

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of:	:	
A.S. et al.,	:	No. 10AP-414
	:	(C.P.C. No. 03JU-15355)
(K.H.,	:	
Appellant).	:	(REGULAR CALENDAR)
	:	
In the Matter of:	:	
H.S., Dependent Minor,	:	No. 10AP-415
	:	(C.P.C. No. 06JU-14964)
(K.H.,	:	
Appellant).	:	(REGULAR CALENDAR)
	:	
In the Matter of:	:	
A.S. et al.,	:	No. 10AP-456
	:	(C.P.C. No. 03JU-15355)
(C.S.,	:	
Appellant).	:	(REGULAR CALENDAR)
	:	
In the Matter of:	:	
H.S.,	:	No. 10AP-457
	:	(C.P.C. No. 06JU-14964)
(C.S.,	:	
Appellant).	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on November 9, 2010

Giorgianni Law, LLC, and Paul Giorgianni, for appellee A.S.

Yeura R. Venters, Public Defender, and *David L. Strait*,
Guardian ad Litem.

Robert J. McClaren, for appellee Franklin County Children
Services.

William T. Cramer, for appellant K.H.

Scott Schockling, for appellant C.S.

APPEALS from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

BROWN, J.

{¶1} K.H. ("mother"), appellant, and C.S. ("father"), appellant, appeal from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, in which the court granted the motion of Franklin County Children Services ("FCCS"), appellee, for permanent court commitment ("PCC") with regard to A.S., B.S., He.S., M.S., and Ha.S.

{¶2} Mother and father have five daughters who are involved in the present matter. A.S. was born September 18, 1996; B.S. was born September 15, 1998; He.S. was born June 3, 2001; M.S. was born June 27, 2003; and Ha.S. was born January 19, 2006. A son, C.C., was born during the pendency of this matter and is not the subject of this case. In earlier proceedings not related to the matter at bar, A.S. and B.S. both were removed from the parents' home by FCCS for short periods due to failure to thrive but ultimately returned home.

{¶3} In July 2003, a complaint was filed, in which it was alleged that a male family friend had sexually abused A.S. The oldest four children were removed from the home and placed in foster care, and FCCS was granted temporary custody. The four

oldest children were adjudicated dependant and a temporary court commitment was awarded to FCCS. Additional disclosures of sexual abuse between the siblings were made while the children were in foster care. Ha.S. was briefly removed from the parents' care but then returned to their custody. Although FCCS filed a motion for PCC, the trial court subsequently dismissed the motion at the request of FCCS, and the four oldest children were returned to the parents' home in September 2006.

{¶4} A case plan was put in place, and various services for both the parents and children were provided. During this time, the family's housing environment deteriorated; the parents were not appropriately supervising the girls with respect to interactions between each other and with other males; and the children often acted out sexually in various ways both openly and covertly. There was also an incident in which an adult male slept overnight on the couch with A.S. sleeping on the floor beside him, and a female friend resided with the family for six weeks and was found sleeping in the living room with the children.

{¶5} On August 23, 2007, a parenting mentor with a private children's home and family service discovered two of the children playing unsupervised outside in a 50-gallon trash barrel filled with water, using a lawn chair to jump into the water. FCCS was granted an emergency custody order, and the children were removed from the home. FCCS was granted temporary custody of the children in November 2007.

{¶6} Although the children were all in the same foster home initially, they were eventually placed in separate foster homes due to the children's continued inappropriate sexual behavior. During counseling sessions, A.S. alleged numerous people had sexually abused her, including relatives, family friends, and a family acquaintance, E.C.

{¶7} On July 24, 2008, FCCS filed a motion for PCC. Hearings were held on the motion on numerous dates from August 2009 to March 2010.

{¶8} In late 2009, A.S. and M.S. began alleging that their parents and grandmother were also sexually abusing them. The allegation included the description of a game ("circle-star game") in which their parents and grandmother would make the girls stand on stars inside a circle in the basement and force them to perform sex acts on each other and other men who were invited to attend. He.S. also alleged sexual abuse by her parents and grandmother. B.S. also claimed that an uncle had touched her and A.S. sexually.

{¶9} In 2009, father accused mother of having an affair with E.C., and father alleged E.C. had threatened him, attacked him, and hired his nephews to kill him. The parents moved to Youngstown in October 2009 to get away from "the drama." In November 2009, mother married E.C. and currently lives with him in the Mansfield area. Father lives in a three-bedroom townhouse in Columbus.

{¶10} On April 16, 2010, the trial court granted permanent custody of all five children to FCCS. Mother and father have filed separate appeals of the trial court's judgment, which we have consolidated herein. Mother asserts the following assignment of error:

The trial court violated appellant K.H's due process rights because the judgment was not supported by clear and convincing evidence.

