

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

In re E.M.-1

No. 25-511 (Berkeley County CC-02-2024-JA-241)

MEMORANDUM DECISION

Petitioner Mother E.M.-2¹ appeals the Circuit Court of Berkeley County’s July 8, 2025, order terminating her parental rights to the child, E.M.-1, arguing that the circuit court erred by adjudicating her as a neglecting parent.² 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.

In October 2024, the DHS filed an abuse and neglect petition, alleging that the petitioner abandoned and neglected E.M.-1 due to her failure to provide basic necessities for the child since 2023.³ The DHS explained that in 2023, the petitioner left the child in the care of her ex-boyfriend, M.C. and that M.C. filed a petition for legal guardianship over E.M.-1 in February 2024 due to concerns over the petitioner’s lack of stable housing.

At the adjudicatory hearing in May 2025,⁴ M.C. testified that in May 2024, the circuit court granted his petition for legal guardianship over E.M.-1 because the petitioner failed to provide for

¹ The petitioner appears by counsel Jeremy B. Cooper. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General Katica Ribel. Counsel Nicholas J. Matzureff 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). Additionally, because one of the children and the petitioner share initials, we use numbers to differentiate them.

³ At the time the petition was filed, the petitioner was incarcerated in Texas for violating her probation arising from charges related to causing injury to another person, but she was released sometime between October 2024 and November 2024.

⁴ Prior to this hearing, the petitioner failed to appear for three different status hearings and made her first virtual appearance at a hearing in February 2025, where she confirmed that she then resided in Texas. Thereafter, the petitioner appeared virtually for several hearings. Ultimately, the court ordered that the petitioner either appear in person for her contested adjudication set for May 2025, or that her counsel file a motion for the petitioner to appear virtually if she could not appear in person. Despite no motion being filed, the petitioner appeared virtually for the May 2025

and abandoned the child. M.C. also stated that the petitioner was not present for the final guardianship hearing, although she had virtually attended the prior hearings as she had moved to Florida during the proceedings. He further explained that during the guardianship case, the petitioner was granted weekly supervised visitation with E.M.-1. However, because the petitioner missed several visits, the circuit court ended visitation sometime between April and June 2024 and prohibited the petitioner from contacting E.M.-1, finding that contact was harmful to the child. M.C. further acknowledged that the petitioner had recently begun sending food, gifts, and money to E.M.-1, but clarified that this conduct started approximately three months prior to the instant adjudicatory hearing and that she had not provided any form of regular financial support, food, or basic necessities to E.M.-1 since 2023, despite having employment. M.C. also stated that the petitioner was not involved in the child's education (other than signing a form to allow the child to go to public school) or healthcare, and that she maintained only sporadic contact with the child prior to the no-contact order.

The petitioner then testified that she never abandoned the child, that she provided M.C. with some furniture and dining items when he first moved to West Virginia with E.M.-1 in September 2023, that she spent Christmas with the child in 2023, and that she was consistently employed, sometimes working more than one job. The petitioner further argued that she had moved to Florida to find a higher paying job. However, the petitioner also admitted that she secured employment and suitable housing in West Virginia during the guardianship case in an attempt to gain custody of the child, yet she ultimately chose to move out of state and leave E.M.-1 behind. Due to the contradictory and evasive nature of the petitioner's testimony, the circuit court ultimately found that the petitioner's testimony "lacked all credibility." Based on the evidence presented, the circuit court found that the petitioner failed to provide the child with necessary food, clothing, shelter, supervision, education, and medical care. The court further found that the petitioner failed to adequately engage as a parent with E.M.-1 and that her conduct demonstrated a foregoing of parental duties and responsibilities. The court explained that these conditions existed during the time the petition was filed and continued to exist at the time of the hearing. The court also confirmed that the final order entered in the guardianship case had appointed M.C. as the legal guardian of E.M.-1 because the petitioner had failed to provide the child with any basic needs and had abandoned the child for over six months. Therefore, the court adjudicated the petitioner as an abusing and/or neglecting parent of E.M.-1 based on her abandonment and neglect of the child. Because the petitioner challenges only her adjudication, it is sufficient to note that at the dispositional hearing in June 2025, the circuit court terminated the petitioner's parental rights to E.M.-1.⁵ It is from this order that the petitioner now appeals.

adjudicatory hearing, in violation of the court's prior order. Upon the DHS's motion, the court found that such "failure to appear in person for the adjudicatory hearing and her initial decision to move away from [E.M.-1] during the pendency of her [West Virginia] cases . . . shall be construed as negative inferences against her, represent evidence of abandonment," as those decisions "were not in [E.M.-1's] best interests."

