STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF WESTERLY	**:**	
	:	
v.	**:**	**C.A. No. T15-0018**
	:	**15504500013**
EMILY GUELTZOW	**:**	

DECISION

PER CURIAM: Before this Panel on May 20, 2015—Judge Almeida (Chair), Judge Parker, and Magistrate Goulart, sitting—is Emily Gueltzow's (Appellant) appeal from a decision of Magistrate Abbate (Trial Magistrate), sustaining the charged violation of G.L. 1956 § 31-26-5, "Duty in accident resulting in damage to highway fixtures." The Appellant appeared before this Panel represented by council. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On January 2, 2015, Officer Leddy of the Westerly 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 March 17, 2015.

At the trial, Darsey Vancans (Ms. Vancans) testified that on January 2, 2015 she observed the Appellant driving down South Woody Hill Road in Westerly at approximately 4:20 in the afternoon. (Tr. at 4; 5.) Ms. Vancans was walking on the road with her daughter, and she observed the Appellant "coming quite fast" around a corner. Id. at 6. Ms. Vancans testified that she yelled at the Appellant to slow down, and the Appellant reacted by slamming on her brakes and reversing her vehicle, a Range Rover, into a telephone pole, which "pretty much snapped in

half." Id. at 8. Ms. Vancans stated that Appellant yelled at her and called her vulgar names, so Ms. Vancans informed the Appellant that she would be calling the police. Id. at 10; 12. At trial, Ms. Vancans identified the Appellant as the same woman driving the Range Rover on January 2. Id. at 11; 12. Ms. Vancans did contact the police, and she further observed that National Grid subsequently repaired the pole that the Appellant hit. Id. at 15; 16.

The Officer then proceeded to offer testimony. He arrived at the scene following Ms. Vancan's report "of a motor vehicle collision involving one car and one pole, in which the vehicle had left the scene." Id. at 25. The Officer observed a pole "that was split almost in half. . . ." Id. It was labeled as "Neco Pole 88," which is an identifying number that National Grid assigns to its poles. Id. He obtained a written statement from Ms. Vancans, and proceeded to check the area for the Appellant's vehicle. Id. at 29; 30. Based on the license plate number provided by Ms. Vancans, the Officer was able to locate the vehicle, which was registered to James Gueltzow (Mr. Gueltzow), and also to obtain a phone number at which to reach Mr Gueltzow. Id. at 30; 31. The Officer spoke with Mr. Gueltzow, who informed him that his wife, the Appellant, had been driving the vehicle, and that she had been involved in a collision with a rock. Id. at 31. The Officer then proceeded to the Gueltzow's residence, located nearby on Fallon Road. Id. at 32. The Appellant informed the Officer that she did argue with Ms. Vancans, and that she did back up to speak with her, but the Appellant believed that she had hit a rock only, which was why she left the scene. Id. at 33; 34. The Officer observed the damage done to the Appellant's vehicle; he saw minor damage to her rear bumper, which was cracked and lifted-up. Id. at 34. He also noted that the bumper was "relatively high." Id. The Officer proceeded to generate an accident report, and he notified dispatch regarding the pole number. Id. at 35; 37. The Officer testified at trial that he would have expected fairly significant damage

where a car had hit a pole, and he testified that the picture taken of the Appellant's vehicle accurately depicted the damage. Id. at 40; 41.

The Appellant's husband, Mr. Gueltzow, then proceeded to offer testimony. He further corroborated the picture of the damage to the Appellant's vehicle, which was admitted as full exhibit. Id. at 47; 48. He further testified that when he observed the Appellant on the day in question she appeared calm, and he was not aware that she was running late or angry. Id. at 51. Mr. Gueltzow testified that he saw the pole the next day, and that it was damaged. Id. at 52. He measured where the pole splintered, and it was about four feet off of the ground. Id. at 52; 53. Mr. Gueltzow stated that he and the Appellant were the only people using the car, and that no work had been done on the vehicle since the accident, aside from an oil change. Id. at 56; 57.

