

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 7, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3554

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

GARY CUMMINS and JEAN CUMMINS,

Plaintiffs-Appellants,

v.

**DALE L. SCHLUTER and SHARON SCHLUTER,
RUDOLPH P. REGEZ and UNKNOWN REGEZ, IND d/b/a
AN-BE PARTNERSHIP, EDWIN ROELLI and UNKNOWN
ROELLI, IND d/b/a AN-BE PARTNERSHIP, AMERICAN
FAMILY INSURANCE GROUP, and DARLINGTON
MUTUAL INSURANCE COMPANY,**

Defendants-Respondents,

**PAUL CULLEN and PINE HILL PRODUCE COMPANY,
INC.,**

Defendant.

APPEAL from a judgment of the circuit court for Grant County:
JOHN R. WAGNER, Judge. *Reversed and cause remanded.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Gary Cummins and Jean Cummins appeal from a summary judgment dismissing their complaint against various property owners and renters, and their insurers. The Cumminses sued for crop damage caused by a herd of sheep that were kept on property near but not adjacent to their rented crop land. The trial court dismissed the complaint, under § 90.04, STATS., because the sheep entered the Cumminses' land through a fence that the Cumminses failed to keep in repair. Because we conclude that the plain meaning of § 90.04 does not bar this action, we reverse and remand for further proceedings.

The facts are undisputed. An-Be Partnership rented land to Pine Hill Produce Company for the purpose of grazing sheep. The sheep escaped onto the property of Dale and Sharon Schluter through a defective fence, and from the Schluter property entered the Cumminses' land through another defective fence on the Schluter/Cummins property border. The Cumminses then sued the Schluters, An-Be, Pine Hill and others for the resulting crop damage, based on the failure to maintain the fence on the Schluter/An-Be property line.

Section 90.04, STATS., entitled "Effect of fences on action for trespass by animals," provides in relevant part that "owners of lands who do not maintain and keep in repair lawful partition fences shall not be entitled to recover any damages whatever for trespasses by the animals of owners of any adjoining lands...." The trial court dismissed the action based on that language in the statute and the Cumminses' failure to maintain the Cummins/Schluter fence.

Section 90.04, STATS., does not bar the Cumminses' lawsuit despite the unrepaired fence between their property and the Schluters' property. If the meaning of a statute is plain, we look no further in construing it. *Tenpas v. DNR*, 141 Wis.2d 599, 602, 415 N.W.2d 853, 854 (Ct. App. 1987), *rev'd on other grounds*, 148 Wis.2d 579, 436 N.W.2d 297 (1989). In plain terms, the statute provides that an unrepaired partition fence bars recovery for trespasses only if the animals belong to the owners of adjoining lands. Since the sheep are not owned by the Schluters, the owners of the land adjoining the Cumminses' land,

§ 90.04 does not bar this action. *By the Court.*—Judgment reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.