STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF BRISTOL :
:
V. : Appeal No. M11-0012
:
DAVID GALUPPO :

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STATE OF RHODE ISLAND TRAFFIC TRIBUNAL FILED

DECISION

PER CURIAM: Before this Panel on June 29, 2011—Magistrate Noonan (Chair, presiding), Administrative Magistrate Cruise, and Judge Almeida, sitting—is David Galuppo's (Appellant) appeal from a decision of Municipal Court Judge Grasso, sustaining the charged violations of G.L 1956 §§ 31-27-24, "Prima facie limits and 31-14-2, "Colin B. Foote Act," brought by the Town of Bristol (Appellee). Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On December 17, 2010, after observing Appellant's vehicle traveling forty-five miles per hour in a posted twenty-five mile per hour speed zone, Officer Mark Browning of the Bristol Police Department (Officer Browning) conducted a traffic stop. (4/12/11 Tr. at 1.) Officer Browning issued Appellant a summons for speeding. (4/12/11 Tr. at 1.) Appellant contested the charge, and the matter proceeded to trial.

On April 12, 2011, Appellant did not appear for trial at the Bristol Municipal Courthouse. (Tr. at 1.) Officer Browning informed the trial judge that Appellant had

already failed to appear for a prior court date relating to this charge, and the trial judge decided to proceed with the trial.

At trial, Officer Browning testified that he has been a police officer for seven years and has received formal training and been certified in radar operation by the Rhode Island Municipal Police Academy. (4/12/11 Tr. at 2.) He confirmed that he internally and externally calibrated his radar unit prior to beginning his shift. (4/12/11 Tr. at 2.) Officer Browning then testified that on December 17, 2010, he stopped Appellant's vehicle for speeding and issued him a summons for violating § 31-14-2, "Prima facie limits." The trial judge entered default judgment against Appellant for failing to appear. However, had Appellant appeared, the trial judge noted, Officer Browning's testimony would have been enough to find him guilty of § 31-14-2.

On April 26, 2011, Appellant appeared before the trial court seeking to vacate pursuant to R.I. Traff Trib. R. P. 20(6). Appellant stated that he attempted to pay the ticket prior to the first trial but arrived too late and was defaulted. (4/12/11 Tr. at 2.) The trial judge denied Appellant's motion to vacate. The trial judge then informed Appellant that because he had incurred more than four traffic violations in the previous eighteen months[1], he would be subject to "The Coline B. Foote Act" § 31-27-24. As such, finding that the State had met its burden in proving all the elements of the offenses under §31-27-24 and § 31-14-2, the trial judge imposed penalties. (4/12/11 Tr. at 2.)

Appellant appealed this Decision. The Decision of the majority of the Appeals Panel is rendered below.

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[1] Appellant was charged with violating § 31-20-9 "Obedience to Stop Signs" on 1/5/2011; violating § 31-14-2 "Prima facie limits" on 2/10/11; violating § 31-14-2 "Prima facie limits" on 12/17/10; and violating § 31-14-2 "Prima facie limits" on 9/15/10.

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 on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, may remand the case for further proceedings, or may 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 following 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, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing a hearing judge'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 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 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 decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific 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." Link, 633

A.2d at 1348. Otherwise, it must affirm the hearing judge's conclusions on appeal. See Janes, 586 A.2d at 537.

III

Analysis

Appellant, arguing that the trial judge's decision was affected by error of law and characterized by an abuse of discretion, moves to vacate the trial judge's ruling. Appellant claimed he was denied the right to present a defense when he failed to appear in court and therefore, the court's guilty verdict should be vacated.

The trial court may enter a default judgment against a defendant if he or she fails to appear despite being given notice. R.I. Traffic Trib. R. P. 17(b) (Rule 17(b)). Rule 17(b) holds that if a motorist fails to appear and the truth and validity of the allegations on the summons have been sworn to by the issuing officer, a default judgment of guilty may enter against the defendant. Id. Rule 17(b) is analogous to Rule 55 of the Superior Court Rules of Civil Procedure. See Super. R. Civ. P. 55(c) (Rule 55). Rule 55 provides that judgment by default may be entered when the party against whom relief is sought has failed to plead or defend the suit. McKinney & Nazareth, P.C. v. Jarmoszko, 774 A.2d 33, 37 (R.I. 2001).

Before this Panel, Appellant moves under R.I. Traff Trib. R. P. 21 for relief from a trial judgment or order. Rule 21 states that a "defendant aggrieved by a sentence of a court in a civil traffic violation may appeal therefrom to the appellate panel of the traffic tribunal. . . . the notice of appeal shall contain a concise statement of the grounds therefore." However, the Rhode Island Supreme Court has held that a defendant's unexplained neglect is not sufficient to excuse failure to appear. Bloom v. Trudeau, 107

R.I. 303, 266 A.2d 417, 418 (1970) (holding defendant's increased workload was not sufficient to excuse noncompliance with orderly procedures).

