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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2127**

Roderick Kottom,  
Respondent,

vs.

Minnesota Department of Natural Resources,  
Appellant.

**Filed November 25, 2008  
Reversed  
Minge, Judge**

St. Louis County District Court  
File No. 69HI-CV-07-225

Roderick R. Kottom, 222 Southwest Third Street, Chisholm, MN 55719 (pro se respondent)

Lori Swanson, Attorney General, Kimberly Middendorf, Assistant Attorney General, 445 Minnesota Street, Bremer Tower, Suite 1800, St. Paul, MN 55101 (for appellant)

Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and Minge, Judge.

**UNPUBLISHED OPINION**

**MINGE**, Judge

Appellant asserts that forfeited animal pelts were improperly returned to respondent. Because respondent violated Minnesota law by possessing these animal pelts without proper labeling, we reverse.

## FACTS

In the course of a search of respondent Roderick Kottom's home, appellant Minnesota Department of Natural Resources (DNR) seized 40 fisher and pine marten pelts. Only one of the seized pelts was tagged. Respondent was charged with six counts of violating Minnesota's game and fish laws. Following a bench trial, respondent was convicted of taking or possessing fisher in closed season, a gross misdemeanor under Minn. Stat. § 97A.331, subd. 6 (2004); failing to check traps or snares, a misdemeanor under Minn. R. 6234.2200, subp. 2; failing to provide identification of traps and snares, a petty misdemeanor under Minn. Stat. § 97B.928, subd. 1 (2004); and unlawfully storing protected wild animals, a misdemeanor under Minn. Stat. § 97A.505, subd. 4 (2004). Respondent was acquitted of gross overlimits of wild animals, a gross misdemeanor under Minn. Stat. § 97A.338 (2004), and the state dismissed the charge of unlawfully buying or selling wild animals, Minn. Stat. § 97A.325, subd. 1 (2004).

On June 15, 2007, respondent petitioned to have the pelts returned to him.<sup>1</sup> The district court granted that motion, ordering all animal pelts, except for two fisher pelts,<sup>2</sup> returned to respondent. This appeal follows.

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<sup>1</sup> Respondent had standing to request return of these pelts even though he does not claim to be the owner. Minnesota law states: "Upon acquittal or dismissal of the charged violation for which the property was seized, all property, other than contraband consisting of a wild animal, wild rice, or other aquatic vegetation, must be returned *to the person from whom the property was seized*." Minn. Stat. § 97A.221, subd. 4 (2004) (emphasis added).

<sup>2</sup> The two fisher pelts were found to be contraband because they were taken out of season.

## DECISION

“A reviewing court need not defer to the district court’s application of the law when the material facts are not in dispute.” *Engler v. Wehmas*, 633 N.W.2d 868, 872 (Minn. App. 2001) (citing *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 310 (Minn. 1989)), *review granted* (Minn. Dec. 19, 2001), *appeal dismissed* (Minn. Apr. 5, 2002). Therefore, we review de novo the application of the law to these facts.

“An enforcement officer may seize: (1) wild animals, wild rice, and other aquatic vegetation taken, bought, sold, transported, or *possessed* in violation of the game and fish laws or chapter 84 or 84D.” Minn. Stat. § 97A.221, subd. 1(a) (2006) (emphasis added).

The statute further states:

Confiscated property may be disposed of or retained for use by the commissioner, or sold at the highest price obtainable as prescribed by the commissioner. Upon acquittal or dismissal of the charged violation for which the property was seized: (1) all property, other than contraband consisting of a wild animal, wild rice, or other aquatic vegetation, must be returned to the person from whom the property was seized.

The person seeking return of confiscated animals has the burden of proving that he is entitled to return of the property.<sup>3</sup> Respondent was convicted of improperly possessing

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<sup>3</sup> In a civil forfeiture action, the party attempting to alter title to the property has the burden of proving a basis for the forfeiture by clear and convincing evidence. Minn. Stat. § 609.531, subd. 6(a) (2004). The same is true here. The ownership of wild animals is in the state, and an individual can only acquire property rights in wild animals by complying with the game and fish laws. Minn. Stat. 97A.025 (2004). Therefore, respondent must show that the animals were lawfully acquired and possessed such that he established ownership of those animals. *See generally* Minn. Stat. § 97A.255 (stating that in a prosecution for violating the game and fish laws the burden is on defendant to establish that the animals were lawfully taken).

wild animals by failing to mark the packaging of those animals that he was storing for other people under Minn. Stat. § 97A.505, subd. 4 (2004).

The district court determined that because respondent was storing the pelts for others, he did not “possess” the animals and they were not properly confiscated. In its order releasing the wild animals to respondent, the district court stated: “Specifically the court found in Findings of Fact #10 and #11 in the May 2007 order that [respondent] did not possess but was merely storing the furs belonging to others . . . .” Finding #11 states that “the evidence in the instant case does not show beyond a reasonable doubt that an overlimit amount of fisher and pine marten were solely possessed by [respondent].” The district court relies on its conclusion in the criminal proceeding that the prosecution had not established beyond a reasonable doubt that respondent “possessed” the animal pelts.

Using a finding in one proceeding as a basis for a conclusion in another proceeding is a delicate step. Here, the district court takes findings from a criminal proceeding and uses them in a civil action. We note that the burdens were different in the two proceedings. In the civil action, the burden is on respondent to show that, based on a preponderance of the evidence, he did not possess the animals. In the criminal case, the state had the burden to prove guilt beyond a reasonable doubt. The state’s failure to establish guilt does not mean respondent proved lack of possession. We recognize that because other individuals had left the pelts in respondent’s care and he was storing them on behalf of others, respondent did not have sole possession of the pelts. However, such storage required substantial, temporary possession. Regardless of the extent of his possession, the law required that they be marked. Because respondent violated Minn.

Stat. § 97A.505, subd. 4 (2004), by temporarily possessing these animals and failing to properly mark them, we conclude they were properly confiscated, and the district court erred in ordering them returned to respondent.

It appears from the record that one animal pelt was properly labeled. However, it further appears from our limited record that this pelt was commingled with two contraband fisher. Because such comingling is prohibited, even the properly labeled pelt was held by respondent in violation of the law. Minn. Stat. § 97A.221, subd. 2 (2006). As a result, we conclude that the district court erred in ordering its return to respondent.

**Reversed.**

Dated: