

# Nelson & Dahle, P.C.

316 North 26th Street Billings, Montana 59101 p: 406.867.7000

## DISTRICT COURT

Carter vs. Billings & Wick, Yellowstone DV 99-993, 11/1/2000

VERDICT: Defense, broken tree limb hit head.

A Billings jury found 8-4 that the City of Billings was not negligent and 12-0 that Richard Wick was not negligent in connection with injuries sustained by Melissa Carter in 7/98 in Billings .

Carter was walking on the sidewalk to Wick's residence on S. 29th St. A severe thunderstorm was passing through the Billings area. It produced high winds and large hail in some areas; gusts as high as 63 mph were recorded at the airport. The winds caused a branch on a tree on the boulevard in front of Wick's residence to break loose. It fell and struck Carter. She sued the City and Wick. Her expert contended that the City's tree maintenance program was below the standard of care for a municipality.

While Bozeman , Helena , Missoula , and Great Falls trim trees, Billings imposes tree maintenance on the adjacent homeowner. The City's forester testified that no one could have foreseen that the particular branch would fail. It was uncontested that the inside of the limb was rotten; whether there could be any visualization of the rottenness before it fell was disputed.

Carter, then 16, sustained injuries to her head, neck, shoulders, and upper torso. She has also suffered headaches and inability to sleep. She was involved in a vehicle accident in 11/97 in which she sustained a stiff neck, bruised hips, soreness of her knees, and headaches. She claimed that she had fully recovered from the MVA. She saw her treating physician on 5/7/98 for a 2-3 week history of a stiff neck, apparently from playing softball. 13 days after the tree incident she saw her doctor for neck pain & headaches. Instead of physical therapy she sought chiropractic treatments from Robert Larson beginning 9/29/98 . Larson testified that she would need treatments for the rest of her life.

Plaintiff's Experts: Forester Mark Duntemann, Missoula (deposed).

Defendant's Experts: Forester Gene Blackwell (Billings Parks Dept. director); Arborist Laura Agar, Billings .

No demand or offer. Jury request, \$130,850; jury suggestion, \$2,000 if anything.

Jury deliberated 1 hour 3rd day; Judge Fagg.

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Robert Kelleher Sr., Butte, and Robert Kelleher Jr., Billings, for Carter; Randall Nelson, Billings, for the City (MMIA); Richard Wick, Billings, pro se.

