

No. A09-1889

STATE OF MINNESOTA

IN COURT OF APPEALS

R. James Swenson,

Appellant,

vs.

Mark Holsten, in his official capacity as Commissioner of the Minnesota Department of
Natural Resources, et al.,

Respondents.

RESPONDENTS' BRIEF

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LEGAL ISSUES

I. WHETHER THE DISTRICT COURT CORRECTLY CONCLUDED THAT APPELLANT CANNOT ESTABLISH AN OWNERSHIP INTEREST IN PROTECTED WILD ANIMAL REMAINS BY MEANS OF GENERALLY UNLAWFUL POSSESSION?

The District Court correctly concluded that Appellant cannot acquire a property interest in a protected wild animal or any of its parts by his generally unlawful possession.

Apposite legal authorities:

Minn. Stat. § 97A.501 (2008)

Minn. Stat. § 97A.025 (2008)

State v. Rodman, 58 Minn. 393, 59 N.W. 1098 (1894)

II. WHETHER THE DISTRICT COURT PROPERLY REJECTED APPELLANT'S ARGUMENTS BECAUSE THE STATE HAS REGULATED THE POSSESSION AND TRANSPORTATION OF PROTECTED WILD ANIMALS WITHOUT REGARD TO CAUSE OF DEATH?

The District Court correctly concluded that the game and fish law is a comprehensive body of law that does not contain an exception that would permit Appellant to evade the game and fish law by claiming to have found a wild animal already dead.

Apposite legal authorities:

Minn. Stat. § 97A.501 (2008)

Minn. Stat. § 97A.405, subd. 1 (2008)

Waldo v. Gould, 165 Minn. 128, 206 N.W. 46 (1925)

III. WHETHER THE DISTRICT COURT PROPERLY DECLINED TO CONCLUDE THAT THE GAME AND FISH LAWS ARE UNCONSTITUTIONAL?

The district court concluded that because Appellant has no property interest in the Bear remains, his constitutional challenges were moot.

Apposite legal authorities:

Minn. Stat. § 97A.221 (2008)

Minn. Stat. § 97A.501, subd. 1 (2008)

Cohen v. Kauppi, 172 Minn. 469, 215 N.W.2d 837 (1927)

STATEMENT OF THE CASE

The American Black Bear is a protected wild animal subject to the protection of the game and fish laws of Minnesota. Appellant alleges that he found the remains of an American Black Bear in the woods on his hunting property. Appellant contends that his alleged discovery gives rise to a property interest in the bear remains. Appellant sets forth six counts against Respondents Mark Holsten, in his official capacity as Commissioner of the Minnesota Department of Natural Resources; Thomas Provost, individually and as a Minnesota Department of Natural Resources Law Enforcement Supervisor; and Cary Shoutz, individually and as a Minnesota Department of Natural Resources Conservation Officer, ("Respondents"), all of which are premised on Appellant's erroneous conclusion that he has property rights to this protected wild animal. Furthermore, because Appellant's allegations establish that his possession of the bear remains violated the game and fish laws and that the remains are contraband as a matter of law, any interest Appellant could have had reverted to the State as a matter of law.

Appellant claims that he became the "lawful owner" of bear remains "when [Appellant] reduced [the disputed bear remains] to his possession." (App. Br. 11.) This is the sole basis Appellant identifies as giving rise to his alleged ownership of the remains. According to Appellant, the bear belongs to him because the game and fish

laws do not apply to a protected wild animal that dies of “natural causes.”¹ There is no merit to Appellant’s contention. First, Appellant produced no evidence, and indeed, failed to even allege, that the animal in question died of “natural causes.” More importantly, the Minnesota Legislature has unambiguously declared that no wild animal or any of its parts may be reduced to possession unless expressly authorized by the game and fish laws. The game and fish laws do not authorize an individual to possess a bear, a protected wild animal under game and fish law, or any of its parts merely because an individual claims to have found it already dead.

In sum, Appellant fails to identify a single provision of the game and fish laws that would afford him a property interest as expressly required by the Legislature. That would be an impossible task, as the Legislature has plainly limited the acquisition of private property rights in wild animals to the express provisions of the game and fish laws. Omitting from the comprehensive game and fish law an exception for the ownership, possession or transportation of protected wild animals supported by nothing but an individual’s claim that he found it already dead is well within the legislature’s authority. When, as here, the claim is first made months after the alleged discovery and long after any forensic analysis or other investigation of the remains could be performed, the wisdom of the legislature in prohibiting ownership interests in wild animals based upon nothing more than an individual’s self-serving claim is readily apparent. Therefore,

¹ Appellant has never defined what he considers to be “natural causes” and has conceded he has no knowledge of the bear’s actual cause of death. (AA 85-86).

the State Respondents respectfully request that this Court affirm the District Court's grant of judgment in their favor.

STATEMENT OF FACTS

Pursuant to game and fish law in effect for more than a century, the Minnesota Legislature has declared that “[t]he ownership of wild animals of the state is in the state, in its sovereign capacity for the benefit of all the people of the state. A person may not acquire a property right in wild animals, or destroy them, unless authorized under the game and fish laws” Minn. Stat. § 97A.025 (2008). Likewise:

[a] person may not take, buy, sell, transport, or possess a protected wild animal unless allowed by the game and fish laws. The ownership of all wild animals is in the state, unless the wild animal has been lawfully acquired pursuant to a provision of the game and fish laws. The ownership of a wild animal that is lawfully acquired reverts to the state if a law relating to sale, transportation, or possession of the wild animal is violated.”

Minn. Stat. § 97A.501, subd. 1 (2008). The Minnesota Commissioner of Natural Resources is charged by statute with the “charge and control of all the ... wild animals of the state and of the use, sale, leasing, or other disposition thereof.” Minn. Stat. § 97A.027, subd. 1 (2008). It is the Commissioner's duty to enforce game and fish laws that “prohibit or allow importation, transportation, or possession of a wild animal.” Minn. Stat. § 84.027, subd. 13 (2008); *see also* Minn. Stat. § 97A.011 (2008) (Minn. Stat. chs. 97A, 97B, and 97C are the “game and fish laws” and may be cited as such). Further, the Commissioner “shall execute and enforce the laws relating to wild animals.” Minn. Stat. § 97A.201, subd. 1 (2008). The Commissioner “may delegate execution and enforcement of the wild animal laws to the director and enforcement officers.” *Id.*

Conservation officers have authority to, among other things, “make investigations of violations of the game and fish laws” and “arrest, without a warrant, a person who is detected in the actual violation of the game and fish laws, a provision of chapters ... 88 to 97C.” Minn. Stat. § 97A.205 (2008). Conservation officers have discretion to “enter and inspect any commercial cold storage warehouse, hotel, restaurant, ice house, locker plant, butcher shop, and other building used to store dressed meat, game, or fish to determine whether wild animals are kept and stored in compliance with the game and fish laws.” Minn. Stat. § 97A.215, subd. 1(a) (2008). In addition, conservation officers have discretion to “inspect the relevant records of any person that the officer has probable cause to believe has violated the game and fish laws.” Minn. Stat. § 97A.215, subd. 2 (2008). Conservation officers “may, at reasonable times: (1) enter and inspect the premises of an activity requiring a license under the game and fish laws.” Minn. Stat. § 97A.215, subd. 3 (2008).

