

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

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

Court of Appeals of New Mexico
Filed 4/22/2026 9:28 AM



Mark Reynolds

Petitioner-Appellee,

v.

No. A-1-CA-42688

FRANK W.,

Respondent-Appellant,

and

FAITH G.,

Respondent,

**IN THE MATTER OF JANE W., KAI W.,
and MARIAH W., Children.**

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Grace B. Duran, District Court Judge

Children, Youth, & Families Department
Cynthia Tessman, Acting Chief Children's Court Attorney
Albuquerque, NM

for Appellee

Office of Family Representation & Advocacy
Wolfgang J. Bomgardner
Albuquerque, NM

for Appellant

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

4 **MEMORANDUM OPINION**

5 **MEDINA, Chief Judge.**

6 {1} Frank W. (Father), appeals the termination of his parental rights to his three
7 biological children (Children), pursuant to NMSA 1978, Section 32A-4-28(B)(2),
8 (3) (2022). For the reasons that follow, we reverse.

9 **BACKGROUND**

10 {2} Father and Faith G. (Mother)¹ have three biological children. On April 23,
11 2024—while Father was incarcerated in Texas—the Children, Youth & Families
12 Department (CYFD) filed a petition alleging Children were abused or neglected by
13 Father and Mother.

14 {3} CYFD concurrently filed a motion for an ex parte custody order, pursuant to
15 NMSA 1978, Section 32A-4-18 (2022), based on allegations of neglect, including
16 unsanitary home, inadequate shelter, drug exposure, and lack of supervision. The
17 district court granted the motion and issued the ex parte custody order. According to
18 the return of service, Children were placed in the custody of CYFD that same day.

¹Mother is not a party to this appeal.

1 {4} After a May 6, 2024 hearing, the district court ordered that CYFD retain
2 temporary custody of Children pending adjudication. A June 13, 2024 family
3 treatment plan and predispositional study indicated that Father was “currently
4 incarcerated and has not had any contact with [CYFD].”² The treatment plan
5 required Father, in part, to participate in a parenting program, maintain contact with
6 Children through letters, phone calls, and visits, resolve all his legal problems,
7 complete his term of incarceration, and—upon release from incarceration—follow
8 release conditions, and obtain and maintain safe and suitable housing for himself and
9 Children. CYFD in turn was required to make appropriate referrals, obtain, review
10 and follow up with referrals, request updates and records as needed, and make efforts
11 to reach out to Father to obtain updates.³

12 {5} The district court held an adjudicatory hearing on July 23, 2024, during which
13 Father pleaded no contest to general neglect. *See* NMSA 1978, § 32A-4-2(G)(2)
14 (2023, amended 2025). The district court advised Father to maintain contact with his
15 attorney and CYFD, to the extent that he could, and to participate in the case plan
16 that CYFD would provide for him. On September 9, 2024, Father, who was then
17 incarcerated in South Dakota, was permitted to appear telephonically for a scheduled

²During the proceedings below, “treatment plan” and “case plan” are used interchangeably. We follow suit in this memorandum opinion.

³The treatment plan in the record is not signed by either parent and there is nothing in the record indicating that this plan was provided to Father.

1 adjudicatory/dispositional hearing. Father’s attorney requested that he and Father be
2 excused because the hearing related to Mother only. Subsequently, the court found
3 that Mother had neglected Children and that Father was “incarcerated and not
4 providing any parental control.” The court further ordered that legal custody of
5 Children shall remain with CYFD for a period of up to two years, CYFD shall make
6 reasonable efforts to implement the treatment plan adopted by the court, and
7 respondents shall make reasonable efforts to comply.

8 {6} On September 30, 2024, Father appeared telephonically at an initial judicial
9 review hearing. After the district court informed Father that the hearing would be
10 reset for October 7, 2024, the following colloquy took place:

11 Father: Would I be able to get more information . . . on getting a
12 direct number to my kids so I would be able to talk to them? I
13 haven’t been able to talk to them since I’ve been incarcerated.

14 Court: Oh, I’m sorry about that.

15 Father: It’s been a while.

16 Court: Ms. Rakes [supervisor of the caseworker for Children’s
17 case], are you prepared to give him some information about that?