⁵ The father's parental rights were also terminated. Permanency has been achieved, as the child remains in M.C.'s care.

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 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 argues only that her adjudication was based on insufficient evidence and that her conduct does not satisfy the statutory definitions of abandonment and neglect. We disagree.

“[West Virginia Code § 49-4-601(i)], requires the [DHS], in a child abuse or neglect case, to prove ‘conditions existing at the time of the filing of the petition . . . by clear and convincing [evidence].’ The statute, however, does not specify any particular manner or mode of testimony or evidence by which the [DHS] is obligated to meet this burden.” Syllabus Point 1, *In Interest of S.C.*, 168 W.Va. 366, 284 S.E.2d 867 (1981).

Syl. Pt. 1, *In re Joseph A.*, 199 W. Va. 438, 485 S.E.2d 176 (1997) (citations omitted). In regard to this burden, we have explained that “the clear and convincing standard is ‘intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases.’” *In re F.S.*, 233 W. Va. 538, 546, 759 S.E.2d 769, 777 (2014) (quoting *Cramer v. W. Va. Dep’t of Highways*, 180 W. Va. 97, 99 n.1, 375 S.E.2d 568, 570 n.1 (1988)). Under West Virginia Code § 49-1-201, “abandonment” is defined as “any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child.” Furthermore, a “neglected child” is a child

[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, when that refusal, failure, or inability is not due primarily to a lack of financial means on the part of the parent, guardian, or custodian.

Id. Importantly, we have held that a non-custodial parent can still be adjudicated if their conduct satisfies the definition of abuse and/or neglect. See *In re Katie S.*, 198 W. Va. 79, 86, 479 S.E.2d 596 (1996) (“To the extent that *State ex rel. McCartney v. Nuzum*, 161 W. Va. 740, 248 S.E.2d 318 (1978), holds that a non-custodial parent can be found not to have abused and neglected his or her child it is expressly overruled.”). As such, the petitioner’s argument that E.M.-1 was never neglected because she allowed M.C., whom she acknowledges to be a proper guardian, to care and provide for the child’s needs is unpersuasive. Instead, the record reflects that such legal guardianship was necessary due to the petitioner’s failure to provide the child with stable housing and care. Testimony highlighted that the petitioner failed to consistently provide financially for the child despite being employed; moved to Florida even though the child and the ongoing guardianship case remained in West Virginia; was uninvolved in the child’s education and healthcare; and maintained minimal, sporadic communication with E.M.-1 before the circuit court entered a no-contact order because such contact was harmful to the child’s well-being. As we have explained, “non-custodial parents are expected to show interest in the child’s welfare and provide financial and emotional support for the child; a failure to do so is strong evidence of abandonment.” *In re C.M.-1*, 247 W. Va. 744, 749, 885 S.E.2d 875, 881 (2023) (quoting *In re R.R.*, No. 17-0930, 2018 WL 1251845, at *3 (W. Va. March 12, 2018) (memorandum decision)). We also note that in the guardianship case, the petitioner was found to have abandoned the child for over six months

and to have failed to provide basic necessities for E.M.-1. The circuit court further found that the petitioner's testimony to the contrary lacked credibility, a finding that we decline to disturb on appeal. *See Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997) ("A reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations."). As such, the circuit court had ample evidence to find that the petitioner was neglectful and demonstrated a settled purpose to forego her duties and parental responsibilities to the child. We therefore conclude that the circuit court did not err in adjudicating the petitioner on these grounds.⁶

For the foregoing reasons, we find no error in the decision of the circuit court and affirm the circuit court's July 8, 2025, dispositional order.

Affirmed.

ISSUED: September 22, 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

⁶ The petitioner raises an additional argument that the circuit court should not have used her failure to appear in person for her adjudicatory hearing as evidence of her abandonment of the child. It is unnecessary to address this argument, however, because the evidence outlined above indicates that the circuit court had a sufficient basis upon which to adjudicate the petitioner *without* considering her in-person absence from the hearing as evidence of abandonment.