IN THE SUPREME COURT OF THE STATE OF FLORIDA

JAMES EARL RIPPY,

Petitioner,

v. **Case No. SC09-1677**

JAMES SHEPARD,

Respondent.
_________________________________/

PETITIONER'S BRIEF ON THE MERITS

On Review from the District Court of Appeal, First District of Florida

---

STEVEN L. BRANNOCK
Florida Bar: 319651
CELENE H. HUMPHRIES
Florida Bar: 884881
SARAH C. PELLENBARG
Florida Bar: 559571
BRANNOCK & HUMPHRIES
400 North Ashley Drive, Suite 1100
Tampa, Florida 33602
(813) 223-4300
(813) 262-0604- fax
Attorneys for Petitioner

TABLE OF CONTENTS

Table of Citations iii

Introduction 1

Statement of the Case and Facts 2

Summary of the Argument 4

Argument 6

Standard of Review 6

I. A Farm Tractor Should be Deemed a "Dangerous Instrumentality" Because it is Inherently Dangerous 6

II. A Tractor is a Dangerous Instrumentality Because it is Defined as Motor Vehicle Under Florida Law 11

III. A Farm Tractor Should Also be Considered a "Dangerous Instrumentality" Because it is Regulated by the Legislature and is Operated on both Public and Private Land 13

IV. The District Erred in Resolving the Question on a Motion to Dismiss, before the creation of any factual record in the Case 20

Conclusion 22

Certificate of Compliance 23

Certificate of Service 23

TABLE OF CITATIONS

Cases

Anderson v. Southern Cotton Oil Co.,
73 Fla. 432, 74 So. 975 (1917) 7, 14, 20

Aurbach v. Gallina,
753 So. 2d 60 (Fla. 2000) 11

Barth v. City of Miami,
146 Fla. 542, 1 So. 2d 574 (Fla. 1941) 4

Canull v. Hodges,
584 So. 2d 1095 (Fla. 1st DCA 1991) 3, 15, 16, 21

Eagle Stevedores, Inc. v. Thomas,
145 So. 2d 551 (Fla. 3d DCA 1962) 11, 21

Harding v. Allen-Laux, Inc.,
559 So. 2d 107 (Fla. 2d DCA 1990) .... passim

McCain v. Florida Power Corp.,
593 So. 2d 500 (Fla. 1992) 8

Meister v. Fisher,
462 So. 2d 1071 (Fla. 1984) .... passim

Orefice v. Albert,
237 So. 2d 142 (Fla. 1970) 7, 8, 14, 21

Reid v. Associated Engineering of Osceola, Inc.,
295 So. 2d 125 (Fla. 4th DCA 1974) 15, 18, 21

Rippy v. Shepard,
15 So. 3d 921 (Fla. 1st DCA 2009) 3

Southern Cotton Oil Co. v. Anderson,
80 Fla. 441, 86 So. 629 (Fla. 1920) .... passim

Sarkis v. Pafford Oil Co., Inc.,
697 So. 2d 524 (Fla. 1st DCA 1997) 6

Saullo v. Douglas,
957 So. 2d 80 (Fla. 5th DCA 2007).. 8, 9, 21

Scott & Jobalia Const. Co., Inc. v. Halifax Paving, Inc.,
538 So. 2d 76 (Fla. 5th DCA 1989).. 8, 16, 18, 21

Skinner v. Ochiltree,
148 Fla. 705, 5 So. 2d 605 (Fla. 1941) 8, 9

St. Pierre by Brammer v. City of Watervliet,
127 Misc. 2d 135, 485 N.Y.S.2d 685 (N.Y. Sup. Ct. 1985)................................20

Switzer v. Dye,
177 So. 2d 539 (Fla. 1st DCA 1965) 21

Weatherby v. Meredith,
341 So. 2d 139 (Ala. 1976)...20

Williams v. Surf Properties Inc.,
88 So. 2d 299 (Fla. 1956) 8

Statutes

§ 316.003, Fla. Stat. 11, 12

§ 316.2295, Fla. Stat. 16, 17

§ 316.239, Fla. Stat. 16

§ 322.01, Fla. Stat. 11

§ 322.04, Fla. Stat. 16

§ 450.061, Fla. Stat. 17

INTRODUCTION

On the barest of records, the First District declared below that a 4,000 pound farm tractor was not a dangerous instrumentality. This decision, however, is inconsistent with Florida law. A farm tractor is defined by Florida statute as a motor vehicle. Since this Court's seminal decision in *Southern Cotton Oil Co. v. Anderson,* 80 Fla. 441, 468, 86 So. 629, 637 (1920), courts addressing a statutorily defined motor vehicle have held that such vehicles, including trucks, buses, and even golf carts, are dangerous instrumentalities under Florida law. This result is not surprising. Such vehicles are inherently dangerous and capable of causing great injury -- precisely why such vehicles are regulated.

The First District's opinion missed the forest through the trees. First, its intricate analysis of the statutory regulations at issue ignores that, whatever the scope of the regulations, the regulations were put in place because farm tractors are dangerous, as demonstrated by this case. Similarly, its focus on where the injury occurred ignores that the question is whether the tractor can cause injury to others, not where that injury occurs.

The decision below should be quashed and the case remanded for trial.

STATEMENT OF THE CASE AND FACTS

Petitioner James Earl Rippy respectfully requests that this Court reverse the orders of the trial court and First District below holding that a tractor does not constitute a "dangerous instrumentality" as a matter of law. Rippy sued Respondent James Shepard under Florida's dangerous instrumentality doctrine after he suffered permanent and disabling injuries caused by a farm tractor owned by Shepard (R. 1-2).

The accident occurred on December 16, 2004, when Shepard knowingly and willingly allowed Michael Rose to drive his 12-foot long, 4,000 pound farm tractor 4.5 miles across several public roads to the Shepard's residence (R. 2). The tractor could be operated at up to 15 miles per hour (R. 2). The tractor was pulling a five foot Bush Hog, which had operational blades to cut grass (R. 2). Rose was operating the tractor on Shepard's property when Rose negligently allowed the tractor to strike and injure Rippy, who suffered permanent and disabling injuries (R. 2-3). Rippy subsequently sued Shepard under a vicarious liability theory pursuant to Florida's Dangerous Instrumentality doctrine (R. 1-3). The trial court dismissed Rippy's complaint with prejudice, holding that a farm tractor is not a dangerous instrumentality under Florida law (R. 13).

The First District Court of Appeal affirmed, noting that its decision was consistent with its prior precedent in which it had found that a road grader was not

a dangerous instrumentality. *Rippy v. Shepard*, 15 So. 3d 921 (Fla. 1st DCA 2009) (*citing Canull v. Hodges,* 584 So. 2d 1095, 1098 (Fla. 1st DCA 1991)). The First District reasoned that even though the legislature had defined a farm tractor as a "motor vehicle," it was not extensively regulated by the Legislature and was not routinely operated in public places, and thus did not qualify as a machine appropriate for coverage under the dangerous instrumentality doctrine. *Id*. at 922.

The First District rejected Rippy's argument that the tractor was a dangerous instrumentality because it is defined as a motor vehicle by statute, regulated by the Legislature, and inherently dangerous in nature. *See Meister v. Fisher,* 462 So. 2d 1071 (Fla. 1984) (finding a golf cart to be a dangerous instrumentality). As Rippy observed in his brief on jurisdiction, surely if a golf cart constitutes a dangerous instrumentality, then a tractor must also constitute a dangerous instrumentality.

This Court accepted jurisdiction of this case on June 2, 2010.

SUMMARY OF THE ARGUMENT

What is a dangerous instrumentality? Very simply, a product that is inherently dangerous. In many cases, it should be obvious. A car, a truck, a 4,000 pound tractor (or even a golf cart for that matter) are all products that are likely to cause serious injury or death when they are misused. That simple test is easy to apply here and should have been dispositive.

The First District, however, ignored the simple test and got bogged down in an analysis of other factors often considered by the Courts. For example, this Court in *Meister v. Fisher,* 462 So. 2d 1071 (Fla. 1984), held that a golf cart constitutes a dangerous instrumentality because it is inherently dangerous, is defined as a "motor vehicle" by the Florida Legislature, and is also subject to numerous regulations by the Florida Legislature. Seizing upon this discussion, the First District engaged in an intricate comparison of golf cart and tractor regulation, missing the point that the regulations were in place because all motor vehicles are dangerous.

