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Jury Verdicts & Settlements

Family of girl killed in ATV accident receives partial award

Case: Duane Hennarichs, as personal representative of Sara Rose Hennarichs, deceased v. Karen Fina, Roger Fina, Nicolas Fina, a minor, Tierra Del Rey Property Owners Association, Inc., a Florida corporation, GRS Management Associates, Inc., a Florida corporation, John S. Imbres, Susan K. Imbres and Matthew Imbres, a minor.

Case No.: 502004CA005169

Description: Wrongful death

Filing date: May 18, 2004

Trial date: Oct. 29-Nov. 2, 2007

Judge: Palm Beach Circuit Judge David French

Plaintiff lawyers: Paul Jacobs, Jacobs & Strauss, Boca Raton, and Richard E. Retamar, Retamar & Millian, Deerfield Beach

Defense lawyer: John H. Roberts, Cooney Mattson Lance Blackburn Richard & O'Connor, Fort Lauderdale

Details: Sara Hennarichs, 13, of Delray Beach and another teenager were dropped off at a friend's house Sept. 13, 2003. Thirteen-year-old Nick Fina, who was visiting a friend living in the same community, arrived on an all-terrain vehicle and allowed Sara to drive the ATV with another child riding behind her.

Sara drove the ATV down a paved road, lost control at a turn and was thrown head-first into a tree. She was wearing a helmet but died of her injuries. The child riding behind her suffered minor injuries.

Sara's parents sued Nick and his parents for negligent supervision of their child because of warnings on the ATV. The owner's manual also warned no one under 16 should operate the vehicle, which had a 125cc engine. The instructions also said the vehicle was not supposed to be operated on paved roads or with a passenger.

Sara's parents also sued the homeowners association and management agent for the Tierra Del Rey community as well as the boy who Nick was visiting and that boy's parents.

Plaintiff case: Jacobs offered the vehicle and owners' manual warnings as proof no one under 16 should drive the ATV because of its

power.

Witnesses included Nick, his parents and Ronald "Buck" Warfield, a retired Maryland state trooper who runs the ATV Safety Institute.

Warfield testified that allowing Nick to use the ATV regularly with few restrictions "fell below every standard of care," Jacobs said. Warfield said 13-year-olds do not have the cognitive ability to handle an ATV or understand its potential dangers.

Nick testified Sara had driven his ATV about a week before in a different location. She asked Nick if she could drive it on the day of the accident, and he "didn't see a problem with it."

Defense case: Roberts did not return a call seeking comment. Jacobs said the defense called only the Finas as witnesses.

Roger Fina testified he felt the warning labels on the ATV were designed mainly to protect manufacturers from lawyers, and he felt "their son could handle" the ATV, which they bought for him when he was 11. He said he was not aware others were driving the ATV.

Outcome: After deliberating about four hours, the jury returned a \$4.5 million verdict finding Roger and Karen Fina each 35 percent negligent for not supervising their child and the ATV and found Nick 10 percent negligent for the accident. Sara was found 5 percent negligent.

Karen Majdalawi, the mother of the child Sara was visiting, was found 15 percent negligent. She went to the mall while the children were at her home.

Because Majdalawi was not a defendant, Jacobs said she is not liable for her \$675,000 portion of the verdict. Deducting \$225,000 for the victim's share of responsibility, the net award for the Hennarichs from the Fina family was \$3.6 million.



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Plaintiff lawyers Paul Jacobs, seated, and Richard E. Retamar maintained no one under 16 should drive the ATV due to its power.

The other defendants were dismissed before trial after small, confidential settlements were reached with them, Jacobs said.

Comments: The Finas tried to point the finger of blame at others, but Jacobs said, "There was really no way they could dig out of their negligence" based on the vehicle warnings.

Jacobs said the Finas "were rolling the dice" in trial because they and Nationwide Insurance refused to settle the case for the full amount of the Finas' \$500,000 liability policy.

Post verdict: Jacobs said the Finas "are going to appeal this" decision, questioning whether parents can be held responsible in accidents like this one. He said the insurer can be held liable for the award for rejecting a good-faith effort to settle the case for the coverage amount. But Jacobs said "it's going to be years" before the case is resolved. ■

— Bud Newman