

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In the Matter of:	:	
	:	No. 24AP-647
[Lu.M.-R. et al.,	:	(C.P.C. No. 20JU-9670)
R.M., Mother,	:	(REGULAR CALENDAR)
Appellant].	:	

D E C I S I O N

Rendered on August 27, 2026

On brief: *John T. Ryerson*, for appellant.

On brief: *Robert J. McClaren*, for Franklin County Children Services.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations and Juvenile Branch

DINGUS, J.

{¶ 1} Appellant, R.M., mother of minors, Lu.M.-R. and Lo.M.-R. (“the children”), appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations and Juvenile Branch, placing these children in the permanent custody of appellee, Franklin County Children Services (“FCCS”). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} Lu.M.-R. was born in January 2011, and he is the biological son of mother and J.R. (“father”). Lo.M.-R. was born in September 2016, and she is the biological daughter of mother and father. Father is originally from El Salvador, is not a United States citizen, and his current whereabouts—including whether he was deported—are unknown. The parents married in May 2017 and divorced in September 2021.

{¶ 3} In addition to fathering Lu.M.-R. and Lo.M.-R., father has four other biological children with another mother, J.R., M.R., A.R., and E.R.¹ All six of father's children resided in the same household with mother, and these other four children are not the subject of this appeal. In mid-March 2019, FCCS received an allegation that father had abused one of his children. On March 28, 2019, all six children were placed in the emergency custody of FCCS. The next day, FCCS was awarded temporary custody of all six children.

{¶ 4} On December 31, 2020, FCCS filed a complaint alleging that Lu.M.-R. and Lo.M.-R. were dependent children under R.C. 2151.04(C). On March 15, 2021, mother filed a motion to dismiss the complaint pursuant to Juv.R. 22(A) and 29(F). In February and March 2021, a trial court magistrate conducted a five-day trial on the dependency issue. On the day after the trial concluded, March 23, 2021, FCCS moved for permanent custody of the children. Two days later, mother was charged with four counts of endangering children. Subsequently, in March 2022, mother pleaded guilty to the amended charge of one count of disorderly conduct, with the other three counts being dismissed. Father was charged with domestic violence, assault, and child endangering. In February 2022, father was convicted of six counts of domestic violence against two of his children, J.R. and E.R.

{¶ 5} On April 19, 2021, a trial court magistrate issued a decision adjudicating the children to be dependent minors, terminating the temporary order of custody, making the children wards of the court, committing the children to the temporary custody of FCCS, and granting extensions of that temporary custody. In her decision, the magistrate expressly found that reasonable efforts had been made to prevent or eliminate the need for removal of the children from their home. Mother and father separately filed objections to the magistrate's decision. On April 22, 2021, FCCS again moved for permanent custody of the children.

{¶ 6} In November 2021, the trial court overruled mother and father's objections and adopted the magistrate's decision. Mother appealed from the trial court's judgment overruling her objections and adopting the magistrate's decision. Father did not appeal. In her appeal, mother assigned errors challenging the trial court orders concerning the

¹ In June 2024, the trial court granted FCCS's request for permanent custody of these four children, and this court affirmed that judgment. *In re E.R.*, 2025-Ohio-1512 (10th Dist.).

extension of temporary custody of the children, but she did not assign as error the trial court's finding that reasonable efforts had been made to prevent or eliminate the need for removal of the children from their home. This court overruled mother's assignments of error and affirmed the trial court's judgment. *In re Lu.M.-R.*, 2022-Ohio-4779 (10th Dist.).

{¶ 7} FCCS's April 2021 motion for permanent custody eventually proceeded to a seven-day trial in early 2024. At trial, mother testified to the following facts. She moved in with father in 2016, and they married in May 2017. By early 2019, she had two children (Lu.M.-R. and Lo.M.-R.) with father, and father's four other children from a different mother, J.R., M.R., A.R., and E.R., resided with them. Mother and father divorced in approximately April 2021, and she went from August 2019 until May or June 2021 without seeing the children. At the adjudication hearing, one of father's children, J.R., accused him of abusing them, and mother testified that this was the first time she learned of the abuse directly from a child. She denied witnessing any physical abuse in the home, but she believed the allegations. Given the evidence of abuse by father, mother wanted to keep him away from her children, and that was why she divorced him.

