STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

PHILIP DEY	:	
	:	
v.	:	**A.A. No. 14-124**
	:	
State of Rhode Island,	:	
(RITT Appeals Panel)	:	

JUDGMENT

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

ORDERED AND ADJUDGED

The decision of the Appeal Panel is affirmed.

Dated at Providence, Rhode Island, this 21st day of September, 2015.

Enter: By Order:

/s/ /s/

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. DISTRICT COURT
SIXTH DIVISION

PHILIP DEY	:	
	:	
v.	:	A.A. No.: 6AA-2014-124
	:	
STATE OF RHODE ISLAND	:	
(RITT APPELLATE PANEL)	:	
	:	

DECISION

CLIFTON, J. This matter is before the Court on the complaint of Philip Dey (Appellant) seeking judicial review of a final decision rendered by the Rhode Island Traffic Tribunal (RITT) Appellate Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-9.

FACTS AND TRAVEL

On June 29, 2012, Appellant was stopped by a police officer in the Town of North Kingstown for speeding. (RITT Decision, at 1). Appellant was cited for violation of § 31-14-2(a).[1] Appellant was charged with traveling forty miles per hour within a thirty-five mile per hour zone. Id. Appellant contested the violation charged against him and the matter proceeded to trial before Magistrate Goulart ("Trial Magistrate") on February 1, 2013. Id. The Trial Magistrate, who found that Appellant was a frequent offender under the Colin Foote Statute,[2]

[1] Section 31-14-2(a) states, "[w]here no special hazard exists that requires lower speed for compliance with § 31-14-1, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this title shall be lawful, but any speed in excess of the limits specified in this section or established as authorized in this title shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful."

[2] The Colin Foote Statute, in pertinent part, reads: "Every person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period may be fined up to one thousand dollars ($1,000), and shall be ordered to attend sixty (60) hours of driver retraining, shall be ordered to perform sixty (60) hours of public community service, and the

sustained the aforementioned charge, and imposed the following sentence: a $250.00 monetary fine, a three-month loss of his driver's license, sixty hours of community service, and a sixty-hour driver re-training program. Id.

Thereafter, Appellant filed a timely appeal to the RITT Appellate Panel and argued that his sentence exceeded the Trial Magistrate's authority under the Colin Foote Statute. Id. Upon determining that the Trial Magistrate erred in determining that Appellant was a frequent offender under the Colin Foote Statute, the RITT Appellate Panel remanded Appellant's case to the Trial Magistrate for resentencing consistent with its decision. Id. at 1-2. On remand, the Trial Magistrate stated that he would reduce the sixty-hour driver re-training class to a four-hour driver re-training class because of Appellant's driving record, which includes ten speeding violations and several other violations. Id. at 2 (citing Tr. at 12)). In addition to requiring Appellant to complete the aforementioned four-hour driver's re-training class, the Trial Magistrate suspended Appellant's driver's license for three months, and imposed upon Appellant a fine of $95.00 and $35.00 in court costs. Id. With respect to his suspending of Appellant's driver's license for three months, the Trial Magistrate relied on § 31-41.1-6(c) for legal authority to suspend Appellant's driver's license for such an amount of time. Moreover, in justifying his revised sentence as a whole, the Trial Magistrate stressed that it is within his power—as a Magistrate of the Traffic Tribunal—"to order driver re-training, suspensions, consistent with the statute for any offense, even a first time offender . . . ." Id. (quoting Tr. at 14)).

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person's operator license in this state may be suspended up to one year or revoked by the court for a period of up to two (2) years. Prior to the suspension or revocation of a person's license to operate within the state, the court shall make specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard." Sec. 31-27-24(a).

Aggrieved by the Trial Magistrate's revised sentence, Appellant timely filed an appeal pursuant to § 31-41.1-8, and the RITT Appellate Panel heard the appeal on March 12, 2014. The RITT Appellate Panel determined that the Trial Magistrate did not abuse his discretion or commit an error of law by suspending Appellant's driver's license for three months and by requiring Appellant to complete a four-hour driver re-training course. Thereafter, Appellant filed a complaint for judicial review in this Court.

STANDARD OF REVIEW

The standard of review this Court employs on a review of a final decision of the RITT Appellate Panel is § 31-41.1-9(d). That section provides:

> "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 prejudiced because the appeals panel's findings, inferences, conclusions or decisions 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."

In conformity with our review of agency decisions, this Court will not "substitute its judgment for that of the [RITT Appellate Panel]" on questions of fact and will refrain from "weigh[ing] the evidence." Elias-Clavet v. Bd. of Review, 15 A.3d 1008, 1013 (R.I. 2013); Johnston Ambulatory Surgical Assoc.'s, Ltd. v. Nolan, 755 A.2d 799, 805 (R.I. 2000). It follows that this Court will uphold the RITT Appellate Panel's findings of fact although a reasonable mind might have reached a contrary result. See D'Ambra v. Bd. of Review, Dept. of Emp't

Sec., 517 A.2d 1039, 1041 (R.I. 1986). The aforementioned standard of review to which this Court must abide is identical to the standard of review that the RITT Appellate Panel was required to employ, which is prescribed by § 31-41.1-8(f). Here, the RITT Appellate Panel has made determinations based on the record and arguments presented to them, and the role of this Court is "limited to determining whether any legally competent evidence exists within the record as a whole, or whether reasonable inferences may be drawn therefrom, to support the decision being reviewed, or whether the [RITT Appellate Panel] committed error of law in reaching its decision." Elias-Clavet, 15 A.3d at 1013. "Legally competent evidence is defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance." Id. (internal quotations omitted). Finally, unlike questions of fact, this Court will "'review questions of law de novo.'" State v. Rosenbaum, 114 A.3d 76, 80 (R.I. 2015) (quoting Wilby v. Savoie, 86 A.3d 362, 372 (R.I. 2014)).

ANALYSIS

Appellant argues on appeal before this Court that because Appellant was charged with traveling less than ten miles per hour over the posted speed limit, and even assuming that Appellant had been cited for traveling twenty miles per hour over the posted speed limit, Appellant's driver's license should have been suspended for only thirty days or sixty days respectively, pursuant to § 31-41.1-4(b)(1) and § 31-41.1-4(b)(2). In pertinent part, §§ 31-41.1-4(b)(1) and 31-41.1-4(b)(2) provide:

> "(1) For speeds up to and including ten miles per hour (10 mph) over the posted speed limit on public highways . . . the license may be suspended up to thirty (30) days.

(2) For speeds in excess of ten miles per hour (10 mph) over the posted speed limit on public highways . . . the license may be suspended up to sixty (60) days."

Furthermore, Appellant asserts that the Trial Magistrate erred in relying upon § 31-41.1-6(c) for legal authority in suspending Appellant's driver's license for a longer period of time than the thirty-day or sixty-day period prescribed by §§ 31-41.1-4(b)(1) and 31-41.1-4(b)(2) because § 31-41.1-4(b) is the more specific sentencing provision. To bolster his argument, Appellant relies on Park v. Ford Motor Co., 844 A.2d 687, 694 (R.I. 2004) in which our Supreme Court stated that "[e]very attempt should be made to construe and apply [conflicting general and specific provisions] so as to avoid the inconsistency."

As the Trial Magistrate's ruling is one of statutory interpretation, this Court undertakes a de novo review of the Trial Magistrate's decision to suspend Appellant's driver's license for three months. See Rosenbaum, 114 A.3d at 80. One of the well-established principles this Court follows when interpreting statutes is that "'when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'" Duffy v. Estate of Scire, 111 A.3d 358, 363 (R.I. 2015) (quoting Tanner v. Town Council of East Greenwich, 880 A.2d 784, 796 (R.I. 2005)). Nonetheless, this "plain meaning approach must not be confused with 'myopic literalism.'" State v. Hazard, 68 A.3d 479, 485 (R.I. 2013) (quoting In re Brown, 903 A.2d 147, 150 (R.I. 2006)). Even when this Court construes "clear and unambiguous statutory provision[s], it is entirely proper for [this Court] to look to the sense and meaning fairly deducible from the context." Id. Therefore, this Court "consider[s] the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.'" Raiche v. Scott, 101 A.3d 1244, 1248 (R.I. 2014) (quoting Hazard, 68 A.3d at 485)).

A second well-established principle this Court follows when interpreting statutes is that of in pari materia, which provides that "statutes on the same subject . . . are, when enacted by the same jurisdiction, to be read in relation to each other." Reed Dickerson, *The Interpretation and Application of Statutes*, 233 (1975). When this Court is "faced with statutory provisions that are in pari materia, we construe them in a manner that attempts to harmonize them and that is consistent with their general objective scope." Horn v. S. Union Co., 927 A.2d 292, 295 (R.I. 2007).

Here, Appellant's reading of §§ 31-41.1-4(b)(1) and 31-41.1-4(b)(2) is narrow. Appellant reads these sections as though they are isolated punitive provisions unconnected to the other chapters and sections within Title 31, and as though the thirty-day and sixty-day parameters that it prescribes are mandatory limits by which RITT judges and magistrates must abide. On the contrary, the introductory phrase to § 31-41.1(b) itself allows RITT judges and magistrates to impose the penalties enumerated by § 31-41.1-4(b) "*[i]n addition* to any other penalties provided by law." (Emphasis added.) Accordingly, in ascribing to § 31-41.1(b) its "plain and ordinary meaning," the Trial Magistrate possessed the legal authority to impose a penalty that may not be explicitly enumerated by § 31-41.1-4(b) so long as it is a penalty "provided by law." § 31-41.1-4(b); Duffy, 111 A.3d at 363. Similarly, § 31-41.1-6(c) equips RITT judges and magistrates with the legal authority to suspend drivers' licenses in accordance with any Title 31 provision:

> "A judge or magistrate may include in the order the imposition of any penalty authorized by any provisions of this title for the violation, including, but not limited to, license suspension and/or in the case of a motorist under the age of twenty (20), community service, except that no penalty for it shall include imprisonment. A judge or magistrate may order the suspension or revocation of a license or of a registration in the name of the defendant in accordance with any provisions of this title which authorize the suspension or revocation of a license or

> of a registration, or may order the suspension of the license and the registration of the defendant for the willful failure to pay a fine previously imposed."

Consequently, at issue is whether the Trial Magistrate's suspending of Appellant's driver's license—due to Appellant's unlawful speeding—for three months rather than for only thirty days or sixty days under § 31-41.1-4(b) is "provided by law" and is "authorized by any" Title 31 provision. §§ 31-41.1-4(b); 31-41.1-6(c).

Two sections from separate chapters within Title 31 evince the General Assembly's intent to equip RITT judges and magistrates with broad discretion when suspending drivers' licenses. First, Chapter 11 of Title 31 mandates RITT judges and magistrates keep a full record for each case in which a person is charged with violating any Title 31 section, and for an abstract of this full record to be sent to the division of motor vehicles. See § 31-11-5. More importantly, when sending such abstracts to the division of motor vehicles, RITT judges and magistrates "may make an order to the division of motor vehicles as to the suspension of the license of the defendant in cases *as he or she may deem necessary*." Id. (Emphasis added.) Second, Chapter 27 of Title 31 provides that RITT judges and magistrates may take the initiative to "furnish to the division of motor vehicles the details of all particularly flagrant cases . . . and may make *any recommendations* to the division of motor vehicles as to the suspension of the license of the persons defendant in the case that the judge may deem necessary." Sec. 31-27-12.3(c)(3) (emphasis added).

The plain and ordinary meaning of §§ 31-11-5 and 31-27-12.3(c)(3) evidences that RITT judges and magistrates possess unlimited discretion when suspending the licenses of those drivers adjudicated to have violated one or more sections within Title 31, unless the specific section that the driver violated does not afford RITT judges or magistrates such discretion.

