

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF WARREN

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:
:

v.

**C.A. No. M13-0011
07103010162**

MARCUS MONROE

DECISION

PER CURIAM: Before this Panel on October 9, 2013—Magistrate Abbate (Chair, presiding), Administrative Magistrate Cruise, and, Judge Parker, sitting—is Marcus Monroe’s (Appellant) appeal from a default judgment entered by Judge Mayo of the Warren Municipal Court (trial judge), sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to devices.” Appellant appeared before this Panel pro se. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On May, 21 2013, police officer James Martel of the Warren Police Department (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on July 24, 2013. However, the Appellant failed to appear. At trial, in the Appellant’s absence, the Officer testified that on May 21, 2013, at approximately 12:56 am—he was at a fixed traffic post on Charles Street in the Town of Warren. (Tr. at 1.) The Officer testified that he observed at that time a dark gold vehicle traveling at a high rate of speed. The vehicle was clocked moving forty-three (43) miles per hour in a twenty-five (25) mile per hour zone. Id. The Officer also stated that he identified the operator as Marcus Monroe. Id.

The trial judge found that the Officer’s testimony had provided “sufficient evidence to satisfy the clear and convincing standard.” Id. Thereafter, the Warren Municipal Court entered a default judgment against the Appellant. Id.

Standard of Review

Pursuant to § 8-18-9, “[a]ny person desiring to appeal from an adverse decision of a municipal court . . . may seek review thereof pursuant to the procedures set forth in § 31-41.1-8.”

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.¹ 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)). It is the policy of the court to liberally construe statutory provisions which by their nature are intended to provide defaulting litigants with their day in court. See § 9-21-2; see also Pate v. Pate, 97 R.I. 183, 196 A.2d 723 (1964). “In so doing, we rely upon our inherent powers in equity to look to the substance rather than the form of the right asserted.” Rymanowski v. Rymanowski, 105 R.I. 89, 100, 249 A.2d 407, 413 (1969)

¹ Rule 20 of the Rules of Procedure for the Traffic Tribunal reads, in relevant part:

[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 the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or misconduct of an adverse party;
- (4) the judgment or order is void;
- (5) the judgment or order has been satisfied, released, or discharged, or it is no longer equitable that the judgment or order should have prospective application;
- or (6) any other reason justifying relief from the operation of the judgment, or order, including that relief is warranted in the interests of justice.

Traffic Trib. R. P. 20.

Analysis

On appeal, Appellant appeared before this Panel contending that the hearing judge's entry of default judgment was an abuse of discretion. Specifically, Appellant argues that he was unable to make it to court because he did not have transportation. Additionally, the Appellant avers that he is not from the Warren area, did not know that it was illegal to make a left-hand turn in the relevant area, and that he has not made an illegal left hand turn on Charles Street since the incident giving rise to this controversy.

Rule 20 of the Traffic Tribunal Rules of Procedure provided Appellant with the method for filing a motion to vacate the default judgment entered by the hearing judge. Traffic Trib. R. P. 20. Following an entry of a default, the proper procedure was to file a motion to vacate the default judgment with the court that entered the default judgment. See id. In the instant matter, the Appellant failed to file a motion to vacate the default judgment with the Warren Municipal Court.

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 July 24, 2013 trial date in front of the hearing judge.

Conclusion

Accordingly, this Panel orders that the Appellant’s case be remanded to the Warren Municipal Court for further proceedings consistent with this opinion.

ENTERED:

Magistrate Joseph A. Abbate

Administrative Magistrate David R. Cruise

Judge Edward C. Parker

DATE: _____