

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

Court of Appeals of New Mexico
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2 **STATE OF NEW MEXICO ex rel.**
3 **CHILDREN, YOUTH & FAMILIES**
4 **DEPARTMENT,**



Mark Reynolds

5 Petitioner-Appellee,

6 v.

No. A-1-CA-42653

7 **PAUL S.,**

8 Respondent-Appellant,

9 and

10 **CORINNE M.,**

11 Respondent,

12 and

13 **IN THE MATTER OF ALIYANA S.**

14 **and AMARA S., Children.**

15 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

16 **Mary L. Marlowe Sommer, District Court Judge**

17 Children, Youth & Families Department

18 Cynthia Tessman, Acting Chief Children's Court Attorney

19 Albuquerque, NM

20 for Appellee

21 Susan C. Baker

22 El Prado, NM

23 for Appellant

1 Ernest O. Pacheco
2 Santa Fe, NM
3 Guardian Ad Litem

4 **MEMORANDUM OPINION**

5 **HENDERSON, Judge.**

6 {1} Appellant Paul S. (Father), appeals from a judgment terminating his parental
7 rights to his two daughters (the Children), pursuant to NMSA 1978, Section 32A-4-
8 28(B)(2) (2022). On appeal, Father argues that the New Mexico Children, Youth and
9 Families Department (CYFD) failed to prove by clear and convincing evidence that
10 it made reasonable efforts to assist Father in adjusting the conditions rendering him
11 unable to properly care for the Children because CYFD’s treatment plan described
12 no services for Father, and CYFD failed to engage Father or attempt to locate him
13 while he was unhoused. Following careful review of the record, we conclude that
14 there was clear and convincing evidence to support that CYFD made reasonable
15 efforts as required by Section 32A-4-28(B)(2) and affirm.

16 **BACKGROUND**

17 {2} CYFD responded to a report that Father and mother were squatting in an
18 apartment and suspected of drug activity on October 18, 2023.¹ When CYFD arrived
19 to the apartment, neither parent was present and the older daughter indicated that

¹The Children’s mother also had her parental rights terminated but is not a party to this appeal.

1 Father had jumped out of an open window just before law enforcement forcibly
2 entered. During the investigation, CYFD attempted to contact Father by checking
3 law enforcement and CYFD records, calling prior known phone numbers and the
4 jail, visiting his last known prior address, and trying to make contact through family
5 members but could not reach Father. CYFD then filed an abuse and neglect petition
6 concerning the Children after the investigation in October 2023. Following an initial
7 custody hearing where Father failed to appear, the Children were placed in the
8 custody of CYFD on October 31, 2023. The district court also adopted CYFD's
9 initial assessment plan, which required Father to participate in comprehensive
10 psychological and alcohol and substance abuse evaluations and to follow all
11 recommendations.²

12 {3} CYFD then completed a family treatment plan and predispositional study on
13 January 31, 2024. This plan also required Father to participate in substance use and
14 psychological evaluations and follow recommended treatments, and stated that its
15 desired outcome for Father was to “stay in close contact with [CYFD] concerning
16 his treatment plan,” by utilizing CYFD “to help him with his treatment plan and
17 maintain contact with [the C]hildren.” CYFD planned to take steps to “try to engage
18 [Father] to utilize all needed services and resources available to participate in his

²Because Father was not served prior to this hearing and failed to appear, the district court did not have jurisdiction over him and the order could only apply to Father once served. However, Father later accepted service on December 1, 2023.

1 treatment plan.” The plan reported that Father had minimal contact with CYFD and
2 had participated in one visit with the Children to date. The study further described
3 that “[CYFD] is unaware of [Father]’s whereabouts, he has not attempted to contact
4 staff to work toward gaining custody of the [C]hild[ren]. [Father] is [unhoused], [and
5 it is] reported that he is using illegal substances. He is unable to be a safe and stable
6 parent at this time.”

