

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR LEE COUNTY
GENERAL CIVIL DIVISION

BRITTANY FALKNER,

Plaintiff,

v.

Case No.: 09-CA-004033

Division: I

EDWARD S. MURAWSKI,

Defendant.

Consolidated for discovery with:

Progressive Select Insurance
Company f/k/a Progressive Auto
Pro Insurance Company,

Petitioner,

v.

Case No.: 09-CA-005738

Edward Murowski and
Brittany Falkner,

PLAINTIFF'S SIXTH AMENDED COMPLAINT

COMES NOW, the Plaintiff, Brittany Falkner, by and through the undersigned counsel and sues Defendant, Edward Murowski, Jr., and alleges:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of \$15,000.
2. At all times material hereto, Defendant, Edward Murowski, Jr., was a resident of Collier County, Florida.

3. On July 4, 2007, Murowski owned a 199 Chevrolet S10 pickup truck.

4. On July 4, 2007, while at his above-stated residence, Defendant Murowski loaded his four-wheeler - ATV onto the bed of his S10 pickup truck.

5. Murowski used and operated the pickup truck to transport his four-wheeler - ATV (a 2001 Yamaha 660R Raptor - hereinafter "raptor") onto a privately owned piece of property that was comprised of a dark wooded area and challenging terrain.

6. The raptor is designed as a single occupant ATV and contains a manufacturer-placed warning, in the operating handbook, and affixed to the raptor which prohibits the carrying of any passengers.

7. Murowski used and operated his S10 pickup truck to unload the raptor ATV onto the above-described private property.

8. After unloading his raptor, Murowski consumed a large amount of alcohol. Specifically, Murowski drank rum directly from the bottle.

9. After unloading his raptor and consuming large amounts of alcohol, Murowski, in derogation of the multiple warnings, took Brittany for a ride on his raptor throughout the private property.

10. In the early morning hours of July 4, 2007, Murowski encountered uneven terrain and lost control of his raptor while Brittany Falkner was on it. Brittany Falkner was ejected and collided with a tree. Murowski, who was seated in the raptor's manufacturers single occupant seat, remained adherent to the raptor, and therefore, was not ejected or injured. The force of the collision between Brittany's body and the tree resulted in multiple injuries - most notably to her brain, brain stem, and a shattered fracture of the vertebrae in her thoracic spine.

11. Immediately after the collision, Brittany Falkner, who was marginally coherent suffered from breathing problems and the nature of the injuries prevented Brittany Falkner from voluntarily breathing at a normal rate.

12. At that time, Murowski made a decision to use and operate his pickup truck to transport Brittany's body to a medical center.

13. In order to get Brittany Falkner's body to his pickup truck, Murowski chose to again transport her on his raptor, through the wooded property and challenging terrain, while being towed by another ATV rider.

14. Due to the severe nature of Brittany's injuries, her condition continued to quickly deteriorate - which included her breathing becoming more shallow and dissipated.

15. It was obvious, to the observation of any reasonable person, that the type and nature of Brittany Falkner's injuries, were the type that required ALS-type emergency responder care to keep her still and stationary.

16. The process of transporting Brittany to a medical center included Defendant, Murowski, placing her into his private automobile, a Chevrolet S10 pickup truck, and using his vehicle to drive her to Naples Community Hospital.

17. As a result of her traumatic injuries, Brittany Falkner required the services of a Level I or Level II Trauma Center.

18. Within the vicinity of where the collision occurred, there were ALS equipped EMS and Fire Rescue stations that were could have reached Brittany's position and location within a significant shorter term than was required for Murowski to transport her to Naples Community Hospital.

19. Murowski had ample and adequate means and opportunity to call 911, or contact emergency responder personnel or otherwise cause emergency responder personnel to be notified.

20. Due to Muroski's decisions, actions and inactions, there was a significant delay in receiving timely, available and adequate EMS care which caused Brittany Falkner to suffer progressive oxygen deprivation thus causing irreversible brain damage to her.

