

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

v.

**J.D**

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**C.A. No. T19-0012  
18203505888**

**DECISION**

**PER CURIAM:** Before this Panel on August 21, 2019—Magistrate DiChiro (Chair), Administrative Magistrate Abbate, and Magistrate Kruse Weller, sitting—is J.D’s (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Hearing Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 21-28-4.01(c)(1), Possession of marijuana, 1 ounce or less, 18 years or older.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

**I**

**Facts and Travel**

On October 7, 2018, Officer William Holz of the Warwick Police Department issued Appellant a citation for the possession of one ounce or less of marijuana. *See* Summons No. 18203505888. Appellant was scheduled to appear for a hearing on October 19, 2019 to enter a plea. However, Appellant failed to appear for the hearing on the scheduled date. As such, a judicial officer of the Rhode Island Traffic Tribunal entered a default judgment against Appellant, sustaining the charged violation. Appellant subsequently filed a motion to vacate the default judgment on April 10, 2019, pursuant to Rhode Island Traffic Tribunal Rule of Procedure 20.

At the hearing on Appellant's Motion to Vacate on April 26, 2019, Appellant stated that she arrived at the hearing late and, by that time, a default judgment had already been entered against Appellant. (Tr. at 1.) Appellant further stated that she did not pay the ticket after the default judgment entered because she lost her job. *Id.* In addition, Appellant argued that no one at the Rhode Island Traffic Tribunal told Appellant that she could file a motion to vacate the default judgment. *Id.* The Hearing Magistrate informed Appellant that Rhode Island Traffic Tribunal employees are not permitted to give motorists legal advice and that Appellant is "required to know what the rules are." *Id.*

Appellant then asked the Hearing Magistrate if the fine could be reduced because the fine doubled once after thirty days and again after sixty days of nonpayment. *Id.* The Hearing Magistrate stated that he could not reduce the fine because "it doubles by law." *Id.* Thereafter, the Hearing Magistrate sustained the default judgment against Appellant, finding that Appellant "purposefully ignored [the ticket]." *Id.* at 2. Thereafter, Appellant filed a timely appeal of the Hearing Magistrate's decision. Forthwith is this Panel's decision.

## 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 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 Mutual Insurance Company 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 *Environmental Science Corporation 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 Hearing Magistrate’s decision was “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” *See* § 31-41.1-8(f)(5). Specifically, Appellant avers that the default judgment entered against her

should be vacated because she arrived late to the hearing due to her responsibility as her mother's caretaker.

Pursuant to 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 . . . [m]istake, inadvertence, surprise, or excusable neglect.” However, “it is well established in this jurisdiction that unexplained neglect, standing alone and without more . . . will not automatically excuse noncompliance with orderly procedural requirements.” *Santos v. D. Laikos, Inc.*, 139 A.3d 394, 398 (R.I. 2016) (quoting *Iddings v. McBurney*, 657 A.2d 550, 553 (R.I. 1995)) (internal quotation marks omitted). The Rhode Island Supreme Court has defined “excusable neglect” as

“[a] failure to take the proper steps at the proper time, not in consequence of the party’s own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party,” *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)).

In order to establish excusable neglect, “the 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 (quoting *Boranian 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 (*pro se* 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). In determining whether excusable neglect exists, factors to be considered include the reason for the error, its potential impact on judicial proceedings, whether it was within the reasonable control of the movant, and whether the movant acted in good faith. *Boranian*, 983

A.2d at 839 (citing *Conetta v. National Hair Care Centers, Inc.*, 183 F.R.D. 403, 406 (D.R.I. 1998)).

Here, the Trial Magistrate did not err in sustaining the default judgment against Appellant. The Appellant's arriving late to her hearing due to prior obligations does not warrant a finding of "excusable neglect." See *UAG West Bay AM v. Cambio*, 987 A.2d 873,881 (2010) (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"). In addition, Appellant knew on October 19, 2018 that a default judgment entered against her, yet Appellant waited until April 10, 2019—approximately six months later—to file her Motion to Vacate. Appellant asserts that she did not know that she could file a motion to vacate the judgment; however, this lack of knowledge does not constitute excusable neglect. See *id.* (attorney's assertion that he did not know how to file notice of appeal is not excusable neglect). As the circumstances that caused Appellant to miss the hearing were fully in Appellant's control, this Panel is satisfied that the Hearing Magistrate's decision to deny Appellant's Motion to Vacate was neither clearly erroneous nor an abuse of discretion. See *Santos*, 139 A.3d at 399; sec. 31-41.1-8(f)(5)-(6).

## IV

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Hearing Magistrate's decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary, capricious, or characterized by an abuse of discretion. Sec. 31-41.1-8(f)(5)-(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 Michael DiChiro (Chair)

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Administrative Magistrate Joseph A. Abbate

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Magistrate Erika Kruse Weller

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