[Cite as *T.M. v. Z.W.*, 2026-Ohio-4313.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

T.M.	:	
	:	C.A. No. 30856
Appellant	:	
	:	Trial Court Case No. 2025 DV 00956
v.	:	
	:	(Appeal from Common Pleas Court-
Z.W.	:	Domestic Relations)
	:	
Appellee	:	**FINAL JUDGMENT ENTRY & OPINION**

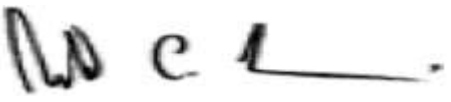
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Pursuant to the opinion of this court rendered on October 30, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



RONALD C. LEWIS, PRESIDING JUDGE

EPLEY, J., and HUFFMAN, J., concur.

OPINION
MONTGOMERY C.A. No. 30856

ANNE HARVEY, Attorney for Appellant
Z.W., Appellee, Pro Se

LEWIS, P.J.

{¶ 1} Petitioner-appellant T.M. ("Mother") appeals on behalf of her minor son, J.W., from a judgment of the Montgomery County Common Pleas Court, Domestic Relations Division that overruled her objections to a magistrate's decision, denied her petition for a domestic violence civil protection order, and vacated an ex parte domestic violence civil protection order against respondent-appellee, Z.W. ("Father"). For the following reasons, the judgment of the trial court is affirmed.

I. Facts and Procedural History

{¶ 2} On June 20, 2025, Mother filed a petition for a domestic violence civil protection order ("DVCPO") on behalf of J.W. against Father pursuant to R.C. 3113.31. The incident that led Mother to file the petition allegedly took place while Father was watching four-month-old J.W. on May 16, 2025. Mother's petition alleged that Father dropped J.W., which resulted in serious physical harm and hospitalization. Both the police and Montgomery County Children Services ("Children Services") became involved following the incident. Mother alleged that Father admitted that he had squeezed J.W. too hard on at least two or three occasions. Father was removed from the family home and ordered to have no physical contact with J.W. Mother alleged that Father had continued to reach out to Mother and had come to the family home when neither Mother nor J.W. was present. The trial court issued an ex parte DVCPO the same day it was filed.

{¶ 3} After several continuances, a full hearing was held before a magistrate on February 18, 2026. Both Mother and Father were present and represented by counsel. The parties were the only witnesses who testified at the hearing.

{¶ 4} Father was called by Mother as if on cross-examination. Father provided his name and address, and admitted that he and Mother had previously lived together in West Carrollton, Ohio, and had one child in common, J.W. Mother and Father had been together for almost eight years but had never married. In early January 2025 when J.W. was born, both Mother and Father were employed and lived together. J.W. was Father's only child. Father was aware that Mother had filed the petition for a DVCPO against him. Father invoked his Fifth Amendment privileges in response to all other questions. Father's counsel stipulated that there was a pending criminal investigation related to the May 16, 2025 incident.

{¶ 5} Mother testified on her own behalf. She stated that she filed for the DVCPO because of a May 16, 2025 "accident" that occurred when Father was alone with J.W. and dropped him, which resulted in severe injuries. Mother left four-month-old J.W. at home with Father that day so that she could go to work. Normally, Mother's father watched J.W., but he was ill that day. Mother was hesitant to leave J.W. alone with Father because Father was not often alone with J.W. But Father was J.W.'s parent and she trusted him. Father had gotten enough sleep the night before, had not consumed any alcohol or other substances, and had acted normally that morning.

{¶ 6} Around 9:30 a.m., while Mother was at work, Father called her and was "very hysterical." Father told her that he had dropped J.W. Mother rushed home and remained on the phone with Father for the entirety of the 15 minutes it took for Mother to get home. During the call, Mother told Father to put J.W. in his car seat so that they could take him to

the hospital. Mother did not call 911, because she did not realize how serious the injuries were until she arrived home, at which point she went into "panic mode" and wanted to get J.W. to the hospital as quickly as possible. Father told Mother that he was holding J.W. and making a bottle when he dropped J.W. in the kitchen. J.W. hit the counter and then hit the floor. Father tried to shake J.W. to wake him up after the fall and removed J.W.'s clothing to look for any bruises. At that time, J.W. weighed approximately 10 pounds.

{¶ 7} When Mother got home, Father was pacing around the house and J.W. was crying hysterically. J.W. was sleepy and "trying to go in and out of consciousness." J.W. was not bleeding, and there were no bruises or marks on him. But his eyes were stuck to the right. Mother immediately got J.W. into a car seat and drove to Dayton Children's Hospital. Father sat in the back seat with J.W. Mother yelled at Father to keep J.W. conscious, but Father was non-responsive. Father cried while remaining slumped over in the seat and repeatedly stated he was sorry.

{¶ 8} When they arrived at Dayton Children's Hospital, the hospital staff evaluated J.W. and then transported him to the main Dayton hospital via ambulance. Mother and Father followed the ambulance in their car. J.W. was given a hospital room, and the parents were permitted to stay with him. Father again said that he was sorry and explained that he was holding J.W. in the air and lost his hold on J.W., who then hit the counter and hit the floor. Father did not recall exactly what he was doing when he dropped J.W.

{¶ 9} The day after the incident, Children Services and the police became involved. Mother told Children Services that she was not aware of anyone acting aggressive towards J.W. but had seen Father "unsafely playing" with J.W. Mother explained that there were a handful of times that Father would throw J.W. into the air and catch him, hang J.W. upside down, or bounce J.W. around on his leg. When Mother corrected Father about these

actions, he stopped. According to Mother, Father was not very careful with J.W.'s head. The last time that Mother had spoken to Father about protecting J.W.'s head was a week or two before the May 16, 2025 incident.

{¶ 10} Mother testified that she and Father were never married and she had custody of their son. J.W. remained in the hospital for almost a week after the incident, but he did not undergo any surgeries. After J.W. was released from the hospital, there were multiple appointments to check his head for a skull fracture and brain bleed. J.W. also had rib fractures and hemorrhaging in his eyes that involved months of follow-up appointments. J.W. never developed any bruises. Mother was unaware of whether any of J.W.'s injuries would result in long-term damage.

{¶ 11} Mother discussed with Father whether all the injuries had occurred at once or if they had been caused separately, but Father did not know. Nor was Mother aware of how all the injuries could have happened. Mother testified that she had seen Father pushing on J.W.'s belly aggressively to relieve gas, which she told him not to do. Mother testified that Father corrected his actions after she told him to stop. Father never admitted to her that he mishandled J.W. Mother observed Father demonstrate to Children Services workers how he shook J.W. to wake him up immediately after the May 16, 2025 fall, which Mother described as aggressive.

{¶ 12} Mother sought the DVCPO in June 2025, approximately a month after the incident, on J.W.'s behalf only. Father had been removed from the family home following the incident. Had Mother stayed with Father, Children Services would have removed J.W. from her care. Although Mother was not included in the DVCPO petition, Mother had requested Father to stay away from the home, and he complied. Father tried to contact her, but Mother asked through her attorney for that to stop as well. Mother stated that

Father could sometimes have a temper, but she had never seen him lose his temper with J.W. Mother admitted that Father had never been aggressive toward J.W. but had used aggressive words. Mother testified that Father had called J.W. a "bitch" because J.W. was crying or being annoying. Mother also stated that Father would get upset when J.W. was crying and was comforted when Mother held him but was not comforted when Father held him. In those situations, Father would storm out of the room or refuse to give J.W. to Mother.

{¶ 13} Mother testified that she feared Father would not stay away because he was stubborn and very persistent. Father wanted to be a part of J.W.'s life, and Mother believed that without a protection order in place, Father would fight to remain in J.W.'s life.

{¶ 14} On February 27, 2026, the magistrate issued a decision and order dismissing the petition and vacating the ex parte DVCPO. The magistrate found that Mother failed to prove by a preponderance of the evidence that J.W. was in danger of or had been a victim of domestic violence as defined in R.C. 3113.31(A).

{¶ 15} Mother filed objections to the magistrate's decision. On April 22, 2026, the trial court overruled Mother's objections, dismissed the DVCPO petition with prejudice, and vacated the June 10, 2025 ex parte DVCPO.

{¶ 16} Mother timely appealed, and she raises five assignments of error. Father has not filed an appellate brief. For ease of discussion, we consider the first two assignments of error together.

II. The Trial Court's Denial of Mother's Petition for a DVCPO Is Not Against the Manifest Weight of the Evidence

{¶ 17} Mother's first and second assignments of error state:

> THE TRIAL COURT'S CONCLUSION THAT THE EVENT WAS JUST

AN ACCIDENT IS AGAINST THE WEIGHT OF EVIDENCE, AN ABUSE OF DISCRETION AND CONTRARY TO OHIO LAW.