In reviewing a hearing judge's decision pursuant to Rule 21, this Panel will not disturb the trial justice's ruling absent a showing of abuse of discretion or an error of law. See Link, 633 A.2d at 1348. At the first trial date, Appellant failed to appear before the court and was accordingly found in default. (4/12/11 Tr. at 1.) In order to gain relief Appellant needed to demonstrate his absence from trial was the result of excusable neglect. Pari v. Pari, 558 A.2d 632 (R.I. 1989) ("excusable neglect that would qualify for relief from judgment is generally that course of conduct which a reasonably prudent person would take under similar circumstances []").

The Appellant stated to the trial judge: "I was told that I could go pay that [the ticket] before the court dates so I was going to . . . . that day but I went to the clerk's office to try and pay it but by the time I got here I was too late." (4/12/11 Tr. at 2.) As such, the record clearly evidences that Appellant failed to demonstrate "excusable neglect" to the satisfaction of the trial judge. Accordingly, this Panel finds the decision of the Municipal Court judge did not constitute an abuse of discretion. See Bailey v. Algonquin Gas Transmissions Co., 788 A.2d 478, 482 (R.I. 2002) (appellate court will not overturn a trial court ruling absent a showing of abuse of discretion or error of law).

A

Trial Judge's Credibility Findings

Additionally, Appellant asserts the trial judge abused his discretion in denying the motion to vacate, and thereby prejudiced Appellant by denying him an opportunity to present a defense. Specifically, Appellant contends that the trial judge chose to credit

Officer Browning's trial testimony that the radar unit recorded, and he observed, Appellant's vehicle operating in excess of the posted speed limit without allowing Appellant to rebut the charge.

In Link, our Supreme Court made clear that this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of Officer Browning or Appellant, it would be impermissible to second-guess the trial judge's "impressions as he . . . observe[d] [Officer Browning and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[]." Environmental Scientific Corp., 621 A.2d at 206. After listening to the trial testimony, the trial judge determined that the Officer's testimony was sufficient to find Appellant guilty. Confining our review of the record to its proper scope, this Panel is satisfied that the trial judge did not abuse his discretion, and his decision to sustain the charged violation is supported by legally competent evidence.

This Panel is satisfied that the record demonstrates Officer Browning's testimony satisfies the prevailing standard for admissibility of radar speed readings set forth in State v. Sprague,113 R.I. 351, 322 A.2d 36 (1974). In Sprague, our Supreme Court held that a radar speed reading is admissible in evidence upon a showing that "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method," and "testimony setting forth [the Officer's] training and experience in the use of a radar unit." Sprague, 113 R.I. at 357, 322 A.2d at 39-40.

In the present case, based on the credible testimony of Officer Browning, the trial judge found that he had received the necessary training in the use of radar units, specifically, the particular unit used on the date in question, while he was at the Rhode Island Municipal Police Academy. (Tr. at 2.) Additionally, the trial judge was able to rely on the testimony from Officer Browning that on the date in question, the radar device was properly calibrated both internally and externally before he started his shift. Thus there is reliable, probative, and substantial evidence on the record to satisfy the Sprague factors.

Accordingly, the members of this Panel conclude that the trial judge's decision to sustain the charged violation of § 31-14-2—based on Officer Browning's radar speed reading and the testimony of the Officer—is unaffected by error of law and does not constitute an abuse of discretion. Accordingly, presented with the Appellant's absence and failure to demonstrate excusable neglect, along with Officer Browning's testimony, the trial judge did not abuse his discretion in denying the motion to vacate.

B

Colin B. Foote Act

At Appellant's appearance for his Motion to Vacate, the trial judge noted Appellant was in violation the Colin B. Foote Act (the Act) §31-27-24. The Act requires courts to impose additional penalties on drivers convicted of "moving violations on four separate and distinct occasions within an eighteen month period." Sec. 31-27-24 (a). At trial, the trial judge recounted Appellant's driving record: a violation of § 31-20-9 "Obedience to Stop Signs" on 1/5/2011; a violation of § 31-14-2 "Prima facie limits" on 2/10/11; a violation of § 31-14-2 "Prima facie limits" on 12/17/10; and a violation of § 31-14-2 "Prima facie limits" on 9/15/10. He found that these violations qualified

Appellant to have his license suspended for up to one year or revoked for up to two years, to be fined up to one thousand dollars, to be ordered to attend sixty hours of community service, and to be ordered to attend sixty hours of driver retaining. Id. After considering Appellant's occupation and driving record, the trial judge imposed a thirty day license suspension, a two hundred dollar fine, sixty hours of community service, and driver retraining. (4/26/11 Tr. at 2.) The sentence imposed by the trial judge was consistent with the statutory provisions of § 31-27-24 and not an abuse of discretion.

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 is not clearly erroneous in light of the reliable, probative, and substantial record evidence, affected by other error of law, or an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations sustained.

ENTERED: