

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DUSTIN RAY DORRIS,

Respondent,

v.

SAMUEL L. KOHL,

Appellant.

DOCKET NUMBER WD71600

Date: February 22, 2011

Appeal from:
Henry County Circuit Court
The Honorable William J. Roberts, Judge

Appellate Judges:
Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Attorneys:
Russell F. Watters, Bradley Hansmann, Ireme Marusic, and Patrick Bousquet, St. Louis, MO, for
appellant.
Stephen K. Nordyke, Butler, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

DUSTIN RAY DORRIS

Respondent,

v.

SAMUEL L. KOHL,

Appellant.

WD71600

Henry County

Before Division Two Judges: Joseph M. Ellis, P.J., Alok Ahuja and Karen King Mitchell, JJ.

Dustin Dorris lost several of the toes on his left foot in an accident in a feed mill owned by his employer Samuel Kohl. At the time of Dorris's injury, the mill was being used solely to grind feed grown on Kohl's nearby farm, to feed Kohl's own cattle (although the mill had previously been used to grind feed for retail sale).

Dorris brought an action claiming negligence *per se*, based on Kohl's alleged violation of a provision of the "Factory Act," § 292.020, RSMo, which requires that machinery in "manufacturing, mechanical and other establishments in this state" be adequately guarded. A jury returned a verdict in favor of Kohl. The trial court set the verdict aside as against the weight of the evidence, and granted Dorris a new trial. Kohl appeals, arguing that the Factory Act is inapplicable to his feed mill because the mill was being used solely to support his farming activities and that Dorris failed to make a submissible case even if the Factory Act applied.

AFFIRMED.

Division Two holds:

The mill in which Dorris was injured is an "other establishment" subject to § 292.020. Case law holds that the statute is to be liberally construed and applies to all places of business where employees are required to work near unguarded machinery. The fact that the mill was involved in agriculture-related activities does not make § 292.020 inapplicable. While *Johnson v. Bear*, 40 S.W.2d 481 (Mo. App. 1931), held that the predecessor to § 292.020 was not applicable to activities *on a farm*, Dorris was not injured on Kohl's farm in Leeton but at a mill located in the town of Calhoun.

Dorris made a submissible case of negligence *per se*. His evidence indicated that the auger at the mill was inadequately guarded, that deployment of an adequate guard was feasible without interfering with the auger's operation, and that the lack of an adequate guard proximately caused his injuries. Given that Dorris made a submissible case, the trial court acted within its discretion in ordering a new trial based on the court's assessment that the jury's verdict was against the weight of the evidence.

Opinion by: Alok Ahuja, Judge

February 22, 2011

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