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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 6/29/2026 11:48 AM



Mark Reynolds

5 Petitioner-Appellee,

6 v.

No. A-1-CA-43218

7 **AMANDA R.,**

8 Respondent-Appellant,

9 **IN THE MATTER OF JIMMY R., Child.**

10 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**

11 **Lee A. Kirksey, District Court Judge**

12 Children, Youth and Families Department
13 Cynthia Tessman, Children's Court Attorney
14 Albuquerque, NM

15 for Appellee

16 Susan Baker
17 El Prado, NM

18 for Appellant

19 Laura K. Castillo
20 Hobbs, NM

21 Guardian Ad Litem

1 **MEMORANDUM OPINION**

2 **MEDINA, Chief Judge.**

3 {1} Respondent Amanda R. (Mother) appeals the district court’s order
4 adjudicating Child abused and neglected. We issued a notice of proposed summary
5 disposition proposing to affirm, and Mother has responded with a timely
6 memorandum in opposition. After due consideration, we remain unpersuaded that
7 our initial proposed disposition was incorrect. We therefore affirm the district court.

8 {2} Mother continues to argue that the evidence was insufficient to support the
9 district court’s adjudication. “To meet the standard of proof in an abuse or neglect
10 proceeding, the fact[-]finder must be presented with clear and convincing evidence
11 that the child was abused or neglected.” *State ex rel. Child., Youth & Fams. Dep’t v.*
12 *Shawna C.*, 2005-NMCA-066, ¶ 7, 137 N.M. 687, 114 P.3d 367. “For evidence to
13 be clear and convincing, it must instantly tilt the scales in the affirmative when
14 weighed against the evidence in opposition and the fact[-]finder’s mind is left with
15 an abiding conviction that the evidence is true.” *Id.* (internal quotation marks and
16 citation omitted). “Our standard of review is a narrow one and we may not re[]weigh
17 the evidence. Our standard of review is therefore whether, viewing the evidence in
18 the light most favorable to the prevailing party, the fact[-]finder could properly
19 determine that the clear and convincing evidence standard was met.” *Id.* (internal
20 quotation marks and citation omitted).

1 {3} With respect to the district court’s finding that Child was neglected under
2 NMSA 1978, Section 32A-4-2(G)(2) (2025) (defining “neglected child” as one
3 “who is without proper parental care and control or subsistence, education, medical
4 or other care or control necessary for the child’s well-being because of the faults or
5 habits of the child’s parent, guardian or custodian or the failure or refusal of the
6 parent, guardian or custodian, when able to do so, to provide them”), Mother argues
7 that Children, Youth and Families Department (CYFD) failed to establish that Child
8 was at a serious risk of harm. Mother also contends that CYFD failed to establish
9 that her relapse into drug use was attributable to her faults or habits, or to her failure
10 or refusal to provide a safe home for Child. [MIO 6]

11 {4} Section 32A-4-2(G)(2) requires that “two conditions be satisfied before a
12 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)). Our

1 Supreme Court concluded that “to find a child to be without proper parental care and
2 control necessary for the child’s well-being such that the child must be removed
3 from the family, the child must be subjected to circumstances that create a serious
4 risk to the child’s mental or physical health and safety.” *Id.* ¶ 35.

5 {5} In determining neglect under Section 32A-4-2(G)(2), the focus “should be on
6 the acts or omissions of the parents in their caretaking function and not on apparent
7 shortcomings of a given parent due to any unfavorable status, poverty being the most
8 common.” *Id.* ¶ 37 (text only) (citation omitted). This Court has held that to make a
9 finding of neglect under Section 32A-4-2(G)(2), “[t]he district court must have been
10 presented with clear and convincing evidence of [a parent’s] culpability through
11 intentional or negligent disregard of [a c]hild’s well-being and proper needs.” *State*
12 *ex rel. Child., Youth & Fams. Dep’t v. Amanda H.*, 2007-NMCA-029, ¶ 21, 141
13 N.M. 299, 154 P.3d 674.