18 Ms. Rakes: I don’t have it right now, but I can ask his caseworker to
19 send it to him, provided with it that the three children are placed
20 in the same home. So, it will be easy to get some kind of
21 communication going on some phone visits between the two
22 oldest ones and [Father].

23 Court: Do you need some contact information for [Father]?

24 Ms. Rakes: Yes, I would appreciate that.

1

2 Father: I don't have a phone number. I'm in prison.

3

4 Court: Ok. Somebody will get in touch with you so that we can
5 make sure that you can participate next Monday.

6

7 Father: I haven't had any contact with my kids for about like
8 thirteen months.

9 Court: All right, we're going to try to remedy that.

10 Father's Attorney: This is your attorney, . . . I know we had just talked
11 but if you could call me this afternoon after three, if possible, I'll
12 get some more contact information from you and try to get to the
13 permanency worker.

14 {7} During the October 7, 2024 initial review hearing, Mr. McBride on behalf of
15 CYFD asserted that given Father's incarceration in Texas, Father could "not really
16 make progress in his case plan." Father appeared telephonically. Father's attorney
17 informed the court that, despite CYFD's apparent misunderstanding, Father was no
18 longer incarcerated in Texas, and was instead serving time in Yankton, South
19 Dakota. Father's attorney stated that he had been in consistent contact with Father
20 and his prison caseworker. Father's attorney stated that he believed Father could
21 work on some packets while in custody and encouraged CYFD to reach out to him
22 so Father could begin working on the treatment plan. The court stated, "CYFD will
23 be required to make reasonable efforts to comply with the case plan, in particular, to

1 reach out to [Father,]” and instructed Father to maintain contact with his attorney.
2 Father again asked for a phone number to talk to Children, and the court informed
3 Father that there will be an effort for telephone contact to be made. Father’s attorney
4 requested the permanency worker’s phone number for his client, stating that Father
5 had tried calling and had issues trying to make contact. A phone number was then
6 provided to Father.

7 {8} Although Father appeared telephonically, Father’s attorney informed the
8 district court that Father was now incarcerated in South Dakota, and there was no
9 testimony or evidence that services were provided to Father, the court entered an
10 initial review order finding in pertinent part that Father: (1) was not present but
11 represented by attorney, (2) had not started services that were referred by CYFD, (3)
12 was still incarcerated in Texas, and (4) needed to make further progress in all areas
13 of his case plan.

14 {9} An initial permanency hearing was held on November 4, 2024, during which
15 the district court informed the parties, “[Father] is incarcerated. However, I do have
16 [information] that he will be released sometime in 2025, so the case plan does
17 provide for his participation once he is released.” The next hearing was held on
18 February 10, 2025, during which the court considered arguments about whether to
19 change the plan from reunification to adoption and Mother’s lack of progress on the
20 items in the treatment plan. The district court entered a permanency review order

1 dated February 10, 2025, in which it changed the plan from reunification to adoption
2 and found, in part, that Father had not started services that were referred by CYFD,
3 was still incarcerated in South Dakota, and needed to make progress in all areas of
4 his case plan.

5 {10} CYFD filed a motion for termination of parental rights on March 24, 2025, in
6 which it alleged that Father was unable or unwilling to provide proper parental care
7 or control for Children and that CYFD had “provided or made available services and
8 support designed to correct this inability or unwillingness, but [Father] ha[d] either
9 not utilized these services and supports or ha[d] been unable or unwilling to benefit
10 sufficiently from them” and that “[i]t [was] unlikely that this situation will change
11 in the foreseeable future.”

12 {11} A termination of parental rights (TPR) hearing was held on May 19, 2025,
13 during which the district court took judicial notice of Father’s adjudicatory judgment
14 where Father pleaded no contest to general neglect, in part, on the basis of being
15 “incarcerated and not providing any parental control.” Father testified that CYFD
16 had not presented him with a case plan and he had tried repeatedly to get in contact
17 with CYFD. Father further testified that he had not received mail or calls from CYFD
18 and expected to be released from incarceration in November.

