

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

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


Mark Reynolds

Petitioner-Appellee,

v.

No. A-1-CA-42787

LARRY S.,

Respondent-Appellant,

and

GINA D.,

Respondent,

**IN THE MATTER OF BELLA S., and
SUREYA S., Children.**

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

Children, Youth and Families Department
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for Appellee

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for Appellant

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Guardian Ad Litem

MEMORANDUM OPINION

HANISEE, Judge.

{1} Respondent Larry S. appeals the district court’s order terminating his parental rights to B.S. and S.S. (collectively, Children).¹ This case is governed by the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901-1963; the New Mexico Indian Family Protection Act (IFPA), NMSA 1978, §§ 32A-28-1 to -42 (2022, as amended through 2023); and the New Mexico Abuse and Neglect Act (Abuse and Neglect Act), NMSA 1978, §§ 32A-4-1 to -35 (1993, as amended through 2025). Respondent contends Petitioner New Mexico Children, Youth, and Families Department (CYFD) failed to present evidence sufficient to prove beyond a reasonable doubt that (1) he neglected or abused Children; (2) if left in his custody Children would likely suffer serious emotional or physical damage; (3) CYFD made

¹During pendency of this appeal, the district court entered an order declaring Respondent not to be the biological father of B.S., and therefore to have no constitutionally protected liberty interest as to B.S. *See State ex rel. Child., Youth & Fams. Dep’t v. Cosme V.*, 2009-NMCA-094, ¶ 42, 146 N.M. 809, 215 P.3d 747 (recognizing that the statutory definition of neglect applies to a child’s parent, guardian, or custodian, and that the nonbiological father did not qualify for any of those titles). Respondent has not appealed this order or advanced any argument in this appeal contesting the accuracy of it. We nevertheless proceed with our review of the termination order as it relates to both B.S. and S.S.

1 active efforts to prevent the breakup of his Indian family; and (4) the district court
2 failed to consider permanent guardianship as an alternative to the termination of
3 Respondent’s parental rights. We affirm.

4 **BACKGROUND**

5 **CYFD Investigation**

6 {2} CYFD filed an abuse and neglect petition against Respondent, as well as the
7 mother of Children (Mother),² in August 2022. The petition alleged that Children
8 were “abused” and “neglected” by both Respondent and Mother (collectively,
9 Parents) as defined in Section 32A-4-2(B)(1) and Section 32A-4-2(G)(2) of the
10 Abuse and Neglect Act, respectively. The petition stated that Children had tribal
11 affiliations with both the Oglala Sioux tribe of South Dakota and the Choctaw Nation
12 tribe of Oklahoma.

13 {3} The petition was filed following an investigation initiated upon CYFD’s
14 receipt of a report by an anonymous source (Source) the previous month. Source
15 disclosed that S.S. was born on July 20, 2022, in Hobbs, New Mexico, premature,
16 and was transferred to and hospitalized in Lubbock, Texas, following her birth.
17 Source further stated that shortly after S.S. was born and still hospitalized, they
18 received a call from the Hobbs Police Department informing them that Parents had

²Mother is not a party to this appeal, but is discussed in this opinion to develop pertinent factual and procedural history.

1 been parties to a domestic violence incident. The police report stated that Parents got
2 into a physical altercation in front of B.S., then three years old, resulting in Parents’
3 arrest and B.S. being placed in the care of a family friend. On July 28, 2022, Mother
4 traveled to Lubbock, planning to take S.S. home. At the hospital, she was taken to
5 S.S., and about ten minutes later informed hospital staff that Respondent would be
6 arriving shortly as well. The hospital did not release S.S. to Parents.

7 {4} Instead, hospital staff notified CYFD, but when CYFD arrived Parents had
8 left. CYFD learned that Parents and B.S. were staying at a hotel in Lubbock. Unable
9 to locate parents at the hospital or hotel, and having left several messages for Parents,
10 CYFD received a call from Mother. CYFD requested to see B.S., but Mother
11 refused, stating that B.S. was “fine” following the domestic violence incident and
12 that “[i]t happens all the time.” CYFD unsuccessfully attempted to contact
13 Respondent by going to his home and other provided addresses.

14 {5} On July 29, 2022, CYFD spoke with Mother again, stating that a safety plan
15 was needed before S.S. could go home from the hospital with Mother, given the
16 domestic dispute and CYFD’s knowledge of Mother’s prior drug use. CYFD
17 requested a hair follicle sample, a urinalysis, and a meeting with Parents to ensure
18 the safety of the home for Children, to which Mother agreed. Parents did not fulfill
19 any of these requests. Shortly thereafter, Mother informed CYFD that the Oglala

1 Sioux tribe told her she could pick up S.S. and suggested that the tribe was neither
2 informed nor aware of any CYFD investigation.