{¶11} Father asserts the following assignment of error:

The manifest weight of the evidence does not support the juvenile court's finding that the children cannot or should not be reunited with Appellant C.S. and that termination of his parental rights is in the best interests of his children.

{¶12} We will address mother's and father's assignments of error together, as they rely upon the same testimony and evidence. Initially, we note that mother contests only the PCC determinations related to the three youngest daughters, He.S., M.S., and Ha.S, while father contests the PCC determinations related to all five daughters.

{¶13} A trial court's determination in a PCC case will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Andy-Jones*, 10th Dist. No. 03AP-1167, 2004-Ohio-3312. Judgments supported by some competent, credible evidence going to all essential elements of the case are not against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, paragraph one of the syllabus.

{¶14} A decision to award permanent custody requires the trial court to take a two-step approach. First, pursuant to R.C. 2151.414(B)(1), a trial court must find whether any of the following apply:

(a) The child is not abandoned or orphaned, has not 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, or has not 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 if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) 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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

{¶15} Once the trial court finds that one of the circumstances in R.C. 2151.414(B)(1)(a) through (d) apply, the trial court then must determine whether a grant of permanent custody is in the best interest of the child. R.C. 2151.414(B)(1). FCCS must prove by clear and convincing evidence that an award of permanent custody is in the child's best interest. *Id.* Clear and convincing evidence is that degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the facts to be established. *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus. It is more than a mere preponderance of the evidence but does not require proof beyond a reasonable doubt. *Id.*

{¶16} With regard to R.C. 2151.414(B)(1), FCCS's motion for PCC was based upon subsection (a). R.C. 2151.414(E) provides that, in determining whether the child can be placed with the child's parents within a reasonable time or should not be placed with the child's parents under R.C. 2151.414(B)(1)(a), a court must determine, by clear and convincing evidence, that one or more of the factors enumerated in R.C. 2151.414(E)(1) through (16) exist. In the present case, the trial court found factors (1), (2), (4), (14), (15), and (16) existed.

{¶17} A trial court may base its decision that a child cannot or should not be placed with a parent within a reasonable time upon the existence of any one of the R.C.

2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with the parent within a reasonable time. See *In re William S.*, 75 Ohio St.3d 95, 1996-Ohio-182.

{¶18} In the present case, the major reason cited by FCCS for filing the motion for PCC was the parents' unwillingness to accept what the children were saying about the sexual abuse, which relates to R.C. 2151.414(E)(14) and (15). Thus, we will first review the evidence that relates to those subsections. R.C. 2151.414(E)(14) and (15) provide, in pertinent part:

(14) The parent for any reason is unwilling * * * to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

(15) The parent has committed abuse * * * against the child or caused or allowed the child to suffer neglect * * * and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

{¶19} At trial, there was extensive testimony by numerous witnesses about the sexual abuse and sexual behavior of the children. Regina Fruge, a social worker, testified that she provided therapy to A.S., B.S., He.S., Ha.S., mother, and father from December 2007 until June 2009. A.S. wrote "I have been raped" on a note to her at their first meeting. Fruge believed A.S. had experienced seven or eight incidents of sexual abuse, each by different abusers, not including those between siblings. In a July 13, 2009 FCCS document, it was documented that A.S. alleged one sexual abuse incident in 2003, two incidents in 2005, and five incidents in 2008. A.S. also told Fruge that she had had sexual contact with B.S. The sexual activity between A.S. and B.S. occurred even while in foster care. A.S. told Fruge in early- to mid-2008 that she was afraid to go back home because

she was worried that the touching would happen again. Fruge also testified that B.S. made an allegation of sexual abuse that occurred prior to December 2007 involving one of the same men who allegedly abused A.S. B.S. also engaged in sexual activity with a female friend who was around her same age, about which her parents did not know. He.S. also revealed to Fruge that she had sexually acted out on her sisters, as well as fellow classmates. Fruge agreed that "most" of the abuse in the present case involved A.S. sexually abusing her sisters and called the degree of sexual activity between the siblings "alarming." None of the children claimed they learned sexual behavior from the parents, and the children never reported to her any sexual abuse by their parents. Fruge further testified that the children lacked "stranger boundaries," meaning they too easily gave personal information and affection to strangers. Fruge said that some of the questioning techniques she used were open-ended questions and some were suggestive. However, she said she used open-ended questions to negate the danger of suggestive techniques, and she never told the children what to say.

