IN THE SUPREME COURT OF THE STATE OF FLORIDA

JAMES EARL RIPPY,

Petitioner,

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

JAMES SHEPARD,

Respondent.
_____/

PETITIONER'S JURISDICTIONAL BRIEF

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

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INTRODUCTION

What is a "dangerous instrumentality" under Florida law? This Court has previously ruled that a golf cart is a dangerous instrumentality, subjecting the owner of the golf cart to vicarious liability when he or she allows a third party to operate the cart and the third party negligently causes an injury. Following this Court's reasoning, the Second District has similarly ruled that a forklift is a dangerous instrumentality. Yet, the First District has now ruled in the case below that a 4,000 pound tractor pulling a five-foot Bush Hog is not a dangerous instrumentality. This follows an earlier decision of the First District that similarly held that a roadgrader is not a dangerous instrumentality.

Clearly, something is amiss. As we explain below, there is an obvious conflict between the conclusion reached by the First District and the holdings of the Second District and Florida Supreme Court. These decisions simply cannot be reconciled and the District Courts of Appeal are in need of a clearer articulation of the applicable standard. Accordingly, this Court should exercise its discretionary jurisdiction and resolve this conflict.

STATEMENT OF THE CASE AND FACTS

This appeal arises out of a final order dismissing Petitioner James Earl Rippy's complaint against the Respondent, James Shepard. Rippy sued Shepard under Florida's dangerous instrumentality doctrine after he suffered permanent and

disabling injuries caused by Shepard's farm tractor. (R. 2, 3). Rippy alleged that Shepard knowingly and willingly allowed Michael Rose to operate his 4,000 pound tractor, which was pulling a five-foot Bush Hog with its blades engaged to cut grass. (R. 2). Rose was operating the tractor on Rippy's property when Rose negligently allowed the tractor to strike and injure Rippy while the blades were engaged. (R. 2). 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 based on reasoning that conflicts with prior decisions from the Florida Supreme Court and Second District Court of Appeal. *See Rippy v. Shepard*, 2009 WL 2396316 (Fla. 1st DCA August 6, 2009). The First District held that a farm tractor does not qualify as a dangerous instrumentality, noting that its decision was consistent with its prior precedent in which it had found that a road grader was not a dangerous instrumentality. *See id.* at *2 *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. *See Rippy v. Shepard*, 2009 WL 2396316 at *1-2 (Fla. 1st DCA August 6, 2009).

SUMMARY OF THE ARGUMENT

The decision of the First District Court of Appeal below expressly and directly conflicts with prior decisions from the Florida Supreme Court and the Second District Court of Appeal concerning the scope of Florida's dangerous instrumentality doctrine. If a golf cart and a forklift are considered dangerous instrumentalities by the Florida Supreme Court and the Second District Court of Appeal respectively, then surely the First District's determination below that a 4000 pound farm tractor is not a dangerous instrumentality is in conflict. *See Meister v. Fisher,* 462 So. 2d 1071 (Fla. 1984) (deeming a golf cart a dangerous instrumentality); *Harding v. Allen-Laux, Inc.*, 559 So. 2d 107 (Fla. 2d DCA 1990) (deeming a fork lift a dangerous instrumentality). Additionally, the First District's overemphasis on the location of the accident and the extent of legislative regulation of farm tractors is misplaced and merits further clarification from this Court. Accordingly, this Court should exercise its discretionary jurisdiction in this case.

ARGUMENT

The First District Court of Appeal created a conflict in Florida law by holding that a farm tractor is not a dangerous instrumentality, which is directly contrary to prior law holding that both a golf cart and a forklift constitute

dangerous instrumentalities. *See Rippy v. Shepard*, 2009 WL 2396316 (Fla. 1st DCA August 6, 2009). Additionally, as we explain below, the First District misapplied the law by focusing primarily on the extent of the legislative regulation of a farm tractor and the fact that the injury occurred on private property.

If a golf cart is a dangerous instrumentality, then surely a farm tractor is a dangerous instrumentality!

The dangerous instrumentality imposes vicarious liability on owners who entrust their vehicles to others. *See Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 446 (1920). The dangerous instrumentality doctrine is based on "the practical fact that an 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." *Meister,* 462 So. 2d at 1072, *citing Southern Cotton Oil Co. v. Anderson,* 80 Fla. 441 (1920).

A 4000 pound farm tractor that is pulling a Bush Hog with operational blades for cutting grass is undoubtedly a dangerous instrumentality. The First District Court of Appeal's opinion to the contrary conflicts with both the *Meister* and the *Harding* decisions, in which the respective courts held that both a golf cart and a forklift constitute dangerous instrumentalities. *See, e.g. Meister,* 462 So. 2d 1071; *Harding*, 559 So. 2d at 108.

