



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: GID-1415-36

File ID: GID-1415-36

Type: Settlement

Status: Consent Item

Version: 2

Reference: Item 14

In Control: City Council

Department: Legal Department

Cost: \$10,000.00

File Created: 02/25/2015

File Name: Settlement - R. Perry vs. City of Norman

Final Action:

Title: CONSIDERATION OF A RECOMMENDATION FROM THE CITY ATTORNEY THAT THE CITY COUNCIL APPROVE A SETTLEMENT IN THE AMOUNT OF \$10,000 IN ROBERT RILEY PERRY VS. THE CITY OF NORMAN, CLEVELAND COUNTY DISTRICT COURT CASE NO. CJ-2014-328 TS.

Notes: ACTION NEEDED: Motion to approve or reject the City Attorney's recommendation; and, if approved, authorize the City Attorney's Office to effectuate the settlement in the amount of \$10,000.

ACTION TAKEN: _____

Agenda Date: 03/10/2015

Agenda Number: 14

Attachments:

Project Manager: Rick Knighton, Assistant City Attorney

Entered by: deedra.vice@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File GID-1415-36

Body

BACKGROUND: This case was brought by Robert Riley Perry as a result of injuries he is alleged to have sustained while being arrested for public intoxication and interference with official process after the 2013 Norman Music Festival. Perry has tentatively agreed to settle the case for \$10,000.

DISCUSSION: Perry's petition was filed in Cleveland County District Court on March 20, 2014. It alleges an excessive force claim under Article 2, § 30 of the Oklahoma Constitution. In *Bosh v. Cherokee County Bldg. Authority*, 2013 OK 9, 305 P.3d 994, the Oklahoma Supreme Court recognized a private cause of action for excessive force under Article 2, §30 of the Oklahoma Constitution, notwithstanding the requirements and limitations provided by the Oklahoma Governmental Tort Claims Act, 51 O.S. § 151 *et seq.* (OGTCA). Although the facts in *Bosh* arose out of excessive force alleged to have been committed by jailers, the case caused concern among Oklahoma municipalities because it appeared to apply to all law enforcement officers and to expose Oklahoma municipalities to unlimited damages.

On July 8, 2014, the district court granted the City's motion to dismiss the petition filed by Perry. The court ruled that *Bosh* does not apply when a plaintiff has an alternative cause of action under the OGTCA. Plaintiff

appealed the district court's ruling to the Oklahoma Supreme Court. The Oklahoma Supreme Court retained jurisdiction and affirmed the district court's ruling. See *Perry v. City of Norman*, 2014 OK 119, 341 P.3d 689. The Court's decision benefits all municipalities in Oklahoma because it clarifies that the requirements and limitations set forth in the OGTCa, including but not limited to the cap on liability, apply to excessive force claim filed against law enforcement officers employed by Oklahoma municipalities.

Although dismissal of Perry's claim under Article 2, §30 was affirmed on appeal, he still has a potential remedy in federal court under 42 U.S.C. §1983. Because this matter involves pending litigation, the merits of Perry's §1983 claim were discussed during an executive session on February 10, 2015. Based on feedback during the executive session, the item is now being brought forward for formal Council consideration.

RECOMMENDATION: It is believed the proposed settlement is fair, reasonable and in the best interest of the City. It is recommended that settlement of this matter be approved by City Council and that the City Attorney's office move forward to finalize the settlement including reducing the settlement amount to Judgment in accordance with 51 O.S. § 159 and 62 O.S. §362. The Judgment will then be placed on the property tax rolls for collection over the next three years. The procedure will minimize the impact of the settlement on the general fund.