[Cite as *In re: K.E.A.*, 2012-Ohio-4099.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

IN RE: K.E.A.	:	**O P I N I O N**
	:	
	:	**CASE NOS. 2011-P-0106 and 2012-P-0004**

Civil Appeals from the Portage County Court of Common Pleas, Juvenile Division, Case No. 2011 JCC 00607.

Judgment: Affirmed.

Shubhra N. Agarwal, 3766 Fishcreek Road, #289, Stow, OH 44224 (For Appellant-Kimberly S. Brunton).

Michael E. George, 1700 W. Market Street, Suite 201, Akron, OH 44313 (For Appellant-Gerald W. Anderson).

Victor V, Vigluicci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Appellee-Portage County Department of Job and Family Services).

Gregory J. Wysin, P.O. Box 2100, Streetsboro, OH 44241(Guardian ad litem).

DIANE V. GRENDELL, J.

{¶1} Appellants, Kimberly Brunton and Gerald Anderson, appeal the judgment of the Portage County Court of Common Pleas, Juvenile Division, finding the minor child, K.E.A., to be dependent. The issues before this court are whether the juvenile court erred by allowing Brunton's probation officer to testify regarding her drug and alcohol treatment in unrelated juvenile matters, whether Brunton could be compelled to testify in light of Juvenile Rule 29's right "to remain silent," and whether the court's

finding of dependency was proper in the absence of evidence of actual harm to the child. For the following reasons, we affirm the decision of the court below.

{¶2} On July 1, 2011, appellee, Portage County Department of Job and Family Services, filed a Complaint, alleging that Brunton's daughter, K.E.A., was neglected, as defined in R.C. 2151.03(A), and/or dependent, as defined in R.C. 2151.04. The Complaint made the following allegations:

> **{¶3}** On June 14, 2011, PCDJFS [Portage County Department of Job and Family Services] received a report regarding K.E.A. who was born on June 13, 2011. The report alleged K.S.B. [Kimberly Brunton], age 17 (DOB 9/2/93) had given birth to a baby a girl. It was reported that K.S.B. appeared to be developmentally delayed and that she and her infant planned on living with the maternal grandparents [Brenda and Carl Brunton] for 6 weeks. K.S.B. and the infant will then be moving in with the baby's father, Gerald W. Anderson.
>
> **{¶4}** * * *
>
> **{¶5}** SW [Social Worker] Keena Sosnowski met with K.S.B., Gerald and K.E.A. at the hospital on June 15, 2011. * * * They reported having all necessary baby items such as clothes, diapers, formula, crib and a bassinet. * * * They were able to explain the infant's feeding schedule but not without counting backward and forward on the hands of the clock. Parents reported a normal pregnancy, labor and delivery. They reported their daughter was healthy and doing

well. * * * Both parents appeared to be of below average cognitive abilities and struggled with staying on topic. K.S.B. paced and made phone calls throughout the interview.

{¶6} * * *

{¶7} Both parents are currently on probation and diagnosed with bi-polar disorder. K.S.B. is not currently taking her medication for this diagnosis due to the recent pregnancy. Per Eugene Clinkscale of Portage County Juvenile Probation, a condition of K.S.B.'s probation is that she is not to socialize with her co-defendants one of which is Gerald.

{¶8} * * *

{¶9} On June 20, 2011, SW Sosnowski made an unannounced home visit to the home of Brenda Brunton. * * * [Brenda and Carl] advised that K.S.B. and Gerald had taken K.E.A. to Gerald's apartment in Ravenna to stay for a couple of days. * * * Brenda acknowledged that SW Sosnowski had recommended against this but reported she felt they were doing well. * * * SW Sosnowski contacted Ravenna Police Department (RPD) and requested they accompany SWs to Gerald's apartment to check the child's welfare and assess the environment. This attempt at contact was unsuccessful.

