MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CHARLES JOHN BESTGEN,

Appellant,

v.

GENE HAILE, et al.,

Respondents.

DOCKET NUMBER WD83865

Date: March 1, 2022

Appeal from:

Callaway County Circuit Court
The Honorable J. Hasbrouck Jacobs, Judge

Appellate Judges:

Division Two: W. Douglas Thomson, Presiding Judge, Lisa White Hardwick and Edward R. Ardini, Jr., Judges

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Attorneys:
Matthew J. Padberg, St. Louis; Tim E. Dollar, Kansas City; Theresa A. Applebaum, St. Louis for appellant.
Michael R. Baker and Clayton L. Thompson, Columbia for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

CHARLES JOHN BESTGEN, Appellant,
v.
GENE HAILE, et al., Respondents.

WD83865 Callaway County

Before Division Two Judges : W. Douglas Thomson, Presiding Judge, Lisa White Hardwick and Edward R. Ardini, Jr., Judges

Charles Bestgen appeals from the summary judgment entered in favor of Gene Haile on Bestgen's negligence claim against Haile. Bestgen contends that the circuit court erred in entering summary judgment because genuine issues of material fact remain as to whether Haile can be held personally liable as a co-employee under the 2012 version of Section 287.120.1, RSMo, for injuries Bestgen incurred at work.

AFFIRMED.

Division Two holds:

The circuit court did not err in granting summary judgment in favor of Haile on Bestgen's negligence claim. Pursuant to *Brock v. Dunne*, 637 S.W.3d 22 (Mo. banc 2021), Haile is entitled to immunity under Section 287.120.1, RSMo Cum. Supp. 2012, because there appears to be no genuine issue of material fact that Haile's affirmative, negligent act was not employed purposefully and dangerously to cause or increase the risk of injury to Bestgen. Even if there were a genuine issue of material fact as to whether Haile was entitled to immunity, however, summary judgment in favor of Haile would still be proper because Bestgen would not be able to produce the evidence necessary to support a claim of common law negligence against Haile. While Bestgen's allegations, if true, show that Haile was negligent, Haile's negligence fell within Employer's foreseeable nondelegable duty to provide a safe workplace.

Opinion by: Lisa White Hardwick, Judge March 1, 2022

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