IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Brodrick Jamar Jenkins,	)	
	)	
Plaintiff,	)	Case No. 3:19-cv-188
	)	
vs.	)	**ORDER**
	)	
United States of America,	)	
	)	
Defendant.	)	

Plaintiff Brodrick Jamar Jenkins seeks to recover compensation for property seized and allegedly improperly sold without proper notice. Jenkins, an inmate at a federal penitentiary, filed a complaint asserting unconstitutional taking and due process claims against the United States under the Little Tucker Act, 28 U.S.C. § 1346(a), and a motion to appoint counsel. (Doc. 6; Doc. 7). The Little Tucker Act gives district courts jurisdiction over civil actions against the United States, for claims not exceeding $10,000, based on the Constitution, a federal statute or regulation, or any express or implied contract with the United States. 28 U.S.C. § 1346(a)(2).

The court granted Jenkins' motion to appoint counsel, appointed the Federal Public Defender to represent him, and permitted counsel to supplement the complaint. (Doc. 8). Counsel filed a supplement, (Doc. 12), and after initial screening of the complaint and supplement under 28 U.S.C. § 1915A, the court permitted Jenkins to proceed with his claim and ordered the Clerk to issue a summons and serve the United States, (Doc. 16). The United States filed an answer, (Doc. 22), and the court set deadlines for completion of discovery and for filing motions, (Doc. 31; Doc. 35; Doc. 38). The United States now moves to dismiss the complaint.

In his complaint and supplement, Jenkins asserts the government seized two vehicles—a 1987 Oldsmobile Cutlass and a 2001 Chevrolet Tahoe—pursuant to a search warrant, the government failed to inform him when the vehicles were no longer needed as evidence and could be returned to him, and an impound lot later sold the vehicles at an auction. Jenkins contends he is entitled to money damages in an amount less than $10,000. The United States contends the court lacks subject matter jurisdiction because Jenkins does not have standing to bring his claim and because his claim is barred by sovereign immunity. (Doc. 39). The parties have fully briefed the motion.

Background

On April 10, 2013, Jenkins pleaded guilty to a drug conspiracy charge and was subsequently sentenced to 252 months of imprisonment. United States v. Jenkins, No. 3:12-cr-91-1. Jenkins, proceeding pro se, moved for return of property seized in connection with the criminal case, id. at Docs. 888 and 891, and the United States responded that it would return certain property, including the two vehicles, if there were no other claims to the property, id. at Doc. 890. In light of the United States' response, the court found Jenkins' motions moot. Id. at Doc. 892.

Jenkins moved for reconsideration of the court's order, requesting, in part, that he not be held responsible for any vehicle towing or storage fees. Alternatively, in the event the United States was unable to locate his property, he requested monetary compensation. Id. at Doc. 900. The court appointed the Federal Public Defender to represent Jenkins in the criminal case. Id. at 901. After learning the vehicles had been sold by an impound lot, Jenkins filed a settlement proposal captioned as a motion. Id. at Doc. 938. After briefing, the court denied Jenkins' motion, concluding that because Jenkins' claim was, at that time, for an amount in excess of $10,000, the United States

Court of Federal Claims had exclusive jurisdiction. Id. at 947. Thereafter, Jenkins filed this civil action under the Little Tucker Act. (Doc. 6).

In support of his complaint, Jenkins submitted copies of an October 23, 2012 search warrant authorizing the search of the vehicles, inventory receipts listing property seized, and a September 15, 2017 Drug Enforcement Agency (DEA) report of investigation regarding the seized vehicles. That report, prepared by DEA Task Force Officer (TFO) Orie Oksendahl, states law enforcement seized the vehicles at Jenkins' residence in St. Paul, Minnesota, on October 11, 2012, Twin Cities Transport and Recovery then towed the vehicles to its impound lot in Oakdale, Minnesota, law enforcement put "a hold" on the vehicles while it obtained a search warrant for the vehicles, and the search warrant was executed on October 24, 2012. (Doc. 6-1; Doc. 12-1). TFO Oksendahl reported that, at the request of the United States Attorney's Office, she contacted Twin Cities Transport and Recovery on September 15, 2017, to ascertain the status of the vehicles and was informed that pursuant to company policy, the vehicles were sold in May 2014. Id. There is no evidence the vehicles were forfeited to the United States through an administrative proceeding.