{¶10} RPD continued to attempt contact with the family and was not successful until the afternoon of June 22, 2011. Sergeant Dustin

Svab of RPD conducted the welfare check and reported there were baby supplies in the home, a supply of formula and that K.E.A. appeared clean and healthy. Gerald and K.S.B. advised that this was the first time they had been home in several days.

{¶11} SW Sosnowski spoke to Brenda Brunton on June 24, 2011. She reported that K.S.B. and Gerald had not been back to her home. She denied having a contact number for the couple. Brenda reported that K.S.B. and Gerald call her when they need to speak or need a ride.

{¶12} * * *

{¶13} On June 28, SW Sosnowski met with K.S.B. and Gerald at Gerald's home in Ravenna. They reported their daughter had thrush and needed to begin taking medication. Brenda has the prescription and is getting it filled. While SW Sosnowski was at the home, Brenda delivered the medication but did not enter the apartment allowing SW to speak with her.

{¶14} * * *

{¶15} On July 1, 2011, SW met with Gerald and K.S.B. in Gerald's home. They reported that K.E.A. was no longer on the medication for her thrush they reported she was only to take this for 48 hours. SW Sosnowski read the instructions for the medication which stated that the medication was to be given for 48 hours after the thrush has been resolved. Gerald attempted to argue with SW as to the

> interpretation of this instruction, SW Sosnowski advised that they contact the pediatrician and ask about the medication. K.S.B. commented while SW was present that K.E.A.'s tongue looked "white"; Gerald looked in the infant's mouth and said it was probably just from her milk. SW Sosnowski also noted during this home visit K.E.A. appeared thinner than she had on June 28, 2011. At the time this complaint was drafted SW was awaiting a return call from the pediatrician regarding K.E.A.'s health, development and proper medication.

{¶16} On August 9, 2011, an adjudicatory hearing was held before a magistrate of the juvenile court. The following persons testified at this hearing.

{¶17} Traci Hagen, a therapist with Children's Advantage, was assigned to assist Kimberly and Gerald with parenting K.E.A. Hagen testified that Kimberly and Gerald were unable to properly chart K.E.A.'s feeding schedule, so that it was impossible to assess how much K.E.A. was being fed or who was feeding her. Likewise, Hagen testified that there was uncertainty as to who was administering K.E.A. medication. Hagen described the home environment during her visits as chaotic, with Kim and Gerald often distracted by video games, cell phones, and a multitude of other persons entering and leaving the apartment. Hagen also noted a "lack of engagement * * * as far as parent/child bonding" between Kimberly and K.E.A.

{¶18} Eugene Clinkscale, Kimberly's probation officer from December 2008 until July 2011, testified over the objection of Kimberly's attorney. Clinkscale testified that Kimberly was originally placed on probation for prohibition, and that she received further

detentions for criminal damaging, disorderly conduct and additional prohibitions. Clinkscale affirmed that a "no contact" order was issued for Kimberly and Gerald in September 2010.

{¶19} The magistrate ordered Kimberly and Gerald to undergo mental evaluations pursuant to Juvenile Rule 32(A)(3), granted Job and Family Services an "interim order of protective supervision" over K.E.A., and continued the adjudicatory hearing until September 6, 2011.

{¶20} On September 6, 2011, the adjudicatory hearing was reconvened before the magistrate. The following persons testified at this hearing.

{¶21} Kimberly Brunton testified over the objection of her attorney. Kimberly testified that K.E.A. spends most the day sleeping. She testified that she feeds K.E.A. by placing her in a bouncer and propping the formula bottle up with a blanket. Kimberly testified that her family and Gerald's mother help her to care for K.E.A., and that she does not want social workers to be involved in raising K.E.A.

