STATE OF MICHIGAN

COURT OF CLAIMS

ROGER TURUNEN,

Plaintiff,

v

Case No. 25-000089-MZ

SHANNON LOTT, DANIEL EICHINGER, SCOTT BOWEN, and MICHIGAN DEPARTMENT OF NATURAL RESOURCES,

Hon. James Robert Redford

Defendants.
_____/

OPINION AND ORDER GRANTING DEFENDANTS LOTT, BOWEN, AND THE DNR'S MOTION FOR SUMMARY DISPOSITION AND GRANTING PLAINTIFF LEAVE TO AMEND COMPLAINT WITHIN 28 DAYS

In this matter involving a 2010 Invasive Species Order (ISO) prohibiting the possession or sale of a species commonly referred to as wild boar or Russian Boar, defendants Shannon Lott, Scott Bowen, and the Michigan Department of Natural Resources (the DNR),[1] collectively referred to as the DNR Defendants, move for summary disposition of plaintiff Roger Turunen's complaint under MCR 2.116(C)(7) (res judicata; statute of limitations) and (8). For the reasons discussed in this opinion and order, the Court GRANTS the motion for summary disposition, DISMISSES plaintiff's complaint WITH PREJUDICE as to any claims arising from events occurring on May 5, 2022, and earlier, DISMISSES plaintiff's complaint WITHOUT PREJUDICE as to any claims

[1] Defendant Daniel Eichinger is no longer employed with the DNR, has not appeared in this action, and is not one of the parties moving for summary disposition. As noted later, Eichinger was not served properly with the summons and complaint, and the claims against him were dismissed as a matter of course when the summons expired. See MCR 2.102(E).

arising from events occurring after May 5, 2022, and GRANTS plaintiff leave to amend the complaint within 28 days, consistent with this opinion and order.

I. BACKGROUND

This lawsuit presents another chapter in a long and contentious legal dispute over whether plaintiff's pigs are unlawful wild boar, which is a designated invasive species under the DNR's ISO Amendment No. 1. The dispute has given rise to litigation in the Baraga, Marquette, and Ingham Circuit Courts, as well as a prior lawsuit in this Court (Court of Claims Case No. 22-000061-MM), referred to as the 2022 Lawsuit, which was filed on May 5, 2022.

The Michigan Court of Appeals provided the following relevant factual background on appeal in the 2022 Lawsuit:

> In 2010, the DNR amended its "Invasive Species Order" (ISO), adding certain wild boar and their hybrids to the list of prohibited species. Turunen was a breeder of pigs for the "high fence hunting" (HFH) industry.[2] "The ISO amendment was met with a firestorm of opposition" from individuals like Turunen, whose businesses and livelihood were affected by the change. *Johnson v Dep't of Natural Resources*, 310 Mich App 635, 643; 873 NW2d 842 (2015). Litigation ensued between the DNR and pig breeders, including disputes initiated by Turunen over the legality of the ISO amendment and the classification of some of his pigs as prohibited species.
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> . . . Turunen . . . sued in 2012 in Baraga Circuit Court for declaratory and injunctive relief. Among other things, Turunen's circuit court complaint requested a declaration that the ISO constituted an unlawful taking of his property. Several other pig breeders commenced similar litigation, and in due course, this Court upheld the facial constitutionality of the ISO amendment. *Johnson*, 310 Mich App at 651-659.
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> Following *Johnson*, Turunen's lawsuit proceeded in Baraga Circuit Court. In September 2016, shortly before a bench trial, the DNR reevaluated Turunen's

[2] Plaintiff asserts that he has developed a unique breed of pig that he has named the "Hogan Hog." He has disputed throughout the various legal proceedings whether the Hogan Hogs fall within the category of wild boar considered an invasive species under ISO Amendment No. 1.

