

**IN THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,  
LAKE COUNTY, FLORIDA  
APPELLATE DIVISION**

**TIMOTHY HARRISON BOYETT,**

**Appellant,**

v.

**APPELLATE CASE NO.: 2021-AP-02  
L.T. CASE NO.: 2020-TR-23045**

**STATE OF FLORIDA,**

**Appellee.**

\_\_\_\_\_ /

Opinion filed on July 1, 2022.

Appeal from the County Court  
in and for Lake County  
Hearing Officer Norman C. Polak

Charles D. Waller, Esq.  
Waller Law, P.A.  
P.O. Box 1668  
Dade City, Florida 33526  
Attorney for Appellant

Jonathan Olson, Assistant State Attorney  
Office of the State Attorney  
550 W. Main Street  
Tavares, Florida 32778  
Attorney for Appellee

**OPINION**

Tatti, A., J.

Appellant appeals the Hearing Officer's order denying Appellant's motion to vacate the order adjudicating Appellant guilty of violating Fla. Stat. § 316.075(1)(c)1 by failing to yield while turning on a steady red light. Because we find the Hearing Officer erred by failing to hold a hearing on Appellant's motion to vacate order, we reverse.

Appellant was cited for violating Fla. Stat. § 316.075(1)(c)1 by failing to yield while turning on a steady red light and requested a court hearing. Appellant's case was originally set for a zoom hearing on June 24, 2021; however, Appellant and the Florida Highway Patrol Trooper were unable to connect. The hearing was reset for August 12, 2021, again on zoom. At the hearing, the Florida Highway Patrol Trooper appeared while Appellant failed to appear. The Hearing Officer proceeded with the hearing, heard evidence from the Florida Highway Patrol Trooper, and, thereafter, adjudicated Appellant guilty. On August 17, 2021, Appellant, through counsel, filed a motion to vacate order, cited to Fla. R. Civ. P. 1.540, and claimed technical difficulties resulting in his inability to enter the zoom hearing constituted excusable neglect. On August 18, 2021, the Hearing Officer denied Appellant's motion.

Fla. R. Traf. Ct. 6.450(g) states if a defendant fails to appear for a hearing, the hearing official may proceed with the hearing, determine whether the infraction was committed, and impose a penalty as if the defendant had attended the hearing. "In the interests of justice, the court may vacate the judgment upon a showing of good cause by the defendant." Fla. R. Traf. Ct. 6.450(g). Although the Florida Rules of Traffic Court failed to define "good cause," Fla. R. Civ. P. 1.540(b) provides guidance. *See Perez v. State*, 16 Fla. L. Weekly Supp. 291a (Fla. 9th Cir. February 24, 2009); *McGuinness v. State*, 6 Fla. L. Weekly Supp. 468b (Fla. 11th Cir. May 7, 1999). Fla. R. Civ. P. 1.540(b) allows a court to "relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for . . . (1) mistake, inadvertence, surprise, or excusable neglect. . . ." A party's claim that they failed to appear for a zoom hearing due to technological problems may constitute excusable neglect. *See Burke v. Soles*, 326 So. 3d 83 (Fla. 4th DCA 2021). Accordingly, the Hearing Officer erred in failing to hold a hearing on Appellant's motion.

**REVERSED AND REMANDED.**

TAKAC, M., EINEMAN, T., J.J., concur.