[Cite as *In re J.A.*, 2009-Ohio-589.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

IN RE: J.A. AND K.A.	C.A. No. 24332
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE Nos. DN 08-3-207 and DN 08-3-208

DECISION AND JOURNAL ENTRY

Dated: February 11, 2009

MOORE, Judge.

{¶1} Appellant, Mother, appeals from the decision of the Summit County Juvenile Court. This Court affirms.

I.

{¶2} Mother is the natural mother of J.A and K.A. On March 18, 2008, Summit County Children Services Board ("CSB") filed a complaint, alleging the children to be dependent and neglected. The complaint stemmed from an inspection of Mother's home after a fire broke out. According to the undisputed evidence, the Akron Fire Department responded to a fire at Mother's home. Upon extinguishing the fire, the Fire Department became concerned with the deplorable conditions of Mother's home and contacted CSB, the Health Department and the Akron Police Department. According to a stipulation at the adjudicatory hearing, Mother's home was filthy and presented a health hazard. Due to the conditions of the home as well as the

occurrence of the fire, the Akron Police Department and CSB located J.A. and K.A. and took them into custody pursuant to Juv.R. 6.

{¶3} On April 25, 2008, a magistrate held an adjudicatory hearing, and on May 2, 2008, found J.A. and K.A. to be neglected and dependent. The trial court adopted this decision on the same day. On May 12, 2008, Mother filed objections to these findings. On May 15, 2008, the magistrate held a dispositional hearing. In an order dated May 21, 2008, the magistrate ordered that J.A. and K.A. be returned to Mother's legal custody subject to dispositional orders of protective supervision to CSB. Also on May 21, 2008, the trial court adopted the magistrate's decision and on May 27, 2008, Mother objected to the decision.

{¶4} On July 17, 2008, the trial court overruled Mother's objections to both the adjudicatory and dispositional hearing and adopted the magistrate's decision. Mother timely appealed from this decision raising five assignments of error for our review. We have rearranged and combined some of Mother's assignments of error for ease of review.

II.

ASSIGNMENT OF ERROR II

> "THE JUVENILE COURT COMMITTED REVERSIBLE ERROR AND ABUSED ITS DISCRETION WHEN IT OVERRULED []MOTHER'S OBJECTIONS, AND ADOPTED THE MAGISTRATE'S DECISION, BY REFUSING TO PERMIT []MOTHER TO INTRODUCE OR CONSIDER EVIDENCE SUBSEQUENT TO THE DATE THE COMPLAINT WAS FILED, IN ORDER TO EXPLAIN, INTRODUCE, OR SHOW REMEDIAL MEASURES TAKEN BY []MOTHER TO NEGATE THE ALLEGATIONS STATED IN THE COMPLAINT."

{¶5} In her second assignment of error, Mother contends that the juvenile court committed reversible error and abused its discretion when it overruled her objections and adopted the magistrate's decision by refusing to permit her to introduce or consider evidence subsequent to the date the complaint was filed, in order to explain, introduce, or show remedial

measures taken by Mother to negate the allegations in the complaint. This argument is without merit.

{¶6} Initially, we note that in her brief, Mother states that the parties stipulated that she remedied the conditions of the home after the complaint was filed. A review of the record shows that the magistrate took testimony on this issue. Further, the juvenile court noted this fact in its decision adopting the magistrate's decision and overruling Mother's objections. Therefore, our review of the record does not support Mother's argument that the juvenile court refused to permit or to consider evidence subsequent to the date of the complaint. Accordingly, Mother's second assignment of error is overruled.

ASSIGNMENT OF ERROR I

> "THE JUVENILE COURT COMMITTED REVERSIBLE ERROR AND ABUSED ITS DISCRETION WHEN IT OVERRULED []MOTHER'S OBJECTIONS, AND ADOPTED THE MAGISTRATE'S DECISION, BY FINDING THAT THE ALLEGATIONS OF NEGLECT AND DEPENDENCY DID NOT HAVE TO EXIST AS OF THE DATE OF THE ADJUDICATORY HEARING."

