

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

**STATE OF NEW MEXICO ex rel.
CHILDREN, YOUTH & FAMILIES
DEPARTMENT,**

Petitioner-Appellee,

v.

SAMANTHA R.,

Respondent-Appellant,

and

FRANCISCO R., SR.,

Interested Party,

**IN THE MATTER OF
FRANCISCO R., JR., a Child.**

**APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
Grace B. Duran, District Court Judge**

Children, Youth & Families Department
Amanda M. Romero, Chief Children's Court Attorney
Santa Fe, NM

for Appellee

Susan C. Baker
El Prado, NM

for Appellant

Court of Appeals of New Mexico

Filed 2/25/2025 8:00 AM



Ramon J. Maestas
Chief Clerk

No. A-1-CA-42039

1 Jennifer L. Munson
2 Las Cruces, NM
3 Guardian Ad Litem

4 **MEMORANDUM OPINION**

5 **HANISEE, Judge.**

6 {1} Respondent Samantha R. (Mother) appeals from the district court’s
7 termination of her parental rights as to Child. We issued a calendar notice proposing
8 to affirm. Mother has filed a memorandum in opposition, which we have duly
9 considered. Unpersuaded, we affirm.

10 {2} Our notice proposed to affirm based on our suggestion that there was
11 sufficient evidence to support the district court’s termination of Mother’s parental
12 rights. Specifically, we proposed to conclude that the Children, Youth and Families
13 Department (CYFD) made reasonable efforts to assist Mother in adjusting the
14 conditions that rendered her unable to properly care for Child [CN 4] and that the
15 evidence was sufficient to support the district court’s conclusion that the causes and
16 conditions of neglect were unlikely to change in the foreseeable future [CN 7].

17 {3} In her memorandum in opposition, Mother continues to assert the district
18 court’s order terminating her parental rights should be reversed because CYFD
19 failed to prove by clear and convincing evidence that the reasons for filing this case
20 were unlikely to improve in the foreseeable future. [MIO 11] Despite her struggles
21 with medication management [MIO 11] and inability to parent for long periods of

1 time due to a pattern of failing to follow through with her parental responsibilities
2 [CN 6-7], Mother asserts that she “could have adequately parented Child” if she had
3 been given “more specialized treatment and more time to engage in it” [MIO 11].
4 Mother points out that she previously had an in-house caretaker to ensure she
5 remained on her medication, and states her belief that CYFD could have done more
6 to help her. [MIO 11] We note, however, that “the [district] court is not required to
7 place . . . [Child] in a legal holding pattern, when doing so would be detrimental to
8 . . . [Child’s] best interests,” *See State ex rel. Hum. Servs. Dep’t v. Dennis S.*, 1989-
9 NMCA-032, ¶ 7, 108 N.M. 486, 775 P.2d 252, and the district court determined that
10 it was in Child’s best interests to terminate Mother’s parental rights. [2 RP 278]. *See*
11 *also State ex rel. Child., Youth & Fams. Dep’t v. Mafin M.*, 2003-NMSC-015, ¶ 24,
12 133 N.M. 827, 70 P.3d 1266 (“Because it is important for children to have
13 permanency and stability in their lives, termination proceedings should not continue
14 indefinitely.”). Furthermore, “[p]arents do not have an unlimited time to rehabilitate
15 and reunite with their children.” *State ex rel. Child., Youth & Fams. Dep’t v. Browind*
16 *C.*, 2007-NMCA-023, ¶ 40, 141 N.M. 166, 152 P.3d 153 (internal quotation marks
17 and citation omitted)).

18 {4} Mother also asserts that CYFD did not provide reasonable efforts because it
19 failed to provide “reasonable accommodations” in accordance with the Americans
20 with Disabilities Act (ADA). [MIO 13] *See* 42 U.S.C. § 12132. In order to “preserve

1 issues concerning violations of the ADA, the parent bears the initial burden of
2 asserting that the parent is a qualified individual with a disability under [the ADA].”
3 *State ex rel. Child., Youth & Fams. Dep’t v. Johnny S., Sr.*, 2009-NMCA-032, ¶ 8,
4 145 N.M. 754, 204 P.3d 769; *see also id.* ¶ 9 (stating that the “burden to raise and
5 argue the issues . . . lies with the parents and their counsel”). The parent must “create
6 a factual and legal record sufficient to allow meaningful appellate review of the
7 district court decision on the issue,” including “a request for relief citing the ADA
8 backed by facts developed in the record.” *Id.* ¶ 8.

9 {5} Neither the docketing statement nor the memorandum in opposition indicate
10 Mother raised this argument in the district court. *See* Rule 12-208(D)(4) NMRA
11 (providing that the docketing statement must provide “a statement of the issues
12 presented by the appeal, including a statement of how they arose and how they were
13 preserved in the trial court”); *State v. Rael*, 1983-NMCA-081, ¶¶ 10, 15, 100 N.M.
14 193, 668 P.2d 309 (reiterating that preservation must be shown if an appellant seeks
15 to add any issue to those previously set forth in the docketing statement). Mother has
16 also failed to provide a citation to the record indicating she established that she is an
17 individual with a disability as defined by the ADA, as required. *See Muse v. Muse*,
18 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 (“We will not search the record
19 for facts, arguments, and rulings in order to support generalized arguments.”).
20 Accordingly, Mother has not properly preserved her issue, and we cannot consider


1 it on appeal. *See Benz v. Town Ctr. Land, LLC*, 2013-NMCA-111, ¶ 24, 314 P.3d
2 688 (“To preserve an issue for review on appeal, it must appear that appellant fairly
3 invoked a ruling of the trial court on the same grounds argued in the appellate court.”
4 (internal quotation marks and citation omitted)); *Johnny S., Sr.*, 2009-NMCA-032,
5 ¶ 10 (affirming the termination of parental rights based on a parent’s failure to
6 preserve an ADA argument, and stating the parent’s failure to preserve the argument
7 created shortcomings in the record such that the appellate court could not “undertake
8 any analysis of the factual showing which might be required to demonstrate
9 eligibility for ADA protection”). As such, we remain unpersuaded that the district
10 court erred in concluding CYFD’s efforts in this case were reasonable. [CN 4]

11 {6} We also note that Mother has abandoned her assertion in the docketing
12 statement that the district court erred by failing to address the possibility of
13 permanent guardianship. [CN 8] *See Taylor v. Van Winkle’s IGA Farmer’s Mkt.*,
14 1996-NMCA-111, ¶ 5, 122 N.M. 486, 927 P.2d 41 (recognizing that issues raised in
15 a docketing statement but not contested in a memorandum in opposition are
16 abandoned).

17 {7} For the reasons stated in our notice of proposed disposition and herein, we
18 affirm.

1 {8} IT IS SO ORDERED.

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J. MILES HANISEE, Judge


4 WE CONCUR:

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JANE B. YONAHALEM, Judge

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KATHERINE A. WRAY, Judge