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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 3/11/2025 9:08 AM



Ramon J. Maestas
Chief Clerk

5 Petitioner-Appellee,

6 v.

No. A-1-CA-41891

7 **ANDREA L.,**

8 Respondent-Appellant,

9 and

10 **ROBERT G.,**

11 Respondent,

12 **IN THE MATTER OF KAMRI G., a Child.**

13 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**

14 **Jane Shuler Gray, District Court Judge**

15 Children, Youth & Families Department

16 Amanda M. Romero, Chief Children's Court Attorney

17 Albuquerque, NM

18 for Appellee

19 Susan C. Baker

20 El Prado, NM

21 for Appellant

1 575 Law Group, LLC
2 Eileen P. Riordan
3 Carlsbad, NM

4 Guardian ad Litem

5 **DECISION**

6 **MEDINA, Judge.**

7 {1} Andrea L. (Mother) appeals the termination of her parental rights to K.G.
8 (Child). Mother argues that the district court’s findings supporting termination of
9 her parental rights were speculative and, as such, there was insufficient evidence to
10 terminate her parental rights. We affirm the judgment of the district court.

11 **BACKGROUND**

12 {2} Child was born on September 17, 2021. Child’s father is Robert G. (Father),
13 who is not a party to this appeal. The following facts surrounding Child’s placement
14 in Children, Youth & Families Department (CYFD)’s custody were obtained from
15 the affidavit for the ex parte custody order. On April 13, 2022, when Child was
16 approximately seven months old, officers were dispatched to an address associated
17 with Child’s aunt (Aunt) in order to conduct a welfare check on Aunt’s child. Unable
18 to locate Aunt at the address, the officers drove to Child’s maternal grandmother’s
19 (Grandmother) house. Upon arrival at Grandmother’s house, one of the officers
20 observed Mother and Father “crawl[ing] out of a broken[-]down vehicle in the

1 driveway.” Mother told the officer that she had a child in the house but could not
2 grant the officer access to the home because she did not live there.

3 {3} CYFD was contacted and a CYFD investigator, Brandie Medrano, drove to
4 Grandmother’s house. When Ms. Medrano arrived, Mother and Father stated no one
5 was in the home with Child. The officer and Ms. Medrano called Grandmother, who
6 returned home and granted the officer access into the house in order to perform a
7 welfare check on Child. Grandmother told the officer that Mother, Father, and Child
8 lived with her. Mother, on the other hand, claimed they were just visiting but refused
9 to provide Ms. Medrano with an address where she resided.

10 {4} Once in the home, Ms. Medrano and the officer found Child sleeping alone
11 on a bed. Ms. Medrano described the condition of the home as “filthy[,] dirty, it had
12 a very foul odor[. T]here was trash and dirty clothes piled up all over the home[.
13 S]ome rooms were so bad you could not even walk through [them. T]here was no
14 baby food in the home[. T]here were extension cords all over the house.”

15 {5} Members of Mother’s family had a pattern of substantiated allegations of
16 abuse or neglect with CYFD. CYFD recently informed Mother that Grandmother’s
17 home was not safe for children. Medrano concluded it would be “contrary to the
18 welfare of . . . [C]hild to remain in the home” and listed two dangerous indicators:
19 (1) “[i]mminent danger of harm due to failure to meet basic needs”; and (2)
20 “[h]azardous living conditions.” CYFD also identified additional risks arising from

1 the family residing in Grandmother’s home who despite having been informed that
2 the home is not adequate for children, failed to clean the home.

3 {6} On April 15, 2022, CYFD filed a petition alleging Child was abused and
4 neglected for the following reasons: (1) Child “suffered or [was] at risk of suffering
5 serious harm because of the action or inaction of . . . [C]hild’s parents [Mother and
6 Father,] pursuant to [NMSA 1978, Section] 32A-4-2(B)(1) [(2018, amended
7 2023)]”; and (2) Child was “without proper parental care and control” and was
8 neglected by Mother and Father, contrary to Section 32A-4-2(G)(2). The following
9 day, the district court entered an ex parte custody order placing Child in CYFD’s
10 legal custody, subject to judicial review.

11 {7} The district court entered a stipulated judgment and disposition in June 2022,
12 adjudicating Child neglected, pursuant to Section 32A-4-2(G)(2). Mother and Father
13 did not contest the allegations of neglect. The court granted CYFD legal custody of
14 Child for up to two years, subject to judicial review. The stipulated judgment ordered
15 Mother to participate in a treatment plan which included: participating in a mental
16 health assessment and following all recommendations for individual therapy;
17 participating in outpatient or inpatient drug treatment services; participating in a
18 psychological evaluation and following recommendations; participating in random
19 drug screens; participating in scheduled visitation with Child; completing a

1 parenting program; obtaining and maintaining safe and stable housing; maintaining
2 employment in order to provide care for herself and family.

3 {8} On January 19, 2023, the district court held an initial permanency hearing and
4 reviewed Mother's progress on the treatment plan. Mother completed the
5 psychological evaluation, attended the parenting class, and attended visits with
6 Child. However, Mother continued to test positive for methamphetamines, THC
7 (delta-9-tetrahydrocannabinol), and amphetamines and did not address the other
8 items in the treatment plan including finding safe and stable housing and
9 employment. As a result, the district court ordered Child's permanency plan be
10 changed to adoption, as recommended by CYFD, and gave Mother approximately
11 six months to make additional progress on the treatment plan.

12 {9} The following day, CYFD filed a termination of Mother's parental rights
13 (TPR) motion to Child. Hearings were held on April 13, 2023, and July 13, 2023, to
14 review Mother's progress with the treatment plan and Child's permanency plan. In
15 April 2023, Mother completed an inpatient rehabilitation program and maintained
16 her sobriety since completing the program. Following the hearing on July 13, 2023,
17 the district court found Mother needed to next make progress on securing safe and
18 stable housing and employment.

19 {10} After several continuances in the proceedings, on November 30, 2023, CYFD
20 filed a second TPR motion and a hearing was scheduled for January 18, 2024. The

1 district court continued the January 18, 2024 hearing, because Mother stated she
2 recently moved into her employer’s home. The TPR hearing was held on February
3 8, 2024, in which CYFD presented the following testimony.

4 {11} Mariah Pineda, a permanency planning coordinator with CYFD, testified
5 about Mother’s status with the transition plan and stated Mother made progress on
6 many of the items; however, the outstanding concerns were safe and stable housing
7 and employment. Ms. Pineda testified that, throughout the case, Mother lived at
8 Grandmother’s house. Ms. Pineda further testified that although “physical
9 [alterations]” were made to the home, the house remained unsafe because there were
10 individuals with previous charges and criminal history who continued to reside in
11 the home.

12 {12} In December 2023, Mother told Ms. Pineda that she moved into the home of
13 her employer, for whom she provided occasional childcare. Ms. Pineda inspected
14 the home and found it to be suitable, but she did not believe Mother lived there full
15 time for the following reasons: there were very few personal items in the bedroom
16 Mother claimed to use; Mother did not provide Ms. Pineda with a rental agreement;
17 Mother told Ms. Pineda that she only lived in the home when her employer was there
18 and he is out of the home for weeks at a time for work. Mother also stated she was
19 recently on a two-week vacation and had not lived at her employer’s home for that
20 time. However, Ms. Pineda testified that during the two weeks Mother claimed to be

1 on a vacation, Mother did not miss any visits with Child and Ms. Pineda observed
2 Mother leaving Grandmother's home one morning around 7:45-8:00 a.m. For these
3 reasons, Ms. Pineda believed Mother was still living with Grandmother. Ms. Pineda
4 testified she had no reason to believe Mother would find safe and stable housing in
5 the foreseeable future.

6 {13} In further support of CYFD's belief that Mother had failed to obtain safe and
7 stable housing and was instead continuing to live in Grandmother's home, CYFD
8 presented testimony from Mandy Cutshall, Mother's parenting coach. Ms. Cutshall
9 testified she transported Mother for visitation with Child eight times within a month
10 or two month period. Each time Ms. Cutshall transported Mother to visitations with
11 Child, Ms. Cutshall picked Mother up from Grandmother's home.

12 {14} With regard to the condition that Mother obtain employment, Ms. Pineda
13 testified that she was able to verify two of the three jobs Mother claimed to have.
14 Mother reported to CYFD that she began working with DoorDash in August 2023.
15 Although Mother had vision problems and did not have a license to drive a vehicle,
16 Mother stated that another person would drive her to make deliveries. However,
17 Mother did not provide CYFD with proof of employment for DoorDash. Mother also
18 claimed she worked as a nanny for the employer she claimed to live with. Ms. Pineda
19 testified she received verification from employer in January 2024 that Mother
20 provides childcare some weekends, when he had custody of his children and was not

1 working out of town. Finally, Mother provided CYFD with proof of employment at
2 a senior living center, where she began working less than two weeks before the TPR
3 hearing.

