicial adjudication has been made in a prior or
8 the present proceeding that either parent or other person seeking
9 custody has engaged in one or more acts of domestic abuse against the
10 child, a parent of the child or other household member. If a
11 determination is made that domestic abuse has occurred, the court shall
12 set forth findings that the custody or visitation ordered by the court
13 adequately protects the child, the abused parent or other household
14 member.

15 {18} The district court's written decree of dissolution did not make point-by-point
16 findings. It is framed as an order, and includes only the court's decision on custody
17 and the parenting plan adopted by the court, as well as orders on the dissolution of
18 the marriage and child support. However, the detailed oral ruling following the
19 evidentiary hearing on Mother's objections to the GAL's recommendations did track
20 the relevant statutory factors. We note that a number of factors were not in dispute:
21 neither party claimed that the other interfered with transfers of custody; that they
22 could not communicate and cooperate in meeting Children's needs; that they were
23 both able to adequately care for Children; and that Children had a close relationship
24 with both parents. Indeed, it does not appear that either party opposed joint legal
25 custody. The district court's finding that both parents had shown they could make

1 adequate arrangements for the care of Children when they were working is
2 challenged by Mother. That finding and the evidence supporting it are discussed
3 below. The GAL found Children too young to be able to express a choice between
4 the two parents' homes but it did not appear that they had a strong preference towards
5 either parent, so that factor was not relevant. The district court found as to most of
6 the factors that there was no clear choice as to which parent's primary custody was
7 in Children's best interest.

8 {19} Faced with choosing one parent who would have primary custody given the
9 distance between the parents' homes, the district court highlighted two findings of
10 fact that significantly influenced its award of primary physical custody to Father (1)
11 Mother's failure to report their daughter's sexual abuse for six months, while
12 continuing to live with Children in the same home as the half-brother who had
13 sexually abused their daughter; and (2) Mother's acceptance of government
14 assistance she was no longer entitled to receive. The district court concluded from
15 this behavior that Mother had demonstrated a concerning "propensity to see things
16 her way and not maybe the reality."

17 {20} We find it entirely reasonable for the district court in making this difficult
18 choice to rely on concerns about conduct by Mother in the past, which appeared to
19 the court to value Mother's convenience and her finances (in continuing to live with
20 her parents and in continuing to improperly, and perhaps illegally, receive

1 government money), without seeing the potential impact of her choices on Children.
2 We find no abuse of discretion in the district court’s reliance on Mother’s conduct
3 in these two instances, together with the evidence that Children were thriving in their
4 current placement with Father, to make the decision to award Father primary
5 physical custody.

6 {21} We therefore hold that the district court made adequate findings and did not
7 abuse its discretion in evaluating and weighing the relevant statutory factors and
8 determining based on those factors that Father should have primary physical custody
9 of Children.

10 **II. Substantial Evidence Supports the District Court’s Finding Regarding**
11 **Father’s Ability To Provide Adequate Care**

12 {22} Mother next argues that the district court’s finding that Father could provide
13 “adequate care for [Children] throughout each period of responsibility, including
14 arranging for [Children]’s care by others as needed,” § 40-4-9.1(B)(2), is not
15 supported by substantial evidence in the record. Mother contends that the evidence
16 conclusively showed that Children were not being adequately cared for by their
17 paternal grandparents, who were taking care of Children after school while Father
18 was working. Mother claims that there is no evidence in the record supporting the
19 district court’s finding that the substitute care arrangements made by Father with
20 grandparents were adequate.

1 {23} We will uphold a district court’s custody findings if they are supported by
2 substantial evidence. *Grant v. Cumiford*, 2005-NMCA-058, ¶ 13, 137 N.M. 485,
3 112 P.3d 1142. “Substantial evidence is such relevant evidence that a reasonable
4 mind would find adequate to support a conclusion.” *Hough*, 2017-NMCA-050, ¶ 18
5 (internal quotation marks and citation omitted). “If the evidence shows that the
6 [district] court’s decision is based on reasonable, substantial, and probative
7 evidence, so that it can be said that a reasonable person might have reached the same
8 conclusion, the trial court’s decision should be affirmed.” *Brito v. Brito*, 1990-
9 NMCA-062, ¶ 16, 110 N.M. 276, 794 P.2d 1205. The district court’s finding that
10 Father arranged for adequate care for Children while he was working is supported
11 by substantial evidence.