{¶22} Gerald Anderson testified that he was born in January 1987, and currently resides at 262 West Cedar Avenue, in Ravenna, Ohio. Gerald testified that he has another child from a prior marriage, with whom he has supervised visitation. Gerald testified that domestic violence charges have been filed against him with regard to Kimberly and to his ex-wife. Gerald testified to recently breaking down the door to the apartment after Kimberly locked him out. Gerald testified that he is currently on probation for a felony charge of complicity to commit burglary. Gerald testified that he has been diagnosed with bi-polar and attention deficit disorder. Gerald receives social security disability. His mother is his representative payee and takes care of his

expenses. Gerald testified that he obtained work packaging boxes through the board of developmental disabilities, but that he quit because it "wasn't the right job for me."

{¶23} Keena Sosnowski, a family assessment specialist with Job and Family Services, received an initial report regarding K.E.A. on June 14, 2011, and made five visits to Gerald's household through July 18, 2011. Sosnowski described the visits thus: "the baby is frequently in the pack and play throughout my home visits * * * the parents are generally just waking up * * * upon inviting me into the home one of Gerald's first comments to me is always, 'I was about to change the baby' * * * the baby has been wet on every occasion that I've come to the home * * * I've observed the parents propping the baby's bottle rather than holding the bottle to feed the infant." Sosnowski described the misapplication of the thrush medication and testified that the condition persisted until July 12, 2011. Sosnowski expressed concerns that Kimberly and Gerald rely on individuals for transportation who are not well known to them.

{¶24} Sosnowski testified that K.E.A. has never been reported to have diaper rash, her pediatrician reports that her weight is within the normal range for a child of her age, and that Gerald's apartment has always had formula, diapers, and other necessities for a baby.

{¶25} The magistrate continued the adjudicatory hearing until September 26, 2011, to allow the parties to review the mental evaluations of Kimberly and Gerald conducted by Dr. Timothy Kohl.

{¶26} On September 26, 2011, Dr. Timothy Kohl testified as a witness of the court. With respect to Kimberly, Dr. Kohl testified that she had bi-polar and attention deficit hyperactivity disorder (ADHD), she has a borderline paranoid personality, her IQ

is within the mildly mentally retarded range, and she reads at a fourth-grade level. Dr. Kohl believed it was irresponsible for Kimberly not to have re-initiated treatment for her ADHD following the birth of K.E.A. Dr. Kohl testified that Kimberly is resistant to authority and defers to Gerald in her decision-making. Dr. Kohl testified there was no evidence of current drug use by Kimberly.

{¶27} Dr. Kohl, who was under the impression that K.E.A. had already been removed from her home, opined that Kimberly is "unable to care for an infant child or to establish a safe home at this time," on account of "her low level of cognitive functioning, her inadequate support system, and her untreated mental health and substance abuse issues."

{¶28} With respect to Gerald, Dr. Kohn testified that his mental retardation was more severe than Kimberly's retardation. Dr. Kohn opined that Gerald was not properly treated for his mental health issues.

{¶29} When questioned about Kimberly and Gerald's current success in caring for K.E.A., Dr. Kohl ascribed it to "luck and the intense scrutiny that the parents are under at this time and the amount of help they are receiving from child care workers in the home coaching them and the vigilance of both of the grandmothers at this time." Dr. Kohl believed these conditions are "temporary" and "motivated by this Court action."

{¶30} On September 26, 2011, a Magistrate's Decision was issued, finding K.E.A. to be a dependent child. The magistrate made the following findings:

> **{¶31}** [K.E.A.] was born on June 13, 2011, to parents who each have profound limits on their intellectual and cognitive capabilities; who each have histories of substance abuse; who have each been

> diagnosed with mental health disorders, though both have not been consistent in ongoing treatment; the mother had a history of involvement with the juvenile court, generally for cases involving substance abuse; the father is currently on felony probation and he has a history of domestic violence with his former wife and with Ms. Brunton; both parents receive some type of Social Security disability benefit because of their developmental disabilities and/or their mental health conditions, though neither is capable of managing his or her own funds and each has a representative payee and the father's mother takes care of paying their bills; and that they have demonstrated difficulties in both comprehending and then following through on basic instructions regarding infant child care.

