STATE OF MICHIGAN

COURT OF CLAIMS

JASUN BEGG,

Plaintiff,

v

LISA TAUBE and THE DEPARTMENT OF NATURAL RESOURCES,

Defendants.
_____/

OPINION AND ORDER

Case No. 22-000211-MZ

Hon. Thomas C. Cameron

This action for alleged violations of the Fourth Amendment to the United States Constitution and its state counterpart and the Fifth Amendment to the United States Constitution and its state counterpart, as well as conversion, relates to a set of whitetail deer antlers. Plaintiff alleges that defendants unconstitutionally seized and converted the antlers, which he claims he lawfully possessed after shooting and killing the deer with a bow and arrow. Defendants counter that plaintiff trespassed onto private property to retrieve the deer remains, and defendants lawfully seized the antlers from a taxidermist as part of an ongoing criminal investigation.

The case is complicated by a number of procedural issues, prompting the parties to file several motions. Plaintiff moves for a show-cause order and a "preliminary and permanent preliminary injunction" for the return of the antlers. Plaintiff has also moved for entry of a default judgment against defendants. Defendants move for summary disposition under MCR 2.116(C)(7), (C)(8), and (C)(10). The Court has reviewed the briefing and dispenses with oral argument. For the reasons discussed below, the Court DENIES plaintiff's motion for entry of a default judgment,

GRANTS defendants' motion for summary disposition, and DISMISSES AS MOOT plaintiff's motion for a show-cause order and a permanent preliminary injunction.

I. BACKGROUND

Plaintiff is a recreational bow-and-arrow hunter. During the evening of October 8, 2022, plaintiff shot and killed a male whitetail deer in Shiawassee County. Plaintiff asserts that he obtained permission from a landowner, Mark Senk, to hunt on Senk's property. Early the next morning, plaintiff retrieved the remains, tagged the deer antlers with a unique identification number, and reported the kill through an online portal with defendant Department of Natural Resources (DNR). He alleges that he "gutted" the deer and took the remains (including the antlers) with him. He took the remains to a nearby taxidermy shop, Wildlife Creations Taxidermy, to be preserved and mounted.

The next day, Alan Shuster, a farmer who owns two lots next to Senk's property, located a pile of animal remains (a "gut pile") in his soybean field, along with a clear, notched-out back to a deer license[1] and a broken black belt. His son, Andrew Shuster (Andrew), was able to tell from the deer license that the hunter had shot a 9-point buck. The two also "look[ed] into whether any of the neighbors had allowed someone to hunt on their land," and learned that Senk had allowed plaintiff on his property. Andrew also viewed a social-media website known as MI Buck Pole, in which he claims to have seen a posting by plaintiff describing the 9-point buck and the hunt. From that information, the Shusters gleaned that plaintiff was the hunter who had killed the deer. Shuster denies that he gave anyone permission to hunt on his property.

[1] The notches on the license denote how many "points" the deer antlers had and where those points appeared on the antlers.

On October 14, 2022, Shuster reported the incident to DNR's Report All Poaching hotline. Conservation Officer Lisa Taube came onto the property and discussed the matter with Andrew (Shuster was out of town that day). Andrew showed Taube the area where the men located the remains. By that point, one of their neighbors had cleaned up the gut pile, although the area still contained visible blood and flattened foliage. While on the property, Taube saw that a tree on Senk's property had numerous marks designating where climbing sticks had been used to reach a bow-and-arrow stand. The tree was about a half mile from the gut pile. Andrew told Taube that he suspected plaintiff was the hunter who had trespassed on the property, and he gave her the belt and the notched hunting-license backing. Shuster later told Taube that he wanted to press charges.

Taube met with plaintiff later that day. The parties dispute, to some extent, what was discussed during this conversation. Plaintiff said that he shot the deer from a tree stand on Senk's property, but maintained that he had permission to be on the property during the hunt. According to Taube, plaintiff acknowledged that the deer ran a "couple hundred yards" before lying down, and he eventually admitted to trespassing onto Shuster's property to recover the deer.

The next day, Taube went to the taxidermy location and retrieved the antlers. She denies that she took any other part of the deer remains. Taube created a property-seizure report and placed the antlers in the DNR's evidence room in Lansing. She submitted a warrant request for recreational trespass, MCL 324.73102, to the Shiawassee County Prosecutor's Office on November 28, 2022. A month later, after Taube did not receive a response, she contacted the prosecutor's office again. She learned that her warrant request was not received because of a system error. Taube re-submitted the request on December 28, 2022. The warrant request remains pending.

