

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

IN RE Z.B., ET AL. :  
 : Nos. 110500 and 110510  
Minor Children :  
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JOURNAL ENTRY AND OPINION

**JUDGMENT: REVERSED AND REMANDED**  
**RELEASED AND JOURNALIZED: September 16, 2021**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD-21-900334, AD-21-900335, and AD-21-900336

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***Appearances:***

Cullen Sweeney, Cuyahoga County Public Defender, and  
Britta Barthol, Assistant Public Defender, *for appellee*.

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Joseph C. Young, Assistant Prosecuting  
Attorney, *for appellant*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, Cuyahoga County Department of Children and Family Services (hereinafter “CCDCFS” or “agency”) brings this appeal challenging the juvenile court’s judgment dismissing the agency’s complaint for neglect and dependency, and request for temporary custody. CCDCFS argues that the juvenile court erred and abused its discretion in concluding that the complaint contained defects that the agency could not cure and dismissing the complaint. After a

thorough review of the record and law, this court reverses the juvenile court's judgment and remands the matter to the juvenile court for further proceedings consistent with this opinion.

### **I. Factual and Procedural History**

{¶ 2} The instant matter arose from custody proceedings involving three minor children: Zau.B. (d.o.b. May 22, 2012), Z.B. (d.o.b. March 11, 2015), and D.B. (d.o.b. December 29, 2017). Cuyahoga J.C. No. AD-21-900334 pertained to Zau.B., Cuyahoga J.C. No. AD-21-900335 pertained to Z.B., and Cuyahoga J.C. No. AD-21-900336 pertained to D.B.

{¶ 3} Appellee, L.B., is the mother of the three children (hereinafter "Mother"). R.G. is the father of Zau.B. and Z.B. (hereinafter "Father" or "R.G."). At the time of the juvenile court's March 29, 2021 adjudicatory hearing, paternity for D.B. had not been established.

{¶ 4} CCDCFs became involved with the family following an incident in January 2021, during which the children were observed playing on the roof of the family home without supervision. The home also appeared to be unsafe and unsanitary. The agency was also concerned about Father's history of violence. Father was indicted on December 7, 2020, with two counts of domestic violence in Cuyahoga C.P. No. CR-20-654805-A. Zau.B. and Z.B. were the named victims of the domestic violence offenses. Furthermore, Father was convicted of attempted domestic violence involving Mother in Cuyahoga C.P. No. CR-16-612143-A. The indictment in CR-16-612143-A referenced Father's two prior domestic violence

convictions, one in 2015 (CR-15-596355-A) and the other in 2014 (CR-14-583550-A).<sup>1</sup>

{¶ 5} On January 15, 2021, CCDCFS filed a complaint alleging that the children were neglected and dependent, and requesting an order of temporary custody. The juvenile court granted predispositional temporary custody of the children to the agency.

{¶ 6} A magistrate held an adjudicatory hearing on CCDCFS's complaint on March 29, 2021. During the hearing, the agency sought to amend its original complaint as it pertained to Mother. The magistrate permitted the agency to amend the complaint, and Mother entered an admission to the amended complaint. Father denied the allegations in CCDCFS's complaint.

{¶ 7} CCDCFS social worker Justin McDowell testified during the adjudicatory hearing. A dispute arose regarding whether paternity had been established for Father. McDowell testified that Father was the father of Zau.B. and Z.B., and that paternity had been established for Father. McDowell explained that the case originally came in as a "Doe case," but he subsequently learned that Father had established paternity for Zau.B. and Z.B. (Tr. 20-21.)

