



center suffering from bilateral retinal hemorrhages, cerebral edema, encephalomalacia, possible shear injury to the brain, and a reddened abrasion over his right chest. Dr. Lori Vavul-Roediger, a pediatrician with an expertise in child abuse, was asked to provide a consult to the treating neurosurgeon who treated T.H. upon his arrival at the hospital. Dr. Vavul-Roediger reviewed CT scans and MRI's and confirmed the neurosurgeon's and radiologist's findings previously mentioned.

{¶ 3} Dr. Vavul-Roediger testified that she interviewed T.H.'s parents for their account of how the child was injured. T.H.'s mother, R.B., told the doctor that she was in the bathtub when she heard three loud thuds. She said she got out of the bathtub, clothed herself, went to the area of the basement steps, and found the baby and the father at the end of the basement steps. Father was standing upright and erect with the baby in his arms talking to the baby stating "Just cry for daddy."

{¶ 4} Dr. Vavul-Roediger testified that T.H.'s father, T.H., Sr., told her that the baby had been fussy so he had been walking around the house cradling him. He told the doctor that he was walking down the basement steps when he fell down approximately three or four steps. He stated he fell backwards and fell on his own left hip and back. The father reported some soreness to his left hip, back, and shoulder area, and his left ankle was also hurting following the fall. Father stated that he maintained the baby in his left arm in a cradle hold with the baby's head in the crook of his arm. Father reported that his reaching across the baby's chest caused the abrasion on the baby's right upper chest. Father had a large ring with raised "D-A-D" letters. Father stated that at no time did the baby fall or come loose from his arm. Father stated that he held the baby tightly firmly gripping the baby

with his right hand causing the abrasion. Finally, the father told the doctor he did not know whether T.H. hit his head during the fall down the stairs.

{¶ 5} Dr. Vavul-Roediger testified that the historical information provided by T.H.'s parents was incongruous with an accidental injury leading to the way in which the child clinically presented. (Tr. 38.) She testified that in her medical opinion based on the constellation of the findings that this child had – acute subdural hemorrhage, evidence of cerebral edema to two regions of the brain, possible shear injury to the brain and multi-layer bilateral retinal hemorrhages, that the injuries were non-accidental.

{¶ 6} Dr. Vavul-Roediger testified that isolated subdural hemorrhages can be caused by “a variety of things” and that the cerebral edema could have been caused by “anything that causes trauma to the head or brain that would be of a significant nature.” Nevertheless, she also testified that if T.H. was held in the manner described and fell down a short distance with the three contacts being absorbed by the father with the child not moving out of the father's arms, the child would not sustain enough velocity or injury to his head to have cerebral edema, bilateral retinal hemorrhages, bilateral subdural hemorrhages and possibly some shear injury.

{¶ 7} Dr. Vavul-Roediger specifically testified that multi-layer, bilateral retinal hemorrhages do not result from simple isolated trauma in the manner in which the fall had been recorded or documented, given the child's general well being, and that her opinion is supported by the medical literature. She also testified that a shear injury occurs when there is repetitive violent motion of the head going back and forth or side to side, it is not a little bump or jog to the head.

{¶ 8} Additionally, Dr. Vavul-Roediger testified that even if the child's head was not cradled in the crook but resting on top of the father's arm, the child would not have the injuries documented from the fall that has been described. She testified that in her medical opinion, if the fall occurred as the father described to her and his injuries, his body would have absorbed the weight of the fall. If the arm, which was cradling the infant, is what connected with the steps, some additional force would be transmitted to the baby but not enough to cause the necessary force applied to the child's head to result in the inter-cranial and ocular eye findings that T.H. sustained. Finally, Dr. Vavul-Roediger testified that in her medical opinion T.H. suffered physical maltreatment, which was non-accidental or abusive in nature. She testified that she believed that a violent force was applied to T.H.'s head and that the injury was caused by rotational trauma to the head.

{¶ 9} T.H., Sr., the boy's biological father, provided the same explanation for the child's injuries to the court as he had given to Dr. Vavul-Roediger. The child's mother, R.B., provided testimony which corroborated the father's testimony. She testified she had never seen the child's father ever "be rough with our son." She testified she had seen T.H., Sr., interact with his other children and she had never seen him abuse them.

{¶ 10} At the conclusion of the hearing, the magistrate found that T.H. was a dependent and abused child and recommended that temporary custody of the child be placed with the maternal aunt and uncle of T.H., Jr. After the mother filed timely objections to the magistrate's order and recommendations, the trial court sustained her objections in part. The trial court found that the State had failed to demonstrate

by clear and convincing evidence that T.H. was abused.

{¶ 11} The trial court noted the following factors convinced it that the State had not proven the child's injuries were intentionally inflicted by the child's father.

{¶ 12} "First, Dr. Vavul-Roediger is certainly a credible witness as portrayed by her extensive background in child pediatrics. This Court does not impeach her ability to diagnose said child's medical condition, as his physical injuries were obviously 'of significant nature.' However, Dr. Vavul-Roediger's testimony makes it difficult for this Court to establish, by clear and convincing evidence, that said child's injuries were intentionally inflicted.

{¶ 13} "Second, Dr. Vavul-Roediger stated that said child's subdural hemorrhage could have been caused by 'a variety of things.' She also testified that said child's cerebral edema could have been caused by 'anything that causes trauma to the head or brain that would be of a significant nature.' Therefore, said child's injuries could have been caused by accidental trauma or intentional abuse. Consequently, this court is reluctant to allow medical testimony to ascertain, by a clear and convincing standard, that [the father's] actions were intentional, since intentional or accidental trauma could have caused the exact injuries that said child incurred.