{¶20} Patti Luick-McIntire, a parenting mentor with a private children's home and family service, testified she was concerned for the safety of the children when they were in parents' care because several 11- to 12-year-old male cousins and another male relative in his 20s had complete access to the girls when they visited. Another young male that would visit the parents' home was overly affectionate to the children, particularly Ha.S. Luick-McIntire testified the parents would sometimes forget to check on a child who may be in the bathroom for an unusual amount of time. B.S. admitted to Luick-McIntire that she would go to the bathroom to self-stimulate and would look for opportunities to do it. Also, some of the children would self-stimulate with animals and had to be monitored at

all times. Although she never witnessed any inappropriate touching between the children and any relatives, she said B.S. sometimes acted "provocatively."

{¶21} Bridgette Radcliffe, a caseworker for the family from February 2009 to May 2009, testified that, in May 2009, she was at a visitation, and He.S. was rocking on a toddler bike. Radcliffe thought she may be self-stimulating, so she prompted the parents to redirect He.S., which they did. However, when He.S. began rocking again, they failed to redirect her, and Radcliffe had to do so.

{¶22} Shannon Evans, a caseworker for FCCS, provided vast testimony on the sexual abuse and sexual behaviors of the children. Evans testified that A.S. was sexually abused by "Gabe" in the backseat of a car while mother and father were in the car. Evans said there was another incident in which Gabe went to A.S.'s bedroom and either pulled down his pants or pulled down A.S.'s pants while A.S. was asleep. Evans said A.S. also accused E.C. of sexually abusing her, and E.C. was investigated as an abuser of A.S., resulting in a finding that sexual abuse was indicated. A.S. continued to maintain her accusations against E.C. Evans did not recall any sexual abuse allegations that A.S. had recanted, although she said that FCCS had found some of the children's reports to be inaccurate or unsubstantiated. A.S. also reported that her sisters, mother, and grandmother took showers together and touched each other. A.S. also reported that she, a sister, her mother, and her grandmother would also take baths together, which Evans found not credible due to the size of the family's bathtub. A.S. also reported that mother and grandmother would hide under her bed before the children entered the room and then watch the children touch each other or they would pretend as if they were leaving the room and then hide under the bed.

{¶23} Evans further testified that, in October 2009, A.S., M.S., and He.S. started to make accusations of sexual abuse by mother, father, and their grandmother. A.S. and M.S. separately told Evans and another counselor that the parents made them play the circle-star game, in which the four oldest children would stand on stars within a circle fashioned on the basement floor, and men would pay mother and grandmother money for the girls to engage in various sexual acts with each other. A.S. said that there were 11 participants, many of which she specifically named, that were part of the circle-star game. A.S. reported that two uncles, two cousins, two minor friends, and others sat outside the circle, and the girls had to touch them and suck their "ding dongs." M.S. told her that grandma forced her to suck men's "ding dongs" and referred to the men as "[father's nickname]'s boys." At the time of the accusations, M.S. and A.S. had been living apart for about ten months. In November 2009, M.S. told her foster mom that everything was a dream, and she wanted to live with her parents, but then she began to cry and said she dreamed about "sucking ding dongs" and she wanted to live with her foster parents. M.S. also told Evans that she has had to "suck ding dongs." Evans admitted that some of M.S.'s statements were in conflict with each other. B.S. denied any knowledge of the circle-star game or ever having to suck a man's penis. He.S. denied any knowledge of "[father's nickname]'s boys." Evans never saw circles and stars painted on the floors of any of the children's homes she inspected, and she did not know whether the circle-star game allegations were believable or unbelievable. An investigation was conducted into these allegations, and they were deemed unsubstantiated due to the inability to gather enough information.

{¶24} Evans also testified that He.S. told her foster mother that father would spank them naked while they stood in a corner, and her mother and grandmother touched her vagina. In November 2009, He.S. told a caseworker that her mother and father had touched her vagina with their hands with her clothes on one time, but her grandmother had never touched her. He.S. also said that the only other person who ever touched her private parts was M.S. who put her mouth on her vagina, and she denied that she ever had to put her mouth on anyone's private parts or that her parents had ever threatened to harm her. He.S.'s foster mother told another caseworker that He.S. had dreams that her parents were trying to kill her with a knife.

{¶25} Evans further said that in November 2009, B.S. told a caseworker that her parents or grandparents only touched her private parts to wash her. However, B.S. reported at that same time their uncle Eddie touched her and A.S.'s vaginas and breasts on top of their clothes. The therapist reporting this abuse said maybe B.S. and A.S. were reporting this abuse because they did not want to go back home.

{¶26} Evans also testified that M.S. denied that anyone had ever put anything in her mouth, but then said that men would put penises in her mouth, which Evans agreed was inconsistent. M.S. also then denied ever taking showers or baths with her parents or grandmother, denied that anyone touched her private parts while she bathed, and denied knowing anything about the circle-star game. However, Evans said it is rare that a six-year-old, like M.S., can accurately describe oral sex, but M.S. was able to gesture how her grandmother pushed her head down.

