

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

MAYA AUSTELL,	:	APPEAL NO. C-130579
Plaintiff-Appellee,	:	TRIAL NO. P092258X
vs.	:	<i>JUDGMENT ENTRY.</i>
BRANDON BOWIE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Brandon Bowie challenges the juvenile court's overruling of his objection to and its adoption of a November 2012 magistrate's decision modifying and increasing his child-support obligation for two of his minor children.

Bowie had been injured on the job in late 2010. At an October 2012 hearing on Bowie's motion to modify his child support, he offered two Physician's Reports of Work Ability as evidence that he had been physically unable to work and thus unable to provide child support. The magistrate used the first report, prepared by Stephen Altic, D.O., to conclude that Bowie was able to return to work in May 2012. But the magistrate refused to employ the second report, which indicated that Bowie could

not return to work before December 2012. Bowie claimed that the second report had also been prepared by Dr. Altic. But many important parts of that report had been left blank, including the date the report had been signed, a description of Bowie's capabilities, the doctor's clinical findings, and the name and business address of the treating doctor. Moreover, it bore only "a squiggly line" in the signature blank which the magistrate found was "not similar" to the signature affixed to the first report. The magistrate found that Bowie had been physically able to support his children except for one six-month period identified in the first report. The magistrate ordered Bowie to pay \$235.33 per month per child in support, to pay an additional \$94.13 per month to reduce an existing arrearage, and to make monthly health-care payments for the children.

Bowie filed an objection to the magistrate's decision, asserting that the "squiggly line" in the second report was indeed Dr. Altic's signature. In support of his argument, Bowie attached to the objection a third Physician's Report of Work Ability, also bearing the "squiggly line" signature.

At the hearing on the objection, the juvenile court rejected Bowie's argument and refused to consider the third report stating that with reasonable diligence that evidence could have been submitted to the magistrate. In an August 8, 2013 entry, the juvenile court overruled Bowie's objection and adopted the magistrate's decision.

In two interrelated assignments of error, Bowie argues that the juvenile court erred in giving "no weight" to the "squiggly line" physician's report, and thus erred in increasing his child-support obligation. Here, as in the trial of other civil cases, the weight to be given the evidence and the credibility of the witnesses are primarily for the magistrate and the juvenile court sitting as the triers of the facts. *See State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

First, we note that throughout his appellate brief, Bowie supports his argument with excerpts from his testimony given before the juvenile court on October 17, 2013. But the juvenile court did not have that testimony before it when it rejected Bowie's objection. That hearing had been held more than 60 days after the juvenile court had decided the matter and 38 days after Bowie had filed his notice of appeal. As a reviewing court, we cannot consider evidence that was not before the lower court and then decide the appeal on that basis. *See State Farm Fire and Cas. Co. v. Condon*, 163 Ohio App.3d 584, 2005-Ohio-5208, 839 N.E.2d 464, ¶ 21 (1st Dist.), citing *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus. Therefore, we will not consider the October 17 testimony in resolving the assignments of error.

Here, the juvenile court did not err in weighing the evidence. Despite the absence of a transcript of matters before the magistrate, the juvenile court heard Bowie's argument. It reviewed those portions of the record available to it, and conducted an independent review of the objected matter. *See* Juv.R. 40(D)(4)(d). We cannot say that the juvenile court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *See Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517.

Next, Bowie argues that the juvenile court erred in failing to consider the third physician's report, attached to his objection, as additional evidence. Juv.R. 40(D)(4)(b) gives the juvenile court discretion in deciding whether to hear additional evidence. The juvenile court did not abuse that discretion by refusing to hear additional evidence on the authenticity of Dr. Altic's signature when that issue was clearly before the magistrate and Bowie had been put on notice that he would be reasonably expected to introduce this evidence before the magistrate. *See Riley v.*

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Riley, 6th Dist. Huron No. H-08-019, 2009-Ohio-2764, ¶ 20 (interpreting identical language in Civ.R. 53(D)(4)); *see also Dagostino v. Dagostino*, 165 Ohio App.3d 365, 2006-Ohio-723, 846 N.E.2d 582, ¶ 14 (4th Dist.).

The first and second assignments of error are overruled. Therefore, the juvenile court's judgment is affirmed.

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

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

To the clerk:

Enter upon the journal of the court on July 25, 2014

per order of the court _____
Presiding Judge