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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,**

Court of Appeals of New Mexico
Filed 10/30/2024 12:02 PM



Ramon J. Maestas
Chief Clerk

5 Petitioner-Appellee,

6 v.

No. A-1-CA-41799

7 **LARISSA O.-H.,**

8 Respondent-Appellant,

9 **IN THE MATTER OF KYLER F.,**
10 **HARPER H., and SPENCER O.,**

11 Children.

12 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**
13 **Jane Shuler Gray, District Court Judge**

14 Children, Youth & Families Department
15 Mary McQueeney, Chief Children's Court Attorney
16 Santa Fe, NM
17 Kelly P. O'Neill, Children's Court Attorney
18 Albuquerque, NM

19 for Appellee

20 Susan C. Baker
21 El Prado, NM

22 for Appellant

23 Pedro Pineda
24 Las Cruces, NM

25 Guardian Ad Litem

1 **MEMORANDUM OPINION**

2 **IVES, Judge.**

3 {1} Respondent appeals from the district court’s finding that she abused and
4 neglected her three children. [RP 126-30] We previously entered a notice of
5 proposed disposition, proposing to affirm. Respondent filed a memorandum in
6 opposition to that notice, which we have duly considered. Unpersuaded, we affirm.

7 {2} Respondent’s memorandum in opposition abandons two of the assertions she
8 made in her docketing statement, but argues that the exclusionary rule prevented the
9 district court from relying on the fact that CYFD discovered fentanyl during a home
10 visit and insufficient evidence supports the abuse and neglect findings. [MIO 4] *See*
11 *State v. Salenas*, 1991-NMCA-056, ¶ 2, 112 N.M. 208, 814 P.2d 136 (noting that
12 where a party has not responded to the Court’s proposed disposition of an issue, that
13 issue is deemed abandoned). Regarding the former argument, Respondent
14 acknowledges that the exclusionary rule does not apply in abuse and neglect
15 proceedings, but asserts that we should reconsider our holding in *State of New*
16 *Mexico ex rel. Children Youth & Families Department v. Michael T.*, 2007-NMCA-
17 163, 143 N.M. 75, 172 P.3d 1287. [MIO 10]

18 A party asking this Court to overturn a decision must generally show
19 either obvious error or that (1) the decision is so unworkable as to be
20 intolerable; (2) reversing the decision would not create an undue
21 hardship as a result of reliance on the previous decision; (3) the law
22 surrounding the prior decision has developed to such an extent as to
23 leave the old rule no more than a remnant of abandoned doctrine; or (4)

1 the facts have changed in the interval from the old rule to
2 reconsideration so as to have robbed the old rule of justification.

3 *State v. Moncayo*, 2022-NMCA-067, ¶ 7, 521 P.3d 120. Respondent does not address
4 these factors and thus we decline to address this argument further or reevaluate our
5 holding in *Michael T.* Consequently, we direct Respondent to our analysis in our
6 proposed disposition on this issue.

7 {3} Our notice of proposed disposition also suggested affirmance was appropriate
8 because sufficient evidence supported the district court’s findings of abuse and
9 neglect. [CN 4-7] Our proposal was based on both the facts asserted in the docketing
10 statement as well as what was contained in the affidavit of the CYFD investigator.

11 [*Id.*] In her memorandum in opposition, Respondent maintains that “the presence of
12 illicit substances alone does not establish abuse or neglect.” [MIO 8] However,
13 Respondent does not address any of the other facts discussed in our proposed
14 disposition. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759
15 P.2d 1003 (stating that “[a] party responding to a summary calendar notice must
16 come forward and specifically point out errors of law and fact” and the repetition of
17 earlier arguments does not fulfill this requirement), *superseded by statute on other*
18 *grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We remain
19 unpersuaded that Respondent has demonstrated that the calendar notice was in error
20 on this issue.


1 {4} Accordingly, and for the reasons stated herein and in our notice of proposed
2 disposition, we affirm.

3 {5} **IT IS SO ORDERED.**



ZACHARY A. IVES, Judge

6 **WE CONCUR:**



JENNIFER L. ATTREP, Chief Judge



KATHERINE A. WRAY, Judge