{¶ 8} Father's counsel orally moved to dismiss the complaint, arguing that there were "material defects" in the complaint with respect to Father's paternity

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<sup>1</sup> We take judicial notice of the fact that Father was charged in a five-count indictment on July 8, 2021, with felonious assault, robbery, robbery, domestic violence, and endangering children. Cuyahoga C.P. No. CR-21-661014-A. These charges are currently pending.

status. The magistrate granted Father's motion to dismiss, and dismissed the complaint without prejudice. The magistrate's March 29, 2021 decision provided, in relevant part, "[c]ounsel for [F]ather entered an oral motion to dismiss due to material defects within the complaint. Mother through counsel does not object to the dismissal. [CCDCFS] is unable to cure the defects to permit the instant action on the complaint to proceed." The magistrate dismissed CCDCFS's complaint without prejudice pursuant to R.C. 2151.35(A)(1).

{¶ 9} On April 9, 2021, CCDCFS filed objections to the magistrate's decision. In its objections, CCDCFS argued that the complaint fulfilled the requirements of Juv.R. 10(B):

[T]he complaint stated in ordinary and concise language the essential facts that bring the proceedings within the jurisdiction of the court when it made allegations of neglect and dependency regarding poor supervision, unsanitary housing conditions and unwillingness or inability of [M]other to provide for the [three] children, and [Father's] criminal background, his violence with the children and his current pending domestic violence charges against two of the children.

CCDCFS argued that Father was identified as the father of Zau.B. and Z.B. at the bottom of the complaint where the parties are identified, and that the failure to specifically allege that Father was the father of Zau.B. and Z.B. in the body of the complaint did not affect the allegations of neglect and dependency that brought the matter within the jurisdiction of the juvenile court.

{¶ 10} On May 11 and 17, 2021, the juvenile court overruled CCDCFS's objections to the magistrate's decisions and adopted the magistrate's decisions dismissing CCDCFS's complaint.

{¶ 11} CCDCFS filed the instant appeals on May 14 and 19, 2021. On May 19, 2021, this court consolidated Cuyahoga C.A. Nos. 110500 and 110510 for purposes of briefing, hearing, and disposition.

{¶ 12} CCDCFS filed motions for emergency stay of execution of the juvenile court's May 11 and 17, 2021 orders pending the outcome of the agency's appeals. This court granted the agency's motions to stay.

{¶ 13} In challenging the juvenile court's May 11 and 17, 2021 judgments, CCDCFS assigns one error for review:

I. The trial court erred and abused its discretion by dismissing the complaint due to its erroneous conclusions that the complaint suffered from material and fatal deficiencies and that it lacked the ability to cure those perceived deficiencies.

## **II. Law and Analysis**

### **A. Final Appealable Order**

{¶ 14} As an initial matter, we must determine whether the juvenile court's judgments dismissing CCDCFS's complaint without prejudice are final appealable orders capable of invoking this court's jurisdiction.

{¶ 15} On May 14 and 19, 2021, this court issued sua sponte orders in the two appeals ordering CCDCFS to show cause why the appeals should not be dismissed for lack of a final appealable order. This court explained that the juvenile court

dismissed this case without prejudice, and a dismissal without prejudice is generally not a final appealable order.<sup>2</sup>

{¶ 16} CCDCFS filed its supplemental brief on May 20, 2021. Therein, CCDCFS confirmed that it had not refiled its complaint. Furthermore, CCDCFS argued, in relevant part, that the trial court’s judgments are final appealable orders under R.C. 2505.02(B) because the judgments were entered in a special proceeding and the trial court’s dismissal of CCDCFS’s complaint affects the agency’s substantial right to fulfill its obligation under R.C. 5153.16 to protect at-risk children.

{¶ 17} Mother and Father filed a supplemental brief on May 26, 2021. Therein, they argued that the juvenile court’s dismissal of the agency’s complaint was not a final appealable order because (1) the dismissal was not an adjudication on the merits, but rather based on the material defects in the agency’s complaint, and (2) no substantial right of the agency’s has been affected nor has the action been determined on the merits because CCDCFS can refile its complaint.

{¶ 18} After reviewing the record, we find that the juvenile court’s dismissal of CCDCFS’s complaint constitutes a final appealable order under R.C. 2505.02(B)(2).