Along with its motion to dismiss, the United States submitted an affidavit of Renee Gardas, the owner and manager of Twin Cities Transport and Recovery. (Doc. 41). Gardas stated that on October 21, 2013, the Minnesota Bureau of Criminal Apprehension "released holds" on the vehicles and Twin Cities Transport and Recovery sent letters to Stephanie Buchanan, the registered owner of the vehicles, notifying her that each of the vehicles could be reclaimed upon payment of towing and storage charges. Gardas stated that on February 2, 2014, Twin Cities Transport and Recovery sent Buchanan, via certified mail, a "Final Notice" explaining the vehicles would be sold

if they were not reclaimed. Gardas further stated that no one reclaimed the vehicles so the 2001 Tahoe was sold on May 9, 2014, and the 1987 Cutlass was sold on May 12, 2014. Id. Documents attached to Gardas' affidavit show the letters were mailed to Buchanan in Minneapolis, Minnesota, at an address associated with her as the owner of the vehicles, according to motor vehicle registration queries. (Doc 41-1 to -4).

In response to the motion to dismiss, Jenkins' submitted his own affidavit and that of Buchanan, who is Jenkins' mother. Jenkins stated he purchased the 1987 Cutlass from a private seller for $5,000 at the end of 2011 and transferred title to Buchanan in early 2012. (Doc. 53). He stated he purchased the 2001 Tahoe from a private seller for $6,500 in 2012 and transferred title to Buchanan several months later. He stated, "Despite my mother being the title holder, I retained ownership and exclusive use of both the 1987 Oldsmobile Cutlass and the 2001 Chevrolet Tahoe." Id. He noted that his wallet with his identification, along with other items of his personal property, were seized during the search of the 2001 Tahoe. Id. He further stated he "was never advised of the location of either vehicle until [he] received information from the Federal Public Defenders Office that [his] vehicles had been held by Twin Cities Transport and Recovery and were sold in 2014" and "at no time did [his] mother advise [him] of the location of either vehicle." Id.

Buchanan's affidavit is consistent with Jenkins' affidavit. Buchanan stated she was aware that Jenkins had purchased the vehicles, he asked that the titles be transferred to her and she agreed, and "it was understood between [her] son and [she] that he was the owner of the vehicle[s] and exclusive user of the vehicle[s]." (Doc. 54). She stated she never received notice that either vehicle could be retrieved or that either vehicle would be sold or auctioned. She explained that because she surrendered for

service of a sentence in the District of Minnesota on November 18, 2013, she did not live at the Minneapolis address when the notice letters were mailed and "no other family members or others known to [her] resided at that address after [her] incarceration." Id.

Law and Discussion

Jurisdiction is a threshold question that must be decided at the outset of a case. Green Acres Enters., Inc. v. United States, 418 F.3d 852, 856 (8th Cir. 2005) (citing Osborn v. United States, 918 F.2d 724, 729 (8th Cir. 1990)). When a motion to dismiss challenges the factual basis of a court's jurisdiction, the court may consider affidavits or other documents outside the pleadings without converting the motion to one for summary judgment.[1] Moss v. United States, 895 F.3d 1091, 1097 (8th Cir. 2018). In responding to the motion, the plaintiff bears the burden of establishing subject matter jurisdiction and must prove jurisdictional facts by a preponderance of the evidence. Buckler v. United States, 919 F.3d 1038, 1044 (8th Cir. 2019); Moss, 895 F.3d at 1097.