Pursuant to Minn. Stat. § 97A.221, subd. 1, a conservation officer has discretion to seize “wild animals ... taken, bought, sold, transported, or possessed in violation of the game and fish laws.” Minn. Stat. § 97A.221, subd. 1 (2008). Once an officer exercises his discretion to seize a wild animal, the conservation officer “must hold the seized property.” Minn. Stat. § 97A.221, subd. 3 (2008). In the event of acquittal or dismissal of the charged violation for which the property was seized, “all property, other than contraband consisting of a wild animal ... must be returned to the person from whom the property was seized.” Minn. Stat. § 97A.221, subd. 4 (2008). In contrast, the Commissioner has discretion to summarily confiscate the seized property if the person is

guilty of the offense charged, or if the property is “contraband consisting of a wild animal.” Minn. Stat. § 97A.221, subd. 3 (2008). For purposes of the game and fish laws, “contraband” means “a wild animal taken, bought, sold, transported, or possessed in violation of the game and fish laws.” Minn. Stat. § 97A.015, subd. 12 (2008).

Bears are the subject of considerable regulation for their protection pursuant to the game and fish laws. As defined in Minn. Stat. § 97A.015, subd. 39 “protected wild animals” include “big game.” “Big game” is in turn defined to include “bears.” Minn. Stat. § 97A.015, subd. 3 (2008). As a protected wild animal, a “person may not take, buy, sell, transport, or possess” a bear “without a license” unless otherwise authorized by the game and fish laws. Minn. Stat. § 97A.405, subd. 1 (2008). In addition to the license requirement, “a person may not possess or transport ... bear ... taken in the state unless a tag is attached to the carcass in a manner prescribed by the commissioner.” Minn. Stat. § 97A.535, subd. 1 (2008). A tag validated by the Commissioner “must be attached to the ... bear ... prior to the animal being placed onto and transported on a motor vehicle, being hung from a tree or other structure or device, or being brought into a camp or yard or other place of habitation.” Minn. Stat. § 97A.535, subd. 1(e)(2) (2008). In addition to licensing and tagging requirements, bear taken in the State “must be registered” with DNR. Minn. Stat. § 97A.535, subd. 2 (2008). The period during which a person may transport bear in any manner is limited to “open season and the two days following the season.” Minn. Stat. § 97A.535, subd. 3 (2008). By rule, open season for bears occurs from September 1 through the Sunday nearest October 15. Minn. R. 6232.2700 (2007). In 2007, open season for bear closed on Sunday, October 18. *Id.* A person may not

transport a bear for another individual unless the animal is tagged and registered. Minn. Stat. § 97A.535, subd. 4 (2008).

The game and fish laws set forth a number of requirements for taxidermists as well. A taxidermist “must have the required license under the game and fish laws to buy or sell wild animals, to tan animal hides or dress raw furs, or to mount specimens of wild animals and must keep complete records of all transactions and activities covered by the license.” A taxidermist’s records “must show: (1) the names and address of persons from whom wild animals were obtained and to whom they were transferred; (2) the dates of receipt, shipment, and sale of wild animals; ... [and] (4) serial numbers of seals, tags, or permits required to be attached to the wild animals.” Minn. Stat. § 97A.535, subd. 2 (2008).

Appellant alleges that he “discovered the remains of an exceptionally large American Black Bear in the woods” on property he owns. (Compl. ¶ 9.) Appellant alleges this “discovery” occurred on or about November 1, 2007. (*Id.*) Appellant does not allege that he obtained a license for the bear, that he obtained tags for the bear, or that he registered the bear with DNR, but rather concedes that he did not contact DNR with respect to the bear until April 14, 2008. (Compl. ¶ 12.) Instead, Appellant informed his taxidermist of the alleged “find.” (Compl. ¶ 10.) Appellant admits that “the taxidermist collected the bear remains from Swenson’s farm with the mutual understanding that the taxidermist would return the skull and hide as a fully mounted display.” (Compl. ¶ 10.) Appellant alleges that he contacted his taxidermist on or about April 7, 2008, “to inquire about the progress of his mount.” (Compl. ¶ 11.) Appellant alleges that during this

conversation, he asked “whether the taxidermist was required to contact the DNR in order to mount the bear remains, and if so, whether the DNR was contacted.” (Compl. ¶ 12.) Appellant did not contact DNR about his alleged discovery until April 14, 2008. (Compl. ¶ 12.) After “learning that the taxidermist had not contacted the DNR,” Appellant claims his attorney contacted Lieutenant Provost to “report the find” for him. (Compl. ¶ 12.)

On April 15, 2008, Conservation Officer Shoutz went to Jones Taxidermy in Emily, Minnesota. (Compl. ¶ 13.) Shoutz seized the bear skull and hide in which Appellant claims an ownership interest from Jones Taxidermy. (Compl. ¶ 13.) Conservation Officer Shoutz advised Appellant that the bear hide and skull had been confiscated “[b]ecause [Swenson] illegally possessed a black bear in violation of [Minn. Stat. § 97A.501, subd. 1].” (Compl. ¶ 14.) Appellant admits he was issued a warning of violation for illegal possession. (Compl. ¶ 15.) Tracy Allen Jones of Jones Taxidermy subsequently admitted guilt and paid a fine for his failure to keep records required by Minn. Stat. § 97A.425 (2008) with respect to the bear. (See Middendorf Affidavit (“Aff.”) at Ex. A (*State of Minnesota v. Tracy Allen Jones*)). As contraband items, the bear skull and hide remain in the State’s possession. (See Compl. ¶ 16.)

Although Appellant contends that he has not been afforded due process in this matter, the record establishes the contrary. Following Shoutz’s seizure of the bear from Jones Taxidermy, Appellant contacted Conservation Officer Shoutz’s supervisor, Lt. Thomas Provost to argue for the return of the bear remains. (AA 57.) Relying on Minn. Stat. § 97A.501, subd. 1 (2008), Lt. Provost concluded that the bear was contraband and rejected Appellant’s demand for its return. Appellant’s attorney then

submitted written argument to Lt. Provost, contending that the game and fish laws do not apply to a wild animal because “animal remains lying in the woods” are not subject to the game and fish laws. (AA 58-59.) Appellant’s attorney claimed that Appellant “feels that the remains were based upon a personal grudge” which Appellant based on “rumors that the bear skull is currently being displayed in the living room of Officer Shoutz’s personal residence.” (AA 59.) Lt. Provost assured counsel that Appellant’s paranoia was unfounded and that the hide and skull were “in storage awaiting final disposition.” (AA 60.) Appellant then appealed to the Commissioner along with a copy of his “draft complaint.” (AA 61-63). The Commissioner, “[a]fter extensive review of the details and consideration of this issue,” concluded that the bear was lawfully seized as evidence in an investigation, and subsequently confiscated as authorized by statute. (AA 64.) The Commissioner concluded that “[t]he bear in question was not harvested or possessed legally; and in fact was considered contraband upon being transported and possessed in violation of state game and fish laws.” *Id.*

Appellant’s argument that the animal in question died of natural causes is not the only assertion he makes that is devoid of factual support. Appellant claims that Conservation Officer Shoutz “conducted an unannounced raid and seizure.” (App. Br. 10.) Appellant cites to the correspondence of his counsel to establish that proposition, although the argument of counsel is not, in fact, evidence. Appellant also claims that the seizure of the bear from the taxidermist “was part of a continuing pattern of hostility toward him by Respondent Shoutz that had gone on for several years.” (App. Br. 10.) Unsurprisingly, Appellant makes no attempt to cite to the record for that particular

argumentative and unfounded statement, as such was not alleged in his Complaint, nor included in his improperly submitted affidavit. Indeed, if Conservation Officer Shoutz truly were engaged in a “pattern of hostility,” one would expect him to have issued a criminal citation rather than a mere warning.