This Court has also held that the proximity of the vehicle to the public is a consideration in determining whether a vehicle constitutes a dangerous instrumentality. *See, e.g. Barth v. Miami,* 146 Fla. 542, 1 So. 2d 574 (1941) (explaining that the dangerous instrumentality requires owners to ensure that their vehicles are properly operated when on the public highway under their authority).

Seizing on this factor, the First District focused on the fact that the injury here occurred on private property, ignoring that farm tractors are often on public roads and are just as dangerous on public or private property. The result was a decision inconsistent with many cases holding that vehicles were inherently dangerous regardless where they were being operated.

To eliminate future confusion, we suggest that this Court should hold that all vehicles defined as "motor vehicles" by the Legislature are dangerous instrumentalities. In this case, this holding would end the analysis because a tractor is a motor vehicle.

If the vehicle or other product is not defined as a motor vehicle, then courts should consider all of the relevant factors holistically in determining whether an instrumentality constitutes a "dangerous instrumentality," with the primary factor being the dangerous nature of the vehicle. The approach of the First District and trial court below, which was to look at two factors in isolation, should be rejected.

Similarly, this Court should reject the procedure employed by the courts below, which was to decide the matter on a motion to dismiss without the creation of any factual record at all about the vehicle in question. A question of this importance should be decided on a complete record.

ARGUMENT

A farm tractor constitutes a "dangerous instrumentality" because it is inherently dangerous (Section I of this Brief), defined as a motor vehicle by statute (Section II), and regulated by the Legislature and often operated on public roads (Section III). At the least, if there is any doubt on the issue, the case should be remanded for further factual development (Section IV).

Standard of Review

The decision to grant a motion to dismiss with prejudice is reviewed *de novo*. *Sarkis v. Pafford Oil Co., Inc.*, 697 So. 2d 524 (Fla. 1st DCA 1997).

I. A Farm Tractor Should be Deemed a "Dangerous Instrumentality" Because it is Inherently Dangerous.

The First District's decision below ignores the obvious -- the dangerous instrumentality doctrine is first and foremost concerned with whether a vehicle is *inherently dangerous.* In Florida, the dangerous instrumentality doctrine imposes vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another. *See Southern Cotton Oil Co. v. Anderson,* 80 Fla. 441, 468, 86 So. 629, 637 (1920). As this Court explained in *Southern Cotton*:

> [O]ne who authorizes and permits an instrumentality that is peculiarly dangerous in its operation to be used by another on the public highway is liable in damages for injuries to third persons caused by the negligent operation of such instrumentality on the highway by one so authorized by the owner.

Id. at 638.

The roots of the *Southern Cotton* decision extend far back in the common law. The doctrine applied to certain things "of extraordinary risk" where one party exposes another party to such risk. *Id*. at 631. In its early days the doctrine applied to fire, floods, water and poisons. *Id*. It later was expanded to include firearms and explosives. *Id*. Then, as mankind became more mobile, the doctrine began to apply to motor vehicles such as locomotives, push cars, and street cars. *Id*. *See Orefice v. Albert,* 237 So. 2d 142, 144 (Fla. 1970) (*citing Anderson v. Southern Cotton Oil Co.,* 73 Fla. 432, 74 So. 975 (1917)).

Finally, in *Southern Cotton*, this Court expanded the doctrine to automobiles due to their dangerous nature. *See id.* at 661. As this Court observed, "An automobile is nearly as deadly as, and much more dangerous than, a street car, or even a railroad car. These are propelled along fixed rails, and all that the traveling public has to do to be safe is to keep off the tracks; but the automobile, with nearly as great weight and more rapidity, can be turned as easily as can an individual . . ." *Id*. Since that holding, many types of motor vehicles have been determined to be dangerous instrumentalities including golf carts, buses, trucks, and tow-motors. *Meister*, 462 So. 2d at 1072. *See also Harding v. Allen-Laux, Inc.,* 559 So. 2d 107 (Fla. 2d DCA 1990) (forklift is a dangerous instrumentality); *Scott & Jobalia*

Const. Co., Inc. v. Halifax Paving, Inc., 538 So. 2d 76, 79 (Fla. 5th DCA 1989) (construction crane is a dangerous instrumentality).

