

May 7, 1999

Col. Leo W. Haseman, Director
Division of Enforcement
Minnesota Department of
Natural Resources
500 Lafayette Road
St. Paul, Minnesota 55155-4047

RE: In the Matter of the Trespass Citation Issued to James Wesley Grant;
OAH Docket No. 12-2000-12157-2.

Dear Col. Haseman:

A hearing in this matter was held on April 30, 1999, at the Rice County Courthouse, Faribault, Minnesota. Participating in the hearing were Conservation Officer Joe Frear, landowner Jerry P. Mariska, and James W. Grant, who was issued Trespass Civil Citation No. 30091 by Officer Frear for trespassing on Mr. Mariska's land on November 12, 1998. All were sworn and gave testimony. The primary issue in this case is whether Mr. Mariska's land was properly posted and that involves fact questions of where his signs were located. There is also a factual dispute as to how far onto the land Mr. Grant walked.

Mr. Mariska is the owner of land in Section 16 of Blooming Grove Township of Waseca County. A township road runs along the northern edge of the property, which is one-half mile wide from east to west. Another owner owns a small portion of the land in the northeast corner on which he has a building. Along the township road, Mr. Mariska's land is mostly agricultural land. However, there is a small drainage ditch about 150 yards from the west end of the property that runs southwesterly from the township road. About 75 yards east of that is a private field road that runs south from the township road and then winds back to a private gravel pit on the property. Adjacent to the private road and just to the east of it is a larger drainage ditch that runs under the township road and then to the southeast across Mr. Mariska's land. Attached Exhibit 1 is an illustration of the property drawn by Mr. Mariska with annotations by me.

Because of some wooded and other non-agricultural features of the property, Mr. Mariska's land is attractive to hunters. In an effort to keep the hunters off his land, Mr. Mariska annually posts no trespassing signs around his property. On November 12, 1998, Mr. Mariska had five signs posted along the township road. One was located at the west end of the land; another was located about 150 yards east of that next to the small drainage ditch; a third was located about 75 yards east of that near the west side of the field road; a fourth sign was located about 75 yards east of that beyond the east side of the large drainage ditch; and his fifth sign was located at the east corner of the land. Between the fourth and fifth signs was a sixth no trespassing sign that was posted by the owner of the small parcel in the northeast corner of Mr. Mariska's land.

Mr. Mariska uses the gravel pit for gravel for his own asphalt business, although it has been used rarely during the last two or three years. He has also allowed a few other contractors to obtain gravel from the gravel pit. Therefore, dump trucks occasionally use the field road to get to and from the gravel pit. Because the road slopes somewhat toward the drainage ditch and has occasionally washed out, Mr. Mariska has put gravel on it. This is especially true near the township road, and so the field road has the appearance of an improved gravel road extending several yards from the township road. That is why Mr. Mariska posted one of his no trespassing signs adjacent to the west side of the field road.

On November 12, 1998, Mr. Grant was hunting in the area, as he had for years. He drove along the township road and noticed some pheasants in the area of the large drainage ditch and decided to investigate. He parked his pickup truck on the north side of the township road across from the entrance to the field road. He left his dog in the pickup, but took his unloaded over and under shotgun with him.^[1] Mr. Grant checked the no trespassing sign posted to the east of the drainage ditch as well as the one posted to the west of the drainage ditch to see if they were posted by the same landowner, which they were. According to Mr. Grant, the sign to the east was about 40 yards east of the ditch and the

sign to the west was about 40 yards to the west of the field road, not at the edge of the field road. I believe Mr. Mariska's description of the sign locations is more accurate because it was corroborated by Officer Frear and because it was consistent with Mr. Mariska's attempts to post some of the signs at common access points.

After checking the signs to the east and west of the field road, Mr. Grant walked up the field road 40 or 50 yards to the point where it turns to the southeast and is less graveled. He had turned around and was walking toward the township road about the time Mr. Mariska came along driving his truck on the township road from the east. As Mr. Mariska came over a rise some 200 yards to the east of the drainage ditch, he saw the pickup, then Mr. Grant, who was then still about 40 yards up the field road. Mr. Mariska stopped his truck on the left side of the township road next to the field road. By the time he got out of his truck, Mr. Grant was up to him and they had a somewhat heated discussion. Mr. Mariska asked Mr. Grant why he was hunting back there and Mr. Grant told him that it was a public road back to the gravel pit. Mr. Grant repeated that position at the hearing.

Mr. Grant was issued a Civil Citation for violation of Minn. Stat. § 97B.001. Subdivision 4 of that statute prohibits a person from entering any land that is posted in accordance with the statute without first obtaining permission of the owner. That subdivision requires that such signs be posted either at intervals of 1,000 feet or less along the boundary of the area (or at intervals of 500 feet or less in wooded areas where boundary lines are not clear) **OR** at the primary corners of each parcel of land and at access roads and trails at the point of entrance to each parcel of land.

Mr. Grant argued at the hearing that he could walk upon the field road because it was not properly posted and was therefore public. That argument was based upon his interpretation of the statute that access roads and trails at the point of entrance to each parcel must be marked, and his testimony that there was no sign next to the field road. There are two defects with that argument. First, I believe that there was a no trespassing sign next to the field road. Second, even if the sign was located 40 yards to the west of the field road and

Col. Leo W. Haseman, Director
May 7, 1999

Page Four

another was located 40 yards to the east, as Mr. Grant described, the signs were posted at intervals of less than 1,000 feet along the boundary of Mr. Mariska's land. Such posting complies with the first alternative in the statute. By both Mr. Grant's and Mr. Mariska's descriptions, the signs to the left and right of the drainage ditch and field road were only 75 to 80 yards apart. That is 225 to 240 feet apart; and Mr. Grant inspected both signs, then entered the property between them.

Finally, Mr. Grant claims that he never got far enough off the township road to be on Mr. Mariska's land; that he was at most 10 yards off the township road. Again, however, I find Mr. Mariska's testimony more credible that Mr. Grant was about 40 yards up the field road and headed back toward the township road when he first observed him. Therefore, I conclude that Mr. Grant did enter, for outdoor recreational purposes, Mr. Mariska's properly posted land without first obtaining Mr. Mariska's permission in violation of Minn. Stat. § 97B.01, subd. 4. I therefore recommend that the citation be AFFIRMED.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order in this matter until at least five days after receipt of this letter. Mr. Grant may, during that five-day period, comment to the Commissioner on this recommendation and the Commissioner must consider such comments.

I am closing our file in this matter and returning the record to you.

Sincerely,

STEVE M. MIHALCHICK
Administrative Law Judge
Telephone: 612/349-2544

SMM:lc
Enclosure
cc: James W. Grant
Conservation Officer Joe Frear

^[1] Mr. Grant testified that it is his practice to carry an unloaded shotgun in such situations because he is aware of hunters being assaulted by landowners in the area.