STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

CITY OF PAWTUCKET	:	
	:	
v.	:	**C.A. No. M14-0027**
	:	**13408516229**
MARY E. WOLL II	:	

DECISION

PER CURIAM: Before this Panel on January 21, 2015—Chief Magistrate Guglietta (Chair), Magistrate Noonan, and Magistrate Abbate, sitting—is Mary E. Woll's (Appellant) appeal from a decision of Judge Nesselbush of the Pawtucket Municipal Court, sustaining the charged violation of G.L. 1956 § 31-28-7(f), "Motor vehicle plates for persons with disabilities." Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On December 20, 2013, Officer Carrie Hormanski of the Pawtucket Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on October 3, 2014.

At trial, the Officer testified that on December 20, 2013 at approximately 9:11 in the evening, he was patrolling the area of 27 Magnolia Street for traffic violations. (Tr. at 3.) On his patrol, the Officer observed a 1997 Toyota Camry with Massachusetts registration "972CD1" parked in a handicapped parking spot that was labeled with a sign and arrow pointing directly at the vehicle. Id. at 4. Thereafter, the Officer testified that the vehicle was present in the handicap parking spot, and that he placed a citation on the vehicle. Id. at 4 and 11.

Subsequently, Appellant testified that she never received a citation in the mail because the citation was mailed to the wrong address. Id. at 4-5. Next, Appellant testified that it was impossible for her car to be parked in the handicap spot because she had an electrical fire in her car on December 11, 2013, that left her car unable to drive. Id. at 7. The Appellant explained that her mechanic came to the scene of the fire on December 11th and he took the car from the scene. Id. at 10 and 15. The Appellant provided the Court with a receipt that an auto body shop installed a new battery on December 26, 2013. Id. at 9.

Thereafter, the trial judge stated that she "can tell there was a problem with the vehicle," but she cannot tell "that the problem made it such that on December 20, 2013, [Appellant's] car could not be at [the] location." Id. at 16. Consequently, the trial judge found Appellant responsible for having the car parked in a handicap zone. Id. at 18-19. Aggrieved by the trial judge's decision, Appellant timely filed this appeal.

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:
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> (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 Ins. 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 Envtl. 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 clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Specifically, Appellant argues that she proved to the Court that her car was unable to operate from December 11, 2013 through January 16, 2014. Thus, the trial judge should not have found her guilty.

In Link, our Supreme Court made clear that this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not

have an opportunity to view the live trial testimony of the Officer or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony, the trial judge determined that the Officer's testimony was credible, and Appellant's vehicle was parked in a handicap zone. See Tr. at 18-19. "[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial [judge] concerning the weight of the evidence on questions of fact." Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). Here, the trial judge considered the testimony of the Officer and the testimony of the Appellant. The trail judge noted that based on the testimony, she could tell "there was a problem with the vehicle," but could not tell "that the problem made it such that on December 20, 2013, [Appellant's] car could not be at [the] location [on the ticket]." (Tr. at 16.) After hearing all of the testimony presented at the trial, the trial judge found the Officer's testimony more credible than that of the Appellant's. Therefore, pursuant to the holding in Link, this Panel is unable to revisit the credibility findings made by the trial judge. 633 A.2d at 1348.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial judge's decision was supported by the reliable, probative, and substantial evidence of record. This Panel is also satisfied that the trial judge's decision was not affected by error of law. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied.

ENTERED:

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Chief Magistrate William R. Guglietta (Chair)

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Magistrate Willliam T. Noonan

_____
Magistrate Joseph A. Abbate

DATE: _____