

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

Council Agenda  
Item No. XI. AB  
9/26/2023

TO: Mayor and Council  
FROM: Kenneth Jordan  
Municipal Counselor

Shayda Guin  
7908 NW 82nd Street  
Oklahoma City, OK 73132  
Ward 1  
\$272.39  
Recommended for APPROVAL

AGENDA CLAIM # a

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges damages to her vehicle on July 16, 2023, when her vehicle struck low-hanging foliage while travelling southbound on North Mustang Road at or near the intersection of West Memorial Road and North Mustang Road in Oklahoma City. Damages are alleged in the amount of \$272.39, the cost of repairing her windshield and antenna assembly. 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 office is in receipt of information from the Action Center regarding this incident. This information indicates that the City had received reports of low-hanging foliage over the roadway at or near the intersection of West Memorial Road and North Mustang Road in Oklahoma City in the six (6) months prior to the date of the alleged incident. In this case, it appears that the City had actual or constructive notice of the condition of the roadway prior to the alleged 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.

ZAW

Angel Henriquez  
c/o Ausitn S. Pieratt, Esquire  
512 NW 12th Street  
Oklahoma City, OK 73103  
Ward 7  
\$500  
Recommended for APPROVAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges personal bodily injuries on December 27, 2022, when the claimant was a passenger in a vehicle that was struck by a City vehicle driven by a Utilities employee at or near 10800 North May Avenue in Oklahoma City. Claimant alleges damages in the amount of \$6,000. After negotiation, the Municipal Counselor's Office has agreed to recommend, and the claimant has agreed to accept, \$500 as full and final settlement of all of claimant's claims, including but not limited to personal injury and property damage.

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).

This office is in receipt of information from the Official Oklahoma Traffic Collision Report and the Solid Waste Management Division of the Utilities Department regarding this incident. This information indicates that the City vehicle was backing in the parking lot of a private business located at 10800 North May Avenue and the City driver did not see the vehicle in which claimant was a passenger. This information indicates that the City vehicle struck the vehicle. This information further indicates no improper action by claimant.

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.

ZAW

APPROVED

Emely Henriquez  
c/o Ausitn S. Pieratt, Esquire  
512 NW 12th Street  
Oklahoma City, OK 73103  
Ward 7  
\$500  
Recommended for APPROVAL

AGENDA CLAIM # c

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges personal bodily injuries on December 27, 2022, when the claimant was a passenger in a vehicle that was struck by a City vehicle driven by a Utilities employee at or near 10800 North May Avenue in Oklahoma City. Claimant alleges damages in the amount of \$6,000. After negotiation, the Municipal Counselor's Office has agreed to recommend, and the claimant has agreed to accept, \$500 as full and final settlement of all of claimant's claims, including but not limited to personal injury and property damage.

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).

This office is in receipt of information from the Official Oklahoma Traffic Collision Report and the Solid Waste Management Division of the Utilities Department regarding this incident. This information indicates that the City vehicle was backing in the parking lot of a private business located at 10800 North May Avenue and the City driver did not see the vehicle in which claimant was a passenger. This information indicates that the City vehicle struck the vehicle. This information further indicates no improper action by claimant.

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.

ZAW

Leticia Nelson  
2125 NE 27th Street  
Oklahoma City, OK 73111  
Ward 7  
\$255  
Recommended for APPROVAL

AGENDA CLAIM # d

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges damage to her cell phone on March 4, 2023, when an Oklahoma City Police Officer drove off after leaving claimant's cell phone on his police vehicle near NE 27th Street and Normandy Street in Oklahoma City. Damages are alleged in the amount of \$255, the amount of claimant's insurance deductible. 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 office is in receipt of information from the Oklahoma City Police Department regarding this incident. This information indicates that the claimant had been pulled over for observed traffic violations and subsequently arrested. During the arrest, the Oklahoma City Police Officer placed claimant's phone on the top of the police vehicle and failed to retrieve it before departure. The phone was later retrieved, however it was damaged.

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.

LSJ