

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

Council Agenda
Item No. IX. BW
8/13/2024

TO: Mayor and City Council

FROM: Kenneth Jordan
Municipal Counselor

Resolution authorizing the Municipal Counselor to waive service of process and to confess judgment without admission of liability in the amount of \$53,980 and all the costs of the action in the Oklahoma County District Court in the claim filed by Nancy Coats. Ward 2.

Claimant's address:
2518 NW 66th Street
Oklahoma City, OK 73116

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges nuisance and negligence arising from damage to her backyard and koi fishpond on January 17, 2024, when wastewater washed into claimant's back yard, washing away the landscaping, coating it with mud, and killing dozens of seventeen-year-old koi fish. Damages are alleged in the amount of \$53,980. This includes the cost of removing the deceased fish from the pond and restocking the pond with live fish of similar age and size, restoring the landscaping to its original condition, and compensation for the nuisance claimant allegedly experienced.

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).

This office is in receipt of information from the Line Maintenance Division of the Utilities Department regarding this incident. This information indicates that there was an asset failure at or near the claimant's property on or about January 17, 2024, that led City workers to allow water exiting the City's closed system to gain entry to claimant's pond. This information further shows several prior asset failures near the claimant's property. Claimant has also provided photographs of significant damages.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be approved, and that the Municipal Counselor should be authorized to Confess Judgment without admission of liability in the amount of \$53,980 and all costs of the action in the District Court. If Council agrees, a Resolution to that effect has been prepared.