



MEMORANDUM

Office of the City Attorney

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TO: Mayor and City Commissioners

DATE: March 14, 2005

FROM: City Attorney


CONSENT

SUBJECT: Matt Miller and his wife, Lydia Miller vs. City of Gainesville; Alachua County Circuit Court; Case No.: 01-05-CA-800

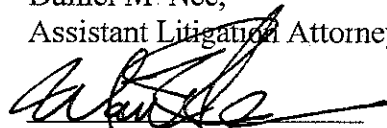
Recommendation: The City Commission authorize the City Attorney to represent the City in the case styled Matt Miller and his wife, Lydia Miller vs. City of Gainesville; Alachua County Circuit Court; Case No.: 01-05-CA-800.

On February 24, 2005, the City of Gainesville was served with a summons and complaint. The Plaintiffs allege that on or about June 23, 2002, Mr. Miller was swinging on a swing in Northeast Park at which time Mr. Miller's swing broke, causing him to fall to the ground. Plaintiff Matt Miller alleges that he was injured as a result of the accident. Plaintiff Lydia Miller has filed a loss of consortium claim.

Prepared by:


Daniel M. Nee,
Assistant Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

EAW/cgow

IN THE CIRCUIT COURT, EIGHTH
JUDICIAL CIRCUIT, IN AND FOR
ALACHUA COUNTY, FLORIDA

MATT MILLER and LYDIA MILLER,
his wife,

Plaintiffs,

CASE NO.:

vs

DIVISION:

CITY OF GAINESVILLE,
Defendant

COMPLAINT

COME NOW the Plaintiffs, MATT MILLER and LYDIA MILLER, his wife, by and through their undersigned attorneys, and sue the Defendant, CITY OF GAINESVILLE, and allege:

1. This is an action for damages in excess of fifteen thousand dollars (\$15,000.00), exclusive of interest and costs

2. The Plaintiffs, MATT MILLER and LYDIA MILLER, are residents of Gainesville, Alachua County, Florida.

3. The Defendant, CITY OF GAINESVILLE, is a municipality existing within the State of Florida

4. The Plaintiffs, MATT MILLER and LYDIA MILLER, presented a claim, in writing, to the Defendant, CITY OF GAINESVILLE, in compliance with §768.28, Florida Statutes on July 5, 2002. A final denial of this claim was made on February 10, 2005 in accordance with §768.28, Florida Statutes.

5. At all times material to the allegations contained herein, the Defendant, CITY OF GAINESVILLE, owned and was responsible for the public park known as Northeast Park located on NE 16th Avenue in Gainesville, Florida.

6. At all times material to the allegations contained herein, the Defendant, CITY OF GAINESVILLE, owned and was responsible for the inspection, maintenance, and repair of swings and swing sets located at Northeast Park, Gainesville, Florida.

COUNT I

As and for a First Count to be filed herein, the Plaintiffs, MATT MILLER and LYDIA MILLER, reallege paragraphs 1-6 above, and further allege:

7. As the owner and entity responsible for the aforementioned Northeast Park, the Defendant, CITY OF GAINESVILLE, had the right, power, and duty to inspect its swings and swing sets for dangerous and/or hazardous conditions and to maintain its swings and swing sets in a reasonably safe condition.

8. On June 23, 2002, at approximately 5:00 p.m., MATT MILLER, accompanied by his minor children, was lawfully on the premises of Northeast Park for the purpose of swinging on a swing set with his children.

9. At the time and place described above, MATT MILLER, along with his minor son, began swinging on a swing set located in Northeast Park.

10. At the time and place described above the apparatus holding the swing seat to the connecting chains suddenly and unexpectedly broke which resulted in MATT MILLER colliding with the ground and receiving an injury to his back.

11 At the time and place described above, the Defendant, CITY OF GAINESVILLE, knew, or should have known, of the dangerous and/or hazardous condition of the aforementioned swing, specifically that the apparatus used to connect the swing seat to the connecting chain was defective and not intended to be used for this application.

12 At all times material to the allegations contained herein, the Defendant, CITY OF GAINESVILLE, had a duty to inspect, maintain, and repair the aforementioned swing and promptly correct, remedy, or warn of any condition which presented a danger or hazard to the public, including the Plaintiff, MATT MILLER.

13 The Defendant, CITY OF GAINESVILLE, violated the duties alleged above and was negligent in the following respects:

- a The CITY OF GAINESVILLE negligently failed to inspect the aforementioned swing and permitted a dangerous and/or hazardous condition to exist by using defective and inappropriate materials.
- b The CITY OF GAINESVILLE negligently failed to maintain the aforementioned swing in a reasonably safe condition by failing to utilize proper materials when maintaining and repairing the aforementioned swing.
- c The CITY OF GAINESVILLE negligently failed to warn the public, and in particular MATT MILLER, of the dangerous and/or hazardous condition caused by the use of defective materials not intended for this application.

- d. The dangerous and/or hazardous condition of the swing was known to the CITY OF GAINESVILLE or had existed for a sufficient length of time so that the CITY OF GAINESVILLE should have known of the condition
- e. The CITY OF GAINESVILLE was aware that safer alternatives to the defective materials used on the aforementioned swing were available
- f. The CITY OF GAINESVILLE was aware that the defective material was only in use on the swing on which MATT MILLER was injured.

14 As a direct and proximate result of the negligence of the Defendant, CITY OF GAINESVILLE, the Plaintiff, MATT MILLER, has been injured in an about his body and extremities, suffered pain there from, incurred medical expense in the treatment of his injuries and suffered physical handicap, lost the capacity for the enjoyment of life and a loss of earning capacity. These injuries are either permanent or continuing in nature and the Plaintiff, MATT MILLER, will suffer these losses and impairments in the future.

WHREFORE, the Plaintiff, MATT MILLER, demands judgment against the Defendant, CITY OF GAINESVILLE, for damages, costs, and a trial by jury.

COUNT II

CONSORTIUM CLAIM OF LYDIA MILLER

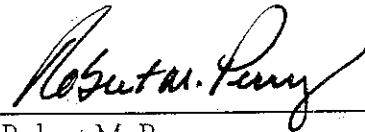
As and for a Second Count to be filed herein, the Plaintiff, LYDIA MILLER, hereby realleges each and every allegation contained in paragraphs 1-14 and further alleges:

15. As a direct and proximate result of the negligence of the Defendant, CITY OF GAINESVILLE, which resulted in injury to her husband, the Plaintiff, LYDIA MILLER, has

suffered loss of her husband's companionship, society, services and support in the past and will suffer such losses in the future

WHEREFORE, the Plaintiff, LYDIA MILLER, demands judgment against the Defendant, CITY OF GAINESVILLE, for damages, costs, and a trial by jury

PERRY & VLOEDMAN



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