animals and identified eight pigs owned by Turunen that the DNR alleged were prohibited by the amended ISO. The Baraga Circuit Court agreed with Turunen that none of these pigs were properly classified as prohibited species. The DNR appealed, and this Court remanded to the circuit court to rule on [the] constitutionality of the ISO amendment as applied to Turunen and to make factual findings on the lawfulness of each particular pig. *Turunen v Dep't of Natural Resources*, unpublished per curiam opinion of the Court of Appeals, issued July 5, 2018 (Docket No. 336075) (*Turunen I*). On remand, the Baraga Circuit Court concluded that the ISO was unconstitutionally vague as applied to Turunen and that defendants failed to establish that any of his pigs were illegal. In the end, this Court reversed the constitutional ruling but affirmed the factual determination that the eight pigs were not prohibited species. *Turunen v Dir of Dep't of Natural Resources*, 336 Mich App 468, 481-489; 971 NW2d 20 (2021) (*Turunen II*). The circuit court litigation ended in 2021 with neither Turunen nor the DNR seeking leave to appeal from this Court's decision in *Turunen II*.

. . . Turunen then filed a lawsuit in the Court of Claims on May 5, 2022. He brought a claim for inverse condemnation, alleging that defendants' actions were wrongful and destroyed his property rights without just compensation. He also brought a claim under 42 USC 1983 against the Director and Deputy Director of the DNR, alleging that they knowingly deprived him of compensation for his property.

In lieu of an answer, defendants moved for summary disposition under MCR 2.116(C)(7), asserting that Turunen's [2011 notice of intent (NOI)] was untimely and that his claims were barred by the applicable statute of limitations. Turunen responded that his complaint was timely because his claims did not accrue until this Court's decision in *Turunen II*, and in any event, statutory and equitable tolling applied. The Court of Claims held that the 2011 NOI was timely, but it concluded that the three-year statute of limitations applied to Turunen's claim, and all of the allegedly wrongful conduct committed by defendants occurred more than three years before he filed his complaint. The Court of Claims rejected Turunen's arguments that his claim did not accrue until the conclusion of *Turunen II*, and it rejected his other arguments in support of tolling. [*Turunen v Dep't of Natural Resources*, unpublished per curiam opinion of the Court of Appeals, issued February 29, 2024 (Docket No. 363594 (*Turunen III*), pp 1-2.]

In *Turunen III*, the Michigan Court of Appeals addressed plaintiff's argument in favor of tolling the three-year limitations period under the stabilization doctrine, which provides that the limitations period does not begin to run on an inverse-condemnation claim premised on a continuous governmental wrong until the consequences of the government's actions have stabilized. *Id.* at 5. The Court of Appeals affirmed the ruling of this Court that plaintiff's claims

fell beyond the scope of the stabilization doctrine because plaintiff did not allege any continuing wrongs by the DNR, and instead, relied on two distinct wrongs—the issuance of the ISO itself and a later decision that at least some of plaintiff's pigs were prohibited wild boar. *Id.* at 6. The Court of Appeals held that plaintiff's inverse-condemnation claim accrued on or around September 28, 2016, when the DNR inspected plaintiff's property and issued a determination that the ISO prohibited eight of plaintiff's pigs. *Id.* at 6-9. The Court of Appeals found no other basis to toll the statute of limitations and affirmed this Court's dismissal of plaintiff's claims. *Id.* at 9.

Since the 2022 Lawsuit, the DNR has continued to enforce the ISO. However, plaintiff does not allege that any enforcement action has been taken directly against plaintiff's property or his pigs. Plaintiff sued defendants in this action in May 2025. In addition to the DNR, plaintiff also names Bowen (the Director of the DNR), Lott (the Deputy Director of the DNR), and Eichinger (the former Director of the DNR) as defendants.

The first 129 out of 142 factual allegations in the complaint are almost word-for-word recitations of the allegations from the 2022 complaint. There are some minor modifications that are stylistic in nature. There are about 12 new factual allegations in the instant complaint. Specifically, plaintiff alleges that certain events occurred in the 2016–2021 time frame relating to the DNR's genetic testing of harvested pigs. He also alleges that several circuit courts have ruled in his favor on the issue of whether his Hogan Hogs are wild boar. The remainder of the new allegations relate to the DNR's efforts in 2023 to enforce the ISO in the Ingham Circuit Court. Specifically, plaintiff alleges that, in the spring of 2023, the DNR sued four HFH facilities and their owners, alleging that the facilities possessed illegal wild boar. Plaintiff alleges that at the conclusion of a trial, in May 2025, the Ingham Circuit Court ruled in favor of the HFH facilities as it related to the Hogan Hogs. Plaintiff includes the relevant documents from the Ingham Circuit

Court case as exhibits to his complaint. Those documents reveal that plaintiff was *not* one of the defendants sued by the DNR in that case.

Plaintiff alleges three claims for relief, which are the same three claims for relief that plaintiff asserted in the 2022 Lawsuit. First, plaintiff alleges a claim for inverse condemnation. Second, plaintiff alleges a claim for violation of 42 USC 1983 against defendants Lott and Eichinger,[3] in their personal capacities, which is premised on the alleged inverse condemnation. Third, plaintiff raises a claim for "any and all further relief" in the "interests of justice." (Capitalization omitted.)

The DNR Defendants move for summary disposition at the outset of the case under MCR 2.116(C)(7) and (8). They argue that the doctrine of res judicata bars plaintiff's claims because plaintiff's claims were already deemed untimely in the 2022 Lawsuit. In the DNR Defendants' view, the 2022 Lawsuit involved the same legal issues, involved the same parties, and was resolved on the merits. The DNR Defendants argue that any claims that are not precluded by res judicata are untimely under the three-year statute of limitations because the continued enforcement of the ISO did not restart the limitations period. Alternatively, the DNR Defendants argue that plaintiff's inverse-condemnation claim lacks merit because the DNR has not taken any of plaintiff's property and has not otherwise engaged in any wrongdoing.

Plaintiff responded that this action is distinct from the 2022 litigation because it focuses on the DNR's enforcement efforts in 2023 and later. He argues that his claims accrued in 2023, at the earliest, because the stabilization doctrine would apply to toll when the claims first accrued.

[3] Director Bowen is *not* included as a defendant for purposes of this claim.

He further argues his claims survive on the merits because he has alleged a valid taking of his property via diminution of value. Plaintiff also suggests in his response brief that the DNR has conducted a more recent inspection of his property in June 2025 (following the filing of the complaint), but plaintiff does not argue that any action was taken against his property following the inspection.

The DNR Defendants reply that plaintiff's response brief is untimely and should be rejected.[4] They reiterate their earlier arguments on the merits. Because the briefing is adequate to address the issues, the Court dispenses with oral argument under LCR 2.119(E)(3).

II. ANALYSIS

Summary disposition under MCR 2.116(C)(7) is appropriate when the claim is barred by res judicata or the statute of limitations. *Allen Park Retirees Ass'n, Inc v Allen Park*, 329 Mich App 430, 443; 942 NW2d 618 (2019) (res judicata); *Independent Bank v Hammel Assoc, LLC*, 301 Mich App 502, 508; 836 NW2d 737 (2013) (statute of limitations). "A motion brought under MCR 2.116(C)(7) may be supported by affidavits, depositions, admissions, or other documentary evidence." *Allen Park*, 329 Mich App at 444 (quotation marks and citation omitted; emphasis omitted). The contents of the complaint must be accepted as true unless the documentary evidence, viewed in the light most favorable to the nonmovant, contradicts it. *Id.* "If there is no factual dispute, the determination whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law." *Id.*

[4] The Court disagrees with the DNR Defendants' argument that their motion should be deemed uncontested. Although plaintiff's response to the DNR Defendants' motion for summary disposition was untimely, there is no apparent prejudice to the DNR Defendants, who submitted a timely reply brief. Therefore, the Court will not strike plaintiff's response brief.