{¶32} On September 29, 2011, following a dispositional hearing, a Magistrate's Decision was issued placing K.E.A. in the legal custody of Kimberly Brunton subject to the protective supervision of Job and Family Services.

{¶33} On September 30, 2011, the juvenile court adopted the September 26 Magistrate's Decision, incorporated it in a Journal Entry, and entered it as the judgment of the court.

{¶34} On the same date, the juvenile court adopted the September 29 Magistrate's Decision, and entered it "as a matter of record."

{¶35} On October 7, 2011, Kimberly filed Objections to the Magistrate's Decision.

{¶36} On November 21, 2011, a hearing was held on Kimberly's Objections.

{¶37} On December 2, 2011, the juvenile court issued a Journal Entry, overruling the Objections and affirming the dependency adjudication.

{¶38} On December 20, 2011, Kimberly filed a Notice of Appeal. On appeal, she raises the following assignments of error:

{¶39} "[1.] The Appellate Court lacks jurisdiction to hear this appeal as there is no final appealable order or ruling."

{¶40} "[2.] The Trial Court committed reversible and plain error by finding that testimony of Mother's probation officer relating to services that were offered to her for drug and alcohol treatment was appropriate for consideration in the dependency case."

{¶41} "[3.] The Trial Court committed reversible and plain error in compelling Mother to testify at the adjudicatory hearing in violation of Juv.R. 29."

{¶42} "[4.] The Trial Court committed reversible error by finding that there was clear and convincing evidence that K.E.A. is a dependent child."

{¶43} "[5.] The trial Court's Decision adjudicating K.E.A. to be a dependent child was against the manifest weight of the evidence."

{¶44} On January 3, 2012, Gerald filed a Notice of Appeal. On appeal, he raises the following assignment of error: "The adjudication of the infant child as dependent under R.C. 2151.04(C) was against the manifest weight of the evidence."

{¶45} The two appeals have been consolidated for the purpose of disposition.

{¶46} In her first assignment of error, Kimberly argues that the juvenile court's adoptions of the Magistrate's Decisions do not constitute final orders, because they did not constitute "separate and distinct" entries as required by the decisions of this court,

e.g., *Condron v. Willoughby Hills*, 11th Dist. No. 2007-L-015, 2007-Ohio-5208, ¶ 29, and because they did not enter a "judgment" as required by Juv.R. 40(D)(4)(e) ("[a] court that adopts * * * a magistrate's decision shall also enter a judgment").

{¶47} Although Kimberly presents a correct statement of the law with respect to the adoption of a magistrate's decision, the law cited does not apply to the present situation. Kimberly's Notice of Appeal indicates that she is appealing from the juvenile court's December 2, 2011 Journal Entry, which, in addition to disposing of objections raised by the parties, states that there is clear and convincing evidence in the record that K.E.A. is a dependent child as defined in R.C. 2151.04(C), *i.e.*, "a child whose condition or environment is such as to warrant the State, in the interest of the child, in assuming the child's Guardianship." The December 2, 2011 Journal Entry constitutes a separate and distinct entry memorializing K.E.A.'s adjudication as a dependent child. *See In re A.L.W.*, 11th Dist. Nos. 2011-P-0050, 2011-P-0051, and 2011-P-0052, 2012-Ohio-1458, ¶ 20-27.[1]

{¶48} The first assignment of error is without merit.

{¶49} In her second assignment of error, Kimberly argues the juvenile court/magistrate erred by allowing her probation officer, Clinkscale, to testify to her prior adjudications as well as the conditions and restrictions of her probation, the drug/alcohol treatment programs in which she participated, and her school performance. Kimberly contends that this testimony constituted inadmissible hearsay, inasmuch as no medical, school, or court records were admitted into evidence.

1. Kimberly does not challenge the juvenile court's dispositional ruling of protective supervision, which was modified prior to the court's ruling on the objections to grant Job and Family Services temporary custody of K.E.A.

