

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

Filed in the Trial Courts
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU

JOHN FORREST,


Plaintiff,

vs.

KATHLEEN KALILA TURLEY nee
KATHLEEN ADAIR,

Defendant.

OCT 16 2015

By  Deputy

Case No.: 1JU-15-523 SC

ORDER

Trial on plaintiff's claim for damages was held on October 12, 2015 and completed on October 15, 2015. Plaintiff's claim is based on AS 16.05.790 that prohibits a person from intentionally obstructing or hindering another person's lawful hunting, fishing, trapping, or viewing of fish or game.¹ In order to prevail, plaintiff must establish by a preponderance of evidence that defendant interfered with his traps with the intent to obstruct his trapping. It is an affirmative defense to the claim that a person was lawfully entitled to obstruct or hinder the hunting, fishing, trapping, or viewing of fish or game.² A civil remedy for violation of AS 16.05.790 is provided by AS 16.05.791.³

¹ AS 16.05.790 Obstruction or hindrance of lawful hunting, fishing, trapping, or viewing of fish or game.

- (a) Except as provide in (e) of this section, a person may not intentionally obstruct or hinder another person's lawful hunting, fishing, trapping, or viewing of fish or game by
- (1) Placing one's self in a location in which human presence may alter the
 - (A) Behavior of the fish or game that another person is attempting to take or view; or
 - (B) Feasibility of taking or viewing fish or game by another person; or
 - (2) Creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the fish or game that another person is attempting to take or view.

.....

During the course of trial, it was clearly established through prior statements and the testimony of Ms. Turley that she interfered with three traps by springing them. She however testified that she felt privileged to do so out of the necessity to safeguard her dogs on December 24th and fellow hikers on December 27th.⁴

On the 24th of December, Ms. Turley was surveying the condition of the Davies Creek Trail two days before a planned group hike she intended to lead. She noted that along the trail were various traps set clearly in view and some near the trail. Approximately 1.3 miles up the trail, she discovered a bald eagle caught in a trap intended for wolverines. The eagle was alive and watching her. She quickly tied her three dogs to a nearby bush and busied herself with freeing the bird from the trap. It was apparent the eagle had struggled to free itself because chain was wrapped tightly around its legs. She made a concerted effort for an hour to free it while trying various methods to do so. Concerned about her dogs getting loose during the process, she snapped a nearby trap closed. She was successful in her effort and left the area with the eagle in her backpack and her dogs walking with her under voice control.

As she proceeded to trail's end, she was stressed having labored hard to free the eagle and probably somewhat angry it had been caught in a trap. The last thing she wanted to manage was the need to free one of her dogs from another trap she saw near the trail in a box. She disabled that trap as well.

² AS 16.05.790(c). In a prosecution under this section, it is an affirmative defense that the person was lawfully entitled to obstruct or hinder the hunting, fishing, trapping, or viewing of fish or game.

³ AS 16.05.791. Civil remedies for violation of AS 16.05.790.

(a) A person aggrieved by conduct or threatened conduct in violation of AS 16.05.790 may petition a superior court to enjoin the respondent from engaging in the conduct.

(b) A person aggrieved by a violation of AS 16.05.790 is entitled to recover general damages, and special damages, including license and permit fees, travel costs, guide-outfitting fees, costs for special equipment and supplies, and other related expenses.

(c) A court may award punitive damages in addition to the damages set out in (b) of this section.

⁴ Plaintiff makes no claim based on the trap that captured the eagle.

Two days later, Ms. Turley was on the trail again with a group of Alpine Club members. There were ten members with varying degrees of competence. One member was separated from the group near the far end of the trail causing delay. On the way out Ms. Turley noted the same trap near the trail had been reset. For the same reason she deactivated the trap two days before, she did so again but this time out of added caution for people.

The traps belonged to Mr. Forrest who has been trapping the Davies Creek area for a number of years and has trapped most of his life. His trap line is approximately three miles long in that area. As noted by the testimony of Trooper Abbott, his trap sets met all legal state requirements and appeared safe when he inspected them some weeks before.⁵ The traps were visible because they were set in boxes and one in a bucket.

Because there is no question whether Ms. Turley deactivated the traps, the questions that do remain are whether she did so with the intent to obstruct or hinder another person's lawful trapping and whether she was lawfully entitled to do so. Disabling the traps was clearly intentional rather than the result of accident or inadvertence. She may not have done so with the primary intent to obstruct or hinder but clearly she recognized that would be the result. Ms. Turley has extensive experience in the outdoors and that experience includes taking game for her own use. She knows if the means to take game is denied, the ability to do so is obstructed. Knowing the result will occur is to intend it. Though she may have been motivated by notions of safety, she chose to hinder Mr. Forrest's ability to take game with the particular traps.

⁵ The state has designated many trails in the Juneau area that require a ¼ mile distance between them and the nearest trap. Davies Creek Trail is not one of them. **5 AAC 92.550(1)(F)**. The City and Borough of Juneau also prohibits traps within one half mile of any public or private street, road, right-of-way, or highway within the CBJ. **CBJ 08.45.030**.

