

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

v.

JULY ENEL

:
:
:
:
:

**C.A. No. M12-0023
07409097488**

DECISION

PER CURIAM: Before this Panel on January 30, 2013—Magistrate Goulart (Chair, presiding), Judge Parker, and Magistrate DiSandro sitting—is July Enel’s (Appellant) appeal from a decision of the Municipal Court, denying her motion to vacate the default judgment on the charged violations of G.L. 1956 § 31-10-32, “Notice of change of address or name,” and § 31-15-12, “Interval between vehicles.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 18, 2012, an officer of the Providence Police Department charged Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charges, and the matter was set down for arraignment on November 27, 2012.

However, Appellant failed to appear for her scheduled court date, and the Court entered a default judgment against her. Following the entry of the default judgment, Appellant filed a Motion to Vacate pursuant to Rule 20 of the Traffic Tribunal Rules of Procedure (Rule 20).¹

¹ Rule 20 of the Rules of Procedure for the Traffic Tribunal reads, in relevant part: “On motion and upon such terms as are just the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for . . . excusable neglect.” Traffic Trib. R.P. 20.

After a hearing on December 4, 2012, at which time the Appellant failed to appear, her motion to vacate was denied. It is from the denial of her motion that Appellant now appeals to this Panel.

Standard of Review

Pursuant to § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal.

Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the

record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge's [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant contends that her absence from her arraignment and motion hearings should be excused. Specifically, Appellant maintains that she reported to the courthouse on the date of her arraignment. However, Appellant explains that Appellant's attorney notified her that he would not be able to make it to court for the hearing due to his illness, and then instructed her to leave the courthouse. In regards to the second hearing on the motion to vacate, Appellant testified she reported to the courthouse, but once again her attorney was ill and could not appear on her behalf. Appellant appealed to this Panel in order to request that the court remand the matter to the trial court so she could proceed by representing herself on the matter.²

"It is a well-established principle in Rhode Island that a motion to vacate a default judgment is within the discretion of the trial justice before whom the motion is brought.³ Such findings will not be disturbed upon appeal unless there is an error of law or an abuse of that

² On the date of this appeal, Appellant's attorney also failed to appear due to his illness.

³ Rule 20 of the Rules of Procedure for the Traffic Tribunal reads, in relevant part: "On motion and upon such terms as are just the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for . . . excusable neglect." Traffic Trib. R.P. 20.

discretion.” Phoenix Constr. Co., Inc. v. Hanson, 491 A.2d 330, 331 (R.I. 1985) (citing Friendly Homes, Inc. v. Shareholders and Creditors of Royal Homestead Land Co., 477 A.2d 934, 937 (R.I. 1985)). The burden is squarely on Appellant to show that her “failure to take the proper steps at the proper time [was] not in consequence of [his] own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident” Pleasant Management, LLC v. Carrasco, 960 A.2d 216 (R.I. 2008) (quoting Small Business Loan Fund Corp. v. Gallant, 795 A.2d 531, 533 (R.I. 2002)).

The record reflects that Appellant did not follow the “course of conduct which a reasonably prudent person would take under similar circumstances.” Id. (quoting Pari v. Pari, 558 A.2d 632, 635 (R.I. 1989)). Accordingly, this Panel is satisfied that it was not an abuse of the hearing judge’s discretion, having taken “account of all relevant circumstances surrounding [Appellant’s] omission[.]” Id. (quoting Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 389 (1993)), to deny her Rule 20 motion.

The Appellant was fully informed of the dates she was required to appear before the Court and has not produced evidence sufficient to merit excusing her absence. The Supreme Court has held that “to establish excusable neglect, the party generally must show that the circumstances that caused the party to miss a deadline were out of that party or counsel’s control.” Rivera v. Rose, 14 A.3d 939, 945 (R.I. 2011) (quoting Boranian v. Richer, 983 A.2d 834, 840 (R.I. 2009)). Additionally, Appellant’s record reflects that even though her attorney did not appear on her behalf, she failed to report to the courtroom to inform the judge of her circumstance. Accordingly, the hearing judge did not abuse his discretion when he denied the Appellant’s motion to vacate the default judgment.

After a review of the record and the oral arguments presented to this Court, this Panel finds that the decision of the hearing judge was supported by the reliable, probative, and substantial evidence of record. The hearing judge did not abuse his discretion when he denied the defendant's motion to vacate the default judgment.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the motion hearing judge's decision was not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

Magistrate Alan R. Goulart (Chair)

Judge Edward C. Parker

Magistrate Domenic A. DiSandro III

DATE: _____