

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

2 Opinion Number: \_\_\_\_\_

3 Filing Date: April 21, 2017

4 **NO. 35,472**

5 **STATE OF NEW MEXICO ex rel.**  
6 **CHILDREN, YOUTH AND FAMILIES**  
7 **DEPARTMENT,**

8           Petitioner-Appellee,

9 v.

10 **WILLIAM C., JR.,**

11           Respondent-Appellant,

12 and

13 **IN THE MATTER OF SKYLA C.,**

14           Child.

15 **APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY**

16 **John F. Davis, District Judge**

17 Children, Youth & Families Department  
18 Charles E. Neelley, Chief Children's Court Attorney  
19 Santa Fe, NM  
20 Kelly P. O'Neill, Children's Court Attorney  
21 Albuquerque, NM

22 for Appellee

1 Law Office of Gina M. Maestas

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4 for Appellant

5 Jay Mueller

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7 Guardian Ad Litem

1 **OPINION**

2 **SUTIN, Judge.**

3 {1} William C. (Father) appeals from an order terminating his parental rights to his  
4 daughter, Skyla C. (Child). After the district court denied the Children, Youth and  
5 Families Department’s (the Department) first motion to terminate Father’s parental  
6 rights to Child, a second hearing on a second motion to terminate his parental rights  
7 was held. After the second hearing, the court granted the Department’s motion and  
8 terminated Father’s parental rights. On appeal, Father argues that: (1) the district  
9 court erred in allowing evidence at the second termination hearing regarding events  
10 that occurred prior to the first termination hearing, and (2) there was insufficient  
11 evidence to terminate his rights. We hold that the district court did not err in hearing  
12 evidence that preceded the first termination hearing and that there was sufficient  
13 evidence to terminate Father’s rights. We therefore affirm.

14 **BACKGROUND**

15 {2} The Department, which had taken custody of Child on September 26, 2013,  
16 filed a neglect petition against Father and Child’s mother, Allisha V. (Mother), on  
17 September 30, 2013. Child and Child’s half-brother, who is not Father’s biological  
18 son and who is not the subject of this appeal, were removed from the home due to  
19 concerns about Mother’s and Father’s alleged substance abuse, domestic violence,

1 and mental health concerns. After both entered pleas of no contest, judgment was  
2 entered against Mother and Father that they neglected Child, pursuant to NMSA  
3 1978, Section 32A-4-2(E)(2) (2009, amended 2016) (current version at Section 32A-  
4 4-2(F)(2)), and on February 20, 2014, the district court adopted a treatment plan.

5 {3} On April 6, 2015, the Department filed its first motion for termination of  
6 parental rights as to both parents. After the Department filed its motion, Mother  
7 relinquished her rights in Child. The hearing on the motion was set for June 11, 2015.  
8 However, prior to the hearing the Department filed an unopposed motion to vacate  
9 and reset the hearing because a necessary witness was unavailable that day. The court  
10 did not reset the hearing, and the motion for termination of parental rights was heard  
11 on June 11, 2015. At the conclusion of that hearing, the court denied the  
12 Department's motion, but ordered that custody of Child was to remain with the  
13 Department. The Department filed its second motion to terminate Father's parental  
14 rights in Child on October 16, 2015, and the hearing on that motion was set for  
15 December 10, 2015.

16 {4} At the beginning of the second termination hearing, the district court took  
17 judicial notice of the no contest plea entered into by Father in February 2014. Also,  
18 counsel for Father moved to clarify the scope of the inquiry, arguing that the  
19 "*Benjamin O.* cases" indicated that the court should only look at what had happened

1 since the last hearing, i.e., June 11, 2015 to December 10, 2015, and should not  
2 consider what happened prior to the last hearing. The court ruled that the Department  
3 could present evidence regarding events that preceded that earlier termination of  
4 parental rights hearing and could also present any new information concerning what  
5 had occurred since the first hearing.