As the law evolved, the determination of what constitutes a dangerous instrumentality has always focused on the inherently dangerous nature of the product. As this Court explained, "Dangerous instrumentalities have been defined as those which by nature are reasonably certain to place life and limb in peril when negligently constructed, such as airplanes, automobiles, guns and the like." *Orefice v. Albert,* 237 So. 2d 142, 143-44 (Fla. 1970) (*citing Williams v. Surf Properties,* 88 So. 2d 299 (Fla. 1956)). The doctrine is based on "the practical fact that the owner of an instrumentality which [has] the capability of causing death or destruction should in justice answer for misuse of this instrumentality by anyone operating it with his knowledge and consent." *Saullo v. Douglas,* 957 So. 2d 80, 86 (Fla. 5th DCA 2007). *See also Skinner v. Ochitree,* 148 Fla. 705, 5 So. 2d 605 (1941) (holding that because the use of a dangerous instrumentality involves such a high degree of risk of serious injury or death, whoever deals in such instrumentalities must exercise the "highest degree of care"); *McCain v. Florida Power Corp.,* 593 So. 2d 500 (Fla. 1992) ("as the risk grows greater, so does the duty, because the risk to be perceived defines the duty that must be undertaken.").

Applying this simple test, a farm tractor, like an automobile, should be considered a dangerous instrumentality as a matter of law due to its inherently

dangerous nature when in operation. Farm tractors have proven themselves inherently dangerous. Farm tractors are large, heavy vehicles (4,000 pounds in our case) that often pull dangerous farm equipment (such as a Bush Hog in our case), and are as commonplace in rural communities, both on the farm and on the road. Like cars, tractors are loud, and thus pose a particular threat to innocent bystanders nearby because the drivers may not know that bystanders are present. Tractors carry a high degree of risk of serious injury and require the exercise of the highest degree of care. *See Skinner*, 5 So. 2d at 708 (dangerous instrumentalities are those that require the "highest degree of care"). The misuse of a tractor can certainly cause death and destruction. *See Saullo*, 957 So. 2d at 86 (dangerous instrumentality is capable of causing death and destruction).

The statistics are damning. For example, farm tractors accounted for the *deaths* of 2,165 people between 1992 and 2001 and were the leading source of fatal occupational injuries in agriculture, forestry, and fishing. They remain the leading source of death and injury on farms.[1] *See Southern Cotton,* 86 So. at 633 (Fla. 1920) ("However cleverly the courts may state the reasons why they think the automobile in operation on the streets and highways is not a dangerous instrumentality or agency, these statistics afford a complete refutation").

---

[1] *See* http://depts.washington.edu/trsafety/stats_research.php#surveil *citing* CDC/NIOSH (2004); National Safety Council, (2005).

This simple and practical "inherently dangerous" test is precisely what this Court utilized in *Meister* when it held that a golf cart constitutes a dangerous instrumentality. *See Meister,* 462 So. 2d 1071. In ruling that a golf cart is a dangerous instrumentality, this Court emphasized the inherently dangerous nature of a vehicle such as a golf cart when it is in motion: "a golf cart when negligently operated on a golf course, has the same ability to cause serious injury as does any motor vehicle operated on a public highway." *Meister,* 462 So. 2d at 1073. The Court concluded that it was simply common sense to assume that a vehicle in motion such as a golf cart is dangerous regardless of the location in which it is operated.[2] *Id*.

Simply put, if a golf cart operated on a private golf course is an inherently dangerous vehicle, clearly a 4,000-pound tractor which tows dangerous farm tools such as mowing equipment is inherently dangerous as well. Indeed, this is the same analysis applied by the Second District in determining that a forklift is a dangerous instrumentality. *See Harding,* 559 So. 2d at 108 ("If an owner of a golf cart is liable under Florida's dangerous instrumentality doctrine for the golf cart's operation on a golf course by a lessee, surely the owner of this larger, four-wheel

---

[2] Notably, a golf cart typically weighs anywhere between 500-700 pounds, where as the tractor at issue in our case weighed approximately 4,000 pounds. http://www.golfcartsforum.com/questions-begin-what-why/243-what-my-golf-cart-weight-club-car-yamaha-ezgo.html

vehicle with protruding steel tusks is liable under this doctrine for its operation on a public highway by a lessee").