{¶50} "The admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343 (1987), paragraph two of the syllabus; *Rigby v. Lake Cty.*, 58 Ohio St.3d 269, 271, 569 N.E.2d 1056 (1991). Our review of a trial court's evidentiary rulings is deferential. "It is not sufficient for an appellate court to determine that a trial court abused its discretion simply because the appellate court might not have reached the same conclusion or is, itself, less persuaded by the trial court's reasoning process than by the countervailing arguments." *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, __ N.E.2d __, ¶ 14.

{¶51} Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C).

{¶52} Kimberly does not cite specific instances of hearsay statements in her brief, and the transcript of Clinkscale's testimony does not reveal any particular objections raised on the basis of hearsay. App.R. 12(A)(2). Accordingly, a plain error standard of review will be applied to this assignment of error. *In re S.B.*, 11th Dist. No. 2011-G-3005, 2011-Ohio-2716, ¶ 66.

{¶53} Our review of Clinkscale's testimony does not reveal inadmissible hearsay statements. In his testimony, Clinkscale did not expressly repeat or refer to any out-of-court statement. As Kimberly's probation officer, Clinkscale was competent to testify regarding the terms and conditions of her probation, as it was his duty to monitor her compliance. Likewise, Clinkscale would have had first-hand knowledge of Kimberly's subsequent detentions for violating probation. Clinkscale identified several treatment programs to which Kimberly was referred and testified generally as to her "involvement."

He did not refer to any evaluation or assessments of Kimberly performed by the organizations operating these programs. Likewise, Clinkscale's testimony regarding Kimberly's performance at school was limited to describing the remedial nature of her classwork and her difficulty in understanding the material, information which he testified Kimberly "explained" and "told" him. Clinkscale did not reveal grade reports or performance evaluations.

{¶54} The case of *In re C.S.*, 9th Dist. No. 25344, 2010-Ohio-4463, cited by Kimberly, is distinguishable. In *C.S.*, two of the witnesses for children services, a caseworker and a licensed clinical counselor testifying as an expert, relied heavily on out-of-state records for the substance of their testimony. The expert asserted that her opinion was based "in significant part upon the lengthy history provided by 'the Georgia records.'" *Id.* at ¶ 42. The caseworker "testified that some of Mother's current statements were not consistent with those [Georgia] court records," thereby using the out-of-court statements to impeach another witness' testimony. *Id.* at ¶ 40. Their testimony, admitted over the objections of the mother's counsel, was based on statements amounting to hearsay. In contrast, there is no indication that Clinkscale's testimony relied on narrative statements, *i.e.*, "oral or written assertions" by third persons. Evid.R. 801(A). *See In re O.H.*, 9th Dist. No. 25761, 2011-Ohio-5632, ¶ 23 ("[a]n investigator may testify to what he or she has learned in the course of an investigation, provided the testimony does not include an out-of-court statement").

{¶55} The second assignment of error is without merit.

{¶56} In her third assignment of error, Kimberly argues the juvenile court/magistrate erred by compelling her testimony at the adjudicatory hearing. She

maintains that Juvenile Rule 29 affords her the right to remain silent. She relies on the following provisions: "At the beginning of the [adjudicatory] hearing, the court shall * * * [i]nform any unrepresented party who waives the right to counsel of the right * * * to remain silent * * *." Juv.R. 29(B)(5). "The court may refuse to accept an admission and shall not accept an admission without addressing the party personally and determining both of the following * * * [t]he party understands that by entering an admission the party is waiving the right * * * to remain silent * * *." Juv.R. 29(D)(2).

{¶57} This court has held that "there can be no doubt that the 'right to remain silent' [in Juvenile Rule 29] refers to the juvenile's Fifth Amendment privilege against self-incrimination." *In re Onion*, 128 Ohio App.3d 498, 503, 715 N.E.2d 604 (11th Dist.1998). This court has also held that the provisions of Juvenile Rule 29 apply in dependency proceedings. *In re Borntreger*, 11th Dist. No. 2001-G-2379, 2002-Ohio-6468, ¶ 49 ("Juv.R. 29(D)(2) makes no distinction between delinquency hearings and neglect, dependency, or abuse proceedings").