1. Standing

For a court to have subject matter jurisdiction, the plaintiff must have standing to bring a claim. Standing requires a plaintiff to show an actual or threatened injury, resulting from the challenged conduct of the defendant, that could likely be redressed by a decision favorable to the plaintiff. California v. Texas, Nos. 19-840 & 19-1019, 2021 WL 2459255, at *4 (U.S. June 17, 2021); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). The court next addresses each of the three requirements for standing.

[1] The United States moves to dismiss under Federal Rule of Civil Procedure 12(b)(1). Technically, motions challenging subject matter jurisdiction filed after an answer should be brought under Rules 12(c) and 12(h)(3), but that distinction is purely formal because the standard that applies is the same as that of Rule 12(b)(1). Jahnke v. R.J. Constr., Inc., No. 13-962, 2014 WL 4639831, at *5 (D. Minn. Sept. 16, 2014).

A. Actual Injury

The United States argues Jenkins has not established he suffered any injury because Buchanan, not Jenkins, was the registered owner of the vehicles. (Doc. 40, p. 7). Jenkins contends that though he transferred title to Buchanan, he purchased the vehicles, "functioned as the recognized owner," and "retained exclusive and sole use." (Doc. 51, p. 5). Though title is generally conclusive of vehicle ownership, Jenkins asserts Minnesota law recognizes testimony of the buyer and seller may rebut that presumption. Further, Jenkins notes the seizure of the vehicles was in connection with criminal proceedings against him, not Buchanan, and the United States failed to inform either him or Buchanan of the seizure. Id. at 6.

For purposes of determining standing, an injury is "an invasion of a legally protected interest." Lujan, 504 U.S. at 560. "Ownership interest can be shown by actual possession, control, title, and financial stake" and is defined by state law. United States v. Premises Known as 7725 Unity Ave. N., Brooklyn Park, Minn., 294 F.3d 954, 956 (8th Cir. 2002).

The United States, relying on Jackson v. United States, 526 F.3d 394 (8th Cir. 2008), contends Jenkins cannot show a lawful entitlement to the vehicles. (Doc. 40, p. 10). In Jackson, the plaintiff moved for return of certain property seized at the time of his arrest. The seized property included stereo/video equipment and wheel rims that the plaintiff had installed on a vehicle his girlfriend leased from Ford Motor Company and clothing that was inside the vehicle. A towing company released the clothing to the plaintiff's girlfriend's grandmother and "representative," and Ford repossessed the vehicle upon default on the lease. Before the repossession, the stereo/video equipment was stolen. Though noting "a person from whom property is seized is presumed to have

a right to its return," the court determined the United States proved the plaintiff's girlfriend had a claim of ownership adverse to the plaintiff since the stereo/video equipment was purchased in her name and she filed an insurance claim and recovered for the loss of the equipment, and since the girlfriend's grandmother, acting on behalf of the lessee, signed a receipt for the clothing with the stated purpose on the receipt: "Return to Owner/[grandmother's name]."[2] 526 F.3d at 396-97. The Eighth Circuit remanded for determination of the plaintiff's claim to compensation for the wheel rims.

Unlike the plaintiff's girlfriend in Jackson, Buchanan has not asserted any claim of ownership of the vehicles adverse to Jenkins. Further, the United States overlooks that the Jackson court held the plaintiff had an ownership interest in the wheel rims because he "was using them and possessing them at the time they were seized" and had introduced evidence that he had purchased the rims and had installed them on the vehicle leased to his girlfriend. Thus, Jackson does not support the proposition that Jenkins had no ownership interest in the vehicles.

