

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 John
Robert Vorpahl

**RECOMMENDATION THAT
CITATION BE AFFIRMED**

This matter came before Administrative Law Judge Manuel J. Cervantes (ALJ) on a Notice of Hearing, filed January 13, 2011. The telephone hearing was held on February 3, 2011. Conservation Officer (Officer) Daniel Baumbarger, Officer Tony Anderson, and John Fridgen (Manager) appeared as witnesses on behalf of the Department of Natural Resources (Department or DNR). John Robert Vorpahl (Appellant) appeared on his own behalf.

The facts are as follows: on the morning of October 17, 2010, the Appellant and a friend were hunting in a channel on Mud Lake in Traverse County, Minnesota. At about 9:30 a.m., the Manager heard gunshots coming from the lake. The Manager proceeded towards the lake where the gun shots were coming from. The Manager saw the Appellant and his friend hunting ducks from the high land of his property, approximately 25 yards from the shore.

The Manager told the hunters that they were on private property, that they did not have permission to hunt from there, and requested that they leave immediately. The Manager also pointed out that the property had been posted "No Trespass." The No Trespass sign had been pulled out of the ground and was lying on the ground about 15 feet from where the hunters had been hunting. The hunters argued with the Manager, stating words to the effect that they had the right to hunt in the vegetation, that he [the Manager] could not tell them where to hunt, and that they were not leaving. The Manager said that they were mistaken as to their understanding of the law, that they had been hunting on his dry land, and were not entitled to be there. Because they refused to leave, the Manager said he would report them to the Sheriff's Office.

The Manager then left the area and proceeded back to his house and called the Sheriff with his complaint. The Sheriff's Office connected the Manager to the Officers at the DNR.

Approximately an hour and a half later, the Officers appeared at the property and spoke to the Manager. All three men proceeded through the farmland to the channel

near the lake. Appellant and his friend were still present at the water's edge, near or in their boat. Officer Anderson approached the hunters. Officer Baumbarger remained with the Manager. While Officer Anderson spoke to the hunters, Officer Baumbarger looked around the immediate area where the hunters had been hunting on the Manager's land. The grass in that area had been matted down, there were boot prints in the mud, and many shell casings were strewn about the area. Officer Baumbarger also noticed a "No Trespass" sign that had been pulled out of the ground and was lying near the area where the hunters had been hunting. It was clearly visible to him.

Officer Anderson directed the hunters to return to their truck. The officers met Appellant there and issued citations to him and his friend.

Minn. Stat. § 97B.001, subd. 4(a), in relevant part, states "a person may not enter, for outdoor recreational purposes, any land that is posted under this subdivision without first obtaining permission of the owner, occupant, or lessee."

Minn. Stat. § 97B.001, subd. 4(b), in relevant part, states, "[t]he owner, occupant, or lessee of private land ... may prohibit outdoor recreation on the land by posting signs once each year that state 'no trespassing' or similar words...."

Minn. Stat. § 97B.001, subd. 3, in relevant part, states, "a person may not remain on any land for outdoor recreation purposes after being orally told not to do so by the owner, occupant, or lessee."

The issue in the matter is: did Appellant trespass upon the land of the Manager.

The Appellant denies that he hunted from the area of the Manager's land. He maintains that he hunted only from the cattails and vegetation at the shore's edge. This testimony is contradicted by the Manager who said that the hunters had been hunting on his land about 25 yards from the shore. Officer Baumbarger's testimony relative to the physical evidence of the flattened grass, boot marks, and strewn shotgun shells corroborated the Manager's observations.

The ALJ accepts the testimony of the Manager and Officer Baumbarger as credible and finds that the Department has met its burden of proof by a preponderance of evidence that the Appellant trespassed upon the land of the Manager, contrary to Minnesota law.

The Minnesota Trespass law contemplates the inadvertent going on to another's land. Minn. Stat. § 97B.001, subd. 3, affords a person the opportunity to leave when asked to do so by a rightful owner, occupant, or lessee. Had Appellant done so, rather than arguing with the Manager, it is unlikely that this matter would have resulted in the way it did.

RECOMMENDATION

Based upon the facts and law as stated above, the ALJ recommends that Appellant pay the \$50 scheduled civil penalty.

Dated: February 8, 2011

s/Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally recorded.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Natural Resources will make the final decision after review of the entire record. The Commissioner may not issue a final order until at least five days after receipt of the report of the administrative law judge. The appellant may, within those five days, comment to the Commissioner on the recommendation and the Commissioner will consider the comments. The final order may be appealed in the manner provided in Minn. Stat. §§ 14.63 to 14.69.