STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT **RHODE ISLAND TRAFFIC TRIBUNAL**

TOWN OF WESTERLY	:	
	:	
v.	:	**C.A. No. M13-0003**
	:	**12504501263**
JAMES CARDILE	:	

DECISION

PER CURIAM: Before this Panel on May 29, 2013—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Goulart, sitting—is James Cardile's (Appellant) appeal from a default judgment entered by the Westerly Municipal Court, sustaining the charged violation of G.L. 1956 § 31-20-9, "Obedience to stop sign." The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On September 2, 2012, there was a motor vehicle accident involving two motor vehicles on Route 1 at the intersection of Argyle Street in Westerly, Rhode Island. (Trial Tr. Vol. 1. at 2.) Appellant was charged with the aforementioned violation of the motor vehicle code. Appellant contested the charge, and the matter proceeded to trial on March 4, 2013.

The trial commenced with the Appellant not present at trial. (Trial Tr. Vol.1 at 1.). The parties agreed and the trial judge allowed the Appellant's counsel to present Appellant's case prior to hearing the prosecution's case because of the availability of the Appellant's witness, Gerald Francese. Id.[1]

[1] Appellant's witness ("Witness"), is a licensed attorney in the state of Rhode Island. The Witness' schedule made it necessary for the court to hear his testimony on March 4, 2012. (Trial Tr. Vol. 1 at 2.)

Gerald Francese explained that he and the Appellant left his home on 17 Rock Ridge Road, Westerly, Rhode Island in their respective motor vehicles at approximately the same time. (Trial Tr. Vol.1 at 2-3.) The Witness and the Appellant proceeded on Rock Ridge Road to Ocean View Drive toward Argyle Street. (Trial Tr. Vol.1 at 3.) Gerald Francese stated he was the second motor vehicle behind the Appellant's motor vehicle. (Trial Tr. Vol.1 at 6.) Furthermore, the Witness indicated that while driving on Ocean View Drive to Argyle Street another motor vehicle came between him and the Appellant. (Trial Tr. Vol.1 at 3.) In addition, Mr. Francese testified that because of the decline of the street, he had a clear view of the Appellant's car and witnessed the Appellant's car come to a full stop at the stop sign located at the end of Argyle Street. (Trial Tr. Vol.1 at 6.)

After further testimony from Gerald Francese, the trial judge stated that the trial would reconvene the following Monday, March 11, 2013. (Trial Tr. Vol. 1 at 26.) When the trial resumed, Appellant's counsel informed the court that the Appellant was not present, again. (Trial Tr. Vol. 2 at 2.) Appellant's counsel advised the court that the Appellant was either in the hospital or receiving medical care in his home and had been unable to come to court. Id. The trial judge retorted that it had been represented to the court that the Appellant would be present. Id.[2] The trial judge also noted that Appellant's counsel had represented that Appellant was not present because he was unable to leave his home, but the trial judge stressed that he had nothing else that confirmed the veracity of Appellant counsel's representations. (Trial Tr. Vol. 2 at 3.)

The Town of Westerly made a motion for a default judgment to enter for the failure of the Appellant to appear at trial. Consequently, the trial judge granted the prosecution's motion

[2] Appellant's counsel vehemently denied directly or indirectly advising the court that his client would be present. (Trial Tr. Vol. 2 at 3.)

for a default judgment. Id. It is from entry of default judgment that Appellant now appeals to this Panel.

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.[3] 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)

[3] 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 on March 4, and March 11, 2013, because he was receiving medical care at his home.

It is important to note that Rule 23 (b) of the Traffic Tribunal Rules of Procedure provided Appellant's counsel with the mechanism to waive Appellant's appearance at Appellant's March 4, and March 11, 2013 trial dates. Traffic Trib. R. P. 23 (b). A defendant who is represented by counsel may apply to the court for an order to waive his or her presence at the arraignment, at every stage of trial, and the imposition of sentence. Id. The Westerly Municipal Court is required by the State and Municipal Court Compact to follow the Traffic Tribunal Rules of Procedure providing for waiver of defendant's presence at trial. See § 8-18-11. In doing so, Appellant's counsel could have preemptively avoided the entry of default judgment in the case at bar.

In addition, Rule 20 of the Traffic Tribunal Rules of Procedure also provided Appellant's counsel 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 is to file a motion to vacate the default judgment with the court that entered the default judgment. Id. At the same time, this Panel has the authority on its own initiative to relieve a party from a default judgment. See id.; see also Rymanowski, at 105 R.I. 89, 100, at 249 A.2d 407, 413.

Here, pursuant to Rule 20, in order for the court to grant the relief sought by the Appellant, the Appellant was required to prove to the satisfaction of the hearing judge 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)).

Furthermore, our Supreme Court has made clear that a defendant's right to "present his defense at a trial . . . should be carefully protected." Berick v. Curran, 179 A. 708, 711 (R.I. 1935). Under the Fourteenth Amendment, a tribunal must not be "biased or otherwise indisposed from rendering a fair and impartial decision." Davis v. Wood, 444 A.2d 190, 192 (R.I. 1982). Implicit in rendering a fair and impartial decision is the opportunity to be heard that conforms to the Due Process clause. It is well established that Due Process within municipal courts requires the opportunity to be heard "at a meaningful time and in a meaningful manner." Millett v. Hoisting Engineers' Licensing Div. of Dept. of Labor, 119 R.I. 285, 296, 377 A.2d 229, 235-36 (1977)); see also Gimmicks, Inc. v. Dettore, 612 A.2d 655, 660 (R.I. 1992) (court held due process requires that a [Municipal Court] allow a person to present evidence and testimony).

In the case at bar, this Panel is in the difficult position of deciding between a violation of our rules of procedure versus allowing the Appellant a fundamental right to a fair trial. 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. This Panel notes that the Appellant was born November 24, 1924, making him eight-nine (89) years old. Balancing the totality of circumstances in this case, this Panel believes that the Appellant should be afforded the opportunity to present evidence and testimony at trial despite the Appellant's violation of Rule 23.

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 an abuse of discretion. Substantial rights of the Appellant have been prejudiced. Accordingly, this Panel remands Appellant's case to the Westerly Municipal Court for a new trial.

ENTERED:

_____
Associate Judge Lillian M. Almeida (Chair)

_____
Chief Magistrate William R. Guglietta

_____
Magistrate Alan R. Goulart

DATE: _____