

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

Council Agenda
Item No. XI. P
5/23/2023

TO: Mayor and Council
FROM: Kenneth Jordan
Municipal Counselor

Harvey Bradley
6209 Raptor Court
Oklahoma City, OK 73145
Ward 4
\$178
Recommended for APPROVAL

AGENDA CLAIM # a

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges his vehicle was damaged on April 10, 2023, when it struck a pothole at or near 6801 South Air Depot Boulevard. Damages are alleged in the amount of \$178, the cost of a replacement 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 this 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 this act for any act or omission of an employee acting outside the scope of his employment.

51 O.S. 2018 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 reports of potholes near the same location in the six months prior to the incident. In this case, it appears the City had actual and 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 approved, and we so recommend.

BGR

APPROVED

Mary Horn
12208 High Meadow Court
Oklahoma City, OK 73170
Ward 5
\$232.50
Recommended for APPROVAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges damages to her residence on January 28, 2023, when a City sewer main backed up inside the property located at 12208 High Meadow Court in Oklahoma City. Damages are alleged in the amount of \$232.50, the cost of cleaning and remediation. 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 this 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 this act for any act or omission of an employee acting outside the scope of his employment.

51 O.S. 2011 §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).

Applicable law holds that a municipality is not liable for damages resulting from a sewer backup unless the municipality had prior notice, actual or constructive, of a nuisance or defect in the sewer line which it failed to abate within a reasonable time and such nuisance or defect resulted in damage to the claimant. *Oklahoma City v. Romano*, 433 P.2d 924, 927 (Okla. 1967).

This office is in receipt of information from the Line Maintenance Division of the Utilities Department regarding this incident. This information indicates there was a failure in the City's main at or near the claimant's residence on or about the date of the alleged incident. The information indicates that there were reports of defects in the City's sewer main near the same location in the five years prior to the alleged incident. In this case, it appears the City had actual and constructive notice of the defective condition of the sewer main 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 approved, and we so recommend.

BGR