

# Nelson & Dahle, P.C.

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## DISTRICT COURT

VERDICT: \$325,000, wrongful death of passenger with underage DUI driver (81% negligent) and underage DUI other driver (19% negligent), instantaneous death, stop-sign auto.

Melissa Ray, 18, was a passenger in Michael Marsac's car headed north on 64th St. W. in Billings 8/9/03. Ryan Lindstadt failed to stop at the stop sign at 64th and Niebauer Road at 4:20 a.m. Ray was in the front with another passenger. According to Plaintiff, it was disputed as to whether she was on his lap or beside him. According to Lindstadt, it was undisputed that she was on his lap. She was ejected through the passenger side window upon impact and died of a high level cervical fracture which severed her spinal cord. According to Lindstadt and disputed by Plaintiff, her head hit the inside of the car within "milliseconds." The parties disputed whether she was conscious or alive after the impact. Plaintiff contended that she died from suffocation after coming to rest on the road. Lindstadt's expert testified that she suffered a catastrophic head/brain injury and died instantly of a broken neck. Lindstadt, 18, was cited for failing to stop. Marsac, 17, pled guilty to DUI. His BAC at the time of the accident was .15-.20. Lindstadt's BAC was .04. Accident reconstruction determined that Marsac was traveling 5 mph over the 60 mph limit. Ray's mother Joy Mathis and brother Robert Ray sued Marsac and Lindstadt for wrongful death, grief, and loss of companionship. Defendants disputed the percentage of their liability. Marsac cross-claimed against Lindstadt. He had stipulated medicals of \$6,000 and vehicle loss of \$9,000.

Judge Gustafson granted summary judgment for Plaintiff on comparative fault, granted summary judgment for Lindstadt on the punitives claim against him, denied Plaintiff's motion for directed verdict on survivorship, and did not allow the punitives claim against Marsac to go to the jury.

The Billings jury found that Lindstadt's violation of § 61-8-410 (under 21 driver with .02 BAC) was a cause of the accident, Marsac's violation of § 61-8-401 (DUI) was a cause of the accident, Marsac's violation of § 61-8-406 (.08 BAC) was a cause of the accident, and Marsac's violation of § 61-8-410 was a cause of the accident. It attributed negligence 81% to Lindstadt and 19% to Marsac. It found that Ray did not live an appreciable time. It awarded \$325,000 to her estate for grief, companionship, and mental anguish of her mother and brother from her death. It awarded nothing for loss of earning capacity. It awarded nothing on Marsac's claim against Lindstadt.

Plaintiff's experts: physicist Denman Lee, Bozeman (deposed); pathologist Thomas Bennett, Billings (cause of death/survival, deposed); Barry Maron, Minneapolis (hypertrophic cardiomyopathy/longevity, deposed); economist Joseph Kasperick, Butte.

Defendant Marsac's expert: Harry Townes, Bozeman (reconstruction, deposed).

Defendant Lindstadt's expert: John Jurist, Billings (biomechanics, deposed).

Demand, \$1 million; offer, \$550,000 from Lindstadt, \$100,000 from Marsac. Jury request, \$2 million; jury suggestion, \$300,000 plus funeral expenses. 1st mediator, Stuart Kellner; 2nd mediator, Michael Anderson.

Jury deliberated 5 1/2 hours 6th day.

Mattern (PR for Ray) v. Marsac and Lindstadt, Yellowstone DV 04-292, 10/2/06.

John Richardson (Richardson Law Office), Bozeman, for Plaintiff; Calvin Stacey & Gavin Murphy (Stacey & Funyak), for Marsac (Farmer Ins. Group); Randall Nelson (Nelson & Dahle), Billings, for Lindstadt (Mountain West Farm Bureau Mutual Ins.).