3 {6} CYFD had in fact notified both the Oglala Sioux tribe and the Choctaw Nation
4 tribe of its investigation via email and letter within twenty-four hours of
5 commencement of the investigation, and informed Mother of the same. CYFD
6 additionally informed Mother that S.S. would not be released from the hospital until
7 a safety plan was in place. CYFD also unsuccessfully attempted to contact David
8 Red Cloud, an ICWA specialist. On August 2, 2022, CYFD again attempted to reach
9 Mother to develop a safety plan, but was unsuccessful.

10 {7} Unable to further its efforts with Parents during the ensuing weeks, CYFD
11 concluded its investigation and determined it to be contrary to the welfare of
12 Children to join (in the case of S.S.) or remain (in the case of B.S.) in Parents'
13 custody. In support of its determination, CYFD noted the recent incident of domestic
14 violence between Mother and Respondent in the presence of B.S., the refusal of both
15 parents to allow CYFD to access B.S., the past history of abuse and neglect by
16 Mother of her other children, Mother's past drug abuse while pregnant with B.S. and
17 S.S., B.S. testing positive for amphetamines when she was born, and Respondent's
18 unwillingness to communicate or engage with CYFD. CYFD reported that it made
19 active efforts to provide remedial services and rehabilitative programs designed to
20 prevent the breakup of the Indian family by attempting to implement a safety plan,

1 conduct drug screenings, provide information about home services and visits, and
2 timely notify each tribe of the investigation via email and letter.

3 **Placement of Children and Termination of Parental Rights**

4 {8} On August 5, 2022, CYFD filed an ex parte motion for custody of Children,
5 as well as an affidavit from the case investigator. A custody hearing was held on
6 August 18, 2022. At the time, neither Mother nor Respondent had been served and
7 neither appeared at the hearing. The district court issued a custody order determining
8 that Children would remain in the legal custody of CYFD. Thereafter, CYFD filed
9 a certificate of notice to both the Oglala Sioux and the Choctaw Nation tribes. It was
10 later determined that the Choctaw Nation was the tribe of record for Children. By
11 the end of August 2022, Children were both in CYFD's custody and had been placed
12 in nonrelative foster care.

13 {9} As the proceedings continued, CYFD was unable to locate Respondent to
14 serve him with notice of the pendency of the action against him. Eventually in early
15 2023, CYFD filed a motion for service by publication, which was granted, and the
16 following month CYFD filed an affidavit of publication from the Hobbs News-Sun
17 documenting the public notice notifying Respondent of the abuse and neglect
18 petition filed against him and the potential termination of his parental rights to
19 Children. A month later, CYFD filed a permanency report, noting that Respondent
20 had failed to participate in any treatment plan components, that Respondent had not

1 made contact with CYFD since December 2022—having then participated in three
2 visits with Children remotely when Respondent was incarcerated for portions of
3 2022 and 2023—and that CYFD was unaware of his whereabouts upon his release.
4 Also in March, CYFD filed a notice of change of placement for Children from a
5 nonrelative to fictive kin in Wyoming. Such was an ICWA-approved placement,
6 given Children were placed with siblings—Mother’s other children.

7 {10} The initial motion to terminate Parents’ parental rights was filed in October
8 2023, citing Respondent’s unwillingness to make progress in his permanency plan
9 despite CYFD’s asserted efforts to engage him to do so. The first termination hearing
10 was held in February 2024; however, the district court determined there to then be
11 insufficient evidence of abuse, neglect or abandonment of Children by Parents to
12 justify termination of Parents’ parental rights beyond a reasonable doubt. A new
13 motion requesting the termination of Mother’s and Respondent’s parental rights was
14 filed January 17, 2025. This appeal follows the subsequent termination hearing held
15 in March 2025, at which the district court determined there to be sufficient evidence
16 to terminate both parents’ parental rights to B.S. and S.S. As to Respondent, the
17 court concluded he had exposed Children to drugs and domestic violence, had no
18 “meaningful contact . . . with . . . Children for years” despite having been offered
19 “remedial services, rehabilitation programs, and support designed to correct the
20 inability or unwillingness of [Respondent] to provide proper parental care or control

1 for . . . Children and to prevent the breakup of the Indian family . . . [or] to change
2 the causes and conditions of the neglect.” As stated, this appeal concerns only the
3 loss of Respondent’s parental rights, and we provide additional facts where relevant.

