

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

Council Agenda
Item No. XI. Q
8/27/2024

TO:	Mayor and Council	William Conner 11233 Markwell Drive Oklahoma City, OK 73162 Ward 1 \$2,800
FROM:	Kenneth Jordan Municipal Counselor	
AGENDA CLAIM # a		Recommended for DENIAL

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges personal injuries and property damages on May 15, 2024, when a sewer line backed up inside the property located at 11233 Markwell Drive. Damages are alleged in the amount of \$2,800, the cost of plumbing repair services. 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).

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. The information indicates that the backup was the result of roots and a broken saddle in the claimant's private lateral line. The City is only responsible for defects in the City's sewer main. Additionally, information from the Line Maintenance division indicates that there are no recent defects in the City main that would have affected the claimant, so the City did not have notice of any defect in the sewer main servicing the claimant's household.

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.

JRS

DENIED

Richard Laskey
4816 Chester Street
Spencer, OK 73084
Ward 7 (Location of Incident)
\$669.66
Recommended for DENIAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges claimant's vehicle was damaged on August 12, 2023, when a tree branch, overhanging the roadway, fell on claimant's vehicle while he was driving at or near NE 50th Street and Hiwassee Street in Oklahoma City. Damages are alleged in the amount of \$669.66, the cost of windshield replacement, replacement parts, and a replacement radio. 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 Action Center regarding this incident. The information indicates that there were no reports of overhanging branches 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 right-of-way at or near this location prior to the claimant's incident. Furthermore, the responsibility for maintaining the trees would be the actual property owners.

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.

JRS

Patrick Wilson
4024 Woods Drive
Oklahoma City, OK 73111
Ward 7
Amount Unknown
Recommended for DENIAL

AGENDA CLAIM # c

This office acknowledges receipt of a claim from the above-referenced claimant, in which the claimant alleges that on May 3, 2024, claimant's vehicle was damaged when it collided with a City vehicle driven by a Parks and Recreation department employee at or near North Santa Fe Avenue and East Hill Street in Oklahoma City. Claimant has not alleged an estimated cost of damages.

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 further stated that the driver of a motor vehicle must always use that degree of care which is reasonable and prudent under the circumstances. *Agee v. Gant*, 412 P.2d 155 (Okla. 1966).

This office is in receipt of the Official Oklahoma Traffic Collision Report from the Oklahoma City Police Department regarding this incident. This information indicates that the claimant failed to use proper care while driving by violating Oklahoma City municipal ordinance § 32-199 which states in part that “[n]o vehicle shall be driven to the left side of the roadway . . . [w]hen approaching within one hundred (100) feet of or traversing any intersection.”

The City vehicle was a tractor pulling a flex wing mower, travelling southbound on Santa Fe Avenue. The City tractor had the slow-moving vehicle sign installed and was using its flashing hazard lights. The City tractor began to turn east onto East Hill Street when claimant attempted to overtake the tractor on the left, thus striking the City vehicle on the left wing of the mower.

Since the claimant improperly overtook the City vehicle on the left while at an intersection, the City employee could not have reasonably anticipated the actions of the claimant. Based upon the claimant’s contributory negligence in the collision, the City cannot be determined to be at fault for the collision.

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.

JRS