THE TRIAL COURT'S CONCLUSION THAT THE INFANT IS NOT AN ABUSED CHILD IS AGAINST THE WEIGHT OF EVIDENCE, AN ABUSE OF DISCRETION AND CONTRARY TO OHIO LAW.

{¶ 18} "DVCPOs are governed by R.C. 3113.31, which permits a person to seek a protection order against anyone who has committed domestic violence (as defined in R.C. 3113.31(A)(1)) against them or a dependent." *B.H. v. C.H.*, 2024-Ohio-1803, ¶ 7 (2d Dist.). Under R.C. 3113.31(E)(1), a court may grant a DVCPO to bring about a cessation of domestic violence against family or household members if the "petitioner has shown by a preponderance of the evidence that petitioner or petitioner's family or household members are in danger of domestic violence." *Felton v. Felton*, 1997-Ohio-302, paragraph two of the syllabus, citing R.C. 3113.31(D). "A preponderance of the evidence is defined as that measure of proof that convinces the judge or jury that the existence of the fact sought to be proved is more likely than its nonexistence." *State ex rel. Doner v. Zody*, 2011-Ohio-6117, ¶ 54. On appeal, it must be determined whether a protection order should have been granted and thus whether the necessary elements were established by a preponderance of the evidence. *T.O. v. T.G.*, 2024-Ohio-4510, ¶ 39 (2d Dist.). This standard is, in essence, a review of whether the issuance or denial of the DVCPO was against the manifest weight of the evidence. *Id.*, citing *Caban v. Ransome*, 2009-Ohio-1034, ¶ 7 (7th Dist.).

{¶ 19} When evaluating whether a judgment is against the manifest weight of the evidence, we review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the court "clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and

a new trial ordered." *State v. Thompkins*, 1997-Ohio-52, ¶ 25, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). When applying this analysis, "the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 21. A reversal based on the weight of the evidence is ordered only in exceptional circumstances. *Thompkins* at ¶ 25.

{¶ 20} Pursuant to R.C. 3113.31(A)(1), domestic violence is defined as the occurrence of one of the following against a family or household member: (i) attempting to cause or recklessly causing bodily injury; (ii) placing another by the threat of force in fear of imminent serious physical harm or committing a violation of R.C. 2903.211 or 2911.211; (iii) committing certain acts against a child that would result in the child being an abused child as defined in R.C. 2151.031; or (iv) committing a sexual oriented offense. R.C. 3113.31(A)(1)(a)(i) through (iv). If a protection order is issued, the remedy is in addition to, and not in lieu of, any other available civil or criminal remedies. R.C. 3113.31(G)(1).

{¶ 21} Mother alleges that J.W. was entitled to a DVCPO under R.C. 3113.31(A)(1)(i) and (iii). We address each of these arguments in turn.

A. Recklessly Cause Bodily Injury Under R.C. 3113.31(A)(1)(i)

{¶ 22} Mother argues that J.W. was entitled to a DVCPO under the first prong of the definition of domestic violence, which required Mother to prove by a preponderance of the evidence that Father recklessly caused J.W. bodily injury on May 16, 2025. "A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature." R.C. 2901.22(C). "A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person

disregards a substantial and unjustifiable risk that such circumstances are likely to exist." *Id*.

{¶ 23} While there is no dispute that J.W. suffered bodily injury, the trial court concluded that Father's actions on May 16, 2025, were not reckless. Mother cites *State v. Hoff*, 2024-Ohio-5837 (2d Dist.), to support her conclusion that Father acted recklessly.

{¶ 24} In *Hoff*, this court affirmed the defendant's conviction for child endangering where the defendant fractured his infant daughter's skull. At the time of the injury, Hoff was watching his premature twin daughters while their mother was at work. Hoff did not mention the child's injury to anyone until several hours after it had occurred. Hoff suggested that the child be taken to her pediatrician the following day, and he did not believe that the child needed to go to the hospital. Hoff also suggested that the injury could be cancer. He later informed the child's mother that he had "accidently put [the baby] in the crib too hard, and she might have hit the side of the dresser." *Id*. at ¶ 7.

{¶ 25} In finding that Hoff's conviction was supported by sufficient evidence and was not against the manifest weight of the evidence, we stated that "Hoff's conduct involved much more than a momentary lapse in care or judgment." *Id*. at ¶ 44. Hoff "repeatedly acknowledged an awareness of the risk of the crib's proximity to the dresser and the resultant need to move it back, yet he left it in place." *Id*. Hoff was also defensive when confronted about the lengthy amount of time between the injury and his acknowledgment that the baby needed medical attention. As we explained, "Hoff's cumulative actions and omissions demonstrated the required mental state [of recklessness]. Hoff had been drinking [alcohol], was lacking in sleep, 'confused' and 'super-upset' after 'racking' his shin while caring for two premature infants, each of whom needed his attention simultaneously.

The room was dark, although an operational lamp was near the crib, and Hoff failed to negate the substantial risk to the child by simply turning on the light." *Id*. at ¶ 46.

{¶ 26} We agree with the trial court that *Hoff* is distinguishable from the facts of this case. According to Mother's testimony, Father was holding J.W. and making a bottle in the kitchen when he lost his grip of J.W. and dropped him. Mother testified that Father had not consumed any alcohol or other substances that morning and did not appear unusually stressed or sleep deprived. Despite Mother being hesitant to leave J.W. home with Father, she trusted Father to take care of their child. No evidence was presented that Father attempted to obscure J.W.'s injuries by claiming something else had happened. Further, the facts of this case do not demonstrate that Father intentionally delayed medical treatment or refused to obtain medical treatment. After J.W. fell, Father assessed his injuries and frantically called Mother. Mother told him they would take J.W. to the hospital immediately when she got home, which they did. Mother stayed on the phone with Father until she arrived home shortly thereafter. Father's pacing, crying, apologizing, and non-responsive behavior were not necessarily indicative of criminal intent. As the trial court noted, it would have been "suspicious or unusual for him not to react that way, given the circumstances." Decision and Judgment (Apr. 22, 2026), p. 7. Though Mother emphasizes that Father did not call 911, Mother admitted that she did not call 911 either, and explained that she herself went into "panic mode."

{¶ 27} The trial court also rejected Mother's argument that Father's prior behaviors established that he had acted recklessly on May 16, 2025. These prior behaviors included a "handful" of times where Father threw J.W. into the air and caught him, hung J.W. upside down, or bounced J.W. on his leg. Mother described these behaviors as "unsafely playing," but she did not provide any additional details or explanation to establish that Father's actions

were reckless. We do not agree with Mother that these prior behaviors were so reckless on their own to warrant a DVCPO. None of those prior behaviors, as described by Mother, led to J.W.'s injuries or constituted sufficient evidence to warrant a DVCPO. Importantly, Mother testified that Father stopped engaging in those behaviors when she corrected him.

{¶ 28} Mother testified that she had never seen anyone act aggressively towards J.W. and had never seen Father be aggressive with J.W. "in an angry way." Mother points to her testimony that Father pushed aggressively on J.W.'s stomach when he had gas and that Father called J.W. a "bitch" when J.W. was crying or being annoying. But neither of these actions demonstrate that Father must have acted recklessly on May 16, 2025. Notably, Mother testified that she had never seen Father lose his temper with J.W. Mother never testified that she feared for J.W.'s safety, but rather she feared that Father would fight to be a part of J.W.'s life.

{¶ 29} Mother argues that the trial court failed to consider Mother's petition and her ex parte hearing testimony as evidence, which would have demonstrated Father was reckless. But the Ohio Supreme Court has held that "[a] pleading is not admissible into evidence at a hearing to prove a party's allegations and must not be considered as evidence by the court." *Felton*, 1997-Ohio-302, at ¶ 29, citing *State ex rel. Copeland v. State Med. Bd.*, 107 Ohio St. 20 (1923), paragraph two of the syllabus. Rather, the only admissible evidence is that which is presented by the parties at the full hearing. *Id*. The only evidence presented at the full hearing in this case was the testimony of Mother and Father. The trial court therefore did not err in failing to consider the allegations in Mother's petition or her ex parte hearing testimony before dismissing Mother's petition.

{¶ 30} In her brief, Mother cites Father's subsequent criminal indictment as an additional reason the petition should have been granted. Father was not indicted at the

time of the trial court's decision. Therefore, this information was not considered by the trial court, and it cannot be considered by this court. Furthermore, even if Father were subsequently indicted, it was still Mother's burden at the hearing to prove by a preponderance of the evidence that Father had committed domestic violence. A civil protection order exists as a remedy in addition to, not in lieu of, any other available civil or criminal remedies. R.C. 3113.31(G). It is certainly possible that the results of Father's criminal proceedings may be different based on additional evidence presented in the criminal proceedings. But we are limited to considering only the evidence in the record before us.

