

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

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

TO: Mayor and Council
FROM: Kenneth Jordan
Municipal Counselor

Brandi Beres
16164 North Western Ave Unit # 3
Edmond, OK 73013
Ward 7
\$125
Recommended for APPROVAL

AGENDA CLAIM # a

This office acknowledges receipt of a claim from the above-referenced claimant alleging damages on June 24, 2024, when she hired a plumber for an inspection after an error on her June 2024 billing statement. The Utilities Department found the issue to be a billing error, and made proper adjustments on claimant's July 2024 statement. The claimant is seeking reimbursement in the amount of \$125, the cost of the plumber's water leak inspection. 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).

A City may be liable for damages if it negligently permits water to escape from its water supply system. *Blackburn v. City of Healdton*, 14 P.2d 943, 945 (Okla. 1932) citing *Miller Grocery Co. v. Des Moines*, 192 N.W. 306, 307-08 (Iowa 1923).

A City is not an insurer of its water mains. Nevertheless, if it fails to remedy a rupture after notice thereof, and simply, by its inaction, permits continuance of resultant damage to private property, it is guilty of negligence. *City of Muskogee v. Turner*, 98 P.2d 1095, 1097 (Okla. 1940).

The office is in receipt of information from the Line Maintenance Division of the Utilities Department regarding this incident. The information indicates a billing error appeared on the claimant's June 2024 statement. After further inspection of claimant's meter, this error was found to be the fault of the City. The information corroborates claimant's account and the discrepancy on claimant's water bill. Claimant's July 2024 bill was adjusted to address the error. Claimant is seeking reimbursement in the amount of \$125, the cost of having a plumber verify there was not a water leak at her home.

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

Misty Birchfield
17336 Shadow Hawk Lane
Edmond, OK 73012
Ward 8
\$180.95
Recommended for APPROVAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges damages on July 15, 2024, when a Utilities Customer Service representative advised client to hire a plumber for leak detection after claimant noticed a discrepancy on her water bill for her residence at 17336 Shadow Hawk Lane. Damages are alleged in the amount of \$180.95, the cost of a service call for leak detection by a licensed plumber. 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).

This office is in receipt of information from the Customer Service division of the Utilities department regarding this incident. This information corroborates the claimant's account and indicates that the discrepancy on the claimant's water bill was the result of an incorrect meter reading rather than a defect in the claimant's plumbing system.

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.

JRS