1 {12} A senior permanency coordinator for CYFD testified that she was the
2 caseworker assigned to the case.⁴ When asked if she or anyone with CYFD reviewed
3 the case plan with Father she responded, “I don’t recall myself doing it with him
4 because I was never able to get through [to] him [at] the prison he [was] at.” The
5 permanency coordinator further testified that she believed Father was told of the case
6 plan items at the time of the adjudication. When asked to describe the efforts made
7 to contact Father, the permanency coordinator testified she called the facility in
8 South Dakota at least once monthly requesting to speak to Father but was
9 unsuccessful in making contact with Father, that she had not attempted to reach
10 Father through his prison caseworker, and that she had not received a call, email or
11 letter from Father.

12 {13} CYFD argued that the permanency coordinator made reasonable efforts to
13 reach out to Father and that the inability to make contact with Father due to the
14 “prison’s hierarchy” does not fall on CYFD, that Father was incarcerated on his own
15 accord, that Father had not participated in the case plan, does not have safe and stable
16 housing because he is incarcerated, that Father would not be released until
17 November, and that Children deserved permanency. Father’s attorney argued that
18 there had been no testimony that CFYD made contact with Father to inform Father
19 of the treatment plan, which would explain Father’s lack of progress. With regard to

⁴Henceforth referred to as the permanency coordinator.

1 Father, the district court stated that Father “could have imposed on the caseworker
2 at the prison to do what needed to be done in order for him to continue to have at
3 least phone calls with the kids and that didn’t happen.”

4 {14} The court found, in part, (1) “CYFD reviewed [Father’s] treatment plan with
5 him on multiple occasions, including explaining what was required and [Father]
6 indicated by his words or gestures that he understood”; (2) “the causes and
7 conditions of neglect that brought [C]hildren into CYFD custody are unlikely to
8 change in the foreseeable future despite reasonable efforts by CYFD and other
9 appropriate agencies to assist [Father] in addressing the conditions which render him
10 unable to provide for [C]hildren,” required by Section 32A-4-28(B)(2); and (3) “the
11 conditions under [Section] 32A-4-28([B])(3) exist” such that there is a presumption
12 of abandonment. The district court ordered the termination of Father’s parental rights
13 as to Children, pursuant to NMSA 1978 Section 32A-4-29.

14 {15} Father now appeals the termination of his parental rights as set forth in the
15 judgment terminating parental rights (Judgment).

16 **DISCUSSION**

17 {16} Father challenges both grounds for termination of his parental rights provided
18 in the Judgment: (1) neglect or abuse pursuant to Section 32A-4-28(B)(2), and (2)
19 presumptive abandonment pursuant to Section 32A-4-28(B)(3).

1 {17} “Parents have a fundamental liberty interest in the care and custody of their
2 children; due process of law is required before parents can be deprived of that right.”
3 *State ex rel. Child., Youth & Fams. Dep’t v. Keon H.*, 2018-NMSC-033, ¶ 37, 421
4 P.3d 814 (internal quotation marks and citation omitted). “Due process requires that
5 findings necessary to terminate parental rights be supported by clear and convincing
6 evidence.” *Id.* (citing *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982); see *State ex*
7 *rel. Child., Youth & Fams. Dep’t v. Nathan H.*, 2016-NMCA-043, ¶ 31, 370 P.3d
8 782 (“Clear and convincing evidence means evidence that instantly tilts the scales
9 in the affirmative when weighed against the evidence in opposition and the
10 fact[-]finder’s mind is left with an abiding conviction that the evidence is
11 true.”). Therefore, viewing the evidence in the light most favorable to CYFD, we
12 consider whether the fact-finder could properly determine that clear and convincing
13 evidence supported the termination of Father’s parental rights. See *Keon H.*, 2018-
14 NMSC-033, ¶ 38.

