

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

In re P.P., T.S., L.L.-E., and C.T.

No. 25-674 (Berkeley County CC-02-2024-JA-230, CC-02-2024-JA-231, CC-02-2024-JA-232, and CC-02-2024-JA-233)

MEMORANDUM DECISION

Petitioner Mother C.H.¹ appeals the Circuit Court of Berkeley County’s September 8, 2025, order terminating her parental rights to T.S., L.L.-E, and C.T. and her custodial and guardianship rights to P.P., arguing that the circuit court erred by allowing her testimony to form part of the basis for both her adjudication and the termination of her parental rights when her competency was undetermined.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 September 2024, the DHS filed a petition alleging that the petitioner neglected the children by failing to provide them with food, supervision, education, and medical care and that she was unable to properly care for the children due to substance abuse and/or untreated mental health issues. The DHS alleged that, during two incidents in July and September 2024, law enforcement was called after the petitioner displayed erratic behavior in public while caring for then-seven-year-old L.L.-E. and then-three-year-old C.T. During the September incident, law enforcement found C.T. running down the sidewalk wearing only a diaper and L.L.-E. in soiled clothes after the petitioner drove with the children while having a suspended license. The DHS further alleged that T.S. disclosed that the children were responsible for providing their own food—resulting in a majority of their meals coming from their schools and them often going without dinner. In addition, the DHS alleged that L.L.-E. was often absent from school and, when she did go to school, she was observed walking alone along a road where people often speed. The DHS also alleged that the petitioner was involved in abuse and neglect proceedings in 2008 after her child was born drug affected, which concluded with the petitioner voluntarily relinquishing her parental rights to that child.

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 Lee Niezgoda. Counsel Tracy Weese appears as the children’s guardian ad litem (“children’s guardian”).

² We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

The circuit court held a preliminary hearing in October 2024, where the children’s guardian (who served as guardian ad litem in the 2008 proceedings) moved for the petitioner to undergo a competency and parental fitness evaluation based upon the allegations and her familiarity with the petitioner. The court granted the motion and ordered the DHS to provide transportation. However, the evaluation had not been completed by February 2025, at which time the court appointed a guardian ad litem for the petitioner.

The circuit court held two adjudicatory hearings in April and May 2025. At the first hearing, the DHS called the petitioner as a witness. The petitioner denied the allegations of abuse and neglect before admitting to using methamphetamine in August and September 2024. She testified that she was not taking medication prescribed for her mental conditions and that she did not feel that she needed treatment for the same. At the second hearing,³ the court heard testimony from additional witnesses—including a Child Protective Services (“CPS”) worker, J.T.’s father, and J.T.’s paternal aunt—establishing that the petitioner exhibited erratic behavior endangering the children, which resulted from either her substance abuse or her untreated mental health issues. Based upon the evidence presented, the court found that the petitioner engaged in educational neglect, failed to provide for the children’s basic needs, failed to properly supervise the children, and placed two of the children in harm’s way by driving them while in an impaired mental state. As a result, the court found that the petitioner abused and neglected the children. Shortly thereafter, the petitioner filed a motion for a post-dispositional improvement period.

The circuit court held a dispositional hearing in June 2025, where the petitioner testified in support of her motion for an improvement period. The petitioner stated that she had been receiving counseling services at AppleGate since October 2024 and that she had also set up an appointment with a mental health provider, but represented that the appointment would not be until several months later. The petitioner further stated that she would complete a psychological evaluation if required as part of the improvement period’s terms. However, when questioned as to why she had not complied with prior attempts to conduct the evaluation, she blamed the DHS for not giving her more notice of the appointments. The court then heard from a CPS worker, who testified that the DHS recommended terminating the petitioner’s parental rights, as she had neither made any contact with the DHS during the pendency of the proceedings nor participated in any services offered to her, even when those services were provided at her home.

In the resulting order, the circuit court found that the petitioner never completed the psychological evaluation ordered in October 2024 and that she failed to participate in basic services offered since the initiation of the proceedings, despite arrangements being made to assist her. Based upon these findings, the court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected, as the petitioner was unwilling or unable to comply with a reasonable family case plan to address these conditions. The court further concluded that termination of the petitioner’s parental rights was in the children’s best interests—with the exception of then-fourteen-year-old P.P., who expressed a desire that the petitioner retain her parental rights. Accordingly, the court terminated the petitioner’s parental rights to T.S., L.L.-E,

³ The petitioner did not appear for the May 2025 adjudicatory hearing, but she was represented by counsel at this hearing.

and C.T., and her custodial and guardianship rights to P.P.⁴ It is from this dispositional order that the petitioner appeals.