Appellant’s contention that the animal in question expired naturally has never been alleged by Appellant. Appellant bases his entire legal argument on his contention that the bear died of natural causes. Appellant cites to a letter written by his attorney to DNR for the proposition that the bear died of natural causes. Appellant’s attorney’s letter is not evidence of the bear’s cause of death, and indeed, Appellant’s counsel does not therein contend that the animal in question died of natural causes. (AA 56-57.) Appellant failed to allege that the animal died of natural causes and apparently has no basis to make such a determination.² Appellant, by causing the animal to be removed from the scene and butchered and then waiting for months before reporting his alleged discovery destroyed not only the best evidence but also DNR’s ability to determine the manner of the bear’s death.

² Appellant improperly supplements the record before this Court, inserting his self-serving affidavit into his appendix as if it had been submitted in opposition to the State’s motion for judgment. (See AA 85-86.) In fact, it was submitted after the motion for judgment in support of Appellant’s improper motion for a continuance. Far from establishing any dispute of material fact or error on the part of the District Court, the affidavit’s value is limited to Appellant’s concession that, at best and contrary to the arguments he presents to this Court, he has no idea what killed this bear.

STANDARD OF REVIEW

Minn. R. Civ. P. 12.03 provides that a court may grant a motion for judgment on the pleadings as follows:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on such motion, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Minn. R. Civ. P. 12.03.

Although the State brought a motion for judgment on the pleadings, Appellant nevertheless presented the District Court with matters outside of the pleadings, namely the Affidavit of Michael Carey and all of the exhibits attached thereto. (*See* AA 52-82.) By operation of Minn. R. Civ. P. 12.03, the motion is considered one for summary judgment if the District Court considers the extraneous materials. Rule 56 of the Minnesota Rules of Civil Procedures provides that summary judgment should be entered:

[I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.

Minn. R. Civ. P. 56.03. Thus, summary judgment is proper where the non-moving party fails to demonstrate a genuine issue of fact with respect to the basic elements of the party's case. *Westbrock v. Marshalltown Mfg. Co.*, 473 N.W.2d 352 (Minn. Ct. App. 1991); *Rients v. Int'l Harvester Co.*, 346 N.W.2d 359 (Minn. Ct. App. 1984). An issue is "genuine" only if a party reasonably disputes it, rather than raises it as a sham or

frivolous argument to avoid summary judgment. *Highland Chateau, Inc. v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984). Once a motion for summary judgment is made and affidavits and other evidence are submitted in support of the motion, the burden is on the non-moving party to come forward with evidence to establish an issue of fact. Minn. R. Civ. P. 56.05.

To successfully oppose a summary judgment motion, the nonmoving party must present affirmative evidence sufficient to raise issue of material fact; mere denials, general assertions, and speculation are not enough to survive a motion for summary judgment. See *Bob Useldinger & Sons, Inc., v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993) (affirming grant of summary judgment when nonmoving party engages in mere speculation and conjecture); and *Gutbrod v. County of Hennepin*, 529 N.W.2d 720 (Minn. Ct. App. 1995) (same). The party opposing a motion for summary judgment cannot rely on the pleadings' bare allegations but must specifically show there are genuine issues of fact. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). The function of drawing legal conclusions from admitted or proven facts, however, rests with court. *Nationwide Corp. v. Northwestern Nat. Life Ins. Co.*, 251 Minn. 255, 87 N.W.2d 671 (1958). Mere allegation of legal conclusions does not divest court of that judicial function. *Id.*

Appellant contends that the game and fish laws must somehow be strictly construed against the public and that if so, his interpretation prevails.³ Respondents submit that the outcome remains the same regardless of the standard of construction applied to the relevant provisions. Nevertheless, Appellant is mistaken that there is any basis that requires the strict construction of game and fish laws in this matter. Rather, the game and fish laws are subject to liberal construction and have been for more than a century. *See e.g.* Minn. Stat. § 97A.021, subd. 1 (providing that even provisions that are inconsistent with penal law remain in effect for purposes of game and fish law) and *State v. Rodman*, 58 Minn. 393, 59 N.W. 1098 (1894) (declining to employ the strict construction urged by the defendant). In order to prevail in his attempt to obtain strict construction, Appellant would have to overcome the presumption that the statutes are consistent with common law. *Ly v. Nystrom*, 615 N.W.2d 302 (Minn. 2000). As illustrated below, Appellant has failed to establish that the statutes are anything but fully consistent with common law. Instead, Appellant asks this Court to adopt his interpretation of the game and fish laws in contradiction to both their plain language and

³ Appellant's contentions that the Court must construe the game and fish laws as penal statutes is inapposite in this civil action and should be summarily rejected. The general rule is that forfeiture statutes are to be liberally construed to carry out remedial purposes that include enforcing the law, deterring crime, and forfeiting property unlawfully used or acquired. *See* Minn. Stat. § 609.531, subd. 1(a) (2008). Other than his unfounded belief that the statutes are in conflict with common law, Appellant fails to provide any rationale for the strict construction in his favor of the provisions of game and fish law that provided limited rights to acquire property rights in property otherwise owned by the public. Respondent submits that whether the statute is liberally or strictly construed, the outcome compelled here, that the animal is contraband and Appellant has no property interest in it, remains unchanged. Nevertheless, the statutes are required to be construed liberally.

the obvious legislative intent, as well as the very authority he claims supports his unfounded position.

ARGUMENT

Appellant argues that the game and fish laws should not apply to him because he claims to have discovered a deceased bear. Appellant's lengthy arguments are based upon two fundamental misunderstandings of game and fish law.⁴ First, the game and fish laws prohibit all private ownership and possession of wild animals unless expressly permitted by the game and fish laws. Second, the game and fish laws apply irrespective of the alleged manner of a bear's death. Appellant's legal analysis is consistently erroneous and completely contrary to the plain language of the applicable provisions of game and fish law as well as legislative intent to provide a comprehensive statutory scheme with respect to protection and preservation of the wild animals that belong to the public.

The game and fish laws prohibit all private ownership of wild animals, without exception based upon an alleged manner of death, unless otherwise expressly permitted. Appellant offers nothing but conclusions supported only by his unfounded personal belief that he may do whatever he pleases with a protected wild animal unless the statutes

⁴ Moreover, even if Appellant were not fundamentally mistaken about the State's game and fish laws, the fact remains that Appellant's entire argument is based upon a premise never alleged or sworn by affidavit—that the animal in question expired of natural causes. (*See Compl.*) Appellant alleged no facts that would support a conclusion of lawful acquisition of the bear remains, affirmatively alleged facts that establish as a matter of law that his possession of the bear remains violated a number of game and fish provisions, and entrusted the remains to a taxidermist who committed further violations, one of which resulted in conviction.

expressly prohibit his actions. To the contrary, the game and fish laws clearly provide that “a person may not take, buy, sell, transport, or possess a protected wild animal in the state, *unless allowed by* the game and fish laws.” Minn. Stat. § 97A.501, subd. 1 (2008) (emphasis added). In the absence of another provision in the game and fish laws that expressly permits possession and transportation of protected wild animals, the general restriction against possession and transportation controls. Appellant can only have taken the actions he claims he took in ignorance of the game and fish laws.

I. APPELLANT CANNOT ESTABLISH AN OWNERSHIP INTEREST IN PROTECTED WILD ANIMAL REMAINS BY MEANS OF GENERALLY UNLAWFUL POSSESSION.