Legal entitlement can take various forms but the most applicable here is “necessity.”⁶ AS 16.05.791 provides a civil remedy for the criminal acts described in AS 16.05.790. The defense of necessity is therefore available.⁷ In order to establish the defense of necessity, the defendant must show the existence of three essential elements: 1) the act charged must have been done to prevent a significant evil; 2) there must have been no adequate alternative; 3) the harm caused must not have been disproportionate to the harm avoided. The defendant’s judgment concerning the third element, whether the reasonably foreseeable harm resulting from the violation would be less than the harm resulting from compliance with the law, is evaluated objectively using the facts as the defendant reasonably perceived them. In the event of a continuing offense, it must be apparent she stopped violating the law as soon as the necessity ended.⁸

Ms. Turley justifies springing all three traps to assure the safety of her dogs and hikers. If that was all that was required anyone could claim justification knowing a particular trail is used for trapping and choosing to walk dogs without a leash and disarming every trap within range. The justification of necessity is not available to those who created the need to violate the law in the first instance. Here, defendant was confronted by an eagle in extreme condition and was presented with what she viewed as an emergency. She felt compelled to act. She acted quickly by tying her dogs to a bush and began her effort to free the eagle. Near the eagle trap

⁶ AS 11.81.320. **Justification: Necessity.** (a) Conduct which would otherwise be an offense is justified by reason of necessity to the extent permitted by common law when

- (1) Neither this title nor any other statute defining the offense provides exemptions or defenses dealing with the justification of necessity in the specific situation involved; and
- (2) The justification specified in (a) of this section is an affirmative defense.

⁷ Some jurisdictions have considered whether the defense of necessity is applicable in defense of a civil claim even in those instances where the civil claim is not based on a criminal statute, and permitted it. See, e.g. *Morgan vs Foretich*, 546 A.2d 407 (DC Court of Appeals 1988).

⁸ *Greenwood vs. State*, 237 P.3d 1018, 1022 (Alaska 2010).

was a marten trap. As a cautionary measure, she sprung that trap to assure that, while she was working, the dogs didn't get loose and invade that trap adding to the emergency. When evaluating the circumstances and objectively applying facts as the defendant reasonably perceived them, the court finds that she was justified when she rendered the trap near the eagle harmless.

On the way out to the road with the eagle in her backpack and in the company of her three dogs off leash, Ms. Turley encountered another trap in a box near the trail. She neutralized the trap by throwing a stick in it. She did so out of concern that her dogs might fall back to investigate the trap despite her confidence that she had voice control. She explained one was only a three month old puppy. The puppy could have been leashed. Three days later while returning from the hike with her group, she rendered the same trap harmless out of concern one of the hikers might step on it, although the trap was in a box presenting little apparent danger.

In order to be justified those latter two acts would have to be done to prevent a significant evil. It is difficult to classify the potential harm to a person by a marten trap a significant evil. The second factor to establish a necessity defense requires that there must be no adequate alternative. Here, Ms. Turley warned all the hikers that the traps were in proximity and urged their caution. If she was concerned about that particular trap, she could have placed herself in front of it or asked someone else to do so while all the hikers passed. Other alternatives existed. Given these findings, it is unnecessary to reach the third factor. The court finds that necessity did not justify disarming the marten trap a half mile from the road twice.

That leaves the issue of damages to be awarded to Mr. Forrest. He asks the court for damages between \$500 and \$700. He did not explain why he feels that amount is warranted. The evidence presented by plaintiff concerning damages is wanting. He testified concerning the

mileage rate allowed by the state but offered no evidence of his loss of income. The only evidence in that regard came as a result of the court's questions. The court asked what his average take was on a typical week during that time of year. He testified that it varied but it would not be unusual for him to trap two marten, a mink and maybe two beavers. During the week in question he recalls trapping a large beaver and a mink but could not be more specific and had not apparently given the matter much thought until asked. Better evidence of damages might have been weekly logs of animals taken noting which traps and what portion of the trap line was productive. The court might then have some basis upon which to calculate the likelihood of more success in the week of the December 24, 2014. Mr. Forrest may have caught a marten in the trap one half mile up the trail or he may not. It could be that he has never caught anything in a trap in that particular area. Loss of profits from harvesting fish or game, although difficult if not impossible to prove with mathematical certainty, are recoverable if proved with "reasonable certainty."⁹ Reasonable certainty requires a showing of actual loss of profits and a reasonable basis upon which to compute an award.¹⁰ Here the court is left to speculate because no basis exists upon which to compute an award. The court concludes therefore that plaintiff failed to prove his damages by a preponderance of evidence. With regard to the requested punitive damages, the court cannot find by clear and convincing evidence the acts committed by Ms. Turley were outrageous, including acts done with malice or bad motives or they evidenced reckless indifference to the interest of another person.¹¹

⁹ *Johnson vs. Alaska State Department of Fish and Game*, 836 .2d 896, 910 (Alaska 1991)

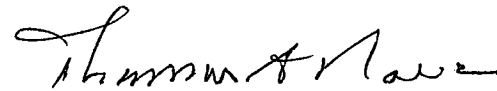
¹⁰ *Id.*

¹¹ AS 09.17.020(b)(1) & (2).

It is the conclusion of this court that defendant Ms. Turley is liable to plaintiff Mr. Forrest for any loss due to her unjustified interference with his trap at half mile on the trail but that plaintiff failed to prove any damages.¹² Therefore,

IT IS ORDERED that plaintiff take nothing by his complaint. Each party shall bear their own costs and attorney fees.


Dated at Juneau, Alaska this 16th day of October, 2015.



Thomas G. Nave
District Court Judge

CERTIFICATION

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¹² AS 09.17.020(f)(1) prohibits punitive damages more than three times the amount of compensatory damages awarded to plaintiff. Here, no compensatory damages were awarded so punitive damages cannot be supported.