SUPREME COURT
STATE OF FLORIDA

CASE NO. 64,223

MILDRED K. MEISTER and ABRAHAM MEISTER, her husband,

Petitioners,

vs.

PAUL FISHER, EMERALD HILLS COUNTRY CLUB, INC., CONTINENTAL INSURANCE COMPANY, and ALLSTATE INSURANCE COMPANY,

Respondents.

BRIEF OF RESPONDENTS, EMERALD HILLS COUNTRY CLUB, INC. AND CONTINENTAL INSURANCE COMPANY

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CITATIONS OF AUTHORITY

STATEMENT OF THE CASE AND FACTS

Respondents, Emerald Hills Country Club and Continental Insurance Company, accept petitioners' Statement of the Case and Facts with the exception of petitioners' characterization of Mrs. Meister's injuries. The extent of Mrs. Meister's injuries is immaterial for the purposes of this appeal, and any discussion of damages is an improper attempt to sway this court by arousing its sympathy.

ISSUE ON APPEAL

DOES THE DANGEROUS INSTRUMENTALITY RULE APPLY TO GOLF CARTS?

ARGUMENT

THE DANGEROUS INSTRUMENTALITY RULE DOES NOT APPLY TO GOLF CARTS.

The dangerous instrumentality rule is a creation of the judiciary. That genesis does not appear to bother Petitioners. They suggest that courts may decide which objects constitute dangerous instrumentalities but juries must decide which do not. We question the validity of a test that mystically transforms questions of law to those of fact depending upon the outcome. Similarly, questions of fact are not created by glib affidavits that do nothing more than recite self-serving conclusions of fact and law. Holl v. Talcott, 191 So.2d 40 (Fla. 1966), Palm Beach County v. Town of Palm Beach, 426 So.2d 1063 (Fla. 4th DCA 1983); Brooks v. Serrano, 209 So.2d at 280 (Fla. 4th DCA 1968).

The dangerous instrumentality rule, as first enunciated, was limited to conveyances used on the public highways. Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629 (1920). Although a dangerous instrumentality does not lose its character as such because it is operated on private property, the fact that a conveyance is principally designed for use off the public highways is a relevant consideration because the potential for widespread injury is greatly diminished. The legislature has implicitly recognized the reduced danger by its failure to regulate the use of motor vehicles on private property. In fact, the legislature

does not classify a conveyance as a "motor vehicle" unless it is used to transport people or property over the public streets and highways. Section 320.01, Florida Statutes (1981).[1]

Obviously, golf carts are principally designed for use off the public highways. The very fact that golf carts must be modified to permit their use on public roadways demonstrates that they were neither intended nor designed for that purpose. That coupled with the fact that golf carts are slower and lighter than automobiles should exclude them from application of the dangerous instrumentality rule. Golf carts simply do not pose the menace to the public that automobiles do and should not be

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[1] Petitioners incorrectly cite Section 320.01, Florida Statutes (1981), for the proposition that a golf cart qualifies as a motor vehicle. The statute definies a "motor vehicle" as a vehicle "operated over the public streets and highways of this state and used as a means of transporting persons or property over the public streets and highways." Clearly, a golf cart, which has not been modified so as to permit its lawful use on the public streets and highways, does not satisfy the definition of a motor vehicle.

Similarly, petitioners' citation to State Uniform Traffic Control Law, Section 316.003(21), Florida Statutes (1981), is ill conceived, because the Traffic Control Law only applies to the operation of vehicles on public streets and highways. Sections 316.003(54) and 316.006, Florida Statutes (1981). According to the Traffic Control Law, a mode of transportation does not even qualify as a "vehicle" unless it "is or may be transported or drawn upon a highway." The golf cart in the present case was not transported or drawn upon a highway nor could it have been without modification.

Morever, a vehicle need not be licensed unless it is used on the public streets and highways. Section 316.005, Florida Statutes (1981).

placed in the same category.[2]

Significantly, firearms, which present a far greater hazard to the public than golf carts, do not come within the purview of the dangerous instrumentality rule. Mercier v. Meade, 304 So.2d 262 (Fla. 4th DCA 1980). The mere fact that an object may inflict injury if it is misused does not make it a dangerous instrumentality. A pencil may become a deadly weapon in the wrong hands and even as innocuous an item as a shoe could be used to beat a person to death.

The dangerous instrumentality rule is not even one of strict, but of absolute, liability: it operates in the absence of the slightest fault. Therefore, its use should be carefully restricted. The present framework of the law provides adequate redress when a golf cart owner is at fault

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[2] Although 1920 vintage motor vehicles may have been smaller and lighter than some of those in use today, they still differ from golf carts because they were designed principally for use on public highways.

In formulating the dangerous instrumentality rule, this court was influenced by statistics from the National Safety Council documenting the "deadly" nature of the automobile. Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. at 633 (1920). Such data is lacking as to golf carts, attesting to their relatively benign nature.

in causing or contributing to cause injury.[3] As a matter of judicial policy, golf carts should not be construed as dangerous instrumentalities because they do not pose a sufficient hazard to qualify for that extreme treatment.

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[3] The Academy of Florida Trial Lawyers suggests that the imposition of liability without fault upon golf cart owners would promote safety. (Academy Brief, p. 2) The opposite is true. The operators of golf carts are likely to use greater care if they are the ultimate bearers of responsibility for their negligent use. If a cart path is negligently designed, the owner may be held liable under the law as it presently exists. If a cart is negligently designed, the manufacturer may be held liable under the law as it presently exists. Finally, if a cart is negligently maintained, the owner may be held liable under the law as it presently exists but, notably, petitioners abandoned all claims of negligent maintenance in the present case. (R. 659, 660)

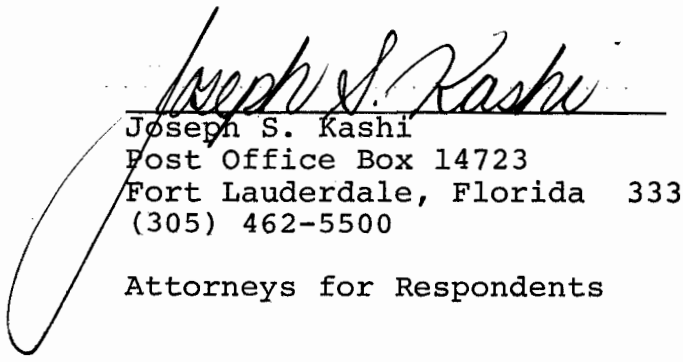
CONCLUSION

The judgment in favor of petitioners should be affirmed.

Respectfully submitted,

CONRAD, SCHERER & JAMES

By: Gordon James, III and
Joseph S. Kashi



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Respondents was mailed this 24th day of October, 1983 to:

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