7 {4} The district court then issued an order in February 2024 following a hearing
8 where Father failed to appear, finding that CYFD had not been able to make contact
9 with Father and ordering Father to comply with his case plan. Father’s caseworker
10 testified that she would attempt to contact Father through his last known phone
11 numbers and residences, as well as conduct a search for family members. Once
12 contact was made, the caseworker would explain the treatment plan, including the
13 requirements that Father participate in a psychological evaluation, a substance abuse
14 evaluation, and recommended treatment based on the evaluations. When asked
15 whether inpatient treatment for substance abuse would be required, the caseworker
16 confirmed that if the substance abuse evaluation recommended inpatient treatment,
17 she would “refer him immediately.” Later, the district court issued an adjudicatory
18 judgment for Father in March 2024 after he failed to appear at the corresponding
19 hearing, finding that the Children were neglected, pursuant to NMSA 1978, Section

1 32A-4-2(G)(2) (2023, amended 2025),³ and ordered Father to make reasonable
2 efforts to comply with the case plan and maintain regular contact with CYFD and
3 Father’s attorney.

4 {s} CYFD reports, caseworker testimony, and judicial orders throughout 2024
5 reported that although Father had some visits with the Children; there were instances
6 where Father fell asleep during the visits; Father had taken two drug tests, which
7 were positive for amphetamines, methamphetamines, cocaine, fentanyl, and
8 methadone; Father had little to no contact with CYFD; and Father had not made
9 progress on his treatment plan.⁴ Father never contacted CYFD to make a more
10 specific treatment plan, but CYFD noted that his plan would have contained the same
11 items as mother’s including addressing substance use issues, mental health
12 evaluations, and providing safe and appropriate housing. Father’s counsel indicated
13 on multiple occasions that she too had not spoken with Father and that he had not

³The judgment was filed on March 5, 2024, before the statute was amended in 2025. We use the 2023 statute throughout, as that was the statute in effect at the time of Father’s adjudication, and the 2025 amendment is not relevant to our analysis.

⁴It is unclear how many times Father visited the Children. CYFD reports from May 2024 reported that Father had four visits, while reports from September 2024 reported that Father had “some” visits. Father’s permanency caseworker testified in February 2024 that he had attended one visit, and then testified in January 2025 that he had attended three visits. We observe that CYFD’s reports appear to be internally inconsistent—both reporting visits and drug screens but also reporting that Father had “not had any communication with” CYFD. While there may be facts that explain these apparent discrepancies, those facts are not clear in our record.

1 participated throughout this case. Regardless, CYFD reports and caseworker
2 testimony indicate that caseworkers continually tried to locate and engage Father
3 throughout this case, and initially offered to provide weekly transportation for the
4 parents to visit with the Children. Although Father was assigned to a different
5 caseworker from February to June 2024, his initial caseworker who took over the
6 case again in June, testified that the other caseworker also made efforts to contact
7 Father and did have contact where he explained the treatment plan to Father on a
8 visit to the Children.

9 {6} Because both parents repeatedly tested positive for illegal substance use,
10 mother struggled to comply with her treatment plan, and Father had not
11 communicated with CYFD, created a specific treatment plan, and did not have
12 appropriate housing, CYFD proposed changing the permanency plan from
13 reunification to adoption. The district court issued an initial permanency order on
14 October 22, 2024, following a hearing where Father failed to appear, finding that
15 CYFD had made reasonable efforts to implement the case plan and that Father had
16 not communicated with CYFD, had minimal visits with the Children, tested positive
17 for illegal substances, and had not progressed in his treatment plan. The order found
18 CYFD's permanency plan of adoption appropriate and ordered its implementation.