15 **I. Insufficient Evidence Supports Termination of Father’s Parental Rights**
16 **on the Ground That He Presumptively Abandoned Children**

17 {18} Parental rights may only be terminated if the statutory requirements are
18 satisfied. See *id.* ¶ 36. Section 32A-4-28(B)(3) provides the basis for termination due
19 to presumptive abandonment as follows:

20 (3) the child has been placed in the care of others, including
21 care by other relatives, either by a court order or otherwise and the
22 following conditions exist:

1 (a) the child has lived in the home of others for an
2 extended period of time;

3 (b) the parent-child relationship has disintegrated;

4 (c) a psychological parent-child relationship has
5 developed between the substitute family and the child;

6 (d) if the court deems the child of sufficient capacity to
7 express a preference, the child no longer prefers to live with the
8 natural parent;

9 (e) the substitute family desires to adopt the child; and

10 (f) a presumption of abandonment created by the
11 conditions described in [s]ubparagraphs (a) through (e) of this
12 paragraph has not been rebutted.

13 {19} Father argues that there was “no clear and convincing evidence presented at
14 the TPR hearing regarding the six criteria[of presumptive abandonment].” CYFD
15 responded, “Substantial evidence established that Father failed to maintain contact
16 with [C]hildren, failed to participate in the case plan, and failed to demonstrate any
17 parental involvement through the pendency of the case” and that “Father did not
18 appear for hearings.”

19 {20} “[A simple] finding that a parent was incarcerated during the period of alleged
20 abandonment” does not support termination on the grounds of presumptive
21 abandonment. *See State ex rel. Child., Youth & Fams. Dep’t v. Christopher B.*, 2014-
22 NMCA-016, ¶ 12, 316 P.3d 918 (applying the principle to abandonment under
23 Subsection (B)(1)); *State ex rel. Child., Youth & Fams. Dep’t v. Melvin C.*, 2015-

1 NMCA-067, ¶ 14, 350 P.3d 1251 (applying the principle to presumptive
2 abandonment under Subsection (B)(3)). Contrary to CYFD’s assertion on appeal,
3 the record reflects that, despite his incarceration, Father routinely appeared
4 telephonically for and participated in hearings in this case. The record further
5 demonstrates that Father stayed in regular contact with his attorney as the court
6 ordered. As to CYFD’s assertion that “Father failed to maintain contact with
7 [C]hildren,” the record reflects that, during two separate hearings, Father proactively
8 and independently advocated to have an opportunity to contact Children by asking
9 for their contact information. But nothing in the record indicates CYFD ever
10 provided Children’s contact information to Father or facilitated an opportunity for
11 visitation otherwise, despite the Court’s directive that it do so. This asserted failure
12 to contact Children apparently resulted from the challenges imposed by his
13 incarceration. Most glaringly, and to be addressed multiple times below, our review
14 of the record indicates no evidence supports that Father was ever made aware of the
15 items in the treatment plan—also a result of the challenges imposed by his
16 incarceration. Therefore, his “fail[ure] to participate in the case plan”—as CYFD
17 characterizes it—cannot be taken to indicate the parent-child relationship has
18 disintegrated. In effect, Father’s incarceration was the only evidence presented
19 supporting the parent-child relationship disintegration required to find presumptive

1 abandonment. Accordingly, the court erred as to the determination of Father's
2 presumptive abandonment.

3 **II. Insufficient Evidence Supports Termination of Father's Parental Rights**
4 **on the Ground That He Presumptively Neglected or Abused Children**

5 {21} Section 32-4-28(B)(2) provides the basis for termination due to neglect or
6 abuse as follows:

7 [T]he child has been a [(1)] neglected or abused child as defined in the
8 Abuse and Neglect Act . . . [, (2)] the court finds that the conditions and
9 causes of the neglect and abuse are unlikely to change in the foreseeable
10 future[, and (3)] despite reasonable efforts by [CYFD] or other
11 appropriate agency to assist the parent in adjusting the conditions that
12 render the parent unable to properly care for the child.

13 {22} Father asserts no substantial evidence supports terminating Father's parental
14 rights on the basis of neglect or abuse as to the second and third elements in the
15 statute. As to the second element, CYFD responds that Father "remained
16 incarcerated throughout this case" and "demonstrated no progress on his treatment
17 plan, no behavioral change, and no steps toward assuming parental responsibility."
18 As to the third element, CYFD responds that "CYFD developed a treatment plan
19 tailored to Father's circumstances, reviewed the plan with him multiple times, and
20 ensured that Father understood what was required." While insufficient evidence on
21 either element would be dispositive, we agree with Father as to both.