Lastly, the Appellant testified at trial. She stated that she believed she had struck a rock with her car on the day in question, and that she did not believe it constituted an accident that needed to be reported. Id. at 59. The Appellant testified that she first learned of the allegation against her when the Officer came to her home. Id. at 8; 12. She testified that on that day she was leaving her job at a laundromat in Stonington, Connecticut, and heading home. Id. at 60; 61. The Appellant could not recall her speed as she drove along South Woody Hill Road, but she did state that "[i]t's hard to speed on that road. It's all windy. . . ." Id. at 61. She testified that she recalled observing Ms. Vancans but did not see the child with her. Id. at 62. Rather, she simply recalls Ms. Vancans screaming at her. Id. The Appellant admitted that she used her brakes and stopped the car upon hearing Ms. Vancans, and that she reversed to speak with Ms. Vancans. Id. at 63; 64. The Appellant testified that she does not recall how fast she was going, and that when she hit something it was "not a slam. It was a nudge." Id. at 65. She testified that she did not exit her vehicle to look for damage because she did not believe there was any damage. Id. at 66.

She testified that she did not observe a telephone pole and was only aware of some rocks that were in the area. Id.

The Appellant further testified that she refused to "banter back and forth" with Ms. Vancans, and that she was unaware of Ms. Vancans telling her she would be reporting Appellant to the police due to the damaged telephone pole. Id. at 67. The Appellant testified that, upon arriving at home, she discussed the damage to the Range Rover with her husband, but she believed that she had struck a rock. Id. at 68. She testified that she does not have any medical condition that requires her to take medication that might make her unaware she had struck the telephone pole. Id. at 69; 70. The Appellant was unable to describe the size of the rock she believed she hit with her vehicle, and she maintained that nothing happened on January 2, 2015 that required her to make a police report. Id.

Following the witness testimony, the Trial Magistrate made findings of fact and determined that the Court, based on sufficient evidence from the testimony of the Officer and Ms. Vancans, could find that the National Grid telephone pole in issue was in fact damaged and eventually repaired. Ms. Vancans testified that she observed Appellant put "her car into reverse and . . . hit a telephone pole . . . [and] the pole pretty much snapped in half." Id. at 8; 10. The Officer also observed the damaged pole, and noted that it was labeled "Neco Pole 88," which was an identifying number for National Grid. Id. at 25. Additionally, Ms. Vancans testified that she saw National Grid repair the damaged pole. Id. at 15. Thus, the Trial Magistrate held that the Town of Westerly met its burden of proof by clear and convincing evidence that Appellant was in violation of § 31-25-5, and was involved in an accident causing damage to a highway fixture and failed to properly report the accident.

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 Magistrate's decision was in violation of the law, unsupported by competent evidence, was against the weight of the evidence and the facts as presented, and was not supported by clear and convincing evidence. Specifically, Appellant contends that there was insufficient evidence to prove that the telephone pole in question was a highway fixture, and, additionally, that there was insufficient evidence to prove the pole was damaged.

Section 31-26-5 requires "[t]he driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property of the fact and of his or her name and address and of the registration number of the vehicle the driver is driving." It is the responsibility of the driver to "give notice of the accident to a nearby office of local or state police." Id.

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, Appellant, or other witnesses, it would be impermissible to second-guess the Trial Magistrate's "impressions as he . . . observe[d] [the witnesses] [,] 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.

Here, the Trial Magistrate made findings of fact regarding both the pole’s status as a highway fixture and the damage done to the pole. The Trial Magistrate specifically found the testimony of Ms. Vancans “to be most credible.” (Tr. at 76; 77.) He found that Ms. Vancans observed Appellant’s vehicle strike a utility pole, which nearly split in half upon impact. Id. at 77; 78. The Trial Magistrate further determined that the Officer arrived upon the scene and observed the damaged utility pole. Id. at 78. The Trial Magistrate proceeded to hold that

> “there’s sufficient evidence here for the Court to infer from the testimony of Officer Leddy, who observed that this telephone pole was clearly marked, I believe he said Neco . . . 88 and . . . it was reported to dispatch with regard to the damage of the telephone pole, and that there is sufficient evidence that that pole was eventually repaired.” Id. at 81; 82.

Furthermore, the Trial Magistrate determined that the Court need not reach judicial notice “to come to the conclusion, that this pole was clearly marked, and it was a utility pole that was adjacent to the highway.” Id. at 82. He additionally found the testimony of Ms. Vancans and the Officer “to be most credible,” and that “[t]he Court does not find the testimony of the [Appellant] to be credible, at all.” Id. Thus, this Panel does not find the Trial Magistrate’s decision to be “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . .” § 31-41.1-8(f)(5); see Link, 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 Magistrate's decision was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation and sanction are sustained

ENTERED:

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Judge Lillian M. Almeida (Chair)

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Judge Edward C. Parker

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Magistrate Alan R. Goulart

DATE: _____