

April 27, 2011

Col. William C. Bernhjelm, Director
Division of Enforcement
MN Dept. of Natural Resources
500 Lafayette Rd.
St. Paul, MN 55155-4047

RE: In the Matter of the Trespass Citation #39643 Issued to Rodney Lee Scott;
OAH Docket No. 6-2000-14791-2

Dear Col. Bernhjelm:

On February 2, 2002, Conservation Officer Bruce Hall issued a trespass civil citation to Rodney Lee Scott. Mr. Scott appealed the citation, and on March 13, 2002, the matter was referred to our office for resolution. On March 18, 2002, I issued a Notice of Prehearing Conference and Notice of Hearing, setting a prehearing conference telephone call for April 8. On April 8, a prehearing conference telephone call took place between myself, Officer Hall, and Mr. Scott. After hearing from both of them, it became apparent to me that the critical issue was whether or not the land was properly posted. The two participants agreed on where the trap site was, and they agreed where the "no trespassing" sign was located. But they could not agree on the distance between the two. I decided that the best way to resolve the matter was for the three of us to get together on the site and determine the distance. On April 15, the three of us did meet at the site and measured the distance. It became evident that the sign was located more than 500 feet from the trap site. As is explained more fully below, I calculate the distance between the two to be 859 feet, which is substantially greater than the 500 feet required to sustain the citation. I am, therefore, recommending that the citation be dismissed. After participating in the measurement, Officer Hall returned the trap (which he had seized) to Mr. Scott.

The complaining landowners in this matter, Nathan Rod and Samantha Iverson, own a rectangular 80 acre parcel of wooded land in Ford Township, Kanabec County. In the northwestern corner of their property, the Snake River crosses it. The river runs in a generally southwest to northeast direction at that point. The river bisects the property at the very corner, leaving a very small piece (less than a few acres) cut off from the rest of their property. In other words, the vast bulk of their property lies to the southeast of the river, but a small piece of it lies to the northwest of the river. The size of this small parcel is so small that, in fact, the local plat books do not make it appear to

be part of their property. Both Officer Hall and Mr. Scott had plat books. But neither of the books indicated that these landowners owned any land to the northwest of the river. A fair reading of the plat books was that all of the land northwest of the river was owned by a Joe Sweeny.

Rodney Scott is an experienced amateur trapper in this general area. Sometime in the fall of 2000, he observed that the north bank of the river would be a likely spot for a beaver trap. There is a forest road, which runs north and south, that crosses the river. It is known locally as Olympic Street, in Isle, Minnesota. There is a bridge over the river. As a person travels from south to north, approaching the bridge, the "no trespassing" signs posted by the complaining landowners are obvious on the east side of the road. However, the last of the signs is more than 500 feet from the north bank of the river. As one crosses the bridge, still proceeding north, one sees a different kind of "no trespassing" sign which is also on the east side of the road, but on the north side of the river roughly 100 feet from the north bank of the river. This different sign has been posted by Joe Sweeny.

The property line between complaining landowners and Joe Sweeny is somewhere just north of the north bank of the river. The complaining landowners were notified of the site visit on April 15, and urged to attend. Officer Hall believed that Mr. Rod was going to attend around 4:30 p.m., but he did not appear by the time the site visit ended at 4:50 p.m. Officer Hall went to the house to see if either Mr. Rod or Ms. Iverson were present, but they were not. Therefore, neither Officer Hall, Mr. Scott, or the Administrative Law Judge could be precise with regard to where the complaining landowner's property ended, and Mr. Sweeny's property began. However, the Administrative Law Judge finds, based upon the representations of Officer Hall and the signed statement of Mr. Rod, that the trap was located on property owned by the complaining landowners.

Mr. Scott had looked at the plat book, and assumed that the river was the dividing line between the complaining landowner's land (which he assumed to be all to the south of the river) and Mr. Sweeny's land (which Scott assumed to begin at the river and proceed northward). Therefore, during the late fall or early winter of 2000, Mr. Scott approached Mr. Sweeny and asked whether he could place a trap on Sweeny's property. After some discussion about the location of the trap, Sweeny agreed that Scott could do so.

Sometime in 2001, Scott did place a trap along the north bank of the river. Unfortunately, a domestic cat owned by the complaining landowners got caught in the trap, and was killed. Sometime during the week of December 10, the complaining

landowners contacted Officer Hall by telephone. They told him that their cat had been caught in a trap which was placed on their land without their permission. They further told Officer Hall that their land was posted. Officer Hall met with them on December 15 and formed the opinion that their land was legally posted against trespass by posting signs every 500 feet. Hall then located the trap, found that it was tagged by "Rodney Scott" and seized it. The next day, Hall returned to the complaining landowners property, and asked Nathan Rod to sign a landowner statement, which he did. Hall then contacted Scott, indicated that he had obtained permission to trap on the land the year previously. Hall responded that the complaining landowners had indicated they had given no permission to hunt on the land, and did not even know who Scott was. Communications between the two broke down at this point, and thus it is unclear whether, at that time, Hall even understood that Scott believed the land to be owned by Sweeny, rather than the complaining landowners.

On February 2, 2002, Hall issued Trespass Civil Citation and Penalty No. 39643 to Scott. On February 11, 2002, Scott filed an appeal. On March 13, 2002, the matter was referred to the Office of Administrative Hearings, and on March 18, the Administrative Law Judge issued a Notice of Prehearing Conference and Notice of Hearing. That notice set a prehearing conference date for April 8, which is when the prehearing conference telephone call did occur.

The salient facts of this matter are that Scott thought he had permission from the landowner to place the trap when, in fact, he did not, because he only had permission from the wrong landowner. But, the right landowner had not properly posted the land. The distance from the trap site to the nearest posting by the complaining landowners was well over 800 feet. That is more than the 500 feet required by law for wooded land. An alternative method of posting, at the primary corners of the parcel and access roads and trails at the point of entrance to each parcel, was not properly followed either. The complaining landowners did not have a sign on the north side of the river at all. While practical necessity and common sense dictate that it may not always be possible to post a sign exactly at the corner of a parcel, the sign must be posted reasonably near the corner in order to accomplish its purpose. In this case, there was no sign on the north side of the river at all, and thus the land cannot be claimed to be posted using the corners method.

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The Administrative Law Judge respectfully recommends that this citation by
DISMISSED.

Sincerely,

ALLAN W. KLEIN
Administrative Law Judge

Telephone: 612/341-7609

AWK:cr

NOTICE

The law provides that the final decision in this matter must be made by the Commissioner (or his designee). The law further requires that the Commissioner must wait at least five (5) days after receipt of this recommendation before he makes the final decision. Mr. Scott may, during that five (5) day period, comment to the Commissioner on this recommendation, and the Commissioner must consider the comments. Once the Commissioner has made his final decision in this matter, a copy of that decision must be served upon Mr. Scott and the Administrative Law Judge.