

**STATE OF RHODE ISLAND**  
**RHODE ISLAND TRAFFIC TRIBUNAL**

<b>STATE OF RHODE ISLAND</b>	:	
	:	
v.	:	<b>C.A. No. T22-0002</b>
	:	<b>21001522618</b>
<b>ETHAN PENA</b>	:	

**DECISION**

**PER CURIAM:** Before this Panel on February 23, 2022—Administrative Magistrate Abbate (Chair), Magistrate Noonan, and Magistrate Kruse Weller, sitting—is the appeal of Ethan Pena (Appellant) from a decision of Chief Magistrate DiSandro III (Trial Magistrate), denying Appellant’s Motion to Vacate a default judgment entered against him. That judgment sustained the charged violation of G.L. 1956 § 31-14-2, “Speeding 1 to 10 MPH in excess of posted speed limit – 1<sup>st</sup> offense[.]” Appellant failed to appear before this Panel. Jurisdiction is pursuant to § 31-41.1-8. For the reasons set forth in this Decision, Appellant’s appeal is denied.

**I**

**Facts and Travel**

On June 20, 2021, Appellant was charged with a violation of G.L. 1956 § 31-14-2, “Speeding 1 to 10 MPH in excess of posted speed limit – 1<sup>st</sup> offense[.]” *See* Summons No. 21001522618. Appellant failed to pay the fine, and the matter was set for trial on October 7, 2021. On that date, Appellant failed to appear at the Rhode Island Traffic Tribunal, resulting in a default judgment against him. Appellant motioned to vacate the default judgment against him, and the

trial was continued to January 5, 2022.<sup>1</sup> On that date, Appellant failed to appear at the Rhode Island Traffic Tribunal again, resulting in yet another default judgment against Appellant.

On January 6, 2022, after Appellant's hearing had passed, the Traffic Tribunal received a letter from Appellant,<sup>2</sup> providing Appellant's rationale for not attending the January 5, 2022 trial. Appellant argued that he was unable to attend court on January 5, 2022 because he and his family tested positive for COVID-19. Appellant included a document with his request, which indicated that Appellant had received a positive COVID-19 test result on December 28, 2021. The Patient Instructions portion of the document instructed Appellant to isolate for two weeks from the date of Appellant's December 27, 2021 test. In his letter, Appellant explained that his quarantine would end on January 10, 2022.

On January 7, 2022, the Trial Magistrate entered a judgment by mail, passing on Appellant's motion. The Trial Magistrate noted on the judgment card that Appellant's request was denied, and that Appellant had multiple prior defaults. On January 10, 2022, the motorist called the clerk and requested a new hearing date, explaining that he missed his January 5, 2022 hearing due to COVID-19. Appellant timely filed the present appeal.

## II

### Standard of Review

Pursuant to § 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

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<sup>1</sup> The trial was originally scheduled for November 30, 2021. However, the Traffic Tribunal lost electricity on that day, and the trial was rescheduled for January 5, 2022.

<sup>2</sup> The letter was postmarked on January 4, 2022.

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 Mut. 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.” *Id.* (citing *Env'tl. Sci. 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.” *Id.* Otherwise, the Appeals Panel must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

Appellant argues that he missed the January 5, 2022 hearing because he tested positive for COVID-19 and was still in quarantine on the date of the hearing. *See* Notice of Appeal. Appellant

also wrote in the Notice of Appeal that “I miss only October . . . January I had covid[.]” *See id.* Appellant failed to appear before this Panel to make any additional arguments.

“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)).

Rule 20 of the Traffic Tribunal Rules of Procedure 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 a Rule 20 motion, Appellant would have been required to prove to the satisfaction of the Trial Magistrate 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)). The Supreme Court has held that “to establish excusable neglect, the party generally must show that the circumstances that caused the party to miss a deadline were out of that party or counsel's control.” *Rivera v. Rose*, 14 A.3d 939, 945 (R.I. 2011) (quoting *Boronian v. Richer*, 983 A.2d 834, 840 (R.I. 2009)). Unexplained neglect and case mismanagement, on its own, does not suffice. *See Jacksonbay Builders, Inc.*, 869 A.2d at 584-85

(self-represented litigant's lack of knowledge of the arbitration award rejection deadline did not amount to excusable neglect); *Coutu v. Porter*, 744 A.2d 405, 406 (R.I. 1999) (counsel's explanation that he missed filing deadline insufficient to warrant excusable neglect).

Although Appellant may have a valid excuse for not attending the January 5, 2022 hearing, Appellant does not provide any rationale for his failure to timely notify the Traffic Tribunal that he was unable to attend the hearing. Appellant could have taken other steps to reschedule the hearing or notify the court that he would not be in attendance prior to the passing of the trial. Appellant received a positive COVID-19 result on December 28, 2021 and was instructed to quarantine for two weeks. On December 28, 2021, Appellant was aware that he would need to isolate himself until January 10, 2022. Rather than notifying the court once he received notice of the positive test result, Appellant waited a week to notify the court via postal mail. The Traffic Tribunal did not receive Appellant's letter and COVID-19 results until January 6, 2022, after Appellant's trial had already passed. Appellant could have contacted the court clerk to inquire about a new trial date via telephone or email at some point before the scheduled hearing. Instead, Appellant simply failed to appear for his scheduled hearing. Appellant's mistake in not notifying the court that he would be absent from trial was due to his "own carelessness [or] inattention," and thus squarely within Appellant's control. *See Pleasant Management, LLC*, 960 A.2d at 224-25.

After a review of the record, this Panel finds that the decision of the Trial Magistrate was supported by the reliable, probative, and substantial evidence of record. The record reflects that Appellant did not follow the "course of conduct which a reasonably prudent person would take under similar circumstances." *Id.* (quoting *Pari v. Pari*, 558 A.2d 632, 635 (R.I. 1989)). Accordingly, this Panel is satisfied that denying Appellant's request for a Motion to Vacate was not an abuse of the Trial Magistrate's discretion, because the Trial Magistrate took "account of all

relevant circumstances surrounding [Appellant's] omission[.]” *Id.* (quoting *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 389, 113 S. Ct. 1489 (1993)). The Trial Magistrate did not abuse his discretion when he denied the Appellant’s Motion to Vacate the second default judgment.

**IV**

**Conclusion**

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel are satisfied that the Trial Magistrate’s decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violation is sustained.

ENTERED:

\_\_\_\_\_  
Administrative Magistrate Joseph A. Abbate (Chair)

\_\_\_\_\_  
Magistrate William T. Noonan

\_\_\_\_\_  
Magistrate Erika Kruse Weller

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