On December 20, 2022, plaintiff sued defendants in this Court, raising claims that defendants took his property (the antlers) without just compensation in violation of the Fifth Amendment and its state counterpart, and illegally searched and seized his personal property in violation of the Fourth Amendment and its state counterpart. Plaintiff also claims that defendants converted his property under the common law and MCL 600.2919a, causing him to suffer damages.[2] He alleges that the antlers are "unique in kind" and cannot be valued monetarily.

Plaintiff filed a proof of service by mail for the DNR, only, which contains a printed tracking number from the United States Postal Service. At the same time as the complaint, plaintiff moved for a show-cause order and a "preliminary and permanent preliminary injunction,"[3] arguing that he will suffer irreparable harm if the antlers are not returned promptly because they are subject to wasting. He requests that the Court enjoin defendants from possessing the antlers and order the immediate return of the antlers.

Defense counsel timely appeared and responded to the motion for a show-cause order and injunction on January 11, 2023. Defendants argue that plaintiff is unlikely to succeed on the merits of his claims, and the antlers are not subject to waste. They note that there is a pending criminal warrant request, and the antlers are evidence in connection with the active criminal investigation. If the Shiawassee County Prosecutor's Office declines to pursue charges, then defendants represent that they will return the antlers to plaintiff.

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[2] Under the court rules, the summons would expire 91 days after issuance, or on March 21, 2023. See MCR 2.102(D).

[3] Because plaintiff's motion seeks to compel action by a public official, it may be better characterized as a motion for a writ of mandamus. See *Warren City Council v Fouts*, ___ Mich App ___; ___ NW2d ___ (2022) (Docket No. 361288); slip op at 9.

Approximately one week later, on January 25, 2023, defendants answered the complaint. Defendants filed their answer more than 28 days after plaintiff claims to have served them with the summons and complaint (on December 22, 2022). Defendants raised improper service of process as an affirmative defense. Within their answer, defendants demanded a reply under MCR 2.110(B)(5). On February 21, 2023, defendants moved for summary disposition under MCR 2.116(C)(7), (C)(8), and (C)(10). They argue plaintiff has failed to state a valid cause of action because there is a criminal proceeding pending in another jurisdiction. Defendants also argue that plaintiff did not reply timely to their demand for a response to the answer. Finally, defendants argue that plaintiff's claims fail on the merits because plaintiff cannot establish either a constitutional violation or conversion.

Plaintiff has since responded to defendants' demand for a reply to their answer to the complaint, but he has not responded timely to defendants' motion for summary disposition. He has, however, requested entry of a default and moves for a default judgment under MCR 2.603(B)(3), arguing that defendants failed to respond to the complaint by January 17, 2023.[4] Defendants have not responded to the motion for entry of default/default judgment; however, the motion did not contain a proof of service.

[4] The Court notes that January 17, 2023 is 28 days after the summons and complaint were filed, *not* 28 days after service was allegedly effectuated on the defendants through the mail. Plaintiff claims to have served the defendants through the mail delivered on December 22, 2022, and 28 days after this date is January 19, 2023. Regardless, while defendants appeared within this 28-day time frame, they did not answer the complaint until January 25, 2023.

II. ANALYSIS

A. MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT

Turning first to plaintiff's motion for entry of default and for default judgment, entry of default is appropriate when the opposing party has failed to plead or otherwise defend the case, as provided by the court rules, and that fact is known to the clerk of the court and verified in a request for default. MCR 2.603(A). MCR 2.603(B)(3) provides, in relevant part, that "the party entitled to a default judgment must file a motion that asks the court to enter the default judgment." The plaintiff must also give notice of the request for default judgment to the defaulted party if that party has appeared in the action. MCR 2.603(B)(1). It is unclear whether plaintiff notified defendants of his request for default judgment. However, even assuming defendants were notified, a plaintiff must serve the defendant properly before the defendant can be deemed to know about the lawsuit. See *Bullington v Corbell*, 293 Mich App 549, 555-556; 809 NW2d 657 (2011).

