



## Man last seen with missing teen sued by Family

### Holloway family sues van der Sloot in daughter's unsolved disappearance

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Natalee's parents have filed a lawsuit against chief suspect, Joran van der Sloot, and his father. The papers served in a movie-like moment.

The lawyers for Natalee's parents learned Joran and his parents were coming to the U.S. from Aruba for a network television interview. They drafted a lawsuit, got a process server on the plane with Joran and staked out the hotel where Joran's father was already staying.

While Joran's plane was in the air, and he was out of touch with his parents, Paulus van der Sloot was served in his hotel lobby as he was leaving yesterday afternoon.

When Joran's plane landed in New York, he had to pass by the undercover process server sitting three rows in front of him in order to get off the plane.

Joran was served and, according to an eyewitness to the event, Joran was also taunted by the team waiting for him at the airport.

Now, the lawsuit alleges that Joran, quote, "willfully caused personal injury to Natalee as a result of his sexual assault upon her; wrongfully, unlawfully and intentionally detained and directly restrained Natalee Holloway, depriving her of her personal liberty through force and/or threat of force. Abducted Natalee Holloway and prevented her from returning to the custody of her parents."

The suit also claims that "Paulus van der Sloot breached his duty to Natalee by failing to take steps to prevent Joran from sexually assaulting Natalee Holloway."

So is this lawsuit going to hold up?

Dan Abrams was joined by the civil rights lawyer, Gloria Allred, who is also the author of "Fight Back and Win: My 30 year fight against injustice and how you can win your own battles."

Former prosecutor and NBC legal analyst Susan Filan; and New York personal injury attorney, David Worby.

**DAN ABRAMS, HOST, 'ABRAMS REPORT':** It does seem that this is an odd lawsuit on two fronts.

I mean, first of all, there are a lot of conclusions. It sort of assumes that Joran assaulted Natalee repeatedly. It doesn't lay out the facts upon which they are basing that.

And number two, it's is a lawsuit filed in New York for something that happened to an Alabaman in Aruba.

**SUSAN FILAN, FORMER PROSECUTOR AND NBC LEGAL ANALYST:** Yes. Obviously, the first problem will be jurisdiction, a fancy word for does this court in New York have the power to hear

this case. It may be better removed to federal court.

But as for what there's alleged therein, look, this is a creative approach to trying to deal with what happened to Natalee Holloway.

In a civil case, as you know, Dan, it's just a preponderance of the evidence. It has to tip the scale 51 percent to 49 percent. It's not a criminal proceeding. It's not prove beyond a reasonable doubt.

And the most important thing, Dan, is in a civil suit, you get the powerful tools of discovery, interrogatories, deposition.

You get to put these people under oath, assuming it survives the motions to dismiss, and ask them what happened, and make them answer these questions under oath.

And lastly, Dan, it's a circumstantial case. Joran's given enough of his own statements that we can try to piece together what says he did. And Natalee's mom's going to tell us there's no way Natalee would have every consented to that.

**ABRAMS:** All right. But that's different from saying and I quote, "Natalee was kept against her will, Natalee was sexually assaulted, was fondled and was touched without her consent by Joran and his accomplices, over and over again, as she drifted in and out of consciousness."

I mean, look, they've been there. They have been witnesses who have heard, for example, Mrs. van der Sloot talking to Beth Twitty and it seems Joran has conceded there was some sexual activity that went on.

But how are they going to be able to prove that Natalee was held against her will, sexually assaulted repeatedly as she went in and out of consciousness?

**FILAN:** Well, it will be difficult. But, first of all, the biggest problem is jurisdiction. And that is no small issue, whether or not the court will dismiss this case. Because, of course, the people suing are either from Alabama, that Mrs. Twitty, and Natalee, and the father is from Mississippi, and all of the acts are alleged were done in Aruba, if they occurred.

And, in fact, the defendants are from Aruba or the Netherlands and they're suing under Alabama law in New York.

This is a real question here of jurisdiction. But proving that, in fact, there was a sexual assault is not going to be easy. They are probably going to try to use any statements that were previously made by any of the defendants or by other witnesses.

**ABRAMS:** Mr. Worby, let's talk about this issue that I know all the lawyers want to talk about. Let's keep it simple.

This issue of jurisdiction, you know, people are going to say, "How can they really try to sue in New York when it's an Alabaman woman suing over something that happened in Aruba?"

**DAVID WORBY, PERSONAL INJURY ATTORNEY:** Well, there's no question there are jurisdictional issues. But the law is, if they are served in New York, they are subject to New York jurisdiction.

Now, the defendants can move to, what's called Forum Nonconvenience, (ph) which basically is

Latin for this is an inconvenient forum to move the case out of New York or have it dismissed.

But the New York courts would, thereafter, have power to potentially move the case down to Alabama.

But jurisdiction, once they've been served in New York, is sustainable. The power over the person solely on the issue that they were served in New York State puts them in our power.

**ABRAMS:** Right. But that's not the end of the inquiry.

Here are the factors that are considered as to whether this lawsuit is going to hold up in a New York court.

"The burden on the New York courts." I don't think that's going to be a big issue.

"The potential hardship to the defendants in this case." That certainly, you know, they'll be able to argue it's hardship for them to come back to New York.

**WORBY:** Absolutely.

**ABRAMS:** "The unavailability for an alternative forum for the suit". "The residency of the parties." Again, that works against hem. "Where the basis of the cause of action arose."

I mean, you go through this list, Mr. Worby, and it seems that just about each and everyone of them work against the Holloways.