1 **A. The District Court’s Findings of Fact**

2 {23} We first review the district court’s findings of fact for substantial evidence.
3 “Substantial evidence is relevant evidence that a reasonable mind would accept as
4 adequate to support a conclusion.” *Keon H.*, 2018-NMSC-033, ¶ 36 (internal
5 quotation marks and citation omitted). In doing so we determine whether the clear
6 and convincing evidence standard applicable to the termination of parental rights
7 was met. *Id.* ¶¶ 37, 38. Specifically, Father challenges the district court’s factual
8 findings that (1) “CYFD reviewed [Father’s] treatment plan with him on multiple
9 occasions, including explaining what was required and [Father] indicated by his
10 words or gestures that he understood” and (2) “Referrals to appropriate services for
11 [Father] were made by CYFD.”

12 {24} Our review of the record indicates, not only is there no evidence the treatment
13 plan was reviewed with Father “on multiple occasions,” there is no evidence
14 suggesting that the items of the treatment plan were reviewed with Father at all.

15 {25} Father asserted that he never received the treatment plan. Critically, CYFD
16 did not present testimony of anyone with personal knowledge or other evidence
17 demonstrating that the treatment plan was provided to Father or that anyone ever
18 reviewed it with him. During the TPR hearing, the permanency coordinator testified
19 that, while she had no personal knowledge of such a review, she believed the items
20 of the case plan were reviewed with Father at the time of the neglect adjudication.

1 However, the transcript of the adjudication hearing reveals no such review occurred.
2 Rather, the permanency coordinator testified that she never spoke with Father to
3 review the case plan with him, that her efforts to contact Father consisted of
4 unsuccessful phone calls to the prison in South Dakota at least once a month, and
5 that she did not attempt to reach Father through Father’s prison caseworker.
6 Similarly, there is no evidence showing that referrals for appropriate services were
7 ever made.

8 {26} We hold the district court’s findings that (1) “CYFD reviewed [Father’s]
9 treatment plan with him on multiple occasions, including explaining what was
10 required and [Father] indicated by his words or gestures that he understood”; and
11 (2) “Referrals to appropriate services for [Father] were made by CYFD” are not
12 supported by substantial evidence.⁵ The lack of substantial evidence for these
13 findings underpins our review of the district court’s conclusions: (1) the conditions
14 and causes of abuse or neglect are unlikely to change in the foreseeable future; and
15 (2) CYFD made reasonable efforts to assist Father in adjusting the conditions that
16 render him unable to properly care for Children.

⁵We observe that, on appeal, the State identifies only the language in the Judgment itself to support these findings.

1 **B. Conditions and Causes Are Unlikely to Change**

2 {27} As to the element of Section 32A-4-28(B)(2) requiring that “the conditions
3 and causes of the neglect and abuse are unlikely to change in the foreseeable future,”
4 Father’s incarceration served as the basis of his neglect. Having determined that
5 there is a lack of substantial evidence supporting the district court’s finding that
6 CYFD reviewed and explained the treatment plan with Father and that CYFD made
7 referrals to appropriate services for Father, we hold Father’s lack of access to—and
8 inability to make progress on—the items in the treatment plan was a result of his
9 incarceration, which is in turn the condition and cause of his neglect.

10 {28} In *State ex rel. Children, Youth & Families Dep’t v. Hector C.*, “[the f]ather’s
11 incarceration played an overwhelming and singular role in the termination
12 proceedings,” and this Court determined there was insufficient evidence as to the
13 causes and conditions of neglect being unlikely to change in the foreseeable future.
14 2008-NMCA-079, ¶¶ 21, 23, 144 N.M. 222, 185 P.3d 1072. Here, Father’s
15 incarceration also played an overwhelming and singular role in the termination—
16 perhaps to an even higher degree. Father, unlike the father in *Hector C.*, was
17 foreclosed the opportunity to get his children back even *before* he was released from
18 prison. *See id.* ¶ 21. The only condition and cause of the neglect apparent in the
19 record is Father’s incarceration itself, and the record demonstrates that the period of
20 Father’s confinement was set to end six months after the TPR hearing. Incarceration

1 of a parent cannot serve as the sole basis for the termination of parental rights.
2 Section 32A-4-28(D)(1). Accordingly, the record lacks clear and convincing
3 evidence that the conditions and causes of the neglect were unlikely to change in the
4 foreseeable future.