{¶ 8} Mother also testified regarding her adherence to the approved family case plan. The case plan required mother to maintain stable mental health and obtain a psychological assessment, which she did. She also took parenting classes as required under the case plan to help her learn appropriate methods of discipline for her children. Additionally, she engaged in counseling, which helped her mentally process the abusive acts that father perpetrated in her home. Mother explained that while it was difficult for her to process what had happened to the children, she testified that, by January 2023, she understood and acknowledged the abuse. She denied having any communication with father since 2021.

{¶ 9} Charlotte Buelow, Lu.M.-R.'s therapist, testified that this child has PTSD with dissociative symptoms. Buelow indicated that, for Lu.M.-R.'s needs to be met, it is extremely important that his caregiver acknowledge and understand the trauma he has experienced in his life. While Buelow agreed that Lu.M.-R.'s removal from his parents may have caused trauma, the level of symptoms reflects more severe, repetitive trauma from another source. Lo.M.-R.'s therapist, Alysha Kirschner, testified that this child also has PTSD with dissociative symptoms.

{¶ 10} C.K., the children’s foster mother, testified that they had been in her home continuously since May 2019. Lu.M.-R. struggles with dissociation, which occurs when “his brain and his body aren’t on the same page.” (Jan. 3, 2024 Tr. at 226.) After visits with mother, Lu.M.-R. “dissociates significantly” and Lo.M.-R. is “clingy.” *Id.* at 274. Lu.M.-R. and Lo.M.-R. have bonded with the other children in C.K.’s home. C.K. also testified that Lu.M.-R. often tells her that mother shows pictures of father to him and his sister.

{¶ 11} Jeanne Zipser, a parent mentor, testified that she supervised the weekly one-hour visitations between mother and the children. She had no concerns regarding the visitations, and both children expressed interest in having more time with mother. Zipser, as an advocate for mother, recommended more time for visitations, as one hour per week is not very much time to develop parent-child relationships.

{¶ 12} Maggie Zych, an FCCS caseworker, testified that she was assigned to the matter in June 2022, and that mother consistently denied that the children sustained any trauma or that any physical abuse occurred in her home. One of the half-siblings of the children previously testified to “very specific details of child torture, physical neglect, [and] physical abuse.” (Jan. 18, 2024 Tr. at 151-152.) When mother was confronted with evidence of abuse in the home, she tried to rationalize or diminish the severity of the conduct. Mother attributed any trauma of the children to being in FCCS’s custody. While mother took steps to comply with the case plan, her “minimizing of any abuse or trauma that occurred in the home” led Zych to believe that mother would not be able to protect the children in the future. *Id.* at 115. She took no personal responsibility for the trauma endured by the children in her home. Based on this testimony, Zych believed that mother, while not directly engaging in this conduct, certainly knew it was happening.

{¶ 13} Zych further testified that the children’s supervised visits with mother were generally one hour in length, and that mother rarely missed any visits. Zych did not believe, however, that additional visits would be helpful to the fundamental issue of mother not sufficiently acknowledging the trauma endured by the children and how that trauma causes continued problems for them. And the children showed more dissociative symptoms after visitations. Concerning father, whose whereabouts are unknown, Lu.M.-R. told Zych that mother knows his whereabouts, but she said she could not tell Lu.M.-R. where he is. Despite mother’s divorce from father, men’s shoes and clothing were observed in mother’s

home, suggesting father was not completely removed from mother's life. Zych was also concerned by Lu.M.-R.'s report that mother showed pictures of father to the children, which keeps father in the children's lives to some degree. Zych noted that family therapy for mother and the children was delayed because of the dissociative symptoms of Lu.M.-R. after visitations.

{¶ 14} Stefanie Coe, a Court Appointed Special Advocates ("CASA") lay guardian ad litem ("GAL") for the children, also testified extensively at trial. During Coe's conversations with Lu.M.-R., this child "described physical violence perpetrated by his father against him and against his siblings," with the exception of Lo.M.-R. (Jan. 31, 2024 Tr. at 224.) Coe noted that Lu.M.-R. demonstrated hesitation to speak about this abuse because he wanted to protect his mother. Lu.M.-R. "has been very vocal with [Coe] throughout five years [as to] how much he loves his mom and that he wants to protect her from what his dad did." *Id.* at 225. The children are "extremely bonded" to the foster parents. *Id.* at 233.