4 **DISCUSSION**

5 **I. Preservation and Waiver**

6 {11} We first address CYFD’s challenge to two of Respondent’s arguments on
7 grounds of preservation and waiver, respectively. CYFD urges us to reject
8 Respondent’s challenge that the district court failed to consider permanent
9 guardianship as an alternative disposition as unpreserved; as well, CYFD maintains
10 that Respondent fails to directly challenge the district court’s specific findings
11 supporting the district court’s termination decision, rendering such determinations
12 binding on appeal. As we explain, we agree with CYFD on both points.

13 {12} As to Respondent’s argument that permanent guardianship should have been
14 considered, CYFD argues Respondent failed to preserve this issue. Contrary to our
15 rules of appellate procedure, Respondent did not identify in his brief in chief where
16 he preserved this issue. *See Crutchfield v. N.M. Dep’t of Tax’n & Revenue*, 2005-
17 NMCA-022, ¶ 14, 137 N.M. 26, 106 P.3d 1273 (“[O]n appeal, the party must
18 specifically point out where, in the record, the party invoked the court’s ruling on
19 the issue. Absent that citation to the record or any obvious preservation, we will not
20 consider the issue.”); Rule 12-318(A)(4) NMRA (mandating that the brief in chief

1 contain “an argument which, with respect to each issue presented, shall contain . . .
2 a statement explaining how the issue was preserved in the court below”). Nor has
3 Respondent filed a reply brief responding to CYFD’s argument that this issue is
4 unpreserved or otherwise advanced an argument as to why the usual rules of
5 preservation should not apply here. *See Headley v. Morgan Mgmt. Corp.*, 2005-
6 NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (“We will not review unclear
7 arguments, or guess at what [a party’s] arguments might be.”). We accordingly may
8 treat this as a concession of the matter. *Cf. Delta Automatic Sys., Inc. v. Bingham*,
9 1999-NMCA-029, ¶ 31, 126 N.M. 717, 974 P.2d 1174 (providing that when a reply
10 brief does not address arguments made in an answer brief, “a failure to respond
11 constitutes a concession on the matter”). We give this issue no further consideration.

12 {13} We next address CYFD’s contention that Respondent did not challenge any
13 of the specific findings of fact as entered by the district court supporting termination,
14 and that in light of these unchallenged findings, Respondent’s sufficiency challenges
15 fail. While Respondent’s brief in chief argues that the district court’s ultimate
16 determinations of abuse and neglect, serious emotional or physical damage to
17 Children, and active efforts were not supported by substantial evidence, Respondent
18 fails to effectively challenge any of the specific findings of fact underlying these
19 determinations. As a result, these findings are deemed true for the purposes of our
20 analysis. *See* Rule 12-318(A)(4) (requiring a “specific attack on any finding, or the

1 finding shall be deemed conclusive” and establishing that “[a] contention that a
2 verdict, judgment, or finding of fact is not supported by substantial evidence shall
3 be deemed waived unless the argument identifies with particularity the [challenged]
4 fact or facts”).

5 **II. Abuse and Neglect**

6 **A. Standard of Review**

7 {14} Interpretation of the ICWA, IFPA, and the Abuse and Neglect Act presents
8 questions of law that we review de novo. *State ex rel. Child., Youth & Fams. Dep’t*
9 *v. Marsalee P.*, 2013-NMCA-062, ¶ 12, 302 P.3d 761. While we review the district
10 court’s findings of fact for sufficiency of the evidence, deferring to credibility
11 determinations and drawing inferences in favor of such findings, we review the
12 district court’s application of the law to the facts de novo. *State ex rel. Child., Youth*
13 *& Fams. Dep’t v. Lisa A.*, 2008-NMCA-087, ¶ 6, 144 N.M. 324, 187 P.3d 189. Under
14 the Abuse and Neglect Act, two distinct standards of review apply to the grounds
15 supporting termination of parental rights: (1) clear and convincing; and (2) beyond
16 a reasonable doubt. *State ex rel. Child., Youth & Fams. Dep’t v. Maisie Y.*, 2021-
17 NMCA-023, ¶ 19, 489 P.3d 964. In cases involving ICWA, “the statute
18 unambiguously requires that the beyond a reasonable doubt standard applies.” *Id.*

19 {15} Respondent’s parental rights were terminated on the ground that he abused or
20 neglected Children as provided in the Abuse and Neglect Act. See § 32A-4-2(B),