{¶58} Juvenile Rule 29's provisions regarding the right to remain silent, however, have no application in the present circumstances. Subsection (B)(5) applies where a party is unrepresented by counsel. Kimberly was represented by counsel at the adjudicatory hearing. Subsection (D)(2) applies where a party is entering an admission to allegations contained in the complaint. In the present case, Kimberly never entered such an admission. Rather, she was compelled to give testimony as a witness. This court has held that the assertion of a party's Fifth Amendment/Juvenile Rule 29 right to remain silent does not excuse the party from testifying as a witness, given the civil

nature of the proceedings. *In re L.M.*, 11th Dist. No. 2010-A-0058, 2011-Ohio-1585, ¶ 53; *accord In re M.J.*, 11th Dist. No. 2011-A-0014, 2011-Ohio-2715, ¶ 73 (cases cited).

{¶59} The third assignment of error is without merit.

{¶60} In Kimberly's fourth and fifth assignments of error and in Gerald's sole assignment of error, they argue that the juvenile court/magistrate erred in finding that K.E.A. was a dependent child by clear and convincing evidence and/or that the finding was against the manifest weight of the evidence.

{¶61} The juvenile court is required to find that a child meets the requirements for being dependent by clear and convincing evidence. R.C. 2151.35(A)(1); Juv.R. 29(E)(4). In general, "[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 Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. Stated otherwise, "evidence must * * * exist on each element (sufficiency) and the evidence on each element must satisfy the burden of persuasion (weight)." *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, __ N.E.2d __, ¶ 19.

{¶62} "Where the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954). Clear and convincing evidence has also been described as "that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the

trier of facts a firm belief or conviction as to the facts sought to be established." *Id.* at paragraph three of the syllabus.

{¶63} "Weight of the evidence concerns 'the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.'" (Emphasis sic.) *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *Black's Law Dictionary* 1594 (6th Ed.1990); *Eastley* at ¶ 17-23 (explaining and affirming the applicability of *Thompkins* in civil cases).

{¶64} A "dependent child" is defined, in relevant part, as "any child * * * [w]hose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship." R.C. 2151.04(C). A finding of dependency under R.C. 2151.04(A) "requires no showing of [parental] fault, but focuses exclusively on the child's situation to determine whether the child is without proper (or adequate) care or support." *In re Riddle*, 79 Ohio St.3d 259, 262, 680 N.E.2d 1227 (1997); *accord In re L.P.R.*, 11th Dist. No. 2010-L-144, 2012-Ohio-1671, ¶ 24 (cases cited). "[W]here the state can show that the 'condition' or 'environment' into which a newborn baby will enter is such as to justify the state's preventing that child from entering that environment, it is clear that the state may intervene." *In re Campbell*, 13 Ohio App.3d 34, 36, 468 N.E.2d 93 (12th Dist.1983). The circumstances of a child's condition or environment are only significant if they can be demonstrated "to have an adverse impact upon the child

sufficiently to warrant state intervention." *In re Burrell*, 58 Ohio St.2d 37, 39, 388 N.E.2d 738 (1979). "That impact cannot be simply inferred in general, but must be specifically demonstrated in a clear and convincing manner." *Id.*

{¶65} The evidence in the present case supports a firm belief and/or conviction that K.E.A.'s condition or environment warrants the state's assumption of guardianship. The magistrate recognized several factors demonstrating that K.E.A.'s environment creates a substantial risk to her well-being.

{¶66} The magistrate noted, and it is not disputed, that Kimberly and Gerald both have limited intellectual and cognitive capabilities and mental health disorders for which they receive Social Security disability. Kimberly's and Gerald's mental conditions are severe enough that neither is capable of unassisted, independent living, including the provision of child care for K.E.A. As noted by the magistrate, neither parent is capable of managing his or her disability income. The grandmothers serve as representative payees for the parents and perform such essential tasks as paying for the utilities, filling prescriptions, providing transportation, and acting as direct caregivers.