{¶ 15} Coe further testified that, throughout this matter, mother's continued unwillingness to acknowledge what happened to the children in her home reflected her inability to provide for the basic needs of these children, particularly as it relates to their mental health and developmental needs. In March 2023, mother sent emails to Coe and FCCS caseworkers essentially acknowledging her awareness and presence when at least some of the abuse occurred, as mother attempted to explain her observation of the events—such as father swatting his children in the buttocks with a hanger or other object, his use of a lighter near one child's finger to teach that child a lesson, and his use of cold showers for his children as punishment—in a manner that rationalized or minimized their significance. When mother testified at the permanent custody trial, that was the first time Coe heard her acknowledge the trauma experienced by the children in her home with father. Although mother started to acknowledge this trauma to a limited degree, this acknowledgment does not change the fact that she denied it for years as the children were in foster care. And while Coe generally agreed that an increase in visitation time is helpful for reunification, the continued refusal of mother to recognize the source of the trauma of the children weighed against her recommending more time together.

{¶ 16} As to father, Coe testified that mother indicated that she did not know father's whereabouts, but she also made at least one statement that indicated she could contact him

about something. Nonetheless, Coe opined that, even if father had been deported and was not coming back, mother's failure to acknowledge the abuse reflected an inability to protect the children from future risks. Coe further opined that removing the children from the foster care home would be "extremely detrimental" to them, and that the granting of FCCS's request for permanent custody would be in the children's best interests. (Apr. 25, 2024 Tr. at 229.)

{¶ 17} The trial court separately interviewed Lu.M.-R. and Lo.M.-R. Thirteen-year-old Lu.M.-R. expressed a desire to stay with both his foster family and his biological mother. His sister, seven-year-old Lo.M.-R., did not articulate an opinion as to her custody moving forward.

{¶ 18} In October 2024, the trial court issued a written decision granting FCCS's motion and committing the children to the permanent custody of FCCS for the purpose of adoption. This decision includes findings that FCCS made reasonable efforts to reunify the children with their parents, that the children had been in temporary custody of FCCS for 12 or more months in a consecutive 22-month period, and that the granting of permanent custody to FCCS was in their best interest.

{¶ 19} Mother timely appeals.

II. Assignments of Error

{¶ 20} Mother assigns the following two assignments of error for our review:

I. The Trial Court erred in granting the Motion for Permanent Custody filed by Franklin County Children Services, as it was against the manifest weight of the evidence, as Appellant Mother had completed her reunification case plan requirements, except for family counseling, which was not timely offered or provided by Franklin County Children Services.

II. The Trial Court erred in finding that Franklin County Children Services engaged in reasonable efforts as mandated by statute to reunify Appellant Mother with her children.

III. Discussion

{¶ 21} In her first assignment of error, mother argues that the trial court's decision to grant permanent custody of the children to FCCS was against the manifest weight of the evidence because she completed her reunification case plan requirements, except for family

counseling, which she asserts was not timely offered or provided by FCCS. This assignment of error is not well-taken.

{¶ 22} “Parents have a constitutionally-protected fundamental interest in the care, custody, and management of their children.” *In re H.D.*, 2014-Ohio-228, ¶ 10 (10th Dist.), citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The Supreme Court of Ohio recognizes the essential and basic rights of a parent to raise his or her child. *In re Murray*, 52 Ohio St.3d 155, 157 (1990). However, these rights are not absolute, and a parent’s natural rights are subject to the ultimate welfare of the child. *In re Cunningham*, 59 Ohio St.2d 100, 106 (1979). In certain circumstances, therefore, the state may terminate the parental rights of natural parents when such termination is in the best interest of the child. *H.D.* at ¶ 10, citing *In re E.G.*, 2007-Ohio-3658, ¶ 8 (10th Dist.), citing *In re Harmon*, 2000 Ohio App. LEXIS 4550 (4th Dist. Sept. 25, 2000); *In re Wise*, 96 Ohio App.3d 619, 624 (9th Dist. 1994). Because termination of parental rights “has been described as ‘the family law equivalent of the death penalty in a criminal case,’ ” parents “ ‘must be afforded every procedural and substantive protection the law allows.’ ” *In re Hayes*, 79 Ohio St.3d 46, 48 (1997), quoting *In re Smith*, 77 Ohio App.3d 1, 16 (6th Dist. 1991).