In City of Bloomington v. One 1991 Honda Accord, the Minnesota Court of Appeals determined an individual had an ownership interest and therefore had standing to contest the forfeiture of a vehicle where the title holder sold the vehicle to the contester's brother, the contester and his brother stipulated that the contester owned the vehicle, but neither the contester nor his brother had transferred title of the vehicle from the title holder. No. C5-01-1322, 2002 WL 47124, at *1 (Minn. Ct. App. Jan 15,

[2] The court concluded the receipt was sufficient to prove that Jackson's girlfriend, acting through her grandmother, asserted an adverse claim of ownership of the clothing. Jackson, 526 F. 3d at 397.

2002) (unpublished). This case supports Jenkins' assertion that testimony may rebut the presumption that title is conclusive of ownership.

Considering the Jenkins and Buchanan affidavits and TFO Oksendahl's report, Jenkins has established by a preponderance of the evidence that he had an ownership interest in both vehicles under One 1991 Honda Accord. Both Jenkins and Buchanan stated Jenkins bought, owned, and controlled the vehicles, despite the titles having been held in Buchanan's name. Further, Jenkins' wallet and identification were inside one of the vehicles, and the vehicles were seized from Jenkins' residence in connection with criminal proceedings against him. Thus, Jenkins has sufficiently shown he suffered an actual injury.

B. Causation

The United States argues that even if Jenkins had a legally protected interest in the vehicles, he cannot establish the United States caused any injury he suffered. (Doc. 40, p. 7). The government states that after the holds were released, Twin Cities Transport and Recovery had physical possession of the vehicles and eventually sold them; thus, it contends Jenkins' claims "lie with Twin Cities Transport and Recovery, not the United States." Id. at 8. Jenkins argues the United States, not Twin Cities Transport and Recovery, seized the vehicles and then "simply handed the vehicles over to Twin Cities Transport and Recovery" without providing notice of the vehicles' location or information about how to retrieve them. (Doc. 51, p. 6). The United States counters that Jenkins cited no authority suggesting it had any duty to inform him that the holds had been released and contends Twin Cities Transport and Recovery complied with notice requirements under Minnesota law. (Doc. 55, p. 5).

To establish causation for the purpose of standing, the plaintiff's injury must be fairly traceable to the challenged conduct of the defendant. Miller v. Redwood Toxicology Lab'y, Inc., 688 F.3d 928, 935 (8th Cir. 2012) (citing Lujan, 504 U.S. at 560-61). "When the injury alleged is the result of actions by some third party, not the defendant, the plaintiff cannot satisfy the causation element of the standing inquiry." Id. (citation omitted). "An injury may be 'fairly traceable' to a defendant for causation purposes even when that defendant's actions are not 'the very last step in the chain of causation.'" Wieland v. U.S. Dep't of Health and Human Servs., 793 F.3d 949, 954 (8th Cir. 2015) (quoting Bennet v. Spear, 520 U.S. 154, 168-69 (1997)). "Proximate causation is not a requirement of Article III standing." Lexmark Int'l Inc. v. Static Control Components, Inc., 572 U.S. 118, 134 n.6 (2014).

Whether the United States had a duty to notify Jenkins of the location of the seized vehicles and how he could reclaim them, and whether there is a causal connection between Jenkins' injury and the United States' conduct for the purpose of standing are separate questions. "Courts 'assume that on the merits the plaintiffs would be successful in their claims' when analyzing standing." Religious Sisters of Mercy v. Azar, Nos. 3:16-cv-386 & 3:16-cv-432, 2021 WL 191009, at *11 (D.N.D. Jan. 19, 2021) (quoting Am. Farm Bureau Fed'n v. U.S. Env't Prot. Ass'n, 836 F.3d 963, 968 (8th Cir. 2016)). It is undisputed that the United States seized Jenkins' vehicles but did not notify Jenkins where the vehicles were held or when the holds on the vehicles were released. Regardless of whether Jenkins would be successful on the merits of his claim, for purposes of determining standing, he has demonstrated, by a preponderance of the evidence, a causal connection between his loss of the vehicles and the United States' conduct.