MCR 2.105(A) provides that process may be served on an individual by

> (1) delivering a summons and a copy of the complaint to the defendant personally; or
>
> (2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

Regarding service of process on public entities, MCR 2.105(G) provides:

> Service of process on a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, or *public body* may be made by serving a summons and a copy of the complaint on:
>
> * * *

> (8) the president, the chairperson, the secretary, the manager, or the clerk of any other public body organized or existing under the constitution or laws of Michigan, when no other method of service is specially provided by statute.
>
> The service of process may be made on an officer having substantially the same duties as those named or described above, irrespective of title. In any case, service may be made by serving a summons and a copy of the complaint on a person in charge of the office of an officer on whom service may be made *and* sending a summons and a copy of the complaint by registered mail addressed to the officer at his or her office. [Emphasis added.]

Service by registered mail may also be accomplished through certified mail, although for certified mail, the plaintiff must provide a copy containing an official postmark from the post office. MCR 2.105(L)(1). Under the court rules, the defendant must answer or take other permitted action within 21 days after personal service, or within 28 days after service by registered mail. MCR 2.108(A)(1) and (2).

Service was not effectuated properly on either defendant. For Taube, plaintiff never filed a proof of service indicating she was served personally or through registered mail. See MCR 2.105(A). Even if plaintiff had attempted to serve her through the mail, the court rule requires that the registered or certified mail contain a return-receipt request, and service is only effectuated when the defendant acknowledges service (which did not occur here). See *id*. For the DNR, plaintiff also did not properly effectuate service because he did not serve the summons and complaint on an officer or person in charge of the office and *also* serve a copy of the summons and complaint by registered mail. See MCR 2.105(G)(8). In other words, service must be accomplished through both personal service and registered mail. Because plaintiff only attempted to serve a copy of the summons and complaint through the mail, he did not serve the DNR properly. Furthermore, the documentation plaintiff provided with his proof of service does not contain an official postmark from the post office. Without a service date, the Court cannot conclude that defendants' answer was untimely.

The summons expired on March 21, 2023. See MCR 2.102(D). However, defendants filed an appearance within the 91-day time frame, and so dismissal is not warranted on the basis of the expired summons. See MCR 2.102(E)(1). Nevertheless, defendants did not waive the improper-service argument because they raised it in their first responsive pleading. See MCR 2.116(D)(1) (providing that improper service of process must be raised in the party's first motion or responsive pleading, whichever is filed first, or otherwise the defense is considered waived); *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280, 292; 731 NW2d 29 (2007) (holding that while the defendant had entered a general appearance, he had not waived the defense of insufficient service of process because he raised the issue in his first motion for summary disposition in compliance with MCR 2.116(D)(1)). For these reasons, the Court DENIES plaintiff's request for entry of default and motion for default judgment.

While defendants preserved their challenge to the sufficiency of the service of process, they have not moved for dismissal of the case on that basis. Instead, they request dismissal of the case on the merits. Therefore, the Court turns next to the merits of the claims, which will resolve both the motion for summary disposition and the motion for a permanent preliminary injunction.

B. MOTION FOR SUMMARY DISPOSITION

At the outset, the Court notes that plaintiff has not filed a timely response to the motion for summary disposition. Under the local court rules, the motion is deemed uncontested. Court of Claims LCR 2.119(C)(3). However, even if the motion were contested, the Court concludes that defendants would prevail on the merits.

Summary disposition under MCR 2.116(C)(7) (immunity) is warranted if the claim is barred by immunity granted by law. *Pike v Northern Mich Univ*, 327 Mich App 683, 690; 935

NW2d 86 (2019). " 'The contents of the complaint must be accepted as true unless contradicted by the documentary evidence.' " *Id*. (citation omitted). The documentary evidence is viewed in the light most favorable to the nonmovant. *Id*. "If there is no factual dispute, a trial court must determine whether summary disposition is appropriate under MCR 2.116(C)(7) as a matter of law." *Id*. at 690-691.

A (C)(8) motion tests the legal sufficiency of the complaint. *Bailey v Antrim Co*, ___ Mich App ___; ___ NW2d ___ (2022) (Docket No. 357838); slip op at 5. "A motion under MCR 2.116(C)(8) may . . . be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id*. The court will consider the factual allegations in the complaint as true for purposes of deciding a (C)(8) motion. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 206; 920 NW2d 148 (2018).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The evidence submitted by the parties is reviewed in a light most favorable to the nonmovant. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Prod, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (citation and quotation marks omitted). A genuine issue of material fact exists when the "record which might be developed . . . would leave open an issue upon which reasonable minds might differ." *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013) (citation and quotation marks omitted). When a motion for summary disposition is filed before the close of discovery, the operative question is whether summary disposition is premature because further discovery stands a fair chance of uncovering factual

support for the nonmovant's position. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009).

Plaintiff does not frame his claims in terms of a violation of 42 USC 1983, but that statute provides the remedy for violation of rights under the federal constitution or federal statutes. *Lavigne v Forshee*, 307 Mich App 530, 536-537; 861 NW2d 635 (2014). The United States Supreme Court has held that a state entity, including an arm of the state, is not a "person" a plaintiff can sue for monetary damages under § 1983. *Will v Mich Dep't of State Police*, 491 US 58, 70; 109 S Ct 2304; 105 L Ed 2d 45 (1989). The same goes for state officials sued in their official capacity, except that these individuals may be sued for injunctive relief. *Id*. at 71. In contrast, monetary damages are available as a remedy against a state entity for constitutional torts. *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 687; 983 NW2d 855 (2022). In this case, plaintiff only requests the return of the antlers, claiming they are unique and that he cannot be compensated with a dollar amount.

With this analytical framework in mind, the Court turns to plaintiff's Fourth Amendment claim. The Court agrees with defendants that plaintiff has not articulated a basis for standing under the Fourth Amendment or its state counterpart. The Fourth Amendment protects individuals from an invasion of their privacy in the form of unreasonable searches and seizures. US Const, Am IV; *Lavigne*, 307 Mich App at 537. Similarly, Const 1963, art 1, § 11 also protects individuals and their personal effects from unreasonable searches and seizures and is coextensive with its federal counterpart. See *People v Mead*, 503 Mich 205, 212; 931 NW2d 557 (2019). "When the government infringes an individual's reasonable or justifiable expectation of privacy, a search for purposes of the Fourth Amendment has occurred." *Lavigne*, 307 Mich App at 537. See also *People v Mahdi*, 317 Mich App 446, 458; 894 NW2d 732 (2016). "An expectation of privacy is

legitimate only if the individual exhibited an actual, subjective expectation of privacy and that actual expectation is one that society recognizes as reasonable." *People v Taylor*, 253 Mich App 399, 404; 655 NW2d 291 (2002). And the Court determines whether the plaintiff has standing on a Fourth Amendment claim through the totality of the circumstances, which may include

> ownership, possession and/or control of the area searched or item seized; historical use of the property or item; ability to regulate access; the totality of the circumstances surrounding the search; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of the expectation of privacy considering the specific facts of the case. [*Mahdi*, 317 Mich App at 459 (citation omitted).]

A conservation officer has the authority to enforce criminal laws where the alleged violation is "ancillary to the act of hunting." *People v Carey*, 147 Mich App 444, 449; 383 NW2d 81 (1985). In her role as a conservation officer, Taube took the antlers from the taxidermist and placed them in a DNR evidentiary locker. Plaintiff has not responded to the motion for summary disposition, and he does not provide a legal basis in his motion for a show cause order/injunction to support his claim that he had a reasonable expectation of privacy in the taxidermy shop that could override the consent of the owner. See *People v Borchard-Ruhland*, 460 Mich 278, 294; 597 NW2d 1 (1999) ("One established exception to the general warrant and probable cause requirements is a search conducted pursuant to consent."). He does not allege in his complaint that he had any possession or control over the taxidermy shop, or the ability to regulate access to the shop.

Instead, plaintiff relies, primarily, on the Court of Appeals' decision in *People v Jordan*, 187 Mich App 582; 468 NW2d 294 (1991), to support his argument that the taxidermy shop served as a bailee for the antlers. In *Jordan*, the defendant was convicted of an attempted bank robbery. *Id*. at 584. During the incident, the defendant fled the scene after the bank teller shot him, and

went to a nearby hospital for treatment. *Id*. A police officer was dispatched to the hospital and found the defendant undergoing treatment for his gunshot wound. *Id*. Although the police officer did not have a search warrant, he requested a bag containing the defendant's clothing, and the hospital staff provided it to him. *Id*. at 584-585. Before trial, the defendant moved to suppress evidence of the clothing on the basis that the bag was unlawfully seized without a warrant or an exception to the warrant requirement. *Id*. at 585. The prosecution claimed that the plain-view exception to the warrant requirement applied. *Id*.