12 {24} The evidence shows that Father made the decision that it was in Children’s
13 best interest to be cared for by relatives while he was at work. Father testified that
14 his mother’s home was near his son’s school. Father’s son would have a much
15 shorter ride to school in the morning than from his house, and could take the bus
16 directly to Father’s mother’s house at the end of the school day.

17 {25} Children had been living primarily with Father, and grandparents had been
18 taking care of Children for nearly a year at the time of the hearing. Children appeared
19 healthy and content in their current environment. Father testified that his son was
20 doing well in school, and the GAL reported that he saw no evidence of Children’s

1 inability to adjust to their home in Odessa. This constitutes substantial evidence to
2 support a determination that the care being provided by Father and grandmother was
3 adequate to meet Children’s needs, and indeed, was the best available alternative.

4 {26} Mother focuses on evidence that Children and Father slept overnight some
5 nights at grandmother’s home so that Children could more easily get to school in the
6 morning. Mother claims that the fact that Children slept on grandmother’s living
7 room floor with Father on those nights conclusively shows that the care provided to
8 Children by Father and grandmother was inadequate. We do not agree.

9 {27} Both the statutory factors to consider in determining a child’s best interests in
10 a divorce, and our common law concerning a child’s best interests, values a child’s
11 relationship with their parents and other family members above a comparison of the
12 material facilities each parent can provide. *See Shorty v. Scott*, 1975-NMSC-030,
13 ¶ 11 n.9, 87 N.M. 490, 535 P.2d 1341 (stating that the parent-child relationship is a
14 more important consideration in determining the best interest of a child than
15 “material and economic factors,” and someone’s ability to provide better facilities
16 to the child is not an important consideration (internal quotation marks and citation
17 omitted)). The positive evidence concerning Children’s adjustment to their home,
18 school, and community during their time living primarily with Father, of their
19 comfort with grandmother, and of the practical advantages of taking the school bus
20 to and from grandmother’s house one or two nights a week constitutes substantial

1 evidence in the record supporting the district court’s finding that Father could
2 provide “adequate care for [Children] throughout each period of responsibility,
3 including arranging for [Children]’s care by others as needed.” *See* § 40-4-9.1. We
4 are not persuaded by Mother’s claim of error.

5 **III. The District Court Properly Adopted the GAL’s Recommendations**

6 {28} Finally, Mother argues that the district court improperly adopted the GAL’s
7 recommendations instead of preparing its own findings of facts and conclusions of
8 law. We disagree.

9 {29} According to Rule 1-053.3(A), the district court may appoint a GAL whenever
10 the “custody of minor children is contested” by any party in a divorce proceeding.
11 A GAL “provides independent services without being bound by the child’s or
12 another party’s directives or objectives.” *Kimbrell v. Kimbrell*, 2014-NMSC-027,
13 ¶ 10, 331 P.3d 915. The GAL is charged with making “findings and
14 recommendations to the court regarding the best interests of the child.” *Id.* Although
15 the district court is not permitted to “delegate the ultimate determination of the
16 child’s best interests,” § 1-053.3(D), to the GAL, the district court does not
17 improperly “abdicate its decision-making responsibility” if it adopts the GAL’s
18 recommendations. *Thomas*, 1999-NMCA-135, ¶ 25. Rule 1-053.3(A) states that
19 “[t]he [GAL] serves as an arm of the court and assists the court in discharging its
20 duty to adjudicate the child’s best interests.” The GAL is charged with performing


1 an investigation that the district court is unable to conduct on its own, and preparing
2 recommendations.

3 {30} The fact that the district court adopts the GAL's recommendations with few
4 changes does not demonstrate that the court has abdicated its decision-making
5 responsibility. Where the district court has stated its findings and its reasons for
6 accepting the GAL's recommendations, as it has in this case, the adoption of the
7 GAL's recommendations achieves the purpose of Rule 1-053.3: to provide
8 meaningful assistance to the district court in carrying out the court's responsibilities.

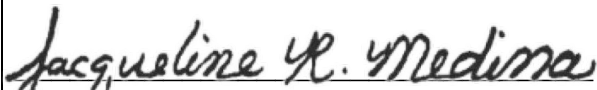
9 **CONCLUSION**

10 {31} For the foregoing reasons, we affirm the custody order and parenting plan
11 adopted by the district court.

12 {32} **IT IS SO ORDERED.**

13 
14 JANE B. YOKALEM, Judge

15 **WE CONCUR:**

16 
17 JACQUELINE R. MEDINA, Judge

18 
19 ZACHARY A. JIVES, Judge