

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

Court of Appeals of New Mexico  
Filed 5/6/2024 11:22 AM

2 **RICHARD K. HILL,**



Ramon J. Maestas  
Chief Clerk

3 Petitioner-Appellant,

4 v.

**No. A-1-CA-41264**

5 **MERCEDE L. HILL,**

6 Respondent-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**

8 **Jane Shuler Gray, District Court Judge**

9 Eric D. Dixon, Attorney and Counselor at Law, P.A.

10 Eric D. Dixon

11 Portales, NM

12 for Appellant

13 Grandjean Law Firm, LLC

14 Jeff Grandjean

15 Roswell, NM

16 for Appellee

17 **MEMORANDUM OPINION**

18 **HANISEE, Judge.**

19 {1} Petitioner is appealing from an order granting a motion to set aside a judgment

20 that had approved Respondent's voluntary relinquishment of her parental rights. [RP

21 84] We issued a calendar notice proposing to affirm. Petitioner has responded with

22 a memorandum in opposition. We affirm.

1 {2} The parties were divorced in December 2020, and were subject to a marital  
2 settlement agreement that gave them joint custody of their young child. [RP 24] In  
3 September 2021, Petitioner’s counsel entered an appearance and filed a request for  
4 a hearing to consider Respondent’s voluntary relinquishment of her rights. [RP 43]  
5 The request for a hearing was not accompanied by any written motion or  
6 documentation that specified any statutory basis for the voluntary relinquishment.  
7 After the hearing, the district court approved the voluntary relinquishment of  
8 Respondent’s parental rights after finding that she had been fully advised of her  
9 rights and had waived counsel. [RP 48] Eight months later, Respondent filed a  
10 motion to set aside the relinquishment order on the ground that no statutory basis  
11 had been satisfied. [RP 55] The district court granted Respondent’s motion, and set  
12 aside its earlier ruling because it was not based on either one of the two statutory  
13 grounds available to support voluntary termination of parental rights. [RP 84] *See*  
14 Rule 1-060(B)(4) NMRA.

15 {3} As we observed in our calendar notice, we are aware of only two statutes that  
16 authorize the voluntary relinquishment of parental rights: the Adoption Act, NMSA  
17 1978, §§ 32A-5-1 to -45 (1993, as amended through 2022), and the Abuse and  
18 Neglect Act, NMSA 1978, §§ 32A-4-1 to -35 (1993, as amended through 2023).  
19 Petitioner argues that Respondent waived her statutory argument by failing to  
20 specify which specific statutory provisions had not been satisfied. [MIO 6] However,


1 Respondent raised the statutory issue, and alerted the district court to the lack of any  
2 compliance. [RP 55]

3 {4} Petitioner does not establish that a specific statutory ground for termination  
4 was satisfied in this case. *See In re Adoption Petition of Darla D.*, 2016-NMCA-  
5 093, ¶¶ 14-15, 382 P.3d 1000 (noting that strict statutory compliance under the  
6 Adoption Act is required). Although Petitioner notes that *Darla D.* addressed the  
7 right to counsel, and Respondent waived this right in the present case, the strict  
8 compliance standard for either statutory process for terminating parental rights must  
9 be followed. [MIO 5] *State ex rel. Child., Youth & Fams. Dep't v. Paul P., Jr.*, 1999-  
10 NMCA-077, ¶ 15, 127 N.M. 492, 983 P.2d 1011 (noting that statutory provisions  
11 relating to termination of parental rights are intended to protect the fundamental  
12 rights of parents).

13 {5} In this case, neither a formal adoption proceeding nor an Abuse and Neglect  
14 Act proceeding had been initiated. Instead, Petitioner treated this as a modification  
15 of child custody, with Respondent not just giving up her custody, but relinquishing  
16 her parental rights. Because this does not satisfy the statutory requirements, we  
17 conclude that the earlier district court judgment ruling was properly deemed to be  
18 void. *See State ex rel. State Highway & Transp. Dep't v. City of Sunland Park*, 1999-  
19 NMCA-143, ¶ 27, 128 N.M. 371, 993 P.2d 85 (setting aside an order on grounds that  
20 it was not carried out in compliance with the governing statutes).

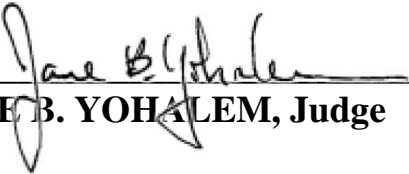
1 {6} For the reasons set forth above, we affirm.

2 {7} **IT IS SO ORDERED.**

3   
4 **J. MILES HANISEE, Judge**

5 **WE CONCUR:**

6   
7 **ZACHARY A. IVES, Judge**

8   
9 **JANE B. YOHALEM, Judge**