

April 13, 2011

Tom Landwehr
Commissioner
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4047

**Re: *In the Matter of the Appeal of the Trespass Citation Issued to Terry Leroy Pickar*
OAH 16-2000-21893-2 (Citation number: 45241)**

Dear Commissioner Landwehr:

This matter came before Administrative Law Judge Manuel J. Cervantes (ALJ) on a Notice of Hearing, filed March 16, 2011. The telephone hearing was held on April 6, 2011. Conservation Officer Al Peterson (Officer), Anthony Beck (Land Owner or Beck), and John Tholen (Invitee or Tholen) appeared as witnesses on behalf of the Department of Natural Resources (Department or DNR). Terry Leroy Pickar (Appellant) appeared on his own behalf. The record closed at the conclusion of the hearing that morning.

The facts are as follows: Anthony Beck is a land owner in Becker County, Minnesota. He gave John Tholen permission to bow hunt deer on his land for the 2010 fall season. The property is agricultural and wooded. The property is properly posted "No Hunting/No Trespassing."

On the morning of October 16, 2011, Tholen saw three men walking across the Beck property in a westerly direction. By the time Tholen retrieved his All Terrain Vehicle (ATV), the men had walked off the Beck property and onto adjacent land. Tholen saw a fourth man enter Beck's property, approaching from the east. Tholen approached this man with his ATV. This man identified himself as Terry Pickar, Appellant herein. Tholen told Appellant that he was on private property and that he did not have permission to be there. Appellant replied that he had been asked to help find a wounded deer that had crossed onto Beck's property. Appellant then located his party of three by cell phone. Tholen overheard the telephone conversation and recognized the party's current location. He offered to take Appellant there. When they arrived, Tholen told the party that when they leave, that they should leave along the edge of the tree line out to the road so as to avoid crossing the Beck field again.

Shortly thereafter, Tholen called Beck to tell him there were four people who walked across his property. Beck joined Tholen and together they found a deer stand on Beck's property. Beck and Tholen identified the location where a deer had been shot on Beck's property, by the traces of blood on the grass and foliage. Beck and Tholen also found bait piles of apples lying on the ground on his property, not far from where the deer had been shot. This irritated Beck because baiting deer is unlawful. Beck, in turn, called the local law enforcement tip-line to make a complaint. DNR was contacted.

Beck has never spoken to these men nor did he give them permission to hunt or enter onto his property.

On October 17, 2011, the DNR Officer met Beck at the property in question to conduct an investigation. The Officer confirmed the location of the hunting stand, the bait piles of apples, and the traces of deer blood. The blood trail started on Beck's property and traveled from east to northwesterly across the Beck property.

On November 11, 2010, the Officer interviewed the Appellant by telephone. The Appellant admitted to the Officer that he saw the No Trespass/No Hunting signs and was on the Beck property when he was approached by Tholen. He also admitted that he had trespassed but he was under the assumption that the hunting party knew what they were doing. It was his belief that there was an understanding among adjacent property owners that they could cross each other's land.

Beck was not aware of any such an agreement. No adjacent landowner has ever spoken to him about this understanding. Appellant admitted that he had not received permission from Beck to cross his land.

On February 2, 2011, the Officer issued civil trespass citations to the four persons, including Appellant, who crossed over the Beck property on October 16, 2010.

In his defense, Appellant stated that he spoke to Tholen for about twenty minutes in an amicable fashion. Tholen offered to take him to where the hunting party was located. Tholen did not ask him to leave the property but drove Appellant farther back onto the Beck property. Appellant believed everything was "fine." Appellant believes that he got a trespass ticket was because Brandon Jacob did not cooperate with the DNR in turning over the bow he hunted with on October 15, 2010, and that the ticket was "personal."

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....”

The material facts in this case are not in dispute: Appellant admitted that the Beck property was posted “No trespassing/No hunting on October 16, 2010.” Appellant saw the signage but walked onto the property anyway, incorrectly believing that the hunting party had permission to enter. He acknowledged that he did not personally receive permission from Beck to cross his land.

Appellant indicated that Tholen did not tell him to leave, but offered to give him a ride to where the rest of the hunting party was, and therefore, he thought everything was fine, inferring that he had been granted permission by Tholen to be there. While there was no testimony to the effect that Appellant was asked to leave, the trespass statute does not require this.

Minn. Stat. § 97B.001, subd. 4(a), requires anyone one who wishes to enter another’s property to get permission from the owner first. Appellant admits that neither he nor anyone in his party received such permission.

In addition, there appears to be a discrepancy between Appellant’s testimony and that of Tholen. Tholen indicated that when he approached Appellant, he told Appellant that he (Appellant) was on private property and that he did not belong there. Appellant contradicts this. The ALJ finds Tholen’s version of the facts to be the more credible of the two. From this finding, the ALJ concludes that Tholen did not grant Appellant permission to be on the Beck property even if Tholen, as an invitee, had authority to grant such permission. The DNR has established, by a preponderance of the facts, an ample basis for the issuance of a trespass citation to Appellant

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

Sincerely,

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

Telephone: (651) 361-7945

MJC:dsc

cc: Conservation Officer Al Peterson
Terry Pickar
Pat Watts