

DENIED AS RECOMMENDED

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

Council Agenda
Item No. XI. AD
8/29/2023

TO:	Mayor and Council	Kristi Wheatley 11208 NW 95th Terrace Yukon, OK 73099 Ward 1 \$189.95 Recommended for DENIAL
FROM:	Kenneth Jordan Municipal Counselor	
AGENDA CLAIM # a		

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges her 2021 Kia vehicle was damaged on May 14, 2022, when it struck a pothole while traveling on North Sara Road between NW Hefner Road and NW Britton Road in Oklahoma City. Damages are alleged in the amount of \$89.95, the cost of performing an alignment. Claimant also alleges on her claim form damage to a 1998 GMC Sierra truck, and alleges \$100 for alignment. There is no supporting documentation for this \$100 alignment on the GMC truck. There is also no indication of the date or time of this alleged damage to the GMC truck, nor is the GMC truck titled in claimant's name. The only amount supported by documentation is the \$89.95 for alignment on the 2021 Kia, although claimant is claiming a total of \$189.95.

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 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 Streets Maintenance Division of the Public Works Department regarding this incident. The information indicates that there were no reports of potholes 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 streets at or near this location 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 denied, and we so recommend.

SRS