

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. XI. AM
5/21/2024

TO: Mayor and Council
Dwight Cornish
8300 NW 10th Street Apt. 62
FROM: Kenneth Jordan
Oklahoma City, OK 73127
Municipal Counselor
Ward 3
\$238
AGENDA CLAIM # a
Recommended for DENIAL

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges claimant's vehicle was damaged on March 23, 2024, when it struck a pothole while traveling at or near the intersection of NW 10th Street and North Council Road in Oklahoma City. Damages are alleged in the amount of \$238, the cost of replacing one tire. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: "(1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care." *McKellips v. Saint Francis Hospital, Inc.*, 741 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. *Id.* Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." *Id.* (citations omitted). "Proximate cause" is also a synonym for "legal cause." BLACK'S LAW DICTIONARY, 804 (6th Ed. 1990). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." *Gaines v. Providence Apartments*, 750 P.2d 125, 126-27 (Okla. 1987) (citations omitted).

The Supreme Court of Oklahoma has held that "the municipality is not an insurer of safety of the traveling public." *Williams v. City of Bristow*, 350 P.2d 484 (Okla. 1960), *Rider v. City of Norman*, 476 P.2d 312, 313 (Okla. 1970), and *Evans v. City of Eufaula*, 527 P.2d 329, 332 (Okla. 1974). A municipality has a duty to exercise ordinary or reasonable care in maintaining the streets and sidewalks in a reasonably safe condition for those using them in a proper manner. *Rider v. City of Norman*, 476 P.2d 312, 313 (Okla. 1970) and *Evans v. City of Eufaula*, 527 at 332. A municipality is liable only for negligence in failing to repair, remove or guard against substantial defects or obstructions after actual or constructive notice of their existence. *Williams* at 488.

Regarding constructive notice, the Supreme Court of Oklahoma has held that a city need not have actual notice of the condition of its streets to be liable for injuries resulting from defective condition of its streets, but it is sufficient that the defective condition has existed for such a period of time that the city, by use of ordinary care, could have discovered it. *City of Norman v. Sallee*, 238 P.2d 292, 296 (Okla. 1951), *Picher v. Barrett*, 249 P.739, 740 (Okla. 1926), *Wagoner v. Black*, 97 P.2d 21, 23 (Okla. 1939) citing *Armstrong v. City of Tulsa*, 226 P. 560, 563 (Okla. 1924), and *Sapulpa v. Williams*, 249 P. 152 (Okla. 1926).

This office is in receipt of information from the Streets Maintenance Division of the Public Works Department regarding this incident. The information indicates that there were no reports of potholes near the same location in the six months prior to the incident. In this case, it appears the City did not have actual or constructive notice of the defective condition of the streets at or near this location prior to the claimant's incident.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

SRS

Owen Modeland
6200 Winchester Drive
Oklahoma City, OK 73162
Ward 8
\$570
Recommended for DENIAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges damages to claimant's sprinkler system in December 2023, by City employees repairing a leak in a main line at or near 6200 Winchester Drive in Oklahoma City. Damages are alleged in the amount of \$570, the cost of repairing the sprinkler. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: "(1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care." *McKellips v. Saint Francis Hospital, Inc.*, 741 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. *Id.* Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." *Id.* (citations omitted). "Proximate cause" is also a synonym for "legal cause." BLACK'S LAW DICTIONARY, 804 (6th Ed. 1990). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." *Gaines v. Providence Apartments*, 750 P.2d 125, 126-27 (Okla. 1987) (citations omitted).

Oklahoma City Municipal Code, 2020 § 30-36 provides:

Mailboxes, lawn sprinkler systems, trash receptacle holders and other similar devices incidental to residential household use of property, herein called "incidental devices," may be lawfully located within public rights-of-way by the owner of

abutting property, without the issuance of a revocable permit, and such shall not constitute a violation of Section 30-33 or Section 30-35 of this chapter, subject to compliance with the following:

- (1) incidental devices shall not be located within portions of rights-of-way occupied by roadway pavement or curbing, nor within the area of a vehicular sight triangle as defined by Section 59-6300.2, Paragraph G(2), nor shall such incidental devices obstruct or interfere with any fire hydrant or sidewalk.
- (2) incidental devices shall not interfere with public utility lines and facilities located within rights-of-way.
- (3) should the City or any trust of the City, their employees, agents, or contractors, damage incidental devices in the course of installing, repairing, or maintaining roadways, sidewalks, or utility lines or facilities, or in the course of otherwise making lawful use of rights-of-way, the City and such trusts, their employees, agents, and contractors shall not be liable for damage to incidental devices.

Oklahoma City Municipal Code, 2020 § 30-36.

The office is in receipt of information from the Line Maintenance Division of the Utilities Department regarding this incident. This information indicates that claimant's sprinkler was located within the City's right-of-way. This information further indicates that the City workers were lawfully digging within the City's right-of-way in order to perform repairs to the City's utilities lines.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

SRS

DENIED

Susan Parker
6505 North Ross Avenue
Oklahoma City, OK 73116
Ward 2
\$1,050
Recommended for DENIAL

AGENDA CLAIM # c

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges damages on January 18, 2024, when a tree and a portion of her garden had to be removed to repair a main water line at or near 6505 North Ross Avenue in Oklahoma City. Damages are alleged in the amount of \$1,050, the cost of removing her tree and replacing her bushes. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: "(1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care." *McKellips v. Saint Francis Hospital, Inc.*, 741 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. *Id.* Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." *Id.* (citations omitted). "Proximate cause" is also a synonym for "legal cause." BLACK'S LAW DICTIONARY, 804 (6th Ed. 1990). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." *Gaines v. Providence Apartments*, 750 P.2d 125, 126-27 (Okla. 1987) (citations omitted).

The office is in receipt of information from the Line Maintenance Division of the Utilities Department regarding this incident. This information indicates that the tree that was removed was in the City's right of way and sat directly on top of the City's water main line. This information further indicates that the tree's roots were the cause of the issues with the water main line and

excavation was necessary to make repairs. The sod and plants on claimant's property have been replaced by the contractor.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

SRS

DENIED

Joshua Wooten
1721 NW 16th Street
Newcastle, OK 73065
Ward 6 (Location of Incident)
\$4,588.47
Recommended for DENIAL

AGENDA CLAIM # d

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges his vehicle was damaged on March 3, 2024, when he drove through an unmarked construction area at or near 5835 South Pennsylvania Avenue in Oklahoma City. Damages are alleged in the amount of \$4,588.47, the cost of replacing two wheels and tires, repairing the suspension, and performing an alignment. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

Section 155 of the Governmental Tort Claims Act provides, in pertinent part, that the state or a political subdivision shall not be liable if the loss or claim results from:

18. An act or omission of an independent contractor or consultant or his or her employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred.

51 O.S. 2023 Supp. §155(18).

The office is in receipt of information from the Project Management Division of the Department of Public Works regarding this incident. This information indicates that an independent contractor was most likely responsible for claimant's damages. Claimant has been provided the contractor's contact information.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

SRS