First, in *Meister*, this Court made clear that vehicles other than automobiles can be considered dangerous instrumentalities under the rule. *Meister*, 462 So. 2d

at 1073. In fact, the Supreme Court noted that all of the other states that had enacted dangerous instrumentality statutes included *all* "motor vehicles" within the doctrine, and thus, this Court held that because the golf cart at issue in *Meister* was considered a "motor vehicle," it was appropriate for coverage under the dangerous instrumentality doctrine. *See id; see also 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). There is no dispute here that a tractor is a "motor vehicle" as defined by the Legislature.

In ruling that a golf cart is a dangerous instrumentality, this Court emphasized the inherent 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.[1] *Id*.

Similarly, in a case even more akin to our case, the Second District Court of Appeal in *Harding*, 559 So. 2d at 108, found that a forklift which was moving

[1] 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

pallets of sod along a roadway was a dangerous instrumentality due to the inherently dangerous nature of the forklift machine.

Interestingly, a forklift, unlike a farm tractor, is not defined as a "motor vehicle" by the Legislature, and thus is arguably less appropriate for coverage under the dangerous instrumentality doctrine than a farm tractor under *Meister's* reasoning. *See 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). However, the *Harding c*ourt explained that the various definitions of "motor vehicle" under the Florida Statutes are not dispositive, and rather, the issue is whether an instrument is peculiarly dangerous in operation:

> [i]f 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 the lessee, *Mesiter v. Fisher*, 462 So. 2d 1073 (Fla. 1984), surely the owner of this larger, four-wheel vehicle with protruding steel tusks is liable under this doctrine for its operation on a public highway by a lessee.

Id. at 108; s*ee also Eagle Stevedores, Inc.*, 145 So. 2d at 552 (holding that a tow-motor is a dangerous instrumentality); *Mann v. Pensacola Concrete Const. Co., Inc.*, 527 So. 2d 279, 280 (Fla. 1st DCA 1998) (noting a crane is a dangerous instrumentality), *disapproved of on other grounds, Halifax Paving, Inc. v. Scott & Jobalia Const. Co., Inc.*, 565 So. 2d 1346, 1348 (Fla. 1990). The *Harding* court's

reasoning equally applies here. If a golf cart is a dangerous instrumentality, then surely a farm tractor with operational cutting blades is a dangerous instrumentality. The decision of the First District Court of Appeal to the contrary conflicts with these cases.

The First District's overemphasis on the location of the accident and the extent of regulation of the vehicle further demonstrates the conflict.

Florida courts have struggled over which factors to apply when determining whether a vehicle or instrument is a dangerous instrumentality. In this case, the First District improperly applied two of these factors; first unnecessarily focusing on the fact that the injury occurred on private property, and second putting undue emphasis on the amount of legislative regulation of a farm tractor.

First, the fact that a farm tractor is not routinely operated in a public place should not be dispositive of the issue of whether a farm tractor constitutes a dangerous instrumentality. The holding of *Meister* is undeniable – a golf cart, operated on a private golf course, is a dangerous instrumentality. *See Meister,* 462 So. 2d at 1073. In *Meister,* the Florida Supreme Court explained that the fact that a golf cart is typically operated on private property is irrelevant:

> 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 cause 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.

Id. 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.)

Additionally, in this case, there is no doubt that farm tractors are operated on private AND public areas, and are even driven on public roadways. In fact, in this case, Rose drove the tractor 4.5 miles across several public roads before reaching Rippy's property. (R.2). Accordingly, the First District's focus on the location of the accident is inconsistent with *Meister* and appropriate for resolution by this Court.

The First District also misapplied Florida law in overemphasizing the legislative regulation of farm tractors. Although courts clearly consider legislative regulation in determining whether a vehicle is a dangerous instrumentality, there is no case to suggest that there is a certain minimal threshold of legislative regulation in order to qualify as a dangerous instrumentality. In fact, in *Harding*, the Second District did not even consider legislative regulation in determining that a forklift,

which is not considered a "motor vehicle" under Florida law, is inherently a dangerous instrumentality when it is in operation. *See Harding*, 559 So. 2d at 107.

In any event, there is no less regulation of farm tractors in our case than there is of golf carts in the *Meister* case. First, just as with the golf cart in *Meister*, the Florida Legislature has defined a farm tractor in section 316.003(12), Florida Statutes, as a motor vehicle. *See id.* Similarly, 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). Lastly, 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), Florida Statutes; (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 (5) requiring specific licensing for minors, section 450.061, Florida Statutes. *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).

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 simply irrelevant, since the issue is not whether a vehicle is subject to legislative regulation, but instead whether a vehicle is so peculiarly dangerous in its nature that the owner should be held vicariously liable under the dangerous instrumentality doctrine. *See Meister,* 462 So. 2d at 1073; *Harding,* 559 So. 2d at 107.

CONCLUSION

The conflict raised by the decisions below is an important one that should be resolved by this Court. This Court should exercise its discretionary jurisdiction, and, as we will demonstrate in our brief on the merits, should resolve that conflict by holding that farm tractors in operation constitute dangerous instrumentalities.

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.

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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 13th day of October 2009.

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