4 {15} Maria Quintana, Child's foster parent, addressed the district court and testified
5 the Child had been with her since April 2022 and that she takes Child to weekly
6 visits with Mother. Ms. Quintana did not believe Child did well after visits with
7 Mother, explaining that after visits with Mother, Child was upset, wanted to be with
8 foster parents, wanted to be held, wanted to sleep with foster parents, and, on one
9 occasion, vomited. Ms. Quintana stated that during the twenty-two months Child
10 lived with them, Child bonded with them and recognizes them as her parents and
11 Quintana's other children as her siblings. During cross-examination, Quintana
12 affirmed that she wishes to adopt Child if she became available.

13 {16} Child's guardian ad litem (Guardian) spoke on behalf of the Child's best
14 interests. Guardian did not believe Mother met the conditions of her treatment plan.
15 First, Guardian emphasized the importance of safe and stable housing, explaining
16 how part-time housing was not stable and stated that Grandmother's home was
17 unacceptable. Next, Guardian was not persuaded Mother met the condition to
18 maintain employment, because Mother did not provide proof of prior claims of
19 employment and her only verified employment began less than two weeks before
20 the hearing.

1 {17} At the conclusion of the TPR hearing, the district court granted CYFD’s
2 motion to terminate Mother’s parental rights. The district court acknowledged
3 Mother’s “efforts on aspects of her [treatment] plan,” but explained that Mother had
4 “failed to follow through with recommendations from her psychological evaluation”
5 and “has demonstrated an unwillingness to address her housing issue” and as a result,
6 “[t]he [district] court finds no reason to believe [Mother] will address this issue and
7 obtain safe and stable housing for . . . [C]hild.” The district court further found that
8 “[Mother] was aware of the case plan requirement that she obtain safe and stable
9 housing” and that “the home she was living in, and the household members she was
10 living with had been assessed as unsafe and [an] inappropriate living environment
11 for . . . [C]hild.” Further, based on the testimony from CYFD’s witnesses, the district
12 court found that Mother’s testimony was not credible particularly with respect to her
13 claimed living arrangement with employer and DoorDash employment, noting that
14 even if Mother sometimes lived with employer that the arrangement did not provide
15 Child with consistent, stable housing.

16 {18} The district court found that it is likely that Mother would return Child to the
17 home she was removed from if Child were reunified with Mother and the case
18 dismissed. The district court additionally found that Mother had not alleviated the
19 causes and conditions that lead to Child’s placement in CYFD custody, did not
20 achieve the goals of her case plan and did not provide a reason to believe Mother

1 would do so in the foreseeable future. In addition to its order, the court issued
2 extensive findings of fact and conclusions of law. This appeal followed.

3 **DISCUSSION**

4 {19} On appeal, Mother makes two arguments. First, Mother contends the district
5 court’s findings regarding Mother’s home and employment were speculative and,
6 second, as a result, those findings did not provide the substantial evidence necessary
7 to terminate Mother’s parental rights.

8 {20} The Abuse and Neglect Act (ANA) provides that the district court shall
9 terminate parental rights if

10 the child has been neglected or abused as defined in the [ANA] and the
11 court finds that the conditions and causes of the neglect and abuse are
12 unlikely to change in the foreseeable future despite reasonable efforts
13 by [CYFD] or other appropriate agency to assist the parent in adjusting
14 the conditions that render the parent unable to properly care for the
15 child.

16 NMSA 1978, § 32A-4-28(B)(2). It is CYFD’s burden to demonstrate these elements
17 by clear and convincing evidence. *See* NMSA 1978, § 32A-4-29(I) (2022); *see State*
18 *ex rel. Child., Youth & Fams. Dep’t v. Patricia H.*, 2002-NMCA-061, ¶ 21, 132
19 N.M. 299, 47 P.3d 859. When considering the termination of parental rights, the
20 district court is obligated to “give primary consideration to the physical, mental and
21 emotional welfare and needs of the child, including the likelihood of the child being
22 adopted if parental rights are terminated.” Section 32A-4-28(A). “Clear and
23 convincing evidence is defined as evidence that instantly tilts the scales in the

1 affirmative when weighed against the evidence in opposition and the fact-finder’s
2 mind is left with an abiding conviction that the evidence is true.” *State ex rel. Child.,*
3 *Youth & Fams. Dep’t v. William C.*, 2017-NMCA-058, ¶ 27, 400 P.3d 266
4 (alterations, internal quotation marks, and citation omitted); *see State ex rel. Child.,*
5 *Youth & Fams. Dep’t v. David F.*, 1996-NMCA-018, ¶ 34, 121 N.M. 341, 911 P.2d
6 235 (defining clear and convincing evidence as “proof stronger than a mere
7 preponderance and yet something less than beyond a reasonable doubt” (internal
8 quotation marks and citation omitted)).

9 {21} We uphold the district court’s termination decision “if, viewing the evidence
10 in the light most favorable to the judgment, a fact[-]finder could properly determine
11 that the clear and convincing standard was met.” *State ex rel. Child., Youth & Fams.*
12 *Dep’t v. Hector C.*, 2008-NMCA-079, ¶ 11, 144 N.M. 222, 185 P.3d 1072 (internal
13 quotation marks and citation omitted). We give deference to the district court’s
14 findings of fact, *see State ex rel. Child., Youth & Fams. Dep’t v. Brandy S.*, 2007-
15 NMCA-135, ¶ 17, 142 N.M. 705, 168 P.3d 1129, and are mindful that “[w]e cannot
16 reweigh evidence. Conflicts in testimony are matters for the [district] court to
17 resolve.” *State ex rel. Child., Youth & Fams. Dep’t v. Vanessa C.*, 2000-NMCA-
18 025, ¶ 28, 128 N.M. 701, 997 P.2d 833.

1 **I. Sufficient Evidence Supports the District Court’s Findings Regarding**
2 **Housing and Employment**

3 {22} Mother argues she met all of the conditions of the treatment plan and the
4 district court’s findings that she did not secure housing and employment were both
5 based on speculation. Our review of the record reveals that CYFD presented clear
6 and convincing evidence that Mother failed to obtain and provide safe and stable
7 housing for Child and to maintain employment of a nature that would enable her to
8 provide care for herself and Child.

9 {23} With regard to obtaining safe and stable housing, the evidence revealed that,
10 when Mother informed her permanency coordinator she was residing with her
11 employer, the permanency coordinator inspected the residence and saw very few
12 personal items in Mother’s bedroom. Moreover, during this time, the evidence
13 revealed that (1) Mother’s parent coach picked up Mother at Grandmother’s home
14 where Child had been removed from and not at the home of Mother’s part-time
15 employer; and Mother’s permanency coordinator observed Mother leaving
16 Grandmother’s home early one morning. Had Mother been living elsewhere, it is
17 reasonable to conclude that Mother’s parent coach would not have been picking
18 mother up at Grandmother’s home and Mother’s permanency coordinator would not
19 have seen Mother leaving Grandmother’s home just before eight o’clock in the
20 morning. Based on this evidence, it was reasonable for the district court to conclude

1 that Mother had not succeeded in attaining safe and stable housing and instead
2 continued to reside in Grandmother's home.

3 {24} Based on the permanency coordinator's testimony, at best, Mother's housing
4 consisted of possible part-time living arrangements in her employer's home. As the
5 district court found, this did not constitute "consistent [and] stable housing for the
6 [C]hild". Mother's own statements to the permanency coordinator that she only
7 resided at her employer's residence when he had custody or visitation with his
8 children provide additional clear and convincing evidence that Mother had not
9 obtained consistent and stable housing for Child. Notably, Mother never identified
10 where she lived when employer did not have his children.

11 {25} With regard to Mother's employment, during the TPR hearing, Mother's
12 permanency coordinator concluded that Mother did not prove she maintained
13 employment throughout this case. The evidence revealed that during the two years
14 of these proceedings, Mother occasionally worked as a child caretaker and only
15 provided proof of her employment with a senior living center, less than a couple
16 weeks before the final TPR hearing. As the district court found, Mother "has not
17 demonstrated an ability to maintain stable employment or obtain another source of
18 stable income to provide for her [C]hild through benefits or other resources." While
19 Mother claimed she worked three jobs, Mother's permanency coordinator was able
20 to verify only two of the jobs. CYFD presented clear and convincing evidence that

1 it was unable to verify Mother’s employment with DoorDash because Mother failed
2 to provide CYFD with proof of employment. In addition, the evidence revealed that
3 Mother did not have a driver’s license. This evidence supports the district court’s
4 finding that Mother’s claim that she worked for DoorDash lacked credibility.

5 {26} To the extent Mother appears to be requesting that we disturb the district
6 court’s determination that Mother’s testimony lacked credibility as to her claimed
7 employment with DoorDash and how she performed the job without a driver’s
8 license, we decline to do so because determinations of credibility are for the fact-
9 finder to make. *See State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d
10 1057 (observing that New Mexico appellate courts will not invade the province of
11 the fact-finder’s decision concerning the credibility of witnesses).

12 {27} We conclude the district court’s findings were not based on speculation and
13 the evidence was sufficient to show Mother failed to obtain safe and stable housing
14 for Child and obtain employment sufficient to provide for herself and Child.

