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Parents win settlement in bicycle death of their 15-year-old son

Published: Wednesday, April 08, 2009, 8:20 PM Updated: Thursday, April 09, 2009, 1:19 PM

**Aimee Green, The Oregonian**

The family of a 15-year-old bicyclist who police said was at fault for putting himself in the path of the TriMet bus that killed him has won a \$200,000 settlement from the transit agency.

The settlement comes as vindication for the parents of Austin Miller, who had agonized over a Beaverton police investigation that concluded the boy made a right-hand turn without stopping and crashed into the side of the bus as it pulled to a stop. His head was crushed under the back wheels Feb. 11, 2008.

Police Officer Jeff DeBolt concluded in a report two months later that the driver could not have avoided the crash.

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The accident happened on Southwest Farmington Road, just west of its intersection with Southwest Murray Boulevard.

Elden Rosenthal, the Portland attorney who represented Stephanie and Mike Miller, said he presented TriMet with statements from the bus driver, who said she saw Miller riding parallel to the bus along Farmington Road. She could have avoided hitting him as she crossed the bike lane, Rosenthal said.

Rosenthal said he is baffled by why the police investigator appeared to disregard that information in reaching a conclusion about fault.

All accounts agree that Miller turned onto Farmington Road without stopping for a red light.

"There was some fault on his part," Rosenthal said.

According to a police report written by Officer Jessica Hull shortly after the accident, driver Sandy Mann said she was stopped at a red light on Farmington at Murray. She said she noticed a cyclist riding along Murray. After she drove the bus through the intersection, she saw Miller pedaling next to the bus along Farmington.

A passenger signaled for a stop, and Mann began to pull over, thinking she had left Miller enough clearance, according to Hull's police report.

"I thought I gave (him) enough room," Mann told a TriMet dispatcher, seconds after the accident.

Mann told the dispatcher that "everybody else" was outside the bus and that they told her Miller was dead. Mann didn't leave the bus to check on Miller, telling the dispatcher she wanted to wait until a TriMet supervisor arrived.

DeBolt, the officer who concluded Miller was at fault, stands by his findings. He said the version of events Mann gave to Hull didn't match that of witnesses, so he decided to re-interview Mann three weeks after the accident. Mann changed her story to say she never saw Miller in the bike lane on Farmington Road -- he was still pedaling along Murray as she drove through the intersection.

"In my experience of dealing with someone who has witnessed a sudden traumatic event, their memory is scattered" immediately afterward, DeBolt said.

During a deposition with Rosenthal 11 months after the accident, Mann confirmed her original story, then said she had misspoken and retold the story she told DeBolt.

Mann wasn't familiar with the No. 52 bus route and the stop. She told police she drove a different route almost every day.

Miller was wearing a helmet. He also might have been listening to music because he had a portable music player on him.

TriMet has argued that Oregon law limits the liability of government or semi-government agencies -- including TriMet -- to \$200,000 in the case of a death. TriMet has agreed to pay another \$175,000 if a judge, at a date to be set, agrees that the limit is \$200,000 per claimant. In Austin Miller's case, the amount TriMet pays could rise to \$375,000 because both parents are claimants.

Stephanie Miller said she filed suit two months after police finished their investigation because it was "excruciatingly painful" to hear the driver wasn't at fault.

"I kept saying 'She (the driver) saw him. She saw him. It says it right here,'" Miller said.

Miller said her son might have been listening to music but she doesn't think it was a factor because he always rode with one earbud removed or kept the volume low.

TriMet isn't admitting fault, but Miller believes the settlement proves her son's death was primarily caused by the driver.

"Nothing will bring Austin back, but we hope that this settlement will heighten public awareness of the need to respect bicyclists riding in their bike lanes," Miller said in a news release Wednesday.

Miller said she prays for the driver "because I'm sure she goes through her own hell every day."

Mann, reached by phone, declined to comment about the accident's details. But she said she is on disability leave for stress and she cries when she sees bicyclists.

TriMet spokeswoman Mary Fetsch said the agency settled to "close a sad chapter for the family and the bus operator."

Fetsch said that since the crash, TriMet has reiterated existing policy to all drivers: If they want to pull over to a stop but see a cyclist riding alongside or near their buses, they should stop in the lane of traffic and wait for the cyclist to pass. Then they should turn on their signal and pull into the stop.

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