

Trespasser Law Update

Andrew Farwell
The Farwell Law Firm, LLC
Kirksville, MO

Mention trespassers to a farmer, rancher, or hunting land owner or lessee, and you are likely to stoke a fire that's been fueled since they invented private land. Many face the hassle and hazards of having trespassers drive, walk or sneak across their property, destroying crops, leaving pasture gates open, or poaching deer. In the past couple decades, news of large jury verdicts against landowners has sparked increasing concern over the liability of landowners to trespassers.

Prior to a decision by the Missouri Supreme Court in July of this year, Missouri case law had taken a consistent position on the landlord's duty to adult trespassers (law dealing with trespassing children creates a greater liability for the landowner). In the Southern District Appellate Court of Missouri, the court tried to continue that precedent in Humphrey v. Glenn. The defendant in that case was a farmer of a 420 acre tract of land. Trespassers apparently made a habit of traveling down a passageway through a wooded area of the property that opened into a field. In an effort to keep trespassers from gaining access to his property and from traveling down the wooded road, the defendant placed a cable across the road, attached to a tree on both sides. The defendant farmer also placed various signs or other objects on the cable to alert the inevitable trespasser to the danger of the cable. The signs and markers were often removed or shot down by trespassers.

On October 7, 2000, a trespasser drove down the road on an ATV at approximately 15-20 miles per hour when he was "clothes-lined" by the cable. The trespasser subsequently filed an action against the farmer for the injuries he sustained alleging that the farmer was liable to him, even as a trespasser, for the medical

bills and other damages he suffered as a result of the accident. There was not a sign on the cable on the date of the injury.

Typically, a landowner does not owe a duty to trespassers. The trespasser, however, argued that there was an exception in this case that allowed him to receive his damages from the landowner. The exception followed by some courts is that the landowner can be held liable to the "constant" trespasser for injuries sustained by an artificial condition of the land if (1) the condition is created or maintained by the landowner, (2) is likely to cause death or serious bodily harm to trespassers, (3) that the landowner has reason to believe that trespasser would not discover the condition, and (4) the landowner has failed to exercise reasonable care to warn the trespassers of the danger involved.

The general rule in Missouri had been that a "possessor of land is not liable for harm caused to a trespasser by failure to put land in a reasonably safe condition." The reasoning was that trespassers should take the premises just as they find them and assume the risk of injury from any condition on the land (the landowner cannot, however, use any type of willful, illegal force on a trespasser such as setting spring guns or hidden traps, and may be liable for any activities conducted on the land). The appellate court hung its hat on the ideal that landowners are entitled to assume that the public will not interfere with their property.

Interpreting the old law, the court stated that even though a landowner may be aware of trespassers upon his land, a trespasser's intrusion is never anticipated. Therefore, even if landowner actually knew of constant trespassing, the old law stated that he was not required to keep land in a "reasonably" safe condition for the trespasser, and would not be held liable for the trespasser's injuries upon his land.

However, the Missouri Supreme Court changed the law in July of 2005. When the Plaintiff in the Humphrey case

appealed the lower court's decision to the Missouri Supreme Court, the Supreme Court found that the landowner could be found liable and forced to pay for the Plaintiff's medical bills and other damages. The court reasoned that if the landowner "should have reasonably anticipated that harm to trespassers was likely to result" as a result of the artificial condition (the cable in this case) created by the landowner, then the landowner may be held liable.

The court did acknowledge a caveat to this apparent about-face in the law. The landowner "is not required to eliminate the condition, but is required to use reasonable care to warn the trespasser of the condition and the risk."

In summary, the landowner may now be held liable to a trespasser who is injured as a result of an artificial condition created by the landowner when (1) the landlord is aware of the constant trespassing on that portion of his property; (2) the trespasser is not likely to be aware of the condition; and (3) the condition is likely to cause serious bodily injury or death. If the landowner does, however, exercise reasonable care in notifying any trespassers of the dangerous condition by sign or otherwise, the landowner should not be liable for the injuries of the trespasser.
(Partial Reprint)