

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

2 **ALONSA JOSE NAJERA,**

3 Petitioner-Appellant,

4 v.

No. A-1-CA-43190

5 **BREANNA KAY EVANS,**

6 Respondent-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **Rebecca C. Duffin, District Court Judge**

9 Alonso Jose Najera

10 Las Cruces, NM

11 Pro Se Appellant

12 Breanna Kay Evans

13 Artesia, NM

14 Pro Se Appellee

15 **MEMORANDUM OPINION**

16 **MEDINA, Chief Judge.**

17 {1} Petitioner Alonso Jose Najera (Father), appeals the district court's order
18 discontinuing mandatory scheduled video calls between Father and child. We issued
19 a notice of proposed summary disposition proposing to affirm, and Father has
20 responded with a timely memorandum in opposition. After due consideration, we
21 remain unpersuaded that our initial proposed disposition was incorrect. We therefore
22 affirm the district court.

Court of Appeals of New Mexico
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Mark Reynolds

1 {2} In the memorandum in opposition, Father continues to argue the district court
2 erred, characterizing the district court’s order as a “total ban” in which the district
3 court “completely discontinue[d] telephonic contact” between himself and child.
4 [MIO 4] We note, however, that contrary to Father’s characterizations, the district
5 court left the matter of telephonic contact with each parent to child’s discretion:

6 [child] shall be allowed to contact [Father] at his leisure, and while in
7 the custody of [Father], shall be allowed to contact [Mother]. If [child]
8 expresses to either parent that he wishes to talk to the other parent, then
9 that parent is ORDERED to facilitate that phone call or Facetime.

10
11 [RP 432] As discussed in our proposed disposition, Father has not identified any
12 facts in the record proper to suggest the district court’s decision to leave the calls to
13 child’s discretion is contrary to child’s best interests. [CN 6]

14 {3} In addition, Father continues to assert generally that the district court failed to
15 consider the required statutory factors. [MIO 4] Father has not, however, identified
16 with any specificity which factors the district court failed to consider. *See Muse v.*
17 *Muse*, 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 (“We will not search
18 the record for facts, arguments, and rulings in order to support generalized
19 arguments.”). Importantly, Father has not responded to our proposed conclusion that
20 the district court was aware of and considered the relevant statutory factors. [CN 7]
21 We therefore conclude that Father has not demonstrated that the district court abused
22 its discretion. *See Hopkins v. Wollaber*, 2019-NMCA-024, ¶ 9, 458 P.3d 583 (stating
23 that the appellate court reviews a child custody determination for an abuse of

1 discretion); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d
2 1003 (“A party responding to a summary calendar notice must come forward and
3 specifically point out errors of law and fact,” and the repetition of earlier arguments
4 does not fulfill this requirement), *superseded by statute on other grounds as stated*
5 *in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

6 {4} Father’s memorandum in opposition also raises three additional arguments
7 that were not included in the docketing statement. [MIO 2-3] New arguments raised
8 in response to a calendar notice are treated as a motion to amend. *See* Rule 12-
9 210(D)(2) NMRA (stating that “[t]he parties shall not argue issues that are not
10 contained in either the docketing statement or the statement of the issues,” but
11 permitting the appellant to move to amend the docketing statement upon good cause
12 shown, which can be combined with a memorandum in opposition). In cases
13 assigned to the summary calendar, this Court will grant a motion to amend the
14 docketing statement to include additional issues if the motion (1) is timely; (2) states
15 all facts material to a consideration of the new issues sought to be raised; (3) explains
16 how the issues were properly preserved or why they may be raised for the first time
17 on appeal; (4) demonstrates just cause by explaining why the issues were not
18 originally raised in the docketing statement; and (5) complies in other respects with
19 the appellate rules. *See State v. Rael*, 1983-NMCA-081, ¶¶ 7-8, 10-11, 14-17, 100
20 N.M. 193, 668 P.2d 309. This Court will deny motions to amend that raise issues

1 that are not viable, even if they allege fundamental or jurisdictional error. *See State*
2 *v. Moore*, 1989-NMCA-073, ¶¶ 36-51, 109 N.M. 119, 782 P.2d 91, *superseded by*
3 *rule on other grounds as recognized in State v. Salgado*, 1991-NMCA-044, ¶ 2, 112
4 N.M. 537, 817 P.2d 730.