{¶ 19} Pursuant to Ohio Constitution, Article IV, Section 3(B)(2), a reviewing court is conferred jurisdiction to review final appealable orders from lower courts of their districts. Final appealable orders are those that ““dispos[e] of the whole case

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<sup>2</sup> *Beth v. Howard*, 8th Dist. Cuyahoga No. 66748, 1994 Ohio App. LEXIS 5796 (Dec. 22, 1994); *In re P.B.*, 8th Dist. Cuyahoga No. 94362, 2010 Ohio App. LEXIS 2397 (June 24, 2010).

or some separate and distinct branch thereof.”” *Rae-Ann Suburban, Inc. v. Wolfe*, 8th Dist. Cuyahoga No. 107536, 2019-Ohio-1451, ¶ 19, quoting *Noble v. Colwell*, 44 Ohio St.3d 92, 94, 540 N.E.2d 1381 (1989), quoting *Lantsberry v. Tilley Lamp Co.*, 27 Ohio St.2d 303, 306, 272 N.E.2d 127 (1971). A trial court order is final and appealable only if it meets the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B). *Oakley v. Ohio State Univ. Wexner Med. Ctr.*, 10th Dist. Franklin No. 18AP-843, 2019-Ohio-3557, ¶ 10.

{¶ 20} R.C. 2505.02(B) defining types of final orders, provides, in relevant part,

An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

- (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
- (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment[.]

{¶ 21} “If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and the appeal must be dismissed.” *Scheel v. Rock Ohio Caesars Cleveland, L.L.C.*, 8th Dist. Cuyahoga No. 105037, 2017-Ohio-7174, ¶ 7, quoting *Assn. of Cleveland Firefighters, #93 v. Campbell*, 8th Dist. Cuyahoga No. 84148, 2005-Ohio-1841, ¶ 6.

{¶ 22} In *In re S Children*, 2018-Ohio-5010, 126 N.E.3d 239 (1st Dist.), the children-services agency filed a complaint, pursuant to R.C. 2151.27, alleging that five siblings were abused, neglected, and dependent, and requesting permanent

custody of the children. The juvenile court dismissed the agency's complaint as it pertained to two of the five children. The agency appealed the juvenile court's ruling. On appeal, the majority held that the juvenile court's partial judgment, dismissing the children-services agency's permanent custody complaint with respect to two of the five children, was a final appealable order under R.C. 2505.02(B)(2) because the order was made in a special proceeding and affected the agency's substantial right to seek an adjudication of abuse, neglect, or dependency to protect the children from the alleged acts of their parents. *Id.* at paragraph one of the syllabus.

**{¶ 23}** Regarding the “substantial right” requirement of R.C. 2505.02(B)(2), the majority explained,

[The Hamilton County Department of Job and Family Services (“HCJFS”)] is the public children-services agency in Hamilton County. *See* R.C. 5153.02. A public children-services agency has broad, statutory authority to intervene to protect a child's health and safety. *See* R.C. 5153.16; *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 28; *In re Collier*, 4th Dist. Athens No. CA-1494, 1992 Ohio App. LEXIS 501, (Feb. 4, 1992), cited in *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 38. The agency, in fact, has a statutory duty to intervene on behalf of children in its jurisdiction it deems in need of “public care or protective services.” R.C. 5153.16(A).

As part of HCJFS's statutory authority and duty to intervene to protect children, the agency “shall” investigate a report of child abuse or neglect, or a threat of abuse or neglect, reported pursuant to Ohio's child-abuse-reporting law. *See* R.C. 2151.421(G)(1). When necessary, the agency shall provide emergency support services and file a complaint. R.C. 2151.421(G)(2) and (J). In exercising its powers, “[t]he [HCJFS] \* \* \* shall have the capacity possessed by natural persons to institute proceedings in any court.” R.C. 5153.18(A).

*In re S Children* at ¶ 6-7. The majority held that the juvenile court's dismissal of the agency's complaint “permanently deprived HCJFS, legal custodian of the children,



of its substantial right to seek and obtain protection for [the two children] due to the conduct of their parents, as alleged in the complaint.” *Id.* at ¶ 15, citing Juv.R. 29(F)(1). Furthermore, the majority noted that the juvenile court’s judgment “also terminated HCJFS’s interim custody of those [two] children and returned the children to their parents, an outcome that may result in irreparable harm if the allegations of the complaint are true. Thus, appropriate relief in the future would be foreclosed in the absence of an immediate appeal.” *Id.* at ¶ 16. Accordingly, the majority held that the juvenile court’s dismissal affected a substantial right to the agency to fulfill its statutory obligation to the children.

{¶ 24} Regarding the “special proceedings” requirement of R.C. 2505.02(B)(2), the majority explained,

Civil actions such as this one brought by a public children-services agency alleging abuse, neglect or dependency of a child and seeking to temporarily or permanently terminate parental rights are special proceedings created by statute, because they were unknown under the common law. *In re Adams*, 115 Ohio St.3d 86, 2007-Ohio-4840, 873 N.E.2d 886, ¶ 43; [*In re S Children*, 1st Dist. Hamilton Nos. C-170624 and C-170653, 2018-Ohio-2961, ¶ 10]; *In re M.H. and L.S.*, 1st Dist. Hamilton Nos. C-130703 and C-130704, 2014-Ohio-1050, ¶ 4.

*In re S Children* at ¶ 12.

{¶ 25} In the instant matter, CCDCFs filed its complaint, pursuant to R.C. 2151.27, alleging that the children were neglected and dependent, and requesting an order of temporary custody. Like *In re S Children*, 2018-Ohio-5010, 126 N.E.3d 239, CCDCFs’s action alleging neglect and dependency and seeking to temporarily terminate Mother’s and Father’s parental rights is a special proceeding. “Temporary

custody is a status *created by statute* to provide interim care for Ohio children alleged to be, among other things, neglected (pursuant to R.C. 2151.03) or dependent (pursuant to R.C. 2151.04).” (Emphasis added.) *In re Adams* at ¶ 8. Accordingly, the first prong of the R.C. 2505.02(B)(2) analysis is satisfied.

{¶ 26} Regarding the “substantial right” prong, R.C. 2505.02(A)(1) defines “substantial right” as “a right that the United States Constitution, the Ohio Constitution, *a statute*, the common law, or a rule of procedure entitles a person to enforce or protect.” (Emphasis added.) CCDCFS, like HCJFS, has a statutory duty under R.C. 5153.16(A) to intervene on behalf of children in its jurisdiction that the agency deems in need of “public care or protective services.” The juvenile court’s dismissal of the agency’s complaint deprived CCDCFS of its substantial right to seek and obtain protection for the children due to the conduct of Mother and Father. Furthermore, although this court granted CCDCFS’s motion to stay execution of the juvenile court’s judgment dismissing the complaint, the juvenile court’s dismissal of the agency’s complaint would terminate the predispositional temporary custody order that had been issued on January 15, 2021.

{¶ 27} Based on the foregoing analysis, we find that the juvenile court’s judgments dismissing CCDCFS’s complaint constitutes final appealable orders under R.C. 2505.02(B)(2) because the judgments were entered in a special proceeding and affect a substantial right of CCDCFS. Accordingly, we find that the jurisdiction of this court has been properly invoked.

{¶ 28} Having resolved the jurisdictional issue, we now turn to the merits of CCDCFS's appeal.

### **B. Dismissal**

{¶ 29} As an initial matter, we note that the juvenile court erred and abused its discretion in dismissing the agency's complaint as it pertained to D.B. The defects at issue with respect to Father's paternity status, based upon which the agency's complaint was dismissed, were entirely irrelevant to D.B. As noted above, Father was not the father of D.B. Accordingly, the juvenile court's judgment dismissing the agency's complaint as it pertained to D.B. is reversed, Cuyahoga J.C. No. AD-21-900336 is reinstated, and the matter is remanded to the juvenile court for further proceedings.

{¶ 30} In its sole assignment of error, CCDCFS argues that the juvenile court erred and abused its discretion in dismissing the agency's complaint.

{¶ 31} On cross-examination of social worker McDowell during the adjudicatory hearing, Father's counsel, referencing allegation three of the amended complaint, suggested that paternity had not been established for Father. McDowell disputed counsel's assertion that paternity had not been established for Father. Father's counsel objected to McDowell's testimony on the basis that the amended complaint did not state that paternity had been established for Father.

{¶ 32} Allegation three of the amended complaint stated, in relevant part, "Father of Zau.B. and [Z.B.], [R.G.], has failed to establish paternity[.]" In opposing Father's counsel's objection, CCDCFS sought to amend the complaint by deleting

the allegation that Father failed to establish paternity. Defense counsel requested a sidebar. Although there is no record of the discussion at sidebar, the agency's motions for an emergency stay of execution of the juvenile court's judgment dismissing the agency's complaint provides, in relevant part, "during a sidebar held with the attorneys and magistrate, counsel for [Father] reported that [Father] is the established father for the [children] and pays child support for the [children]. Counsel for the child's mother verified that [Father] is the established father for the [children] as documented in the Agency's complaint."

**{¶ 33}** Following the sidebar, Father's counsel moved to dismiss the agency's complaint:

It's come to my attention that there are material defects in this Complaint as it's been written.

I don't even know who [Father] is, what he's accused of, what we're doing.

We have [Father] listed as a father. We have him listed as an alleged father. At this point I would respectfully ask that the Court dismiss this Complaint.

(Tr. 23-24.)

**{¶ 34}** In opposing Father's motion to dismiss, counsel for CCDCCFS asserted that the parties "stipulate that [Father] is the father [of Zau.B. and Z.B.] and Mr. McDowell has testified that [Father] is the father." (Tr. 24.)

**{¶ 35}** Father's counsel acknowledged that Father was identified as the father of Zau.B. and Z.B. in the agency's complaint: "Under the Complaint [the agency *has Father*] listed as the father of [Zau.B.] and [Z.B.]" (Emphasis added.) (Tr. 24.)

Nevertheless, in support of the motion to dismiss, Father’s counsel asserted, “[I]f you go down to the last part of the [original] Complaint, [the agency has] an alleged father of [Zau.B.] and [D.B.], John Doe, so I don’t know if in this case [Father] is playing a dual role. I just don’t know.”<sup>3</sup> (Tr. 24.)

{¶ 36} The magistrate granted Father’s motion to dismiss, concluding, “The purpose of the Complaint is to advise a party of what the allegations are against them. This Complaint does contain defects on its face.” (Tr. 25.) After reviewing the record, and for the reasons set forth below, we find that the juvenile court abused its discretion in dismissing the agency’s complaint.

{¶ 37} Juv.R. 10(B), governing the general form of juvenile complaints, provides, in relevant part,

The complaint, which may be upon information and belief, shall satisfy all of the following requirements:

- (1) State in ordinary and concise language the essential facts that bring the proceeding within the jurisdiction of the court[;] \* \* \*
- (2) Contain the name and address of the parent, guardian, or custodian of the child or state that the name or address is unknown;
- (3) Be made under oath.

Juv.R. 10(E) provides that “[a] complaint seeking temporary custody of a child shall state that temporary custody is sought.”

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<sup>3</sup> Father’s counsel appears to be referencing the allegations in both the original complaint, filed on January 15, 2021, and the amended complaint, filed on March 29, 2021.

**{¶ 38}** R.C. 2151.27(A)(1), governing the requirements for filing a complaint in juvenile court, provides, in relevant part, that the complaint “shall allege the particular facts upon which the allegation that the child \* \* \* is a \* \* \* neglected, or dependent child is based.” Furthermore, R.C. 2151.27(C) provides, in relevant part, “[i]f the complainant in a case in which a child is alleged to be an abused, neglected, or dependent child desires \* \* \* temporary custody of the child or children, whether as the preferred or an alternative disposition, \* \* \* the complaint shall contain a prayer specifically requesting \* \* \* temporary custody[.]”

**{¶ 39}** After reviewing the record, we find that the agency’s complaint complied with the requirements of R.C. 2151.27 and Juv.R. 10. Regarding the facts based upon which CCDCFS alleged that the children were neglected and dependent, as required by Juv.R. 10(B)(1) and R.C. 2151.27(A)(1), the amended complaint alleged, in relevant part,

1. On January 14, 2021, the children were observed playing unsupervised on the roof of Mother’s home and police intervention was required. Mother should ensure that her children are properly supervised.

2. Mother should provide a safe and appropriate home for the children. Also, mother should ensure that her children are clean and safe. On or about January 14th, there was no heat in mother’s home reportedly as a result of the gas line being fixed.

\* \* \*

4. [Father of Zau.B. and Z.B., Father,] is physically violent with the children and has current pending charges for domestic violence with Zau.B. and [Z.B.] as the named victims. See Case No. 20CR645805.

5. [Father] also has been convicted of attempted domestic violence with Mother as the victim. See Case No. 16CR612143.

{¶ 40} The amended complaint contained a prayer specifically requesting the children be placed in the temporary custody of CCDCFS, as required by Juv.R. 10(E) and R.C. 2151.27(C). Regarding Juv.R. 10(B)(2)'s requirement that the complaint contain the name and address of the parent, the amended complaint provided, in relevant part:

3. Father of Zau.B. and [Z.B.], [Father] has failed to establish paternity and has failed to regularly visit or communicate with the children since birth.

\* \* \*

6. Alleged father of [D.B.], [R.M.], has failed to establish paternity and has failed to support, visit, or communicate with the child since birth.

7. Alleged father, John Doe, has failed to establish paternity and has failed to support, visit, or communicate with the children since birth.

\* \* \*

The parties are:

\* \* \*

FATHER of Zau.B. and [Z.B.]: [Father] \* \* \* Cleveland, OH 44103.

{¶ 41} In this appeal, CCDCFS concedes that there is a “discrepancy in identifying [Father’s] paternity status” in the amended complaint. Appellant’s brief at 9. A review of the amended complaint confirms that Father is identified as “Father of Zau.B. and [Z.B.],” but the complaint also alleges that Father “has failed to establish paternity.” Furthermore, the complaint references John Doe as an “[a]lleged father,” and alleges that John Doe “failed to establish paternity and has failed to support, visit, or communicate with the children since birth.”

{¶ 42} The agency argues that the discrepancy regarding Father’s paternity status was clarified during the hearing by social worker McDowell. McDowell testified on cross-examination that the case initially came in as a “Doe case,” but the agency subsequently learned from the Paternity Data Bank that Father has established paternity for Zau.B. and Z.B. (Tr. 20-21.)

{¶ 43} In moving to dismiss the complaint, Father and his attorney did not dispute whether Father was, in fact, the father of Zau.B. and Z.B., or whether paternity had, in fact, been established for the two children. The following exchange occurred between Father’s attorney and McDowell on cross-examination:

[Father’s Counsel]: And did you understand that paternity hasn’t been established for [Father] my client?

[McDowell]: No, I actually do not.

[Father’s Counsel]: Your Honor, I would object to that. *It doesn’t state that in the Complaint.*

(Emphasis added.) (Tr. 21-22.) Thereafter, counsel for CCDCFS confirmed that Father had, in fact, established paternity, and sought to amend the complaint accordingly.