{¶7} In her first assignment of error, Mother contends that the juvenile court committed reversible error and abused its discretion when it overruled her objections and adopted the magistrate's decision, by finding that the allegations of neglect and dependency did not have to exist as of the date of the adjudicatory hearing. We do not agree.

{¶8} Specifically, Mother contends that pursuant to this Court's previous decision in *In re D.B.*, 9th Dist. Nos. 03CA0015-M, 03CA0018-M, 2003-Ohio-4526, the juvenile court was *required* to "determine whether at the time of the adjudicatory hearing, there is dependency or neglect, since it is the present condition that is dispositive." Our reading of *In re D.B.* does not reveal such a mandate.

{¶9} In the instant case, the trial court pointed to our previous finding in *In re Hood* (July 3, 1991), 9th Dist. No. 14957, at *2. In that case, we stated, in part, that:

> "While it may be a factor relating to disposition, it is unnecessary that the original reason for the finding of dependency exist at the time of the dispositional hearing. *R.C. 2151.23(A)(1) requires the juvenile court to decide the issue of dependency as of the date or dates specified in the complaint, and not as of any other date.* 2 Anderson, Ohio Family Law (2 ed.1989) 297-298, Section 19.19; See, e.g., *In re Sims* (1983), 13 Ohio App.3d 37, 43." (Emphasis added.) *In re Hood*, supra, at *2.

{¶10} The juvenile court also pointed out that *In re D.B.* did not presumptively overrule *In re Hood*, as Mother suggests. Instead, *In re D.B.* distinguished *In re Hood* by pointing out that in *In re Hood*, the dispositional hearing was held three years after the adjudication hearing, and that the Court determined that dependency need not be reestablished at the dispositional hearing. We then stated that "[n]othing in the *In re Hood* opinion even suggests that evidence of events occurring after the date or dates specified in the dependency complaint would be inadmissible at the hearing to adjudicate dependency." *In re D.B.*, supra, at ¶15. In other words, *In re D.B.* does not overrule *In re Hood* and does not stand for the proposition that the juvenile court was *required* to, as Mother suggests, "determine whether at the time of the adjudicatory hearing, there is dependency or neglect[.]" It is worth noting that we did not specifically find that this evidence was admissible. Instead, we simply found that evidence occurring after the date in the complaint was not necessarily inadmissible.

{¶11} Assuming without deciding that the evidence of Mother's actions after the date of the complaint was admissible, we note that the juvenile court considered this evidence in its entry overruling Mother's objections. As we discussed in Mother's second assignment of error, our review of the record reveals that this evidence *was* considered. Further, as we will more fully set forth in our discussion of Mother's third and fourth assignments of error, the trial court

did not abuse its discretion when it found that this evidence failed to rebut the State's presentation of evidence indicating dependency and neglect. Accordingly, the juvenile court did not abuse its discretion. Mother's first assignment of error is overruled.

ASSIGNMENT OF ERROR III

"THE JUVENILE COURT COMMITTED REVERSIBLE ERROR WHEN IT FOUND BY CLEAR AND CONVINCING EVIDENCE THAT J.A. AND K.A. WERE NEGLECTED CHILDREN UNDER ORC 2151.03(A)(2) AND (A)(3)."

ASSIGNMENT OF ERROR IV

"THE JUVENILE COURT COMMITTED REVERSIBLE ERROR WHEN IT FOUND BY CLEAR AND CONVINCING EVIDENCE THAT J.A. AND K.A. WERE DEPENDENT CHILDREN UNDER ORC 2151.04(C)."

{¶12} In her third and fourth assignments of error, Mother contends that the juvenile court committed reversible error when it found by clear and convincing evidence that J.A. and K.A. were neglected and dependent children. We do not agree.

{¶13} Initially we note that the adjudication proceedings were held before a magistrate. The trial court adopted the magistrate's decision and Mother filed objections to the magistrate's determination. This Court reviews a trial court's order ruling on objections to a magistrate's decision for abuse of discretion. *Medina Drywall Supply, Inc. v. Procom Stucco Sys.*, 9th Dist. No. 06CA0014-M, 2006-Ohio-5062, at ¶5. Under this standard, we must determine whether the trial court's decision was arbitrary, unreasonable, or unconscionable-not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Alleged errors must relate not to the magistrate's findings or decision, but to the action of the trial court. *Berry v. Firis*, 9th Dist. No. 05CA0109-M, 2006-Ohio-4924, at ¶7, quoting *Mealey v. Mealey* (May 8, 1996), 9th Dist. No. 95CA0093, at *2.

