

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PROVIDENCE

v.

JAMES HERARD

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C.A. No. T09-0006

09 MAY 14 PM 2:06

STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on February 18, 2009—Magistrate Noonan (Chair, presiding) and Judge Almeida and Magistrate DiSandro sitting—is James Herard’s (Appellant) appeal from Magistrate Cruise’s denial of his Motion to Dismiss the charged violation of G.L. 1956 § 31-27-2.1, “Refusal to submit to chemical test.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

Facts and Travel

On December 6, 2008, an officer of the Warwick Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The summons issued to Appellant indicated that his arraignment on the charge was scheduled for January 9, 2009.

For reasons that are unclear from the record, Appellant did not appear before this Tribunal until January 23, 2009. At this time, counsel for Appellant argued that the charged violation of § 31-27-2.1 should be dismissed pursuant to Rule 33 of the Rules of Procedure for the Traffic Tribunal (Rule 33).¹ According to Appellant, thirty-three

¹ Rule 33 of the Rules of Procedure for the Traffic Tribunal reads, in pertinent part: “The adjudication of summonses which include charges brought for violation of § 31-27-2.1 of the general laws may follow the

calendar days had elapsed between the issuance of the summons and Appellant's arraignment date. (Tr. at 6.) Arguing that the language of Rule 33 is mandatory, Appellant posited that the trial magistrate had "no discretion . . . but to dismiss the action filed against" Appellant. Id.

At the conclusion of the hearing, the hearing magistrate entered an order denying Appellant's Rule 33 dismissal motion.² Id. Aggrieved by the entry of this order, Appellant filed an appeal to this Panel. Forthwith is this Panel's decision.

Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, 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

procedure established by these rules except that arraignment in refusal cases shall be scheduled two (2) calendar weeks after the date the citation was issued." (Emphasis added.)

² The parties entered into a stipulation whereby Appellant agreed that all of the essential elements of § 31-27-2.1 had been satisfied in exchange for imposition of the minimum sanctions and dismissal of two other moving violations. (Tr. at 6-7.)

- (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 argues that the hearing magistrate's decision on his Rule 33 dismissal motion is affected by error of law. Specifically, Appellant contends that the hearing magistrate's decision is contrary to Rule 33, as his arraignment was not scheduled within the designated two-week time frame. Accordingly, Appellant maintains that dismissal of the charged violation is an appropriate remedial measure for the failure to abide by the clear mandate of Rule 33.

The Appellant's decision to take an interlocutory appeal to this Panel from the hearing magistrate's denial of his dismissal motion is fatal to his appeal as this Panel is prevented by well-established case law from passing upon matters that are "unripe" for consideration. Our Supreme Court "has steadfastly maintained that [courts should] entertain a direct appeal only from a final judgment." In re Joseph T., 575 A.2d 985, 986 (R.I. 1990). Generally a final judgment is one that completely terminates the litigation between the parties. Maloney v. Daley, 115 R.I. 375, 346 A.2d 120 (1975). The so-called "final judgment rule" is embodied in Rule 21 of the Rules of Procedure for the Traffic Tribunal.³

Based on the record before this Panel, we conclude that Appellant's appeal—taken from the hearing magistrate's order denying his motion to dismiss—is from an interlocutory order and not an appealable final judgment. Unlike a "sentence or a judgment," an order denying a motion to dismiss does not constitute a final determination of a party's rights. See Maloney, 115 R.I. at 375, 346 A.2d at 120. Moreover, this is not a case that meets either of the two well-recognized exceptions to the "final judgment rule." First, this is not an appeal from the grant or continuance of an injunction, the appointment of a receiver, the sale of real or personal property, or the order or denial of a new trial after a trial by jury. See G.L. 1956 § 9-24-7. Nor is this an appeal from an order which, although it may be interlocutory in a strict sense, still possesses such an element of finality that it warrants appellate review before the case is finally terminated to prevent clearly imminent and irreparable harm. See Town of Lincoln v. Cournoyer,

³ Rule 21 of the Rules of Procedure for the Traffic Tribunal reads, in pertinent part: "Any party aggrieved by a sentence or a judgment of a court in a civil traffic violation may appeal therefrom to the appeals panel of the traffic tribunal." (Emphasis added.)

118 R.I. 644, 648-649, 375 A.2d 410, 412-413 (1977). Accordingly, this Panel concludes that Appellant's appeal is not properly before us and requires dismissal.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the issues raised by Appellant's appeal are non-justiciable, as his appeal was not taken from a final judgment. Accordingly, Appellant's appeal is denied. However, as the parties stipulated to all of the essential elements of § 31-27-2.1, the charge against Appellant is sustained.

ENTERED: