

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

Council Agenda
Item No. IX. DQ
6/21/2022

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 \$2,149.23 and all the costs of the action in the Oklahoma County District Court in the claim filed by Elmer Morrison. Ward 2.

Claimant's address:
3711 North Virginia Avenue
Oklahoma City, OK 73118

This office acknowledges receipt of a claim from the above referenced claimant in which claimant alleges that on March 10, 2022, around 9:04 a.m., a City trash truck backed into his parked vehicle at 3711 North Virginia Avenue in Oklahoma City causing \$2,149.23 in damage to his vehicle. This amount is supported by documentation submitted by the claimant.

The Oklahoma Government Tort Claims Act provides that:

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.

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 regarding this incident. This information indicates that the City driver was backing up to pick up bulk tree limbs for Big Trash Day pick up and backed into claimant’s parked vehicle. The Collision Report also indicates no improper action on the part of the claimant.

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 sum of \$2,149.23, and all costs of the action in District Court. If Council agrees, a Resolution to that effect has been prepared.