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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-42987

7 **CHRISTOPHER M.,**

8 Respondent-Appellant,

9 and

10 **KELSEY T.,**

11 Respondent,

12 **IN THE MATTER OF CHRISTOPHER**
13 **M., JR., Child.**

14 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**
15 **Lee A. Kirksey, District Court Judge**

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

19 for Appellee

20 Office of Family Representation & Advocacy
21 Wolfgang Bomgardner
22 Albuquerque, NM

23 for Appellant

1 Laura K. Castillo
2 Hobbs, NM

3 Guardian Ad Litem

4 **MEMORANDUM OPINION**

5 **YOHALEM, Judge.**

6 {1} Christopher M. (Father) appeals the district court’s judgment adjudicating
7 Christopher M. Jr. (Child) a neglected child as to Father, pursuant to NMSA 1978,
8 § 32A-4-2(G)(2) (2023, amended 2025). For the reasons stated below, we reverse.

9 **BACKGROUND**

10 {2} The following evidence was presented at the adjudication hearing. Father
11 resided in Sherman, Texas. Kelsey T. (Mother) resided in a separate residence in
12 New Mexico with her boyfriend. Child lived with Mother. The Children, Youth, &
13 Families Department (CYFD) received temporary custody of Child following an
14 incident of domestic violence and intoxication involving Mother and her boyfriend.
15 Father was not involved in the incident.

16 {3} CYFD reached out to Father to inquire about a family placement. The CYFD
17 caseworker testified that she did not consider Father for placement because Father
18 told her there was an active temporary restraining order against him. CYFD did not
19 admit the restraining order into evidence or clarify on the record whether or how that
20 order restrained contact between Father and Child. Father was having contact with
21 Child in supervised visits with Child and Mother. Father told CYFD that he was “not

1 paying child support because he is working odd jobs for cash right now.” Father
2 admitted that he was aware of one incident of drinking and domestic violence
3 involving Mother and her boyfriend.

4 {4} In its closing argument at the adjudicatory hearing, CYFD argued that Child
5 should be adjudicated as a neglected child as to Father because clear and convincing
6 evidence showed: (1) “[Father] was aware there was domestic violence in the home”
7 with Mother and her boyfriend “but made no effort to secure the safety of [C]hild”;
8 (2) Father felt he could not be an appropriate placement because of his history with
9 Mother; and (3) Father was not paying child support.

10 {5} The district court expressly rejected CYFD’s argument that the evidence
11 supported a finding of neglect based on Father’s knowledge of domestic violence
12 between Mother and her boyfriend, stating that CYFD had not offered any evidence
13 that Child was present during or exposed to domestic violence, and therefore CYFD
14 had not shown that Father was or should have been aware that Child was in need of
15 protection or removal from his home with Mother. Therefore, the court concluded
16 there was no clear and convincing evidence of neglect by Father on that basis.

17 {6} The district court made no finding regarding CYFD’s claim that a restraining
18 order or his history with Mother prevented Father from taking care of Child. The
19 petition alleged neglect by Father under Section 32A-4-2(G)(2), which defines a
20 neglected child as one “who is without proper parental care and control or

1 subsistence . . . or control necessary for the child’s well-being because of the faults
2 or habits of the child’s parent, . . . or the failure or refusal of the parent, . . . when
3 able to do so, to provide them.” The district court premised its conclusion that Father
4 had neglected Child under Section 32A-4-2(G)(2) solely on the court’s finding that
5 “Father told CYFD that he was not paying child support or providing support for
6 child although he was working odd jobs for cash.”

7 **DISCUSSION**

8 **I. Substantial Evidence**

9 {7} Father claims that CYFD did not prove by clear and convincing evidence that
10 Father neglected Child. *See State ex rel. Child., Youth & Fams. Dep’t v. Amanda H.*,
11 2007-NMCA-029, ¶ 19, 141 N.M. 299, 154 P.3d 674 (“The standard of proof in an
12 abuse or neglect adjudication is clear and convincing evidence that the child was
13 abused or neglected.”). We agree.

14 {8} “Clear and convincing evidence means evidence that instantly tilts the scales
15 in the affirmative when weighed against the evidence in opposition and the fact-
16 finder’s mind is left with an abiding conviction that the evidence is true.” *State ex*
17 *rel. Child., Youth & Fams. Dep’t v. Kean H.*, 2018-NMSC-033, ¶ 37, 421 P.3d 814
18 (internal quotation marks and citation omitted). On appeal, “[w]e employ a narrow
19 standard of review and do not re[]weigh the evidence. Rather, we review to
20 determine whether, viewing the evidence in the light most favorable to the prevailing

1 party, the fact[-]finder could properly determine that the clear and convincing
2 evidence standard was met.” *Amanda H.*, 2007-NMCA-029, ¶ 19 (citation omitted).

3 {9} As previously stated, a “neglected child,” in pertinent part, is a child
4 who is without proper parental care and control or subsistence,
5 education, medical or other care or control necessary for the child’s
6 well-being because of the faults or habits of the child’s parent . . . or the
7 failure or refusal of the parent . . . when able to do so, to provide them.

8 Section 32A-4-2-(G)(2). Viewing the evidence in the manner most favorable to the
9 decision below, we conclude that the evidence did not meet the clear and convincing
10 standard of neglect under Section 32A-4-2(G)(2). Our Supreme Court recently
11 construed Section 32A-4-2(G)(2) to require “that two conditions be satisfied before
12 a child meets the definition of a neglected child.” *State ex rel. Child., Youth & Fams.*
13 *Dep’t v. Heather S.*, 2025-NMSC-002, ¶ 29, 563 P.3d 821 (internal quotation marks
14 and citation omitted). “The first [condition] addresses the circumstances and
15 condition of the child, mandating that the child must be ‘without proper parental care
16 and control necessary for the child’s well-being.’” *Id.* (quoting § 32A-4-2(G)(2)
17 (omission omitted)). “The second [condition] addresses the culpability of the parent,
18 requiring that the child’s lack of proper parental care and control must be ‘because
19 of the faults or habits’ of child’s parent or the ‘failure or refusal’ of child’s parent to
20 provide the necessary ‘care or control.’” *Id.* (quoting § 32A-4-2(G)(2)). Absent
21 sufficient proof by clear and convincing evidence of both of these elements, a child

1 is not neglected as defined by Section 32A-4-2(G)(2). *Heather S.*, 2025-NMSC-002,
2 ¶ 29.

3 {10} Our Supreme Court concluded that “the Legislature intended that to find a
4 child to be without proper parental care and control necessary for the child’s well-
5 being such that the child must be removed from the family, the child must be
6 subjected to circumstances that create a serious risk to the child’s mental or physical
7 health and safety.” *Id.* ¶ 35. In determining neglect under Section 32A-4-2(G)(2),
8 the focus “should be on the acts or omissions of the parents in their caretaking
9 function and not on apparent shortcomings of a given parent due to any unfavorable
10 status, poverty being the most common.” *Heather S.*, 2025-NMSC-002, ¶ 37 (text
11 only) (citation omitted). As this Court held, to make a finding of neglect under
12 Section 32A-4-2(G)(2), “[t]he district court must have been presented with clear and
13 convincing evidence of [a parent’s] culpability through intentional or negligent
14 disregard of [a c]hild’s well-being and proper needs.” *Amanda H.*, 2007-NMCA-
15 029, ¶ 21.

16 {11} Here, as to the first condition—whether Father left Child without proper
17 parental care or control necessary for Child’s well-being—there is no question that
18 Child came into CYFD’s custody due to Mother’s conduct and lack of proper
19 parental care by Mother. As the district court found, CYFD presented no evidence
20 that Father knew Child was subjected to the domestic violence between Mother and

1 her boyfriend that initiated CYFD’s custody of Child. When CYFD contacted
2 Father, he was attending regular supervised visits with Child and had remained in
3 contact with Child after Mother left Texas with her boyfriend and Child. Aside from
4 Father’s failure to financially support Child, there appears to be no evidence to
5 connect that failure by Father to any aspect of proper parental care or control
6 necessary for Child’s well-being.

7 {12} As to the second condition—whether Father’s lack of proper parental care and
8 control was because of the faults or habits of Father, *see id.*, CYFD presented no
9 evidence that Child’s neglect was caused by a lack of financial support from Father.
10 Moreover, nothing in the record indicates whether Father was making more than a
11 subsistence income doing odd jobs that would allow him to contribute to Child’s
12 support at the current time. There is also no evidence about Father’s history of
13 supporting Child or whether he was making an effort to increase his income. We
14 note, “[T]he court must have been presented with clear and convincing evidence of
15 [the parents’] culpability through intentional or negligent disregard of [the child’s]
16 well-being and proper needs.” *See State ex rel. Child., Youth & Fams. Dep’t v.*
17 *Michelle B.*, 2001-NMCA-071, ¶ 17, 130 N.M. 78, 32 P.3d 790. The evidence does
18 not show a connection between a finding that Father was not providing financial
19 support and that any lack of proper parental control was because of the faults and

1 habits of Father. In sum, substantial evidence of a clear and convincing nature does
2 not support the district court’s adjudication of Child’s neglect as to Father.