15 **II. The Evidence Supports the Termination of Mother’s Parental Rights**

16 {28} Mother’s argument that the order terminating her parental rights to Child
17 should be reversed for lack of sufficient evidence is based entirely on her claim that
18 the district court’s findings regarding obtaining a home and employment were based
19 on speculation and upon a claim that she successfully addressed the conditions that
20 caused her neglect of Child. Mother does not challenge the district court’s finding

1 that Child was abused or neglected or that CYFD made reasonable efforts to assist
2 her in adjusting the conditions that rendered her unable to properly care for Child.
3 Instead, Mother asserts that the district court failed to recognize her successes under
4 the treatment plan and for that reason, this Court should reverse the order terminating
5 her parental rights. To the best of our understanding, we interpret Mother’s argument
6 to be challenging the district court’s finding that “the conditions and causes of the
7 abuse and neglect are unlikely to change in the foreseeable future.” *See*
8 § 32A-4-28(B)(2). We address only whether the conditions and causes of Child’s
9 neglect were unlikely to change in the foreseeable future.

10 {29} Our courts have interpreted the term “foreseeable future” to refer to corrective
11 change within “a reasonable definite time or within the near future.” *Patricia H.*,
12 2002-NMCA-061, ¶ 34 (internal quotation marks and citation omitted). “[I]n
13 balancing the interests of the parents and children, the [district] court is not required
14 to place the children indefinitely in a legal holding pattern.” *Id.* (internal quotation
15 marks and citation omitted).

16 {30} Viewing the evidence in the light most favorable to the judgment, we conclude
17 there was substantial evidence of a clear and convincing nature that the conditions
18 and causes of Mother’s abuse and neglect were unlikely to change in the foreseeable
19 future. As we held above, CYFD provided clear and convincing evidence

1 demonstrating that Mother failed to obtain safe and stable housing during the two
2 years that the case was pending.

3 {31} We address the district court’s finding that Mother’s claims regarding
4 employment and where she was residing lacked credibility. The court agreed with
5 CYFD’s evidence showing that Mother was not in fact residing where she claimed
6 to reside and was not employed where she claimed to be employed. The court,
7 therefore, found that Mother was deceiving CYFD and the court about important
8 components of her treatment plan, components that were essential to keeping Child
9 safe. Mother’s lack of credibility on these components along with waiting until just
10 before the scheduled TPR hearing to obtain verified employment with a senior living
11 center, support the district court’s finding that Mother had failed to comply with her
12 treatment plan by acquiring safe and stable housing for Child and stable employment
13 and put in doubt whether Mother intended to maintain Child in a safe environment.
14 Mother’s testimony that she did not understand why CYFD found Grandmother’s
15 house unsafe adds support to the district court’s finding that Mother would likely
16 return Child to a place that was not safe once court oversight ended.

17 {32} This is substantial clear and convincing evidence that supports the district
18 court’s finding that Mother was unlikely to ameliorate the causes and conditions of
19 abuse and neglect in the foreseeable future. *See State ex rel. Child., Youth & Fams.*
20 *Dep’t v. William M.*, 2007-NMCA-055, ¶ 66, 141 N.M. 765, 161 P.3d 262 (“[A]ny

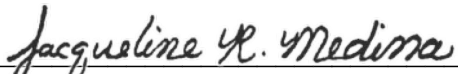
1 further delays in the [termination] proceedings threatened the welfare of . . . [Child],
2 the [district] court was not obligated to wait indefinitely for [Mother] to resolve the
3 issues that caused the abuse and neglect.”); *see also Vanessa C.*, 2000-NMCA-025,
4 ¶ 29 (concluding that “[a]fter two years with limited or no long-term or sustained
5 progress being made, we believe the [district] court could find that there was clear
6 and convincing evidence that the causes and conditions of neglect would not change
7 in the foreseeable future”).

8 {33} In light of the testimony presented during the TPR hearing, we conclude there
9 was substantial evidence of a clear and convincing nature supporting the district
10 court’s finding that the causes and conditions of Child’s neglect were unlikely to
11 change in the foreseeable future and affirm the termination of Mother’s parental
12 rights to Child.

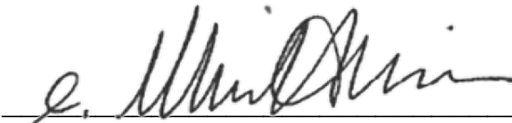
13 **CONCLUSION**

14 {34} For the foregoing reasons, we affirm.

15 {35} **IT IS SO ORDERED.**

16 
17 JACQUELINE R. MEDINA, Judge

1 **WE CONCUR:**

2 
3 _____
3 **J. MILES HANISEE, Judge**

4 
5 _____
5 **JANE B. YOHALEM, Judge**