

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF PROVIDENCE**

v.

**SAMANDA MARTINEZ-TAVAREZ**

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**C.A. No. T13-0059  
07409105043/07409106459**

**DECISION**

**PER CURIAM:** Before this Panel on November 20, 2013—Magistrate Abbate (Chair, presiding), Administrative Magistrate Cruise, and Magistrate DiSandro III sitting—is Samanda Martinez-Tavarez’s (Appellant) appeal from decisions of Judge Parker, sustaining the charged violations of G.L. 1956 § 31-51-2.2, “Stopping for school bus required,” for a citation issued on April 2, 2013, and § 31-51-2.2, “Stopping for school bus required,” for a citation issued on April 4, 2013. The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On April 2, 2013, an officer of the Providence Police Department charged Appellant with § 31-51-2.2, “Stopping for school bus required.” Appellant failed to appear for her scheduled arraignment on May 7, 2013, and the Court entered a default judgment against her.

On April 4, 2013, in a separate incident and subsequent citation, another officer of the Providence Police Department charged Appellant with § 31-51-2.2, “Stopping for school bus required.” Appellant failed to appear for her scheduled arraignment on May 14, 2013, and the Court entered a default judgment against her. Following the entries of the default judgments on

May 7, 2013 and May 14, 2013, Appellant filed a Motion to Vacate pursuant to Rule 20 of the Traffic Tribunal Rules of Procedure (Rule 20).<sup>1</sup>

On September 17, 2013, at Appellant's motion hearing, she requested that the judge vacate the default judgments. Appellant claimed she missed each arraignment because she did not receive either ticket. (Tr. at 2.) In response, the hearing judge inquired where the Appellant lived. Id. The Appellant stated that she lived on 128 Sumter Street in Providence. The hearing judge then confirmed that the citations had been mailed to the correct address. Thereafter, the hearing judge noted that that he did not find the Appellant to be credible. (Tr. at 3.) After the hearing, Appellant's motion to vacate was denied. The Appellant timely appealed the decision to sustain the violations to this Panel.

### **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

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<sup>1</sup> 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.

- (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 the trial judge's decision was characterized by an abuse of discretion. Specifically, Appellant maintains that the judge failed to consider the possibility that she did not receive either citation.

According to the Rhode Island Supreme Court, "it is settled law in this state that motions to modify or vacate a judgment rest within the sound discretion of the trial court which will be reversed only upon demonstrated and clear abuse of discretion." O'Hearn v. O'Hearn, 506 A.2d 78, 79-80 (R.I. 1986) (citations omitted). Such findings will not be disturbed upon appeal unless there is an error of law or an abuse of discretion. Phoenix Construction Co., v. Hanson, 491

A.2d 330, 332 (R.I. 1985) (citing Friendly Home, Inc. v. Shareholders and Creditors of Royal Homestead Land Co., 477 A.2d 934 - 937 (R.I. 1984); Prudential Investment Corp. v. Porcaro, 341 A.2d 720, 722 (R.I. 1975); Stevens v. Gulf Oil Corp., 274 A.2d 163, 164 (R.I. 1971)). However, the onus is on the party requesting relief to provide sufficient reasons warranting that this relief should be granted.

A party's failure to comply with procedural requirements, which results in the entry of default judgment, must be accompanied by significant extenuating circumstances to justify vacating the default judgment as excusable neglect. Bailey v. Algonquin Gas Transmission Co., 788 A.2d 478, 482 (R.I. 2002). Moreover, the judge hearing the motion has discretion in determining whether to vacate the default judgment. Id. at 487. The motion hearing judge thoroughly reviewed the evidence and Appellant's arguments for missing the prior proceedings before denying the Appellant's motion to vacate the default judgments. Specifically, the motion judge found that the Appellant was fully informed of the dates she needed to appear before the Court and had not produced evidence sufficient to merit excusing her absence. Specifically, Appellant signature appears on each citation and each citation included her arraignment date. Accordingly, the trial judge did not abuse his discretion when he denied the Appellant's motion to vacate the default judgments.

After a review of the record and the oral arguments presented to this Court, this Panel finds that the decision of the trial judge was supported by the reliable, probative, and substantial evidence of record. The trial judge did not abuse his discretion or make an error of law when he sustained both individual violations of § 31-51-2.2, "Stopping for school bus required."

### **Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the 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:

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Magistrate Joseph A. Abbate

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Administrative Magistrate David R. Cruise

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Magistrate Domenic A. DiSandro III

DATE: \_\_\_\_\_