{¶ 23} R.C. 2151.414(B) sets forth the circumstances under which a court may grant permanent custody of a child to a children services agency such as FCCS. In deciding to award permanent custody, the trial court must take a two-step approach. *In re K.L.*, 2013-Ohio-3499, ¶ 18 (10th Dist.). Pursuant to R.C. 2151.414(B)(1), the court, after a hearing, may grant permanent custody of a child to FCCS if the court determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency and that any of the factors set forth in R.C. 2151.414(B)(1) apply. *In re Z.C.*, 2023-Ohio-4703, ¶ 7. “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.” *K.L.* at ¶ 14. “It is more than a mere preponderance of the evidence but does not require proof beyond a reasonable doubt.” *Id.*

{¶ 24} “[T]he findings of a trial court are presumed correct since, as the trier of fact, it is in the best position to weigh the evidence and evaluate the testimony.” *In re C.C.*, 2005-Ohio-5163, ¶ 49 (10th Dist.). Consequently, an appellate court will not reverse a trial court’s decision in a permanent custody case unless it is against the manifest weight of the

evidence. *In re I.R.*, 2005-Ohio-6622, ¶ 4 (10th Dist.), citing *In re Andy-Jones*, 2004-Ohio-3312, ¶ 28 (10th Dist.). The manifest weight of the evidence standard concerns the effect of the evidence in inducing belief. *In re Z.C.* at ¶ 13, citing *State v. Thompkins*, 1997-Ohio-52. A decision is not against the manifest weight of the evidence “as long as the decision is ‘supported by some competent, credible evidence going to all the essential elements of the case.’ ” *In re A.M.*, 2025-Ohio-2993, ¶ 19 (10th Dist.), quoting *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus; see also *In re J.M.*, 2015-Ohio-3988, ¶ 7 (10th Dist.). Ultimately, “[w]hen reviewing for manifest weight, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered.” *In re Z.C.* at ¶ 14, citing *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 20. Thus, we “must make every reasonable presumption in favor of the judgment and the trial court’s findings of fact.” (Internal quotation marks deleted and citations omitted.) *In re K.M.*, 2015-Ohio-4682, ¶ 13 (10th Dist.). And deference to the finder of fact is particularly “crucial in a child custody case, where there may be much evidence in the parties’ demeanor and attitude that does not translate to the record well.” (Emphasis omitted.) *Davis v. Flickinger*, 1997-Ohio-260, ¶ 15. But a trial court may not base its permanent custody decision on pervasive and clearly erroneous findings. See *In re S.W.*, 2026-Ohio-2955, ¶ 51 (10th Dist.) (reversing the trial court’s award of permanent custody to FCCS because the court made several “foundational errors” in its best interest determination that “pervaded the court’s analysis”).

{¶ 25} Regarding the first step of the trial court’s analysis, there are five alternative factors in R.C. 2151.414(B)(1) that can satisfy the court’s inquiry. The first factor applies when “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.” R.C. 2151.414(B)(1)(a). This factor only applies when “[t]he child is not abandoned or orphaned” and has not been in temporary agency custody for more than 12 of 22 consecutive months. *Id.* The second factor applies if the “child is abandoned.” R.C. 2151.414(B)(1)(b). A child is presumed abandoned when the child’s parent fails to visit or maintain contact with the child for more than 90 days. R.C. 2151.011(C). The presumption of abandonment is unaffected even if the parent

resumes contact with the child after the 90 days. *Id.* The third factor applies if the “child is orphaned, and there are no relatives of the child who are able to take permanent custody.” R.C. 2151.414(B)(1)(c). The fourth factor applies when “[t]he 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[.]” R.C. 2151.414(B)(1)(d). And the fifth factor applies when the child or another child in the parent’s custody “has been adjudicated an abused, neglected, or dependent child on three separate occasions.” R.C. 2151.414(B)(1)(e).