The Minnesota Supreme Court has long recognized that private individuals have no “preexisting property rights” to wild animals. *Waldo v. Gould*, 165 Minn. 128, 132, 206 N.W. 46, 48 (1925) (declaring that “no property rights exist in wild animals in this state except as permitted by the act, and that such rights as are permitted by the act are forfeited by any violation of its provisions.”). Contrary to Appellant’s contention, this case is not a matter of first impression. (*See* App. Br. 11.) Although no case law appears to be based upon the factual contention of a discovery of a deceased bear, many cases have considered the question of the propriety of state ownership of wild animals and the manner in which an individual may lawfully acquire and evidence a property interest therein. Appellant complains that “the lower court failed to recognize that when Appellant first happened upon the bear remains, that they were not owned by anyone, including the State.” (App. Br. 6.) While Appellant may disagree with the District Court’s conclusion, the District Court considered the many arguments pressed by

Appellant and rejected them as meritless. The District Court correctly concluded that protected wild animal remains belong to the State unless and until an individual acquires and evidences a transfer of ownership in a manner expressly authorized by the game and fish laws. The District Court recognized, correctly, that Appellant entirely failed to allege facts and to cite to any provision of game and fish law that would allow him to acquire an ownership interest based upon the mere claim that it was dead when he discovered it.

A. Title To Protected Wild Animals Originates In The State And Remains In The State Absent Evidence Of Lawful Acquisition.

For more than a century, the recognized purpose of Minnesota game and fish laws has been to protect and preserve the wild animals of the state for the benefit and enjoyment of all Minnesotans. *See State v. Poole*, 93 Minn. 148, 100 N.W. 647 (1904). The existence of property rights in wild animals is a question of state law. *Mertins v. Commissioner of Natural Resources*, 755 N.W.2d 329, 340 (Minn. Ct. App. 2008). Pursuant to Minnesota law, “[t]he ownership of wild animals of the state is in the state, in its sovereign capacity for the benefit of all the people of the state. A person may not acquire a property right in wild animals, or destroy them, unless authorized under the game and fish laws, sections 84.091 to 84.15, or sections 17.47 to 17.498.” Minn. Stat. § 97A.025 (2008). So fundamental to the preservation of Minnesota’s game and fish is this premise that the Legislature reiterates the rule as part of the general restrictions on wild animals found in Minn. Stat. § 97A.501, subd. 1, which states that “[a] person may not take, buy, sell, transport, or possess a protected wild animal unless allowed by the

game and fish laws. The ownership of all wild animals is in the state, unless the wild animal has been lawfully acquired under the game and fish laws.” Accordingly, private ownership cannot be established in the absence of a statutory provision by which the State has acquiesced to the transfer of ownership from the public to the individual. Appellant identifies no provision of the game and fish laws that would permit him or his taxidermist to possess, transport, dress, and mount the remains of a protected wild animal without a license or permit and during closed season. No such provision exists, and Appellant concedes as much, since it would be nothing more than an invitation to poach and directly contrary the purpose of game and fish law.

Minnesota courts have consistently and repeatedly upheld the private wild animal ownership limitations of Minn. Stat. § 97A.025 as a valid exercise of the State’s police power. In *Waldo v. Gould*, the Minnesota Supreme Court established that there are no preexisting private property rights in wild animals and emphasized that the game and fish laws provide the exclusive means by which one may acquire and maintain a property interest. As the Court observed:

In construing the statute, we must bear in mind that it is not dealing with pre-existing property rights. It declares that *no property rights exist in wild animals in this state except as permitted by the act, and that such rights as are permitted by the act are forfeited by any violation of its provisions*. That the Legislature may thus limit and restrict the rights in wild animals permitted in this state, whether they are taken here or elsewhere, is beyond question.

Waldo v. Gould, at 132 (internal citations omitted) (emphasis added). The *Waldo* court confirmed that even where property rights had been acquired by lawful taking in another state, such rights may be forfeited by the subsequent violation of Minnesota game and

fish law. *Id.* In *Waldo*, the Court specifically held that there are no private “preexisting property rights.” *Id.* Far from providing any support for Appellant’s contention that the State and the public have no property interest in the protected wild animal in question, the *Waldo* decision can only be sensibly understood to underscore that no private property interest can be acquired or maintained in derogation of Minnesota statutes.

In *Cohen v. Kauppi*, 172 Minn. 469, 215 N.W.2d 837 (1927), addressing a challenge to the State’s confiscation of wild animal pelts, which were not labeled by the property owner as required by Minnesota statute, the Court stated:

The major premise of our game laws is that the ownership of wild animals, ‘so far as they are capable of ownership,’ is in the state, ‘not as a proprietor, but in its sovereign capacity as the representative and for the benefit of all its people in common.’ ... ***There may be possession and ownership by individuals, but only if acquired and evidenced in the manner provided by law.*** This applies to the pelts of fur-bearing animals.

Id. at 470, 838 (emphasis added). Accordingly, it is incumbent upon the individual asserting an ownership interest in a wild animal to evidence the lawful acquisition of the wild animal sufficient to establish the transfer of a property interest from the State to the individual. *Id.* Appellant bears the burden of proving, by clear and convincing evidence, that he acquired the animal as permitted by the game and fish laws. *Id.*; *Kottom v. Minn. Dep’t of Natural Res.*, 2008 WL 4977414 (Minn. Ct. App. Nov. 25, 2008) (unpublished); *see also* Minn. Stat. § 97A.255, subd. 2 (burden of proving lawful acquisition is on the defendant in a prosecution for game and fish violations). Lawful possession is a prerequisite to ownership, and with respect to bear remains, possession must be licensed or permitted. *See id.*; *see also Missouri v. Holland*, 252 U.S. 416, 432 (1920) (noting that

possession is the beginning of ownership). As concluded by the District Court, Appellant has failed to offer any exception to Minn. Stat. § 97A.025 or 97A.501, subd. 1 that would allow him to acquire an ownership interest based upon his unlicensed possession of the bear in violation of Minn. Stat. § 97A.501, subd. 1 and Minn. Stat. § 97A.405, subd. 1.

Appellant attempts to sidestep his lack of a property interest pursuant to a plain reading of Minn. Stat. § 97A.025 and 97A.501, subd. 1 by fabricating the existence of one under common law. Appellant would like this Court to believe that acceptance of his position “does not require this Court to overrule long standing precedent,” claiming that he merely asks this Court to “examine the foundation for State sovereign ownership of wild animals ferea naturea[sic].” (App. Br. 16.) To the contrary, Appellant plainly does ask this Court to overrule long-standing precedent that affirms that there are no preexisting property rights to wild animals and no means by which one may acquire an interest apart from those afforded by the game and fish laws. *See Cohen v. Kauppi*, 172 Minn. 469, 215 N.W.2d 837 (1927); *Waldo v. Gould*, 165 Minn. 128, 206 N.W. 46 (1925); and *State v. Rodman*, 58 Minn. 393, 59 N.W. 1098 (1894). Any assertion that there exists some common law private property right to wild animals must be rejected in light of the unambiguous declaration of the Minnesota Supreme Court that there are no preexisting private property rights to wild animals.

Appellant seems to contend that the use of the antiquated term “ferae naturae” in common law somehow grants property rights to an individual beyond those afforded by the game and fish laws. Appellant concedes that the “ownership of animals ferae

naturae⁵ indisputably resides in the State.” (App. Br. 5.) Appellant seems to contend, however, that “when ... an animal dies of natural causes, it is no longer *ferae naturae* [sic] and the State’s ownership as trustee ceases.” (App. Br. 5.) The term “wild animals” as used in the game and fish laws is defined by statute. “Wild animals” means “all living creatures, not human, wild by nature, endowed with sensation and power of voluntary motion” Minn. Stat. § 97A.015, subd. 55 (2008).⁶ In an attempt to persuade the District Court that the game and fish laws do not apply to dead animals, Appellant misrepresented the definition of “ferae naturae” to the District Court, contending the term is defined by Black’s as wild *living* animals. (*See* AA 2.) (emphasis added). In reality, Black’s defines *ferae naturae* as “wild; untamed; undomesticated.” Black’s Law Dictionary (8th ed. 2004); *see also* Random House Dictionary, Random House, Inc. 2009 (defining “ferae naturae” as “(of animals) wild or undomesticated (distinguished from *domitae naturae*).” Appellant fails to proffer any rationale for his conclusion that a wild animal that dies of “natural causes” is no longer wild or undomesticated. Appellant’s suggestion that the term “ferae naturae” is used in common law to impliedly distinguish live animals from dead is, at best, frivolous. Appellant offers no authority to establish a legally cognizable distinction between “wild animals” and “wild animals *ferae naturae*.”

⁵ The term is not used in game and fish law.

⁶ Appellant’s contention that the definition of “wild animals” somehow indicates legislative intent to limit the scope of “the State’s power to regulate game and fish” to exclude “dead animals or carcasses of dead animals” is baseless. (*See* App. Br. 3.) Appellant simply ignores the legislature’s command that “a provision relating to a wild animal applies in the same manner to a part of the wild animal.” Minn. Stat. § 97A.021, subd. 3 (2008). Obviously, a “part” of a wild animal includes a bear’s skull and hide.

Respondents submit that the term “ferae naturae” is nothing more than Latin for “wild animal,” and accordingly, of no independent legal significance.

The case law Appellant cites in support of his baseless argument that he has a common law right of property in the dead bear fails to aid Appellant’s argument. It is well established that the existence of property rights and the manner in which one must evidence lawful ownership are questions of state law. Pursuant to Minnesota law, there are no preexisting private property rights in wild animals. Appellant’s reliance on *Pierson v. Post*, 3 Cai. R. 175, 2 Am. Dec. 264 (N.Y. Sup. Ct. 1805) for the proposition that he has a common law right of ownership to wild animals allegedly discovered on his property is misplaced and ultimately unpersuasive. *Pierson* simply does not address public ownership or regulation of wild animals, but rather merely establishes the priority of property rights in wild animals as between the competing claims of two private individuals. *Pierson*, 3 Cai. R. at 175. Further, *Pierson* held that wild animals are the subject of private property only when mortally wounded or entrapped, so as to be deprived of their natural liberty, not when merely discovered or pursued. *Id.*⁷ Appellant, however, claims that he did not pursue or attempt to apprehend the bear. Rather, he merely discovered it dead and took possession of it in violation of Minnesota law.

It is beyond question that Appellant could not lawfully poison the bear without a license merely because he discovered it on his private property. Similarly, the

⁷ Indeed, the *Pierson* court reached its result in consideration of the labor theory of property, or as Appellant terms it “ownership by capture.” (App. Br. 11.) According to Appellant, “pursuing or attempting to apprehend” was central to the result of *Pierson*. *Id.*

Legislature may prohibit the possession of a bear in like manner, as it has in Minn. Stat. § 97A.405, subd. 1, which unequivocally states, “a person may not take, buy, sell, transport, *or possess* protected wild animals of this state without a license.” (Emphasis added.) Possession is defined as “control and use” or the establishment of dominion and control over an object. *See* Minn. Stat. § 97A.015, subd. 36 (2008). As even the Appellant concedes, pursuant to “the default common law rule, property belongs to the individual who reduces it to control and use, unless made unlawful by statute.” (App. Br. 12.) Appellant’s argument utterly fails, as it must, in the face of the Legislature’s plain and unambiguous statement that the unlicensed possession of a bear, a protected wild animal, is flatly prohibited. Minn. Stat. § 97A.405, subd. 1 (2008). From a review of game and fish case law relied upon by Appellant, it is apparent that any assertion that there exists an independent common law property right to wild animals is false. The District Court properly determined that Appellant failed to establish the acquisition of a property interest in the bear authorized by the game and fish law.

B. Appellant’s Possession and Transportation of the Bear Violates A Number Of Game And Fish Law Provisions.

Far from meeting his burden of evidencing, by clear and convincing evidence, the lawful acquisition of a protected wild animal, Appellant’s allegations establish that his possession and transportation of this wild animal were expressly prohibited by game and fish law. Assuming, *arguendo*, that Appellant had established his lawful acquisition of the remains pursuant to the game and fish laws, Respondents submit that the game and fish violations committed by Appellant and his taxidermist caused any property interest

to revert to the public by operation of Minn. Stat. § 97A.501, subd. 1 (2008), as well as rendered the bear remains contraband as a matter of law. As the subject of violations of the game and fish laws related to possession, any property interest Appellant could have acquired would have reverted to the State and the public as the consequence of his and his taxidermist's actions after the alleged discovery. *See* Minn. Stat. § 97A.501, subd. 1 (2008).

There is no merit to Appellant's claim that his actions did not violate game and fish law. Minnesota law is clear with respect to the requirements that one must meet to lawfully obtain or, as the case may be, retain ownership of bear remains. Minn. Stat. § 97A.501, subd. 1 sets forth the general rule that "[a] person may not take, buy, sell, transport, or possess a protected wild animal unless allowed by the game and fish laws." Because a bear is a "protected wild animal" by definition, a person "may not take, buy, sell, transport, *or possess*" a bear "without a license." Minn. Stat. § 97A.405, subd. 1 (2008); *see also* Minn. Stat. § 97B.401(a) (2008) (a person may not *take* bear without a license) (emphasis added). The mere observation or discovery of a wild animal does not render it in one's possession under the game and fish laws. To have possession, one must exercise dominion and control. *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975). Appellant alleged facts establishing that he had possession of the bear as he admittedly caused the bear to be transported from Fifty Lakes to Emily to be butchered and ultimately mounted. Appellant did not allege he had a license or permit to possess the bear or to cause the bear to be transported by his taxidermist. (*See* Compl.; *see also* AA 58-59, 85-86) To lawfully possess, or in other words exercise dominion and control

over a bear, one must have a license. Minn. Stat. § 97A.405, subd. 1 (2008). Appellant's unlicensed possession and transportation of the bear remains therefore violate a number of provisions of the game and fish law, not least among them Minn. Stat. § 97A.501, subd. 1, the violation for which Appellant was issued a warning citation. (Compl. ¶ 14.) Respondents submit that any right Appellant could have obtained in the bear remains, if it actually had died of natural causes on his property, was destroyed by his actions following its discovery. *See* Minn. Stat. § 97A.501, subd. 1 (2008) (ownership of lawfully acquired animal reverts to State if a law related to possession is violated).

Appellant attempts to avoid the unfavorable result that follows the straightforward application of Minn. Stat. §§ 97A.501, subd. 1 and 97A.405, subd. 1 to his actions by claiming that “the game and fish laws only apply when an animal is taken” within the meaning of the definition of “taking” pursuant to Minn. Stat. § 97A.015, subd. 47 (2008).⁸ Appellant contends, without citation to any authority for the proposition, that “the DNR’s sovereign ownership⁹ is triggered only after a wild animal is taken or killed-only then may an individual become subject to State-imposed conditions and limitations, including regulating possession and transportation of wild animals.” (App. Br. 14.) Appellant’s suggestion is without merit. Contrary to Appellant’s conclusory

⁸ Appellant goes on to claim, albeit irrelevantly in light of his claim that he does not know how this animal died, that “animals that die of natural causes are not ‘taken.’” Although Appellant claims he did not “take” the bear, his concession that he does not know how the bear died cannot be the basis of a sensible conclusion that the bear was not taken, by another if not by Appellant himself.

⁹ It must be pointed out that it is not DNR, or even the State of Minnesota, that owns wild animals. Wild animals belong to the public, held in trust by the State of Minnesota for the benefit of the public. *See* Minn. Stat. § 97A.025 (2008).

assertion that the State's interest is not implicated until after a taking, many provisions of Minnesota game and fish law by their plain language apply to ownership, possession, and transportation of wild animals without regard to whether a wild animal has first been "taken." Minn. Stat. § 97A.501, subd. 1, prohibits the ownership of wild animals without regard to whether they were "taken." Minn. Stat. § 97A.535, subd. 3 prohibits the transportation of bear without regard to whether it was "taken." Minn. Stat. § 97A.405, subd. 1 requires a license to possess a bear without regard to whether it was first "taken." Indeed, to take a bear in Minnesota, one requires a license to take pursuant to Minn. Stat. § 97B.401. Upon taking a bear, an individual is required to obtain a "Big Game Possession Tag," which authorizes the subject to possess a bear lawfully taken. Minn. Stat. § 97A.535, subd. 1 (2008). By its express terms, Minn. Stat. § 97A.405, subd. 1 plainly does not require a prerequisite taking. Nor is there any merit to the claim that a taking or killing is impliedly required, as possession of a taken bear is plainly addressed by the Minn. Stat. § 97A.535, subd. 1 requirement of a "possession tag." Thus, there is no merit to Appellant's contention that all provisions of the game and fish law are subject to a prerequisite taking. The violations Appellant committed do not depend upon the protected wild animal's having been taken.

Although relied upon by the State throughout this matter, Appellant makes no attempt to explain why this Court should not simply apply the plain language of Minn. Stat. § 97A.501, subd. 1 (unlawful possession of a wild animal), 97A.405, subd. 1 (prohibiting possession of bear without a license), and 97A.535, subd. 3 (prohibiting transportation of bear outside of season) to conclude that he has violated numerous laws

related to his admitted possession and transportation of this bear. Rather, Appellant continues to misrepresent controlling case law and to ignore the provisions the State actually cited to establish his violations. Appellant argues, as he did below, that “Respondents have alleged Appellant violated the Game and Fish laws because the disputed bear remains were not tagged and registered as required under [Minn. Stat. § 97A.535, subd. (1)(a)].” (App. Br. 15.) This statement is not only false but also exceptionally misleading, presumably offered because, as Appellant points out, Minn. Stat. § 97A.535, subd. 1 requires tags and registration for bear “taken in the state.” If the State were actually relying upon that provision, and only that provision, there might be some merit to Appellant’s claim that he did not violate Minnesota law because he claims he did not “take” the bear. As the record establishes, Appellant was issued a warning citation for violating *Minn. Stat. § 97A.501, subd. 1*, for his unlawful possession of a protected wild animal.

By the allegations of his complaint, Appellant has admitted facts that leave no doubt that his possession and transportation of the bear violated provisions of game and fish law, including Minn. Stat. §§ 97A.501, subd. 1; 97A.405, subd. 1; and 97A.535, subd. 3. The plain language of each of these provisions establishes that none are dependent upon the bear having been taken. The same is true of Minn. Stat. § 97A.521, subd. 5, which states that an individual may not transport a wild animal that was taken, bought, sold, or possessed in violation of game and fish law. In light of the clarity of the game and fish provisions upon which Respondents base their arguments, Appellant’s argument that a wild animal must be “taken” as a prerequisite to the applicability of the

game and fish laws should be rejected as not just a red herring but also patently false. Plainly, all apposite authority establishes that killing or taking, and otherwise lawfully obtaining a possessory interest are nothing more than means by which the State and the public have acquiesced to the transfer of the public's property interest to an individual. Minn. Stat. § 97A.501; *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. 1805); *State v. Rodman*, 58 Minn. 393, 59 N.W. 1098 (1894); see also *Waldo v. Gould*, 165 Minn. 128, 132, 206 N.W. 46, 48 (1925) (confirming that “no property rights exist in wild animals in this state *except as permitted by the act* and that such rights as are permitted by the act are forfeited by any violation of its provisions”) (emphasis added). No fair reading of any of the Minnesota cases cited by either of the parties supports Appellant's claim that taking a wild animal is a prerequisite to the applicability of the game and fish laws.

Just as Appellant's arguments are belied by the plain language of the game and fish laws, they are equally without the support of case law. Despite Appellant's claims that *Rodman* is “instructive on the *limits of State power*,” (emphasis in original)(App. Br. 14), *Rodman* confirms that a property interest in wild animals is wholly dependent upon adherence to the game and fish laws, including those related to possession, even after acquiring an interest by lawfully taking an animal. *Rodman*, 59 N.W. at 099 (concluding that the acquisition of a property right is “subject to the conditions and limitations the legislature has seen fit to impose.”). *Rodman* stands for the proposition that even lawfully acquired wild animals, which would give rise to a transfer of title from the public to the private individual, can be forfeited by their subsequent unlawful possession. *Rodman*, 59 N.W. 1098. As the Court stated:

We take it to be the correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as proprietor, but in its sovereign capacity, as the representative, and for the benefit, of all its people in common. The preservation of such animals ... is a matter of public interest; and it is within the police power of the state, as the representative of the people in their united sovereignty, to enact such laws as will best preserve such game, and secure its beneficial use in the future to the citizens, and to that end it may adopt any reasonable regulations, not only as to time and manner in which such game may be taken and killed, ***but also imposing limitations upon the right of property in such game after it has been reduced to possession. Such limitations deprive no person of his property, because he who takes or kills game had no previous right of property in it, and, when he acquires such right by reducing it to possession, he does so subject to such conditions and limitations as the legislature has seen fit to impose.***

Rodman, 59 N.W. at 1098 (emphasis added). Contrary to Appellant's assertions that *Rodman* concluded, "State ownership as trustee applies only after an animal is taken or killed" (App. Br. 16), the *Rodman* court expressly rejected the argument that the State's authority to regulate wild animals was limited to establishing the time and manner in which game could be killed. *Id.* Rather, *Rodman* emphasizes that the preservation of wild animals is a matter of public interest, such that "the legislature may pass any reasonable laws to effect that end, even ... restricting the ... right of property in the game after it is taken or killed." *Rodman*, 59 N.W. at 099. The *Rodman* Court did not even consider, much less conclude, that State ownership applies only after an animal is taken or killed as Appellant represents to this Court. (App. Br. 16.)

What was obviously true to the Court a century ago is equally true today. A fair reading of *Rodman*, *Pierson*, and *Mitchell* establishes that the Courts have consistently and repeatedly concluded that it is lawful acquisition pursuant to the game and fish laws, whether by taking or killing or otherwise reducing to possession as authorized by the

game and fish statutes, which is the prerequisite to the transfer of title from the State to the individual.

II. THE STATE HAS REGULATED THE POSSESSION AND TRANSPORTATION OF PROTECTED WILD ANIMALS WITHOUT REGARD TO CAUSE OF DEATH.

Appellant apparently contends his possession was lawful because, according to Appellant, the Legislature has not legislated the possession of dead bears. (App. Br. 20.) That this assertion is incorrect is readily apparent from even a cursory review of the many provisions cited by Respondents above and in their memoranda submitted to the District Court. (AA 1-18.) Where, as here, the Legislature has expressly prohibited possession of all wild animals as the general rule, the absence of an exception applicable to the circumstances Appellant claims leaves Appellant without an exception to the general rule and, thus, without means by which he could have acquired a property interest in the bear remains.

