

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

SONDRA CRAWFORD,	:	APPEAL NOS. C-081303
	:	C-090009
Plaintiff-Appellee/Cross-	:	TRIAL NO. P01-2635
Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
and	:	
	:	
HAMILTON COUNTY CHILD	:	
SUPPORT ENFORCEMENT AGENCY,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
JOHN HARRIS,	:	
	:	
Defendant-Appellant/Cross-	:	
Appellee.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In the case numbered C-081303, John Harris appeals the judgment of the trial court that ordered him to pay child support of \$655 per month. We conclude that the trial court abused its discretion when it determined that Harris had an annual income of \$75,000, so we reverse the judgment and remand that case for further proceedings. Sondra Crawford has also filed a notice of appeal, but she has filed no brief in support of her appeal. We therefore conclude that she has abandoned her appeal, and we dismiss appeal number C-090009.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Harris and Crawford are the parents of a child born on November 18, 1992. In 2006, Crawford sought a modification of the order requiring Harris to pay \$116 per month in child support. After a hearing in June 2008, a magistrate of the Hamilton County Juvenile Court issued a decision that ordered Harris to pay child support in the amount of \$655 per month. The magistrate determined that, contrary to Harris's assertion that he had earned \$24,000 in 2007, his income was actually \$75,000. The magistrate also found that Crawford was unemployed, but that she was capable of earning \$40,000. Both Harris and Crawford objected to the magistrate's decision. After a hearing, the trial court denied the objections and accepted the magistrate's decision as the judgment of the court.

We consider Harris's two assignments of error together. In the first, he asserts that the trial court's judgment was against the manifest weight of the evidence, and in the second, he asserts that the trial court abused its discretion when it imputed income to him.

A trial court's determination of child-support obligations is subject to an abuse-of-discretion review.² But challenges to the factual findings upon which the court has based its child-support order raise the issue whether the findings are supported by competent, credible evidence.³

The tax returns for Harris's trucking business indicated that the business had gross income of \$410,314 in 2006 and \$320,008 in 2007. Harris's federal income-tax returns indicated that his income for those years was \$25,906 and \$24,362, respectively. According to Harris, most of the trucking business's gross income was paid out to subcontractors. Harris claimed that his business paid subcontractors \$283,812 in 2006 and \$230,812 in 2007. But he did not provide receipts in support of his assertion.

² *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 1997-Ohio-105, 686 N.E.2d 1108, citing *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144, 541 N.E.2d 1028.

³ *Glassman v. Offenberger*, 8th Dist. Nos. 85838, 85863, and 87175, 2006-Ohio-3837.

The magistrate found Harris’s testimony not to be credible. The magistrate pointed out that Harris lived in a \$265,000 house that had been purchased by his girlfriend, and that his girlfriend paid \$2,000 each month to the mortgage. Harris had testified that his girlfriend worked for his company and worked full-time as a beautician. Because the magistrate concluded that his testimony was not believable, the magistrate stated that “[i]ncome of \$75,000 per year was imputed to him in determining child support.”

Harris correctly argues that, before imputing income, the magistrate needed to make a specific finding that he was underemployed or voluntarily unemployed.⁴ The magistrate clearly did not make such a finding. But we conclude that, although she used the word “imputed,” the magistrate was not imputing income as contemplated in R.C. 3119.01(C)(11). Rather, she was attempting to verify Harris’s actual income.⁵

Although we conclude that the magistrate did not improperly impute income to Harris under R.C. 3119.01(C)(11), we do conclude that her decision was not supported by competent, credible evidence. It is unclear from the record how the magistrate arrived at the figure of \$75,000. We also note that the magistrate used the incorrect worksheet to determine the child-support amount, and that she did not properly enter the amount in the self-employment section of the worksheet.⁶

Absent any support in the record for setting Harris’s income at \$75,000, we must conclude that the figure was arbitrary, and that the trial court abused its discretion in using that amount to determine child support. The first and second assignments of error are well taken. We therefore reverse the judgment of the trial court and remand the cause for proceedings consistent with the law.

⁴ *Beckworth v. Westerdorf*, 1st Dist. No. C-020804, 2003-Ohio-5955. See, also, *Sapinsley v. Sapinsley*, 1st Dist. No. C-050092, 2005-Ohio-6775.

⁵ See R.C. 3119.05.

⁶ R.C. 3119.022.

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A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 18, 2009

per order of the Court _____.
Presiding Judge