(G). For its ruling to be affirmed, the district court must have correctly determined beyond a reasonable doubt that (1) Children were abused or neglected; (2) the continued custody of Children by Respondent likely would have resulted in serious emotional or physical damage to Children; and (3) CYFD made active efforts to assist Respondent in adjusting the conditions which rendered him unable to properly care for Children. *See State ex rel. Child., Youth & Fams. Dep't v. James M.*, 2023-NMCA-025, ¶ 15 n.3, 527 P.3d 633 (“[I]n addition to finding neglect or abuse beyond a reasonable doubt under our state law, termination of parental rights under ICWA also requires a finding beyond a reasonable doubt that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child, as required by 25 U.S.C. § 1912(f) of ICWA.” (omission, internal quotation marks, and citation omitted)); *State ex rel. Child., Youth & Fams. Dep't v. Yodell B.*, 2016-NMCA-029, ¶¶ 8, 17-20, 367 P.3d 881 (holding that ICWA requires that “a party seeking to terminate parental rights shall satisfy the court that *active efforts* have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family” and that “the term active efforts connotes a more involved and less passive standard than that of reasonable efforts” (emphasis added) (internal quotation marks and citations omitted)), *overruled on other grounds by Maisie Y.*, 2021-NMCA-023, ¶¶ 23, 31.

1 {16} Under Section 32A-4-2(B)(1), an “abused child” is defined, in pertinent part,
2 as one “who has suffered or who is at risk of suffering serious harm because of the
3 action or inaction of the child’s parent, guardian or custodian.” Under Section 32A-
4 4-2(G)(2), a “neglected child” is defined, in pertinent part, as one “who is without
5 proper parental care and control or subsistence, . . . medical or other care or control
6 necessary for the child’s well-being because of the faults or habits of the child’s
7 parent . . . or the failure or refusal of the parent, . . . when able to do so, to provide
8 them.”

9 **B. Substance Use Exposure**

10 {17} Respondent asserts that there was no proof that (1) “Children were without
11 proper parental care and control or were at risk of suffering serious harm due to
12 substance exposure,” and (2) that Respondent was culpable. *See State ex rel. Child.,*
13 *Youth & Fams. Dep’t v. Heather S.*, 2025-NMSC-002, ¶ 29, 563 P.3d 821 (providing
14 that to establish neglect under Section 32A-4-2(G)(2), two conditions must be
15 satisfied: “[t]he first addresses the circumstances and condition of the child” and
16 “[t]he second addresses the culpability of the parent”). Respondent points to *State*
17 *ex rel. Child, Youth & Fams. Dep’t. v. Amanda H.*, 2007-NMCA-029, 141 N.M. 299,
18 154 P.3d 674, in which this Court evaluated a mother’s alleged prenatal drug use to
19 support a finding of neglect under Section 32A-4-2(E). We also consider *State ex*
20 *rel. Child, Youth & Fams. Dep’t v. Joseph M.*, 2006-NMCA-029, 139 N.M. 137, 130

1 P.3d 198, where this Court addressed a district court’s termination of a respondent’s
2 parental rights to his children based upon substance use in the home.

3 {18} In *Amanda H.*, a mother admitted to using narcotics and marijuana at different
4 points during her pregnancy. *See* 2007-NMCA-029, ¶ 23. CYFD argued that prenatal
5 drug exposure was alone sufficient to establish neglect under the Abuse and Neglect
6 Act, despite evidence that the child was born healthy and without signs of drug
7 exposure or dependency. *Id.* This Court reversed the district court’s finding of
8 neglect, holding the child’s prenatal exposure to drugs during the first trimester was
9 not alone sufficient to establish neglect, nor did the evidence presented by CYFD
10 that the mother left the newborn child in the care of nurses to smoke outside the
11 hospital show neglect or that the child’s needs were not then provided for. *Id.* ¶¶ 23-
12 24.

13 {19} In *Joseph M.*, CYFD filed an abuse and neglect petition alleging that a mother
14 and father abused and neglected their two children, after both children tested positive
15 for cocaine. 2006-NMCA-029, ¶¶ 3, 6. As a result, the father was incarcerated and
16 required to complete a treatment plan as designed by CYFD to address his substance
17 abuse. *Id.* ¶¶ 5, 7. At the termination hearing, the district court was presented with
18 evidence that the father had made “positive progress . . . toward becoming an
19 adequate parent,” that he was “compliant and stable during the time that [his CYFD
20 social worker] had the case and that [the f]ather worked toward completing his

1 treatment plan” and participated in Alcoholics Anonymous and Narcotics
2 Anonymous. *Id.* ¶¶ 11-12. Despite this, the district court still terminated his parental
3 rights. *Id.* ¶ 14. We reversed, determining that the father made progress and
4 successfully resolved his substance abuse problems, and that the district court erred
5 in determining “that the clear and convincing standard was met” and that the father
6 would be unable to properly parent his children in the foreseeable future. *Id.* ¶ 23.