21. The period of time during which Brittany suffered the permanent and reversible nature of her anoxic brain damage occurred while being transported in Murowski's S10 pickup truck.

22. The vast majority of neurologic damage to her thoracic-region spinal cord resulted from her being placed into and pulled out of Murowski's S10 pickup truck.

23. Brittany Falkner suffered enhanced or additional injuries which resulted in permanent impairment to her brain and spinal cord solely as a consequence of the negligent transportation of her by the use of Murowski's pickup truck.

24. Brittany Falkner has pre-existing injuries, due to colliding with a tree, which was a separate and distinct occurrence from the transportation of Brittany in Murowski's pickup truck. Additionally, Brittany Falkner suffered from preexisting injuries including emotional trauma.

25. The nature of permanent neurologic and cognitive injuries that Brittany sustained due to the aggravation and enhancement of those injuries from the transportation in Murowski's pickup truck are substantially worse than had she received adequate and available EMS or otherwise adequately equipped and trained first responder care.

COUNT I - NEGLIGENCE - ATV USE

Plaintiff, Brittany Falkner, realleges and incorporates into Count I, all of the allegations contained in the General

Allegations as if they were more fully set forth herein and further alleges:

26. Murowski had a duty that was owed to foreseeable Plaintiffs to properly and safely use his ATV.

27. Brittany Falkner was a foreseeable Plaintiff when Murowski, in contravention of the manufacturer's warnings and labels, undertook an obligation and used his ATV in a way that it was not intended for unsafe transportation of a passenger.

28. Murowski breached his duty to Brittany Falkner by using the ATV unsafely in a way that it was not intended.

29. As a direct and proximate result of Murowski's breach, Plaintiff, Brittany Falkner, suffered bodily injury and resulting pain and suffering, disability, disfigurement, loss of capacity for the enjoyment of life, expense of hospitalization, aggravation of a pre-existing condition, medical and nursing care and treatment, loss of earnings and loss of ability to earn money. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff, Brittany Falkner, sues the Defendant, Edward Murowski, Jr., and demands judgment for damages in an amount exceeding Fifteen Thousand Dollars, exclusive of costs, against the Defendant, and demands a trial by jury.

COUNT II - NEGLIGENCE - PICKUP TRUCK USE

Plaintiff, Brittany Falkner, realleges and incorporates into Count II, all of the allegations contained in the General Allegations herein as if they were more fully set forth and further alleges:

30. After Defendant, Murowski's, actions or inactions caused harm to Brittany Falkner (as mentioned above), Murowski took it upon himself to try and transport Brittany.

31. When Murowski undertook this responsibility he created and owed a duty to Brittany to do so reasonably.

32. Murowski breached this duty by not acting reasonably in the following ways:

a. Failure to call or summon proper police or EMS / Fire Rescue services;

b. Loading Brittany's injured body into his pickup truck which was not properly equipped to safely and adequately transport a trauma victim;

c. Pursuing an ill-equipped treatment center and ignoring closer and more suitable treatment facilities; and

d. Causing unreasonable delay in transporting Brittany to get proper medical treatment.

e. Not inspecting or surveying the private piece of property for hazards to the operation of the raptor.

33. The delay and actual transporting of Brittany to the medical center, as opposed to have Emergency Medical Response summoned to her position, resulted in a substantial worsening and aggravation of her then existing traumatic injuries to her brain and thoracic spine.

34. As a direct and proximate result of the negligence of Defendant, Edward Murowski, Jr., Plaintiff, Brittany Falkner, suffered an aggravation and enhanced permanent neurologic and cognitive bodily injury which resulted in past and future pain and suffering, mental pain and anguish, scarring and disfigurement, disability, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money and aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff, Brittany Falkner, sues the Defendant, Edward Murowski, Jr., and demands judgment for damages in an amount exceeding Fifteen Thousand Dollars, exclusive of costs, against the Defendant, and demands a trial by jury.

CERTIFICATE OF SERVICE APPEARS ON NEXT PAGE

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing has been furnished, by e-mail, this 15th day of July 2013 to:

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