**WORBY:** They totally work against the Holloways. But that's not the purpose of the lawsuit. Let's examine what the purpose is.

These are desperate parents that want to know what happened to their daughter. They found out that these people were going to be in New York. That gives them jurisdiction in the United States of America, not Aruba.

Once there's jurisdiction in New York, New York's court power attaches. Is it a convenient forum? No. Will it be moved because of that? Almost 100 percent likelihood. Yes, but New York's can transfer...

**ABRAMS:** But if it's moved—Wait. But if it's moved, wouldn't they have to serve them then in Alabama?

**WORBY:** Once the New York courts have jurisdiction, the defendants can try to remove it because they are from Aruba and the plaintiffs are from Alabama, into a federal court of New York, from which they can move to dismiss it and/or the federal court can transfer it from a New York court to Alabama federal courts. Or it could be transferred potentially from New York State Court.

**ABRAMS:** Bottom line, Mr. Worby, bottom line, do you think this case is going to hold up in a New York court?

**WORBY:** It won't stay for long. But New York courts aren't going to dismiss it, in all likelihood, because of those grounds. And remember, what you mentioned earlier is crucial. Can they prove that there was a false imprisonment? No. However, courts must accept pleadings as true for purposes for considering a motions to dismiss.

All these parents want, they want this kid under oath. They want to find out what happened. And the only way they can do that is for this case to survive a motion to dismiss, which it possibly can do in New York if transferred to another jurisdiction.

**ABRAMS:** All right. Let me do this. Everyone's going to stick around for minute because I want to talk about the father.

I mean, remember, they are not just suing Joran van der Sloot. They're suing his father saying he should have been able to prevent something like this from happening.

And guess what? At the same time as this lawsuit is filed, in a courtroom in Aruba, Joran and his father apparently trying to clear their names.

Not just say, "We should be released or this lawsuit should be released." They want their names cleared.

Let me read from this lawsuit, again, that's been filed. And, again, it's not just Joran they're going after. They're going after papa.

And remember that Paulus, the father was arrested as well and eventually released.

"Paulus van der Sloot knew Joran van der Sloot had a long history of sexual assaults on young women, engaged in underage drinking and gambling and that he would leave his house late at night. He created a permissive environment, in which Joran's criminal proclivities were permitted to fester and be acted upon, unchecked."

Gloria, is that a cause for a lawsuit?

**GLORIA ALLRED, CIVIL RIGHTS ATTORNEY:** Well, they're alleging that under Alabama law, Dan, that it is.

In other words, what they are saying is that it was reasonably foreseeable, given what the father allegedly knew about his son, that the acts they allege the son did to Natalee would occur.

They are alleging that the father knew that the son had engaged in sexual assaults in the past. And, of course, they are going to have to prove that, in fact, there were sexual assaults in the past, and that the father knew. And that, therefore, he should have prevented him from perhaps being with Natalee, and they are, of course, making a leap and saying that he then sexually assaulted her.

So they have a lot to prove here but it is a cause of action that they have alleged.

**ABRAMS:** Susan, how much of a legal long shot is this case?

**FILAN:** Well, you know what this is? This is actually pretty creative lawyering. This is pretty courageous lawyering.

Sometimes lawyers don't think outside the box. And they think, "Oh, gee, I can't win, I won't bring it."

Here, they're going that extra step and they're saying, "We really don't know what happened but we think we know, and we can prove it by a preponderance of the evidence. And, darn it, we're going to bring this lawsuit and we're going to find out." So I think that...

**ALLRED:** Well, wait a second. I don't know how creative it is. Obviously, the reason you go after the father is because he's the one that has deep pockets. The son is not going to have any money should they find that, in fact, the son did what is alleged. The only way to get really get any money out of this is to go after the father and to try to prove that the father is in some way legally liable.

**FILAN:** Well, what is created about it, is that most lawyers would say, "Oh, this could never survive a motion to dismiss. There's jurisdictional issues. It's going to fail to thrive. It's going to be tossed out of court." And they're going for it anyway.

I don't think it's just a question of the deep pockets. What they're basically saying is, look the van der Sloot's created the equivalent of a vicious attack dog and set that attack dog into motion, lo and behold, it attacked. And so they should be responsible for it.

Not only did they know he was an attack dog, they created him to be an attack dog. And I think that's not a bad cause of action to allege. They can't bring it in bad faith. They have to have some basis in fact. They have to have some belief that they can prove it. Otherwise it's completely unethical.

**ABRAMS:** David Worby, let me switch gears a little bit. And that is, when he was served, when Joran van der Sloot was served, there are allegations that he was taunted. There are allegations of efforts at a possible physical confrontation. It didn't apparently happen.

Is it possible that Joran van der Sloot could end up suing back?

**WORBY:** Well, in this country anyone can sue anyone. I can turn around and sue you tomorrow for—well, it was a great show so I couldn't do that but—no, anyone can sue anyone in this country.

Unless there's been an physical altercation to provoke an assault and battery claim, there wouldn't be a claim.

You know, the service in likelihood was valid. The case against the father, in the United States of America, 95 percent of our states do not permit that type of case, unless a parent have entrusted a child with a dangerous instrumentality, such as a gun or something like that. There usually is not a cause of action against the parent. The cause of action is against the kid.

If it survives, they get the kid in court, he's lied before. They can show the person that's lied once, lies more than once. They survive a motion. Maybe they have a chance.

**ABRAMS:** All right, we shall see.

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