{¶ 14} "Third, after conducting multiple scans of his brain, Dr. Vavul-Roediger testified that said child suffered from 'left greater than right, subdural hemorrhage,' 'cerebral edema \* \* \* that was \* \* \* acute in the left posterior temporal occipital region,' and 'a possible left, high frontal peridial cerebral edema.' Although both sides of said child's brain were injured, it is obvious that the left side was injured

more severely than the right side. These findings are consistent with [the father's] story of falling down the stairs on his left side with said child cradled in his left arm. Further, Dr. Vavul-Roediger testified that said child's 'shearing' was caused by a violent event, such as a 'violent motion of the head going back and forth.' Such a motion is consistent with [the father's] account of the alleged fall.

{¶ 15} "Fourth, Dr. Vavul-Roediger's medical conclusion was based upon her recollection that [the father] told her 'at no time did the baby fall or come loose from his arms.' However, [the father] testified that said child was not tucked in, and his head was sitting on the side of [the father's] arm. Therefore, it is quite possible that said child was not tucked as tight as Dr. Vavul-Roediger believes. Thus, her medical conclusion was based upon conflicting testimony.

{¶ 16} "Fifth, this Court disagrees with Dr. Vavul-Roediger's testimony that said child's injuries could not have occurred if he was tucked tightly into [the father's] arm. During the alleged fall, [the father's] bruised elbow indicates that his left arm oscillated in a violent manner when making contact with the stairs. Even if said child's head never touched the stairs, the aggressive movement of [the father's] left arm could cause debilitating injuries to a four-week-old infant. Such injuries could be similar to those produced by said child hitting his head on the stairs. In fact, such injuries could be similar to those produced by [the father] intentionally inflicting harm upon said child. Therefore, this court finds it irrelevant whether or not said child was tightly tucked into [the father's] arm or loosely flailing about since substantial injury could result from either scenario. Thus, the intent of [the father] cannot be substantiated through evidence of said child's body position in [the father's] arm

during the alleged fall.

{¶ 17} “Sixth, Dr. Vavul-Roediger based her medical finding on one fifteen-minute conversation with [the father]. Although she spoke with [the mother] on ‘more than one occasion,’ Dr. Vavul-Roediger failed to extensively evaluate the only person who had first hand experience of the alleged fall. Although she believes an ‘accurate assessment’ was conducted, Dr. Vavul-Roediger did not conduct a thorough evaluation of [the father]. This court believes such information would foster a more accurate assessment of [the father’s] injuries in relation to those sustained by said child.

{¶ 18} “Seventh, [the father] and [the mother] called 911 immediately after said child was injured. They took the proper steps to ensure said child did not suffer serious injuries from the alleged accident. These actions are not consistent with individuals who intentionally inflicted harm upon said child.

{¶ 19} “Eighth, [the father] is almost six feet tall, and over two hundred pounds. Since the alleged fall was severe enough to cause him hip, elbow, and back abrasions, it is reasonable to assume the alleged fall was violent enough to cause severe trauma to a four-week-old infant. Moreover, [the father] testified that he fell on his left side; the same side that said child was on. Collectively, this information is consistent with said child’s injuries, which predominantly occurred on the left side of his brain. Further, the scratch across said child’s chest is consistent with [the father’s] account of reaching over to protect his young child. Therefore, [the father] and said child’s injuries are both consistent with [the father’s] account of the alleged fall.” (Citations to record deleted.)

{¶ 20} In a single assignment of error, the State argues that the trial court abused its discretion in finding that T.H. was not an abused child. In its argument, the State argues that the judgment of the trial court was against the manifest weight of the evidence.

{¶ 21} Ohio Revised Code 2151.031(D) defines an “abused child” as any child who “[e]xhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it.” Ohio Revised Code 2151.35(A)(1) requires that any finding of abuse must be established by clear and convincing evidence.

{¶ 22} “Clear and convincing evidence” is defined as “the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases.” *In re. Estate of Haynes* (1986), 25 Ohio St.3d 101,103. “When reviewing a judgment under a manifest-weight-of-the-evidence standard, a court has an obligation to presume that the findings of the trier of fact are correct.” *State v. Wilson*, 113 Ohio St.3d 382, 387, 2007-Ohio-2202.

{¶ 23} The appellate court does not weigh the evidence nor determine the credibility of witnesses. When examining a case “a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof \* \* \* [and] if some competent, credible evidence going to all the essential elements of the case supports the trial court’s judgment, an



appellate court must affirm the judgment and not substitute its judgment for that of the trial court.” The credibility of witnesses and weight of the evidence are issues primarily for the trial court, as the trier of fact. Where the evidence is in conflict, the trier of facts may determine what should be accepted as the truth and what should be rejected as false. *State v. Scheibel* (1990), 55 Ohio St.3d 71, 74.

{¶ 24} We are satisfied that the trial court carefully and thoughtfully examined the testimony of Dr. Vavul-Roediger and concluded that the State had simply not proven by clear and convincing evidence that the child was the victim of abuse. There is competent and credible evidence to support the trial court’s findings of fact and conclusions of law. The State has not demonstrated that the trial court’s findings are against the manifest weight of the evidence. The assignment of error is Overruled. The judgment of the trial court is Affirmed.

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DONOVAN, P.J., and FROELICH, J., concur.

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