14 {6} As set out in the notice of proposed summary disposition, caseworker Rose
15 Simental testified that after several weeks of working with Mother, Mother’s
16 behavior began to change and become increasingly erratic. Ms. Simental observed
17 Mother sweating profusely and speaking in an incomprehensible manner during a
18 visit. [DS 4; RP 71; 11/21/2025 FTR 12:59:21-1:00:22] Ms. Simental also testified
19 that she noticed Child exhibited a significantly worsening raspy click in his breathing
20 during that time. [Id.] On June 22, 2025, Ms. Simental conducted a home visit with

1 two CYFD investigators, Ana Santana and Laura Wallace. On that date, Ms.
2 Simental detected the odor of methamphetamine in Mother’s apartment, and she saw
3 Mother twitching and jerking while holding Child, causing him to be bounced
4 around. [DS 4; 11/21/2025 FTR 1:05:43-1:00:22]

5 {7} Ms. Santana was present when Child was taken into custody on July 30, 2025,
6 and testified that Child appeared not to have been bathed, his diaper was on
7 incorrectly, and he appeared to have a rash. [DS 4; RP 71; 11/21/2025 FTR 2:19:55]

8 Caseworker Braiden Lutrick testified that when Child was brought into custody
9 Mother’s speech was slurred, Child was wearing a filthy onesie, his diaper was too
10 small, and there was a rash on his private area. [RP 71; 11/21/2025 FTR 12:49:28-

11 12:50:01] Ms. Lutrick also testified that Child had a very strong odor, and was
12 making a concerning sound when breathing that sounded worse than when Ms.
13 Lutrick had last seen Child. [RP 71; 11/21/2025 FTR 12:49:52-12:51:30] CYFD also

14 introduced results of a hair follicle test that showed that Mother was positive for
15 methamphetamines in the three months preceding Child coming into custody, and
16 Mother testified that she struggled with substance abuse and admitted to testing
17 positive for amphetamines and methamphetamines. [DS 6-7: RP 71]

18 {8} This evidence is sufficient to establish neglect under Section 32A-4-2(G)(2).
19 Mother asserts that the evidence only established that she was “shaky,” and that
20 Child may not have been bathed frequently. [MIO 7] We disagree. The evidence

1 established that Mother was using methamphetamine while caring for Child, and that
2 Mother’s care of Child was degrading during that time. Child’s basic hygiene needs
3 were not being met, and he was suffering from worsening health problems, all
4 correlated to the onset of Mother’s methamphetamine use. *See Shawna C.*, 2005-
5 NMCA-066, ¶ 30 (explaining that while unfavorable personal status, such as drug
6 addiction, “may well lead to neglect . . . the focus should be on the acts or omissions
7 of the parents in their caretaking function”); *see also State v. Eventyr J. (In re*
8 *Termination of Parental Rts. of Eventyr J.)*, 1995-NMCA-087, ¶ 23, 120 N.M. 463,
9 902 P.2d 1066 (upholding a neglect adjudication in part based on a mother exposing
10 the children to substance abuse); § 32A-4-2(G)(2).

11 {9} For the same reason, we reject Mother’s argument that the evidence was
12 insufficient to prove that Child was at risk of serious harm due to Mother’s use of
13 methamphetamine. [MIO 7] *See* § 32A-4-2(B)(1) (defining “abused child” as one
14 “who has suffered or who is at risk of suffering serious harm because of the action
15 or inaction of the child’s parent, guardian or custodian). As discussed, the evidence
16 established that Mother was under the influence of methamphetamines while caring
17 for Child and behaving increasingly erratically, including twitching and jerking
18 while holding Child. Additionally, Child’s health and hygiene needs were not being
19 met. *See* § 32A-4-2(B)(1). Under Section 32A-4-2(B)(1), an abuse and neglect
20 adjudication can be properly made based on the risk of future action or inaction, and

1 the evidence before the district court was sufficient to support an inference that Child
2 was at risk of serious harm due to Mother's continuing use of methamphetamine.
3 *See Shawna C.*, 2005-NMCA-066, ¶ 26 (stating that the State may act on perceived
4 future harm).

5 {10} For these reasons, we affirm the district court. We additionally note that while
6 we affirm the district court's abuse and neglect adjudication under both statutory
7 provisions, only one is necessary to support the adjudication. *See id.* ¶ 16 (providing
8 that, where the judgment of neglect is affirmed, the appellate court need not decide
9 whether alternative grounds for neglect or abuse were proven).

10 {11} **IT IS SO ORDERED.**

11 
12 JACQUELINE R. MEDINA, Chief Judge

13 **WE CONCUR:**

14 
15 JENNIFER L. ATTREP, Judge

16 
17 ZACHARY A. IVES, Judge