{¶27} Mother also testified about the sexual abuse and sexual behavior of the children. She said that sometimes she would find the girls three to four times per week in

each other's beds trying to do sexual acts on each other. There was also an incident in which Luick-McIntire thought He.S. was "humping" the family dog, although mother thought she was merely trying to sit on the dog. Luick-McIntire also saw He.S. rocking on a toy during a visitation, and she told mother to redirect He.S. Luick-McIntire thought she was masturbating, although mother disagreed. Mother testified A.S. was abused by "Gabe" in 2003. Mother said A.S.'s eight abusers were uncles, unknown friends, an ex-cop who was a friend of the family, another man named "Lonnie," "Charles," and Eddie's three step-sons. Mother said she never sexually touched any of her children or permitted anyone else to do so.

{¶28} The trial court interviewed A.S. and B.S. in camera. In the interview with A.S., with regard to sexual abuse and sexual behavior, A.S. stated her mother did more "touching" of her than her father. A.S. also said that she did not like living with her parents because they brought "perpetrators" over who touched her sexually. She said her parents knew of the abuse because they participated in the circle-star game in the basement. The circle and stars were made with red tape so they could take them off the floor. A.S. said her father would have Uncle Eddie and ten other perpetrators come over and touch them. A.S. also stated she touched her sisters inappropriately during the circle-star game and at a foster home. She said if the children would not want a perpetrator to touch them during the circle-star game, her father would beat them naked with a belt. A.S. also said her mother set up the circle-star game. Her mother and grandmother would hide under the bed while they were playing the circle-star game so they would know who to touch that night if one of the girls resisted. A.S. said twice she

was not making up the circle-star game to get back at her parents. She said M.S. blocked out memories of the circle-star game so she would not have to remember it.

{¶29} In the interview, A.S. also talked about words and objects with secret meanings that her parents would use when they wanted to communicate certain things to the children. She said a "unicorn" meant do not believe that you are going to be adopted, and her parents would put unicorns in her presents. She said "ninjas" meant do not fight back or do not tell on the parents, and the parents first used the symbol when they were sexually abusing her. A.S. insisted she was not making it up. She did not blame her father for the abuse because she did not feel her father did as much to her as her mother and grandmother did. However, she said her father put his penis in her vagina two times per week.

{¶30} With regard to sexual abuse, B.S. stated in camera that, when she went to a house – either the house of her parents' sisters or brothers – a man touched her breast and vagina. She said she told her parents, but they did not believe her. She said her mother never touched her in any bad way. She said unicorns have no special meaning to her, and she did not know what a ninja was. B.S. said A.S. told her that the circle-star game happened to A.S., but B.S. did not remember it.

{¶31} There was also extensive testimony as to how the parents reacted to and handled their daughters' sexual behaviors and sexual abuse claims. Fruge testified that, at the beginning of therapy, the parents progressed and sought information regarding the children's sexual behavior. There was progress in the parents' ability to identify the ways that the daughters may interact with each other negatively. However, Fruge had concerns about the parents' ability to supervise the children. She was concerned that, given the

liberty to do so, the children would continue to act out sexually and they would be hesitant to tell their parents if there was any touching occurring. In a June 2008 recommendation letter, Fruge also said she was concerned about the parents' allowing visitors into the home and their ability to provide the level of supervision that the children needed. The parents told her that unapproved and uninvited visitors to the home had stopped.

{¶32} Also in June 2008, the parents told Fruge that they did not believe sexual abuse occurred in their home. Fruge believed that the parents' beliefs were inappropriate and detrimental to the children. She believed that, in cases of abuse, parents have to be supportive and understand where the child is coming from regardless of whether an investigation can prove the abuse. The parent must support the child and acknowledge that it happened and respond by doing something about it. However, Fruge acknowledged that A.S. recanted some of the abuse allegations to FCCS, and she said it would be normal for a parent to question an abuse allegation when the child later recanted.

{¶33} Fruge was aware of no evidence showing that the parents were aware of the rape of A.S. Fruge testified that the parents were also unaware of the inter-sibling sexual abuse. Fruge said there were no facts that should have made the parents aware of the sexual abuse of the children, and it is almost impossible for parents to protect children if they do not know there is some type of danger. She admitted that any parent would struggle with 24-hour line of sight supervision.

{¶34} Mother gave testimony about when she learned of the sexual abuse allegations brought by her children. She said she did not learn of A.S.'s first molestation by Gabe until after FCCS had removed the children from the home. A.S. first told her that

she had been abused a few months later while at counseling at Children's Hospital. FCCS told her that A.S. alleged father's brother, Eddie, had sexually abused her in 2002. A.S. told her about the abuse by Eddie's three step-sons during counseling. Mother testified that B.S. first told her she had been abused – by someone different than A.S. – in 2003 while at counseling at Children's Hospital. He.S. never told her that she had been abused by one of her sisters, but she learned it through FCCS in 2008. M.S. never told her she was abused, but mother learned through FCCS in 2008 that her sisters had abused her while in foster care. Ha.S. never told her she was abused, but FCCS told mother Ha.S. had been abused by her sisters in 2008 while in foster care.