Because § 31-41.1-4(b) is devoid of any such language curtailing the discretion of RITT judges or magistrates pursuant to §§ 31-11-5 and 31-27-12.3(c)(3), this Court finds that the Trial Magistrate's suspending of Appellant's driver's license for three months due to his speeding violation is "provided by law" and is "authorized by" Title 31. Secs. 31-41.1-4(b); 31-41.1-6(c).

Appellant submits that if this Court were to find that § 31-41.1-6(c) grants the Trial Magistrate the authority to go beyond the guidelines of § 31-41.1-4(b), then the specific suspension provisions contained within § 31-41.1-4(b) would be "eviscerated." This Court disagrees. On its face, the introductory phrase to § 31-41.1-4(b) also states that "a judge *may* impose the following penalties for speeding." (Emphasis added.) Consistent with the aforementioned plain meaning approach, it follows that § 31-41.1-4(b) permits a judge to suspend a driver's license for up to thirty days or sixty days depending upon the driver's speed in relation to the posted speed limit, but in no way does it limit a judge's suspension of a driver's license to only thirty days or sixty days.

Furthermore, this Court finds that because both §§ 31-41.1-4(b) and 31-41.1-6(c) deal with penalties that could be imposed for violating our motor vehicle code, we read the two statutes as being in pari materia. See Horn, 927 A.2d at 294. Thus, "we construe them in a manner that attempts to harmonize them and that is consistent with their general objective scope." Id. at 295 (quoting State v. Dearmas, 841 A.2d 659, 666 (R.I. 2004)). As stated above, § 31-41.1-4(b) articulates that a driver's license "may" be suspended for speeding. Our Supreme Court has firmly established that "the use of the term 'may' denotes a permissive, rather than an imperative, condition." Downey v. Carcieri, 996 A.2d 1144, 1151 (R.I. 2010); see also Castelli v. Carcieri, 961 A.2d 277 (R.I. 2008) ("the use of the word 'may' . . . implies an allowance of discretion."). Because § 31-41.1-4(b) does not include an obligatory cap with respect to the

length of time to which RITT judges and magistrates must adhere when suspending drivers' licenses, suspending a driver's license longer than thirty or sixty days in accordance with § 31-41.1-6(c) does not eviscerate § 31-41.1-4(b), but rather, it supplements § 31-41.1-4(b). Quite simply, one statute articulates that a driver's license may be suspended by a RITT judge or magistrate for up to thirty days or sixty days depending upon the driver's speed in relation to the posted speed limit, and the other statute articulates that an RITT judge or magistrate may also suspend the driver's license for other amounts of time so long as it is authorized by any provision in Title 31.

Lastly, this Court notes that other sections from Title 31 use the word "shall" to prohibit RITT judges and magistrates from suspending drivers' licenses for more than a specified maximum period of time for traffic violations. This use of "shall" is a further indication that by using the word "may" in § 31-41.1-4(b), the General Assembly intended to allow RITT judges and magistrates to suspend drivers' licenses for a longer period of time than that which is prescribed by § 31-41.1-4(b). For instance, § 31-27-22(b)(1) provides that the drivers' licenses belonging to those drivers who engage in street racing for the first time "*shall* be suspended for a period of not less than ninety (90) days nor more than six (6) months." (Emphasis added.) In using such mandatory language, the General Assembly has clearly prohibited RITT judges and magistrates from suspending the licenses of those drivers who participate in street racing for the first time "for more than six (6) months." Id. Accordingly, if the General Assembly intended to prohibit RITT judges and magistrates from suspending drivers' licenses for more than the thirty-day or sixty-day period enumerated in §§ 31-41.1-4(b)(1) and 31-41.1-4(b)(2), then it would have imposed mandatory parameters as it did in § 31-27-22(b)(1).

CONCLUSION

In light of the foregoing reasons, this Court finds that the RITT Appellate Panel did not abuse its discretion or commit an error of law by upholding the Trial Magistrate's decision to suspend Appellant's driver's license for three months. Substantial rights of Appellant have not been prejudiced. Therefore, Appellant's appeal is denied, and the charged violation sustained.