5 **C. Reasonable Efforts**

6 {29} As to the “reasonable efforts” element of Section 32-4-28(B)(2), we consider
7 the totality of the circumstances to determine whether reasonable efforts were made
8 by CYFD such that parental rights may be terminated. *See Keon H.*, 2018-NMSC-
9 033, ¶ 41. Again, having determined that there is a lack of substantial evidence
10 supporting the district court’s finding that CYFD reviewed and explained the
11 treatment plan with Father, and that CYFD made referrals to appropriate services for
12 Father, the district court’s finding that CYFD made reasonable efforts to assist
13 Father to change and/or alleviate the causes and conditions that brought Children
14 into custody is not supported by clear and convincing evidence. Put simply, a
15 treatment plan never received is akin to a treatment plan never created. *See Melvin*
16 *C.*, 2015-NMCA-067, ¶¶ 16-17 (“Where there is a finding of neglect or abuse under
17 Subsection (B)(2), the plain language of the statute requires a dispositional hearing
18 and the creation of a treatment plan therein.”).

19 {30} We recognize that Father’s incarceration out of state created obstacles in
20 communication between CYFD and Father. However, “when a parent is

1 in[carcerated], [CYFD] must do more to assist the parent, as the parent is limited in
2 [their] ability to appear at [CYFD] to receive information and support.” *Keon H.*,
3 2018-NMSC-033, ¶ 63 (Vigil, J., specially concurring). Here, for example, there was
4 no evidence presented that CYFD ever attempted to mail the case plan to Father at
5 the prison, even though CYFD knew for over a year where he was incarcerated.
6 Despite the challenges posed by his incarceration, Father demonstrated a clear and
7 consistent interest in doing what was necessary to maintain a relationship with
8 Children. Father attended the hearings telephonically, made repeated attempts to
9 obtain contact information for Children from CYFD and maintained regular contact
10 with his attorney.⁶ Accordingly, we observe that Father demonstrated a high level of
11 cooperation with the proceedings. *See id.* ¶ 41 (considering the “level of cooperation
12 demonstrated by the parent” in determining what constitutes reasonable efforts).
13 Meanwhile, we are unsatisfied the calls placed by the permanency coordinator to the
14 prison administration that failed to establish contact with either Father or Father’s
15 prison case manager demonstrated a reasonable effort by CYFD to assist him in
16 adjusting the conditions that render him unable to properly care for Children. *See id.*
17 ¶ 43 (stating that our Supreme Court determined CYFD made reasonable efforts
18 where it went over treatment plan with the father, provided the father with contact

⁶While Father was apparently never provided with the case plan, these actions are largely consistent in principle with the items assigned for Father therein.

1 information, and scheduled appointments on the father's behalf for his necessary
2 psychosocial appointments.). Clear and convincing evidence was not presented that
3 CYFD made reasonable efforts to assist Father here.

4 **CONCLUSION**

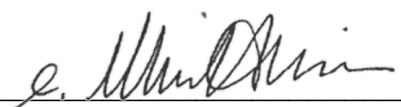
5 {31} Upon being convicted and sentenced to prison time, a parent is not also
6 sentenced to lose parental rights to their children. Here, such a sentence was
7 effectively imposed. This is contrary to the spirit of both the fundamental liberty
8 interest of parental rights to the care and custody of their children and the aim of
9 reunification mandated by the Legislature. *See id.* ¶¶ 37, 39-40. We hold there is
10 insufficient evidence to terminate Father's parental rights pursuant to Section 32A-
11 4-28(B)(2) or (B)(3).

12 {32} For the above reasons, we reverse.

13 {33} **IT IS SO ORDERED.**

14 
15 JACQUELINE R. MEDINA, Chief Judge

16 **WE CONCUR:**

17 
18 J. MILES HANISEE, Judge

19 
20 KRISTOPHER N. HOUGHTON, Judge