

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Trespass Citation Issued to Adam
Scott Anderson

**FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION AND
MEMORANDUM**

A hearing in this matter was held by telephone conference call on March 7, 2001. Participating in the conference call were Deputy Sheriff Nathan Brecht; Jerel Schmidgall, the landowner involved; Brooks Moening, a hunter; and Adam Anderson, the hunter who appealed the citation.

NOTICE

This report is a recommendation, not a final decision. The Pope County Board of Commissioners will make the final decision in this matter. The Board may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation herein. Under Minn. Stat. § 14.61, the final decision of the Board may not be made until this report has been made available to the parties proceeding for at least 10 days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Board. If any party desires to do this, they should contact the county board in Glenwood to make arrangements.

STATEMENT OF ISSUE

Should the trespass citation issued to Adam Anderson be affirmed, or dismissed?

Based on all the files and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 18, 2000, Adam Anderson, Brooks Moening and Jason Alexander were hunting pheasant northeast of Morris, in the northwest corner of Pope County. They had permission to hunt on the land of Mary Hamry, and spoke with Hamry's son, Darren, before they began hunting that morning.

2. At some time during the morning, they crossed a bridge over the Chippewa River, and unbeknownst to them, crossed onto land owned by Jerald Schmidgall. Schmidgall rents the land to a farmer, who had planted soybeans on it.

The hunters were walking in the soybeans when they were seen by Schmidgall. Schmidgall and five friends were going to hunt there that day, and Schmidgall was upset to find persons trespassing. The hunters began to run away as Schmidgall drove toward them in a truck, but he was able to catch up to them. He demanded to see their driver's licenses, which they produced and he obtained identifying information. Schmidgall then telephoned the county sheriff's office, and Deputy Brecht issued citations to each of the three for trespassing. The only citation at issue in this proceeding is Adam Anderson's.

3. Schmidgall's land was posted. He posts it every year, before hunting begins, and he did post it in September of 2000. The hunters did not see any signs, but that is not unusual or impossible – the rules regarding posting do not guarantee that a sign will be visible from every point on a property boundary.

Based on the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Administrative Law Judge has authority to consider this matter based upon Minn. Stat. §§ 97B.001, subd. 3 and subd. 6, as well as § 14.50. The hearing was properly noticed, and all substantive and procedural prerequisites to a valid hearing were satisfied.

2. Minn. Stat. § 97B.001, subd. 2, provides that a person may not enter agricultural land for outdoor recreational purposes without first obtaining permission of the owner, occupant, or lessee, unless they are retrieving wounded game or retrieving a hunting dog. Agricultural land is defined as land that is plowed or tilled, land that has standing crops, or land that is within a maintained fence for enclosing domestic livestock. In this case, Anderson entered onto Schmidgall's soybean field, which is agricultural land, without permission. He was not retrieving wounded game or a hunting dog, and thus he did trespass in violation of Section 97B.001.

3. Section 97B.001, subd. 4 provides that a person may not enter any land that is posted without first obtaining permission of the owner, occupant or lessee, unless they are retrieving a hunting dog. In this case, Schmidgall's land was posted and Anderson did enter onto it without first obtaining permission. He did, therefore, trespass onto the land in violation of the statute.

Based upon the foregoing Conclusions, and all the files and proceedings herein, the Administrative Law Judge makes the following:

RECOMMENDATION

That the trespass citation issued to Adam Anderson based upon his entering onto the land of Jerel Schmidgall on November 18, 2000, be upheld.

Dated this 13th day of March, 2001.

ALLAN W. KLEIN
Administrative Law Judge

MEMORANDUM

There was a technical failure in the judge's telephone system on the morning of March 7. This caused a slight delay in the start of the hearing, as well as making it impossible to record the hearing. However, this report was prepared immediately after the hearing, while the testimony was still fresh in the judge's mind and, along with his handwritten notes taken during the hearing, the judge is confident that these facts fairly reflect the testimony and fairly summarize what actually happened back in November, 2000.

There were a number of discrepancies between Mr. Schmidgall's version of events, and the hunters' versions. The most important discrepancy was over the question of whether or not the hunters had shot a pheasant on the neighbor's land, which then went down on Schmidgall's property, such that the hunters were chasing a wounded bird. The Administrative Law Judge believes that it is more likely than not that the hunters did not shoot a wounded bird and followed it onto Schmidgall's property. When the hunters were confronted by Schmidgall, they did not claim to be retrieving a wounded bird. While it is possible that they may have merely neglected to tell Schmidgall that is why they were on his land, the Administrative Law Judge finds that to be unlikely.

Even if they were chasing a wounded bird that only relieves the hunters of the prohibition against entering into agricultural land without first obtaining permission. It does not relieve them of the prohibition of entering onto posted land. Since they violated both the agricultural land restriction and the posted land restriction, even if they had been found to be chasing a wounded bird, they would still be guilty of trespass on posted land. Therefore, the judge recommends to the Board that it uphold the citation.