19 {7} CYFD then filed a motion for termination of parental rights on November 4,
20 2024, on grounds that the Children have been neglected and the conditions and

1 causes are unlikely to change in the foreseeable future despite CYFD's efforts.
2 Father denied the allegations and moved for denial of CYFD's motion. Father
3 appeared at both hearings considering the termination on January 21 and February
4 4, 2025. Father testified that CYFD never contacted him or told him about his
5 treatment plan, even on visits to the Children. However, he admitted that mother told
6 him about his treatment plan and he was not able to contact CYFD because of his
7 addiction and experiencing homelessness at the time. Father also explained that he
8 completed an inpatient treatment program in January 2025, following conditions of
9 release for an arrest on pending criminal charges and is now enrolled in the RISE
10 program where he is housed, sober, and seeking employment as well as a GED. The
11 district court orally denied Father's request for a six-month continuance for him to
12 work a treatment plan explaining that Father was aware of his treatment plan but did
13 not comply, had not seen the Children in over a year, and Father attended treatment
14 only because he was given the opportunity to do so in lieu of serving time in jail on
15 new criminal charges such that his recent improvements were not sufficient. The
16 district court issued a judgment terminating parental rights to the Children on March
17 19, 2025. Finally, a March 2025 permanency hearing report indicated that CYFD
18 had still not been able to communicate with the parents since parental rights were
19 terminated. Father now appeals the termination.

1 **DISCUSSION**

2 {8} Father argues that there was not sufficient clear and convincing evidence that
3 CYFD made reasonable efforts to assist him as required by Section 32A-4-28(B)(2)
4 before terminating his parental rights because CYFD’s treatment plan described no
5 services for Father, and CYFD failed to engage or locate him while he was unhoused.
6 CYFD argues that it provided reasonable efforts under the circumstances and despite
7 having little to no contact with Father. Based on the totality of the circumstances in
8 this case, we conclude that there was sufficient evidence that CYFD made
9 reasonable efforts.

10 {9} Due process is required before parents can be deprived of their fundamental
11 right to care for their children and “[d]ue process requires that findings necessary to
12 terminate parental rights be supported by clear and convincing evidence.” *State ex*
13 *rel. Child., Youth & Fams. Dep’t v. Keon H.*, 2018-NMSC-033, ¶ 37, 421 P.3d 814;
14 *see* NMSA 1978, § 32A-4-29(I) (2022) (“The grounds for any attempted termination
15 shall be proven by clear and convincing evidence.”). “Clear and convincing evidence
16 means evidence that instantly tilts the scales in the affirmative when weighed against
17 the evidence in opposition and the fact[-]finder’s mind is left with an abiding
18 conviction that the evidence is true.” *Keon H.*, 2018-NMSC-033, ¶ 37 (internal
19 quotation marks and citation omitted). We do not reweigh the evidence on appeal,
20 “[r]ather we view the evidence in the light most favorable to the [district] court’s

1 judgment in determining whether [CYFD] has met the clear and convincing
2 standard.” *State of N.M. ex rel. Child., Youth & Fams. Dep’t v. William M.*, 2007-
3 NMCA-055, ¶ 59, 141 N.M. 765, 161 P.3d 262.

4 {10} Parental rights may be terminated when:

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

11 Section 32A-4-28(B)(2). In making this determination, “the court shall give primary
12 consideration to the physical, mental and emotional welfare and needs of the child.”

13 Section 32A-4-28(A). In this case, the district court found (1) clear and convincing
14 evidence that the Children were neglected pursuant to Section 32A-4-2(G)(2); (2)

15 Father did not comply with his court-ordered case plan nor make any progress
16 towards alleviating the conditions and causes of neglect; (3) CYFD made reasonable

17 efforts to assist Father in adjusting the conditions that rendered him unable to
18 properly care for the Children; and (4) conditions and causes of the neglect are

19 unlikely to change in the foreseeable future. The court also found that termination
20 was “in the best interest of the [C]hildren’s physical, mental and emotional needs.”

21 The only issue here is whether CYFD made reasonable efforts to assist Father,
22 because Father does not attack the other district court findings. *See Keon H.*, 2018-

23 NMSC-033, ¶ 36 (deciding only the issue of reasonable efforts when other elements

1 of a termination proceeding were not disputed); *see also* NMRA Rule 12-318(A)(4)
2 (“The argument shall set forth a specific attack on any finding, or the finding shall
3 be deemed conclusive.”).

4 {11} Because Section 32A-4-28(B)(2) does not list specific acts or services that
5 constitute reasonable effort, “we have traditionally considered the totality of the
6 circumstances when reviewing the district court’s determination.” *Keon H.*, 2018-
7 NMSC-033, ¶ 41. “What constitutes reasonable efforts may vary with a number of
8 factors, such as the level of cooperation demonstrated by the parent and the
9 recalcitrance of the problems that render the parent unable to provide adequate
10 parenting.” *State ex rel. Child., Youth & Fams. Dep’t v. Patricia H.*, 2002-NMCA-
11 061, ¶ 23, 132 N.M. 299, 47 P.3d 859. Services “may include individual, group, and
12 family counseling, substance abuse treatment, mental health services, transportation,
13 child care, and other therapeutic services.” *Id.* ¶ 26. “[O]ur job is not to determine
14 whether CYFD did everything possible; our task is . . . to [determine] whether
15 CYFD complied with the minimum required under law.” *Id.* ¶ 28.

16 {12} In this case, CYFD created a treatment plan for Father to work towards
17 reunification. Contrary to Father’s argument that his plan contained no services or
18 protocols, CYFD’s initial assessment plan required Father to participate in
19 comprehensive psychological and substance use evaluations that were to be

1 scheduled by CYFD, and to follow the recommended treatments post evaluations.⁵
2 The family treatment plan also required Father to complete the evaluations as well
3 as to stay in close contact with CYFD by utilizing CYFD to help him with his plan
4 and maintain contact with the Children. These initial items were never completed
5 because Father did not maintain contact with CYFD, and CYFD was never able to
6 schedule Father’s evaluations. *See State ex rel. Child., Youth & Fams. Dep’t v.*
7 *Tammy S.*, 1999-NMCA-009, ¶¶ 14-15, 126 N.M. 664, 974 P.2d 158 (holding that
8 CYFD’s treatment plan recommending psychological evaluation, alcohol treatment,
9 and domestic violence counselling was sufficient reasonable effort given “[the
10 f]ather’s transience, failure to communicate, and lack of cooperation” with the plan
11 items). In fact, CYFD noted that Father had not initiated contact to make a more
12 specific plan to address his “substance use issues, mental health evaluations, and
13 providing safe and appropriate housing” as CYFD had requested. Therefore, it was
14 due to Father’s lack of contact with CYFD that a more detailed treatment plan with
15 specific services was not created. *See Keon H.*, 2018-NMSC-033, ¶ 50 (explaining
16 that “the delay in formulating a more comprehensive treatment plan could be

⁵Counsel for Father on appeal also represented Father throughout the duration of this case below, and was present for the hearings where Father’s treatment plan was discussed, yet on appeal states that CYFD’s treatment plan described no services for Father. We remind counsel of their duty of candor to this Court. *See* Rule 16-303 NMRA.

1 attributed to [the f]ather’s lack of initiative in participating in the psychosocial
2 assessment at the outset”).

3 {13} Additionally, while there is conflicting testimony as to whether CYFD told
4 Father about his treatment plan, Father admitted that he learned about his plan from
5 mother, who also told him to contact CYFD. We acknowledge that Father did not
6 have a phone to contact CYFD at the beginning of this case, but he did know where
7 CYFD’s Santa Fe office was located as he had attended visits with the Children
8 there. Yet Father admits he did not contact CYFD because of his substance abuse
9 and experiencing homelessness at the time, and the record reflects that he did not
10 make progress on his treatment plan.