A motion for summary disposition under MCR 2.116(C)(8) examines the legal sufficiency of the complaint based solely on the pleadings. *Dalley v Dykema Gossett, PLLC*, 287 Mich App 296, 304; 788 NW2d 679 (2010). The motion examines whether the nonmovant has failed to state a claim on which relief may be granted, accepting the well-pleaded factual allegations as true and construing them in the light most favorable to the nonmovant. *Id.* at 304-305. Summary disposition will be granted under this subrule when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.* at 305.

A. DEFENDANT EICHINGER

Before addressing the merits of the DNR Defendants' motion for summary disposition, the Court briefly addresses the status of the claims against Eichinger. Plaintiff improperly served Eichinger at the DNR's business address. Eichinger has not submitted to this Court's jurisdiction and is no longer employed with the DNR. Plaintiff is suing Eichinger in his personal capacity. Therefore, plaintiff did not serve him properly with the summons and complaint. See MCR 2.105; MCL 600.6434(3). The summons was issued on May 30, 2025, and expired on August 29, 2025. See MCR 2.102(D). Within that time frame, the DNR Defendants appeared in this action and filed their motion for summary disposition, which stated that counsel for the DNR Defendants did not represent Eichinger and alerted plaintiff that Eichinger was not served properly with the summons and complaint. Nevertheless, plaintiff did not serve Eichinger or move to extend the summons before it expired. See *id.* Because Eichinger was never served with process and did not submit to this Court's jurisdiction, dismissal of the claims against him was automatic under MCR 2.102(E)(1). Under the Michigan Court Rules, the claims against Eichinger were dismissed when the summons expired (in August 2025). MCR 2.102(E)(2) and (3) (explaining that the lack of a

dismissal order does not affect the dismissal or otherwise continue an action deemed dismissed). Accordingly, Eichinger is no longer a defendant in this lawsuit.

B. RES JUDICATA/COLLATERAL ESTOPPEL

Turning to the merits, the Court concludes that plaintiff's claims against the DNR Defendants predating the filing of the 2022 Lawsuit are barred by res judicata or the statute of limitations through application of collateral estoppel because the same claims either were or could have been litigated in the 2022 Lawsuit.

Res judicata precludes a party from filing multiple lawsuits and is intended to preserve the finality of litigation. *Garrett v Washington*, 314 Mich App 436, 441; 886 NW2d 762 (2016). "For res judicata to preclude a claim, three elements must be satisfied: (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first." *Id.* (quotation marks and citation omitted). The party raising the defense of res judicata has the burden to establish the elements. *Id.* The final element has been interpreted broadly to include not only claims that were litigated previously but also claims arising from the same transaction that the party, exercising reasonable diligence, could have raised in the prior action but did not. *Id.* at 442.

Plaintiff concedes in his response brief that the first two elements of res judicata are satisfied. The first element of res judicata is satisfied because the 2022 Lawsuit was decided on the merits and resulted in a grant of the defendants' motion for summary disposition, which was affirmed on appeal to the Court of Appeals and was not appealed further. As for the second element, the prior litigation involved mostly the same parties (plaintiff, the DNR, Eichinger, and Lott). The only exception is that Director Bowen was not named as a defendant in the 2022 action

because he was not the DNR Director at the time. Because Director Bowen is not accused of any wrongdoing apart from his role with the DNR, Director Bowen was in privity with the DNR for purposes of res judicata. See *Adair v Michigan*, 470 Mich 105, 122; 680 NW2d 386 (2004) ("To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert.").

