STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC **DISTRICT COURT**
SIXTH DIVISION

ARTHUR TOEGEMANN	:	
	:	
	:	
V.	:	**A.A. 2010-75**
	:	
	:	
RITT	:	

JUDGMENT

This cause came on before Houlihan J. on Administrative Appeal, and upon review of the record and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Board is hereby affirmed.

Dated at Providence, Rhode Island, this 10th day of June, 2011.

ENTER: **BY ORDER:**

/s/ **/s/**

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D E C I S I O N

Houlihan, J. This matter is before the Court on the complaint of Arthur Toegemann, Appellant, pursuant to R.I.G.L. 31-41.1-9, seeking judicial review of a final decision rendered by the respondent, Appellate Panel of the Rhode Island Traffic Tribunal, which upheld the decision of Judge Albert Ciullo.

FACTS & TRAVEL OF THE CASE

The Appellant was found to have violated Rhode Island General Law 31-20-12, "Stopping for school bus required-Penalty for violation," after a trial in the Rhode Island Traffic Tribunal on September 1, 2009. The Appellant did not appeal the decision in that trial. Instead, the Appellant filed a "Motion for Relief of Judgment" that was heard and denied by Judge Albert Ciullo on October 15, 2009. It is Judge Ciullo's denial of Appellant's "Motion for Relief of Judgment" that is the subject of this appeal.

At the hearing before Judge Ciullo, the Appellant asserted newly discovered evidence in support of his motion. This is permitted pursuant to Rule 20, subsection (2) of the Rules of Procedure for the Rhode Island Traffic Tribunal.

Appellant asserted he had a discussion with one of the engineers at the Department of Transportation which revealed that the Department had planned to place a median strip at the site of his offense. Tr. at pp. 6-7.[1] The Appellant candidly admitted no median strip was in place at the time of his violation. Id. at p. 7.[2] Judge Ciullo denied the motion, first, because there was no median strip at the time of the offense and second, because the evidence was available at the time of the trial and not "newly discovered." Id. at p. 9.

The Appellant took an appeal of this decision to the Appeals Panel in the Traffic Tribunal. Such appeal was denied by that Panel on March 22, 2010.

The Appellant seeks review of the Panel's decision here in the District Court.

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[1] Apparently, the gravaman of the Appellant's motion was that *were* a median strip in place at the time of his offense he would not have had to stop for a school bus. See R.I.G.L. 31-20-13(1).

[2] The colloquy was recorded as follows;

Judge Ciullo: Is there a median strip there?

Arthur Toegemann: Presently, no.

Judge Ciullo: Was there one at the time?

Arthur Toegemann: No.

STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in GEN. LAWS 1956 § 31-41.1.-9(d), which provides as follows:

> (d) *Standard of review.* The judge of the district court shall not substitute his or her judgment for that of the appeals Panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals Panel, or 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 appeals Panel's findings, inferences, conclusions or decision are:
>
> (1) In violation of constitutional or statutory provisions;
>
> (2) In excess of the statutory authority of the appeals Panel;
>
> (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.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA)

Under the APA standard, the District Court "* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'Clearly erroneous.'" [3] Thus, the Court will not substitute its judgment

[3] *Guarino v Dept. of Social Welfare*, 122 R.I. 583—84, 410 A.3d 425 (1980) citing R.I. GEN LAWS§42-35-15(g)(5).

for that of the Panel as to the weight of the evidence on questions of fact.[4] Stated differently, the finding of the Panel will be upheld even though a reasonable mind might have reached a contrary result.[5]

APPLICABLE LAW

A. R.I.G.L. 31-20-12, "Stopping for school bus required-Penalty for violation"

R.I.G.L. 31-20-12 mandates drivers stop for a school bus transporting children while operating its flashing lights. It is part of a sequence of statutes that regulate the operation of a motor vehicle in the vicinity of a school bus. R.I.G.L. 31-20-13 excepts operators from the obligation imposed by R.I.G.L. 31-20-12 in the event the bus and automobile are traveling in opposing lanes separated by a median strip.

B. Rule 20 of the Rules of Procedure of the Rhode Island Traffic Tribunal

Rule 20 of the Rules of Procedure for the Traffic Tribunal permits a party to file a motion for relief for enumerated reasons, one of which is relevant here. Rule 20(2) permits a relief from judgment based on newly discovered evidence. The language of the rule mirrors the language contained in Rule 60(b) of the Superior Court Rules of Civil Procedure. A motion such as this requires evidence "material enough" so that it would probably change the outcome of the proceedings. Malinou

[4] *Cahoone v. Board of Review of the Dept. of Emp. Security*, 104 R.I. 503, 246 A.2d 213 (1968).

[5] *Id.* at 506—07, 215.

v. Seattle Savings Bank, 970 A 2d. 6, 10(R.I. 2009)(citing Medeiros v. Anthem Casualty Insurance Group, 822 A.2d 175, 178(R.I. 2003)). Additionally a proponent of a motion of this nature bears the burden of demonstrating the evidence he cited was not discoverable at the time of the original hearing by the exercise of ordinary diligence. Id. at 10.

ANALYSIS

The Appeals Panel at the Traffic Tribunal correctly ruled the "Motion for Relief from Judgment" failed for two reasons, each independently a basis for denial of the relief Appellant seeks.

The evidence proffered by the Appellant in support of his motion was irrelevant such that an analysis of materiality is not necessary. The median strip cited by the Appellant was, by his own admission, not in existence at the time of his offense. Thus, any reliance on the provisions of R.I.G.L. 31-20-13(1) is simply misplaced. This statute exempts an operator from the requirement imposed in R.I.G.L. 31-20-12 only when a median strip separates opposing lanes. The fact that a median strip was planned for the site did not serve to relieve the Appellant of his obligations under R.I.G.L. 31-20-12.

Second, the Appellant failed to demonstrate the evidence he proposed was "newly discovered." The Appellant made no effort at all to demonstrate the evidence he proffered was not discoverable at the time of his original hearing and therefore failed to meet the burden of proof imposed by the rule.

Lastly, the Appeals Panel took the time to address additional arguments raised by the Appellant at the hearing before the Panel but not at the original hearing. The Appeals Panel correctly ruled the Appellant had run afoul of the "raise or waive" rule that has been a fixture of Rhode Island appellate law for years. See State v. Quattrocchi, 235 A.2d 99, 117(R.I. 1967). This Court will not address any argument not raised at the original hearing.

CONCLUSION

Upon careful review of the record, this Court finds the decisions of the Appellate Panel were made upon lawful procedure and were not affected by error of law. R.I.G.L. 31-41.1-9. Furthermore, said decisions were not clearly erroneous in view of the reliable, probative and substantial evidence on the record. Id.

Accordingly, the decision of the Panel is hereby AFFIRMED.