

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JASMINE LAMBERT,	:	APPEAL NO.	C-250469
Plaintiff-Appellee,	:	TRIAL NO.	DV-2500778
vs.	:		
MARK DURGAN,	:	<i>JUDGMENT ENTRY</i>	
Defendant-Appellant.	:		

MOORE, Judge.

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Defendant-appellant Mark Durgan appeals the Hamilton County Court of Common Pleas, Domestic Relations Division’s grant of a domestic-violence civil-protection order (“DVCPO”) against him. Durgan raises four assignments of error, arguing (1) the proceeding below violated double-jeopardy principles, (2) the court erred in excluding exculpatory evidence, (3) the court erred when it relied on appellee’s false and contradictory testimony, and (4) the hearing below was marred by procedural irregularities. We address these arguments in turn.

We note that in some instances Durgan’s brief fails to cite to the record or to case law in support of his arguments. “An appellate 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.’” *Fontain v. Sandhu*, 2021-Ohio-2750, ¶ 14 (1st Dist.), citing App.R. 12(A)(2); App.R. 16(A). While we afford pro se

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litigants some leeway in putting forth legal arguments, we do not absolve these litigants of their burden to put forth a cognizable argument, nor will we create arguments on their behalf. *Borthwick v. Dept. of Bldgs. and Inspections*, 2022-Ohio-1335, ¶ 7 (1st Dist.). Here, however, in the interest of justice, we will accept Durgan’s brief as being in compliance with our appellate rules and address the merits of his appeal.

Durgan argues that because he was acquitted in the State’s criminal case against him, the trial court could not issue a DVCPO because it would violate double jeopardy. There are two flaws in Durgan’s argument under his first assignment of error. The first is that a DVCPO “exists as a remedy in addition to, not in lieu of, other available remedies” including a criminal action. *Zawrotuk v. Zawrotuk*, 2014-Ohio-5225, ¶ 43 (7th Dist.). The second is that because a DVCPO is remedial and not punitive in nature, the issuance of a DVCPO cannot violate double jeopardy. *See Patton v. Patton*, 2010-Ohio-2096, ¶ 30 (5th Dist.) (holding the constitutional right against double jeopardy does not apply to the issuance of a civil protection order); *Rieger v. Rieger*, 2007-Ohio-2366, ¶ 12 (2d Dist.) (holding the grant of a civil protection order cannot trigger double-jeopardy violations); *City of Westlake v. Patrick*, 2005-Ohio-4419, ¶ 18 (8th Dist.). Therefore, Durgan’s first assignment of error is overruled.

Durgan’s second assignment of error is also overruled. He claims that the court erred when it excluded his trial exhibits, but this contention is not supported by the record, as the magistrate admitted all of Durgan’s exhibits.

Durgan argues under his third assignment of error that the court violated due process when it relied on Lambert’s incredible testimony, and that the court was biased. R.C. 3113.31, which governs the issuance of DVCPOs, requires that the

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petitioner must prove by a preponderance of the evidence that the respondent engaged in an act of domestic violence against the petitioner, petitioner’s family, or household members. *See Edelstein v. Edelstein*, 2025-Ohio-4686, ¶ 18 (1st Dist.). We review the court’s issuance of the DVCPO under a manifest-weight-of-the-evidence standard. *Id.* at ¶ 16, citing *Denny v. Sanders*, 2016-Ohio-5113, ¶ 16 (1st Dist.) (for a manifest-weight challenge, we must weigh the evidence, all reasonable inferences, and consider the witnesses’ credibility to determine whether the finder of fact clearly lost its way and created a manifest miscarriage of justice that would necessitate reversing the judgment and ordering a new trial); *see State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

We defer to the trial court’s credibility determinations because the court is best situated to view the witnesses and “observe their demeanor, gestures, and voice inflections, and use [those] observations in weighing the credibility of proffered testimony.” *Edelstein* at ¶ 27, citing *Altman v. Parker*, 2022-Ohio-142, ¶ 21 (1st Dist.). While Durgan asserts that the court’s reliance on Lambert’s testimony constituted a due-process violation, the court was well positioned to weigh both witnesses’ credibility and found both to be unreliable before ultimately determining Lambert was the more credible of the two. Following a review of the record, we cannot hold that the court’s judgment was against the manifest weight of the evidence.

Likewise, Durgan’s argument that trial court was biased is unpersuasive. To successfully argue that a judge was biased, the party raising the argument must show that specific commentary or conduct from the judge revealed a “high degree of favoritism or antagonism as to make fair judgment impossible.” *State v. Terry*, 2025-Ohio-1195, ¶ 25 (1st Dist.). Durgan generally argues the court asked leading questions and that the court’s reliance on Lambert’s testimony evidenced bias. However, Durgan

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has failed to demonstrate the “high degree of favoritism” required to show judicial bias. The third assignment of error is overruled.

Durgan argues under his fourth assignment of error that he was prejudiced by the procedural irregularity of allowing Lambert to testify via Zoom as well as by a “retaliatory intent.” Civ.R. 43 permits remote testimony for good cause, and because the ex parte DVCPO required Durgan to remain 500 feet away from Lambert, good cause was present.

Durgan’s retaliatory-intent argument is similarly unpersuasive. He argues that, pursuant to her testimony, Lambert only filed for the DVCPO because a prosecutor told her she should. While Durgan may not agree with the prosecutor’s advice to Lambert, he fails to cite to any law or authority that would prohibit a prosecutor from doing so. That is because a DVCPO is remedial in nature and may be sought in addition to a criminal prosecution. *Zawrotuk*, 2014-Ohio-5225, at ¶ 43 (7th Dist.). The fourth assignment of error is overruled.

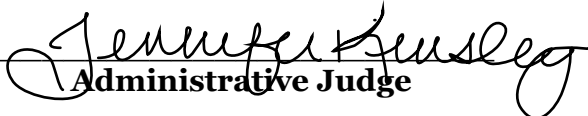
In sum, Durgan’s four assignments of error are overruled. Therefore, the judgment of the trial court is affirmed.

The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed under App.R. 24.

KINSLEY, P.J., and **NESTOR, J.**, concur.

To the clerk:

Enter upon the journal of the court on 3/4/2026 per order of the court.

By: 
Administrative Judge