6 {5} The first witness to testify was Edward Alvarez, who worked for Superior Drug  
7 Testing in Las Cruces, New Mexico. Mr. Alvarez testified that Father was referred  
8 by the Department on July 8, 2015. According to Mr. Alvarez, it was decided that  
9 Father's case worker, Ana Dominguez, would initially make contact with Father to  
10 describe the drug-testing procedure and then Father would contact Mr. Alvarez to  
11 discuss specifics and any questions. Father initially went to Superior Drug Testing on  
12 July 27, 2015, but Mr. Alvarez was not present and no testing was performed. Mr.  
13 Alvarez's first interaction with Father was on October 12, 2015, when Father arrived  
14 at the office. Father did not call Superior Drug Testing between July 27 and October  
15 12. During Father's October 12 visit, he refused to have a hair follicle test performed.  
16 Father next came to the office on October 20, 2015, and a hair follicle test was  
17 performed. Father came into the office on October 23, 2015, but no testing was  
18 performed. The last time Mr. Alvarez heard from Father was on October 26, 2015.  
19 Mr. Alvarez reaffirmed that his understanding was that Ms. Dominguez would

1 initially explain the process for calling in, but he was unsure if Father had in fact been  
2 informed of the procedure on July 27, 2015.

3 {6} Anthony DeCorte, a licensed independent social worker and clinical  
4 therapist/supervisor at Nava Counseling Services (Nava) in Las Cruces, testified that  
5 the Department referred Father for substance abuse and mental health assessments to  
6 Nava on June 18, 2015. Father initially missed substance abuse assessments on July  
7 9, 2015 and July 30, 2015, and he missed mental health assessments on November 13,  
8 2015 and November 23, 2015. Mr. DeCorte eventually saw Father on November 30,  
9 2015. Although Father never completed a substance abuse assessment, part of  
10 Father's mental health assessment evaluated his substance abuse issues. Mr. DeCorte  
11 diagnosed Father as having panic disorder, cannabis-use disorder, and stimulant-use  
12 disorder and recommended that Father participate in individual therapy, an anger  
13 management treatment group, and substance abuse treatment. He informed Father of  
14 those recommendations, Father was "open" to them, but to Mr. DeCorte's knowledge  
15 services had not started. He noted that Father's diagnoses would not necessarily  
16 prevent a person from being able to parent a child, as long as treatment was being  
17 received.

18 {7} Wade C., Father's brother, testified that Child had been living with him since  
19 August 2015 and that he was willing to adopt her. He stated that Child needs

1 consistency, structure, and counseling for her anxiety, depression, and learning  
2 disabilities. He had contact with Father maybe once every two months, and he was  
3 unaware of where Father was living or whether Father had a job. He expressed  
4 concerns about Child's needs and did not believe Father could meet those needs. He  
5 indicated that Father had a visit with Child several weeks before the hearing and had  
6 missed a visit the week before the hearing. Wade C. testified that Child exhibited  
7 depression after missing that visit with Father and that Child's depression and anxiety  
8 minimizes "when there is a consistent period of no contact" with Father. He testified  
9 that he has two other children and that they relate to Child like siblings.

10 {8} Leslie Peterson was Father's permanency planning case worker from October  
11 2014 to May 2015. Ms. Peterson referred Father for therapy at Mesilla Valley  
12 Hospital in Las Cruces and for urinalyses. She also referred Father to La Frontera in  
13 Las Cruces to assist him in dealing with his addictions. She reported that Father was  
14 inconsistent in attending therapy, and she spoke with Father sporadically. In  
15 November 2014 Father was "on track," had electrical contracting work, and was  
16 living in a home with roommates. After that Father was inconsistent, and by January  
17 2015 Father was living at a church office. Father told Ms. Peterson that he missed the  
18 therapy sessions because he was busy or because of conflicts with his job  
19 requirements. While she had the case, Ms. Peterson did not see Father make any

1 progress toward alleviating the causes and conditions that brought Child into the  
2 Department's custody.

3 {9} Dr. Marc Caplan, a licensed psychologist, testified that, pursuant to the  
4 Department's referral, he conducted a psychological evaluation of Father in  
5 November 2014. In addition to a clinical interview, Father was administered a battery  
6 of tests. Father was cooperative but did not offer many details and complained he was  
7 not feeling well the day of the assessment. The tests administered to Father showed  
8 that Father functioned at a "borderline to low average range of intelligence," had  
9 difficulty communicating verbally, and struggled with "organizing his thoughts."

10 Father seemed to struggle with "expansive mood[s]," and there were indications of  
11 psychotic and disorganized thinking that may have corresponded "to what [Father]  
12 reported as earlier diagnoses of anxiety disorder and possibly schizophrenic  
13 disorder." Although Father did not show any positive signs of schizophrenia during  
14 the evaluation, Dr. Caplan did note some minor indications of the negative signs of  
15 schizophrenia, i.e., affect and organization of thinking issues. Based on tests related  
16 to child abuse potential and parenting stress index, Father showed rigidity and  
17 presented with distress and depression, which Dr. Caplan stated were "likely to  
18 contribute to making parenting more difficult." Dr. Caplan noted that Father  
19 perceives Child as demanding, which can be overwhelming for Father. Father had a

1 general sense of how to approach limit-setting and boundary-setting with Child but  
2 tends to be inconsistent. Father admitted to regular use of marijuana to calm him, and  
3 Dr. Caplan indicated that Father could struggle to care for Child if not engaged in  
4 treatment and ongoing parent training. Dr. Caplan diagnosed Father with an  
5 “unspecified schizophrenic-spectrum disorder.” Father indicated to Dr. Caplan that  
6 he was not in treatment at the time of the evaluation. Dr. Caplan emphasized that  
7 Father’s elevated score on the child abuse potential does not necessarily show that he  
8 has or will abuse a child, but merely indicated that he looks like a population that is  
9 known to have abused. Father self-reported irritability and hostility, and Dr. Caplan  
10 indicated that those responses could impact a child in an adverse manner. Dr. Caplan  
11 acknowledged that treatment possibly could be effective for Father, but expressed  
12 concern that Father was inclined to “externalize responsibility,” meaning that Father  
13 felt that the problems he was experiencing were everyone else’s fault.

14 {10} Jeromy Brazfield testified that he was the investigations supervisor in this case  
15 in September 2013. Mr. Brazfield participated in a family centered meeting in 2013  
16 at which point Child was placed on a forty-eight-hour hold. At the time of the family  
17 centered meeting, Father was involved in vocational rehabilitation services. Although  
18 the investigator on the case instructed that a release should be obtained from Father  
19 to secure additional services, the Department had difficulty getting signed releases

1 from Father. Mr. Brazfield supervised at least two drug tests administered to Father  
2 and recalled that visits were to be set up with Child and Father.

3 {11} Misty Castillo, a permanency planning case worker supervisor, testified that  
4 Child came into the Department's custody in September 2013 due to concerns about  
5 Mother's and Father's alleged substance abuse, domestic violence, and concerns  
6 about mental health. Ms. Castillo began supervising the case in June 2014. She  
7 testified that referrals were made to service providers in Albuquerque, New Mexico,  
8 and in Las Cruces. Father was referred to La Frontera in Las Cruces for individual  
9 counseling, substance abuse group sessions, a psychiatric evaluation, and a referral  
10 was also made for a psychological evaluation. He was also referred to Superior Drug  
11 Testing for random drug screens.