{¶ 31} What happened to J.W. on May 16, 2025, is very unfortunate. Based on the record before us, however, we cannot conclude that the trial court's decision was against the manifest weight of the evidence. Mother did not meet her burden to establish by a preponderance of the evidence that Father recklessly caused physical harm to J.W.

B. Abused Child Under R.C. 2151.031(C)

{¶ 32} Mother further argues that J.W. was entitled to a protection order under the third prong of the definition of domestic violence because Father committed an act that resulted in J.W. being an abused child. R.C. 3113.31(A)(1)(a)(iii). Mother points to R.C. 2151.031(C), which provides that an abused child includes any child who "[i]s endangered as defined in [R.C. 2919.22], except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child."

{¶ 33} R.C. 2919.22(A) provides, in relevant part, that no person, who is the parent of a child under the age of 18, "shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support." The term "substantial risk" is defined as "a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist." R.C. 2901.01(A)(8).

"Determination of a substantial risk necessarily depends on the specific circumstances in each case." *State v. Jones*, 2023-Ohio-3862, ¶ 18 (1st Dist.). "Even if the child is actually injured as the result of some hazard, it is the *substantial risk* of injury that controls, not the outcome." (Emphasis in original.) *Id*. at ¶ 20. "[T]he phrase 'duty of care, protection, or support' was intended by the General Assembly to embrace only those duties of a parent toward his child as are imposed by law." *State v. Sammons*, 58 Ohio St.2d 460, 463 (1979). The duty of care, while not statutorily defined, is generally considered the "norm in our society . . . for a parent to strive to see that his children are reasonably well nourished, housed, and clothed and reasonably protected from harm, and provided with necessary health care." *Id*. The culpable mental state for endangering children under R.C. 2919.22(A) is recklessness. *State v. McGee*, 1997-Ohio-156, ¶ 11.

{¶ 34} Alternatively, R.C. 2919.22(B)(1) provides that no person shall abuse a child under the age of 18. "While 'abuse' is not defined by R.C. 2919.22, Ohio Jury Instructions defines the term as 'any act that causes physical or mental injury that harms or threatens to harm the child's health or welfare.'" *State v. Beasley*, 2023-Ohio-670, ¶ 54 (11th Dist.), quoting *Ohio Jury Instructions*, CR § 519.22. The culpable mental state for endangering children under R.C. 2919.22(B) is also recklessness. *State v. Adams*, 62 Ohio St.2d 151, 153 (1980).

{¶ 35} As explained above, the trial court's decision finding that Father did not act recklessly is not against the manifest weight of the evidence. Because both R.C. 2919.22(A) and (B)(1) require that the offense be committed recklessly, the trial court did not err in concluding that J.W. was not an abused child as defined in R.C. 2151.031(C).

{¶ 36} Mother's explanation of the events on May 16, 2025, does not describe any inherently dangerous condition that posed a substantial risk to the health or safety of J.W.

Rather, the testimony at the hearing demonstrated that Father was holding J.W. when Father lost his grip and J.W. fell. Nothing about that scenario created a substantial risk to the health or safety of J.W. or established that Father violated a duty of care, protection, or support. Mother's opinions and speculations about Father's actions do not equate to direct or circumstantial evidence that Father acted recklessly on May 16, 2025.

{¶ 37} Mother argues that the mere occurrence of physical harm to J.W. while in Father's care is sufficient to constitute abuse under R.C. 2919.22(B)(1). But this interpretation removes the necessary element of recklessness. As courts have explained in the criminal context, parents cannot be held criminally liable under a theory of strict liability for every error in judgment, even if a child is injured. *State v. McLeod*, 2006-Ohio-579, ¶ 11 (2d Dist.), citing *State v. Martin*, 134 Ohio App.3d 41, 43 (1st Dist. 1999).

{¶ 38} Having examined the record, we conclude that the trial court's denial of Mother's petition is not against the manifest weight of the evidence. The record supports the trial court's finding that Mother failed to prove her domestic-violence allegations by a preponderance of the evidence. This is not the exceptional case in which the evidence weighs heavily against the trial court's decision.

{¶ 39} Mother's first and second assignments of error are overruled.