5 {5} First, Father asserts he wanted to call a witness who he claims would have
6 discussed child’s attention deficit/hyperactivity disorder, but he acknowledges that
7 the witness was never called and the matter about which she would have testified
8 “was not brought up” at the hearing. [MIO 2] As to the second issue, Father states
9 facts relevant to the parties’ attempts to settle the visitation issue and a request for a
10 guardian ad litem; he makes no clear assertion of error and provides no citation to
11 authority. As to these first two issues, we conclude that Father has neither identified
12 sufficient facts to allow for consideration of the issue, nor established the issues were
13 preserved in the district court. *See* Rule 12-321 NMRA (“To preserve an issue for
14 review, it must appear that a ruling or decision by the trial court was fairly
15 invoked.”). In addition, regarding the second issue, while we review pleadings by
16 self-represented litigants to the best of our ability, we cannot respond to
17 unintelligible statements. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045,
18 ¶ 15, 137 N.M. 339, 110 P.3d 1076 (“We will not review unclear arguments, or guess
19 at what [a party’s] arguments might be.”); *see also Premier Tr. of Nev., Inc. v. City*
20 *of Albuquerque*, 2021-NMCA-004, ¶ 10, 482 P.3d 1261 (stating that it is “the

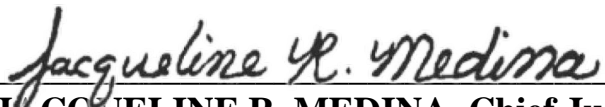
1 appellant’s burden to demonstrate, by providing well-supported and clear
2 arguments, that the district court has erred”).

3 {6} In his third issue, Father asserts that the district court’s total prohibition on
4 telephonic contact is an abuse of discretion because it violates his constitutional right
5 to parent child. [MIO 3] We disagree. Father is correct in his contention that parents
6 have a right to the care and custody of their children. *See, e.g., In re Adoption*
7 *Petition of Darla D. v. Grace R.*, 2016-NMCA-093, ¶ 11, 382 P.3d 1000
8 (recognizing that “a biological parent’s right to the care and custody of [their] child
9 implicates fundamental liberty interests protected by the Due Process Clauses of the
10 federal and state constitutions”). However, Father fails to recognize the well-
11 established principle that such a right is subordinate to the best interests of child. *See*
12 *id.* (recognizing that a parent’s right to the care and custody of their child is not
13 absolute); *see also Ridenour v. Ridenour*, 1995-NMCA-072, ¶ 10, 120 N.M. 352,
14 901 P.2d 770 (“New Mexico case law establishes that parents’ rights are secondary
15 to the best interests and welfare of the children.”); *Jaramillo v. Jaramillo*, 1991-
16 NMSC-101, ¶ 13, 113 N.M. 57, 823 P.2d 299 (referring to the “best interests
17 criterion” as the “lodestar for determining a custody award” and collecting cases to
18 support that characterization); *Lucero v. Hart*, 1995-NMCA-121, ¶ 17, 120 N.M.
19 794, 907 P.2d 198 (“A parent’s fundamental right to raise [their] children, however,
20 is secondary to the best interests and welfare of the child.”). Moreover, as discussed

1 above, Father's assertion that he is being denied all telephone contact is not
2 supported by the facts in the record. [RP 432] Accordingly, Father's motion to
3 amend is denied. *See Rael*, 1983-NMCA-081, ¶¶ 7-8; *Moore*, 1989-NMCA-073,
4 ¶¶ 36-51.

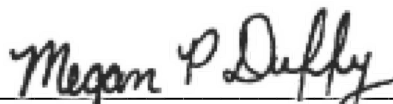
5 {7} Based on the foregoing and for the reasons stated in our notice of proposed
6 disposition, we affirm.

7 {8} **IT IS SO ORDERED.**

8 
9 JACQUELINE R. MEDINA, Chief Judge

10 **WE CONCUR:**

11 
12 JENNIFER L. ATTREP, Judge

13 
14 MEGAN P. DUFFY, Judge