On appeal of the trial court's denial of the motion to suppress, the Court of Appeals concluded that there was no evidence the defendant intended to abandon his clothing, and so the hospital possessed it as a bailee. *Id*. at 592. The hospital had joint access to and control over the clothing, but only because it was required to safeguard the clothing for the defendant. *Id*. The hospital lacked "mutual use" of the clothing. *Id*. Therefore, the Court concluded that the trial court erred by denying the motion to suppress, but ultimately held the error was harmless in light of the other evidence supporting the conviction. *Id*. at 592-594.

The Court agrees with defendants that this case is distinguishable from *Jordan*. Here, plaintiff provided the taxidermist with the deer remains to preserve the remains and create an antler mount. This is different from the situation in *Jordan*, where the hospital was merely storing the defendant's clothing for safekeeping while he underwent treatment.

Plaintiff also argues that defendants had a duty to return the antlers because there is no pending criminal matter. He relies on *People v Washington*, 134 Mich App 504; 351 NW2d 577 (1984). In *Washington*, the Court of Appeals addressed the return of the property in a criminal case after the defendant pleaded to a crime and was sentenced, with no pending appeal. *Id*. at 511-

512. Here, the criminal investigation into plaintiff's conduct remains ongoing, which distinguishes this matter from *Washington*. See *id*. at 511 (holding that the defendant was entitled to the return of the property because there was no lawful reason to deny its return). Accordingly, plaintiff has failed to articulate a valid expectation of privacy in the taxidermy shop to establish standing to challenge the search under the Fourth Amendment.

As for plaintiff's takings claim, both the United States and Michigan Constitutions prohibit the taking of private property for public use without just compensation. *Mays v Snyder*, 323 Mich App 1, 78; 916 NW2d 227 (2018), aff'd 506 Mich 157 (2020). At the outset, the Court notes that plaintiff has only pleaded a claim for an unconstitutional taking, and has not pleaded a claim for violation of his due-process rights. See *Rafaeli, LLC v Oakland Co*, 505 Mich 429, 452; 952 NW2d 434 (2020) (explaining that "[t]he remedy for a taking of private property is just compensation, while the remedy for being deprived of property without due process of law is the return of the property"). The Michigan Takings Clause affords greater protection to property owners, but only in the context of eminent domain. *Id*. at 454. The Michigan Supreme Court has defined a "taking" as a situation in which "the government has permanently deprived the property owner of any possession or use of the property without the commencement of formalized condemnation proceedings." *Id*. The first step in the analysis is to examine whether plaintiff has established a vested right in the property under state law. *Id*. " 'Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to existing rules or understandings that stem from an independent source such as state law.' " *Id*. (citation omitted).

The Michigan Supreme Court addressed property rights in wild game in *People v Zimberg*, 321 Mich 655; 33 NW2d 104 (1948). In *Zimberg*, the Court declared, "It is universally held in

this country that wild game and fish belong to the state and are subject to its power to regulate and control; that an individual may acquire only such limited or qualified property interest therein as the state chooses to permit." *Id*. at 658. The Court also cited favorably to caselaw stating that the state may

> impos[e] limitations upon the right of property in such game after it has been reduced to possession. Such limitations deprive no person of his property, because he who takes or kills game had no previous right of property in it, and, when he acquires such right by reducing it to possession, he does so subject to such conditions and limitations as the legislature has seen fit to impose. [*Id*. at 660 (citation omitted; emphasis omitted).]

Plaintiff had no property interest in the deer until he reduced it to his possession. When he did so, he was subject to the conditions and limitations that the Legislature has imposed. Under *Zimberg*, plaintiff did not necessarily obtain a vested property interest in the deer by killing and taking possession of it. Instead, he was required to do so in a manner that was lawful. The state owns all wild animals and regulates their taking. MCL 324.40105. The state has regulated the taking of wild game and prohibits an individual from taking possession of game except as allowed under the wildlife conservation part of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq*. MCL 324.40106. The Legislature has vested the DNR with the authority to manage animals in the state, including establishing lawful methods for taking game. MCL 324.40107(1)(e).

MCL 324.73102(2) provides, in relevant part, "a person shall not enter or remain upon farm property or a wooded area connected to farm property for any recreational activity or trapping without the consent of the owner or his or her lessee or agent, whether or not the farm property or wooded area connected to farm property is fenced, enclosed, or posted." Plaintiff does not dispute that he shot a deer with his bow and arrow and retrieved the remains, but disputes whether he

entered Shuster's property to retrieve the deer. Defendants have presented evidence to the Shiawassee County Prosecutor's Office to support their position that plaintiff trespassed onto Shuster's property to retrieve the deer. Defendants are holding the antlers (which plaintiff marked with his identification tag) as evidence for that pending criminal investigation. According to plaintiff, the antlers contained information about the "owner of such property . . . and where the owner lives." Until it is determined whether plaintiff obtained the deer lawfully, his interest in the deer antlers has not vested. Because plaintiff cannot establish a vested property right in the antlers, his takings claim fails. Finally, even if plaintiff were to prevail on the takings claim, the proper remedy would be just compensation—not the return of the antlers.

Lastly, plaintiff alleges a claim for conversion and statutory conversion. Conversion and statutory conversion are both tort claims, although the elements differ slightly. See *Aroma Wines & Equip, Inc v Columbian Distrib Servs, Inc*, 497 Mich 337, 361; 871 NW2d 136 (2015). The governmental tort liability act (GTLA), MCL 691.1401 *et seq*., protects governmental agencies from tort liability. Under the GTLA, a governmental agency is immune from tort liability if the agency is engaged in exercising or discharging a governmental function. MCL 691.1407(1). "To overcome governmental immunity for tort liability . . . plaintiffs . . . who bring tort claims against a governmental defendant must either (1) plead a tort that falls within one of the GTLA's stated exceptions, or (2) demonstrate that the alleged tort occurred outside the exercise or discharge of a governmental function." *Genesee Co Drain Comm'r v Genesee Co*, 309 Mich App 317, 327; 869 NW2d 635 (2015) (citations omitted).

As for government officers or employees, conversion is an intentional-tort claim. *Dep't of Agriculture v Appletree Marketing, LLC*, 485 Mich 1, 18; 779 NW2d 237 (2010). Government employees enjoy qualified immunity for intentional torts if "(1) the employee's challenged acts

were undertaken during the course of employment and that the employee was acting, or reasonably believed he was acting, within the scope of his authority, (2) the acts were undertaken in good faith, and (3) the acts were discretionary, rather than ministerial, in nature." *Odom v Wayne Co*, 482 Mich 459, 461; 760 NW2d 217 (2008), citing generally *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567; 363 NW2d 641 (1984), superseded in part by statute on other grounds as stated in *Ray v Swager*, 501 Mich 52, 81; 903 NW2d 366 (2017). The good-faith standard is subjective in nature and requires examination of whether the defendant had an honest belief and good-faith conduct. *Odom*, 482 Mich at 481-482.[5]

Regarding the DNR, plaintiff has not pleaded any facts that would fall within one of the statutory exceptions to governmental immunity outlined in the GTLA. As for Taube, plaintiff has not pleaded any facts that would support that Taube was not acting within the scope of her authority or that her actions were not undertaken in good faith. At all relevant times, Taube was acting in her capacity and exercising her discretion as a conservation officer, including when she seized the antlers. Plaintiff has not pleaded any facts that would support bad faith. And he has not responded to the motion for summary disposition. Accordingly, Taube is entitled to qualified immunity in relation to plaintiff's conversion and statutory conversion claims. Therefore, the Court GRANTS summary disposition in defendants' favor.

[5] Defendants contend that plaintiff must establish gross negligence under MCL 691.1407(2)(c). But MCL 691.1407(3) provides, "Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986," and the *Odom* Court interpreted that provision as removing intentional torts from the gross-negligence standard outlined in MCL 691.1407(2). See *Odom*, 482 Mich at 470.

Because the Court concludes that summary disposition in favor of defendants is appropriate for the reasons discussed above, the Court need not address defendants' alternative argument that plaintiff admitted to the answer by failing to file a timely reply. Furthermore, because the Court concludes that plaintiff does not prevail on the merits, his motion for a show-cause order and permanent preliminary injunction is DISMISSED AS MOOT.

This is a final order that dispenses with the final claim and closes the case.

Date: March 27, 2023

Thomas C. Cameron
Judge, Court of Claims