III. Father's Invocation of His Fifth Amendment Privileges Was Not an Abuse of Discretion

{¶ 40} Mother's third assignment of error states:

> THE BLANKET INVOCATION OF THE FIFTH AMENDMENT PRIVILEGE IS AGAINST THE WEIGHT OF THE EVIDENCE, AN ABUSE OF DISCRETION AND CONTRARY TO OHIO LAW AND PREVENTS ANY ANALYSIS OF WHETHER TO DRAW A NEGATIVE INFERENCE.

{¶ 41} "The Fifth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution declare that no person shall be compelled in any criminal case to be a witness against himself." *State v. Arnold*, 2016-Ohio-1595, ¶ 30. The Fifth Amendment "'not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *State v. Gideon*, 2020-Ohio-6961, ¶ 8, quoting *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973). "In this context, 'incrimination' means not only evidence that would directly support a criminal conviction, but 'information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution.'" *Sojic v. Karp*, 2015-Ohio-3692, ¶ 29 (2d Dist.), quoting *Maness v. Meyers*, 419 U.S. 449, 461 (1975). The Fifth Amendment may not be invoked by a blanket assertion of one's Fifth Amendment privilege but must be invoked on a question-by-question basis. *Id*. at ¶ 31. "Whether a question poses a sufficient hazard of incrimination is a matter for the court that is asked to enforce the privilege." *Id*. at ¶ 32, citing *Cincinnati v. Bawtenheimer*, 63 Ohio St.3d 260, 266 (1992).

{¶ 42} Once a person has invoked their Fifth Amendment privilege, the court must first consider "'whether the information is incriminating in nature.'" *Bawtenheimer* at 266, quoting *United States v. Sharp*, 920 F.2d 1167, 1170 (4th Cir. 1990). "To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Hoffman v. United States*, 341 U.S. 479, 486-487 (1951). It may be evident on its face, considering the

question asked and the circumstances of its asking, and if it is facially evident, the inquiry ends. *Bawtenheimer* at 266-267, citing *Sharp* at 1170. If it is not facially evident, the person asserting the privilege may demonstrate its incriminating potential by further contextual proof. *Id.* at 267, citing *Sharp* at 1170. "If the incriminating nature of the information is established by either route, there remains the question whether criminal prosecution is sufficiently a possibility, all things considered, to trigger the need for constitutional protection." *Vega v. Tivurcio*, 2014-Ohio-4588, ¶ 24 (10th Dist.), citing *Bawtenheimer* at 266-267. As to this, the proper test is simply to assess the objective reasonableness of the party's claimed apprehension of the prosecution. *Id*., citing *Bawtenheimer* at 267.

{¶ 43} Whether the Fifth Amendment privilege applied to the circumstances in this case is a question of law, but we review the trial court's ruling for an abuse of discretion. *Neal v. Lilly*, 2020-Ohio-128, ¶ 29 (2d Dist.). Trial courts have broad discretion to determine the admissibility of evidence, and its ruling will not be overturned on appeal absent a clear abuse of discretion and material prejudice to the party against whom the ruling was made. *State v. Maurer*, 15 Ohio St.3d 239, 265 (1984), citing *State v. Hymore*, 9 Ohio St.2d 122, 128 (1967). "Abuse of discretion" has been defined as a decision that is unreasonable, arbitrary, or unconscionable. *Morrow v. Becker*, 2013-Ohio-4542, ¶ 9.

{¶ 44} While Mother agrees that Father had an objectively reasonable apprehension of criminal prosecution, she argues that the trial court abused its discretion by allowing Father to assert his Fifth Amendment privilege to certain questions posed to him. Mother further argues that the trial court should have drawn an adverse inference from Father's refusal to answer questions.

{¶ 45} Contrary to Mother's claims, Father did not invoke a blanket assertion of his Fifth Amendment privilege as he answered several questions posed to him by opposing counsel. However, he did invoke his privilege in response to some of Mother's questions. Notably, Father's counsel stipulated that there was a pending criminal investigation into the May 16, 2025 incident. Mother contends that Father should have been required to answer questions involving: 1) Mother's character for truthfulness; 2) Father's efforts to see his child or request parenting time during the pendency of the proceedings; and 3) with whom Father had discussed the case, other than his attorney.

{¶ 46} According to the information before the court, Father was being criminally investigated for the events that occurred on May 16, 2025—the same incident at issue in the DVCPO hearing. Father raised the possibility of being charged with a felony offense, which reasonably could have included a child endangering charge, a charge consistent with Mother's assertions in her preceding arguments. This justification was sufficient to invoke Father's Fifth Amendment privilege against self-incrimination. *See In re Knight*, 135 Ohio App.3d 172, 175 (8th Dist. 1999) (mother's raising possibility of child endangering charges sufficient to allow her to invoke her Fifth Amendment privilege in a child custody hearing). The trial court therefore did not err in finding that the Fifth Amendment was applicable to Father.

{¶ 47} Moreover, it was evident from the questions asked, in the setting in which they were asked, that a responsive answer to Mother's questions might be hazardous to Father because injurious disclosure could result. Specifically, Mother's question to Father "Other than your attorney, who have you discussed this case with?" could easily have disclosed an answer that would imperil Father in a future criminal case. Considering only Father was present at the time the injuries to J.W. occurred, any statements Father made about the

incident could have been incriminating, just as Mother relies in this case on Father's statements and behaviors to support granting the DVCPO. Had Father answered, he would have disclosed potential witnesses who could testify against him based on any statements he had made to them about the case. As noted above, the Fifth Amendment privilege applies not only to evidence that may directly support a criminal conviction but also to answers that may "furnish a link in the chain of evidence, exposing the witness to criminal liability." *State v. Landrum*, 53 Ohio St.3d 107, 121 (1990), citing *Hoffman*, 341 U.S. at 486. The trial court could have reasonably concluded that Father had reasonable cause to apprehend danger from responding directly to this question and therefore did not abuse its discretion in allowing Father to invoke his Fifth Amendment privilege.

{¶ 48} Likewise, Mother's question to Father about his opinion of Mother's honesty could likewise have been damaging. The only reason for Mother to ask that question was to bolster her credibility in testifying against Father, certainly not something in Father's best interest. In declining to compel Father to answer this question raised by Mother, the court reasonably acted within its discretion.

{¶ 49} Even if the trial court erred in declining to compel Father to provide his opinion of Mother's honesty, we affirm the trial court's ruling on the alternative basis that the question was prohibited by Evid.R. 608. "In our system of justice it is the fact finder, not the so-called expert or lay witnesses, who bears the burden of assessing the credibility and veracity of witnesses." *State v. Eastham*, 39 Ohio St.3d 307, 312 (1988) (Brown, J., concurring). For this reason, "[o]pinion testimony regarding another witness's credibility 'infringe[s] upon the role of the fact finder, who is charged with making determinations of veracity and credibility.'" *State v. Smith*, 2017-Ohio-9283, ¶ 46 (10th Dist.), quoting *Eastham* at 312.

{¶ 50} An exception in Evid.R. 608(A) permits opinion evidence regarding the credibility of another witness where the testimony involves a witness's general character or reputation for truthfulness. But admission of this opinion testimony is limited under Evid.R. 608(A)(2), which provides that evidence of a witness's truthful character "is admissible *only after* the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise." (Emphasis added.)

{¶ 51} Father was the first witness to testify at the hearing and was called by Mother as if on cross-examination. Mother's counsel asked Father, "[G]enerally, have you known [Mother] to be an honest person during your eight years?" Tr. 9. Father's counsel objected, and Father asserted his Fifth Amendment privilege. The trial court sustained the objection. At the time Father was questioned, Mother's credibility had not been challenged, and her character was not made an issue. Because this testimony should not have been permitted pursuant to Evid.R. 608, we cannot conclude that the trial court abused its discretion in sustaining Father's objection.

{¶ 52} While we agree that Mother's question about Father's efforts to see his son during the pending proceeding were not potentially incriminating to warrant a Fifth Amendment privilege, it was not relevant and therefore objectionable under Evid.R. 402. Father's counsel objected to the question, and the trial court, somewhat incredulously, asked why Mother asked the question. In response, Mother's counsel explained that she wanted to ask Father about his efforts to see J.W. during the pendency of the proceedings because "frequently we negotiate supervised parenting time or some type of contact during these cases, and I was merely asking him did you do that." Tr. 16. The trial court sustained the objection.

{¶ 53} Whether Father made any efforts to see J.W. during the pendency of the case was not relevant and had no bearing on the existence of any fact that was of consequence to whether Father committed domestic violence on May 16, 2025. Notably, Father was told by police and Children Services not to have contact with J.W., and the ex parte DVCPO court ordered him to have no contact with J.W. The trial court did not abuse its discretion in ruling that Father did not have to answer this irrelevant question.