Farm tractors are inherently dangerous and, like automobiles, golf carts, forklifts and other motor vehicles, should be declared a dangerous instrumentality.

II. A Tractor is a Dangerous Instrumentality Because it is Defined as Motor Vehicle Under Florida Law.

Shepard conceded below that a farm tractor is a motor vehicle. See §§ 316.003(12) and 322.01(19), Fla. Stat. This Court in *Meister* placed great emphasis on the fact that golf carts were motor vehicles and regulated by statute. 462 So. 2d at 1072. The Court noted that other jurisdictions have imposed such liability, not just on cars, but on all motor vehicles. *Id*. The same result should attend here. *See Eagle Stevedores, Inc. v. Thomas,* 145 So. 2d 551, 552 (Fla. 3d DCA 1962) (holding that a "tow-motor," which is considered a motor vehicle, is a dangerous instrumentality); *Aurbach v. Gallina,* 753 So. 2d 60, 62 (Fla. 2000) (the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that *motor vehicle* to an individual whose negligent operation causes damage to another.") (emphasis added).

Thus, this Court should eliminate the current confusion under Florida law simply by holding that all motor vehicles as defined by statute be considered "dangerous instrumentalities" under the law. This would add consistency and

reliability to the dangerous instrumentality doctrine and allow citizens to comply with the doctrine accordingly. Such a holding would be consistent with the definition of "motor vehicle" as set forth in Section 316.003(21), Florida Statutes, which defines motor vehicle as: "any self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, or moped." All of these vehicles share the same dangerous qualities – they are reasonably large, heavy, fast-moving vehicles that pose a serious risk of harm to the public when operated negligently. They include farm tractors (Section 316.003(12)), motorcycles (Section 316.003(22)), road tractors (Section 316.003(41)), trucks (Section 316.003(59)), truck tractors (Section 316.003(60)) and golf carts (Section 316.003(68)).

The holding would also be consistent with this Court's *Southern Cotton* decision. This Court determined that an automobile was a dangerous instrumentality because it was a motor vehicle, and like other motor vehicles, was capable of causing great harm when used improperly. The central point of the decision was that all motor vehicles were dangerous and that an automobile was no exception. 86 So. at 631-32 (discussing many forms of motor vehicles from locomotives and street cars to push carts). Such vehicles were dangerous because they were big, powerful, and caused lots of damage when misused. *Id*.

This Court should hold that all motor vehicles, including tractors, are dangerous instrumentalities.

III. A Farm Tractor Should Also be Considered a "Dangerous Instrumentality" Because it is Regulated by the Legislature and is Operated on both Public and Private Land.

If a vehicle is not defined as a "motor vehicle," or if it is difficult to assess whether a vehicle should be deemed "inherently dangerous," courts should secondarily examine whether the vehicle is regulated by the Legislature and operated on public roadways or in a place in which the public may be susceptible to injury. *See, e.g. Harding v. Allen-Laux, Inc.,* 559 So. 2d 107 (Fla. 2d DCA 1990) (holding that a forklift, though not defined as a "motor vehicle" by statute, is a dangerous instrumentality because of its inherent qualities as well as the fact it was operated on a public highway at the time of injury).

These other considerations were first set forth in *Southern Cotton Oil Co. v. Anderson,* 86 So. 629, 633 (Fla. 1920), where this Court held that automobiles were dangerous when operated on the roadways, as reflected not only by the statistics concerning injuries and deaths from automobiles, but also by virtue of the extent of regulation of automobiles and the proximity to the public when in use. *See id.* at 633-35.

Presumably, the more regulation, the more dangerous the vehicle, thus justifying application of the dangerous instrumentality doctrine. So for example, if

the Legislature has enacted a plethora of statutes concerning such issues as vehicle registration, condition, minimum age for operators, and other requirements, this evidence suggests that the Legislature views the vehicle/instrumentality as a "dangerous instrumentality." *See Orefice v. Albert,* 237 So 2d 142, 144 (Fla. 1970) (*citing Anderson v. Southern Cotton Oil Co.,* 73 Fla. 321, 74 So. 975 (1917)). *Meister,* 462 So. 2d at 1072 ("It is idle to say that the Legislature imposed all these restraints, regulations, and restrictions upon the use of automobiles, if they were not dangerous agencies which the Legislature felt it was its duty to regulate and restrain for the protection of the public.")

Similarly, courts have also looked to determine whether the vehicle comes in frequent contact with the public – the more often people are exposed to the potentially dangerous nature of the vehicle, the more likely the vehicle should be included within the realm of the dangerous instrumentality doctrine. *See Harding v. Allen-Laux, Inc.,* 559 So. 2d 107 (Fla. 2d DCA 1990) (noting that the forklift was being operated on a public highway at the time of injury).

Importantly, none of these additional factors are dispositive. Each provides guidance, but the ultimate conclusion should be drawn from an analysis of all of the factors. For example, in *Meister,* this Court was forced to reconcile the fact that golf carts, while regulated by the Legislature, are almost entirely operated on private property rather than public property. The *Meister* Court held, however, that

this was irrelevant, as a golf cart still had the potential to seriously harm people whether operated on a public road or private property. This Court explained:

> We see neither reason nor logic in the view that a motor vehicle in operation, which is a dangerous instrumentality while being operated upon the public highway, somehow ceases to be a dangerous instrumentality the instant the driver causes it to turn off the public street or highway and onto a private drive or other private property. Although it is most probable that a motor vehicle being operated on private property would be moving at a slower speed than one being operated on a public street or highway, common sense tells us that in all other respects such vehicle while in motion is equally dangerous to persons and property no matter where it is operated, and to make the owner's liability for his permittee's negligence in the operation of such vehicle depend upon whether the vehicle is on or off the public highway simply leads to absurd results.

Meister, 462 So. 2d at 1073; s*ee also Reid v. Associated Engineering of Osceola, Inc.,* 295 So. 2d 125, 129 (Fla. 4th DCA 1974) (holding that a vehicle, while not dangerous *per se,* becomes dangerous when put into operation, and the potential danger does not ebb and flow depending on whether a vehicle is on public or private property.)

This focus on isolated factors, instead of a holistic approach, has twice led the First District astray. In this case, the court focused on the fact that the accident took place on private property and the degree of regulation of a tractor, completely overlooking the inherently dangerous nature of a tractor. The court reached a similar conclusion in *Canull*, where it reached the remarkable holding (over a dissent by Judge Zehmer) that a large road grader was not a dangerous

instrumentality. *Canull v. Hodges*, 584 So. 2d 1095 (Fla. 1st DCA 1991).[3] If a road grader being operated at a construction site is not inherently dangerous, it is hard to imagine what would qualify.

Nevertheless, in this case, even notwithstanding the obvious inherent dangers of a farm tractor and the farm tractor's inclusion as a "motor vehicle" under the Florida Statutes, these additional factors weighed in favor of deeming a farm tractor a dangerous instrumentality as a matter of law. There is no less regulation of farm tractors in our case than there is of golf carts in the *Meister* case. For example, as in *Meister,* just as a person does not need a driver's license to operate a golf cart, a person also does not need a driver's license to operate a farm tractor. *See* §322.04(1)(b), Fla. Stat. (exempting farm tractors from licensing requirement); §322.04(1)(e), Fla. Stat. (exempting golf carts from licensing requirement).

Secondly, as in *Meister,* the Florida Legislature has enacted various regulations concerning the operation of farm tractors, which include: (1) requiring hazard lights in the front and rear, section 316.2295(1), Florida Statutes; (2) requiring headlights and a rear light, section 316.2295(2), Florida Statutes; (3) requiring that the headlights be of a certain intensity, section 316.239(1)(b),

[3] The First District's conclusion in *Canull* was directly at odds with the Fifth District's decision in *Scott & Jobalia Const. Co., Inc. v. Halifax Paving, Inc.*, 538 So. 2d 76 (Fla. 5th DCA 1989) in which the court found that a construction crane operated on a job site was a dangerous instrumentality.

