

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF JOHNSTON

v.

ASHLEY DESIMONE

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C.A. No. T14-0002
13405504492

DECISION

PER CURIAM: Before this Panel on March 26, 2014—Chief Magistrate Guglietta (Chair, presiding), Magistrate DiSandro III, and Magistrate Abbate, sitting—is Ashley DeSimone’s (Appellant) appeal from a default judgment entered by Magistrate Noonan (trial magistrate), sustaining the charged violations of G.L. 1956 § 31-47-9, “Operating without proof of insurance,” and Judge Almeida’s decision denying Appellant’s motion to vacate the default judgment. Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On October 31, 2013 an officer of the Town of Johnston Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter was scheduled for trial on December 5, 2013. Appellant failed to appear at her scheduled court date, was defaulted by the hearing Magistrate, and a sentence of twelve (12) months license suspension with a thousand dollar fine was imposed by the hearing Magistrate. When imposing his sentence, the hearing magistrate noted that this was Appellant’s third violation of § 31-47-9. Thereafter, Appellant filed a Motion to Vacate Default Judgment. In particular, Appellant asserted that she was not at her scheduled trial date because

she went to the wrong courthouse. A hearing on Appellant's motion was scheduled on December 17, 2013, but it was rescheduled as a result of inclement weather. The motion was finally heard before Judge Almeida on January 21, 2014. Judge Almeida denied Appellant's Motion to Vacate Default as she was not satisfied with Appellant's excuse that she had gone to the wrong courthouse.

Moreover, Judge Almeida was satisfied by reviewing Appellant's record that this was her third violation of § 31-47-9 and that the imposed penalty was within the parameters outlined in the statute. Judge Almeida stated that she was unwilling to reconsider the sentence imposed by the hearing Magistrate as it was within his statutory authority. However, Judge Almeida inquired with the hearing Magistrate as to whether he was willing to hear a Motion for Reconsideration by Appellant. The Hearing Magistrate notified Judge Almeida that he was not willing to hear Appellant's motion and Judge Almeida related this to Appellant in open court.¹ Subsequently, Appellant timely filed the instant appeal.

Standard of Review

Pursuant to G.L. 1956 § 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 The transcript provided by Appellant is incomplete and does not include Judge Almeida relaying to Appellant that the hearing Magistrate was unwilling to hear a motion to reconsider his sentence. This Panel notes that the discussion between the hearing Magistrate and Judge Almeida was not in court and as a result is not reflected in the record.

- (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 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." Link, 633 A.2d at 1348 (citing Envtl. 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 [or magistrate's] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On Appeal, Appellant admits that this was her third violation of § 31-47-9. Appellant raises no legal basis to reverse the hearing Magistrate's decision to suspend her license for twelve (12) months and impose a thousand dollar fine.

Despite the fact that Appellant raises no cognizable grounds of appeal, this Panel finds that the record of the instant matter makes clear that this constituted Appellant's third violation of § 31-47-9. Section 31-47-9, reads in relevant part, that

“[a]ny owner of a motor vehicle registered in this state who shall knowingly operate the motor vehicle or knowingly permit it to be operated in this state without having in full force and effect the financial security required by the provisions of this chapter, and any other person who shall operate in this state any motor vehicle registered in this state with the knowledge that the owner of it does not have in full force and effect financial security, except a person who, at the time of operation of the motor vehicle, had in effect an operator's policy of liability insurance, as defined in this chapter, with respect to his or her operation of the vehicle, may be subject to a mandatory suspension of license and registration . . . [f]or a third and subsequent offense, a suspension of up to one year. Additionally, any person violating this section a third or subsequent time shall be punished as a civil violation and may be fined one thousand dollars (\$1,000).”

Thus the trial magistrate did not exceed his authority, pursuant to § 31-47-9, when he suspended Appellant's license for a period of twelve months and imposed a fine of \$1000 dollars. See § 31-47-9.

It is also worth noting for purposes of discussion that the Rhode Island Rules of Civil Procedure, like the Federal Rules of Civil Procedure, generally do not recognize or provide for a motion for reconsideration. See Chavers v. Fleet Bank, N.A., 2001 WL 770904 (R.I. Super. June 29, 2001). However, our Supreme Court has “look[ed] to substance not labels” in reference to Rhode Island's “liberal rules” of civil procedure. Sarni v. Melocarro, 113 R.I. 630, 636, 324 A.2d. 648, 651-52 (1974). Consequently, “[a] motion can be construed as made under [relief from judgment or order] even if it is framed as ‘Motion to Reconsider’” See Chavers, 2001 WL 770904 (Internal quotation omitted.); see also Traffic Trib. R.P. 20. A motion for relief from judgment or order does not authorize “a motion merely for reconsideration of a legal issue

... where the motion is nothing more than a request that the [trial] court change its mind.” See United States v. Williams, 674 F.2d 310, 312-13 (4th Cir.1982)); see also Traffic Trib. R.P. 20. In Jackson v. Med. Coaches, 734 A.2d 502, 506-07 (R.I. 1999), our Supreme Court recognized that reconsideration of a previous legal error under Rule 60(b) is allowable “only [in] situations in which ‘the mistake was clear on the record, and involved a plain misconstruction of the statute on which the action was grounded.’”

Here, it is clear to this Panel that the sentence imposed by the hearing Magistrate was within his authority under the statute. See § 31-47-9. Appellant has not asserted that any legal error was made, but instead asks the hearing Magistrate to simply change his mind. See Williams, 674 F.2d at 312-1. Thus the hearing Magistrate’s sentence was not in excess of statutory authority. Accordingly, Appellant’s appeal is hereby denied and the charge against her is sustained. Appellant may still file a motion for reconsideration pursuant to Traffic Tribunal Rule of Procedure 20.

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 in excess of statutory authority or an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violation sustained.

ENTERED:

Chief Magistrate William R. Guglietta

Magistrate Domenic A. DiSandro III

Magistrate Joseph A. Abbate

DATE: _____