{¶ 54} Finally, Mother complains that the trial court abused its discretion by failing to draw a negative inference from Father's refusal to testify based on the invocation of his Fifth Amendment privilege. In civil cases, an adverse inference may be drawn against a party who invokes the Fifth Amendment privilege against self-incrimination, but the trial court is not required to do so. *Wolf v. Rosson*, 2005-Ohio-1174, ¶ 20 (8th Dist.).

{¶ 55} Mother does not identify any specific question Father refused to answer from which the trial court should have drawn an adverse inference. "The inference exists because a witness's assertion that the answer to a question might be self-incriminating proves that the witness engaged in some incriminating activity *relative to the question*." (Emphasis added.) *Cuyahoga Hts. Local School Dist. v. Palazzo*, 2016-Ohio-5137, ¶ 24 (8th Dist.). It is not our duty to search through the record for a question Father refused to answer and to determine whether adopting an adverse inference from Father's refusal to answer that particular question would have proved that Father engaged in some incriminating activity relative to that question. Mother's general, unsupported assertion that the trial court should have adopted an adverse inference against Father falls short of establishing that the trial court acted unreasonably, arbitrarily, or unconscionably.

{¶ 56} The trial court found that the evidence showed J.W.'s injuries were the result of an accident. The trial court also found that Father reasonably invoked his Fifth

Amendment privilege to prevent any prejudice in potential future criminal proceedings. The trial court declined to draw an adverse inference against Father based on the evidence adduced at the full hearing. Having reviewed the record, we cannot conclude that the trial court abused its discretion by failing to draw a blanket adverse inference against Father.

{¶ 57} Mother's third assignment of error is overruled.

IV. Mother Failed to Comply with App.R. 16

{¶ 58} Mother's fourth assignment of error states:

> THE TRIAL COURT'S REJECTION OF PETITIONER'S TESTIMONY REGARDING UNSAFE AND AGGRESSIVE PLAY IS AGAINST THE WEIGHT OF THE EVIDENCE, AN ABUSE OF DISCRETION AND CONTRARY TO OHIO LAW.

{¶ 59} Mother argues in conclusory fashion that the trial court abused its discretion when it discredited some of her testimony. Mother, however, does not include any citations to authorities, statutes, or parts of the record on which she relies. App.R. 16(A)(7) requires an appellant's brief to include "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." App.R. 12(A)(2) states that "[t]he court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)." We therefore decline to consider Mother's fourth assignment of error.

{¶ 60} To the extent Mother argues that to reject her testimony regarding one subject "would require the trial court to reject all her remaining testimony," we do not agree.

Appellant's Brief, p. 23. It is well established that the "weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass*, 10 Ohio St.2d 230, 231 (1967). The trial court, as the finder of fact, was free to believe some, all, or none of the testimony presented by each witness. *State v. Nolan*, 2023-Ohio-92, ¶ 13 (2d Dist.), citing *State v. Ellis*, 2013-Ohio-1184, ¶ 18 (8th Dist.).

{¶ 61} Mother's fourth assignment of error is overruled.

V. The Cumulative Error Doctrine Does Not Apply

{¶ 62} Mother's fifth assignment of error states:

COMBINED PREJUDICE: THE ERRORS ARE INTERDEPENDENT AND THEIR CUMULATIVE EFFECT REQUIRES REVERSAL.

{¶ 63} Mother presents a cumulative error argument contending that the trial court erred in a variety of ways that demonstrate its decision should be reversed. Mother's argument fails for at least three reasons. First, Mother's fifth assignment of error fails to comply with App.R. 16(A)(7) because she does not provide any citations to the authorities, statutes, and parts of the record on which she relies. Second, this court has previously noted that the cumulative-error doctrine "'traditionally has not been applied in the civil context.'" *Wolf v. Rothstein*, 2016-Ohio-5441, ¶ 96 (2d Dist.), quoting *Cummins v. Kettering Med. Ctr.*, 2008-Ohio-2591, ¶ 62 (2d Dist.). Third, in order for the doctrine to apply, the appellant must "point to 'multiple instances of harmless error.'" *State v. Mammone*, 2014-Ohio-1942, ¶ 148, quoting *State v. Garner*, 1995-Ohio-168, ¶ 62. Having not found multiple instances of error, we cannot conclude there was cumulative error.

{¶ 64} Mother's fifth assignment of error is overruled.

VI. Conclusion

{¶ 65} Having overruled the assignments of error, we affirm the judgment of the trial court.

. . . . . .

EPLEY, J., and HUFFMAN, J., concur.