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Wildlife trooper with traps on private land sued for trespass

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Land leaseholders Mark Loomis and Nicolene Jordan posted a no trespassing sign at an access point near Colony High School after they discovered snares on the land. Authorities say setting traps or snares on private land isn't illegal unless access points are posted with signs. November 2013.

PHOTO BY MARK LOOMIS

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WASILLA -- An Alaska wildlife trooper has been named the defendant in a lawsuit that claims he and his trapping partner violated the law when they set snares for fox and coyote on private property without permission.

Central Gravel Products owners Nicolene Jordan and Mark Loomis filed the civil lawsuit against Trooper John Cyr for "multiple trespasses and creation of an ongoing nuisance" on land they lease in a suburban area near Colony High School.

The complaint, which Talkeetna attorney Paul Brattan filed Thursday in Palmer Superior Court, also lists as a defendant Rick Ellis, Cyr's trapping partner and a past president of the Alaska Frontier Trappers Association.

Ellis said Friday he hadn't yet been served and declined to comment. Cyr previously instructed a reporter to contact Ellis for any comments. He is a wildlife trooper based out of Palmer.

The lawsuit centers on an incident last month that's sparked a debate about just how far hunters and trappers can go before bumping up against private property rights.

Jordan and Loomis in mid-November discovered at least 38 snares in an old potato field on 160 acres leased for years from landowner Ralph Kircher. Neither they nor Kircher ever gave the trappers permission to enter the property, both said last month.

They also found several moose heads and what looked like the body of a moose calf used as bait, according to the complaint. Boot prints led in and out of the property about 200 feet from a sign marking the entrance to the gravel company.

Cyr's name was on a state permit for the salvaged moose parts.

Loomis pulled the snares and Jordan filed a formal complaint about the trooper's actions with the Department of Public Safety.

A wildlife trooper sergeant came out and investigated the complaint. He found nothing illegal happened because the place the trappers entered the property wasn't posted with a sign prohibiting trespassing or trapping, troopers said at the time.

Under Alaska's criminal trespass statute, property owners must post every road and known access point on their land with signs 144 square inches in size that are inscribed with the landowner or leaseholder's name and contact information.

There was no sign at the point where the trappers entered, authorities said. But there were other signs on the property.

Even if Jordan and Loomis "attempt to post enough signs to convince every potential passing trapper that they have complied with the strict provisions in the Alaska criminal trespass statute, the frequent gale-force winds in the area will soon blow a goodly portion of these signs away," the complaint says.

Ellis said last month that he and Cyr trapped fox and coyote on the land last year. This year, he set the snares but hadn't started trapping yet.

They never asked for permission, he said, because they didn't have to.

Ellis, in a contention echoed numerous times by the troopers, said the trappers did nothing illegal. That's because the place they entered the property -- a pull-out blocked by several logs -- wasn't posted.

"Lacking the presence of any signs, anybody can go anywhere they want," he said last month. "They can trap, they can hunt, they can do whatever."

Several attorneys said in interviews that Ellis' assertion is just not true.

Trapping or hunting on private property that's not properly posted may not be a crime but it's also not legal and could lead to civil lawsuits like the one filed this week by Loomis and Jordan, they said.

"It is a civil wrong," said attorney Sam Fortier, a longtime Anchorage attorney who represents 30 village corporations. "What (the troopers) said was true but that's not the whole story. There's kind of an omission. I think it's wrong to omit material facts as much as it to misstate them."

Civil trespass in Alaska is defined much more simply than its criminal counterpart, according to the Alaska Court System's standard jury instructions: "A trespass is an intrusion onto land possessed by another without consent or other privilege. Trespass includes not only entry onto land, but also remaining on land, or causing a third person or thing to enter or remain."

In a civil trespass case, a landowner or lease holder has the right to damages as well as attorney fees if they can prove someone intentionally entered the land when it wasn't an emergency even if no "harm" was done to the property, according to Doug Pope, another Anchorage attorney with decades of practice who's also a former Board of Game chairman.

"The trappers in your story would be classic examples of that," Pope wrote in an email, referring to an earlier Daily News story about the original incident involving the snares.

Troopers can only enforce criminal statutes, spokeswoman Megan Peters said Friday. "We have to go by the criminal definition of the law."

The complaint against Cyr and Ellis, however, charges that the men also may have violated criminal law.

The document refers to a state statute that defines criminal trespass as "a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land."

But the land in this case was clearly not "unimproved and apparently unused," so it was not necessary to post signs, the complaint charges.

"Snares were set within a dozen feet of excavations and gravel storage piles," it says. "Therefore there could have been no question in any reasonable person's mind about the land being 'apparently unused.'"

Cyr had also bought gravel there in the past, according to the complaint.

Even if the court doesn't find that Cyr and Ellis violated criminal law, they are still liable for civil trespass and creating a nuisance with the snares and carcasses, which could draw animals to the site in close proximity to a school, the complaint says.

Jordan and Loomis are seeking damages to be determined at trial, as well as attorney fees.

Superior Court Judge Eric Smith will hear the case. No hearings have been scheduled yet.

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