Florida Statutes; and (4) requiring that farm tractors be equipped with a slow moving emblem on the rear of the tractor, section 316.2295(5), Florida Statutes; and *Cf. Meister*, 462 So. 2d at 1073 (requiring golf carts to have “adequate brakes, steering apparatus, safe tires, a rear view mirror and red reflectors on the front and rear” and precluding their use on most public streets).

Significantly, the Legislature also imposes special licensing requirements on the operation of farm tractors by minors. § 450.061, Fla. Stat. Minors fifteen years or younger may not operate a farm tractor anywhere except on a family-operated farm in the course of their farm work under the close supervision of their parents. The only exception is if the minor is under the close supervision of a farm operator, but only if the minor has completed an approved tractor safety course, obtained an executed certificate and provided the certificate to the farm operator. *Id*.

Although the First District Court of Appeal suggested that farm tractors were much less heavily regulated than the golf carts in *Meister,* the differences are minimal and irrelevant, particularly given the peculiarly dangerous nature of the farm tractor. *See Meister,* 462 So. 2d at 1073; *Harding,* 559 So. 2d at 107.

The First District below placed much emphasis on the location of the accident in this case, which took place on private property. But as discussed above, this is irrelevant. The golf cart accident in *Meister* took place on private

property and golf carts are more often driven on private rather than public property. Significantly, this Court explained that a dangerous instrumentality does not lose its dangerous character when it turns from a public street onto private property. *Meister*, 462 So. 2d at 1072. More important to this Court's analysis was the fact that golf carts could be driven both on private property and on public roads and that the same potential for injury existed regardless where the accident occurred. *Id. See Scott & Jobalia Const. Co., Inc. v. Halifax Paving, Inc.*, 538 So. 2d 76 (Fla. 5th DCA 1989) ("it is well established that a crane being used on a construction site is a 'dangerous instrumentality' which can subject its owner to vicarious liability"); *Reid v. Associated Engineering of Osceola, Inc*., 295 So. 2d 125, 128-29 (Fla. 4th DCA 1974) (truck causing injury on private driveway was still a dangerous instrumentality).

As with golf carts, there is no doubt that farm tractors are operated on private and public areas, and are commonly driven on public roadways. In fact, in this case, the defendant entrusted the tractor to a driver who drove it 4.5 miles across several public roads before reaching Shepard's property (R. 2). Farm tractors are regularly driven on public highways as they are moved from place to place. As the Legislature has recognized, this movement is dangerous, because tractors are not keeping up with the speed of traffic; hence, the Legislature's requirement of a slow moving vehicle sign on the rear of the tractor.

Nor does the danger disappear when the tractor leaves the public roadway, as this case demonstrates all too clearly. Tractors are often operated within the proximity of other field hands or other farm workers. A tractor in a melon field at harvest, for example, may be surrounded by scores of farm workers, all of whom have their safety in the hands of the tractor operator. How is a tractor operating on a farm any different than a crane operating at a construction site. Each is big, lumbering, and dangerous and is often operated surrounded by other workers.

Even cutting grass around a farmhouse exposes bystanders such as children to danger. No record has been created in this case suggesting that more folks are put at risk on a golf course, than on a crowded farm during harvest time. Thus, the image left by the defendant in their brief below of the solitary farmer on his tractor surrounded by nature simply ignores the reality of modern farming (not to mention the reality of tractors being driven on public roadways).

All of the factors considered by Florida courts support the finding that a tractor is a dangerous instrumentality. A tractor is dangerous and has the potential to cause serious injury or death. It is defined as a motor vehicle by the Legislature and can be, and often is, driven on public roadways. Its safety features are regulated by the Legislature. It is operated on both public roads and in private areas and in either place, is operated around other people. A tractor, like a golf cart or a forklift, or a car, or a bus is a dangerous instrumentality.

IV. The District Erred in Resolving the Question on a Motion to Dismiss, before the creation of any factual record in the Case.

The courts below erred by resolving this case on a motion to dismiss, in the absence of any factual record. All the court had before it were the barebones allegations in the complaint. Absent was any evidence or expert testimony concerning tractors, their inherently dangerous characteristics, or the injuries they cause. At the very least, the case should be remanded for evidentiary development on these points.

For example, in this Court's seminal *Southern Cotton* decision, this Court made its decision to declare the automobile a dangerous instrumentality after a full trial on the merits. This Court affirmed a jury's determination that the owner of the vehicle was vicariously liable for the injuries caused by the negligence of the driver. Indeed, it was the second appearance of the case before the Court. In its previous opinion, this Court held that there were sufficient facts to make the owner's vicarious liability a jury question. *See Anderson v. Southern Cotton Oil Co*., 73 Fla. 432, 74 So. 975 (1917).[4]

---

[4] Other states have held that the question of whether an instrumentality is dangerous is a question of fact. *See Weatherby v. Meredith,* 341 So. 2d 139, 140 (Ala. 1976) ("We recognize that normally the question of whether an instrumentality is dangerous is for the jury."); *St. Pierre by Brammer v. City of Watervliet,* 127 Misc. 2d 135, 135-36, 485 N.Y.S.2d 685, 686-687 (N.Y. Sup. Ct. 1985) ("While certain things may be dangerous instrumentalities per se, other devices may or may not be so defined, depending upon the facts and circumstances of the particular events giving rise to injury").

In previous cases, the First District itself recognized that the determination concerning whether an object is a dangerous instrumentality must await further factual development. *See Switzer v. Dye,* 177 So. 2d 539, 540 (Fla. 1st DCA 1965) ("the test to be applied in a case of this type is whether a reasonably prudent person should have anticipated the presence of children or other persons at the place where the appellee created a condition that a jury could find was an 'inherently dangerous condition' or a 'dangerous instrumentality' like unto an explosive substance, an inflammable material, or live wire or a spring gun"); *Canull v. Hodges,* 584 So. 2d 1095, 1098 (Fla. 1st DCA 1991) (deciding the issue on summary judgment, after factual development).

Other cases are in agreement. The issue of dangerous instrumentality has more commonly been decided on summary judgment or after trial, after the parties have had the opportunity for factual development. *Orefice v. Albert,* 237 So. 2d 142, 143-44 (Fla. 1970) (decided on summary judgment); *Saullo v. Douglas,* 957 So. 2d 80, 86 (Fla. 5th DCA 2007) (summary judgment); *Harding v. Allen-Laux, Inc.,* 559 So. 2d 107 (Fla. 2d DCA 1990) (summary judgment); *Scott & Jobalia Const. Co., Inc. v. Halifax Paving, Inc.*, 538 So. 2d 76 (Fla. 5th DCA 1989) (decided after full jury trial); *Reid v. Associated Engineering of Osceola, Inc.*, 295 So. 2d 125 (Fla. 4th DCA 1974) (summary judgment); *Eagle Stevedores, Inc. v. Thomas*, 145 So. 2d 551, 555 (Fla. 3d DCA 1962) (decided after full jury trial).

In this case, the inherently dangerous nature of the tractor, coupled with the fact that it is a motor vehicle regulated by the Legislature leaves no doubt that a tractor is a dangerous instrumentality. Thus, this Court has the information it needs to reverse. But if there is any doubt about just how dangerous a tractor is, and its propensity for causing serious injury or death, any determination should await further factual development.

CONCLUSION

For all the foregoing reasons, the decision below should be quashed and this Court should hold that a tractor is a dangerous instrumentality. Alternatively, the case should be remanded to the trial court for further factual development.

____

STEVEN L. BRANNOCK
Florida Bar: 319651
CELENE H. HUMPHRIES
Florida Bar: 884881
SARAH C. PELLENBARG
Florida Bar: 559571
BRANNOCK & HUMPHRIES
400 North Ashley Drive, Suite 1100
Tampa, Florida 33602
(813) 223-4300
(813) 262-0604- fax

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to, Robert J. Healy, Jr., Salter, Healy LLC, P.O. Box 10807, Saint Petersburg, Florida 33733-0807 and Jennifer Cates Lester, Dell Graham, P.A., 203 N.E. 1st St. Gainesville, FL 32601on this ______ day of July 2010.

____
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

____
Attorney