{¶35} Mother further testified that, although A.S.'s counselor recommended that the children not use the bathroom together or dress in front of each other, she sometimes had problems following the recommendations. She said frequently the girls had to be redirected when they violated the rules. Also, she admitted that a friend lived at the house when the children lived there, despite the recommendation that no one stay overnight. Mother also admitted that, right before FCCS removed the children, a man was sleeping on the family's sofa, and A.S. was sleeping on the floor beside him. The man was helping father fix his car and dated father's niece. The man worked late on father's car, so father told him he could sleep at the house. Mother said she objected to the man sleeping there because it was against FCCS's recommendations. She said the children slept in the same beds a lot, even though FCCS said the children were to sleep alone, but that she would redirect them to their own rooms when she would discover it. The parents bought some door alarms after the children were removed after they found out the foster parents used them. Mother said FCCS never suggested door alarms to help keep tabs on the

children. Mother also stated that, even though the foster parents were supposed to watch the children 24 hours per day like she was supposed to do, A.S. and B.S. still had sexual contact in the foster home, despite the foster family's use of door alarms.

{¶36} Mother further testified that father did not know whether to believe his brother Eddie had molested A.S., but she believed he had. Once mother found out that B.S. also alleged Eddie had sexually abused her, mother never let Eddie babysit or let the children go to Eddie's house unattended. Mother said she followed FCCS's safety plan prohibiting any contact between Eddie and the children. Mother testified the only incident of abuse that occurred in the home was the first one with A.S., and that perpetrator had since moved from the neighborhood. Mother said she did not know whether to believe E.C. abused A.S. Mother said if the children were returned to her, she would never let any of these people around her children again, although she later married E.C. during the course of the proceedings.

{¶37} Evans testified that mother saw Gabe put his hands down A.S.'s pants. Mother told father, but they continued to allow Gabe into the home and even spend the night. Evans said the parents also asked on a couple of occasions if the father's brother, Eddie, could stay overnight, even though he was an alleged abuse perpetrator. Other times, the parents would allow several of the children to be on one level of the house unsupervised or outside unsupervised. Evans said the parents were still not complying with the recommendations of the counselor, insofar as they were not keeping line-of-sight supervision.

{¶38} Evans also testified that, when she discussed with mother E.C.'s sexual abuse of A.S., mother reacted defensively and gave a different scenario as to how the

allegation arose. Even after Evans explained that it would affect the children's trust of her if she continued to have contact with E.C., mother continued to see E.C. and later married him. Evans said because the parents do not believe the children's abuse allegations, the children will not be willing to divulge future abuse to them. Evans also stated that M.S. and A.S. told her about the secret meanings of unicorns, dolphins, ninjas, army men, and books. Evans said she saw the parents regularly bring the children gifts of ninjas, dolphins, books, and unicorns, and once found a ninja doll hidden inside a jewelry box. Some of the children reported that mother and father would also whisper things to them, such as, not to listen to their foster parents and not to tell of the gifts that parents gave them, and Evans observed whispering between parents and the children. Evans told the parents they could not whisper things to the children, but the children reported that their parents were still doing so.

{¶39} After reviewing the above testimony, we cannot find the trial court's decision was against the manifest weight of the evidence. As mentioned earlier, mother contests the PCC determinations related only to the three youngest daughters, He.S., M.S., and Ha.S, while father contests the PCC determinations related to all five daughters. The first issue that must be discussed is whether the parents themselves abused the children, which would heavily militate against returning custody of any of the children to the parents. A.S. and M.S. maintained that both parents abused them during the circle-star game and at other times. He.S. said her parents would spank them naked while they stood in a corner, and her parents touched her vagina. A.S.'s allegations were unwavering, while M.S.'s and He.S.'s claims were inconsistent and inapposite at times. The trial court never made any finding that mother and father sexually abused the

children. Apparently, the court chose not to believe A.S. and found the testimony surrounding the circle-star game and other allegations of sexual abuse at the hands of the parents not credible. We have no basis to reject the trial court's finding in this respect. The trial court was best able to view the witnesses, particularly A.S. during her in camera interview, and determine their credibility.

{¶40} However, we agree with the trial court that mother and father were unable to prevent the children from suffering sexual abuse and allowed such abuse. The evidence demonstrates that A.S. has been sexually abused. She lists several different abusers. She admitted to sexually abusing her sisters. Her first incident of abuse occurred while her parents were in the car with her and the abuser. B.S. also made an allegation of sexual abuse against the same uncle who allegedly abused A.S. He.S. also indicated that she had sexually acted out on her sisters, as well as fellow classmates. M.S. also alleged sexual abuse. The parents claim there was no way for them to have known about any of this abuse. However, B.S. said she told her parents about the abuse but they did not believe her. Evans testified mother saw Gabe put his hands down A.S.'s pants and told father, yet they continued to allow Gabe into the home and even spend the night. Evans also said the parents asked on a couple of occasions if the father's brother, Eddie, could stay overnight after the allegations against him were known. Mother testified father had some doubt as to whether to believe his brother Eddie had sexually abused any of his children. Mother said that she believed A.S. was abused by Eddie, but said she believed it because FCCS told her to do so. Fruge and Evans opined that the parents' unwillingness to believe the abuse allegations was detrimental to the children and would make them reluctant to tell their parents of any future abuse.

{¶41} The parents also gave several boys unfettered access to the girls without any supervision, failed to continually monitor the children when they were together, and would sometimes forget to check on a child who was alone too long. All of the state's witnesses testified that they were concerned about the parents' lack of supervision over the children, which was serious given the past allegations of abuse and the "alarming" amount of inter-sibling sexual behavior. Fruge believed that, without supervision, the children would continue their sexual behaviors. Against FCCS's recommendations, the parents also admittedly allowed a woman to live in their house for several weeks and allowed another man to sleep on the couch, all while the children were living in the house. Therefore, mother and father have both failed to take precautions to prevent further sexual abuse of the children.

{¶42} Also very troubling is the fact that mother has married E.C. A.S. alleged that E.C. abused her, and FCCS found sexual abuse was indicated. A.S. said she once told her mother that E.C. touched her in the car, but her mother told her to forgive him, and she never trusted her mother again. When Evans discussed the alleged sexual abuse by E.C. against A.S., mother reacted defensively and gave a different scenario as to how the allegation arose. Mother said she did not know whether to believe E.C. abused A.S. Although mother testified that if the children were returned to her she would never let any of these people around her children again, she married E.C. during the course of the proceedings, demonstrating clearly that her priority is not to be reunited with her children. For all these reasons, we find there was competent credible evidence that the parents were unable to prevent the children from suffering sexual abuse, unable to provide adequate supervision, and allowed the abuse of the children.

{¶43} Given FCCS must demonstrate the existence of only one factor to support a finding that the child cannot be placed with the parent within a reasonable time, *In re William S.*, and we have found the evidence supports a finding under both R.C. 2151.414(E)(14) and (15), we need not address the remaining factors found by the trial court.

{¶44} Because the condition in R.C. 2151.414(B)(1)(a) was satisfied, we must then turn to the second test of the analysis and determine whether permanent custody is in the best interest of the child. R.C. 2151.414(D) provides that, in determining the best interest of the child, the court must consider all relevant factors, including, but not limited to, the following: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers, out-of-home providers, and any other person who may significantly affect the child; (2) the wishes of the child, as expressed directly by the child or through the child's guardian ad litem ("GAL"), with due regard for the maturity of the child; (3) 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 12 or more months of a consecutive 22-month period ending on or after March 18, 1999; (4) 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; and (5) whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child. The factors set forth in R.C. 2151.414(E)(7) through (11) include: (1) whether the parents have been convicted of or pled guilty to various crimes; (2) whether medical treatment or food has been withheld from the child; (3) whether the parent has placed the child at a substantial risk of harm

due to alcohol or drug abuse; (4) whether the parent has abandoned the child; and (5) whether the parent has had parental rights terminated with respect to a sibling of the child.

{¶45} With regard to the first factor – the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers, out-of-home providers, and any other person who may significantly affect the child – mother testified that the children's maternal grandmother has a good relationship with the daughters. Mother also said that she felt FCCS acted to isolate her and estrange the children from her. She said she thinks the girls have a bond with her and father. She said the girls ask for hugs and kisses.

{¶46} However, Evans testified there was minimal interaction between A.S. and the parents, and A.S. has no bond with father or mother. B.S. talks more to her parents than A.S., but sometimes she just speaks generally to whoever is nearby. B.S. separates from visits very easily and does not have a bond with mother or father, except for a "little" bond during the visitations themselves. Evans said B.S. would ask father for help sometimes, and she appears to enjoy the visits with father. He.S. is more excited to see her parents than B.S. and A.S. She will sometimes go to mother and father for help during visitation, but she separates easily from the visits with no crying, and she has never asked for longer visits. M.S. has minimal interaction with her parents at visitations and very rarely goes to her parents to play with them. M.S. has told Evans that the visits are boring and she does not want to go to them. Evans said M.S. has no bond with either parent. Evans said Ha.S. is a little more bonded with the parents because she is more

dependent upon them than the other children, but she separates very easily from the visitations.

