

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

CITY OF PAWTUCKET

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:
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v.

C.A. No. M12-0014
12408504462

WILLIAM GALLAGHER

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STATE OF RHODE ISLAND
TRAFFIC TRIBUNAL
FILED

DECISION

PER CURIAM: Before this Panel on October 31, 2012—Judge Ciullo (Chair, presiding), Judge Parker, and Magistrate Noonan sitting—is William Gallagher’s (Appellant) appeal from a decision of the Municipal Court, sustaining the charged violation of G.L. 1956 § 31-15-5(a), “Overtaking on right.” Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

This violation arose from an automobile and motorcycle accident that occurred at the intersection of Armistice Boulevard and Daggett Avenue in Pawtucket. (Tr. at 7-8.) On April 15, 2012, both parties were proceeding in the same direction down Armistice Boulevard, which is a one-way street. (Tr. at 8.) The driver of an SUV, Megan Lefebvre (“Lefebvre”), attempted to make a right turn onto Daggett Avenue while traveling southbound on Armistice Boulevard. (Tr. at 48-49.) In this attempt to turn, Lefebvre struck a motorcycle operated by the Appellant. Id. At the scene of the accident, both operators were given citations by the Officer. (Tr. at 3.)

At trial, on direct examination, Lefebvre testified that while traveling on Armistice Boulevard, she was in the left lane trying to make a right turn. (Tr. at 15.) She further testified that she did not see Appellant in the right lane before she turned. (Tr. at 16, 27.)

Thereafter, the Appellant testified that he began to slow down because he intended to go behind Lefebvre. (Tr. at 50.) Before slowing down, he was in the right lane to make a right, but quickly changed his mind and decided to go straight instead of making a right turn. *Id.* As Appellant was attempting to get behind Lefebvre, Lefebvre pulled up in front of Appellant and collided with Appellant's motorcycle. (Tr. at 51.) Appellant further testified that he was not attempting to overtake Lefebvre. (Tr. at 53.)

At the close of evidence, the trial judge recounted the aforementioned facts in her decision. In rendering her decision, the trial judge determined that the evidence presented at trial was enough to sustain the charge against the Appellant. (Tr. at 64.) The trial judge found it significant that the Appellant testified that he was traveling in the right lane on a street that is marked "right turn only" and that the Appellant decided to go straight instead of making a right turn. (Tr. at 64.) In summation, the trial judge sustained the violation. (Tr. at 64.) Appellant timely filed this appeal.

Standard of Review

Pursuant to G.L. 1956 § 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 argues that the trial judge's findings were affected by error of law. Specifically, Appellant claims that, the evidence was insufficient to prove that Appellant overtook and passed another vehicle, in violation of the statute. We agree.

In pertinent part, Section 31-15-5(a) states:

(a) The driver of a vehicle may **overtake and pass** upon the right of another vehicle only under the following conditions:

(2) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles. Violations of this section are subject to fines enumerated in § 31- 41.1-4. Emphasis added.

In order to violate this statute, the operator of the vehicle must overtake as well as pass the other vehicle. The trial judge's findings were specific and accurate, but elements of the statute were not satisfied by the testimony at trial. See Link, 633 A.2d at 1348. In particular, there was no evidence presented at trial that Appellant was attempting to pass the other vehicle. Appellant testified at trial that he was trying to go into the left lane and did not attempt to pass through the intersection while in the right lane. (Tr. at 50.) Therefore, as the elements of the violation were not proven at trial, the charged violation cannot be sustained. Id.

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 affected by error of law. Substantial rights of Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation dismissed.