12 {12} In the summer of 2014, Child was placed with her paternal grandparents and  
13 supervised visits were to occur once a week. Ms. Castillo did not receive any records  
14 regarding drug tests from Superior Drug Testing but was aware that Father had called  
15 in on one occasion. Father reported to the Department that he was living in different  
16 places at the time, including with a roommate in a converted garage, in his car, and  
17 in a church office. To Ms. Castillo's knowledge, Father did not have a steady job in  
18 2014, although he did report having some electrical work. Father reported to Ms.  
19 Castillo that he was receiving treatment but she was unable to confirm that. In an

1 attempt to confirm Father's reports, the Department reached out to La Frontera a  
2 number of times but was unable to reach them due to La Frontera's transition and  
3 ultimate closure. Ms. Castillo testified that the Department was looking for progress  
4 on sobriety, mental health, as well as stable housing and employment, but she did not  
5 see that Father made any progress while she was involved in the case. Ms. Castillo  
6 did not believe Father could safely parent Child at the time of the hearing.

7 {13} Ms. Dominguez, one of Father's case workers, testified that she was assigned  
8 to Father's case in June 2015. Ms. Dominguez discussed Father's treatment plan with  
9 him face-to-face in July 2015, at which time Father indicated he was already aware  
10 of the plan. Ms. Dominguez made a substance abuse referral to Nava in June 2015  
11 and followed up with them approximately six times to monitor Father's progress.  
12 Father was informed of the referral in June or July 2015 and was informed that Nava  
13 was going to see him for substance abuse, domestic violence, and mental health. Ms.  
14 Dominguez informed Father that Nava would be calling, and then later, when Father  
15 did not receive a call, he was told to call Nava. Father completed his assessment with  
16 Nava on November 30, 2015. Per the treatment plan, Father signed releases when  
17 asked by Ms. Dominguez and provided names to the Department "for relative  
18 placement." Ms. Dominguez discussed random drug testing with Father, and he  
19 provided one sample for a hair follicle test and one sample for a urinalysis test. Ms.

1 Dominguez inspected the office where Father was living and noted that there was no  
2 second bedroom where Child could stay, and it was not an appropriate living space  
3 for Child. Father indicated to Ms. Dominguez that he was looking for an apartment  
4 that would be appropriate for Child, but Ms. Dominguez testified that he was still  
5 living in the office at the end of October 2015. To Ms. Dominguez's knowledge,  
6 Father had not completed any domestic violence program.

7 {14} As to visitation, which was also part of the treatment plan, Father initially had  
8 visits with Child through Father's parents. However, in August 2015, after a family  
9 centered meeting that Father missed, Child was moved to Wade C.'s home and a  
10 referral was made to Family Youth, Inc. (FYI) to assist with supervised visitation.  
11 Father was told to contact FYI to fill out an intake form for visitation. Father  
12 contacted FYI in November 2015, and to Ms. Dominguez's knowledge, he attended  
13 one visit and missed one visit. When Ms. Dominguez first took over the case in June  
14 2015, she had regular contact with Father. However, it became difficult to reach  
15 Father beginning in the middle of July/August 2015. In the months of August through  
16 November 2015, she was only able to speak with Father once a month. Ms.  
17 Dominguez did not believe Father was able to meet Child's needs at the time of the  
18 hearing. He had not alleviated the causes and conditions that brought Child into  
19 custody, nor would he be able to in the foreseeable future.

1 {15} Father was the final witness to testify. Father testified that he secured housing  
2 and that he had been living there for the past two and a half months. Father performs  
3 electrical work for his landlords, their family, and also for his father. Father testified  
4 that he had approximately five Department case workers over the course of the case  
5 and that he had difficulty with the treatment plan because of his unpredictable work  
6 schedule. He testified that he sees a psychiatrist once every three months, and he is  
7 prescribed medication. He also stated that he has received a variety of mental health  
8 diagnoses. Father also testified that, in August 2014, he was hit by a drunk driver and  
9 suffered a back injury and that he informed Ms. Dominguez of that injury. Father  
10 stated that he was misinformed about the family centered meeting in August 2015,  
11 and he felt “left in the dark.” Father testified that he attended a parenting class, as  
12 well as individual and group therapy at La Frontera in 2014. Father expressed that he  
13 loved Child and would do what it took to work on his mental health issues. He  
14 requested that he be permitted to attend “rehab” and then be allowed a month, after  
15 completing rehab, to show that he could meet Child’s needs. On cross-examination,  
16 Father admitted to having been arrested and charged in El Paso, Texas in September  
17 2015 for drug paraphernalia.