7 {20} We first address the fact that the district court here was presented with
8 evidence similar to that in *Amanda H.* Dr. David Engelhart, a lab analyst, testified
9 that, following S.S.’s birth, B.S. tested positive for cocaine and methamphetamine
10 shortly after coming into CYFD’s custody. It was also reported that Mother tested
11 positive for amphetamines while birthing S.S.; however, it was reported that S.S.
12 showed no signs of withdrawal symptoms. After S.S. was born, Mother visited S.S.
13 twice in the two weeks she was being treated at the hospital and Respondent did not
14 visit S.S. at all. While Respondent is correct that this case is analogous to *Amanda*
15 *H.*, in that prenatal drug exposure or the lack of engagement with S.S. by either
16 Mother or Respondent following her birth is insufficient to prove neglect, what is
17 distinguishable is the fact that B.S. tested positive for cocaine and methamphetamine
18 while in the care of Mother and Respondent a month after S.S.’s birth, leading us to
19 view the facts as more analogous to *Joseph M.*

1 {21} The father in *Joseph M.* conceded that his children were abused or neglected
2 because of his substance use. See 2006-NMCA-029, ¶ 18. The dissimilarity, though,
3 between the father in *Joseph M.* and Respondent is that the father in *Joseph M.* “was
4 motivated to comply with [CYFD] and made some steps to improve his parenting
5 skills,” unlike Respondent here. See *id.* ¶ 23. Respondent’s assigned social worker,
6 Ms. Gonzalez, testified that Respondent had made no progress in his case plan and
7 had not demonstrated that he completed any component thereof. Further, in *Joseph*
8 *M.* the initial goal of the permanency plan was reunification, but that was contingent
9 upon the father completing the plan. See *id.* ¶ 19 The same is true here. Respondent
10 was required to participate in an outpatient or inpatient substance abuse program and
11 comply with all requirements of the program and did not, despite numerous efforts
12 by CYFD to enable him to begin and complete it. Instead, while incarcerated in 2023,
13 Respondent reported to Raquel Leyva, the family’s first permanency case
14 coordinator, that he was using methamphetamine.

15 {22} We hold the circumstances of *Amanda H.* and *Joseph M.* are distinguishable
16 insofar as the bases for this Court’s reversals in those cases do not here exist. Rather,
17 CYFD presented evidence beyond a reasonable doubt that Children were abused and
18 neglected through substance use exposure, of which Respondent was part, and such
19 evidence was not offset by progress toward Respondent’s case plan. See *James M.*,
20 2023-NMCA-025, ¶ 14. We affirm the district court as to this determination.

1 **C. Domestic Violence Exposure**

2 {23} Respondent asserts that there was no proof that Children “ever saw domestic
3 violence between Parents.” The district court stated in its findings that Parents
4 separately informed CYFD during its investigation that B.S. was present during a
5 domestic violence incident between them, and Mother later stated that “it happens
6 all the time.” Respondent cites *In re Guardianship of Ashleigh R.*, 2002-NMCA-
7 103, 132 N.M. 772, 55 P.3d 984, to further his argument that there was insufficient
8 evidence to demonstrate (1) Children were without proper parental care and control
9 or exposed to serious harm by being exposed to domestic violence; and (2) that he
10 was culpable. See *Heather S.*, 2025-NMSC-002, ¶ 29 (discussing the elements
11 defining “neglected child” described in Section 32A-4-2(G)(2)).

12 {24} In *In re Guardianship of Ashleigh R.*, this Court was asked to determine
13 whether past incidents of domestic violence made a mother unfit to have custody of
14 her children. See 2002-NMCA-103, ¶ 21. There, we held that past incidents of
15 domestic violence unwitnessed by children, along with evidence of continuing abuse
16 between parents outside the presence of children, does not support a finding of
17 neglect. *Id.* Similarly, in *Heather S.*, our Supreme Court held that a single incident
18 of domestic violence, where a child was not present, does not support a finding of
19 abuse or neglect of the child. 2025-NMSC-002, ¶¶ 4, 56. In that case, nothing in the
20 record indicated that the mother had a history of domestic violence other than a

1 single incident, that the child was present during the incident, or that there was
2 ongoing abuse of the mother or the child. *Id.* ¶ 57.

3 {25} We view the facts of this case as distinguishable from those of both *In re*
4 *Guardianship of Ashleigh R. and Heather S.*, for two reasons. First, Mother’s
5 statement to law enforcement officers following the domestic violence incident
6 between her and Respondent that “it happens all the time” indicates that this type of
7 behavior is not an isolated incident. Second, in the police report Mother stated that
8 as she was going to get the stroller to put B.S. into it, Respondent grabbed Mother
9 and punched her. Mother stated that she was able to get away and physically place
10 B.S. into the stroller, at which point Respondent “came after her again,” indicating
11 that B.S. was present and witnessed this altercation.