{¶14} In order to adopt the magistrate's decision to adjudicate a child dependent pursuant to R.C. 2151.04(C), the trial court must find that the magistrate determined by clear and convincing evidence that the child's "condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship[.]" See, generally, Juv.R. 29(E)(4). Clear and convincing evidence is that which will produce in the trier of fact "'a firm belief or conviction as to the facts sought to be established.'" *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus. While requiring a greater standard of proof than a preponderance of the evidence, clear and convincing evidence requires less than proof beyond a reasonable doubt. *In re Parsons* (Nov. 12, 1997), 9th Dist. Nos. 97CA006662 and 97CA006663, at *3.

{¶15} A finding of neglect must also be supported by clear and convincing evidence. R.C. 2151.35(A); Juv.R. 29(E)(4). In reviewing a juvenile court's adjudication of neglect, this Court must determine whether the juvenile court had before it clear and convincing evidence that the child was neglected. See *In re Jones* (May 2, 2001), 9th Dist. No. 20306, at *4. R.C. 2151.03(A)(2) defines a neglected child as "any child *** who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian[.]"

{¶16} Clear and convincing evidence is not unequivocal. *State v. Eppinger* (2001), 91 Ohio St.3d 158, 164, quoting *Cross*, 161 Ohio St. at 477. To the contrary, evidence may be clear and convincing and yet admit a degree of conflict and uncertainty that is properly resolved by the trier of fact:

> "The mere number of witnesses, who may support a claim of one or the other of the parties to an action, is not to be taken as a basis for resolving disputed facts. *** Credibility, intelligence, freedom from bias or prejudice, opportunity to be informed, the disposition to tell the truth or otherwise, and the probability or improbability of the statements made, are all tests of testimonial value. Where the

> evidence is in conflict, the trier of facts may determine what should be accepted as the truth and what should be rejected as false." *Cross*, 161 Ohio St. at 477-78.

{¶17} The focus of a dependency adjudication is not on the fault of the parents, but on the child's environment, including the condition of the home itself and the availability of medical care and other necessities. See *In re Bibb* (1980), 70 Ohio App.2d 117, 120. In order to establish dependency, therefore, CSB "was required to present evidence of conditions or environmental elements that were adverse to the normal development of the children." *In re A.C.*, 9th Dist. Nos. 03CA0053, 03CA0054, and 03CA0055, 2004-Ohio-3248, at ¶14, citing *In re Burrell* (1979), 58 Ohio St.2d 37, 39.

{¶18} At the adjudication hearing, Officer Ken Shively of the Akron Police Department testified that the Akron Fire Department called him to Mother's home due to the deplorable conditions. He stated that the Akron Fire Department also contacted the health department. Shively testified that "there was just clothes everywhere just piled up, wasn't bedding, no fresh food. The one wall was burnt from whatever was cooking." Shively testified that based on the conditions of the home, he located the children, who were not at the home at the time, and the health department changed the locks on the doors.

{¶19} Melvin Mosley testified that he was a property manager with the Akron Metropolitan Housing Authority ("AMHA"). He stated that in October of 2007, several months prior to the March 17th fire, he visited with Mother as a follow-up to a failed housekeeping inspection. He testified that at that time, the housekeeping of Mother's home was not up to the AMHA standards. Due to this, Mother was required to rectify the situation, which she eventually did. Mosley further testified that on March 17, 2008, he was called back to Mother's home at the request of the Akron Fire Department. He stated that the "apartment was in complete disarray, clothes on the floor, just everything on the floor, in every room, bathroom;

bedrooms, living room, kitchen." He then stated that the conditions were so bad that he and his boss decided to go forward with a lease cancellation. He took photographs of the home, which were presented at the hearing. He stated that he informed Mother of her rights and received a call the next day informing him that the conditions had been corrected. Mosley testified that he held a hearing with Mother on this issue.