18 {16} The district court entered findings of fact and conclusions of law on January  
19 28, 2016, concluding in relevant part that Father had not alleviated the causes and

1 conditions that brought Child into custody and that the causes and conditions were  
2 unlikely to change in the foreseeable future despite reasonable efforts by the  
3 Department to assist Father. An order terminating Father’s parental rights was filed  
4 on February 10, 2016, and this appeal followed.

## 5 **DISCUSSION**

6 {17} On appeal, Father makes two arguments: (1) that the district court erred in not  
7 limiting the evidence to events that occurred after the first termination of parental  
8 rights hearing, and (2) that there was insufficient evidence Father had not alleviated  
9 the causes and conditions that led to Child being taken into custody by the  
10 Department or that he would not do so in the foreseeable future. We address each  
11 argument in turn.

### 12 **I. Limitation on Evidence**

13 {18} Father argues that under the reasoning of *State ex rel. Children, Youth &*  
14 *Families Department v. Benjamin O. (Benjamin O. I)*, 2007-NMCA-070, 141 N.M.  
15 692, 160 P.3d 601, the district court erred in failing to limit evidence at the second  
16 hearing to events that occurred after the first hearing. To the extent our analysis  
17 requires interpretation of the Abuse and Neglect Act, NMSA 1978, §§ 32A-4-1 to -34  
18 (1993, as amended through 2016), our review is de novo. *Benjamin O. I*, 2007-  
19 NMCA-070, ¶ 24. Before addressing the parties’ specific arguments regarding any

1 limitation on the evidence in this case, we find it useful to give a brief history of the  
2 *Benjamin O.* cases, including the 2007 case upon which Father relies.

3 {19} The first case in the *Benjamin O.* saga, *State ex rel. Children, Youth & Families*  
4 *Department v. Shawna C.*, 2005-NMCA-066, 137 N.M. 687, 114 P.3d 367, dealt with  
5 the district court’s adjudication that the mother and the father abused and neglected  
6 their daughter. *Id.* ¶ 1. In *Shawna C.*, this Court reversed the adjudication of abuse or  
7 neglect as to the father, noting that “[e]vidence of [the f]ather’s somewhat aged  
8 criminal history, his anger, his mental health issues as diagnosed by the psychologist,  
9 and the fact that he ‘permitted’ [his mother] to care for [the c]hild while [his mother]  
10 ingested drugs, while not reflecting exemplary behavior, does not support anything  
11 more than a vague inference of future harm.” *Id.* ¶ 22. However, while the parents’  
12 appeal as to the adjudication was pending, the district court continued to monitor the  
13 case, and the Department ultimately filed a motion to terminate the parental rights of  
14 both parents. *Id.* ¶¶ 7-12; *see Benjamin O. I*, 2007-NMCA-070, ¶ 1.

15 {20} The parties learned of this Court’s opinion in *Shawna C.* on the last day of the  
16 hearing on the Department’s motion to terminate parental rights as to the mother and  
17 the father, and upon learning of that opinion, the district court ordered the hearing  
18 continued and asked that briefs be submitted by the parties on the issues raised by the  
19 opinion in *Shawna C. Benjamin O. I*, 2007-NMCA-070, ¶¶ 13, 14. After considering

1 both parties' arguments regarding the district court's role post-*Shawna C.*, the court  
2 ruled that it had jurisdiction to hear the motion to terminate and granted the  
3 Department's request to conduct further investigation with respect to the father and  
4 to reopen the termination hearing if necessary. *Benjamin O. I*, 2007-NMCA-070,  
5 ¶¶ 14-18. Less than two months after the adjudication was reversed, the Department  
6 filed supplemental allegations regarding the father in support of its motion to  
7 terminate his parental rights, and after the Department presented additional evidence,  
8 the father's rights were terminated. *Id.* ¶¶ 19-22. That termination was appealed and  
9 resulted in this Court's opinion in *Benjamin O. I*, 2007-NMCA-070.