So the critical issue is whether the claims raised in this case were or could have been resolved in one or more of the prior cases. In *Turunen III*, the Court of Appeals held that plaintiff's inverse-condemnation claim, which was premised on the same overarching set of facts, was barred by the three-year limitations period. *Turunen III*, unpub op at 4-6. The Court of Appeals rejected plaintiff's argument that the stabilization doctrine extended the accrual date, reasoning that plaintiff's allegations relied on two distinct wrongs, both of which occurred in September 2016 or earlier. *Id.* at 6. Thus, the Court found that plaintiff's claims accrued, at the latest, in September 2016. *Id.* The Court also held that no other form of tolling applied to plaintiff's claims, such as equitable tolling, despite the fact that there was ongoing litigation following the September 2016 accrual date. *Id.* at 6-8.

In this case, the first 129 allegations in the complaint are the same as those raised in the complaint in the 2022 Lawsuit and encompass the vast majority of the factual allegations used to support plaintiff's legal claims. The new allegations raised in the instant complaint center on a 2016 genetics test that was performed on the pigs, as well as the DNR's ongoing enforcement efforts in 2023 and later. Plaintiff's allegations relating to the 2016 genetics testing are factual allegations that he uses to support his inverse-condemnation claim. They do not form a distinct basis for relief. Plaintiff does not explain why he did not raise these allegations in the 2022 Lawsuit even though the 2016 events occurred about six years before that lawsuit was filed. Furthermore,

any claim premised on the 2016 genetic testing would be untimely under the three-year limitations period for claims against the State. See *id.* at 4, citing MCL 600.6452(1). Nor, as the Court of Appeals held in *Turunen III*, can plaintiff rely on the DNR's more recent attempts to enforce the ISO through litigation to revive his time-barred claims that are premised on the same events alleged in the 2022 Lawsuit. See *id.* at 6-9. Accordingly, plaintiff's claims in the complaint that are premised on events that occurred before the 2022 Lawsuit was filed either were, or could have been, decided in the context of the 2022 Lawsuit. These claims are barred by res judicata.

Alternatively, even if res judicata did not apply, the issue whether plaintiff's claims from before the 2022 Lawsuit was filed are time-barred cannot be relitigated under the principle of collateral estoppel. Collateral estoppel has three elements: "(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full [and fair] opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004) (quotation marks and citation omitted; alteration in original). As noted earlier, whether plaintiff's claims premised on events predating the 2022 Lawsuit were barred by the statute of limitations was actually litigated and determined by a valid and final judgment in the 2022 Lawsuit. The same parties and those in privity with them had a full and fair opportunity to litigate the issue. And mutuality of estoppel is not required when, as in this case, collateral estoppel is being asserted defensively and plaintiff had the opportunity to litigate the issue in the prior proceeding. *Id.* at 691. Therefore, plaintiff cannot relitigate the statute of limitations in the context of this lawsuit under the principle of collateral estoppel, and his claims would be time-barred under the statute of limitations. In summary, any claims that predate the filing of the 2022 Lawsuit are barred by res judicata or the statute of limitations.

C. RECENT ENFORCEMENT ACTIONS

The Court acknowledges that plaintiff pleads some new factual allegations relating to more recent enforcement efforts taken by the DNR in 2023. He indicates in his response brief that further enforcement efforts have occurred in 2025, after he filed this lawsuit. However, plaintiff has not stated a valid claim for inverse condemnation in the manner and form alleged in the complaint because he does not allege a recognizable taking of his property, and his new claims as alleged in the complaint would be nonjusticiable.

Inverse condemnation is a claim through which a plaintiff may enforce the constitutional prohibition on the uncompensated taking of property. *Krieger v Dep't of Environment, Great Lakes & Energy*, 348 Mich App 156, 171; 17 NW3d 700 (2023). Plaintiff does not allege an actual taking of his property. Rather, he asserts that his property's value was either completely destroyed or "greatly diminished." To establish inverse condemnation via diminution of property value, the plaintiff must establish "(1) that the government's actions were a substantial cause of the decline of the property's value and (2) that the government abused its powers in affirmative actions directly aimed at the property." *Mays v Snyder*, 323 Mich App 1, 80; 916 NW2d 227 (2018) (quotation marks and citation omitted), aff'd by equal division sub nom *Mays v Governor*, 506 Mich 157 (2020). In other words, "there must be some action by the government specifically directed toward the plaintiff's property that has the effect of limiting the use of the property." *Id.* at 79 (quotation marks and citation omitted). There must also be a causal connection between the government's action and the plaintiff's alleged damages. *Id.*

