

NEW MEXICO ABUSE AND NEGLECT ACT IMPORTANT CASES

This list introduces important cases and principles that arise in abuse and neglect proceedings. While this list may facilitate further legal research, it is not exhaustive and should not be used in lieu of actual research. Please note that the parenthetical descriptions highlight important principles, but may not summarize an entire case nor cover all of the holdings in a case.

Cases are listed in reverse chronological order.

SUPREME COURT CASES

1. *State v. Strauch*, 2015-NMSC-009 (explaining that §32A-4-3 means every person has a duty to report child abuse, not just those persons whose professions are listed in the statute; clarifying that the duty to report is not limited to professionals when acting in their official capacity, but applies to government and private practitioners equally; and holding that the therapist could be compelled to disclose statements made by the alleged abuser about child abuse in court because the evidentiary rule permits mental health professionals to disclose information they are required to report by law).
2. *In re Mahdjid B. & Aliah B. State ex rel. CYFD v. Djamila B.*, 2014-NMSC-003 (holding that kinship guardians have a statutory right to a revocation hearing in which the Rules of Evidence apply before being dismissed from an abuse and neglect proceeding; the revocation hearing could occur in the abuse and neglect case; and kinship guardians are not necessary and indispensable parties to abuse and neglect proceedings because the necessary and indispensable party concept is derived from the Rules of Civil Procedure, not the Children's Court Rules).
3. *In re Grace H., State ex rel. CYFD v. Maurice H.*, 2014-NMSC-034 (clarifying that TPR should be based on abandonment pursuant to §32A-4-28(B)(1) *only* when a parent is completely absent prior to termination and that §32A-4-28(B)(2), neglect due to abandonment, should be used whenever a parent is present and willing to participate prior to filing the motion for termination of parental rights).
4. *State ex rel. CYFD v. Marlene C.*, 2011-NMSC-005 (in a contested Indian Child Welfare Act (ICWA) case, the findings required by Sections 1912(d) and (e) of ICWA must be made during the adjudicatory hearing because it incorporates procedural due process protections and applies a stringent standard of proof that parallel those required by ICWA). *See also State ex rel. CYFD v. Marlene C.*, 2009-NMCA-058, (allowing appeal despite

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failure to preserve because ICWA allows parent to petition *any* court of competent jurisdiction for redress of violations of certain sections of ICWA; reversing adjudication of neglect in case where Mother consented to temporary custody, but contested all allegations at the adjudication, because CYFD never offered expert testimony as required by ICWA).

5. ***In re Damion M.C., State ex rel. CYFD v. Kathleen D.C.***, 2007-NMSC-018, ¶ 16 (indigent parent may be entitled to the appointment of an expert witness at the State's expense in an abuse and neglect proceeding).
6. ***In re Pamela A.G., State ex rel. CYFD v. Pamela R.D.G. & Frank G.***, 2006-NMSC-019 (affirming the Court of Appeals and analyzing admissibility of hearsay evidence under catch-all exception to the hearsay rule in a sex abuse case involving a young child where the child does not testify at trial). ***See also State ex rel. CYFD v. Frank G. & Pamela G.***, 2005-NMCA-026 (adjudication that child is abused or neglected is a final order for purposes of appeal; upholds the trial court's admission of hearsay evidence (child's statements) under the catch-all exception and the exception for statements made for purposes of medical diagnosis or treatment).
7. ***State ex rel. CYFD v. Mafin M.***, 2003-NMSC-015 (Parents have the right to participate meaningfully at trial even when not physically present. The parent's right to meaningful participation must be balanced against the children's best interests. In this case, where Mother had 13 months to prepare for the TPR trial after its commencement, but still had not significantly improved her condition, the court determined that additional delays would have "been unwarranted and infringed upon the State's compelling interest in the welfare of the boys" and that the children's need for "permanency and stability in their lives" meant that "termination proceedings should not continue indefinitely.").
8. ***State ex rel. CYFD v. Joe R., In re Sara R.***, 1997-NMSC-038 (discussing the differences between custody and placement).
9. ***In re Adoption of J.J.B.***, 119 N.M. 638 (1995) (parents' due process rights at TPR require clear and convincing evidence; parents' rights are not absolute; described standards for TPR on the grounds of presumptive abandonment; even when noncustodial parent found to be fit, court may consider the existence of extraordinary circumstances that make custody with noncustodial parent not in the child's best interests).
10. ***In re Termination of the Parental Rights of Ronald A.***, 110 N.M. 454 (1990) (emphasizing the CCA's duty to treat parents with scrupulous fairness).

COURT OF APPEALS CASES

1. ***State ex rel. CYFD v. Yodell B.***, 2016-NMCA-029, ¶¶ 26, 29 (filed Dec. 21, 2015) (active efforts are more involved and less passive than reasonable efforts; reversing TPR because CYFD "took a passive role by shouldering Father with the burden of not only

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independently locating and obtaining services, but also ensuring that service providers were communicating with the Department about his progress.”).

