

DISTRICT COURT

VERDICT: Defense, auto/pedestrian, concussion/ fractured ankle.

A 12-0 Billings jury found that Joshua Young was not negligent in connection with injuries sustained by pedestrian Cory Dobson in Billings in 9/04.

Dobson,14, a freshman at Skyview High School, was walking home from school. When he approached the intersection of Wicks and Governors he stepped into the road some distance from the crosswalk and crossed 3 lanes. The driver in the middle lane had stopped and waited for Dobson to pass in front of him. As he crossed in front of the vehicle he broke into a jog or run in order to cross the right turn lane. As he ran into the right turn lane he collided with the left front fender of Young's vehicle. Young,17, a senior at Skyview, was slowing to turn right at the intersection and was traveling 5-15 mph. Dobson left a dent in the side of Young's truck, bounced off, landed on his back, and sustained a concussion and ankle fracture which was repaired with 7 screws and a steel plate. Medicals totaled \$15,300.

Dobson contended that Young was at fault for failing to exercise due care in avoiding a pedestrian, and that a school zone required a heightened duty of care. He admitted some portion of fault, but contended that his fault must be compared with Young's. Young contended that Dobson's claim was barred by comparative fault for failing to observe the crosswalk law and cross in a safe manner. 3 eyewitnesses in nearby vehicles testified that they saw the accident.

Dobson moved to exclude opinion testimony of investigating officer Ken Tuss on the ground that the accident was simple and the jury did not require assistance of an expert. Judge Fagg ruled that Tuss could not testify as to his opinion of the cause of the accident. Dobson's counsel then asked expert and legal questions on cross, and Fagg ruled that he had opened the door, and allowed Tuss to testify over objection on redirect that Dobson was solely at fault.

Plaintiff's experts:none.

Defendant's expert: Officer Ken Tuss, Billings.

Demand, \$15,000; offer, 0. Jury request, \$53,300; jury suggestion, 0, but if liability found, an amount in the jury's discretion.

Mediator, John Crist. Young had asked to be excused from the mediation requirement, which Dobson opposed, and Fagg ordered mediation. Offer at mediation, 0.

Jury deliberated 15-20 minutes 1st day.

Dobson v. Young, Yellowstone DV 05-11, 12/19/05.

Scot Schermerhorn (Edmiston, Schermerhorn & Colton), Billings, for Dobson; Randall Nelson (Nelson & Dahle), Billings, for Young (State Farm).