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). Further, we review a circuit court's ruling on a witness's competency to testify under an abuse of discretion standard. Syl. Pt. 2, *State v. Merritt*, 183 W. Va. 601, 396 S.E.2d 871 (1990). Before this Court, the petitioner raises a lone assignment of error arguing that the circuit court erred by relying in large part on her testimony in adjudicating her of abuse and neglect and in terminating her rights when her competency was undetermined. We disagree.

Rule 601 of the West Virginia Rules of Evidence establishes that “[e]very person is competent to be a witness except as otherwise provided for by these rules.” In *Merritt*, we recognized that the Fourth Circuit Court of Appeals

has consistently suggested that every witness is presumed to be competent, and neither feeble-mindedness nor insanity renders a witness incompetent or disqualified. The only grounds for disqualifying a party as a witness are that the witness does not have knowledge of the matters about which [she] is to testify, that [she] does not have the capacity to recall, or that [she] does not understand the duty to testify truthfully.

183 W. Va. at 608, 396 S.E.2d at 878 (quoting Franklin D. Cleckley, *Handbook on Evidence for West Virginia Lawyers* § 2.2(B) (2d ed. 1986)); accord *United States v. Odom*, 736 F.2d 104, 112 (4th Cir. 1984). However, as an initial matter, we note that the petitioner fails to identify any portion of the record demonstrating that she objected to her own competency as a witness or that the issue of her competency was properly before the circuit court. See W. Va. R. App. P. 10(c)(7) (requiring the petitioner's brief to “contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal”); *Noble v. W. Va. Dep't of Motor Vehicles*, 223 W. Va. 818, 821, 679 S.E.2d 650, 653 (2009) (“Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered.” (citation omitted)).

Nevertheless, even if we examine the petitioner's testimony in light of *Merritt*, we find no reason to conclude that the court erred by allowing her testimony. First, the petitioner's testimony at the adjudicatory and dispositional hearings demonstrated that she had knowledge of the subject matter she was called to testify on, which included the events surrounding the allegations of abuse and neglect in the petition, her participation (or lack thereof) in treatment for her substance abuse and mental health issues, and her refusal to participate in the court-ordered evaluation. Second,

⁴ The court also terminated the parental rights of the fathers of T.S., L.L.-E., and C.T. The permanency plan for these children is adoption in their current placements. The court terminated the custodial and guardianship rights of P.P.'s father, and the child's permanency plan is a legal guardianship in her current placement.

although the petitioner’s testimony contradicted other evidence presented, nothing in her testimony indicates that she was unable to recall any of the events she was testifying about. Finally, there is nothing in the record indicating that she failed to understand her duty to testify truthfully.⁵ The petitioner asserts that the circuit court’s orders requiring her to undergo a competency evaluation—which she prevented from happening—and appointing a guardian ad litem for her demonstrate that the issue of her competency was unresolved. However, the existence of these orders is, at most, incidental to the actual issue and alone cannot overcome the circumstances clearly demonstrating that her testimony satisfied the requirements of *Merritt*. In conclusion, the petitioner has failed to demonstrate any error as to her competency as a witness or the circuit court’s reliance on her testimony. As such, we conclude that the circuit court did not abuse its discretion in allowing the petitioner to testify or in considering her testimony in making its adjudicatory and dispositional findings. Furthermore, a review of the record shows that, even in the absence of the petitioner’s testimony, the circuit court was presented with sufficient evidence to adjudicate the petitioner as an abusing parent and subsequently terminate her parental rights to the children.

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

Affirmed.

ISSUED: September 22, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice H. L. Kirkpatrick
Justice James W. Flanigan

DISQUALIFIED:

Justice Charles S. Trump IV

⁵ To the extent that the petitioner argues that the court should not have considered her testimony in the absence of the previously ordered competency and parental fitness evaluation, we note that this evaluation did not occur solely due to the petitioner’s own refusal to cooperate with the same. As such, the petitioner waived this issue on appeal as her conduct prevented the court from considering the evaluation’s results.