{¶47} Furthermore, Evans testified A.S. is bonded to her foster parents and talks openly with them and relies upon them for nurture and support. B.S. has bonded with her foster mother as well. He.S. is also bonded with her foster mother and refers to her as "mom." M.S. is bonded with her foster parents and refers to them as "mommy" and "daddy." Evans also testified that the children are bonded with each other and enjoy visits with each other.

{¶48} John Ferguson, a social worker and GAL, viewed the children's relationship with their parents more as familiarity rather than a bonding, and he did not believe there was a bond between the children and the parents. Radcliffe thought there was bonding between parents and the children at that time.

{¶49} Father argues that the reason it may have looked like he was not interacting at some of the visitations was that, for a period of about three weeks, he was told by a police officer at visitations that he was not permitted to touch any of the children, and he had to sit with his arms crossed during visitations. Mother said the children noticed this, and it hurt their feelings. Mother also said father was hurt by it. However, no other witness had ever heard about this happening and knew nothing about it, and, regardless, if it did occur, it only lasted three weeks. The evidence demonstrates that parents have no bond with A.S. and very little to no bond with the remaining children. For these reasons, we cannot find the trial court erred in its analysis under R.C. 2151.414(D)(1).

{¶50} With regard to the second factor – the wishes of the child, as expressed directly by the child or through the child's GAL – A.S., He.S., and M.S. have told Evans

they do not want to return home to either parent and want to stay in foster care or be adopted, while Ha.S. is of tender age and has not shared her desires. The GAL testified that A.S., B.S., and He.S. would like PCC to be granted and to be adopted. As for M.S., the GAL said that she views her foster home as her real home and anticipates living there, but he did not believe she had a firm understanding of what PCC really meant. The GAL said Ha.S. is too young to understand the nature of the PCC proceedings. The GAL concluded it would be in the children's best interest to grant PCC to FCCS for purposes of adoption. Although father said two months before the final hearing date, A.S. and B.S. told him if he and mother broke up, they wanted to live with him, A.S. and B.S. both stated in camera that they did not want to live with their parents and wanted to be adopted. A.S. said she would run away if she lived with either parent. B.S. said she would miss her father a little, but not too much, and she would not miss her mother. B.S. said she would rather stay in the foster home because her mother, father, and grandmother would not take good care of her. Therefore, this factor weighs in favor of granting PCC to FCCS.

{¶51} With regard to the third factor – the custodial history of the child – FCCS removed A.S. from the home as a baby for about 30 days based upon her failure to thrive. Mother said A.S. was removed because their home had been burglarized, and they did not have any items to care for the baby. A.S. stayed in the home for about three months but then left the home again for about 28 days in July 1997. Father testified that, when A.S. was born, they fed her all the time, but she would repeatedly vomit, and FCCS viewed her failure to grow as neglect. Mother testified that they found out years later that she had a medical condition that had prevented her from eating properly. FCCS also removed B.S. for 90 days when she was about one year old due to her failure to thrive.

On July 29, 2003, FCCS removed the four oldest children from the home. After Ha.S. was born in January 2006, FCCS removed her from the home briefly but then she was returned. The other children were returned to the home in September 2006, but then removed a final time in August 2007. The children are now all in foster care with families who would like to adopt them. Thus, the children have all spent a significant time in foster care, despite efforts to reunite them with their parents.

{¶52} In considering the fourth factor, 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, mother testified that, from September 2006 to August 2007, she sometimes had a problem with the house being dirty. At one point, they had one dog, two cats, and two kittens. For a short time, they also had a puppy that had ringworm, but they took the puppy to the animal shelter. Mother admitted the animals in the home had gotten out of control and had made the house dirty. She said there was animal feces in the basement and clutter in the home at the time the children were removed. Although the dog sometimes defecated in the basement, she maintained someone would clean it up once or twice a week. However, mother admitted they could not keep up with the expenses and upkeep associated with the animals. A.S. said the dogs were not cared for very well and defecated in the house, and her parents would not clean it.

{¶53} Mother also testified there was, at times, old food, pet food, and trash in the house. Mother said the clutter in the house mostly consisted of clothes that the children had outgrown and they were in the process of sorting through them to give away. She claimed that any food that was sitting around was on the counter or in a cabinet. She

said she would also leave food they had for dinner on the counter until they had finished tending to the children. Although mother said the house was sometimes cluttered because she had to provide constant supervision to five children, the parents admitted to many lapses in the supervision of the children.