2. ***State ex rel. CYFD v. Casey J.***, 2015-NMCA- ____ (No. 33,409, filed June 22, 2015) (explaining that §1912(d) of ICWA, requiring the agency to make active efforts to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family, does not apply to the placement preferences listed in §1915, and holding that there was good cause to deviate from ICWA’s placement preferences when the Department, in collaboration with the Navajo Nation, repeatedly attempted to identify and license family members, other members of the Navajo Nation, and other Native American placements; when the children’s cultural needs were being addressed in their placements; and when the Navajo Nation never objected to the children’s placements).
3. ***State ex re. CYFD v. Melvin C.***, 2015-NMCA-067 (explaining that when a parent has been adjudicated on allegations of abuse and neglect, the court must proceed to TPR on the basis of §32A-4-28(B)(2), which triggers certain statutory requirements (including a treatment plan and subsequent judicial review and permanency hearings before termination), and may not terminate on the basis of presumptive abandonment, which does not trigger the same procedural safeguards).
4. ***Chris & Christine L. v. Vanessa O. & Adon F.***, 2013-NMCA-107 (court’s failure to advise parent of right to counsel if indigent under the Adoption Act was fundamental error requiring reversal of the final decree of adoption).
5. ***State ex rel. CYFD v. Marsalee P.***, 2013-NMCA-062 (reversing TPR because CYFD had not met its obligation under §32A-4-22(I) to pursue the children’s enrollment in the Navajo Nation; explaining that the district court has an affirmative obligation to make sure that the requirements of the Abuse and Neglect Act are followed “prior to the termination of something as fundamental as the parental rights to a child”).
6. ***State ex rel. CYFD v. Laura J.***, 2013-NMCA-057 (decided 2012) (child’s cousin, who had intervened in the children’s court in order to be considered for placement purposes, had standing to appeal; CYFD did not make reasonable efforts to locate relatives for placement, as required by §32A-4-25.1(D), and remanded so that CYFD could consider whether the cousin could serve as an appropriate placement for the child).
7. ***State ex rel. CYFD v. Carl C.***, 2012-NMCA-065 (holding that § 32A-4-2(B)(1) does not require the trial court to determine *which* parent’s actions put a child at risk, only that *a* parent, guardian or custodian caused the abuse).
8. ***State ex rel. CYFD v. Steve C.***, 2012-NMCA-045 (amending the petition after closing arguments to include an allegation of abuse for the first time violates due process).
9. ***State ex rel. CYFD v. Lance K.***, 2009-NMCA-286 (the court may not rely on out-dated evidence).

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10. *State ex rel. CYFD v. Benjamin O.*, 2009-NMCA-039 (the third opinion in a series discusses presumptive abandonment, court procedures to be followed after reversal of an adjudication of abuse or neglect, and reasonable efforts toward reunification; affirms the TPR despite the earlier reversed adjudication). *See also State ex rel. CYFD v. Benjamin O.*, 2007-NMCA-070; *State ex rel. CYFD v. Shawna C.*, 2005-NMCA-066.
11. *State ex rel. CYFD v. Johnny S.*, 2009-NMCA-032 (applicability of the ADA in TPR cases must be proved by Respondent). *See also State ex rel. CYFD, In re John D.*, 1997-NMCA-019 (explaining that the ADA can apply in TPR proceedings based on presumptive abandonment even though reasonable efforts need not be demonstrated if the parent could show that because of the State's violation of the ADA she lacked responsibility for the destruction of the parent-child relationship).
12. *State ex rel. CYFD v. John R., In re Sabrina R.*, 2009-NMCA-025 (describing when the court must appoint counsel (as distinct from a GAL) for a child turning 14).
13. *Malissa C. v. Matthew Wayne H.*, 2008-NMCA-128 (jurisdiction under the Uniform Child Custody Jurisdiction Act).
14. *State ex rel. CYFD v. Lisa A.*, 2008-NMCA-087 (reiterating holding of *In re Mary L.*, 108 N.M. 702 (Ct. App. 1989), that noncustodial parent is entitled to custody unless CYFD can prove the noncustodial parent is unfit, but explaining that the trial court should consider whether any "extraordinary circumstances" exist that render immediate custody with the noncustodial parent not in the best interest of the child).
15. *State ex rel. CYFD v. Michael T.*, 2007-NMCA-163 (exclusionary rule does not apply to civil abuse or neglect cases; describing the meaning of "best interests of the child").
16. *State ex rel. CYFD v. Brandy S.*, 2007-NMCA-135 (disapproving of the practice of taking judicial notice of the case file in TPR proceedings, especially after the close of evidence).
17. *State ex rel. CYFD v. Amanda M.*, 2006-NMCA-133 (presuming ineffective assistance of counsel and extending jurisdiction over the appeal where the notice of appeal from an adjudication of abuse and neglect is filed late).
18. *State ex rel. CYFD v. Athena H.*, 2006-NMCA-113 (mere compliance with a treatment plan, without changes in behavior that reduce the risk of harm to the children, does not guarantee return of the children to the parents).
19. *State ex rel. CYFD v. Joseph M.*, 2006-NMCA-029 (CYFD's efforts will not be considered reasonable if CYFD does not adequately inform a parent of the specific conditions that must change in order to avoid TPR; a parent's rights may not be terminated simply because "a child might be better off in a different environment.").
20. *State ex rel. CYFD v. Shawna C.*, 2005-NMCA-066, ¶ 30 (parents' unfavorable personal status, such as low IQ, poverty, mental illness, incarceration, prior convictions, or