12 {26} Respondent argues in his briefing that he is also a victim of domestic violence
13 as evidenced by the red markings on his chest and face following the altercation with
14 Mother. However, Respondent’s argument in this regard does not negate a finding
15 of abuse or neglect. *See In re Guardianship of Ashleigh R.*, 2002-NMCA-103, ¶ 21
16 (explaining that “when the abused parent fails to recognize the harm the violence
17 causes the children or refuses to get help in ending the situation,” domestic violence
18 could support a finding of neglect); *see also Heather S.*, 2025-NMSC-002, ¶ 53
19 (“[T]he risk posed by a history of domestic violence combined with a failure to take

any action to prevent future instances of domestic violence is serious and may constitute neglect under certain circumstances.”).

{27} Respondent also argues that there was no proof that S.S. was ever exposed to domestic violence between him and Mother. It, however, has been established that B.S. was present for the domestic violence incident in question. And this Court has previously ruled that evidence of abuse of other children can support a finding of neglect of a sibling. *See State ex rel. Child., Youth & Fams. Dep’t. v. Shawna C.*, 2005-NMCA-066, ¶ 15, 137 N.M. 687, 114 P.3d 367 (acknowledging that harm to other children can be considered in finding neglect of another child). Consequently, the domestic violence to which B.S. was exposed properly supports a finding of neglect of not only B.S., but also of S.S. And to reiterate, Respondent’s case plan included attending domestic violence prevention classes, however, CYFD was never presented with proof of attendance by Respondent.

{28} We hold that sufficient evidence supported the district court’s conclusion that Children were abused or neglected by domestic violence exposure.

III. Emotional or Physical Damage to Children in Respondent’s Custody

{29} Respondent asserts that insufficient evidence exists to support termination of his parental rights on grounds that Children were at risk of serious emotional and physical damage in his custody, either from substance use exposure or domestic violence exposure. He adds that the district court failed to state that the requirements

1 under ICWA and IFPA were proven to the necessary degree—beyond a reasonable
2 doubt—as to this determination.

3 {30} From our understanding, Respondent’s assertions imply that the district court
4 terminated his parental rights over Children *only* because of the risk of substance
5 abuse or domestic violence exposure, contravening Section 32A-28-13(B)(4). As
6 stated in Section 32A-28-13(B)(4), “without a causal relationship identified in
7 Paragraph (3) of this subsection, evidence that shows only the existence of
8 community or family poverty, isolation, single parenthood, custodian age, crowded
9 or inadequate housing, substance abuse or nonconforming social behavior shall not
10 by itself constitute clear and convincing evidence or evidence beyond a reasonable
11 doubt that continued custody is likely to result in serious emotional or physical
12 damage to the child.” Pursuant to Subsection (B)(3), “the evidence shall show a
13 causal relationship between the particular conditions in the home and the likelihood
14 that continued custody of the child will result in serious emotional or physical
15 damage to the . . . child.” Respondent is incorrect that, under Section 32A-28-
16 13(B)(4), substance abuse and domestic violence alone are not enough to prove
17 beyond a reasonable doubt that a child’s continued custody with a parent, guardian
18 or Indian custodian is impermissible. Instead, the language of Section 32A-28-
19 13(B)(4) makes clear that there must be a causal link between the substance abuse
20 or domestic violence and the likelihood of continuing, significant harm to the child.

1 Here, that link existed: Children were repeatedly exposed to instances of domestic
2 violence, tested positive for substances to which they were repeatedly exposed, and
3 no efforts were made to remedy these conditions. Additionally, Respondent is
4 incorrect that more (beyond substance abuse and domestic violence) was not shown
5 to satisfy the requirement that Children's continued custody by Respondent is likely
6 to result in serious emotional or physical damage to Children. *See* § 32A-28-
7 13(B)(2). There were several reasons cited by the district court to support the notion
8 that Children's custody with Respondent would likely result in serious emotional or
9 physical damage.

10 {31} Indeed, the district court cited the following reasons to support the termination
11 of Respondent's parental rights over Children pursuant to Section 32A-28-13: (1)
12 neither Mother nor Respondent would allow CYFD to see B.S. to ensure her health
13 and safety; (2) while he was incarcerated in March 2023, Respondent admitted to
14 continuing methamphetamine use; (3) Ms. Leyva made Respondent aware of his
15 case plan, which included parenting training, income to support Children, substance
16 use treatment, domestic violence prevention classes, drug tests, employment,
17 housing, visitation with Children, psychological evaluation, individual therapy, and
18 weekly contact with CYFD, yet Respondent did not make any progress on the plan
19 following his release from jail in 2023; (4) Ms. Leyva referred Respondent to
20 treatment court and inpatient substance use treatment, the New Mexico Department

1 of Workforce Solutions (Workforce Solutions), the Income Support Division of the
2 New Mexico Health Care Authority (Income Support Division), Social Security,
3 resources for domestic violence prevention classes, and a psychological evaluation
4 appointment, but Respondent did not provide proof that any of these resources were
5 utilized or case plan requirements completed; (5) when Rebecca Gonzales took over
6 as the permanency case coordinator in 2024, she reviewed the case plan again with
7 Respondent and was provided with no progress from Respondent; and (6) Kasey
8 Ruthart and Samantha Lovell from the Choctaw Nation tribe testified as qualified
9 expert witnesses (QEWs) for this case and stated that the Choctaw Nation
10 recommended termination of Respondent's parental rights because of Respondent's
11 refusal to engage in any services and no evidence of change by Respondent.

12 {32} In his briefing, Respondent even acknowledges the very reasons the district
13 court cited to support the termination of his parental rights over Children: that QEWs
14 testified that serious emotional or physical damage was likely to occur should
15 Children be in his custody, that there was evidence that he did not participate in the
16 domestic violence counseling, and that there was evidence that he was abusing
17 substances.

18 {33} Based on all the foregoing evidence, the district court was presented with
19 sufficient evidence to conclude beyond a reasonable doubt under IFPA that in
20 Respondent's custody Children were at risk of serious emotional and physical

1 damage. Though as to this one particular conclusion the district court did not state
2 the applicable standard—beyond a reasonable doubt—its use of the standard in every
3 other conclusion sufficiently relays its understanding of CYFD’s burden of proof in
4 this regard. *Cf. Att’y Gen. v. Montoya*, 1998-NMCA-149, ¶ 16, 126 N.M. 273, 968
5 P.2d 784 (explaining that where “there is nothing in the record to indicate that the
6 trial court applied, or was advised by counsel of, the proper burden of proof,” remand
7 was necessary for the trial court to apply the correct standard).

8 **IV. Active Efforts to Prevent the Breakup of the Indian Family**

9 {34} Respondent next argues that there was insufficient evidence to support that
10 CYFD made active efforts to prevent the breakup of the Indian family, pursuant to
11 both ICWA and IFPA.³ “When a petition for abuse and neglect seeking removal of
12 an Indian child from the custody of their parent, legal guardian, or Indian custodian
13 is filed by CYFD, . . . the district court must make the findings required by

³ While Respondent asserts in a single sentence that the district court impermissibly considered the bonding of Children with their foster parents, directly contradicting IFPA, *see* § 32A-28-19(C) (stating that “bonding between the Indian child and the Indian child’s foster parent shall not be considered as a factor in terminating parental rights”), Respondent fails to identify in his brief in chief where this issue was preserved. *See Crutchfield*, 2005-NMCA-022, ¶ 14. Respondent as well fails to develop any such argument on appeal. *See State ex rel. Child., Youth & Fams. Dep’t v. Josie G.*, 2021-NMCA-063, ¶ 28, 499 P.3d. 658 (stating “we will not guess at [the respondent]’s undeveloped arguments”). We therefore decline to further consider or discuss this assertion of error in the instant case. We nonetheless caution district courts—given that such a prohibition does not exist in ICWA—as to the New Mexico Legislature’s directive in this regard.

1 ICWA[, 25 U.S.C.] § 1912(d)[,] at the adjudicatory hearing, including the finding
2 that active efforts designed to prevent the breakup of the Indian family have been
3 made.” *State ex rel. Child., Youth & Fams. Dep’t v. Eric E.*, 2024-NMCA-026, ¶ 28,
4 544 P.3d 307. Our Supreme Court has observed that “[i]n cases where [ICWA]
5 applies, a showing of active efforts on the part of [CYFD] is required before a
6 parent’s parental rights may be terminated.” *State ex rel. Child., Youth & Fams.*
7 *Dep’t v. Keon H.*, 2018-NMSC-033, ¶ 42, 421 P.3d 814 (emphasis omitted). A
8 showing of active efforts must be established in support of ICWA terminations,
9 which CYFD must prove beyond a reasonable doubt. *See James M.*, 2023-NMCA-
10 025, ¶ 21 (“In reviewing the sufficiency of the evidence of CYFD’s efforts, we bear
11 in mind that CYFD was required to prove that it made ‘active efforts’ by evidence
12 beyond a reasonable doubt.”). Similarly, IFPA Section 32A-28-4(A) requires that
13 CYFD make active efforts to maintain or reunite an Indian child with the Indian
14 child’s family. “Active efforts” are defined as efforts that are “affirmative, active,
15 thorough and timely and that represent a higher standard of conduct than reasonable
16 efforts.” *See* § 32A-28-2(A).