{¶54} Evans testified that the family home was, at first, neat and clean, beds were made, and dishes were put away. However, as the weekend visitations with the children would progress through the weekend, the condition of the house would deteriorate. From September 2006 to August 2007, Evans said the condition of the parents' home was not reasonable. Evans testified there was animal feces in the home, animal food spilling out of the bag onto the floor, guinea pig bedding spilling onto the floor, old food sitting out, dirty dishes throughout the home, and dirty clothes scattered throughout the home. Evans said there was also an ongoing problem with some of the older children having lice, for which the parents failed to follow through on treatments.

{¶55} The parental housing situation is also troublesome. The family moved five times from September 2006 to August 2007 because either the neighborhood was bad or the landlord would not care for the property. Although this may be viewed positively, in that the parents were seeking more suitable housing each time, it also is troubling because it shows the parents' lack of judgment and inability to afford housing that is suitable for raising the children. At the time of the final hearing date, father had secured a multi-bedroom townhome, but he also told Evans that he was "broke." Although father testified that he earned \$3,500 - \$4,500 per month doing construction and independent manual labor jobs, mother said she never knew father to make \$3,500-\$4,500 per month during their 18-year relationship.

{¶56} With regard to mother's housing, mother has a separate residence now, too. However, mother is living with her husband, E.C., who is an indicated sexual abuser. Furthermore, although mother claimed she could cooperate with father if she obtained custody, father said he has problems with E.C. Father testified that E.C. put out a "hit" on him and offered to pay his nephews \$1,500 to kill him. E.C. told mother if she did not leave father, he was going to have him killed. E.C. also swung a baseball bat at his head. Father said E.C. told him he was going to behead him, cut his body into pieces, blow his house up, and blow his brains out. On June 22, 2009, E.C.'s nephews ran father's vehicle off the freeway, causing father's car to hit a wall. Father was taken to the hospital, where father claimed doctors pronounced him dead three times. Father also testified that E.C. had called him on the phone over 50 times and threatened him over 200 times.

{¶57} Ferguson did not believe the parents were a safe placement for the children, given mother admitted to him that it would not be good for the children to see her and E.C. together because of the abuse he perpetrated on A.S. Additionally, the parties each have told him that the other has stolen and destroyed the other's property. Ferguson testified that he believed it would be in the children's best interest to grant PCC to FCCS for purposes of adoption.

{¶58} The parents were also having problems supervising the children. Mother testified the children were removed from the home because she was not redirecting them when they were misbehaving, the girls were sleeping in each other's rooms, the girls were touching each other inappropriately, and she did not have eye-to-eye contact with the children at all times. Mother admitted to the incident in which He.S. and M.S. were swimming in a 50-gallon trash container, but mother said it was a hot summer day, and

she had gone inside to get Ha.S. something to drink at the time. Mother said the girls were outside for 10 or 15 minutes. Mother also admitted that, right before FCCS removed the children, a man was sleeping on the family's sofa, and A.S. was sleeping on the floor beside him.

{¶59} Furthermore, Luick-McIntire testified that, at one of her visits with the parents and children, they went to a playground where He.S. wandered off and soiled herself, and the parents never noticed she was gone. Luick-McIntire did say the parents did a good job of keeping the visitations under control and engaging in age appropriate activities with them. However, Fruge testified the meetings with the parents and the three oldest children were often chaotic, with the parents at times having difficulty managing the children. She said she saw some improvement over the course of a year, but it was still a concern after a year of counseling. Evans also said the parents are not consistently able to redirect the children when they are misbehaving. She said neither parent has implemented the new parenting practices into their daily routines as explained by the counselors.

{¶60} In addition, Evans testified that many times when she had visited the parents' home announced or unannounced, the children's grandmother had been left with the children, and she would not be following line-of-sight supervision. On other visits, Evans saw He.S., B.S., and M.S. darting across the street unsupervised without looking. Evans testified that, when she found He.S. and M.S. swimming in the trash can, she also found Ha.S. wandering around the area without supervision. Evans said it was difficult to keep the parents focused on her concerns when she pointed out to them their lack of

supervision. For the above reasons, we find the fourth factor weighs in favor of granting PCC to FCCS.

{¶61} With regard to the fifth factor – whether any of the factors in R.C. 2151.414(E)(7) to (11) apply in relation to the parents and child – we find none of these factors apply to the present case.

{¶62} None of the factors analyzed above weigh in favor of denying FCCS's motion for PCC. For the reasons explained above, we find the record supports the trial court's findings that it was in the best interest of the children to grant PCC to FCCS. Because the children should not be placed with their parents, and PCC would be in the children's best interest, we find the trial court did not err in granting FCCS's motion for PCC. Therefore, mother's and father's assignments of error are overruled.

{¶63} Accordingly, mother's and father's assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

TYACK, P.J., and KLATT, J., concur.
