

By [Carolina Bolado](#)

Law360 (April 25, 2019, 3:13 PM EDT) -- A Florida appeals court rejected a bid Wednesday by the owner of an amusement park ride that injured a child to block the addition of punitive damages to the victim's family's lawsuit, finding that it lacked jurisdiction to review the sufficiency of the evidence provided by the family to support the claim.

Florida's Fourth District Court of Appeal denied The Event Depot Corp.'s petition for certiorari review of an order allowing Robert and Terri Frank, whose daughter was injured on an amusement park ride, to add a punitive damages claim against the company in their personal injury suit.

The appeals court said the scope of its certiorari review is limited to whether the trial court has complied with the procedural requirements of state law.

In this case, the trial court held a hearing at which the Franks presented testimony from the creator and developer of the ride at issue, the Psycho Swing, to show that The Event Depot allowed it to be used without a required safety harness, the owner's manual or adequate safety training.

"Here, the trial court complied with the procedural requirements of the statute," the appeals court said. "Respondents proffered evidence to support their punitive damages claim and, after a hearing, the trial court entered an order finding the proffer to be sufficient to support the claim. The petition for writ of certiorari must therefore be denied."

In a concurring opinion, Judge Jeffrey T. Kuntz suggested that the [Florida Bar's](#) Appellate Court Rules Committee consider amending the Florida Bar Rules to allow the appeal of a nonfinal order determining the right of a party to amend a complaint to add a punitive damages claim.

The Franks' daughter, Elizabeth Frank, was injured in 2011 when she fell from the Psycho Swing amusement ride at the Seminole Ball Park in Hollywood, Florida. In 2016, they filed a complaint against The Event Depot and other defendants over the accident, claiming that the swing was missing crucial safety equipment and safety instructions.

In July 2017, the Franks asked to add a claim for punitive damages against all of the defendants, which was granted except for the claim against The Event Depot. One year

later, after holding a hearing on the issue, the trial court reversed course, granting the motion and allowing the Franks to file a fourth amended complaint to see punitive damages against the company.

Attorneys for the parties could not be reached for comment Thursday.

Judges Alan O. Forst, Martha C. Warner and Jeffrey T. Kuntz sat for the Fourth District.

The Event Depot Corp. is represented by Eric C. Morales and Jason H. Klein of [Wood Smith Henning & Berman LLP](#).

The Franks are represented by Daniel Mahfood and Bryan S. Gowdy of [Creed & Gowdy PA](#) and Jonathan R. Gdanski and David Silverman of [Schlesinger Law Offices PA](#).

The case is The Event Depot Corp. v. Frank et al., case number 4D18-2306, in the Fourth District Court of Appeal of Florida.

--Editing by Rebecca Flanagan.