

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

State of Rhode Island

v.

Margaret Maxwell

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:
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A.A. No. 10-113

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings & Recommendations of the Magistrate.

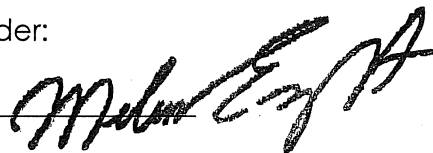
After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto.

It is, therefore, ORDERED, ADJUDGED AND DECREED, that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the appellate panel of the Traffic Tribunal is AFFIRMED.

Entered as an Order of this Court at Providence on this 27th day of October, 2010.

By Order:

Clerk



Melvin J. Enright
Acting Chief Clerk

Enter:



Jeanne E. LaFazia
Chief Judge

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

STATE OF RHODE ISLAND	:	
	:	
V.	:	A.A. No. 2010 – 113
	:	(M09-0024)
MARGARET MAXWELL	:	(07-407-009475)

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Ms. Margaret Maxwell urges that the appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it dismissed her appeal from a conviction in the North Providence Municipal Court on a charge of “Turn Signal Required,” a civil offense under Gen. Laws 1956 § 31-16-5. This matter has been referred to me for the making of findings and recommendations pursuant to General Laws 1956 § 8-8-8.1. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9. After a review of the entire record, I find that the decision of the panel should be affirmed and I so recommend.

TRAVEL OF THE CASE

On June 25, 2009, Ms. Maxwell was charged by a member of the North Providence Police Department with the single charge of turn signal required in summons number 07-407-09475. On September 28, 2009, the matter proceeded to trial before a judge of the North Providence Municipal Court, who found Ms.

Maxwell guilty.

The motorist timely appealed to the RITT appellate panel pursuant to Gen. Laws 1956 §§ 8-18-9 and 31-41.1-8 and the matter was denominated C.A. No. M09-0024. On April 28, 2009, the appeal was heard by a panel comprised of: Magistrate Dominic DiSando (Chair), Judge Edward Parker and Magistrate Alan Goulart. By order dated May 3, 2009, the panel dismissed Ms. Maxwell's appeal based on the fact that she did not appear before the panel and because she had not presented a trial transcript to the panel for its consideration. See ORDER, dated April 30, 2009, at 1.

On May 14, 2010, Ms. Maxwell filed the instant pro-se complaint for judicial review in the Sixth Division District Court pursuant to section 31-41.1-9 of the General Laws.

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 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.

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

ISSUE

The issue before the Court is whether the appeals panel committed error when it dismissed Ms. Maxwell's appeal due to her failure to appear and her failure to provide a trial transcript?

ANALYSIS

In her statement of appeal filed on May 14, 2010 Ms. Maxwell apologized for missing the court date before the panel and explained that she is a student at a local college and had examinations that day. She does not indicate she made any attempt to have the case reassigned. I believe the decision of the panel to dismiss her appeal should be upheld for the following reasons:

First, the panel correctly cited Gregson v. Superior Court, 46 R.I. 362, 365, 128 A. 221, 222 (1925) for the proposition that a party in a civil case who fails to appear trial may be defaulted. The panel's invocation of this precedent in the situation where an appellant failed to appear for appeal session was certainly apt and appropriate.

Second, it is oft-stated — and undeniable — that in the absence of a transcript an appellate court cannot provide a meaningful review. Falcone v. State,

871 A.2d 361, 363 (R.I. 2005). Therefore, the panel could not proceed in the absence of the record of the trial below and its dismissal of her appeal was reasonable and proper.

CONCLUSION

Upon careful review of the record, I recommend that this Court find that the decision of the appellate panel was not affected by error of law in that the dismissal of her appeal was an appropriate remedy. See General Laws 1956 § 31-41.1-9. Accordingly, I recommend that the decision of the RITT appellate panel be AFFIRMED.

A handwritten signature in black ink, appearing to read 'J. P. I.', followed by a long horizontal flourish.

Joseph P. Ippolito
MAGISTRATE

OCTOBER 27, 2010