

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

v.

**ALBERT LAWRENCE THOMAS**

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**C.A. No. T20-0005  
19001504800**

**DECISION**

**PER CURIAM:** Before this Panel on November 25, 2020—Magistrate Kruse Weller (Chair), Judge Parker, and Magistrate DiChiro, sitting—is Albert Thomas Lawrence’s (Appellant) appeal from a decision of Administrative Magistrate Joseph A. Abbate (Trial Magistrate) of the Rhode Island Traffic Tribunal, denying the Appellant’s motion to vacate the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits,” and § 31-22-22(g), “Safety belt use.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For the reasons stated herein, this Panel sustains the Trial Magistrate’s decision

**I**

**Facts and Travel**

On February 12, 2019, Officer Antonio Miguel, Jr. (Officer Miguel) of the Rhode Island State Police issued Summons 19001504800 to the Appellant for speeding eleven miles in excess of the posted speed limit and no seat belt. *See* summons 19001504800.

On March 7, 2019, when the matter was scheduled for first appearance, Appellant failed to appear. Ten months later on January 29, 2020 Appellant filed a motion to vacate the judgment and a hearing was scheduled for February 5, 2020. In his motion form, the Appellant wrote as the reason why he missed his court date as “due to medical issues/work.”

On February 5, 2020, the motion was heard and the Appellant also argued that he did not receive the summons and did not know what day to come to court. The Trial Magistrate denied the Appellant's motion based on the Appellant's reason that "he had to go to work." (Tr. 1). The Trial Magistrate noted "evidently you knew because you said, 'I didn't come because I had to go to work.'" *Id.* The Appellant subsequently filed this timely 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 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 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 *Envtl. 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, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

On appeal, Appellant asserts that the Trial Magistrate erred in his denial of the motion to vacate the judgment because the actual reason Appellant did not appear is because he did not receive the summons and was unaware that he was supposed to be in court due to his address changing and he never received the ticket.

Pursuant to Rhode Island Traffic Tribunal Rules of Procedure Rule 20(a) "[t]he court may, upon motion or on its own initiative, relieve a party or a party's legal representative from a judgment or order for . . . mistake, inadvertence, surprise, or excusable neglect." "It is well established in this jurisdiction that unexplained neglect, standing alone . . . will not automatically excuse noncompliance with orderly procedural requirements." *Santos v. D. Laikos, Inc.*, 139 A.3d 394, 398 (R.I. 2016) (citing *Iddings v. McBurney*, 657 A.2d 550, 553 (R.I. 1995)). To establish excusable neglect, "a party must generally show that the circumstances that caused the party to miss a deadline were out of that party or counsel's control." *Santos*, 139 A.3d at 399.

Moreover, "[a] motion to vacate default judgment is addressed to the sound discretion of trial justice and will not be distributed absent a showing of abuse of discretion." *Pirhonen v. Green*, 641 A.2d 1325, 1326 (R.I. 1993). On appeal, 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* 633 A.2d at 1348. Our Supreme Court has held that reviews by an appeals panel are “confined to a reading of the record.” *Link*, 633 A.2d at 1348. Therefore, an appellant may not introduce new evidence during an appeal if doing so would require that the Panel reconsider questions of fact. *See id.*

Here, the Trial Magistrate denied Appellant’s motion to vacate the judgment because the Appellant’s reason in support of the motion that he “had to go to work” failed to meet the standard of excusable neglect or any other reason justifying vacating the default in accordance with Rule 20. *See UAG West Bay AM v. Cambio*, 987 A.2d 873, 881 (2010) (holding that an attorney’s claim that he was “extremely busy” and forgot to file notice of appeal is “not a sufficient basis for a finding of excusable neglect”). Moreover, in *Santos*, the Supreme Court noted that circumstances in the plaintiff’s control, such as a failure to update an electronic filing system with correct contact information do not establish excusable neglect. 139 A.2d at 399. Thus, because the reason supporting Appellant’s motion was in Appellant’s control and the Trial Magistrate found that the reason did not rise to the level of excusable neglect, this Panel is satisfied that the Trial Magistrate did not abuse his discretion in denying Appellant’s motion to vacate the judgment.

Moreover, as this Panel is confined to a reading of the record, this Panel cannot hear new evidence on appeal that reconsiders question of fact. *See Link*, 633 A.2d at 1348. As such, this Panel cannot consider Appellant’s argument about his address change. *Id.* The time to submit additionally or alternative evidence that the Appellant had changed addresses and was not receiving mail was in his original motion, not on appeal.

#### **IV**

#### **Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision was not "[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." *See* § 31-41.1-8(f)(6). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

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Magistrate Erika Kruse Weller (Chair)

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Magistrate Michael DiChiro, Jr.

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Judge Edward C. Parker

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