

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-7054

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FRANK WILBORN, ET AL.,

Plaintiffs,

FLORENCE WILBORN, Individually and as  
Administratrix of the Estate of  
Frank Wilborn, deceased,

Plaintiffs-Appellants,

versus

DEERE & COMPANY, a Delaware Corporation,

Defendant-Appellee.

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Appeal from the United States District Court for  
the Northern District of Mississippi  
(87-106-D-0)

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(February 26, 1993)

Before REAVLEY, KING and WIENER, Circuit Judges.

PER CURIAM:\*

A reading of this record and consideration of the arguments on appeal reveal no error, and the judgment of the district court must be affirmed.

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

After suffering an adverse jury verdict, the plaintiff complains here of the district court's refusal to preclude the unreasonable dangerousness issue by collateral estoppel, and also of that court's refusal to allow proof of nineteen other accidents while permitting the five injured persons who did testify as well as the two other incidents mentioned. We review both rulings by the abuse of discretion test, and we cannot say the court abused its discretion.

First, admittedly the clean-out door adjacent to an auger presents a danger. Whether it is an unreasonably dangerous design is a different question. On the latter question, changes in substantive and procedural law, as well as different facts affect the determination; and juries have often disagreed in similar cases. No precedent requires collateral estoppel under the circumstances here. On the second point, the trial court must consider the probative value of repeated testimony of other accidents as well as the danger of distracting the jury with collateral issues and prolonging the trial. The court here acted well within its discretion.

AFFIRMED.