[Cite as *In re A.C.*, 2010-Ohio-4933.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of:
A.C., A.C., W.C., H.C.

Court of Appeals No. L-10-1025

Trial Court No. JC09193710

DECISION AND JUDGMENT

Decided: October 8, 2010

* * * * *

Tim A. Dugan, for appellant mother.

James J. Popil, for appellant father.

Jeremy G. Young, for appellee.

* * * * *

COSME, J.

{¶ 1} Appellants, Christine C. ("mother") and Clyde C. ("father"), appeal the judgment of the Lucas County Common Pleas Court, Juvenile Division, adjudicating their four minor children, Alexander C., Arlene C., W.C. and H.C., to be abused, neglected, and dependent, and granting temporary custody of the children to the Lucas County Children Services ("LCCS") agency. Because we conclude that clear and

convincing evidence supported the juvenile court's adjudication of abuse, neglect, and dependency as to Alexander C. and Arlene C., and the adjudication of neglect and dependency as to W.C. and H.C., we affirm.

I. PROCEDURAL BACKGROUND

{¶ 2} On April 29, 2009, LCCS filed a complaint in the juvenile court alleging that four minor children, Alexander C., Arlene C., W.C. and H.C., were abused, neglected, and dependent. As a result of the complaint, the children were placed in the emergency temporary custody of LCCS that same day.

{¶ 3} An adjudication hearing was held on June 17, 2009. Mother and father each had their own counsel. At the conclusion of the hearing, the magistrate found all four children to be abused, neglected, and dependent.

{¶ 4} A disposition hearing was held on July 6, 2009, and the magistrate determined that the proper disposition for the children was to continue in the temporary custody of LCCS. The magistrate's decision was filed on July 15, 2009; mother and father each filed objections thereafter.

{¶ 5} In a decision filed December 28, 2009, the juvenile court modified the magistrate's decision, concluding that while there was clear and convincing evidence to support a finding that Alexander C. and Arlene C. are abused, neglected, dependent, and that W.C. and H.C. are neglected and dependent, there was no evidence presented that W.C. and H.C. are abused children. The trial court also filed an entry in which it affirmed the modification and awarded temporary custody of the children to LCCS.

II. ADJUDICATION HEARING

{¶ 6} At the adjudication hearing, which took place four months after the complaint was filed, the magistrate heard from two of mother's co-workers, two police officers, three LCCS caseworkers, a pediatrician, and the guardian ad litem. Mother and father did not testify. None of the children testified at the hearing. The four children whose welfare is at issue are Alexander C., Arlene C., W.C. and H.C. At the time of the adjudication hearing, the ages of the children were as follows: Alexander C., ten years, seven months; Arlene C., seven years, five and one-half months; W.C., six years and five months; and H.C., six months.

{¶ 7} The abuse, neglect, and dependency of the children is alleged to have occurred approximately one year prior to the adjudication hearing, and encompasses the period of time prior to, and subsequent to, mother's September 7, 2008 report to the police that father had assaulted her. A second report of assault followed on November 21, 2008. At the time of the second report, mother was 37 weeks pregnant with H.C.

{¶ 8} The allegations in the complaint highlighted the following concerns: (1) the ongoing domestic violence against mother; (2) the causal connection between the alleged incidents of domestic violence and their alleged affect upon the children; (3) the potential for abuse to W.C. and H.C.; (4) the filthy and unsanitary state of the home; (5) the filthy and unsanitary state of the children; (6) the lack of supervision or discipline; (7) the intentional violation of the protective orders by both mother and father; (8) the

parents' failure to adhere to the case plan; (9) father's attempt to "sell" H.C.; (10) evidence of physical and mental injury to Alexander C. and Arlene C.; and (11) the young age of the children, including the physical and mental condition of W.C., a disabled child, and H.C., an infant.

{¶ 9} LCCS intended that the first witness they called, Officer Tom Williams, would verify that mother complained of being assaulted by father on September 7, 2008, and thus, establish the first time these allegations of domestic violence had been reported. Officer Williams could not recall meeting with mother and was unable to independently verify the contents of the report.

{¶ 10} Nevertheless, the next witness, Ms. Keiffer, mother's immediate supervisor at her place of employment, Heartland Healthcare Services ("Heartland"), testified that mother came to work with a bruise on her arm sometime in the early fall, and in November 2008, with a black eye. She testified that mother often had loud arguments with father on the phone, that she had advised mother to obtain a protection order because she was concerned for the safety of the children. Although mother did get a protection order, Ms. Keiffer noted that father was still at the house.

{¶ 11} Ms. Keiffer was also concerned with mother's financial situation. Ms. Keiffer was told by mother that father controlled the money and used it all on crack. As such, the family did not have any money for school clothes or other essentials. Mother's co-workers took up donations to help mother buy items for the family and new eyeglasses for mother to replace the ones father broke.

{¶ 12} Ms. Keiffer was also concerned with mother's hygiene, noting that mother's body odor was so bad that mother was offered the use of the company shower. Because of the disruption at work caused by the phone calls, failure to comply with work rules, and the hygiene issue, mother was terminated from Heartland. Following her termination, mother sent Ms. Keiffer a text message threatening suicide unless she was re-hired.

{¶ 13} Ms. Zaborski, also employed at Heartland Healthcare Services, testified that she became concerned for mother because she would show up for work with bruises all over her face, choke marks on her neck, even when mother was nine months pregnant. Mother told her co-workers that father had hit her and punched her. Ms. Zaborski described mother's phone calls with father as argumentative, loud, and vulgar. Ms. Zaborski also expressed concern for the well-being of the children based on mother's lack of interaction, involvement, concern for, or care of the children. Ms. Zaborski described mother's house as not being clean, that there were no light bulbs in the dining room, the first floor toilet was not working, and a pornographic movie had been left on the chair. Ms. Zaborski was also concerned with mother's financial situation, relating that mother told her that father planned to sell W.C.'s diapers, which W.C. needed because of his disability. The family received the diapers for free from the state because of W.C.'s disability.

{¶ 14} Officer Koehler testified that he took a report from mother on November 20, 2008, in which mother alleged that she had been assaulted by father.

Mother told Officer Koehler that father had punched her in the face and stomach and threatened to kill her if she filed domestic violence charges. Officer Koehler observed that mother had bruising around her eye. Mother was nine months pregnant at the time of the assault.

