

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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

In re C.P., J.P., and A.H.

No. 25-583 (Kanawha County CC-20-2024-JA-444, CC-20-2024-JA-445, and CC-20-2024-JA-446)

MEMORANDUM DECISION

Petitioner Mother A.M.¹ appeals the Circuit Court of Kanawha County’s August 8, 2025, order terminating her parental rights to C.P., J.P., and A.H., arguing that the circuit court erred in adjudicating her of neglecting the children.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.

On December 12, 2024, the DHS filed a petition alleging that the petitioner abused drugs, subjected C.P. and J.P. to medical neglect, and subjected J.P. and A.H. to educational neglect. The DHS asserted that it had implemented services in the home in December 2023 after receiving a referral that then-five-year-old J.P. displayed poor hygiene, had rotten teeth, and was still drinking from a bottle, and that neither he nor then-two-year-old C.P. had been to a doctor since birth. In August 2024, a Child Protective Services (“CPS”) worker began assisting the family by setting up medical appointments for C.P. and J.P. and enrolling J.P. in school. The DHS alleged that the petitioner followed through with initial appointments, including J.P.’s autism evaluation and immunization, and took J.P. to his initial dental appointment but failed to attend the following surgical consultation. However, the DHS also alleged that school personnel later informed the CPS worker that J.P. came to school smelling like methamphetamine, and that the worker discovered drug paraphernalia, including a double-edged razor blade, burnt spoons, and burnt aluminum foil, in the home and within the reach of then-three-year-old C.P. The DHS asserted that the petitioner admitted to using fentanyl prior to the worker’s arrival at the home. Furthermore, the DHS alleged that the petitioner had a long history of substance abuse and that both C.P. and J.P. tested positive for drugs at birth. Finally, the DHS alleged that A.H. had been living with her maternal grandparents since 2017, without any formal custody agreement.

¹ The petitioner appears by counsel Sandra K. Bullman. The West Virginia Department of Human Services (“DHS”) appears by counsel Attorney General John B. McCuskey and Assistant Attorney General James Wegman. Counsel Bryan B. Escue appears as the children’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).

A contested preliminary hearing was held on December 19, 2024, where the circuit court heard testimony from a CPS worker and the petitioner. The CPS worker testified that the DHS implemented two in-home safety plans involving the family that required the petitioner to clean the home and ensure the children receive medical and dental care, the latter of which the petitioner had not done. The CPS worker stated that the lack of medical care led to the initiation of a third safety plan in August 2024, at which time she became involved and set up C.P. and J.P.'s medical and dental appointments. However, the CPS worker testified that the petitioner failed to take C.P. and J.P. to any dental appointments following the initial consultation. Regarding J.P.'s education, the CPS worker testified that the petitioner did not attend any of the meetings held with the board of education to get the child specialized services following his autism diagnosis. The CPS worker further testified that then-fifteen-year-old A.H. had resided with her maternal grandparents for approximately five years and that the child was suffering from mental health issues and had missed thirty days of school since the beginning of the school year. The petitioner then testified that A.H. began residing with her maternal grandparents after the petitioner's home lost electricity and did not return because "she wanted to stay" with them, though there was no formal custody or guardianship arrangement. The petitioner further testified that she was aware that A.H. was missing school and "tried to get her to go," but could not "make her" do so. The petitioner admitted that J.P. was not enrolled in school prior to CPS involvement due to her belief that the child had autism, but admitted that she had not taken J.P. to a doctor prior to CPS involvement. The petitioner further testified that, while C.P. had been taken to a doctor in the past, he "hadn't been in a while" due to a lack of transportation. The petitioner asserted that, contrary to the CPS worker's testimony, she had been the one to set up dental appointments for C.P. and J.P. and further denied that the children were exposed to drug paraphernalia or that dangerous items were within the children's reach. However, the petitioner admitted that burnt foil and razor blades were in the home, that she used fentanyl, and that she robbed her mother to purchase fentanyl. The petitioner then testified that she started substance abuse treatment a week before the hearing. As to J.P.'s education, the petitioner testified that she spoke to the principal of J.P.'s school "one time," but admitted that she made no further action to get J.P. specialized school services.

