

and who failed to appear during any of the permanent custody proceedings, has not appealed from this decision.

{¶2} On June 25, 2009, Mother called the Middletown Police Department after E.P., her four-year-old son, claimed J.W., his 11-year-old half-brother, and "daddy," believed to be Stepfather, "licked his 'pee pee.'" The following day, the trial court granted temporary custody of E.P. to BCDJFS and the child was placed in foster care. The trial court later adjudicated E.P. an abused and dependent child.

{¶3} On June 7, 2010, at the request of E.P.'s therapist and his guardian ad litem, the trial court suspended Mother's supervised visitation time with the child. In so holding, the trial court determined that suspending visitation time was "necessary in order to prevent any immediate or threatened emotional or physical harm to the child" due to ongoing concerns that Mother "has not taken any ownership for the environment wherein [E.P.] became traumatized and abused."

{¶4} On August 12, 2010, BCDJFS moved to modify temporary custody of E.P. to permanent custody. Thereafter, on September 21, 2010, Mother voluntarily surrendered custody of J.W. to BCDJFS after he admitted to licking E.P.'s penis. The claims levied against Stepfather, however, were not pursued further after two polygraph tests yielded inconclusive results.

{¶5} On April 12, 2011, following a four-part hearing that ultimately concluded on February 22, 2011, the trial court granted BCDJFS permanent custody of E.P. Throughout the pendency of this matter, E.P. remained in the continuous care of his original foster caregivers.

{¶6} Mother and Stepfather now appeal from the trial court's decision granting BCDJFS permanent custody of E.P., raising three assignments of error for review. For ease

of discussion, the three assignments of error will be addressed together.

{¶7} Mother's Assignment of Error No. 1:

{¶8} "THE TRIAL COURT'S DECISION AND ORDER GRANTING PERMANENT CUSTODY OF THE CHILDREN TO BUTLER COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶9} Stepfather's Assignment of Error No. 1:

{¶10} "THE COURT ERRED AS A MATTER OF FACT AND LAW AND ABUSED ITS DISCRETION WHEN IT FOUND TERMINATING THE PARENTAL RIGHTS OF APPELLANT TO BE IN THE CHILDREN'S BEST INTERESTS AND THAT THE CHILDREN COULD NOT BE PLACED WITH EITHER PARENT WITHIN A REASONABLE TIME."

{¶11} Stepfather's Assignment of Error No. 2:

{¶12} "THE TRIAL COURT'S DECISION AND ORDER OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶13} In their three assignments of error, Mother and Stepfather argue that the trial court's decision granting permanent custody to BCDJFS was not in E.P.'s best interest and that such a finding was against the manifest weight of the evidence.¹ These arguments lack merit.

{¶14} Before a natural parent's constitutionally protected liberty interest in the care and custody of her child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *Santosky v. Kramer* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. An appellate court's review

1. BCDJFS does not argue that Stepfather was improperly afforded the same protections as E.P.'s biological parents during these proceedings. Therefore, we will not address any potential issues related thereto. See, generally, *In re Kenny, B.*, Lucas App. No. L-05-1227, 2006-Ohio-968 (finding stepfather of child was not entitled to same procedural protections as child's biological parents during permanent custody proceedings).

of a trial court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the trial court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. As an appellate court reviewing a decision granting permanent custody, we neither weigh the evidence nor assess the credibility of the witnesses, but instead determine whether there is sufficient clear and convincing evidence to support the trial court's decision. *In re H.P.*, Preble App. No. CA2010-07-010, 2011-Ohio-1148, ¶23.