{¶ 15} Ms. Ledford, a LCCS caseworker, was assigned to do an assessment of the children based on the allegation of domestic violence and physical abuse of the children. Ms. Ledford related that when she met mother four days after the November 21, 2008, report of domestic violence, mother had a black eye, bruising to the side of her face, and glasses that were broken. Mother told her that father had punched her in the face, hit her in the nose causing it to bleed, and broken her glasses. Mother related to Ms. Ledford that she was nine months pregnant at the time. Ms. Ledford testified that father admitted to her that he had given mother a black eye.

{¶ 16} Ms. Ledford assisted mother in obtaining a protection order, but expressed concern for the children's safety because both Alexander C. and Arlene C. told her that they saw father hit mother. Ms. Ledford also related that mother had taken Alexander C. and Arlene C. to the hospital to be checked for abuse, and that mother did so of her own initiative.

{¶ 17} Ms. Pettaway, another LCCS caseworker, was assigned to connect mother to community resources. Ms. Pettaway assisted mother with transporting Alexander C. and Arlene C. to Children's Advocacy Center, and to and from municipal court. She also assisted mother with clothing vouchers, new locks for the doors on the home, a referral to

family counseling at Harbor Behavioral Healthcare, a voucher for a crib and mattress, and an application for additional funds from Lucas County Job and Family Services. According to Ms. Pettaway, mother had no money because father spent mother's paychecks on alcohol and drugs.

{¶ 18} Ms. Pettaway described her concerns with the poor hygiene of Alexander C. and Arlene C. She described them as very dirty, not well kept, and wearing clothing that was either too small or not appropriate for the weather. She also noted that the children's school uniforms were very dirty and stained. Ms. Pettaway was also concerned about mother's lack of involvement with the children, leaving them to fend for themselves. She described mother's lack of concern over the fact that Arlene C. had gone to school without any underwear. She emphasized mother's lack of supervision and discipline of the children, and in particular, mother's disregard of behaviors that could be harmful to the other children. According to Ms. Pettaway, Alexander C. and Arlene C. would constantly argue, hit each other and complain. Ms. Pettaway was concerned that mother gave the children "free course to carry and hold [the baby] whenever they wanted to," and described the children's conduct as being so bad that the counselor had to confront the mother and the children about the risk to the baby. Alexander C. and Arlene C. would fight over who would carry the baby, with one tugging on the baby's arms and the other tugging on the baby's feet. They would also hold her and carry her in a way that was inappropriate for a three-week old baby.

{¶ 19} Dr. Schlievert interviewed and conducted a physical examination of both Alexander C. and Arlene C. According to Dr. Schlievert, Alexander C. had a "hairpin" or curve-shaped scar on his left arm that was consistent with injuries caused by a clothes hanger. Although Dr. Schlievert conceded he could not know if the injury had occurred "days, weeks, months, or even years" ago, he was certain that the injury had occurred within the past year based on the fact that the scar was still visible. Arlene C. had a scar on her left shoulder that Dr. Schlievert described as a "classic scar that's left after someone is hit with an electrical cord or * * * a lamp cord or something like that." Dr. Schlievert could not say when or where this injury occurred, but opined that it had occurred within the past year, given that the scar was still visible.

{¶ 20} According to Dr. Schlievert, the two scars he noted on the children were not the result of play or accident. He described the difference between a scar resulting from abuse and one resulting from play or accident as being very "discrete" but easily identified by one with experience and training in examining other abused children. A scar resulting from abuse would be more clearly defined and a scar resulting from accident would look more "jagged," "irregular," and would look "nasty."

{¶ 21} Dr. Schlievert testified that both children related to him that they had been hit. Alexander C. told Dr. Schlievert that "he had been beaten with a pipe, hanger, and a switch by his dad." He also told Dr. Schlievert of being hit with tools, and that he had marks on his legs, but that they were no longer visible. Arlene C. told Dr. Schlievert, "I got whooped," but when asked who whooped her, she said, "I don't know."

{¶ 22} In addition to the children's physical injuries, Dr. Schlievert also noted that both children were unusually reluctant to participate in the physical examination and both exhibited behavior that Dr. Schlievert described as "bizarre" and "more disturbed than your average child."

{¶ 23} During his physical examination, Alexander C. did not want his shirt or pants taken off, but agreed to allow Dr. Schlievert to examine him only if he could lift his clothes up instead of taking them off. Arlene C. was also unwilling to be examined, but did allow Dr. Schlievert to look at her arms, legs, back and belly.

{¶ 24} Dr. Schlievert also noted that Alexander C. was very "distractible" during the interview and "hard to keep corralled." He further described Alexander C.'s behavior as "bizarre" because Alexander C. would be "very clear and direct" but then change, "making weird noises and saying weird things that I honestly have not seen a patient do in my career."

{¶ 25} Dr. Schlievert described a therapy session during which Arlene C. sat at the door and would not look up at anyone, would not stand up, and would not leave that position. He observed that Arlene C. would swing at people or try to hit them if they tried to pick her up. He added that he could "only recall a handful of times where I've seen behavior like that, and it's generally a sign of someone who is psychologically or psychiatrically disturbed." Dr. Schlievert testified that Arlene C.'s behavior led him to believe that Arlene C. had a mental or emotional problem which was the result of abuse.

{¶ 26} Finally, Dr. Schlievert testified that the evidence of the physical abuse, coupled with the reports of domestic violence, placed the children at a higher risk of psychological and emotional harm. He stated that the children's behavior was evidence of that psychological harm and stated that the children should be removed from the home because they needed a "different environment."

{¶ 27} Ms. Burr, a LCCS caseworker assigned to assist the children, described the domestic violence situation as her greatest concern. She spoke with father about getting services, such as parenting classes, and he told her that he was getting help from Unison. However, when Ms. Burr followed up with Unison, she learned that father was not receiving assistance from them. When she spoke again with father, he told her that he was not interested in any services. As such, father was not complying with the case plan that called for him to engage these services in response to the allegations that father was abusing mother and using illicit drugs.

{¶ 28} Ms. Burr also spoke with mother about completing services as part of her case plan, and specifically about the domestic violence survivor's treatment, but mother's response was that she "didn't need that shit," and she knew "about the cycle," and knew "how to keep herself safe." Mother expressed no concern for the safety of the children.

{¶ 29} Ms. Burr observed that a CPO had been issued by the court as a result of the domestic violence, but noted that the parties were not complying with the no-contact provision. Mother told Ms. Burr that she did not feel the father was a risk to the children,

and even asked that the court take the children off the CPO. The father, however, disregarded the no-contact provision by moving back into the home.

{¶ 30} Ms. Burr expressed concern with the children's well-being, noting that they were not clean; their hair was "dirty" and "matted." She also expressed concern with the mother's ability to supervise and discipline the children, mentioning the older children's handling of the baby, the same behavior complained of by Ms. Pettaway, as well as Alexander C.'s arrest for kicking mother.

{¶ 31} Finally, Ms. Paully, the guardian ad litem, testified briefly on the issue of whether father had violated the terms of the CPO. Ms. Paully stated that she had personal knowledge that the parties had violated the CPO, describing a visit she made to the home while the no contact provision was in effect. According to Ms. Paully, both mother and father were at the home, a violation of the no-contact provision of the CPO.

III. MANIFEST WEIGHT OF EVIDENCE

{¶ 32} In her sole assignment of error, mother maintains that:

{¶ 33} "The Juvenile Court's finding of abuse, dependency, and neglect, was against the manifest weight of the evidence."

{¶ 34} In his first assignment of error, father maintains that:

{¶ 35} "The trial court erred in finding clear and convincing evidence that the above named children were dependent, neglected and abused children."

{¶ 36} Mother argues that the evidence upon which the juvenile court relied does not prove clearly and convincingly that Alexander C. and Arlene C. were abused, or that

Alexander C., Arlene C., W.C., and H.C. were dependent or neglected. Mother asserts that Dr. Schlievert's testimony was not evidence of abuse because he was unable to testify who caused the injuries to Alexander C. and Arlene C., or specifically when they occurred. Mother also asserts that there was no evidence that the children were dependent or neglected because LCCS's portrayal of the children's living conditions at home was incomplete and that there was no evidence that the children were not being cared for.

{¶ 37} Father claims that the facts of this case are strikingly similar to the family's prior case, *In re Alexander C.*, 164 Ohio App.3d 540, 2005-Ohio-6134, and argues that the only difference is the new allegation of physical and sexual abuse of Alexander C. and Arlene C. According to father, the allegations of abuse are unsupported since Dr. Schlievert "was unable to state when the alleged abuse had occurred * * *, how the abuse occurred, or who the perpetrator was." He argues that since the children are being properly fed, clothed, and receiving proper care, the decision of the juvenile court is not supported by clear and convincing evidence.

{¶ 38} Both mother's and father's assignments of error claim that the juvenile court's decision that the children were abused, neglected, or dependent was against the manifest weight of the evidence and not supported by clear and convincing evidence.

{¶ 39} We disagree.

{¶ 40} That a child is an abused, neglected, or dependent minor must be established by clear and convincing evidence. R.C. 2151.35(A). Clear and convincing

evidence is that measure or degree of proof which is more than a mere preponderance of the evidence, but does not reach the extent of the certainty required to establish "beyond a reasonable doubt" in criminal cases. It is that quantum of evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *In re G.S.*, 10th Dist. No. 05AP-1321, 2006-Ohio-2530, ¶ 4, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469 477. When reviewing a trial court's decision on the manifest weight of the evidence, appellate courts are guided by the presumption that the findings of the trial court were correct. *In re Williams*, 10th Dist. No. 01AP-867, 2002-Ohio-2902, ¶ 9. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The rationale for this presumption is that the trial court is in the best position to evaluate the evidence by viewing witnesses and observing their demeanor, voice inflections, and gestures. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. Thus, "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, paragraph one of the syllabus.

A. Abused Child

{¶ 41} As defined by R.C. 2151.031(D), an "abused child" includes any child who "[b]ecause of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare."

{¶ 42} "Once the clear and convincing standard has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof." *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368. Moreover, because a claim that there was a failure to meet the requisite burden of proof essentially challenges the weight given by the trial court to the evidence in the record, a reviewing court may not reverse the trial court's ruling if the "judgment[ ][is] supported by competent, credible evidence going to all the material elements of the case." *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. See *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74. See, also, *In re Haker* (Dec. 3, 1999), 11th Dist. No. 98-P-0106.

{¶ 43} Pursuant to R.C. 2151.031(D), the definition of "abused child" includes "any child who * * * [b]ecause of the acts of his parents * * * suffers physical or mental injury that harms or threatens to harm the child's health or welfare." The definition also includes "any child who * * * [e]xhibits evidence of any physical * * * injury * * * inflicted other than by accidental means * * * which is at variance with the history given." R.C. 2151. 031(C). The plain language of R.C. 2151.031(C) clearly indicates that parental fault is not required for a finding of abuse. See *In re Pitts* (1987), 38 Ohio

App.3d 1, 5, ("During the adjudicatory phase of the proceedings, the trial court does not have to find any fault on the part of a parent, guardian or custodian in order to find that the child is 'abused' * * *.")

{¶ 44} At adjudication, the juvenile court magistrate heard the testimony of Dr. Schlievert, who testified that Alexander C. and Arlene C. had physical and mental injuries consistent with child abuse.

{¶ 45} Based on the testimony of Dr. Schlievert, we find that there existed clear and convincing evidence that the Alexander C. and Arlene C. suffered physical and mental injuries as a result of the actions of their parents.

B. Neglected Child

{¶ 46} A "neglected child" has been statutorily defined by R.C. 2151.03, and clear and convincing evidence must support a magistrate's determination that a child falls within the statute's purview.

{¶ 47} The complaint does not allege which specific subsection of R.C. 2151.03 the neglect was based upon. Nor do the magistrate's findings of fact set forth a particular subsection of the neglect statute. However, a reading of the magistrate's findings of fact and transcript of the adjudicatory hearing make clear that all but subsection (1) and (7) are applicable. Thus we look at R.C. 2151.03(A)(2), (3), (4), (5), and (6) independently.