{¶ 26} Here, the trial court found that the children cannot, or should not, be placed with either parent within a reasonable time, that the parents had abandoned the children, and that the children had 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. Mother does not dispute that the factor set forth in R.C. 2151.414(B)(1)(d) (the 12 of 22-months factor) was established. As the trial court correctly found, the children had been in the temporary custody of FCCS since March 28, 2019. Therefore, it is uncontested that the first part of the two-part permanent custody test was established for the children. Based on this circumstance, it is unnecessary for this court to review the applicability of the other factors set forth in R.C. 2151.414(B)(1). *See In re M.W.*, 2011-Ohio-6392, ¶ 36 (10th Dist.) (“because FCCS met the ‘12 of 22’ requirement set forth in R.C. 2151.414(B)(1)(d), it was not necessary for the trial court to make further findings regarding whether the minor child cannot be placed with either parent within a reasonable time or should not be placed with either parent”); *In re C.K.*, 2020-Ohio-5437, ¶ 23 (5th Dist.) (“Once we conclude the record contains clear and convincing evidence supporting one basis for granting permanent custody [in R.C. 2151.414(B)(1)], review of the balance of the findings is unnecessary.”); *In re I.G.*, 2014-Ohio-1136, ¶ 30 (3d Dist.) (“Pursuant to the plain language of R.C. 2151.414(B)(1)(d), when a child has been in an agency’s temporary custody for twelve or more months of a consecutive twenty-two month period, a trial court need not find that the child cannot or should not be placed with either parent within a reasonable time.”).

{¶ 27} Once a trial court determines that one of the circumstances in R.C. 2151.414(B)(1) applies, it must then determine whether the granting of permanent

custody is in the child's best interest. *In re A.J.*, 2014-Ohio-2734, ¶ 16 (10th Dist.); R.C. 2151.414(B)(1). Mother focuses her manifest weight argument on evidence that she substantially completed requirements of her case plan with FCCS. For example, she cites evidence that she signed all information releases as requested, that she maintained stable mental health, that she engaged and worked with clinicians for the children (noting that family counseling services were not available until the trial began), that she completed parenting classes and worked with a parent mentor, and that she completed a domestic violence aggressor assessment and followed all recommendations. She contends that, considering her efforts, the children should have been returned to her. But mother's efforts at reunification and completion of case plan objections, while relevant, are not dispositive to the best-interest determination under R.C. 2151.414(D). *See In re M.W.*, 2020-Ohio-5199, ¶ 57 (10th Dist.) (finding that the trial court's best-interest determination was not against the manifest weight of the evidence despite the mother's substantial completion of her case plan at the time of trial). Simply stated, the analysis of a child's best interest is not limited to reviewing a parent's efforts toward reunification.

{¶ 28} In determining the best interest of a child, R.C. 2151.414(D)(1) requires the trial court to consider all relevant factors including, but not limited to, the following:

- (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;
- (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;
- (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, 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 [R.C. 2151.413(D)(1)], the child was previously in the temporary custody of an equivalent agency in another state;

(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;

(e) Whether any of the factors in [R.C. 2151.414(E)(7) to (11)] apply in relation to the parents and child.

R.C. 2151.414(D)(1)(a) through (e). The factors in R.C. 2151.414(E)(7) through (11) include: (1) whether the parent was convicted of or pleaded guilty to certain criminal offenses, (2) whether the parent repeatedly withheld medical treatment or food from the child, (3) whether the parent put the child at a substantial risk of harm due to substance abuse, (4) whether the parent abandoned the child, and (5) whether the parent's parental rights were terminated regarding a sibling of the child. Although R.C. 2151.414(D) "requires a weighing of all the relevant factors," this statute does not give any one factor "greater weight than the others." *In re Schaefer*, 2006-Ohio-5513, ¶ 64, 56.

{¶ 29} R.C. 2151.414(D)(1)(a) required the trial court to consider the interactions and relationships between the child and the individuals in the child's life, including the child's parents, siblings, relatives, and "any other person who may significantly affect the child." As to this issue, the trial court concluded that father's interactions with the children were detrimental to their physical and mental health, and that mother's relationship with each child was unique because Lu.M.-R. is older and developed a relationship with mom before his removal, but Lo.M.-R.'s younger age at removal limits her recollection. The trial court also concluded that both children are bonded with their foster parents, and that their relationship with each other seemed normal considering their age difference. These findings were supported by the evidence. For example, GAL Coe testified that the children are extremely bonded to their foster parents, that Lu.M.-R. has expressed his love for mother, and that Lo.M.-R. has a good relationship with mother. Additionally, C.K., the foster mother, testified that Lu.M.-R. and Lo.M.-R. have developed strong bonds with the other children in her home. Thus, while the children, particularly Lu.M.-R., are bonded with mother, they have developed strong bonds in their foster home, where they have been since May 2019.

{¶ 30} R.C. 2151.414(D)(1)(b) required the trial court to consider the wishes of the children, expressed either directly by each child or through the child's GAL. Concerning the children's wishes, the trial court determined that Lu.M.-R. is conflicted because he

would like to live with mother but also with his foster mother. The trial court noted that Lu.M.-R. also indicated that he would defer to the trial court in deciding what is in his best interest. The trial court considered Lo.M.-R. to be too young to fully comprehend the situation, but it noted that she is strongly bonded to her foster parents and her brother Lu.M.-R., and that it is in the children's best interest to remain together. At trial, the trial court interviewed both children in-camera. Consistent with the trial court's findings, Lu.M.-R. expressed his desire to live with both his foster parents and with mother. And given her young age, Lo.M.-R. was unable to meaningfully express her wishes.

{¶ 31} R.C. 2151.414(D)(1)(c) required the trial court to consider the custodial history of each child. As to this factor, the trial court noted that both children were in the custody of their parents until March 27, 2019, but, since that date, they were continuously in the temporary custody of FCCS. The record shows that, on March 28, 2019, the children, along with their four half-siblings, were placed in the emergency custody of FCCS. They have been in FCCS's custody continuously since that date. Thus, the trial court correctly determined that, as of the time of trial in the first few months of 2024, the children had been in FCCS's temporary custody for approximately five years.

{¶ 32} R.C. 2151.414(D)(1)(d) addresses each child's need for "legally secure permanent placement" and required the trial court to consider whether this can be achieved without a grant of permanent custody to the agency. *In re D.P.*, 2007-Ohio-1703, ¶ 16 (10th Dist.). The phrase "legally secure permanent placement" has been interpreted "to mean a safe, stable, consistent environment where a child's needs will be met." *In re M.B.*, 2016-Ohio-793, ¶ 56 (4th Dist.). Relevant to this factor, the trial court noted that father's whereabouts were unknown, and that he demonstrated a lack of commitment towards the children and an inability to provide an adequate permanent home. The trial court also found that, although mother appeared to have a suitable residence, she demonstrated a limited ability to care for the special needs of the children because she did not adequately comprehend and appreciate the children's PTSD resulting from father's conduct in their home. The trial court thus concluded that a legally secure permanent placement could not be achieved without a grant of permanent custody to FCCS.

{¶ 33} As to this factor, and as discussed above, mother correctly notes that evidence showed that she completed aspects of the case plan, such as taking parenting classes,

maintaining stable mental health, and utilizing counseling services. But consideration of these efforts does not end the analysis. The therapists of the children identified their PTSD diagnoses and dissociative symptoms, and caseworker Zych and GAL Coe both testified that mother did not timely or adequately acknowledge the continuing impact of the trauma endured by the children in her home based on father's abuse. Coe noted that mother's testimony at the permanent custody trial was the first time she had heard mother acknowledge the child abuse that occurred in her home. Zych and Coe also described how, throughout this matter, mother denied, rationalized, and diminished the harmful impact of father's conduct on the children. And insofar as mother acknowledged the children's special needs, she attributed them to their removal from her and father. Thus, although evidence showed that mother completed aspects of the case plan, other evidence supported a finding that she remained unable to adequately meet the needs of the children. That is, evidence at trial supported the trial court's conclusion as to this factor.

{¶ 34} Lastly, under R.C. 2151.414(D)(1)(e), the trial court was required to consider any applicable factors set forth in R.C. 2151.414(E)(7) through (11). Here, the trial court found R.C. 2151.414(E)(10), the factor addressing parental abandonment, to be applicable because both father and mother had abandoned the children. R.C. 2151.011(C) provides that “[f]or the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.” A parent's intent is not pertinent when determining abandonment for the purpose of R.C. 2151.414(E)(10). *In re E.B.*, 2017-Ohio-2672, ¶ 44 (10th Dist.). Evidence at trial showed that mother and father failed to visit or maintain contact with the children for more than 90 days, and neither argued—in the trial court or on appeal—that this presumption was overcome.