{¶20} On cross-examination, Mosley testified that after he initially visited Mother's home in October of 2007, it took her a few weeks to cure the housekeeping issue. Mosley stated that a housekeeping issue was a "curable violation." On the day of his hearing with regard to the March 17, 2008 violation, he visited the home again and testified that Mother "accept[ed] responsibility for the condition of the home[.]" He testified that upon inspection, the conditions from March 17, 2008 had been cured.

{¶21} On redirect examination, Mosley testified that when he visited the home on March 17, 2008, the home was not a safe place for adults and children to live.

{¶22} Ed Dieringer testified that he was a housing inspector with the Akron Health Department. He testified that he conducted the March 17, 2008 investigation of Mother's home. He stated that the home was in "extreme clutter, general disarray of, you know, items in the house." He testified that upon his investigation he believed the conditions of the home to be "hazardous." He then issued orders to the AMHA to fix the door and to Mother to clean the property. Dieringer testified that he went back to the home on March 31, 2008 and Mother had cleaned the home. He testified that she was staining the hardwood floors at the time. "I felt that she had done what she needed to to bring the house into compliance with my orders, so therefore, I closed the file." As of March 31, 2008, Dieringer believed that the home was safe and secure for children and adults.

{¶23} Amy Schuster, an intake caseworker for CSB, testified that, at the time of intake, K.A. was four months old and J.A. was four years old. Schuster testified that her concerns were that there had been a fire in the home and that the "conditions of the home were deplorable." She stated that upon her review of the home she

> "observed clothing, food, just trash in general all over the floors. There was very little clear space on the floors. The home smelled of a grease fire, or it smelled strongly of fire, I should say. There was toilet paper on the floors, the toilet was full of human feces, there was a litter box full of feces, the furniture was dirty and unkempt."

{¶24} She further testified that part of the referral stated that there was cat feces and vomit in the crib. She stated that clothing, trash, and old food were lying on the floor. Upon seeing the conditions of the home, Schuster testified that police invoked Juv.R. 6, which allowed them to take the children from daycare into custody. Schuster testified that upon arriving at the daycare, J.A.'s clothing was very dirty and he had on a lot of clothing, which was inappropriate for the weather. She further testified that J.A. was dirty and that he smelled. Schuster stated that K.A.'s clothing was dirty as well and she also had on more clothing than was appropriate for the weather. According to Schuster, K.A. was dirty and needed to be bathed.

{¶25} Schuster testified that Mother came to the agency the following day. According to Schuster, "Mother reported that she was lazy and that [J.A.] was responsible for making a lot of the mess." Schuster stated that Mother expected J.A. to clean the mess. The State rested its case.

{¶26} Mother testified that she moved into the home in April of 2006. When asked if it was "fair to say that [her] home was extremely dirty[,]" Mother answered, "Yes." When asked if the home was "extremely filthy" and a "health hazard[,]" Mother responded, "Yes." Mother testified that the family had not been staying in the home for over a month and that she was not

sure how the fire started. She explained that it must have been a "coincidence." Mother testified that immediately after she was notified of the fire, she went to the home and began to clean it up. She stated that she had spoken with a nutritionist at the WIC office and fed J.A. peanut butter and jelly and eggs because he did not like meat. She stated that she fed K.A. formula. When asked how the home came to be in such horrible condition, Mother stated that she did it when she was "look[ing] for stuff." She denied telling Schuster that she was lazy and testified that she did not expect J.A. to clean up the mess. She testified that she took her children to the doctor when they needed medical treatment and that she fed them when they were hungry. She explained that she did not use corporal punishment.

{¶27} On cross-examination, Mother confirmed that in October of 2007 the condition of the home was very bad. Mother again explained that the home got in bad condition while she and her children were staying with her mother. When asked about the specifics of the condition of the home, including an extremely dirty bathroom sink, Mother stated that she was not sure how it got in that condition. She explained that it was from "[m]e like coming in there, I don't know, to do something real fast and then leaving, and I kept doing it." She further explained that when she left the home, the knobs to the oven were on the counter and that she assumed the fire department replaced them to turn the stove off after the fire. She explained that if bumped, the knobs "might have turned on easily." She further stated that she remembered hitting the stove when she left, but that there were no knobs.