R.C. 2151.03(A)(2)

{¶ 48} We turn first to R.C. 2151.03(A)(2), which defines a neglected child as any child "[w]ho lacks adequate parental care because of the faults or habits of the child's

parents, guardian, or custodian." "'Adequate parental care' means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs." R.C. 2151.011(B)(1). R.C. 2151.05 governs children without proper parental care and states as follows:

{¶ 49} "Under sections 2151.01 to 2151.54 of the Revised Code, a child whose home is filthy and unsanitary; whose parents, stepparents, guardian, or custodian permit him to become dependent, neglected, abused, or delinquent; whose parents, stepparents, guardian, or custodian, when able, refuse or neglect to provide him with necessary care, support, medical attention, and educational facilities; or whose parents, stepparents, guardian, or custodian fail to subject such child to necessary discipline is without proper parental care or guardianship." See *In re Browne Children* (July 7, 2003), 5th Dist. No. 2003CA00027.

{¶ 50} In this case, there was testimony that the family home was unsanitary and the children were not properly cared for based upon their clothing and appearances. As well, Ms. Ledford and Ms. Burr both described concerns with the mother's ability to supervise and discipline the children and to ensure the safety of the other children, particularly the baby, H.C. Both caseworkers had to ask the mother to intervene and they asked mother not to allow the children to hold or touch the baby in that manner because of concerns for the baby's well-being.

{¶ 51} Other witnesses described their concern with the ongoing domestic violence in the home and its affect upon the safety of the children, particularly in light of the physical and mental injury noted by Dr. Schlievert. Thus, there is clear and convincing evidence that Alexander C., Arlene C., W.C. and H.C. are neglected under R.C. 2151.03(A)(2).

R.C. 2151.03(A)(3)

{¶ 52} R.C. 2151.03(A)(3) provides that in order for a court to adjudicate a child as neglected, the child must be one: "[w]hose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being[.]"

{¶ 53} A necessary element in the determination that a child is neglected is the commission of a culpable act by the parents; the fault, unfitness, or unsuitability of the parent is the crux of the cause. *In re East* (1972), 32 Ohio Misc. 65. For example, children have been held neglected children under the Ohio statutes where the parents indulge in adultery as a normal course of life, are selfish and childish far beyond reasonable limits, and allow such children to associate closely with vicious, criminal, and immoral persons. *In re Douglas* (1959), 11 Ohio Op. 2d 340. The court in *In re Locker*, 5th Dist. No. 2002AP020011, 2002-Ohio-6124, ¶ 24, observed that a violation of a civil protection order, if proved, could be sufficient to find a child neglected pursuant to R.C. 2151.03(A)(3).

{¶ 54} At issue here is mother's and father's failure to abide by the protective orders. *In re Walling*, 1st Dist. No. C-050646, 2006-Ohio-810, ¶ 18, the court declined to presume harm to the child because of Walling's failure to abide by the protective orders. The court noted that "without evidence of some nexus between her failure to abide by the orders and resulting harm to Cody, we cannot presume harm." Id. at ¶ 18. The Supreme Court of Ohio in *In re Burrell* (1979), 58 Ohio St.2d 37, 39, has stated that such harm may not be inferred, and "[a]s a part of the child's environment such conduct is only significant if it can be demonstrated to have an adverse impact upon the child sufficiently to warrant state intervention. That impact cannot be simply left to inference, but must be specifically demonstrated in a clear and convincing manner."

{¶ 55} Thus, the conscious decision of a parent to disregard a lawful order may serve as a basis for finding that the children are not receiving the "other care necessary for the child[ren]'s health, morals, or well being," so long as it has been demonstrated that the children have been adversely affected. R.C. 2151.03(A)(3).

{¶ 56} Here, the complaint sets forth allegations of domestic violence and asserts that mother obtained a temporary protection order and civil protection order ("CPO") against father, both with a no contact provision. However, at a later hearing, mother asked for removal of the no-contact provision of the CPO pertaining to the children and did not inform the caseworker. Nevertheless, while the CPO was in effect, the father was at the home, a violation of the CPO. Several witnesses, including the guardian ad litem, Ms. Paully, testified that father was at the house during the time the CPO was in effect.

{¶ 57} The caseworkers voiced their concern that the children had been adversely affected by the parents' behavior. In particular, they were concerned that the children's rough play with each other, the children's contempt for authority, and their ambivalence towards their parents' conduct, were the result of the ongoing domestic violence. The case workers also cited the fact that Alexander C. had been arrested for hitting mother. Additionally, Alexander C. and Arlene C. both told others that they had been hit, and Dr. Schlievert confirmed that both had scars consistent with abuse.

{¶ 58} We conclude that there was substantial evidence to support a finding of neglect under R.C. 2151.03(A)(3).

R.C. 2151.03(A)(4)

{¶ 59} R.C. 2151.03(A)(4) defines a neglected child as a child "[w]hose parents * * * neglect[ ] the child or refuse[ ] to provide the special care made necessary by the child's mental condition[.]" See *In re Tate* (Sept. 12, 2001), 9th Dist. No. 20147.

{¶ 60} Relevant to R.C. 2151.03(A)(4) is the importance of adhering to a case plan. Non-compliance with the case plan is a ground for termination of parental rights, a step beyond the temporary placement in the present case. *Matter of Greene* (Nov. 17, 1992), 10th Dist. No. 92AP-288. See *In the Matter of Holbert* (Mar. 6, 1984), 10th Dist. No. 83AP-704; *In the Matter of Butcher* (Apr. 10, 1991), 4th Dist. No. 1470; *In re Spurlock Children* (Jan. 27, 1992), 12th Dist. No. CA90-01-013.

{¶ 61} The lack of supervision for all four children reflects that the parents do not understand the level of care necessary for such young children. Because W.C. is a

disabled child, he has additional needs beyond those of a typical six year old. Diagnosed with Coffin-Lowery syndrome, a disability which affects his gait and his ability to respond appropriately and emotionally to others, W.C. has difficulty carrying on a conversation and is in a specialized class at school.

{¶ 62} A case plan was established in part to ensure that all of the children were kept safe, in light of the domestic violence. Ms. Burr spoke with mother about obtaining domestic violence survivor's treatment and mother responded negatively. Despite a referral for services and the testimony of other witnesses that mother had been abused by father, she declined to engage those services.

{¶ 63} In addition, Ms. Burr testified that father chose not to participate in parenting classes after initially agreeing to do so. Father also refused to take substance abuse classes and undergo an assessment for needed treatment.