11 {14} Finally, contrary to Father’s argument that CYFD did not make reasonable
12 effort to locate or engage him while he was unhoused, CYFD did take steps to
13 contact Father throughout this case. During the initial investigation, CYFD checked
14 law enforcement and CYFD records, called prior known phone numbers and the jail,
15 visited his last known prior address, and attempted to contact Father through family
16 members. The treatment plan also tasked CYFD with trying to engage Father to
17 participate in services. Father’s caseworkers continually attempted to contact Father
18 to explain his plan by calling his last known phone numbers, contacting through
19 mother, visiting last known residences, and conducting a search for family, but could
20 not find contact information. Although his caseworker admitted that she did not have

1 knowledge Father was incarcerated or check jail logs when she was the primary
2 caseworker, Father was not arrested on his criminal charges until November 14,
3 2024, which is after CYFD filed for termination of parental rights. Also, Father
4 admitted at the second termination hearing that despite the fact that he had completed
5 inpatient treatment, remained sober, acquired housing and a phone, and is now
6 looking for a job, he had not reached out to CYFD or attempted to visit the Children.
7 Here, there is sufficient evidence that CYFD took steps to try to contact Father and
8 engage him with his treatment plan, but Father did not and has not participated. *See*
9 *Keon H.*, 2018-NMSC-033, ¶¶ 47-50 (concluding that CYFD’s efforts were
10 sufficient, even when the parent was unhoused for part of the case, when it prepared
11 and sent the parent a treatment plan but the parent never contacted CYFD to work
12 the plan and only visited the child once or twice at the beginning of the case).

13 {15} We see it as important to highlight Father’s recent efforts and note that his
14 participation in substance abuse treatment programs, securing housing, and getting
15 a phone are commendable. However, “[o]ur standard of review requires us to
16 determine whether the [district] court’s conclusion, when viewed in the light most
17 favorable to the decision below, was supported by substantial evidence, not whether
18 the [district] court could have reached a different conclusion.” *Patricia H.*, 2002-
19 NMCA-061, ¶ 31; *see State ex rel. Child., Youth & Fams. Dep’t v. Brian F.*, 2023-
20 NMCA-087, ¶ 20, 538 P.3d 478 (“To the extent Father directs this Court to evidence

1 that might support the opposite determination, we note that when this Court is
2 presented with conflicting evidence, we defer to the district court's determinations
3 of ultimate fact."'). After handling this case for over a year, the district court reasoned
4 that Father's recent efforts were not sufficient to outweigh his previous lack of
5 contact or engagement with the case and that termination was in the best interest of
6 the Children. *See State ex rel. Hum. Servs. Dep't v. Dennis S.*, 1989-NMCA-032,
7 ¶ 7, 108 N.M. 486, 775 P.2d 252 ("When balancing the interests of parents and
8 children, the court is not required to place the children indefinitely in a legal holding
9 pattern, when doing so would be detrimental to the children's interests."); *see also*
10 *State ex rel. Child., Youth & Fams. Dep't v. Browind C.*, 2007-NMCA-023, ¶¶ 44-
11 46, 141 N.M. 166, 152 P.3d 153 (holding that a parent's recent efforts in improving
12 their circumstances were commendable but came too late to change the
13 determination that termination was in the child's best interest). Considering the
14 totality of the circumstances in this case, there was clear and convincing evidence
15 for the district court to determine that CYFD made reasonable efforts to contact
16 Father and implement a treatment plan pursuant to Section 32A-4-24(B)(2), even if
17 Father did not take advantage of the efforts. *See Keon H.*, 2018-NMSC-033, ¶ 48
18 ("Both [CYFD] and [the f]ather are responsible for making efforts toward
19 reunification of the family."). Therefore, there was sufficient evidence to support the
20 termination of Father's parental rights.

1 **CONCLUSION**

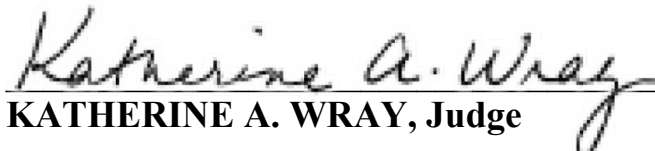
2 {16} For the foregoing reasons, we affirm the district court's judgment terminating
3 Father's parental rights to the Children.

4 {17} **IT IS SO ORDERED.**

5 
6 SHAMMARA H. HENDERSON, Judge

7 **WE CONCUR:**

8 
9 JACQUELINE R. MEDINA, Chief Judge

10 
11 KATHERINE A. WRAY, Judge