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addiction, is relevant only to the extent that it causes abuse or neglect; the court's focus should be on the parent's acts or omissions in their caretaking function; finding of abuse or neglect cannot be based solely on a parent's status).

21. *State ex rel. CYFD v. Maria C.*, 2004-NMCA-083 (district court has affirmative duty to protect parents' due process rights in abuse or neglect proceedings; procedural due process rights attach at permanency hearings, which are "critical stages" of an abuse or neglect case).
22. *State ex rel. CYFD v. Amy B.*, 2003-NMCA-017 (explaining that aggravated circumstances provision is constitutional and does not create a presumption of unfitness, but gives the trial court discretion not to require reasonable efforts if warranted by all of the relevant facts).
23. *State ex rel. CYFD, In re Elizabeth H. and Concerning Patricia H.*, 2002-NMCA-061, ¶ 27 ("CYFD is only required to make reasonable efforts, not efforts subject to conditions unilaterally imposed by the parent.").
24. *State ex rel. CYFD v. Vanessa C.*, 2000-NMCA-025 (cautioning the district court and parties against making futility findings at hearings during which the Rules of Evidence do not apply).
25. *State ex rel. CYFD v. Stella P.*, 1999-NMCA-100 (describing the respective roles and obligations of the Children's Court Attorney, parent's attorney, and GAL for the parent where mentally ill parent purportedly waives her right to contest TPR; even in the absence of any objection, the trial court has a duty to inquire as to whether a parent is intentionally waiving the entire right to contest termination proceedings).
26. *State ex rel. CYFD v. Alicia P.*, 1999-NMCA-098 (decided in 1998) (because parents are entitled to appeal the TPR, trial counsel is obligated to present parent's issues in accordance with the guidelines established in *State v. Franklin*, 78 N.M. 127 (1967)); see also Children's Court Rule 10-352.
27. *State ex rel. CYFD v. Tammy S.*, 1999-NMCA-009 (decided in 1998) (statutory right to counsel implies right to effective assistance of counsel; attorney must fulfill counseling obligations to client).
28. *State ex rel. CYFD, In re Esperanza M.*, 1998-NMCA-039 (describing the scope of the GAL's role; affirming admission of a pediatrician's testimony about a child's statements that her father had sexually abused her under the hearsay exception for statements made for the purposes of medical diagnosis or treatment, but reversing the admission of the psychologist's testimony about the child's identification of her father as her abuser because the psychologist acknowledged that she did not need to know the identity of the alleged perpetrator to form her opinions or provide treatment. The Court also reversed the admission of hearsay testimony of a social worker and school counselor under the same exception because a proper foundation had not been laid for this exception.).

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29. *State ex rel. CYFD, In re George F. and Frank F.*, 1998-NMCA-119 (GALs are not prohibited by Rule 16-402 from communicating directly with social workers to gain factual information relevant to representing the child).
30. *State ex rel. CYFD, In re A.H.*, 1997-NMCA-118 (CYFD has duty to investigate allegations of abuse and court has duty to safeguard the children during the investigation; safeguarding may include granting custody to CYFD).
31. *State ex rel. CYFD, In re Termination of Parental Rights of Lilli L.*, 1996-NMCA-014, (failure to appoint a guardian ad litem for minor respondent did not violate respondent's due process rights because she was represented by counsel).
32. *State ex rel. HSD, In re Jacinta M.*, 1988-NMCA-100, ¶ 9 (once CYFD has legal custody, the children's court lacks authority to prohibit the department from giving physical custody to a particular person; sexual orientation alone is not enough to support a conclusion that a person cannot provide a proper environment).
33. *In re Jason Y.*, 106 N.M. 406 (Ct. App. 1987) (mental illness is not a defense to TPR).
34. *In re Samantha D.*, 106 N.M. 184 (Ct. App. 1987) (best interests of children is paramount concern; parents do not have absolute right to their children).
35. *State ex rel. HSD v. Peterson*, 103 N.M. 617 (Ct. App. 1985) (incarceration alone is insufficient to demonstrate abandonment; "Father may not delegate parental obligations to mother and then be held harmless when she neglects these obligations.").