{¶ 64} In *In re Zeiser* (1999), 133 Ohio App.3d 338, 340-341, the court determined that insufficient parental supervision, alone, will support a finding of neglect. Id. at 347-350. The court set forth three salient factors to be considered when determining if a lack of supervision is neglect. Id. at 347. These include: (1) the ages of the children; (2) "the pattern, regularity, and length of the incidents of no supervision;" and, (3) whether it appears that the lack of supervision will continue due to the inability or unwillingness of the parents to acknowledge the problem. See *In re Corey Children*, 11th Dist. No. 2005-G-2649, 2006-Ohio-2013, ¶ 20.

{¶ 65} Application of these factors to the instant case supports the juvenile court's adjudication of the children as neglected. The juvenile court was well aware of the age of the children, the oldest, being Alexander C., who was nearly 11 years old at the time of the complaint, and the youngest, being H.C., who was only weeks old at the time. Clearly, H.C. and W.C. were not competent to testify because of their age. The parental supervision of the children was inappropriate, the incidents involving the children were not isolated incidents, and neither parent was receptive to the caseworkers' warnings that additional supervision was necessary. Nor did the parents comply with the case plan designed to protect the children.

R.C. 2151.03(A)(5)

{¶ 66} R.C. 2151.03(A)(5) would render H.C. a "neglected" child because of father's attempt to find someone to "buy" the baby. The complaint alleges that mother told Ms. Burr that father did not want the baby and was looking for someone who would buy the baby. Ms. Burr's testimony at the adjudication hearing, however, does not include any reference to father trying to sell the baby. The only testimony concerning this allegation is that of Ms. Keiffer who said that mother told her that her "old man" (father) wanted to sell the baby.

{¶ 67} Unlike statements made to social workers for the purpose of facilitating medical treatment which are admissible under the medical exception to hearsay, *In re A.R.*, 9th Dist. No. 22836, 2006-Ohio-1548, and *State v. Major*, 9th Dist. No. 21662, 2004-Ohio-1423, mother's statement to Ms. Keiffer is inadmissible. Ms. Keiffer is not a

social worker. She is mother's former co-worker. See Evid.R. 803(4). We decline to consider this allegation of neglect based solely on hearsay.

R.C. 2151.03(A)(6)

{¶ 68} R.C. 2151.03(A)(6) holds that "neglected child" also includes any child "[w]ho, because of the omission of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare." *In re Norris* (Dec. 12, 2000), 4th Dist. Nos. 00CA038, 00CA041.

{¶ 69} We are mindful that a previous case involving the same parents and some of the same children was reversed and remanded to the trial court in part because there was no evidence that domestic violence between the parents was an issue. In that case, this court held, "[u]sually, when domestic violence between the parents is an issue, more evidence supports a causal connection between the alleged incidents and their alleged effect on a child - i.e., telephone calls to police, police reports, the child's statements, etc." *In re Alexander C.*, 164 Ohio App.3d 540, 2005-Ohio-6134, ¶ 54. See *In re Tate* (Sept. 12, 2001), 9th Dist. No. 20417 (which reversed an adjudication of neglect, although the mother had failed to comply with the safety plan after the agency received allegations of domestic violence between the parents.)

{¶ 70} Unlike the earlier case, there is now substantial evidence showing that domestic violence is an issue. In addition, there is also evidence of physical and mental injury to the children.

{¶ 71} Dr. Schlievert testified that the scars on Alexander C. and Arlene C. were consistent with abuse, and he observed signs of mental injury that he attributed to the abuse or exposure to the domestic violence in the home. See *In re Malaya H.*, 6th Dist. No. L-05-1005, L-05-1006, 2005-Ohio-7010, ¶ 19.

{¶ 72} We conclude that there exists clear and convincing evidence that Alexander C. and Arlene C. have suffered physical and mental injury as a result of the domestic violence in the home and the physical abuse by father.

{¶ 73} Consideration of the factors set forth in R.C. 2151.03(A)(2), (3), (4), (5), and (6) compel us to find that the trial court's adjudication of the children as neglected is proper.

C. Dependent Child

{¶ 74} Unlike a finding of neglect under R.C. 2151.03, which requires proof that the parents were willfully at fault in abandoning or neglecting the children or refusing to perform their parental duties, "a finding of dependency under R.C. 2151.04 must be grounded on whether the children are receiving proper care and support. The focus is on the condition of the children, not the fault of the parents." *In re Bibb* (1980), 70 Ohio App.2d 117, 120. See *In re Alexander C.*, 164 Ohio App.3d 540, 553, 2005-Ohio-6143, ¶ 45. "The determination that a child is dependent requires no showing of fault on the parent's part." *In re Bolser* (Jan. 31, 2000), 12th Dist. Nos. CA99-02-038 and CA99-03-048. Rather, the focus is solely on the child's condition or environment, and whether the child was without adequate care or support. See *In re Ament* (2001), 142 Ohio App.3d

302, 307. However, a court may consider a parent's conduct insofar as it forms part of the child's environment. *In re Alexander C.*, 164 Ohio App.3d 540, 2005-Ohio-6134, ¶ 51, citing *In re Burrell* (1979), 58 Ohio St.2d 37, 39. A parent's conduct is significant if it has an adverse impact on the child sufficient to warrant state intervention. *In re Ohm*, 4th Dist. No. 05CA1, 2005-Ohio-3500, ¶ 21, citing *In re Burrell*, 58 Ohio St.2d at 39.

{¶ 75} While the child's present "condition or environment" is the focus of a dependency determination, "the law does not require the court to experiment with the child's welfare to see if * * * [the child] will suffer great detriment or harm." *In re Burchfield* (1988), 51 Ohio App.3d 148, 156. "[T]he child does not first have to be put into a particular environment before a court can determine that * * * [the] environment is unhealthy or unsafe." Id., citing *In re Campbell* (1983), 13 Ohio App.3d 34, 36. See *In re East* (1972), 32 Ohio Misc. 65 ("a child should not have to endure the inevitable to its great detriment and harm in order to give the parent, guardian, or custodian an opportunity to prove her suitability").

{¶ 76} Juv.R. 29(E)(4) requires that these findings be proven by clear and convincing evidence.

{¶ 77} "A 'dependent child' means any child:

{¶ 78} "(A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;

{¶ 79} "(B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;

{¶ 80} "(C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;

{¶ 81} "(D) To whom both of the following apply:

{¶ 82} "(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.

{¶ 83} "(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." R.C. 2151.04.

{¶ 84} Again, the complaint does not allege which specific subsection of R.C. 2151.04 the dependency was based. Nevertheless, we consider each subsection independently.

R.C. 2151.04(A)

{¶ 85} R.C. 2151.04(A) defines a dependent child as one "[w]ho is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian or custodian." *In re Kasper Children* (June 30, 2000), 5th Dist. No. 1999CA00216.

{¶ 86} "'Adequate parental care' means the provision by a child's parent or parents, guardian, or custodian of adequate food, clothing, and shelter to ensure the child's health

and physical safety and the provision by a child's parent or parents of specialized services warranted by the child's physical or mental needs." R.C. 2151.011(B)(1). R.C. 2151.05 governs a child without proper parental care and states as follows:

{¶ 87} "Under sections 2151.01 to 2151.54 of the Revised Code, a child whose home is filthy and unsanitary; whose parents, stepparents, guardian, or custodian permit him to become dependent, neglected, abused, or delinquent; whose parents, stepparents, guardian, or custodian, when able, refuse or neglect to provide him with necessary care, support, medical attention, and educational facilities; or whose parents, stepparents, guardian, or custodian fail to subject such child to necessary discipline is without proper parental care or guardianship." *In re Browne Children* (July 7, 2003), 5th Dist. No. 2003CA00027.

{¶ 88} Father argues that at no time were these children without food, clothing, or care. Therefore, according to father, these children did not fall within the statutory definition of a dependent child and any finding that they were dependent is against the manifest weight of the evidence.

{¶ 89} Witnesses at the adjudication hearing, however, testified that the home was filthy and unsanitary. They also testified that the children lacked adequate supervision. Dr. Schlievert also testified that Alexander C. and Arlene C. had injuries consistent with abuse. Finally, there is sufficient evidence to show that the children were otherwise dependent or neglected.

{¶ 90} Since LCCS demonstrated that these children were without proper parental care, as defined under R.C. 2151.05, an adjudication that they are dependent under this subsection is supported by the manifest weight of the evidence.

R.C. 2151.04(B)

{¶ 91} R.C. 2151.04(B) defines a dependent child as any child who "lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian."

{¶ 92} In proving that a child is dependent under R.C. 2151.04(B), the evidence must demonstrate not only that the parent had a mental incapacity, but also that the child lacked adequate care because of the mental incapacity. *In re Brown* (1989), 60 Ohio App.3d 136, 137-138. See *In re Miller* (Mar. 27, 1995), 12th Dist. No. CA94-06-124; *In re Hale* (Jan. 14, 1993), 2d Dist. No. 13316. There was no testimony that mother or father suffered from an adjustment disorder, depression, or anxiety, which affected their ability to parent the children. Consequently, R.C. 2151.04(B) does not apply.

R.C. 2151.04(C)

{¶ 93} R.C. 2151.04(C) states that a child is dependent where his "condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship."

{¶ 94} In *In re Alexander C.*, 164 Ohio App.3d 540, 2005-Ohio-6134, ¶ 58, this court held: "* * * a long history of domestic violence between the parents can constitute the clear and convincing evidence necessary for a finding pursuant to R.C. 2151.04(C);

that is, a child residing in a household where the parents' relationship is marred by domestic violence is one whose condition or environment is such as to warrant the state, in the interests of the child, to assume the child's guardianship. *In re Jehosephat W.*, 6th Dist. No. L-01-1505, 2002-Ohio-5503, [ ] at ¶ 17, citing R.C. 2151.04(C)."

{¶ 95} In *In re Alexander C.*, at ¶ 59, this court declined to find the children in that case to be dependent because there was no evidence that the "child or children suffered from any conditions listed in the statute and where it was 'undisputed that their needs for shelter, food and other necessaries were satisfied.' *In re Tikyra A.* (1995), 103 Ohio App.3d 452, 454 [ ]."

{¶ 96} In the present case concerning the same family, however, there is evidence that two of the children were abused, and all four have been neglected. The juvenile court magistrate considered both the conduct of the parents as well as the condition of the children. While the magistrate's findings of fact center upon the father's domestic violence against the mother, the magistrate also considered the testimony of caseworkers and Dr. Schlievert in concluding that the children suffered physical or mental injury that threatens their health or welfare. R.C. 2151.03.

{¶ 97} As reflected in the magistrate's findings of fact, the magistrate considered the acts of domestic violence between mother and father, the unclean condition of the children, their clothes, and the house, evidence of physical abuse to Alexander C. and Arlene C., the affect upon the mental well-being of the children resulting from the domestic violence and the physical abuse, the parent's interaction with and care of their

children, the existence of pornographic material in the home, mother's threat to commit suicide after losing her job, mother's poor hygiene, and mother's disregard for the welfare of her children.

{¶ 98} All of the above describes an environment which warrants the intervention of the state on behalf of the children.

R.C. 2151.04(D)

{¶ 99} R.C. 2151.04(D)'s definition of a "dependent child" includes "any child * * * [who] is residing in a household in which a parent * * * committed an act that was the basis for an adjudication that a sibling of the child * * * is an abused * * * child, [and] [b]ecause of the circumstances surrounding the abuse * * * and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent." Similarly to the definition of "abuse," a finding that a child is "dependent" does not require parental fault. See *In re Riddle* (1997), 79 Ohio St.3d 259, 262.

{¶ 100} Thus, dependency of a child requires clear and convincing proof of two factors: (1) a parent residing in the household committed an act that resulted in an adjudication that a sibling was abused, and (2) the dependent child is in danger of being abused by the parent. *In re Anthony*, 11th Dist. No. 2002-A-0096, 2003-Ohio-5712.

{¶ 101} As discussed above, Alexander C. and Arlene C. were abused children and, therefore, the first element necessary to prove dependency is satisfied.

{¶ 102} As to whether the remaining children are in danger of being abused, Dr. Schlievert testified that Alexander C. and Arlene C., in addition to their physical injury,

also demonstrated behavior that was the result of abuse. The nature and extent of Alexander C. and Arlene C.'s injuries clearly indicate that any child residing in the household would be in danger of abuse if he or she were to remain in the household.

