

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

Council Agenda  
Item No. IX. CE  
8/29/2023

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 \$4,122.52 and all the costs of the action in the Oklahoma County District Court in the claim filed by Sandra Wineberry. Ward 4.

Claimant's address:  
5004 SE 51st Street  
Oklahoma City, OK 73135

This office acknowledges receipt of a claim from the above-referenced claimant, in which the claimant alleges that on June 24, 2023, claimant's vehicle was damaged when it was struck by a City vehicle driven by a City employee at or near 3701 South Lake Hefner Drive in Oklahoma City. Claimant alleges damages in the amount of \$13,074.86, the cost to repair claimant's vehicle and lost wages. After negotiation, the Municipal Counselor's Office has agreed to recommend, and the claimant has agreed to accept, \$4,122.52 as full and final settlement of claimant's claims. 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 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 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).

The Municipal Counselor's Office is in receipt of information from the Oklahoma City Police Department regarding this incident. This information indicates that claimant had crossed sidewalks and passed barriers and parked her vehicle at or near the Stars and Stripes pavilion located at or near 3701 South Lake Hefner Drive in Oklahoma City. An Oklahoma City Police Officer directed claimant to relocate her vehicle away from the pavilion. Claimant did not relocate her vehicle. After a period of time, a City employee driving a Parks and Recreation Department vehicle arrived at the pavilion and exited the City vehicle without placing the vehicle in park. The City-owned vehicle struck the claimant's vehicle.

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 \$4,122.52 and all costs of the action in the District Court. If Council agrees, a Resolution to that effect has been prepared.

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