17 {35} Respondent cites *Yodell B.* in making his case that CYFD failed to make active
18 efforts to prevent the breakup of the Indian family. *See* 2016-NMCA-029. In *Yodell*
19 *B.*, this Court made the distinction between “active efforts” and “passive efforts” as
20 follows:

1 Passive efforts are where a plan is drawn up and the client must develop
2 his or her own resources towards bringing it to fruition. Active
3 efforts . . . [are] where the state [permanency worker] takes the client
4 through the steps of the plan rather than requiring that the plan be
5 performed on its own.

6 *Id.* ¶ 17 (internal quotation marks and citation omitted). Simply providing a parent
7 with a treatment plan and then waiting for them to complete it does not constitute
8 active efforts. *See id.*

9 {36} The district court found that “CYFD has proven beyond a reasonable doubt
10 that CYFD has provided or made available remedial services, rehabilitation
11 programs, and support designed to correct the inability or unwillingness of
12 [Respondent] to provide proper parental care or control for . . . Children and to
13 prevent the breakup of the Indian family but [Respondent] has been unable or
14 unwilling to benefit sufficiently from the services and support to change the causes
15 and conditions of the neglect of . . . Children.” We agree.

16 {37} Ms. Leyva reviewed the case plan with Respondent on eight different
17 occasions while he was in prison. Ms. Leyva arranged an appointment at the prison
18 for a psychologist to complete the psychological evaluation she had begun with
19 Respondent; however, Respondent did not attend and reported to Ms. Leyva that “he
20 forgot.” After Respondent told Ms. Leyva he was using methamphetamine while in
21 prison, she coordinated with three different companies to do drug tests, facilitated
22 drug rehabilitation programs, and organized parenting programs provided by the

1 prison; however, Respondent was released before he was able to avail himself of
2 these resources. Prior to his release, Ms. Leyva also referred Respondent to
3 Workforce Solutions, Income Support Division, and Social Security, but no follow
4 up on these programs was undertaken by Respondent.

5 {38} After his release from prison, CYFD referred Respondent to three different
6 locations where he could receive domestic violence prevention classes; however, no
7 proof of attendance was provided. When Ms. Gonzalez took over as the permanency
8 coordinator for this case, she was only able to reach Respondent a total of three times
9 in one year to facilitate progress on his permanency plan. CYFD also arranged
10 virtual visitation with Children while Respondent was in jail, which Respondent
11 attended a little over half the time.

12 {39} In *James M.*, this Court ruled that there was undisputed evidence that CYFD:

13 (1) had not provided active assistance in obtaining services for [the
14 f]ather, (2) had not developed or proposed alternative ways of meeting
15 [the f]ather's need for parenting classes in light of his difficulty with
16 computer technology, (3) had not facilitated in-person visits with [the
17 c]hildren, (4) had not monitored [the f]ather's progress, (5) provided no
18 assistance to [the f]ather in obtaining appropriate housing for him and
19 [the c]hildren, and (6) did not assess either the home [the f]ather
20 ultimately found without CYFD assistance prior to the termination of
21 his parental rights, or [the f]ather's ability to care for [the c]hildren in
22 his . . . home without creating a likelihood of serious emotional or
23 physical damage to [the c]hildren.

24 2023-NMCA-025, ¶ 26. The facts before this Court are dramatically distinct from
25 that of *James M.* Here, CYFD provided Respondent with numerous resources to

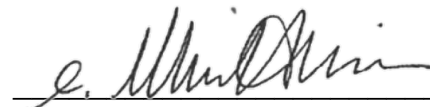
1 render his permanency plan effective, and in our view “led” Respondent directly to
2 the resources he needed.

3 {40} Viewing the evidence in the light most favorable to CYFD, the district court
4 could properly determine that CYFD undertook active efforts to facilitate
5 Respondent in his permanency plan. *See id.* ¶ 21. It was Respondent’s minimal effort
6 in participating in his permanency plan—and not CYFD’s failure to provide
7 opportunities—that leads us to affirm the district court’s conclusion in this regard.

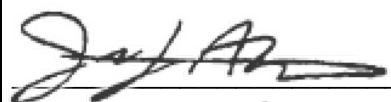
8 **CONCLUSION**

9 {41} For the foregoing reasons, we affirm.

10 {42} **IT IS SO ORDERED.**

11 
12 **J. MILES HANISEE, Judge**

13 **WE CONCUR:**

14 
15 **JENNIFER L. ATTREP, Judge**

16 
17 **GERALD E. BACA, Judge**