10 {21} In *Benjamin O. I*, we stated that the issue presented was "what happens after  
11 an adjudication of abuse or neglect is reversed during termination of parental rights  
12 proceedings." *Id.* ¶ 23. In analyzing the father's arguments on appeal, we held that  
13 "[w]hile we do not disagree with [the f]ather's assertion that the district court may not  
14 rely on an adjudication of abuse or neglect that has been reversed on substantive  
15 grounds," we were not convinced that the district court so relied, and we specifically  
16 noted that the father's rights could still be terminated based on his current inability  
17 to care for the child. *Id.* ¶ 33. Although we held that the father's rights could  
18 ultimately be terminated, we reversed the district court's order terminating his

1 parental rights and remanded the case due to a lack of specific findings by the district  
2 court. *Id.* ¶¶ 33, 47-48.

3 {22} Approximately one year after we issued our opinion in *Benjamin O. I* and  
4 remanded the case, the Department filed an amended motion to terminate the father’s  
5 parental rights. *State ex rel. Children, Youth & Families Dep’t v. Benjamin O.*  
6 (*Benjamin O. II*), 2009-NMCA-039, ¶¶ 7, 10, 146 N.M. 60, 206 P.3d 171. “The  
7 motion realleged the original allegations and the 2005 supplemental allegations[,] . . .  
8 [and] new allegations of abandonment or presumptive abandonment.” *Id.* ¶ 10. After  
9 a three-day hearing on the motion, the district court entered extensive findings of fact  
10 and conclusions of law and entered a judgment terminating the father’s parental  
11 rights. *Id.* That termination was appealed and resulted in our opinion in *Benjamin O.*  
12 *II*, 2009-NMCA-039, in which “we conclude[d] that clear and convincing evidence  
13 supported the district court’s determination that [the f]ather abandoned [the c]hild and  
14 that the district court complied with the requirements of *Benjamin O. [I]*.” *Benjamin*  
15 *O. II*, 2009-NMCA-039, ¶ 42.

16 {23} In the present case, Father argues that our statement in *Benjamin O. I* that the  
17 Department could seek termination by bringing “new or current allegations of abuse,  
18 neglect, or abandonment to the district court’s attention” means that termination can  
19 only be pursued based on facts that occurred after the district court’s denial of the

1 first motion to terminate. 2007-NMCA-070, ¶ 39. Father argues that, because the  
2 court in this case denied the Department’s first motion to terminate due to a lack of  
3 clear and convincing evidence that the statutory requirements for termination had  
4 been satisfied, the Department was limited to presenting evidence of abuse or neglect  
5 after the district court’s June 2015 denial of the Department’s motion. Father argues  
6 that it was unfair to hold past conduct against him, and the focus should have been  
7 on Father’s situation since June 2015.

8 {24} The Department responds that the facts in *Benjamin O. I* are not analogous to  
9 the present case and thus the district court did not err in allowing testimony regarding  
10 events that occurred prior to the first termination hearing. According to the  
11 Department, the issue before this Court in *Benjamin O. I* was “what steps the district  
12 court and [the Department] should take following the appellate reversal on  
13 substantive grounds of a prior adjudication of abuse and neglect while [the  
14 Department] is in the process of attempting to terminate a parent’s parental rights.”  
15 *Id.* ¶ 1. The Department argues that in this case, Father stipulated at the adjudicatory  
16 hearing that Child was neglected and does not challenge the finding of neglect on  
17 appeal. The Department notes that its first attempt to terminate Father’s parental  
18 rights was unsuccessful because it did not present evidence regarding its efforts to  
19 assist Father, and thus the court could not determine whether its efforts were

1 reasonable. The Department argues that the fact the first motion was denied does not  
2 make all preceding evidence irrelevant. Finally, the Department asserts that even if  
3 it was required to limit the evidence presented at the second termination hearing to  
4 events that occurred after the first termination hearing, the judgment is still supported  
5 by substantial evidence, noting Father's ongoing substance abuse and mental health  
6 issues, lack of participation in the process, inconsistent contact with the Department,  
7 and minimal visitation with Child.

8 {25} We hold that to the extent *Benjamin O. I* limits the Department's ability to  
9 present prior evidence when an adjudication is overturned on appeal, it does not apply  
10 here because this case does not deal with a reversed adjudication. None of the  
11 *Benjamin O.* cases stand for the proposition that when a motion for termination of  
12 parental rights is denied, all evidence preceding that denial must be ignored in future  
13 attempts to terminate parental rights. To ignore all preceding evidence when there is  
14 no dispute as to the adjudication of abuse or neglect, which could include a parent's  
15 history of compliance, information about the causes and conditions that led to the  
16 child being taken into custody, attempts to alleviate those causes and conditions, etc.,  
17 would be to limit the district court's access to information that is needed to  
18 appropriately assess whether a parent's parental rights should be terminated. We  
19 decline to extend *Benjamin O. I* because doing so would force courts to make

1 important decisions based on information that is incomplete or without needed  
2 context.

3 {26} Because *Benjamin O. I* is not applicable and because we see no value in  
4 extending its application to this case, we conclude that the district court did not err  
5 in allowing the Department to present evidence of events preceding the first hearing  
6 on the first motion to terminate parental rights.

## 7 **II. Sufficiency of the Evidence**

8 {27} “The standard of proof in cases involving the termination of parental rights is  
9 clear and convincing evidence.” *State ex rel. Children, Youth & Families Dep’t v.*  
10 *Vanessa C.*, 2000-NMCA-025, ¶ 24, 128 N.M. 701, 997 P.2d 833. “Clear and  
11 convincing evidence” is defined as evidence that “instantly tilt[s] the scales in the  
12 affirmative when weighed against the evidence in opposition and the fact[-]finder’s  
13 mind is left with an abiding conviction that the evidence is true.” *In re Termination*  
14 *of Parental Rights of Eventyr J.*, 1995-NMCA-087, ¶ 2, 120 N.M. 463, 902 P.2d 1066  
15 (internal quotation marks and citation omitted). We “view the evidence in the light  
16 most favorable to the prevailing party, and . . . determine therefrom if the mind of the  
17 fact[-]finder could properly have reached an abiding conviction as to the truth of the  
18 fact or facts found.” *State ex rel. Children, Youth & Families Dep’t v. Michelle B.*,

1 2001-NMCA-071, ¶ 12, 130 N.M. 781, 32 P.3d 790 (internal quotation marks and  
2 citation omitted).

3 {28} In this case, the district court terminated Father’s parental rights pursuant to  
4 Section 32A-4-28(B)(2), which provides for termination 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 the  
7 neglect and abuse are unlikely to change in the foreseeable future  
8 despite reasonable efforts by the department or other appropriate agency  
9 to assist the parent in adjusting the conditions that render the parent  
10 unable to properly care for the child.

11 {29} Father does not dispute that Child was a neglected child; however, Father  
12 argues on appeal that there was insufficient evidence that he had not alleviated the  
13 causes and conditions that led to Child being taken into custody or that he would not  
14 do so in the foreseeable future despite reasonable efforts by the Department.  
15 Specifically, he contends that he made efforts to comply with his treatment plan and  
16 was progressing and that the Department failed to make reasonable efforts to assist  
17 him with his treatment plan by not obtaining a clear assessment of his mental health.  
18 Father points to testimony that there were many different Department workers  
19 assigned to his case, that La Frontera closed, and that there was confusion about what  
20 he was required to do with various referrals. He also asserts that he was confused  
21 about the visitation process and attributes his inconsistency to the car collision that  
22 he was in and to his work schedule. He argues that despite his struggles with the

1 treatment plan, he attended two assessments, participated in two drug tests, was set  
2 up for visitation, had obtained housing, and participated in some classes and therapy  
3 at La Frontera prior to its closure. Father also argues that the Department did not  
4 make reasonable efforts to assist him because he did not receive a clear assessment  
5 of his mental health diagnoses. He asserts that because Dr. Caplan's and Mr.  
6 DeCorte's diagnoses were different, he never received accurate and definitive  
7 diagnoses and did not receive appropriate treatment.

