

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF TIVERTON

:  
:  
:  
:  
:

v.

C.A. No. T13-0029  
07305010267; 07305010268

EDWARD BERUBE

**DECISION**

**PER CURIAM:** Before this Panel on August 14, 2013—Magistrate Noonan (Chair, presiding), Judge Almeida, and Magistrate DiSandro III, sitting—is Edward Berube’s (Appellant) appeal from a decision of Magistrate Goulart, denying his Motion to Vacate a Default Judgment entered against him sustaining the charged violations of G.L. 1956 § 31-16-5, “Turn signal required”; § 31-22-22 (g), “No seat belt operator”; § 31-22-24 “Interior lights to be operated before dawn and after dusk during police stop”; and § 31-10-27 “License to be carried and exhibited on demand.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On December 18, 2012, an officer of the Town of Tiverton Police Department charged Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charge, and the matter was set down for arraignment on March 8, 2013.

However, Appellant failed to appear for his scheduled court date, and the Court entered a default judgment against him. Following the entry of the default judgment, Appellant filed a Motion to Vacate pursuant to Rule 20 of the Traffic Tribunal Rules of Procedure (Rule 20).<sup>1</sup> After a hearing on April 19, 2013, Appellant’s Motion to Vacate was denied. In considering the

---

<sup>1</sup> Rule 20 of the Rules of Procedure for the Traffic Tribunal reads, in relevant part: “On motion and upon such terms as are just the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for . . . excusable neglect.” Traffic Trib. R.P. 20.

Appellant's Motion to Vacate, the hearing magistrate asked the Appellant, "[w]hy didn't you show up for your original arraignment date?" (Tr. at 2.) The Appellant responded, "I couldn't get here I was stuck in my yard, I called, I called the court before at the time . . ." Id. The hearing magistrate retorted:

Well, it is too late at that point sir. As I said to that other gentleman, when you don't show up you lose your ability to challenge whether you have seat belt on, whether you put your interior lights on, whether you use your turn signal, or whether you have a license, you gave up your ability to challenge those facts, so that as it relates to those counts, your motion is denied.  
(Tr. at 2-3.)

It is from the denial of his motion that Appellant now appeals to this Panel.

### **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) 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 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 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 [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

“It is a well-established principle in Rhode Island that a motion to vacate a default judgment is within the discretion of the trial justice before whom the motion is brought. Such findings will not be disturbed upon appeal unless there is an error of law or an abuse of that discretion.” Phoenix Constr. Co., Inc. v. Hanson, 491 A.2d 330, 331 (R.I. 1985) (citing Friendly Homes, Inc. v. Shareholders and Creditors of Royal Homestead Land Co., 477 A.2d 934, 937 (R.I. 1985)).

### **Analysis**

On appeal, Appellant appeared before this Panel contending that the hearing magistrate’s denial of Appellant’s request to grant his Motion to Vacate was an abuse of discretion. Specifically, the Appellant asserts that had he been allowed to complete his sentence beginning—“I couldn’t get here I was stuck in my yard, I called, I called the court before at the

time . . .”—he would have explained that he was snowed-in and unable to get to the court. It is worth noting that the Appellant was born November 17, 1939, making him seventy-three (73) years old.

Here, in order to prevail on his Rule 20 motion, Appellant would have been required to prove to the satisfaction of the hearing magistrate that his failure to appear on his scheduled trial date was due to “excusable neglect.” The burden was squarely on Appellant to show that his “failure to take the proper steps at the proper time [was] not in consequence of [his] own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident. . . .” Pleasant Management, LLC v. Carrasco, 960 A.2d 216 (quoting Jacksonbay Builders, Inc. v. Azarmi, 869 A.2d 580, 584 (R.I. 2005)).

While this Panel is mindful that the Appellant failed to appear as required by our rules of procedure; our “rules are intended to provide for the just determination of every civil traffic violation.” Traffic Trib. R. P. 2. Therefore, this Panel believes that the Appellant should be afforded the opportunity to describe the entire circumstances encompassing his failure to appear at his March 8, 2013 arraignment to the hearing magistrate.

### **Conclusion**

Accordingly, without deciding the merits of the Appellant’s Motion to Vacate, this Panel orders that the Appellant’s case be remanded to the Motion Calendar for further proceedings consistent with this opinion.

ENTERED:

---

Magistrate William T. Noonan (Chair)

---

Associate Judge Lillian M. Almeida

---

Magistrate Domenic A. DiSandro, III

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