{¶67} While the reliance on others in and of itself is not a factor supporting dependency, *In re J.S.*, 4th Dist. No. 08CA27, 2009-Ohio-1622, ¶ 13, there was evidence in the present case that the support from the parents' grandmothers was not sufficient to guarantee K.E.A.'s well-being. Both Kimberly's mother and the Ravenna Police Department have had difficulty on occasion in locating K.E.A. and communicating with the parents. Kimberly demonstrated a tendency to refuse advice from her family, and especially from Job and Family Services, and indicated a degree of instability in her relationships with members of her family. For example, she testified that, after the birth

of K.E.A., she decided not to live with her mother because "I was tired of my sisters thinking that they could beat up on me." Kimberly also admitted that she "almost got hit a couple days ago when I was holding my own baby." Dr. Kohl testified that the support system currently in place was inadequate for persons with Kimberly's and Gerald's level of cognitive disability to effectively parent a child.

{¶68} The magistrate further noted that Kimberly and Gerald demonstrated difficulties in comprehending and following through on basic instructions regarding child care. This finding was supported by several incidents testified to during the adjudicatory hearings. For example, Kimberly and Gerald misunderstood how to apply K.E.A.'s medication for thrush, with the result that the condition persisted for several weeks. K.E.A. is improperly fed by being placed in a bouncer and having the bottle propped up with a blanket. Gerald and Kimberly are unable to explain K.E.A.'s feeding schedule or account for how much and how often she is actually fed. This problem is compounded by the presence of unrelated persons in the household, who variously assist with feeding and transportation.

{¶69} The magistrate noted that there is a history of domestic violence between Gerald and Kimberly, and there was testimony regarding a no-contact order and an incident in which Gerald broke down a door after Kimberly locked him out of the apartment. A history of domestic violence between the parents is a factor within the child's environment which supports a finding of dependency. *In re Alexander C.*, 164 Ohio App.3d 540, 2005-Ohio-6134, 843 N.E.2d 211, ¶ 58 ("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)").

{¶70} The magistrate noted that Kimberly and Gerald have histories of substance abuse; and it has been held that a finding of dependency can be predicated on the "past history" of the parent or custodian. *In re Bishop*, 36 Ohio App.3d 123, 126, 521 N.E.2d 838 (5th Dist.1987).

{¶71} In sum, the magistrate has identified several areas of legitimate concern in K.E.A.'s environment that warrant the State's assumption of guardianship in the present case. *See In re Melchizedek M.*, 6th Dist. No. L-05-1379, 2006-Ohio-3062, ¶ 12 ("[g]iven Jose's admitted violations of the no-contact order with Theresa, Theresa's revelations of domestic violence while pregnant with Melchizedek, appellants' unremedied living circumstances despite extensive services, we find the adjudication of prospective dependency supported by clear and convincing evidence").

{¶72} The fact that K.E.A. was receiving adequate care at the time of the hearings does not preclude a dependency adjudication. As has been observed, "[t]he state need not subject a child to a potentially detrimental environment where a court has made a prospective finding of dependency pursuant to R.C. 2151.04." *In re Pieper*, 85 Ohio App.3d 318, 325, 619 N.E.2d 1059 (12th Dist.1993). Likewise, "[a] juvenile court should not be forced to experiment with the health and safety of a newborn baby where the state can show by clear and convincing evidence, that placing the child in such an environment would be threatening to the health and safety of that child." (Citation omitted.) *In re T.P.-M.*, 9th Dist. No. 24199, 2008-Ohio-6437, ¶ 17.

{¶73} Kimberly's fourth and fifth assignments of error and Gerald's sole assignment of error are without merit.

{¶74} For the foregoing reasons, the judgment of Portage County Court of Common Pleas, Juvenile Division, finding K.E.A. to be a dependent child, is affirmed. Costs to be taxed against appellants.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.