{¶ 44} Juv.R. 22(B), governing the amendment of pleadings, provides, in relevant part, “[a]ny pleading may be amended at any time prior to the adjudicatory hearing. After the commencement of the adjudicatory hearing, a pleading may be amended upon agreement of the parties or, if the interests of justice require, upon order of the court.” Juv.R. 22(D), governing prehearing motions, provides, in relevant part,



Any defense, objection or request which is capable of determination without hearing on the allegations of the complaint may be raised before the adjudicatory hearing by motion. The following *must be heard before the adjudicatory hearing*, though not necessarily on a separate date:

\* \* \*

(2) Defenses or objections *based on defects in the complaint* (other than failure to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceeding)[.]

(Emphasis added.)

{¶ 45} In the instant matter, Father and his attorney both confirmed that they read and understood the allegations in CCDCFS's complaint. Nevertheless, neither Father nor his attorney filed a preadjudicatory hearing motion or raised a timely objection to the sufficiency of the complaint as it pertained to Father's paternity status. Accordingly, Father failed to comply with Juv.R. 22(D)(2) and, as a result, waived the issue. *See In re Emery*, 5th Dist. Stark No. 2007 CA 00288, 2008-Ohio-2173, ¶ 39-40 (where a juvenile failed to raise a timely objection to a purportedly defective complaint, the trial court's dismissal of the state's complaint without providing the state with an opportunity to cure any alleged defect was "not a valid exercise of the trial court's discretion"); *In re I.M.*, 8th Dist. Cuyahoga Nos. 82669 and 82695, 2003-Ohio-7069, ¶ 19 (father was precluded from challenging the sufficiency of the complaint on appeal when he did not raise any objections to the sufficiency of the complaint during the ten-month period between being served with the complaint and the juvenile court's adjudicatory hearing); *In re J.C.*, 9th Dist. Summit Nos. 26229 and 26233, 2012-Ohio-3144, ¶ 9 (father's oral motion to

dismiss at the beginning of the adjudicatory hearing was untimely pursuant to Juv.R. 22(D)(2), and father forfeited any challenge to a defect in the complaint based on his failure to timely raise any purported defects in the complaint); *In re Dukes*, 81 Ohio App.3d 145, 610 N.E.2d 513 (9th Dist.1991) (appellants waived objection to defect in complaint by raising the defect for the first time at the adjudicatory hearing).

{¶ 46} Aside from the fact that Father waived the “material defects” in the amended complaint by failing to raise them in a timely manner, as required by Juv.R. 22(D), the record reflects that Father identified himself as “[R.G.], the father,” during the adjudicatory hearing. (Tr. 5.) Father’s attorney identified herself as “attorney for father [R.G.]” (Tr. 4.) As noted above, neither Father nor his attorney disputed whether Father was, in fact, the father of Zau.B. and Z.B., or whether Father had established paternity for the two children.

{¶ 47} The magistrate and the juvenile court appeared to conclude that the agency’s complaint failed to sufficiently advise Father of the allegations against him. In granting Father’s motion to dismiss, the magistrate concluded, “[t]he purpose of the Complaint is to advise a party of what the allegations are against them. This Complaint does contain defects on its face.” (Tr. 25.)

{¶ 48} The record reflects that Father was advised of the allegations against him. As noted above, Father and his attorney both confirmed at the adjudicatory hearing that they read and understood the allegations in CCDCFS’s complaint. Father did not allege that he was not properly served with a copy of the agency’s

complaint. The record reflects that Father participated in the proceedings on the agency's complaint, during which he acknowledged, both explicitly and implicitly, his role as the father of Zau.B. and Z.B.

{¶ 49} Notwithstanding the allegation in paragraph three of the amended complaint that Father “failed to establish paternity,” which the agency sought to amend during the adjudicatory hearing, the amended complaint references Father as “[f]ather of Zau.B. and [Z.B.]” in both the first clause of paragraph three and at the bottom of the complaint where the parties are identified.