Based on the foregoing, the circuit court entered an order finding probable cause that imminent danger existed to remove C.P. and J.P. from the home due to the petitioner's substance abuse and medical and educational neglect.³ The court then ordered the DHS to provide services to the petitioner, including random drug and alcohol screening, and ordered the petitioner to screen immediately following the hearing. The DHS subsequently filed an amended petition in January 2026, wherein it alleged that the petitioner tested positive for fentanyl, methamphetamine, and amphetamine following the preliminary hearing.

The circuit court held an adjudicatory hearing in February 2025,⁴ where it took judicial notice of the evidence presented at the preliminary hearing and the results of the petitioner's drug screen, both without objection. The court also acknowledged a report filed by the DHS, which

³ The DHS did not seek removal of A.H. from her maternal grandparents' care after they completed paperwork for the child to attend school virtually.

⁴ The transcript of the adjudicatory hearing is not a part of the appendix record.

stated that the petitioner refused to participate in drug rehabilitation and had not drug screened, as the service provider was unable to contact the petitioner. The report further stated that the petitioner made only sporadic contact with the DHS, which was often limited to her blaming the DHS for removing the children. Ultimately, the court found that the petitioner neglected the medical needs of C.P. and J.P., neglected the educational needs of J.P. and A.H., and that her substance abuse negatively affected her ability to parent. Accordingly, the court adjudicated the petitioner of neglecting the children. Given that the petitioner challenges only the circuit court's adjudicatory findings, it is sufficient to note that the court terminated her parental rights to the children following a dispositional hearing in June 2025. It is from the dispositional order that the petitioner appeals.⁵

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 erred in adjudicating her of neglecting C.P. and J.P. because the DHS failed to prove neglect by clear and convincing evidence. We disagree. We have previously held as follows:

“[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). 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)). Pursuant to West Virginia Code § 49-1-201, a “[n]eglected child” is a child whose

physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian, or custodian 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.

The record contains sufficient evidence to adjudicate the petitioner of neglecting the children. At adjudication, the circuit court took judicial notice—without objection—of the evidence presented at the preliminary hearing. This evidence included testimony that, prior to DHS's involvement, J.P. had not been enrolled in school due to the petitioner's concerns that he had autism, which the petitioner did not seek a formal diagnosis for, and that the petitioner had not

⁵ The circuit court also terminated the parental rights of the children's fathers. The permanency plan for C.P. and J.P. is adoption in their current placement. A.H. has reached the age of majority.

taken either C.P. or J.P. to get medical care. The court was also presented with evidence that the petitioner failed to take either child to follow-up dental appointments after the initial consultations scheduled by the CPS worker, and that the petitioner began to use fentanyl shortly before the filing of the petition. The petitioner admitted to using fentanyl, then, and drug testing confirmed the admission. In advancing her argument, the petitioner ignores this evidence and instead asks this Court to rely solely on her own testimony that she provided C.P. with regular medical care, complied with the safety plans, and began substance abuse treatment. We decline to do so, as the circuit court is the entity tasked with addressing witness credibility and weighing evidence. *See State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995) (“An appellate court may not decide the credibility of witnesses or weigh evidence as that is the exclusive function and task of the trier of fact.”). Accordingly, we conclude that the court did not err in adjudicating her of neglecting C.P. and J.P.

Finally, the petitioner argues that the circuit court erred in adjudicating her of neglecting A.H. because the child had not been in her care for several years prior to the filing of the petition. We again disagree. We have held that

[t]he mere fact that a child is in a legal guardianship at the time an abuse and neglect petition is filed does not preclude a circuit court from . . . adjudicating whatever rights a [parent] may still have to that child, provided the child meets the definition of an ‘abused child’ or ‘neglected child’ as defined in West Virginia Code § 49-1-201.

Syl. Pt. 3, in part, *In re B.V.*, 248 W. Va. 29, 886 S.E.2d 364 (2023), *overruled in part by* Syl. Pt. 4, *In re R.M.*, 252 W. Va. 422, 923 S.E.2d 352 (2025). As noted above, a child is “neglected” when their “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 . . . supervision, medical care, or education.” W. Va. Code § 49-1-201. Here, the petitioner’s own testimony at the preliminary hearing established that she had at least some contact with her parents and A.H. and was aware that the child missed a large amount of school and had mental health issues but took no concrete steps to remedy these problems. Such evidence is sufficient to support a finding of neglect, and, accordingly, the circuit court did not err in adjudicating the petitioner of neglecting A.H.

For the foregoing reasons, we find no error in the decision of the circuit court, and its August 8, 2025, order is hereby affirmed.

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