{¶ 103} We believe this evidence is sufficient for the trial court to permissibly conclude that Alexander C. and Arlene C. would be in danger of future abuse, and similarly, their siblings, W.C. and H.C., would also be in danger of being abused. Thus, there was sufficient evidence for the trial court to find dependency of all four children by clear and convincing evidence.

{¶ 104} Application of R.C. 2151.04(A), (C), and (D), sufficiently support the juvenile court's conclusion that adjudication of the children as dependent was proper. We conclude that Alexander C. and Arlene C. were properly adjudicated as abused, and Alexander C., Arlene, C., W.C., and H.C., were properly adjudicated as neglected and dependent.

{¶ 105} Accordingly, mother's sole assignment of error and father's related first assignment of error are not well-taken.

IV. CONTINUANCE OF ADJUDICATION HEARING

{¶ 106} In his second assignment of error, father maintains that:

{¶ 107} "Appellant [father] was denied a fair trial by the trial court's failure to grant [father's] trial counsel's request to continue."

{¶ 108} Father asserts that his trial counsel was unable to adequately prepare for the adjudicatory hearing because: (A) the state failed to comply with Juv.R. 24; (B) the

juvenile court magistrate erred in failing to continue the adjudicatory hearing; and (C) the juvenile court erred in refusing to allow him to recall a witness.

{¶ 109} We disagree.

A. Compliance with Juv.R. 24(A)

{¶ 110} The purpose of discovery rules is to prevent surprise and the concealment of evidence favorable to one party. *Lakewood v. Papadelis* (1987), 32 Ohio St.3d 1, 3. The overall purpose of the rules is to produce a fair trial. Id. Juv.R. 24 governs discovery in juvenile proceedings, and reads, in relevant part:

{¶ 111} "Upon written request, each party of whom discovery is requested shall * * * produce promptly for inspection, copying, or photographing the following information, documents, and material in that party's custody, control, or possession:

{¶ 112} "(1) The names and last known addresses of each witness to the occurrence that forms the basis of the charge or defense;

{¶ 113} "(2) Copies of any written statements made by any party or witness;

{¶ 114} "(3) Transcriptions, recordings, and summaries of any oral statements of any party or witness, except the work product of counsel;

{¶ 115} "(4) Any scientific or other reports that a party intends to introduce at the hearing or that pertain to physical evidence that a party intends to introduce;

{¶ 116} "(5) Photographs and any physical evidence which a party intends to introduce at the hearing;

{¶ 117} "(6) Except in delinquency and unruly child proceedings, other evidence favorable to the requesting party and relevant to the subject matter involved in the pending action. In delinquency and unruly child proceedings, the prosecuting attorney shall disclose to respondent's counsel all evidence, known or that may become known to the prosecuting attorney, favorable to the respondent and material either to guilt or punishment."

{¶ 118} Father claims that his counsel was unable to adequately prepare for the hearing because he was still receiving discovery from the state. Counsel indicated at the adjudicatory hearing that, "As of yesterday, I received some 44 pages. I cannot say that I am prepared for trial, given the late response. I just received the guardian ad litem's report this morning." Counsel did not specifically describe the discovery he was lacking. Nor did he describe what the 44 pages of discovery he had received the day prior to trial pertained to. Finally, he did not indicate how his trial preparation had been affected.

{¶ 119} On May 1, 2009, father filed a request for discovery pursuant to Juv.R. 24. He also asked that the state supplement this discovery. In response, the state filed a witness list on June 3, 2009, that identified 24 witnesses, and noted that it would also call any witness called by another party, and any witnesses not known to LCCS at the time the witness list had been filed. LCCS responded to father's request for discovery on June 4, 2009, by letter dated June 2, 2009.

{¶ 120} On June 3, 2009, LCCS requested discovery from the parents and the guardian ad litem. Seven days later, on June 10, 2009, LCCS filed a motion to compel

the parents and the guardian ad litem to respond to discovery arguing that it had not yet received a response. In his June 17, 2009 memorandum in opposition to the state's motion to compel discovery, father noted that LCCS took a month to respond to his request for discovery and questioned how he could comply with LCCS's request for discovery in less than a week, when the response from LCCS, was "so large that a comprehensive review has not yet been completed."

{¶ 121} Similarly, mother responded in her memorandum in opposition to the state's motion to compel discovery, that the discovery obtained from LCCS included "several hundred pages." She also noted that she received an additional 44 pages of discovery by fax the following day and questioned how she could respond in such a short period of time given the amount of discovery received.

{¶ 122} The record reflects that an amended case plan, totaling 72 pages, for all of the children, was filed on June 11, 2009. In addition, the record includes a report of the guardian ad litem that was filed June 16, 2009, and which comprises eight pages.

{¶ 123} We note that the Rules of Juvenile Procedure which control adjudication proceedings in juvenile court differ from the Rules of Criminal Procedure in regard to a continuing duty to disclose. Unlike Crim.R. 16, Juv.R. 24 contains no requirement that disclosures be updated. Therefore, a party seeking current information must either repeat its request or move for an order compelling discovery pursuant to Juv.R. 24(B). *In re Jeremy K.* (July 27, 2001), 6th Dist. No. E-00-051. After LCCS responded to the initial

discovery request, father made no further requests and sought no order compelling discovery.

{¶ 124} Juv.R. 24(A) is similar to Crim.R. 16(B)(1)(e) and provides in relevant part that "[u]pon written request, each party to whom discovery is requested shall * * * produce * * * [c]opies of any written statements made by any party or witness; * * * [t]ranscriptions, recordings, and summaries of any oral statements of any party or witness, except the work product of counsel[.]" If a request for discovery is refused, Juv.R. 24(B) provides that the party seeking the discovery may apply to the court for a written order granting the discovery. If that order is then not complied with, Juv.R. 24(C) provides that the court may prevent the non-complying party from introducing the evidence at issue. Accordingly, Juv.R. 24 only authorizes sanctions, such as prohibiting a witness from testifying, when a party has failed to comply with a court order compelling discovery. Nevertheless, a juvenile court's ruling with regard to a discovery dispute is reviewed by an appellate court under an abuse of discretion standard. *State v. Metz* (June 4, 1997), 4th Dist. No. 96CA03. See *Blakemore v. Blakemore* (1984), 5 Ohio St.3d 217, 219.