3 **II. Remaining Arguments**

4 {13} We clarify two remaining points. First, Father spends much of his brief
5 attempting to rebut an argument that CYFD raised in response to this Court’s
6 proposed reversal on the summary calendar, apparently anticipating that CYFD
7 would raise this argument in its answer brief. CYFD, however, turned to a different
8 argument on appeal. We do not address arguments made during the calendaring
9 process and it is not proper for the parties to do so. Arguments on appeal must be
10 fully developed in the briefs on appeal without reference to pleadings submitted in
11 calendaring. *See State v. Aragon*, 1990-NMCA-001, ¶¶ 4-5, 109 N.M. 632, 788 P.2d
12 932 (stating proposition that arguments not raised in briefing are abandoned, and
13 “[t]he appellate rule concerning briefing does not provide for incorporation of
14 arguments contained in other pleadings”).

15 {14} Second, CYFD does not defend on appeal the district court’s conclusion that
16 Father’s failure to currently provide child support alone supports an adjudication of
17 neglect. CYFD instead argues that we should affirm on a different ground, not
18 supported by the district court’s findings. CYFD points to evidence it introduced and
19 claims that evidence is sufficient to establish that Father failed to provide Child with
20 proper care and failed to protect Child from known risks, including that (1) the

1 restraining order against Father limited his ability to take custody of Child; and (2)
2 domestic violence had occurred between Mother and her boyfriend and that Father
3 failed to intervene on Child’s behalf. The record, however, is clear that the district
4 court did not make the findings CYFD now advocates on appeal.

5 {15} As stated above, the district court made no findings regarding whether
6 Father’s ability to care for Child was limited by the restraining order. Moreover,
7 CYFD failed to introduce admissible evidence about the content of the restraining
8 order, including information about whether it applied to contact with Child
9 independently of Mother. Further, the district court directly rejected CYFD’s
10 argument concerning Father’s failure to remove Child from a known risk from
11 domestic violence between Mother and her boyfriend, concluding that CYFD
12 presented no evidence that Father knew Child was exposed to domestic violence.


13 {16} This Court is not a fact-finding court. *Cockrell v. Cockrell*, 1994-NMSC-026,
14 ¶ 5, 117 N.M. 321, 871 P.2d 977. An appellate court “must depend upon the findings
15 made by the [district] court to support a conclusion and judgment.” *Id.* Our function
16 as an appellate court is to review the findings made by the district court and to
17 determine if those findings are supported by sufficient evidence in the record, not to
18 review the evidence and make new findings to support the result, as CYFD requests
19 in its brief on appeal. As the party challenging a finding on appeal, we expect CYFD
20 (1) to attack the district court’s findings directly; and (2) in doing so, to set out the

1 substance of *all* evidence supporting the district court’s findings so that we may
2 review for substantial evidence. *See State ex rel. Foy v. Vanderbilt Cap. Advisors,*
3 *LLC*, 2022-NMCA-026, ¶¶ 26-28, 511 P.3d 329; *see also Lerma v. Romero*, 1974-
4 NMSC-089, ¶ 2, 87 N.M. 3, 528 P.2d 647 (holding that, where a party argued the
5 district court erred in refusing or failing to make certain findings but did not directly
6 attack the district court’s findings, the findings would not be reviewed on appeal).

7 **CONCLUSION**

8 {17} We reverse the district court’s adjudication of neglect. On remand, the district
9 court should determine whether reunification with Father is in the best interest of
10 Child. *See, e.g., State ex rel. Child., Youth & Fams. Dep’t v. Benjamin O.*, 2007-
11 NMCA-070, ¶¶ 38-39, 141 N.M. 692, 160 P.3d 601 (providing that “in light of the
12 fact that [a parent] was wrongfully adjudicated to have abused or neglected [a c]hild,
13 the [district] court and CYFD must also seriously consider whether reunification is
14 possible”). If CYFD does not believe reunification is in the best interest of a child,
15 “it can bring new or current allegations of abuse, neglect, or abandonment to the
16 district court’s attention.” *Id.* ¶ 39.

17 {18} **IT IS SO ORDERED.**

18 
19 **JANE B. YOHALEM, Judge**

1 **WE CONCUR:**

2 *Jacqueline R. Medina*
3 _____
4 **JACQUELINE R. MEDINA, Chief Judge**

4 *Kristopher N. Houghton*
5 _____
6 **KRISTOPHER N. HOUGHTON, Judge**