8 {30} The Department responds that the fact Dr. Caplan's and Mr. DeCorte's  
9 assessments differed does not mean that they were inaccurate or that the Department's  
10 efforts to assist Father were unreasonable. The Department notes that the assessments  
11 occurred a year apart, and the circumstances surrounding each evaluation were  
12 different. The Department also highlights a number of efforts to assist Father,  
13 including its numerous, appropriate referrals to assist Father in addressing his issues,  
14 its attempts to maintain contact with Father, and its efforts to give Father an  
15 opportunity to regularly visit with Child. The Department then disputes Father's  
16 position that clear and convincing evidence did not support the district court's finding  
17 that Father had not alleviated the causes and conditions of neglect or would be unable  
18 to in the foreseeable future. In support of its argument, the Department notes that  
19 Father had made little to no progress, did not consistently participate in counseling,

1 did not maintain contact despite efforts by the Department, and did not show how his  
2 work schedule prevented him from participating in treatment. The Department also  
3 argues that the evidence Father construes as showing effort instead shows that Father  
4 made no effort to timely follow through with recommendations. The Department  
5 states that Father had not started therapy and group sessions, had only participated in  
6 two drug tests over a six-month period, only made minimal effort to visit with Child,  
7 and, in fact, had missed a visit just one week prior to the termination hearing. The  
8 Department highlights the fact that Child had been in custody for over two years by  
9 the time of the second termination hearing and argues that it is reasonable to infer that  
10 he would not be able to address his substance abuse and mental health issues in the  
11 foreseeable future.

12 {31} We hold that there was sufficient evidence for the district court to conclude that  
13 Father had not alleviated the causes and conditions that led to Child being taken into  
14 custody and that he would not do so in the foreseeable future, despite reasonable  
15 efforts by the Department to assist Father. As noted by the Department, Father was  
16 not consistent in attending treatment or counseling services despite numerous  
17 referrals and the fact that both Dr. Caplan and Mr. DeCorte indicated that services  
18 were needed. Father missed two substance abuse assessments and only completed a  
19 mental health assessment less than two weeks prior to the second termination hearing.

1 Father's participation in drug screenings was inconsistent, and he attributed his lack  
2 of participation to his schedule. Father waited two months to fill out the intake  
3 paperwork with FYI to begin supervised visitation with Child once she was moved  
4 to her uncle's residence, and although Father testified that he had recently secured  
5 housing, the court found that he did not have stable housing as required by his  
6 treatment plan, and the Department had not confirmed nor conducted a home visit of  
7 that residence. Father was inconsistent in his contact with the Department, even  
8 though he was ordered to maintain contact as part of his treatment plan.

9 {32} Although Father attempts to bolster his position by highlighting evidence that  
10 he believes shows some progress, our standard of review requires us to view the  
11 evidence in the light most favorable to the prevailing party and determine whether the  
12 clear and convincing evidence standard was met, "not whether the trial court could  
13 have reached a different conclusion." *State ex rel. Children, Youth & Families Dep't*  
14 *v. Patricia H.*, 2002-NMCA-061, ¶ 31, 132 N.M. 299, 47 P.3d 859. Given that  
15 standard and the evidence presented in this case, we conclude that the evidence  
16 supported termination of Father's parental rights in Child.

## 17 **CONCLUSION**

18 {33} For the reasons set forth in this opinion, we affirm.

1 {34} **IT IS SO ORDERED.**

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**JONATHAN B. SUTIN, Judge**

4 **WE CONCUR:**

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6 **M. MONICA ZAMORA, Judge**

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8 **HENRY M. BOHNHOFF, Judge**