{¶ 50} McDowell testified that Father is the “father or alleged father” for both Zau.B. and Z.B. and that Father had established paternity for both children. (Tr. 13.) McDowell confirmed that at the time of the adjudicatory hearing, there was “currently a no-contact order between [*Father*] and his two children[.]” (Emphasis added.) (Tr. 14.) McDowell also confirmed that Father was indicted for domestic violence “against these [two] children[.]” The named victims of the domestic violence offenses are the two children, Zau.B. and Z.B. In seeking to amend allegation three of the amended complaint, the prosecutor for CCDCFS confirmed that Father had established paternity. (Tr. 22.)

{¶ 51} Pursuant to Juv.R. 22(B), and upon agreement of CCDCFS and Mother, the magistrate permitted the agency to amend its complaint during the adjudicatory hearing. The magistrate also permitted the agency to admit into evidence Exhibit C, a journal entry of Father's attempted domestic violence conviction in CR-16-612143-A. Father's counsel objected to the admission of the

exhibit on the basis that the case number on the journal entry (CR-16-612143-A) was different than the case number alleged in paragraph 6 of the original complaint (CR-16-612143). The magistrate overruled Father's objection to the admission of the journal entry on the basis that it was a "clerical error." The magistrate amended the agency's complaint, sua sponte, by adding an "A" after the case number so that the complaint conformed to the evidence. See paragraph 5, amended complaint. (Tr. 19.)

**{¶ 52}** Based on the fact that (1) the complaint complied with R.C. 2151.27 and Juv.R. 10, (2) Father waived any defect in the complaint regarding his paternity status by not filing a timely motion in compliance with Juv.R. 22(D), (3) McDowell's testimony clarified any confusion in the complaint regarding Father's paternity status with respect to Zau.B. and Z.B., and (4) the juvenile court permitted the agency to amend other aspects of the complaint during the adjudicatory hearing to conform to the evidence, the juvenile court abused its discretion in denying the agency's request to amend the complaint regarding Father's paternity status and dismissing the complaint. Given the severity of the allegations in the complaint and the fact that dismissal would result in the children being returned to a potentially dangerous environment, it was unreasonable, arbitrary, and unconscionable for the juvenile court to dismiss CCDDFS's complaint.

**{¶ 53}** The interests of justice required the juvenile court to grant the agency's motion to amend the complaint with respect to Father's paternity status. This amendment, confirming that Father was, in fact, the father of Zau.B. and Z.B.

and that he had established paternity, would conform to the evidence presented at the adjudicatory hearing. *See In re M.P.*, 8th Dist. Cuyahoga No. 93152, 2010-Ohio-2216, ¶ 16 (“Juv.R. 22 clearly allows the trial court to amend the complaint to conform to the evidence presented at the adjudication.”).

**{¶ 54}** Based on the foregoing analysis, CCDCFS’s sole assignment of error is sustained. The juvenile court’s judgment dismissing the agency’s complaint as it pertained to Z.B. and Zau.B. is reversed, and Cuyahoga J.C. Nos. AD-21-900355 and AD-21-900334 are reinstated. The juvenile court’s judgment dismissing the agency’s complaint as it pertained to D.B. is reversed, and Cuyahoga J.C. No. AD-21-900336 is reinstated.

**{¶ 55}** The matter is remanded to the juvenile court to (1) amend, sua sponte, the complaint to conform to the evidence, and (2) enter an adjudication on the agency’s complaint for neglect, dependency, and temporary custody based on the evidence presented during the March 29, 2021 hearing.

**{¶ 56}** This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27  
of the Rules of Appellate Procedure.

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FRANK D. CELEBREZZE, JR., JUDGE

ANITA LASTER MAYS, P.J., and  
LARRY A. JONES, SR., J., CONCUR