

May 21, 2001

Rickey Dale Spreeman
1772 Selby Avenue
St. Paul Park, MN 55071

Deputy Steve Porter
Kittson County Sheriff's Office
P.O. Box 365
Hallock, MN 56728

James Charles Fischer
8051 Jewel Avenue South
Cottage Grove, MN 55016

James Robert Spreeman
7799 Ideal Avenue South
Cottage Grove, MN 55016

RE: In the Matter of the Appeal of the Trespass Citations Nos. 22021, 22022, Unknown, Issued to Rickey Day Spreeman, Charles James Fischer and James Robert Spreeman; OAH Docket Nos. 15-2000-14042-2, 15-2000-14043-2 and 15-2000-14044-2

Dear Mr. Spreeman, Mr. Fischer, Mr. Spreeman and Deputy Porter:

On February 22, 2001, a hearing was held on the trespass citations listed above. Rickey Dale Spreeman, James Robert Spreeman and James Charles Fischer all appeared in person at the Office of Administrative Hearings. With the consent of the defendants, Deputy Stephen Porter appeared by telephone from the Sheriff's office in Hallock, MN. The following persons testified for Deputy Porter by telephone from Hallock in support of the citation: Leonel Anderson, landowner; Ryan Truedson, Mr. Anderson's nephew; and Harold Hilde, a neighboring landowner.

The issue presented is whether the defendants trespassed when they entered on land owned by Mr. Anderson. The land was not posted to prohibit hunting or other recreational use, and, because it was enrolled in the CRP program, it is not considered agricultural land.

The three defendants were hunting together when the citations were issued. All agree that the facts and law governing their citations are the same. Thus, the three matters have been consolidated.

Many of the facts are not in dispute. On November 11, 2001, four men, including the three defendants, were hunting in Kittson County. Rick Spreeman shot a deer on property belonging to Harvey Baker. The deer ran to the west and was last seen on the adjoining property, belonging to Leonel Anderson. Rick Spreeman went to a nearby home and explained to the owner, Harold Hilde, that he had shot an 8-point buck and wanted to retrieve it. Mr. Hilde told Mr. Spreeman that the property belonged to Leo Anderson, and Mr. Hilde would call to get permission from Mr. Anderson to retrieve the buck. Mr. Anderson gave his permission.

Rick Spreeman, Jim Spreeman and Jim Fischer walked onto the Anderson property which was covered with grass about waist high. Deer appeared, and Jim Fischer shot and killed a button buck, not the 8-point buck the men were seeking.

Ryan Truedson was visiting his uncle, Leonel Anderson. Mr. Anderson told his nephew that he had given permission for some hunters to retrieve an 8-point buck. Mr. Truedson went out to see what was happening, saw three men on the property, and believed by the way that the men were spaced on the field that they were hunting rather than following the trail of a wounded deer. He called Deputy Porter. Both Anderson and Truedson heard three shots fired. They also saw the button buck being dragged to the road by the hunters.

All of the defendants stated that it is their practice to seek permission before entering private land, and that is supported by their efforts to obtain permission to enter Mr. Anderson's land. All agree that limited permission to enter the land was given. Mr. Anderson admits that he had limited permission, and that he did not tell the men to leave his property. Because the land was not posted, and limited permission to enter was given, I cannot conclude that the defendants went onto Mr. Anderson's land with the intention of doing more than retrieving the 8-point buck, even though Mr. Fischer did shoot at and kill another animal. It is clear that by doing so, Mr. Fischer upset Mr. Anderson, Mr. Hilde and Mr. Truedson, who all believed that permission had been limited to retrieving an 8-point buck. They believed that the hunters had taken unfair advantage of the limited permission granted. The hunters, on the other hand, feel they went beyond the requirements of the law by seeking permission to enter, and that shooting the wrong animal did not make their entry a trespass.

It is undisputed that limited permission to enter the land was given. I cannot conclude that the county has demonstrated by a preponderance of the evidence that the actions of the defendants exceeded that permission. The most I can conclude is that Mr. Fischer did not exercise the care one might wish when he shot. By failing to take care, he upset the landowners who believe that the permission was abused. That does not appear to be the hunters' intention, but is the impression that was created. The statutes allow hunting on non-agricultural land unless the land is posted, but hunters may not remain on the land after being orally told not to do so by the owners.^[1] Although the permission that was given may have been limited, there was no oral notice given to the defendants that their authority to enter the property had been revoked, or overstepped. Wrongful conduct following authorized entry can constitute a trespass, but it is not sufficiently clear in this case that the hunters were denied the right to hunt on the unposted non-agricultural CRP land. Without that express refusal, I cannot conclude that a trespass occurred.

Sincerely,

BEVERLY JONES HEYDINGER

Administrative Law Judge

Telephone: 612/341-7606

BJH:cr

^[1] Minn. Stat. § 97B.001, subd. 3.