

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re J.C.-1

No. 25-620 (Webster County CC-51-2023-JA-32)

MEMORANDUM DECISION

Petitioner Mother E.S.¹ appeals the Circuit Court of Webster County’s September 2, 2025, order terminating her parental and custodial rights to J.C.-1,² arguing that the circuit court erred in adjudicating her as a neglecting parent, denying her an improvement period, and terminating her rights. Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate. *See* W. Va. R. App. P. 21.

Prior to the initiation of the proceedings giving rise to this appeal, the petitioner pled guilty to charges of willful retention of national defense information and international parental kidnapping after taking the child to Mexico with national security information. In 2021, a federal court sentenced her to ninety-seven months of incarceration at a federal correction facility in Texas. In 2022, the child’s stepmother filed a petition to adopt the child, alleging that the petitioner had abandoned the child due to her incarceration. The circuit court denied the adoption petition.

Turning to the proceedings giving rise to this appeal, the father filed a child abuse and neglect petition against the petitioner in September 2023, alleging that she had abandoned the child and failed to provide the child with a safe and suitable home or any financial and emotional support. The circuit court added the DHS as a party and scheduled an adjudicatory hearing. At the hearing, the petitioner did not appear but was represented by counsel. The father testified to the details of the petitioner’s crimes, conviction, and resulting sentence. The father also testified that the petitioner had been incarcerated since 2021, was prohibited from contacting the child, had not provided any child support in the preceding six months, and had only provided a total of \$100 in child support. The petitioner’s counsel then argued that *res judicata* and collateral estoppel precluded the court from considering the issue of abandonment because it was previously litigated. After taking the issue under advisement, the court entered an order finding that the petitioner’s

¹ The petitioner mother appears by counsel Steven B. Nanners. The respondent father J.C.-2 appears by counsel Daniel K. Armstrong. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General A. Tyler Reseter. Counsel Mackenzie A. Holdren appears as the child’s guardian ad litem.

² We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e). Because the child and the father share the same initials, we use numbers to differentiate them.

incarceration rendered her incapable of caring for the child because she was unable to provide food, clothing, shelter, supervision, medical care, or education to the child. Thus, the court adjudicated J.C.-1 as a neglected child. Thereafter, the petitioner filed a motion for a post-adjudicatory improvement period.

After multiple continuances, the circuit court held a final dispositional hearing in August 2025. At the outset, the court took judicial notice of all prior testimony and evidence. The petitioner testified that she would be released from prison no later than July 2026, at which point she would be transferred to a halfway house. When asked whether she would be able to participate in services or contact the child upon her release, she explained that both would be up to her probation officer. After considering the evidence, the court denied the petitioner's motion for an improvement period, finding that the petitioner failed to demonstrate that she could participate. The court further found that the petitioner had not seen the child for nearly six years and was not permitted to have contact with the child due to her criminal conviction. The court observed that the petitioner "will not be released from jail for at least another year and thereafter will be in a halfway house setting; therefore, she [could not] provide fit, apt, and suitable housing for the child." Thus, the court concluded that "there [was] no less restrictive alternative to protect the health, safety, and welfare of [the child] than the termination of parental and custodial rights." As such, the circuit court terminated the petitioner's parental and custodial rights.³ The petitioner appeals from the dispositional order.

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's substantive rulings for abuse of discretion, factual findings are reviewed for clear error, and issues of law are reviewed de novo. Syl. Pt. 1, *In re K.S.*, -- W. Va. --, 930 S.E.2d 400 (2026). Before this Court, the petitioner first argues that the circuit court improperly adjudicated her of neglecting the child because the DHS failed to satisfy its burden of proof.⁴ We disagree. Critically, we have held that "[a] parent's absence from a child's life because of incarceration that results in the *inability* of the parent to provide necessary food, clothing, shelter, medical care, education, or supervision is a form of neglect under the definition of 'neglected child' set forth in West Virginia Code § 49-1-201 (2018)." Syl. Pt. 3, *In re B.P.*, 249 W. Va. 274, 895 S.E.2d 129 (2023) (emphasis added); *see also* W. Va. Code § 49-1-201 (defining "neglected child," in relevant

³ The permanency plan for the child is to remain with the father. We further note that the circuit court specifically terminated the petitioner's "parental, legal, and custodial rights." However, West Virginia Code § 49-4-604(c)(6) permits the termination of only parental, custodial, and guardianship rights. As such, we will address the court's termination of the petitioner's parental and custodial rights only.

⁴ The petitioner also argues that the circuit court erred by refusing to allow her to challenge findings made by the family court. However, because the petitioner fails to provide any analysis or apply any controlling authority in support of this argument, we decline to address it on appeal. *See State v. Larry A.H.*, 230 W. Va. 709, 716, 742 S.E.2d 125, 132 (2013) ("Although we liberally construe briefs in determining issues presented for review, issues . . . mentioned only in passing but [that] are not supported with pertinent authority, are not considered on appeal." (quoting *State v. LaRock*, 196 W.Va. 294, 302, 470 S.E.2d 613, 621 (1996))).

part, as one “[w]hose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent . . . to supply the child with necessary food, clothing, shelter, supervision, medical care, or education”). Here, the father’s uncontradicted testimony at the adjudicatory hearing established that, at the time he filed the abuse and neglect petition, the petitioner’s incarceration had rendered her unable to: (1) care for the child; (2) provide for any of the child’s basic needs; or (3) support the child financially, educationally, or emotionally. On appeal, the petitioner contends only that her “failure to provide financial support to the child does not rise to abuse and neglect” because the family court set her child support obligation to zero due to her incarceration. This argument, however, ignores our prior precedent and the fact that the petitioner’s neglect extended beyond simple financial support. As such, the circuit court had a sufficient basis upon which to find that the petitioner neglected the child, and we discern no error in the circuit court’s adjudication of the petitioner as a neglecting parent.

The petitioner also argues that her adjudication was erroneous because the “matter had already been litigated and denied by the [c]ircuit [c]ourt in [the] [a]doption proceeding.” In support, the petitioner relies on the doctrines of res judicata and collateral estoppel. This Court considered a similar issue in *In re B.C.*, 233 W. Va. 130, 755 S.E.2d 664 (2014). In that case, a mother sought a domestic violence protective order against the father of the child, and then later initiated abuse and neglect proceedings against the father based on the same conduct. The circuit court dismissed the petition, concluding that it was barred by the principles of res judicata and collateral estoppel. However, this Court disagreed, holding that “[a] petition for a domestic violence protective order under W. Va. Code § 48-27-101 et seq., and a petition alleging abuse and/or neglect under W. Va. Code § [49-4-601] et seq., may be filed upon the same facts without consequences under the doctrine of *res judicata* or the doctrine of collateral estoppel.” *In re B.C.*, 233 W. Va. at 133, 755 S.E.2d at 667, Syl. Pt. 6. Critically, the Court explained that one of the key elements required to invoke these doctrines is that “the party in the current lawsuit, against whom either doctrine is being invoked, must be [the] same as [or in privity with] the party in the prior proceeding.” *Id.* at 135, 755 S.E.2d at 669; *see also* Syl. Pt. 4, *Blake v. Charleston Area Med. Ctr., Inc.*, 201 W. Va. 469, 498 S.E.2d 41 (1997) (establishing a three-part test for determining if res judicata bars a claim); Syl. Pt. 1, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995) (establishing a four-part test for determining if collateral estoppel bars an issue). The Court recognized that while an abuse and neglect action “may be initiated by either the [DHS] or ‘a reputable person,’ the action is prosecuted solely on behalf of the State of West Virginia in its role as *parens patriae*.” *In re B.C.*, 233 W. Va. at 133, 755 S.E.2d at 667, Syl. Pt. 5, in part. For that reason, the Court concluded that “the party in interest in a domestic violence action is, as a matter of law, different from the party in interest in an abuse and neglect action.” *Id.* at 138, 755 S.E.2d at 672. Thus, the Court determined because the mother only filed the abuse and neglect petition as “a reputable person,” she was neither the same party nor in privity with the parties in both the domestic violence action and the abuse and neglect action. *Id.*

Similarly, here, the parties in the adoption case were neither the same as nor in privity with the parties in the abuse and neglect case because the DHS was neither a party to nor was it in privity with the parties to the adoption proceeding. Accordingly, the doctrines of res judicata and collateral estoppel do not apply, and the circuit court did not err in adjudicating the petitioner based upon the same facts that the stepmother alleged in the adoption petition. Regardless, we have explained that the doctrines of res judicata and collateral estoppel “must give way when [its]

mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies.” *In re J.L.-1*, No. 21-0848, 2022 WL 4593186, at *4 (W. Va. Sept. 30, 2022) (memorandum decision) (quoting *Wheeler v. Beachcroft, LLC*, 129 A.3d 677, 686 (Conn. 2016)). Indeed, we will “not rigidly enforce [these doctrines] where to do so would plainly defeat the ends of Justice.” *Blake*, 201 W.Va. at 478, 498 S.E.2d at 50) (quoting *Gentry v. Farruggia*, 132 W. Va. 809, 811, 53 S.E.2d 741, 742 (1949)).

Finally, the petitioner argues that the circuit court erred in terminating her parental and custodial rights without affording her the opportunity to participate in an improvement period.⁵ In support of this argument, the petitioner relies on her testimony that she was willing and able to comply with the terms of an improvement period. We find the petitioner’s argument unavailing. Pursuant to West Virginia Code § 49-4-610(2)(B), the circuit court has discretion in granting a post-adjudicatory improvement period not to exceed six months. *See* Syl. Pt. 6, in part, *In re Katie S.*, 198 W. Va. 79, 479 S.E.2d 589 (1996) (“It is within the court’s discretion to grant an improvement period within the applicable statutory requirements”). Here, the petitioner testified that her release date was uncertain but could be as late as July 2026, which would require an improvement period to extend well beyond the statutory maximum of six months. And, although the petitioner argues on appeal that she was willing to participate in services while incarcerated and upon her transfer to a halfway house, she also admitted that her ability to participate was dependent on her probation officer. Thus, the petitioner failed to carry her burden for obtaining an improvement period. *See* W. Va. Code § 49-4-610(2)(B) (requiring that, in order to obtain an improvement period, the parent must “demonstrate[], by clear and convincing evidence, that the [parent] is likely to fully participate in the improvement period”). Accordingly, the petitioner is entitled to no relief as the circuit court did not abuse its discretion by denying the petitioner’s motion for an improvement period.

For the foregoing reasons, we affirm the circuit court’s September 2, 2025, order.

Affirmed.

ISSUED: August 25, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan

⁵ The petitioner also argues that the circuit court erred in terminating her parental and custodial rights because her adjudication was improper. However, as discussed above, the court properly adjudicated the petitioner. Thus, this argument necessarily fails.