{¶ 35} As set forth above, the trial court thoroughly considered and analyzed the factors relevant to the best interest of the children. Based on this analysis, the trial court concluded that granting permanent custody to FCCS would be in each child's best interest. While every permanent custody matter involves tremendously consequential decisions and thus requires utmost consideration, this matter presents a particularly challenging situation because the evidence showed that mother took numerous affirmative steps

toward reunification, and she has professed her intent to prevent any future trauma to her children. However, the children indisputably had become well-bonded to their foster family in the years since removal, and the level of mother's commitment to protecting the children from future harm, and her understanding of how the abuse perpetrated in her home traumatized her children, is subject to reasonable dispute. Nonetheless, in reviewing the trial court's conclusion, we must remain mindful of our deferential standard. Thus, even if we may have reached a different conclusion in deciding credibility issues and weighing all relevant factors, evidence at trial reasonably supported the trial court's determination that granting permanent custody to FCCS was in the children's best interest. Mother fails to show that, in resolving conflicts in the evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered.

{¶ 36} Because the trial court's decision to grant permanent custody of Lu.M.-R. and Lo.M.-R. to FCCS was not against the manifest weight of the evidence, we overrule mother's first assignment of error.

{¶ 37} Mother's second assignment of error contends that the trial court erred in finding that FCCS engaged in reasonable efforts to reunify mother with the children. This assignment of error lacks merit.

{¶ 38} R.C. 2151.419(A)(1) provides that, at certain hearings, the juvenile court must determine whether a public children services agency "has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home." This statute applies to "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children, all of which occur prior to a decision transferring permanent custody to the state." *In re C.F.*, 2007-Ohio-1104, ¶ 41. Because this statute makes no reference to a hearing on a permanent custody motion, it does not apply to motions for permanent custody brought pursuant to R.C. 2151.413, or to hearings held on such motions pursuant to R.C. 2151.414. *Id.*

{¶ 39} An agency may not, however, file a motion for permanent custody "[i]f reasonable efforts to return the child to the child's home are required under [R.C. 2151.419, and] the agency has not provided the services required by the case plan to the parents of

the child or the child to ensure the safe return of the child to the child's home." R.C. 2151.413(D)(3)(b). Consequently, "[i]f the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time." *In re C.F.* at ¶ 43. See *In re N.M.*, 2021-Ohio-2080, ¶ 58 (10th Dist.) ("[T]he issue of whether the agency made reasonable efforts at reunification only arises at the hearing on a motion for permanent custody if the agency has not established that reasonable efforts were made prior to the hearing."). Conversely, if the trial court finds, prior to a permanent custody hearing, that the agency had made reasonable efforts to reunify the family during the child custody proceedings, it is unnecessary for the trial court to make a reasonable-efforts finding in its permanent custody decision. *In re J.H.*, 2021-Ohio-807, ¶ 65 (10th Dist.).

{¶ 40} Prior to the permanent custody hearing in this matter, the trial court found that FCCS had made the required reasonable efforts. On November 23, 2021, and in its decision adjudicating the children to be dependent, the trial court extended the children's placement in FCCS's temporary custody, finding, among other things, that reasonable efforts had been made to prevent or eliminate the need for removal of the children from their home. Mother appealed from this judgment, but she did not assign as error this trial court finding regarding the agency's reasonable efforts. See *In re Lu.M.-R.*, 2022-Ohio-4779 (10th Dist.). Because the trial court's November 23, 2021 judgment satisfied R.C. 2151.419(A)(1)'s reasonable-efforts finding requirement, it was unnecessary for the trial court to make a reasonable-efforts finding in the permanent custody decision.

{¶ 41} Despite being unnecessary for the purpose of granting permanent custody, the trial court made another reasonable-efforts finding in its permanent custody decision. Mother's challenge to this finding in this appeal has no merit because "[w]e cannot reverse a judgment based on an alleged error in a finding that the trial court never had to make in the first place." *In re Bil.I.*, 2023-Ohio-434, ¶ 30 (10th Dist.), quoting *In re J.H.* at ¶ 66. Further, mother could have challenged the earlier reasonable-efforts finding in her prior appeal, but she did not. Therefore, mother's reasonable-efforts argument fails. See *id.* ("Because appellants failed to object to or appeal the earlier reasonable efforts findings at the time they were made, they cannot challenge those findings now [on appeal].").

{¶ 42} For these reasons, mother's second assignment of error is overruled.

IV. Conclusion

{¶ 43} Having overruled mother's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations and Juvenile Branch.

Judgment affirmed.

DORRIAN and JAMISON, JJ., concur.
