

WEST'S JURY VERDICTS - GEORGIA REPORTS

Jury Awards Plaintiffs \$1.1 Million in Rear-End Wrongful Death Case
Georgia Superior Court, Bell-Forsyth Judicial Circuit, Forsyth County.

Nelson v. Muldoon

Type of Case:

Wrongful Death • Adult
Vehicle Negligence • Passenger
Vehicle Negligence • Rear-End
Vehicle Negligence • Phantom Vehicle
Vehicle Negligence • **Truck**
Vehicle Negligence • Negligent Entrustment-Vehicle
Vicarious Liability
Insurance • Automobile Policy
Insurance • Uninsured/Underinsured Motorist

Specific Liability: Motorist swerved around the vehicle in front of him and fled the scene while the vehicle behind him struck the rear-end of a car, causing a fatal collision

General Injury: Death

Jurisdiction:

State: Georgia
County: Forsyth

Related Court Documents:

Plaintiffs' complaint: [2006 WL 5287304](#)
Defendant Muldoon's answer: [2006 WL 5287303](#)
Defendant Windsor's answer: [2007 WL 4774316](#)
[Defendants Debra and Robert Gnuse's answer: 2006 WL 5287302](#)
Defendant State Farm's requested jury charges: [2007 WL 4774310](#)
Defendant Muldoon's requests to charge: [2007 WL 4774311](#)
Proposed consolidated pre-trial order: [2007 WL 4774309](#)
Verdict form: [2007 WL 4770238](#)

Case Name: Linda Nelson and Larry Nelson, as surviving parents of Cyrus Kyle Nelson, deceased and Doug Parish, as administrator of the estate of Cyrus Kyle Nelson, deceased v. Matthew G. Muldoon, Debra L. Gnuse, Robert Gnuse and John Doe, unidentified driver

Docket/File Number: 06CV-1017

Verdict: Plaintiffs, \$1,106,165.02

Verdict Range: \$1,000,000 - 1,999,999

Verdict Date: Dec. 12, 2007

Judge: [David L. Dickinson](#)

Attorneys:

Plaintiffs: [Brian D. Rogers](#), [Michael L. Goldberg](#) and John A. Houghton, Rogers & Goldberg, Atlanta, Ga.
Defendant (Muldoon): [W. Curtis Anderson](#), Downey & Cleveland, Marietta, Ga.
Defendants (Debra and Robert Gnuse): [M. David Merritt](#), McLain & Merritt, Atlanta, Ga.
Defendant (Windsor): Sharon Chester Barnes, Law Office of Sharon Chester Barnes, Alpharetta, Ga. Defendant (State Farm): [Paul L. Groth](#), Groth & Makarenko, Suwanee, Ga.

Trial Type: Jury

Breakdown of Award:

\$1,000,000.00 to plaintiffs for the full value of the life of Cyrus Nelson
\$100,000.00 to plaintiffs for Cyrus Nelson's pre-death pain and suffering
\$6,165.02 to plaintiffs for funeral expenses

Muldoon was found 10% negligent and John Doe was found 90% negligent. The award was reduced in judgment to \$967,548.51

Summary of Facts:

Cyrus Nelson was a passenger riding in the backseat of a vehicle stopped in the southbound lane of Atlanta Highway, waiting to turn left onto Green Field Lane in Cumming November 14, 2005. Matthew Muldoon was driving behind the Nelson vehicle, with an unidentified vehicle directly between them.

Suddenly, the unidentified vehicle swerved around Nelson's car, and Muldoon's **truck** reportedly "rode up the back of Cyrus Nelson's vehicle causing his bumper to enter and crush the rear passenger compartment." The unidentified vehicle fled the scene, and Nelson died as a result of injuries sustained in the collision.

Linda and Larry Nelson, Cyrus' parents, and Doug Parish, the administrator of Cyrus' estate, filed a lawsuit against Muldoon, his mother, Debra Gnuse, and his step-father, Robert Gnuse, in the Superior Court of Forsyth County. They claimed Muldoon had a duty to operate his vehicle safely and breached that duty by driving too fast for the conditions, following too closely and failing to keep a proper lookout. The Gnuses were guilty of negligently entrusting the **truck** to Muldoon, making them vicariously negligent for his unlawful actions.

The plaintiffs later added the unidentified driver, John Doe, as a defendant. They claimed John Doe was negligent by driving too fast under the circumstances, swerving around Cyrus' car at the last moment and failing to signal his movement.

The plaintiffs sought recovery for the full value of Cyrus' life, funeral expenses and pain and suffering.

Muldoon and the Gnuses denied the allegations, arguing Muldoon was not negligent in any way, the accident was not the proximate cause of Cyrus' death and they were not liable for any injuries.

Windsor Auto Insurance Group, the alleged UIM carrier, was served with a copy of the complaint, based on the theory John Doe was an uninsured or underinsured motorist. Windsor argued there was no proof the unidentified driver was uninsured or underinsured, so it was not obligated to pay UIM coverage.

Windsor filed a cross-claim, asserting if judgment was entered against the defendants, resulting in Windsor having to make any payments, it would be entitled to a judgment in its favor against the defendants in that same amount.

State Farm Mutual Automobile Insurance Company, on behalf of John Doe, claimed the accident was caused solely by Muldoon's negligence. It provided UIM coverage for John Doe's actions in the total amount of \$1,250,000 and contended it was entitled to a set-off of payments.

The plaintiffs later received \$300,000 from Muldoon's insurer, entitling Muldoon to a set-off in that amount and \$25,000 from Infinity Insurance, a provider of UM coverage, for John Doe's actions, entitling John Doe to a set-off in that amount.

By the time the case proceeded to trial, only Muldoon and John Doe remained as defendants. A Forsyth County jury found in favor of the plaintiffs, awarding them \$1,000,000 for the full value of Cyrus' life, \$100,000 for Cyrus' pre-death pain and suffering and \$6,165.02 for funeral expenses, for a total award of \$1,106,165.02. They also found Muldoon was 10 percent negligent and John Doe was 90 percent negligent in the accident.

Taking into account the off-sets for prior insurance payments and the jury's determination of the percentage of negligence, Judge David L. Dickinson entered judgment in favor of the plaintiffs against Muldoon in the amount of \$0, in favor of Parish against State Farm in the amount of \$67,548.51 and in favor of Linda and Larry Nelson against State Farm in the amount of \$900,000.

Court: Georgia Superior Court, Bell-Forsyth Judicial Circuit, Forsyth County.

2007 WL 4911226 (Ga.Super.)
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