



OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2022-018

TO: Mayor and Council

FROM: Chris Hall 
Assistant City Attorney

DATE: July 19, 2022

MEETING: August 9, 2022

RE: Damage claim of
Roberta Vowell
4500 NE Arlington Avenue
Lawton, Oklahoma 73507

Submitted in the amount of \$60.00 on May 31, 2022

RECOMMENDATION: Approval in the amount of \$60.00

BASIS OF CLAIM: Claimant, Roberta Vowell on behalf of the Macarthur Park Townhouse Association, 4500 NE Arlington Avenue, has filed a claim for damage to a fence on the east end of NE Arlington Avenue, after a police officer struck the fence with his police unit after suffering a medical emergency. Ms. Vowell has submitted an estimate in the amount of \$60.00 to repair the fence.

DATE OF DAMAGE: May 30, 2022

FACTS: According to the Official Oklahoma Traffic Collision report, on May 30, 2022, a City of Lawton police officer was traveling east bound on NE Arlington and suffered a medical emergency and struck a curb and then the wooden fence. The driver was transported by Emergency Medical Services to Comanche County Memorial Hospital with a life threatening medical issues.

LEGAL BASIS FOR DENIAL OF CLAIM: A municipality's tort liability is governed by the Oklahoma Governmental Tort Claims Act (GTCA), 51 O.S. § 151 *et seq.* A tort is a legal wrong, independent of contract, involving violation of a duty imposed by general law, statute, the Constitution of the State of Oklahoma, or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment. 51 O.S. § 152 (17).

Under the GTCA, a municipality is liable for its torts or the torts of its employees acting within the scope of their employment, subject to the limitations of the GTCA, and only in matters where a private person or entity would be liable for damages under the laws of the State. 51 O.S. § 153 (A) & (B).

Generally, a person is guilty of negligence and liable for damages when the person (1) owes a duty of care to a plaintiff, (2) the person breaches that duty, and (3) the breach was the proximate cause of the plaintiff's injury. *Kamphaus v. Town of Granite*, 2022 OK 46, ¶ 8; *Miller v. David Grace, Inc.*, 2009 OK 49, ¶ 11.

As to the duty of care in this situation, Oklahoma motorists must exercise ordinary care in keeping a lookout consistent with the safety of other vehicles, property, and persons. *Rosamond v. Reed Roller Bit Co.*, 292 P.2d 373 (Okla. 1955); *Townley's Dairy v. Creech*, 476 P.2d 79 (Okla. 1970). Ordinary care is defined in Oklahoma Statutes, Title 25, Section 4 and further explained in the Oklahoma Uniform Civil Jury Instructions Section 9.3 as "the care which a reasonably careful person would use under the same or similar circumstances." Title 25 O.S. Section 4 and the Oklahoma Uniform Civil Jury Instructions Section 9.2 define negligence as the failure to exercise ordinary care to avoid injury to another's person or property.

However, Oklahoma recognizes the affirmative defense of unavoidable accident by reason of incapacitating illness or unconsciousness. *Bowers v. Wimberly*, 1997 OK 24, ¶8. There, the Oklahoma Supreme Court explained that an unforeseeable sudden incapacitating illness or unconsciousness is a defense to negligence. In its discussion of the matter, the Court cited the prior case of *Parker v. Washington*, which quoted "the often-quoted section from Annotation, 28 A.L.R.2d 35", that says:

By the great weight of authority, an operator of a motor vehicle, who, while driving, becomes suddenly stricken by a fainting spell or loses consciousness from an unforeseen cause, and is unable to control the vehicle, is not chargeable with negligence or gross negligence. Stated differently, fainting or momentary loss of consciousness while driving is a complete defense to an action based on negligence *if such loss of consciousness was not foreseeable*. (emphasis added).

Parker v. Washington, 1997 OK 24, ¶9.

Here, the sudden incapacitating illness suffered by the officer while driving was unforeseeable. Therefore, the officer was not negligent under Oklahoma law, and the City is not liable for the damage that resulted. This office recommends denial of this claim.

CHRIS HALL
DEPUTY CITY ATTORNEY


Mincie Beamesderfer, CP

Claims Investigator

mbH:\Damage Claims\MRV\2022-DCMemos\2022-018 Veh Acc Police App.doc