It is clear that Appellant's assertions, that there exists an independent common law property right to wild animals, and that the game and fish laws do not apply absent a taking or killing, are false. Accordingly, unless the statutes themselves provide an exception to the general ownership rule, Appellant cannot have a protected interest in these bear remains. It is well-settled that where a statute is couched in broad and comprehensive language admitting of no exceptions, the court is not justified in engrafting thereon exceptions, however much it may deem the public welfare to require them. *State v. Tennyson*, 212 Minn. 158, 2 N.W.2d 833 (1942). Appellant complains at various points in his brief that "no law, rule or regulation controls the disposition of

animals that expire naturally.” In the absence of a specific provision controlling the disposition of a bear that died of natural causes, assuming for the sake of argument that Appellant had not destroyed evidence and his ability to prove the manner of death by clear and convincing evidence, the general provision that “a person may not acquire a property right in wild animals, or destroy them, unless authorized under the game and fish laws” prevails. Appellant cannot in good faith deny that he asks this court to read into the game and fish laws an exception that does not exist, one that is based upon nothing more than an individual’s claim to have found it. Accordingly, this Court should decline Appellant’s invitation to interject an exception into the broad and comprehensive language used by the Legislature on the basis of Appellant’s meritless contention that the game and fish laws do not apply where an individual claims to have found a wild animal already dead.

Even a cursory consideration of Appellant’s argument that wild animals may be disposed of in any manner that an individual sees fit so long as he claims the animal was deceased when he “discovered” it reveals it to be baseless. First, Appellant claims, falsely, that “[a]t the lower court, Respondents failed to cite a single provision of ... the Game and Fish laws that controls the disposition of animals unless they are first [sic] killed.” (App. Br. 21.). As noted above, Respondents cited Minn. Stat. §§ 97A.025 and .501 (prohibiting the acquisition of property rights in wild animals unless affirmatively permitted by exception), Minn. Stat. § 97A.405, subd. 1, requiring a license for possession, and Minn. Stat. § 97A.535, subd. 3 (prohibiting transportation of bears outside of certain timeframe) to establish Appellant’s violations that disqualify him from

developing a property interest in the bear. In addition, Respondents cited Minn. Stat. § 97A.221 and § 97A.015, subd. 12 to establish that the bear remains are contraband and subject to summary confiscation by the Commissioner because of Appellant's and his taxidermist's violations. Appellant may not prevail by ignoring the many provisions of law that obstruct his pursuit of this bear.

The selective provisions of the game and fish laws Appellant relies upon for his position that anything is permitted with respect to protected wild animals unless affirmatively prohibited only prove to emphasize Appellant's faulty analysis. It is absurd to suggest, as Appellant did below, that the Legislature's express permission to take, possess, or transport "unprotected wild animals ... at any time and in any manner" somehow supports a conclusion that the absence of a similar provision pertaining to protected wild animals nevertheless permits him, by implication, similar latitude to possess or transport protected wild animals. *See* Minn. Stat. § 97B.651 (2008). Appellant complains that "[i]f the Legislature was inclined to regulate the collection of dead bear remains, it could easily have passed a similar law." (App. Br. 24.) Respondents submit that if the Legislature was inclined to permit unfettered possession and transportation of protected wild animals, it would have passed a law similar to Minn. Stat. § 97B.651 (2008). It is clear, that by instead enacting very specific instances of permissible taking, possession, and transportation, that the Legislature meant the general restriction to otherwise apply.

Moreover, the fact that "antler hunting" is expressly permitted, further supports the conclusion that where the Legislature intended to permit an activity related to

protected wild animals, it expressly authorized it. Plaintiff's reliance on the affirmative authorization of ownership or possession of various parts of one species of wild animal is wholly misplaced to establish that by the absence of a similar provision related to bears, the Legislature has somehow impliedly authorized the possession and ownership of bear remains. The Minnesota Supreme Court declines to read into statute a provision that legislature purposely omits or inadvertently overlooks. *Metro. Sports Facilities Comm'n v. County of Hennepin*, 561 N.W.2d 513 (Minn. 1997); see also *State v. Moseng*, 254 Minn. 263, 95 N.W.2d 6 (Minn. 1959) (concluding that where failure of expression, rather than ambiguity of expression, constitutes the vice of statute, courts are not free to substitute amendment for construction and, thereby, supply the legislative omissions). Respondents agree that the Legislature "could easily have passed a similar law" to the antler shed provision if it intended to permit individuals to find and keep protected bear remains without a license or registration. That it did not can indicate nothing but that the general restriction of Minn. Stat. § 97A.501 controls. This conclusion is further compelled by Minn. Stat § 97A.405, subd. 1, which plainly states that "a person may not take, buy, sell, transport, or possess protected wild animals of this state without a license" unless otherwise allowed under the game and fish laws. As Appellant himself acknowledges, there is no provision of the game and fish laws which allow an individual to possess a bear without a license under any circumstances, much less one that allows an individual to conveniently sidestep the requirement of a license by simply claiming to have "found" the bear. Indeed, in *Rodman*, the Minnesota Supreme Court spoke directly to the Legislature's concern, concluding that the Game and Fish Laws are aimed at "not

the mere fact of possession of game lawfully obtained, but to prevent its being unlawfully taken or killed.” *Rodman*, 59 N.W. at 1098. Appellant may consider this a harsh result, but the game and fish laws simply do not permit possession and transportation of bears under the circumstances alleged by Appellant.

III. APPELLANT’S VARIOUS ALLEGATIONS OF CONSTITUTIONAL SHORTCOMINGS ARE WITHOUT MERIT.

Minnesota courts in their wisdom recognize that the power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary. *State v. Richmond*, 730 N.W.2d 62 (Minn. Ct. App. 2007). The party challenging the constitutionality of a Minnesota statute bears the very heavy burden of establishing beyond a reasonable doubt that the statute violates a constitutional provision. *Id.* Although Appellant clearly disagrees with the outcome that follows the straightforward application of game and fish law in this matter, Appellant fails to identify any provision that is even arguably unconstitutional.

The Minnesota Supreme Court has long held that “the legislature may pass any reasonable laws” in furtherance of “the preservation from extinction or undue depletion” of wild animals. *Rodman*, 59 N.W. at 1099. According to the Minnesota Supreme Court, “[a]ll so-called game laws proceed upon that principal, and their constitutionality has rarely, if ever, been successfully assailed.” *Id.* Appellant nevertheless contends that the game and fish laws’ applicability even as to dead wild animals renders them unconstitutional, offering a smattering of undeveloped, unsupported conclusory allegations in various attempts to undermine the cohesive and comprehensive statutory

scheme that is the game and fish law of Minnesota. Each of Appellant's convoluted arguments fails.

Appellant is merely grasping at straws when he claims that the statute is void for vagueness. (App. Br. 27.) Appellant states that a statute is void for vagueness unless "a penal statute define[s] the criminal offense with sufficient definiteness that ordinary people can understand what conduct was prohibited..." (App. Br. 27). Appellant complains bitterly that he "had no way of knowing what to do because no law, rule, regulation, or statute explains what Respondents now claim was required of Appellant." (App. Br. 23). Appellant's analysis fails to withstand scrutiny. The law very plainly spells out precisely the prohibited conduct or what an individual is *not* to do - possess and transport a bear without a license - and the consequences that follow the violation. Moreover, there is no logic in the suggestion that a requirement to enact criminal offenses with a particular level of specificity somehow obligates the State to provide Appellant with an exception that would allow him to acquire the State's property simply by claiming he found it dead,¹⁰ or has any relation whatsoever to the subsequent confiscation of contraband, a civil matter. Indeed, Appellant fails to establish that the State has any obligation whatsoever to allow the disposition of wild animals based upon an individual's claim that he found it. Appellant's argument on this point is both irrelevant and immaterial.

¹⁰ Indeed, Appellant's claim that Manitoba law expressly permits an individual to make a claim of ownership by discovery serves only to emphasize that where a government entity intends to permit acquisition of a wild animal, it has expressly acquiesced to the same. (See App. Br. 30.)

