

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
ENVIRONMENTAL DIVISION

JEFF ALTMAN,)
LAURA NIRENBERG,)
and ALICE ZIMMERMAN,)
Plaintiffs,)

CAUSE NO 49F12-1105-PL-018181

vs.)

FILED

NOV 30 2012

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Elizabeth J. White
CLERK OF THE MARION CIRCUIT COURT

ROBERT E. CARTER, in his official)
capacity as the Director of the)
Indiana Department of Natural)
Resources, and)
WCI FOXHOUND TRAINING)
PRESERVE, INC.)
Defendants.)

DEFAULT JUDGMENT

Plaintiffs Jeff Altman, Laura Nirenberg and Alice Zimmerman ("Plaintiffs") filed their Application for Default Judgment, and the Court has reviewed the record, including, but not limited to the deposition of Linnea Petercheff¹. The Amended Complaint was filed on September 18, 2012, and service was perfected on the Defendant WCI Foxhound Training Preserve, Inc. ("WCI") on September 28, 2012. Defendant WCI has not appeared and has failed to plead or otherwise comply with the Indiana Rules of Trial Procedure. The time within which the Defendant WCI was to have appeared and responded to the Amended Complaint has expired. The Court has jurisdiction over the parties and subject matter.

I. Findings of Fact

1. Defendant WCI is a non-profit corporation organized under and operating pursuant to the laws of the State of Indiana.

¹ Petercheff is an Operations Staff Specialist for the Department of Natural Resources Fish and Wildlife Division, who, in her official capacity, attended two (2) field trials at Defendant WCI's facility. Petercheff dep. pg. 9:8-10, 10:2-3.

2. Defendant WCI owns and operates a facility in Greene County, Indiana, ("Facility") where coyotes are used to train and run hunting dogs. Plt. Complaint p. 1.
3. From approximately 2009 to the present, Defendant WCI has hosted "field trial" competitions at which hunting dog owners used the Facility to train and exhibit their dogs by chasing coyotes during the "closed season"². Petercheff dep. pg. 9:20-22; 10: 2-3; 10:11-18.
4. The field trials at Defendant WCI's Facility are events at which dogs chase live coyotes within an enclosed area. Only designated persons are allowed to enter the enclosed area where the field trials occur. *Id.* at 11:8-11.
5. In September 2010, during the closed season for coyotes, Defendant WCI hosted a field trial at its Facility at which dogs chased live coyotes. *Id.* at 10:15-19.
6. In April 2011, during the closed season for coyotes, Defendant WCI hosted a field trial at its Facility at which dogs chased live coyotes. *Id.*
7. While at Defendant WCI's Facility, coyotes have been killed by dogs during the closed season. Def. Carter's Resp. to Plt. Second RFA No. 4; Petercheff dep. pg. 22:6-18.
8. During at least one field trial conducted during the closed season at Defendant WCI's Facility, dogs "cornered" a coyote and killed it. Petercheff dep pg. 22:12-23.
9. "Possession" of wild animals is defined as to "knowingly have the power and intention of keeping a live wild animal in captivity where it cannot escape into the wild." 312 IAC 9-1-12(2).
10. Defendant WCI's Facility is entirely surrounded by a perimeter fence six feet (6') tall. Petercheff dep. at 31:11-14; 33:8-9.
11. Portions of the fence that are not adjacent to trees are buried underground so coyotes cannot dig under the fence and escape into the wild. *Id.* at 33:19-25

² Coyote trapping season begins at 8:00 a.m. on October 15 and ends at noon on March 15 of the following year. 312 IAC 9-3-12(c)(2)(A). Therefore, the "closed season" begins at 12:01 p.m. on March 15 and lasts until 7:59 a.m. the following October 15 each year. *Id.*

12. The fence surrounding Defendant WCI's facility is reinforced by a single-line electric wire ("electric wire") at the base. *Id.* at 34:1-6

13. The electric wire reinforcing the perimeter fence is activated at times including but not necessarily limited to field trials³. *Id.* at 34:3-6.

14. On numerous occasions between 2009 and the present, Defendant WCI has purchased coyotes which were transported to its Facility from another location. Def. Carter's Resp. to Plt. Second RFA No. 11; Petercheff dep. pg. 66:13-19.

15. There is a "holding pen" approximately fifty (50) feet long and fifty (50) feet wide within Defendant WCI's Facility where WCI places coyotes after purchasing them. *Id.* at 20-24.

16. The Indiana Department of Natural Resources ("DNR") has not issued a wildlife possession permit to Defendant WCI. Def. Carter's Resp. to Plt. First RFA No. 3.

II. Conclusions of Law

17. Defendant WCI intended to possess coyotes during the closed season as demonstrated by its purchase and transport of coyotes to its Facility from a remote location during closed season; by the presence and use of the holding pen at Defendant WCI's Facility used to contain coyotes after they were transported to the Facility; and by the presence of the perimeter fence entirely enclosing Defendant WCI's Facility, including its extension underground and reinforcement by an electric wire.

18. Defendant WCI possessed coyotes during the closed season.

19. Defendant WCI's possession of coyotes during the closed season without a wildlife possession permit is unlawful under 312 IAC 9-11-1.

³ During Plaintiffs' inspection of Defendant WCI's Facility on March 18, 2012, the electric wire reinforcing the perimeter fence was activated although no field trial was conducted that day.

III. Default Judgment

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiffs, separately and severally, should be and hereby are entitled to and GRANTED:

1. Default Judgment against Defendant WCI Foxhound Training Preserve, Inc.;
2. Such damages as they may establish at an evidentiary hearing should they move for such hearing within thirty (30) days of this Order, and;
3. Their costs.

30 November 2017

Date



Judge David Certo
Marion Superior Court
Environmental Division

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