

STATE OF RHODE ISLAND
RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	C.A. No. M21-0005
	:	21403500234
ADELINO LOMBA	:	

DECISION

PER CURIAM: Before this Panel on October 27, 2021—Magistrate DiChiro (Chair), Chief Magistrate DiSandro, and Associate Judge Parker, sitting—is the appeal of Adelino Lomba (Appellant) from a decision of Judge Partington (Trial Judge) of the Cumberland Municipal Court, denying his Motion to Vacate a default judgment entered against him. That judgment sustained the charged violation of G.L. 1956 § 31-22-22(g)(1), “Safety belt use.” Appellant appeared *pro se* before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On January 20, 2021, Appellant was charged with the aforementioned violation of the motor vehicle code. *See* Summons No. 21403500234. Appellant contested the charge, and the matter was scheduled for trial on February 16, 2021. *See id.* On that date, Appellant appeared at the Cumberland Municipal Court, but the court was closed due to COVID-19 restrictions. *See* Mot. to Vacate J. Appellant states that he called the Cumberland Police Department to notify them that he had arrived on time for his scheduled hearing. *Id.* Appellant also notified the court clerk’s office and requested a new hearing date. *Id.* The Cumberland Municipal Court rescheduled the hearing, but Appellant failed to appear, resulting in a default judgment against him.

Following the entry of the default judgment, Appellant filed a Motion to Vacate Judgment pursuant to Rule 20 of the Traffic Tribunal's Rules of Procedure.¹ *See* Mot. to Vacate J. Appellant argued that he did not receive notice of the rescheduled hearing date, causing him to miss the hearing. *See id.* Appellant also noted that he needs his license to operate his business. *Id.*

The hearing on Appellant's Motion to Vacate took place on August 10, 2021. At the hearing, the prosecutor stated on the record that the reason Appellant did not receive notice of trial is that Appellant failed to notify the registry of his change of address. (Tr. at 1.) In response to the Prosecutor's argument, Appellant stated the following: "November of 2016 I was involved in a fire on 240 East St[reet], which is the address on my license." *Id.* Appellant further argued that he has been unable to locate a permanent residence since the fire and that the DMV will not accept a P.O. box as his permanent address. *Id.* After Appellant's explanation, the Trial Judge asked Appellant whether his intention was to oppose the charged violation. *Id.* Appellant responded affirmatively and the Trial Judge immediately said "[m]otion to vacate denied, you have a right to appeal, go see the clerk." *Id.* Appellant timely filed an appeal before this Panel.

II

Standard of Review

Pursuant to § 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 as follows, in pertinent part:

¹ 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.

“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 prejudiced 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 ‘[c]learly 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 (quoting Section 31-43-4(6)(d) and

(e)). “Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions” on appeal. *Id.*; *see Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that “a motion to vacate should not be denied based on the defendant[’]s will to argue against an alleged charge.” (Notice of Appeal.) The Panel agrees.

“It is a well-established principle in Rhode Island that a motion to vacate a default judgment is within the discretion of the trial justice before whom the motion is brought” and that “such findings will not be disturbed upon appeal unless there is an error of law or an abuse of that discretion.” *Phoenix Construction Co., Inc. v. Hanson*, 491 A.2d 330, 332 (R.I. 1985) (citing *Friendly Homes, Inc. v. Shareholders and Creditors of Royal Homestead Land Co.*, 477 A.2d 934, 937 (R.I. 1984)). However, our Supreme Court has made clear that a defendant’s right to “present his defense at a trial . . . should be carefully protected.” *Berick v. Curran*, 55 R.I. 193, 198, 179 A. 708, 711 (1935). Under the Fourteenth Amendment, a tribunal must not be “biased or otherwise indisposed from rendering a fair and impartial decision[.]” *Davis v. Wood*, 444 A.2d 190, 192 (R.I. 1982). Additionally, due process within municipal courts requires the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Millett v. Hoisting Engineers’ Licensing Division of Department of Labor*, 119 R.I. 285, 296, 377 A.2d 229, 235-36 (1977); *see also Gimmicks, Inc. v. Dettore*, 612 A.2d 655, 660 (R.I. 1992) (holding that due process requires that a [Municipal Court] allow a person to present evidence and testimony).

Rule 20 of the Rules of Procedure for the Traffic Tribunal permits the court to relieve a party from a final judgment for a number of reasons, including excusable neglect or “[a]ny other reason justifying relief from the operation of the judgment or order, including that relief is

warranted in the interests of justice.” Traffic Trib. R.P. 20. Here, in order to prevail on his Rule 20 motion, Appellant was required to prove to the satisfaction of the hearing judge that his failure to appear on his scheduled trial date was due to “excusable neglect.” The burden was squarely on Appellant to show that his “failure to take the proper steps at the proper time [was] not in consequence of [his] own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident. . . .” *Pleasant Management, LLC v. Carrasco*, 960 A.2d 216, 224-25 (R.I. 2008) (quoting *Jacksonbay Builders, Inc. v. Azarmi*, 869 A.2d 580, 584 (R.I. 2005)).

Lastly, Section 31-41.1-6(b) requires that, “[a]fter due consideration of the evidence and arguments, the judge or magistrate shall determine whether the charges have been established, and appropriate findings of fact shall be made on the record.”

At the August 10, 2021 hearing on Appellant’s Motion to Vacate the default judgment, Appellant only had a short opportunity to explain that he never received notice of the new hearing because his former residence caught on fire and the notice was sent to that address. *See* Tr. at 1. Appellant pointed out that he could not update his address on his driver’s license because he no longer has a permanent address, and the DMV will not accept a P.O. box as an address. *See id.* After Appellant had a brief chance to explain the circumstances surrounding his absence from the rescheduled trial, the Trial Judge responded “[l]et me ask you this, maybe we could cut to the chase . . . [s]o are you going to, is you’re intention to oppose this?” When Appellant responded affirmatively, the Trial Judge instantly said: “Motion to vacate denied, you have a right to appeal, go see the clerk.” The Trial Judge did not provide any further explanation for his denial. This Panel believes that the Trial Judge should have provided some explanation for his decision to deny Appellant’s motion to vacate.

This Panel is mindful that, while Appellant failed to appear at his rescheduled hearing as required by our rules of procedure, our “rules are intended to provide for the just determination of every civil traffic violation” Traffic Trib. R.P. 2. Appellant’s right to argue against the violation and explain his circumstances should be protected. *See Berick*, 179 A. at 711. Additionally, the Trial Judge should have explained, on the record, his findings of fact supporting his decision to deny Appellant’s motion. *See* § 31-41.1-6(b). Currently, the only apparent explanation, that exists on the record, for the Trial Judge’s decision is that Appellant intended to oppose the charge. *See* Tr. at 1. While this Panel will not decide whether Appellant could have succeeded on his Rule 20 motion, this Panel feels that the Appellant deserves an opportunity to be fully heard on the violation or, at minimum, an explanation for the denial beyond the contention that Appellant planned to oppose the charge.

IV

Conclusion

Accordingly, without deciding the merits of the Appellant's Motion to Vacate, this Panel remands the Appellant's case to the Cumberland Municipal Court for further proceedings consistent with this opinion.

ENTERED:

Magistrate Michael DiChiro (Chair)

Chief Magistrate Domenic A. DiSandro III

Associate Judge Edward C. Parker

DATE: _____