

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

Council Agenda
Item No. IX. DR
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 \$1,000 and all the costs of the action in the Oklahoma County District Court in the claim filed by Cherelle Thomas. Ward 7.

Claimant's address:
11246 Paradise In Drive
Oklahoma City, OK 73131

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges that on March 19, 2022, claimant's vehicle was damaged when it struck a pothole on NE 10th near Grand Boulevard. Damages are alleged in the amount of \$4,378.72, the cost of repairing damage to claimant's vehicle. The claimant has agreed to accept, and this office has agreed to recommend \$1,000, the cost of claimant's insurance deductible, as full settlement of this claim.

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 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*, 527 P.2d 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 Streets Maintenance Division of the Public Works Department regarding this claim. Based on this information, it appears the City had constructive notice of the defective condition of the streets at or near this location in the six months prior to the claimant's incident.

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 \$1,000, and all costs of the action in the District Court. If Council agrees, a Resolution to that effect has been prepared.