{¶ 125} Father did not complain that a request for discovery was refused. Instead, he complains that he received supplemental discovery that LCCS was not obligated to provide. Because of counsel's failure to describe with particularity the documentation received immediately prior to the adjudication hearing, it is not known

whether this supplemental discovery was repetitive, or contained new information that could have been provided earlier, or necessitated a continuance.

{¶ 126} As such, we conclude there is no basis upon which we can find that the state did not comply with Juv.R. 24.

B. Continuance of the hearing

{¶ 127} Juv.R. 23 states that "continuances shall be granted only when imperative to secure fair treatment for the parties." "The power of a trial court in a juvenile proceeding to grant or deny a continuance under Juv.R. 23 is broad and is reviewed under an abuse of discretion standard." *In re Jordan B.*, 6th Dist. No. L-06-1161, 2007-Ohio-2537, ¶ 16. See *State v. Thompson*, 6th Dist. No. WD-06-034, 2007-Ohio-2665, ¶ 38. "'An appellate court will not find error "unless it clearly appears, from all the facts and circumstances, that there has been an abuse of discretion, operating to the prejudice of the party in the final determination of the case."'" *State v. Sipes*, 5th Dist. No. CA-A-04-0014, 2008-Ohio-6627, ¶ 62, quoting *Garrett v. Garrett* (1977), 54 Ohio App.2d 25, 34. See *Blakemore*, 5 Ohio St.3d at 219.

{¶ 128} Nevertheless, the right of due process requires that "a defense counsel be afforded the reasonable opportunity to prepare his case." *State v. Sowders* (1983), 4 Ohio St.3d 143, 144. The Supreme Court of Ohio has recognized: "'There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.'" *State v. Unger*

(1981), 67 Ohio St.2d 65, 67, quoting *Unger v. Sarafite* (1964), 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921.

{¶ 129} Accordingly, the Ohio Supreme Court in *Unger* adopted a balancing test in which a trial court's right to control its own docket and the public's interest in an efficient judicial system are weighed against any potential prejudice to the defendant. Id. at 67. Among other factors, a court should consider "the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case." Id. at 67-68. See *In re S.R.*, 6th Dist. No. OT-09-024, 2010-Ohio-3073, ¶ 22.

{¶ 130} Having examined all the facts and circumstances that existed at the time counsel complained of the late discovery disclosure, we cannot find that the trial court abused its discretion. Although father's counsel told the trial court: "I cannot say that I am prepared for trial, given the latest response," he did not specifically ask for a continuance.

{¶ 131} Considering that father's counsel did not explain why he needed additional time to prepare for the adjudication hearing and what else he wished to do in furtherance of an adequate defense, we fail to see how there was anything presented by father in the way of potential prejudice for the trial court to consider in evaluating his

request for a continuance. See *State v. Harris*, 6th Dist. No. WM-09-015, 2010-Ohio-3526, ¶ 17.

{¶ 132} Moreover, father has not demonstrated any actual prejudice resulting from the denial of the continuance. Although he insists on appeal that he was entitled to a continuance, father has still not identified or even alleged that there is any particular evidence, argument, or defense that he was unable to present at trial due to the purported lack of preparation time. In the absence of such a showing, the denial of a continuance, even if erroneous, will not provide a basis for reversal on appeal. See *State v. Harris*, 6th Dist. No. WM-09-015, 2010-Ohio-3526, ¶ 18. See, also, *In re Am. Transm. Sys., Inc.*, 125 Ohio St.3d 333, 2010-Ohio-1841, ¶ 34; *State v. Claytor* (1991), 61 Ohio St.3d 234, 241; *State v. Starks*, 9th Dist No. 23622, 2008-Ohio-408, ¶ 11; *State v. Amason* (Nov. 17, 1999), 1st Dist. No. C-980910; *Roseman v. Village of Reminderville* (1984), 14 Ohio App.3d 124, 127.

(C) Recalling a witness for cross-examination

{¶ 133} Father maintains that the juvenile court erred in refusing to allow him to recall a witness. Father asserts that he informed the juvenile court magistrate that he could not continue cross-examination of Ms. Ledford because of the substantial amount of discovery he had received the day before the adjudicatory hearing. He asked that he be permitted to suspend his examination of that witness and recall her at a later time. The magistrate responded, "Sure."

{¶ 134} The record does not reflect that the magistrate actually refused to allow counsel to recall the witness. Instead, father was precluded from recalling Ms. Ledford because the magistrate announced his decision at the close of evidence, without asking counsel if he wished to recall Ms. Ledford. Counsel did not, however, ask that he be permitted to recall Ms. Ledford. Nor did he object prior to, or subsequent to, the magistrate's announcement of his decision.

{¶ 135} As with his argument for a continuance, father did not explain how he was prejudiced by the failure of the court to allow him to recall Ms. Ledford. Although he insists on appeal that he was entitled to cross-examine Ms. Ledford, father has not identified or even alleged that there is any particular evidence, argument, or defense that he was unable to present at trial due to his inability (or failure) to recall Ms. Ledford and further cross-examine her. In the absence of any prejudice, there can be no abuse of discretion in failing to allow father the opportunity to recall a witness.

{¶ 136} We conclude that the state complied with Juv.R. 24, there was no abuse of discretion in refusing to continue the adjudicatory hearing or refusing to allow him to recall a witness. Contrary to his assertions, appellant's counsel did not ask for a continuance or to recall a witness for further cross-examination.

{¶ 137} Accordingly, father's second assignment of error is not well-taken.

V. CONCLUSION

{¶ 138} We conclude that clear and convincing evidence supported the adjudication of abuse, dependency, and neglect as to Alexander C. and Arlene C., and the adjudication of dependency and neglect as to W.C. and H.C.

{¶ 139} Specifically, there was clear and convincing evidence that Alexander C. and Arlene C. suffered physical and mental injuries as a result of the acts of their parents. Further, there was clear and convincing evidence that all of the children were neglected. R.C. 2151.03(A)(2), (3), (4), and (6) applied to one or more of the children. Finally, there was clear and convincing evidence that all of the children were dependent because they were not receiving proper care and support. R.C. 2151.04(A), (C), and (D) applied to one or more of the children.

{¶ 140} Accordingly, the judgment of the Lucas County Common Pleas Court, Juvenile Division is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
JUDGE

Keila D. Cosme, J. _____
CONCUR.
JUDGE