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

7 **DEANNA VILLANUEVA,**

8 Petitioner-Appellee,

9 v.

NO. 31,153

10 **ALEJANDRO VILLANUEVA,**

11 Respondent-Appellee,

12 v.

13 **STATE OF NEW MEXICO, ex rel.,**
14 **HUMAN SERVICES DEPARTMENT,**

15 Intervenor-Appellant.

16 **APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY**

17 **Henry R. Quintero, District Judge**

18 Deanna Villanueva

19 Silver City, NM

20 Pro Se Appellee

21 Alejandro Villanueva

22 Las Cruces, NM

23 Pro Se Appellee

24 Human Services Department

1 Child Support Enforcement Division
2 Mary Elizabeth Price, Special Assistant Attorney General
3 for Appellant

4 **MEMORANDUM OPINION**

5 **VANZI, Judge.**

6 The Human Services Department (HSD) is appealing from a district court
7 arrears judgment awarding both Petitioner Deanna Villanueva and HSD back child
8 support. We issued a calendar notice proposing to affirm. HSD has filed a timely
9 memorandum in opposition. [Ct. App. File at blue clip] Father has filed a pro se
10 memorandum in support of our calendar notice. We affirm.

11 The district court determined that Respondent Alejandro Villanueva was in
12 child support arrears and must reimburse HSD in an amount that reflected public
13 assistance benefits paid to Petitioner. [RP 238-39] The district court also terminated
14 Respondent's obligation to pay additional child support. [RP 239] In this appeal,
15 HSD is challenging the termination of the support obligation. *See* NMSA 1978, § 27-
16 2-27(A) (2004). In its order on HSD's motion for new trial, the district court found
17 that Petitioner had moved to Arizona in early 2011, and that under the circumstances,
18 HSD's proper response would be to terminate any further public assistance benefits
19 to Petitioner. [RP 250-51] Given the court's factual findings, which were, in effect,
20 a determination of non-residency, Petitioner would no longer be entitled to public

1 assistance. *See* NMSA 1978, § 27-2-4(F) (1975) (stating that recipient must be a
2 resident of New Mexico). Accordingly, our calendar notice proposed to affirm the
3 court's ruling that HSD would no longer be able to enforce child support under
4 Section 27-2-27(A).

5 In its memorandum in opposition, HSD continues to make factual assertions
6 with respect to Petitioner's eligibility for public assistance and payments that had been
7 paid out subsequent to the court's ruling. HSD correctly sets forth its legal authority
8 to pursue reimbursement for public assistance payments. We do not deem it necessary
9 to resolve the issue of additional public assistance benefits that may have been made
10 and may permit reimbursement here. As we stated in our calendar notice, HSD may
11 use these payments as a basis for seeking reimbursement in a separate action. To the
12 extent that the district court terminated Respondent's child support obligation, we
13 believe that this was directed to specific circumstances that existed at that time and
14 would not prevent HSD from using its legal authority to seek reimbursement in a
15 separate action. In short, we do not believe that the order appealed from prevents
16 HSD from responding to events as they play out. It is better procedurally to create an
17 evidentiary record in a separate proceeding than to play out this independent action
18 for each change in circumstances.

19 For the reasons set forth above, we affirm.

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IT IS SO ORDERED.

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LINDA M. VANZI, Judge

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WE CONCUR:

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JONATHAN B. SUTIN, Judge

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MICHAEL E. VIGIL, Judge