Although it is unclear, Appellant seems to be attempting to make a rational basis challenge as well. Appellant never identifies which provision of the game and fish laws he finds constitutionally offensive. Appellant apparently feels that the applicability of the game and fish laws to all wild animals, despite unverifiable claims as to the manner of death, fails to advance the purpose of the game and fish laws, or to protect and preserve wild animals. (App. Br. 24-25). Appellant simply dismisses the policy of protection and preservation firmly endorsed in *Rodman*, by claiming, despite an utter absence of support in the record, that in this case, unlike others who would make such a claim, the wild animal really did die of natural causes. Thus, according to Appellant, no point is served by withholding from him a property interest in the bear. This is the very problem that the legislature sought to address by making no distinction in the applicability of the law based upon mere allegations as to the manner of death. Further, it is precisely why the law prohibits the acquisition of a property interest in wild animals that is not evidenced as having been acquired in a manner authorized by the game and fish laws. *Rodman* addressed this very concern, in the context of confiscation of lawfully acquired wild animals subsequently unlawfully possessed, stating that:

No court would be justified in declaring unreasonable the provision limiting the time to five days after the commencement of the closed season, during which a person may lawfully retain possession of game taken or killed during the open season. ***What this provision aims at is not the mere fact of possession of game lawfully obtained, but to prevent its being unlawfully taken or killed.*** If it were permitted to have possession during the closed season, without limitation, of game taken or killed during the open season, it would inevitably result in frequent violations of the law, without the least probability of a discovery. Game is usually found in secluded places, away from habitations of men, with no one to witness the killing but the hunter himself. The game would have no earmarks to show whether it was taken

or killed in the open or the closed season, and hence conviction under this statute would ordinarily be impossible, and the law would become practically a dead letter.

Rodman, 59 N.W. at 1098 (emphasis added). In light of the obvious rational basis for the game and fish laws, Appellant's disagreement with the legislature's policy underlying the game and fish laws is more appropriately directed to his legislative representatives.

Appellant contends that he had no notice and opportunity to be heard. Once again, Appellant's argument is singularly devoid of merit. A right to due process is without exception dependent upon the existence of a right, in this case a property right. Appellant claims a property right acquired "outside the scope of the Game and Fish Laws." (App. Br. 32.) As made clear by Minn. Stat. § 97A.025 and the case law upholding the Minnesota public's ownership of wild animals, Appellant is very much mistaken as there are no rights to wild animals outside of those expressly authorized by the game and fish laws.

In light of the absence of private preexisting ownership rights in wild animals, the legislature has authorized summary confiscation of wild animals when a conviction becomes final or when the item seized is contraband consisting of a wild animal. Minn. Stat. § 97A.221, subd. 3 (2008); *see also* Minn. Stat. § 97A.501, subd. 1 (2008) (ownership of lawfully acquired wild animal reverts to the State if a law related to possession is violated). Summary confiscation is only applicable to wild animals consisting of contraband, as there are no "preexisting property rights" in wild animals under Minnesota law. The game and fish laws require forfeiture, on the other hand, with varying degrees of process when the object of forfeiture is subject to preexisting property

rights. Minn. Stat. § 97A.223 (requiring administrative forfeiture of certain firearms and abandoned property seized pursuant to game and fish laws) and Minn. Stat. § 97A.225 (requiring filing and service of complaint against motor vehicles and boats to be confiscated). The absence of preexisting property rights in wild animals, as well as in contraband, distinguishes the confiscation of wild animals from the forfeiture of personal property and removes concerns that might otherwise be associated with confiscation from the analysis.

Minn. Stat. § 97A.221 (2008) governs the seizure and confiscation of property consisting of wild animals subject to the game and fish laws. Wild animals “taken, bought, sold, transported, or possessed in violation of the game and fish laws” are contraband as defined by the game and fish laws and thus subject to seizure and confiscation. Minn. Stat. § 97A.015, subd. 12; Minn. Stat. § 97A.221, subd. 1(1) (2008). Because violation of a game and fish law causes ownership to revert to the public, as discussed above, seized wild animals may be summarily confiscated when the person from whom property has been seized is convicted, or when “the property seized is contraband consisting of a wild animal.” Minn. Stat. § 97A.221, subs. 3(1) and (2) (2008).

The disposition of wild animals in general, and contraband wild animals in particular, is entrusted to the discretion of the Commissioner. *See* Minn. Stat. § 97A.027, subd. 1 (2008). Appellant further fails to establish that the Commissioner’s decision was arbitrary and capricious. Instead, Appellant argues that the game and fish laws provide inadequate notice related to dead animals “whether killed or discovered dead from natural

causes.” This argument is baseless, as the law could not make plainer that possession without a license is prohibited.¹¹ Again, Appellant points to nothing that requires the Commissioner to exercise his discretion in Appellant’s favor, or to adopt rules granting an exception allowing an individual to acquire an ownership interest based upon a claim that he found it dead.

Even assuming, for the sake of argument, that Appellant did have a limited property interest in the remains, any due process right Appellant may have had was vindicated by informal adjudication. First, the statutes themselves satisfy due process as to contraband, by clearly noticing the public that violation of game and fish laws results in their confiscation. *See* Minn. Stat. § 97A.221 (2008). Second, although Appellant insinuates, with no factual basis whatsoever, that the State has engaged in nefarious activity to “punish” him without due process, Respondents submit that the record establishes that any due process rights Appellant may have had have been adequately vindicated. It is axiomatic that due process is satisfied by notice and an opportunity for hearing. Due process does not require a formal administrative hearing unless the law states otherwise. The game and fish law does not require a formal administrative hearing

¹¹ Appellant’s reliance upon the DNR website for the proposition that there is no process by which he could apply for a license is meritless. First, Appellant fails to establish that the State must offer possession licenses at all. Moreover, the website invites the public to contact DNR for more information about special licenses or permits. Appellant did not, assuming instead that he could bypass the game and fish laws because he “believed in [his] heart that it was [his].” (AA 86.) If Appellant had requested a possession license pursuant to Minn. Stat. § 97A.405, and been arbitrarily and capriciously denied one, he plainly has the opportunity to challenge an administrative decision as contemplated by the Minnesota Administrative Procedures Act.

prior to seizing evidence of a game and fish violation or prior to confiscating contraband. Appellant was notified by Conservation Officer Shoutz that the bear remains were being confiscated as a result of his possession of the bear in violation of Minn. Stat. § 97A.501, subd. 1 (2008). Appellant requested review of the matter by Conservation Officer Shoutz's supervisor, Lieutenant Provost. Lieutenant Provost reviewed the arguments of Appellant's counsel and concluded that Appellant was not entitled to possession of the bear under game and fish law. Next, Appellant appealed to the Commissioner, who reviewed the matter and concluded that the remains are contraband because they were possessed and transported in violation of Minnesota game and fish law, and accordingly, properly confiscated.¹² (*See* AA 64.) Appellant fails to establish that the Commissioner's decision was arbitrary or capricious. The undisputed facts establish that the bear in question was contraband not only because of the taxidermist's violations but the Appellant's as well.

CONCLUSION

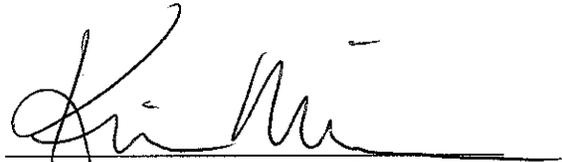
For all of the foregoing reasons, Respondents respectfully request that this Court affirm the decision of the District Court to grant judgment in Respondent's favor on all counts of Appellant's meritless complaint.

¹² For this reason alone, Appellant's 42 U.S.C. § 1983 claim fails. The ultimate decision to confiscate the bear remains was made by the Commissioner, an individual plainly entitled to immunity in the exercise of his discretion. (AA 60.)

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Respectfully submitted,

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