{¶28} We conclude that the trial court did not abuse its discretion when it determined that the magistrate had before him clear and convincing evidence that J.A. and K.A. were neglected children. Again, R.C. 2151.03(A)(2) defines a neglected child as "any child *** who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or

custodian[.]" The evidence showed that due to Mother's own admissions, her home was unsanitary and a health hazard. Further, Schuster testified that when she picked up the children they were dirty, smelled, and were inappropriately dressed for the weather. Therefore, the juvenile court did not abuse its discretion when it found that J.A. and K.A.'s "mother allowed them to live in a home that was filthy, unsanitary, and hazardous to their health and well being, and pursuant to [R.C.] 2151.03(A)(3) as their mother neglected the children or refused to provide them with a clean and safe home which is necessary for their health and well being."

{¶29} We further conclude that the trial court did not abuse its discretion when it found that the magistrate had before it clear and convincing evidence that J.A. and K.A. were dependent children. To find the children dependent, the juvenile court was required to find that CSB presented evidence that the conditions or environmental elements were adverse to J.A. and K.A's development. CSB presented evidence from several witnesses that Mother's home was a health hazard and that it was unsafe for the children to live there.

{¶30} Accordingly, Mother's third and fourth assignments of error are overruled.

ASSIGNMENT OF ERROR V

> "THE JUVENILE COURT COMMITTED REVERSIBLE ERROR WHEN IT PROCEEDED TO DISPOSITION ON THE GROUNDS THAT THERE WAS AN AUTOMATIC STAY WHEN []MOTHER FILED OBJECTIONS TO THE MAGISTRATE'S DECISION MADE AT THE ADJUDICATORY HEARING. THE JUVENILE COURT LACKED JURISDICTION TO PROCEED TO DISPOSITION UNDER JUV.R. 40(D)(3)(E) AND SUMMIT COUNTY JUV.R. 3.03(H)."

{¶31} In her fifth assignment of error, Mother contends that the juvenile court committed reversible error when it proceeded to disposition. Mother claims that there was an automatic stay in effect when she filed objections to the magistrate's decision made at the

adjudicatory hearing and the juvenile court lacked jurisdiction to proceed to disposition under Juv.R. 40(D)(3)(e) and Summit County Juv.R. 3.03(H). We do not agree.

{¶32} On May 12, 2008, Mother objected to the magistrate's May 2, 2008 adjudication determinations. The trial court adopted the magistrate's decision on May 2, 2008. The magistrate then proceeded to disposition on May 15, 2008 and on May 21, 2008, issued a determination. The trial court adopted these findings and on May 27, 2008, Mother objected to the findings.

{¶33} Mother argues that pursuant to Juv.R. 40(D)(3)(e) her timely objections acted to automatically stay the proceedings and that "the Juvenile Court lacked jurisdiction to proceed to the dispositional hearing when []Mother filed objections to the findings made at the adjudicatory hearing; and therefore its decision made at the dispositional hearing is null and void *ab initio*." These arguments are without merit.

{¶34} Juv.R. 40(D)(3)(e)(i) states, in relevant part:

> "The court may enter a judgment either during the fourteen days permitted by Juv.R. 40(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Juv.R. 40(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate *as an automatic stay of execution of the judgment* until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." (Emphasis added.)

{¶35} We have previously stated that

> "the automatic stay triggered by Juv.R. 40(D)(3)(e) did not divest the trial court of subject matter jurisdiction over this case. The subject matter jurisdiction of a court refers to the type of case that the court is authorized to hear. A court does not exceed its subject matter jurisdiction as long as the case before it involves any cause of action cognizable by the forum." (Internal citations and quotations omitted.) *In re P.T.*, 9th Dist. No. 24207, 2008-Ohio-4690, at ¶8.

This case clearly falls within the juvenile court's subject matter jurisdiction pursuant to R.C. 2151.23(A)(1), which explicitly gives the juvenile court original jurisdiction over child abuse, neglect, and dependency cases. Id., at ¶9. Instead, "Mother's real argument is that the trial court improperly exercised its jurisdiction by proceeding with disposition[.]" Id., at ¶10.

{¶36} "Mother's claim that the trial court exceeded its authority under Juv.R. 40 merely challenges the trial court's authority to exercise its jurisdiction in this case. Even if her challenge had merit, it would have rendered the judgment voidable, not void[.]" Id., at ¶11, citing *State v. Parker*, 95 Ohio St.3d 524, 2002-Ohio-2833, at ¶20 (Cook, J., dissenting). Therefore, Mother's argument that the decision made at the dispositional hearing is void is without merit.

{¶37} Further, despite Mother's argument, Juv.R. 40 does not provide that timely objections to the magistrate's decisions act to automatically stay *the proceedings*, but rather, the objections act to automatically stay the *execution* of the judgment. The term "execution" is defined as "the act of carrying out or putting into effect (as a court order)[.]" Black's Law Dictionary (8th Ed., 2004). Therefore, the juvenile court could not carry out or put into effect the adjudication order until it ruled on her objections. Under Mother's view of this section, the juvenile court could not *proceed* until it first disposed of her objections. We do not agree with this interpretation and we find no support for it in the law. By proceeding to disposition, the juvenile court was not carrying out or putting the adjudication order into effect.

{¶38} Accordingly, we overrule Mother's fifth assignment of error.

III.

{¶39} Mother's assignments of error are overruled. The judgment of the Summit County Juvenile Court is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

DICKINSON, J.
CONCURS

CARR, P. J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶40} I concur in judgment only because I believe that R.C. 2151.23(A)(1) limits the juvenile court's determination whether a child is dependent, neglected or abused to circumstances as they were "on or about the date specified in the complaint[.]" See, also, *In re Hood* (July 3, 1991), 9th Dist. No. 14957.

{¶41} The majority relies on our decision in *In re D.B.*, 9th Dist. Nos. 03CA0015-M, 03CA0018-M, 2003-Ohio-4526, for the proposition that the trial court may consider evidence of circumstances in existence after the date(s) alleged in the complaint in determining the adjudication of a child. *In re D.B.* involved a child removed from his parents' custody immediately after birth, prior to the child's arrival in the parents' home, based on an allegation of dependency pursuant to R.C. 2151.04(D).

{¶42} R.C. 2151.04 defines "dependent child." Pursuant to subsection (D), a "dependent child" is one

> "[t]o whom both of the following apply:
>
> "(1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.
>
> "(2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household."

{¶43} The legislature, in enacting this provision, created a unique situation to allow the State to protect children from potentially detrimental situations upon which earlier dependency, neglect or abuse adjudications regarding other children in the home had been based. The mere fact of the prior adjudications; the circumstances surrounding the prior abuse, neglect or dependency; and the other conditions in the home constitute the evidence relevant to the finding of a previously unadjudicated child's dependency. All of that evidence must necessarily exist as of the date(s) alleged in the complaint, and I disagree that "the other conditions in the household of the child" could only be discovered after the date(s) alleged in the complaint. "[T]he other conditions in the household of the child" may certainly include the mere existence of certain persons in home. Furthermore, the fact that the subject child has never lived in the household

does not preclude CSB from investigating the conditions in the home prior to filing the complaint alleging dependency, neglect and/or abuse.

{¶44} In holding in *In re D.B.* that the juvenile court did not err by considering evidence of events which occurred after the date of the filing of the complaint alleging dependency, this Court cited *In re Pieper Children* (1993), 85 Ohio App.3d 318, 325, for the proposition that the juvenile court could properly rely on events which occurred after the removal of the children from their mother's home in its adjudication of dependency. *In re D.B.* at ¶18. I do not believe that *Pieper* stands for the proposition that the juvenile court may properly consider evidence of events or circumstances after the date(s) alleged in the complaint in considering the adjudication of the child. Rather, *Pieper* involved a unique situation in which the child protection agency ("JFS") filed a complaint in 1989 alleging the children to be dependent, neglected and abused; and the children were so adjudicated. The parents' rights were ultimately terminated. The parents appealed, and permanent custody was affirmed as to the father, but reversed as to the mother. JFS then filed a second complaint in 1991, alleging the children to be dependent, neglected and abused, "as of April 12, 1989, continuing through July 19, 1991, and thereafter." *Pieper*, 85 Ohio App.3d at 325.

{¶45} The trial court adjudicated the children dependent, and the mother appealed, assigning as error that "any incidents that occurred after the first adjudication of dependency cannot be the basis for a second adjudication of dependency, as the children were not then in her custody and therefore could not have been adversely impacted by her conduct[.]" Id. The Twelfth District overruled the assignment of error on public policy grounds that "a prospective finding of dependency is appropriate where children have not been in the custody of the mother, but circumstances demonstrate that to allow the mother to have custody of her children would

threaten their health and safety." Id., citing *In re Campbell* (1983), 13 Ohio App.3d 34. In the second case, premised on a new complaint, the trial court in *Pieper* considered evidence of events and circumstances solely as of the dates listed in the complaint, specifically, "as of April 12, 1989, continuing through July 19, 1991, and thereafter." *Pieper*, 85 Ohio App.3d at 325. *In re D.B.* interprets *Pieper* to hold that the trial court did not err by considering evidence of events which occurred after the date the agency *filed* its complaint, without regard for the date(s) *alleged* therein. *In re D.B.* at ¶19. I believe that *Pieper* is distinguishable and must be narrowly construed on the basis of its particular facts. In addition, I believe that the majority in this case at ¶10 further expands the holding of *In re D.B.* by interpreting it to mean that evidence of events which occur after the date alleged in the complaint is not necessarily inadmissible.

{¶46} More than fifty years ago, the Ohio Supreme Court held that "[a]ny fault or habit of a parent sufficient to constitute a lack of proper parental care must exist *at the time of the hearing* of a charge of such neglect." (Emphasis added.) *In re Kronjaeger* (1957), 166 Ohio St. 172, 177. Since then, it has been recognized that the holding in *Kronjaeger* was superseded by statute in 1969 when the legislature enacted R.C. 2151.23, which provided, in relevant part that "(A) the juvenile court has exclusive original jurisdiction under the Revised Code: (1) concerning any child *who on or about the date specified in the complaint* is alleged to be *** neglected ***." (Emphasis in original.) *In the Matter of Linger* (July 12, 1979), 5th Dist. No. CA 2556. The Fourth District recognized that the *Kronjaeger* case involved the issue of neglect, but agreed that its holding was applicable to dependency as well. *In re Hay* (May 31, 1995), 4th Dist. No. 94CA23. Since then, several other district courts have recognized the overruling of *Kronjaeger* and have held that the events and circumstances relevant to an adjudication are those in existence as of the date(s) alleged in the complaint. See, e.g., *In re Rowland* (Feb. 9, 2001),

2d Dist. No. 18429; *In re S.H.*, 12th Dist. No. CA2005-01-007, 2005-Ohio-5047, at ¶9; *In re Alexander C.*, 164 Ohio App.3d 540, 2005-Ohio-6134, at ¶8.

{¶47} Juv.R. 10 provides that the complaint "be upon information and belief," filed by any person "having knowledge" that a child appears to be dependent, neglected or abused. Juv.R. 10(A) and (B). I fear that the majority's expansive interpretation of our prior decision in *In re D.B.* presents a slippery slope which might eventually lead to the admissibility at adjudications of evidence well beyond the scope of the allegations in the complaint.

{¶48} In the instant matter, I agree that the juvenile court did not err by refusing to allow Mother to present evidence of remedial measures taken after the date(s) on which the children were alleged to have been dependent and neglected. I further agree that the juvenile court did not err by finding that neglect and dependency did not need to be proven as of the date of the adjudicatory hearing. Finally, I agree that the trial court did not err by finding the children dependent and neglected by clear and convincing evidence. I merely would not imply that the juvenile court might properly consider evidence of events or circumstances in existence after the date(s) alleged in the March, 18, 2008 complaint. Accordingly, I concur in judgment only.

APPEARANCES:

NEIL P. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.