{¶15} Pursuant to R.C. 2151.414(B)(1), a court may terminate parental rights and award permanent custody to a children services agency if it makes findings pursuant to a two-part test. *In re E.M.D.R.E.*, Butler App. No. CA2010-08-207, 2011-Ohio-669, ¶8. First, the court must find that the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors found in R.C. 2151.414(D). *In re I.H.*, Butler App. No. CA2010-07-157, 2011-Ohio-412, ¶8. Second, the court must find that any of the following apply: the child is abandoned; the child is orphaned; the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; or where the preceding three factors do not apply, the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re E.B.*, Warren App. Nos. CA2009-10-139, CA2009-11-146, 2010-Ohio-1122, ¶22.

{¶16} In this case, the trial court found E.P. had been in the temporary custody of BCDJFS for more than 12 months of a consecutive 22-month period as of the date the agency filed its permanent custody motion. Mother and Stepfather do not dispute this finding. Instead, as noted above, Mother and Stepfather merely challenge the trial court's decision finding it was in E.P.'s best interest to grant permanent custody to BCDJFS and that such a finding was against the manifest weight of the evidence.

{¶17} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to the following:

{¶18} "(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

{¶19} "(b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

{¶20} "(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;

{¶21} "(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

{¶22} "(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶23} With respect to R.C. 2151.414(D)(1)(a), which requires the court to consider the interaction and interrelationship of the child with, among others, his parents, siblings, relatives, and foster caregivers, the trial court found E.P. had no contact with Mother since her supervised visitation time was suspended, nor any contact with A.P., his biological father, since being placed in foster care. The trial court also found that due to the recommendations of their respective therapists, E.P. has had virtually no contact with J.W., his older half-brother, and has had limited visits with his newborn half-sister.

{¶24} Furthermore, while the trial court did note that E.P. demonstrated a bond with

Mother, the trial court also found that he was "thriving" in his foster home and has a "very positive" relationship with his foster caregivers and their eight-year-old daughter. In addition, the trial court noted that E.P. was involved in extracurricular activities, including youth soccer, and had become "extremely bonded to his foster mother, father and sister." The trial court also noted that his foster caregivers indicated a desire to adopt E.P. if he was placed in the permanent custody of BCDJFS.

{¶25} With respect to R.C. 2151.414(D)(1)(b), which requires the court to consider the wishes of the child, as expressed directly by the child or through the child's guardian ad litem, the trial court did not conduct an in camera interview with E.P., but did consider the recommendations of the child's guardian ad litem as to his wishes. The trial court also noted that during his therapy sessions, E.P. had "stated emphatically" that he does not want to live with Mother.

{¶26} With respect to R.C. 2151.414(D)(1)(c), which requires the court to consider the custodial history of the child, the trial court found that E.P. had remained in BCDJFS's custody, as well as in the care of his original foster caregivers, for approximately 19 months.

{¶27} With respect to R.C. 2151.414(D)(1)(d), which requires the court to consider the child's need for a legally secure permanent placement, the trial court found E.P. had been sexually and physically abused by J.W., his older half-brother, while under Mother's care. This abuse, as well as Mother's destructive lifestyle choices and parenting decisions, caused E.P. to suffer from Post-Traumatic Stress Disorder, with a Rule-Out Diagnosis for Mood Disorder and Reactive Attachment Disorder, that led to his bed-wetting, nightmares and hallucinations, violent temper tantrums, and hyper-vigilant behavior.² However, since contact

2. The record indicates that before suspending Mother's supervised visitation time, E.P. suffered from hallucinations that caused him to see a man standing in his bedroom.

with his Mother was suspended, the trial court noted that E.P. was able to focus in therapy and at school, had stopped wetting the bed, was better able to control his temper tantrums, and had stopped suffering from hallucinations.

{¶28} The trial court also found that Mother "has failed to take any responsibility for any of the issues facing her children," but instead, found she feels as though she is the "victim in this case." In addition, the trial court noted that E.P., although failing to elaborate further, had disclosed several times during his therapy sessions that "mommy has been mean to him." The trial court also noted that E.P.'s therapist recommended the child have "no contact with his mother and other family members" for any contact would be "therapeutically detrimental" to his healing process.

{¶29} With respect to R.C. 2151.414(D)(1)(e), which requires the court to consider whether any of the factors listed in R.C. 2151.414(E)(7) to (11) apply, the trial court found that A.P., E.P.'s biological father, has "never traveled from Minnesota to participate in this case" and has had no contact with his son since he was first placed in foster care. The trial court, therefore, found E.P. had been abandoned by his biological father.

{¶30} Based on this evidence, and upon consideration of the statutory factors, the trial court found it clear that legally secure placement of the child could not be achieved without granting permanent custody to BCDJFS. As the trial court stated, it was "not willing to gamble on or experiment with this child's psychological well-being in the future by again allowing contact with his mother, father, or stepfather."

{¶31} Despite these findings, Stepfather argues that the trial court erred in its best interest analysis by considering the fact that Mother voluntarily surrendered custody of J.W., E.P.'s older half-brother, "as a factor favoring permanent custody." However, while it may be true that the trial court's decision did note Mother had voluntarily surrendered custody of

J.W., we find no evidence indicating the trial court considered this as a factor favoring its decision granting permanent custody to BCDJFS. Instead, we find it clear that the trial court merely noted this as further explanation as to why E.P. has had virtually no contact with his older half-brother since being placed in the temporary custody of BCDJFS. This is particularly true considering the trial court included this information in its discussion of R.C. 2151.414(D)(1)(a), which, as noted above, requires the court to consider E.P.'s interaction and interrelationship with his siblings.³

{¶32} Stepfather also argues that the trial court erred by "shift[ing] the burden of proof to the parents." However, nothing in the record convinces this court that the trial court improperly shifted the burden away from BCDJFS to prove by clear and convincing evidence that an award of permanent custody was in E.P.'s best interest. See *In re T.W.*, Franklin App. Nos. 10AP-897, 10AP-898, 10AP-899, 2011-Ohio-903, ¶¶15-19. Instead, we find it clear that the trial court properly weighed all the evidence presented in making its best interest determination. In fact, the trial court's decision explicitly stated that clear and convincing evidence demonstrated that awarding permanent custody to BCDJFS was in E.P.'s best interest. See *In re E.G.*, Franklin App. No. 07AP-26, 2007-Ohio-3658, ¶15. The record, therefore, simply does not support Stepfather's claim.

{¶33} In light of the foregoing, and after a thorough review of the record, we find the trial court's decision granting permanent custody to BCDJFS is in E.P.'s best interest and not

3. It should be noted, even if we were to find the trial court considered Mother's voluntary surrender of J.W. "as a factor favoring permanent custody," such evidence is nonetheless relevant to the trial court's ultimate determination of whether appellants' parental rights should be terminated. See *In re Thompson* (Jan. 10, 2001), Summit App. No. 20201, 2001 WL 22317, at *1 (finding trial court did not err by considering appellant had voluntarily surrendered his parental rights to his three other children when reaching a decision that his parental rights to his two younger children should also be terminated); see, also, *In re H.K.*, Trumbull App. No. 2010-T-0066, 2010-Ohio-4194, ¶55 (finding trial court did not err by considering appellant had voluntarily surrendered custody of three of her five children when reaching a decision that her parental rights to the child in question should also be terminated).

against the manifest weight of the evidence. As noted above, after becoming the victim of sexual abuse at the hands of his older half-brother while in Mother's care, E.P. was placed in BCDJFS's temporary custody. During this time, but only after Mother's visitation was suspended, E.P. made great strides in overcoming his extensive psychological issues. However, the trial court found, and we agree, that while the child has certainly made progress, "the only way [E.P.] will have psychological stability in his young life, after such a tumultuous early childhood, is for the court to [grant] the agency's motion so that he can be placed in a loving and responsible adoptive home." Therefore, having found no error in the trial court's decision granting BCDJFS permanent custody of E.P., Mother and Stepfather's three assignments of error are overruled.

{¶34} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.