To start, plaintiff asserts that the Ingham Circuit Court action was filed against the HFH businesses, and not plaintiff or his business. Plaintiff does not assert in his complaint any basis to find that he has standing to sue on the basis of enforcement actions filed against third parties. See

Saugatuck Dunes Coastal Alliance v Saugatuck Twp, 509 Mich 561, 583; 983 NW2d 798 (2022) (explaining that the term "standing" refers to the right of the plaintiff to invoke the power of the trial court to adjudicate his or her claimed injury).

Additionally, as currently pled, the complaint does not state that any taking has occurred in relation to plaintiff's property following the 2022 Lawsuit. Plaintiff does not allege that the DNR physically took his property or diminished the value of his property through its enforcement efforts. Plaintiff asserts that the outcome of the Ingham Circuit Court action was favorable to his position because the court ruled that the Hogan Hogs in question were not an invasive species. Thus, there was no direct harm to plaintiff's property arising from the enforcement actions outlined in the complaint. To the extent that plaintiff is relying solely on anticipated future enforcement efforts on the part of the DNR, those claims would be unripe. See *Citizens Protecting Michigan's Constitution v Secretary of State*, 280 Mich App 273, 282; 761 NW2d 210 (2008) ("A claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or may not occur at all."), aff'd in part and lv den in part 482 Mich 960 (2008).

It is not clear to the Court whether plaintiff attempts to raise a regulatory-taking claim. Plaintiff's complaint does not allege that property has become overburdened by regulations. Nor does plaintiff allege he has been deprived of *all* economically beneficial uses of his property, or that his claim falls within the factors outlined in *Penn Central Transp Co v New York City*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978). Because plaintiff does not allege a regulatory-taking claim, the Court will not address the merits of such a claim at this time.

Therefore, as currently pled, the complaint does not allege a valid inverse-condemnation claim. Plaintiff's § 1983 claim is premised solely on the inverse-condemnation claim, and

plaintiff's "interests of justice" claim does not state a distinct claim for relief. Accordingly, the Court GRANTS summary disposition on the claims as they relate to the events occurring following the filing of the 2022 Lawsuit, but dismissal of these claims is without prejudice.

Additionally, the Court GRANTS plaintiff leave to amend the complaint, should he choose to, within 28 days of the date of this opinion and order. Finally, plaintiff personally signed his complaint, but his signature is not verified. Therefore, any amended complaint plaintiff may choose to file within the 28-day period shall be properly verified as required under MCL 600.6434(2).

IT IS ORDERED:

1. Plaintiff's claims against defendant Eichinger were automatically DISMISSED under MCR 2.102(E).

2. The DNR Defendants' motion for summary disposition is GRANTED as to any claims that predate the filing of the May 5, 2022 complaint in Court of Claims Case No. 22-000061-MM, and these claims are DISMISSED WITH PREJUDICE.

3. The DNR Defendants' motion for summary disposition is GRANTED as to any claims relating to events following the filing of the May 5, 2022 complaint in Court of Claims Case No. 22-000061-MM. Those claims are DISMISSED WITHOUT PREJUDICE.

4. The Court GRANTS plaintiff leave to file a properly verified amended complaint consistent with this opinion and order and limited to the events following the filing of the May 5, 2022 complaint in Court of Claims Case No. 22-000061-MM. Any amended complaint shall be filed within 28 days of the date of this opinion and order.

5. This order does not resolve the last pending claim or close the case at this time. This order will become a final resolution of all issues in this case on the 28th day after its entry unless plaintiff files an amended complaint. No extensions will be granted.

Date: April 10th, 2026

James Robert Redford
Judge, Court of Claims