C. Redressability

The United Stated contends Jenkins cannot establish redressability because there is no connection between the United States' actions and Jenkins' injury. Jenkins asserts compensatory damages would redress his injury.

The United States conflates causation and redressability, which are distinct standing requirements. See, e.g., United States v. Hayes, 515 U.S. 737, 743 (1995). And while compensatory damages would redress Jenkins' injury, the United States also asserts he cannot recover compensatory damages because the United States it is entitled to sovereign immunity. In the absence of a waiver of sovereign immunity, Jenkins' claim for money damages would be barred. See United States v. Mitchell, 445 U.S. 535, 538 (1980). Thus, the court must consider whether sovereign immunity applies to determine whether Jenkins' claim is redressable.

2. Sovereign Immunity

Absent an explicit waiver of sovereign immunity, a complaint against the United States must be dismissed for lack of jurisdiction. United States v. Testan, 424 U.S. 392, 399 (1976). Jenkins contends the Little Tucker Act waives the government's sovereign immunity, permitting him to seek money damages for the United States' alleged violation of his Fifth Amendment property and due process rights. The United States argues the Little Tucker Act does not waive its sovereign immunity because Jenkins has not stated a Fifth Amendment claim that would entitle him to any relief.[3]

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[3] The United States also contends the Little Tucker Act does not waive its sovereign immunity because Jenkins cannot recover money damages under Federal Rule of Criminal Procedure 41(g). (Doc. 40, p. 12). While Jenkins discussed Rule 41(g) in the supplement to his complaint, he acknowledged that Rule 41(g) only allows a court to order the return of property. He further explained that because the United States no

As stated above, the Little Tucker Act gives district courts jurisdiction over civil actions against the United States, for claims not exceeding $10,000, based on the Constitution, a federal statute or regulation, or any express or implied contract with the United States. 28 U.S.C. § 1346(a)(2). The Little Tucker Act does not create any substantive rights but is a jurisdictional provision that waives the United States' sovereign immunity for claims premised on those other sources of law. United States v. Bormes, 568 U.S. 6, 16-17 (2012). "If a claim falls within the terms of the [Little] Tucker Act, the United States has presumptively consented to suit." United States v. Mitchell, 463 U.S. 206, 216 (1983).

Jenkins bases his claim on the Fifth Amendment to the United States Constitution. Claims for money damages against the United States premised on the Constitution are cognizable under the Little Tucker Act if the substantive law the plaintiff relies on is money-mandating—meaning the substantive law "can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." Id. (quoting United States v. Testan, 424 U.S. 392, 400 (1976)). If a plaintiff identifies a money-mandating source of law and "makes a nonfrivolous assertion that [the plaintiff] is within the class of plaintiffs entitled to recover under the money-mandating source," the court has jurisdiction. Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin., 525 F.3d 1299, 1307 (Fed. Cir. 2008). That is true "even if those claims are frivolous on the merits." Id. at 1304-05. "[T]he merits of the claim [are] not pertinent to the jurisdictional inquiry." Id. (citing United States v. White Mountain Apache Tribe, 537 U.S. 465, 476 n.4 (2003)). The court is not to consider facts specific

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longer possessed his vehicles, he brought the instant action for money damages under the Little Tucker Act rather than proceeding under Rule 41(g). (Doc. 12, pp. 4-5).

to the plaintiff's claims to determine whether it has jurisdiction. Id. at 1308. Only after the court concludes it has jurisdiction does it consider whether plaintiff's factual allegations state a claim within the parameters of the substantive law. Id. If a plaintiff fails to demonstrate entitlement to relief under the substantive law, the complaint should be dismissed under Rule 12(b)(6) rather than under Rule 12(b)(1). Id. at 1307-08.

A. Money-Mandating Source of Law

"It is undisputed that the Takings Clause of the Fifth Amendment is a money mandating source for purposes of [Little] Tucker Act jurisdiction." Jan's Helicopter, 525 F.3d at 1309. Plaintiffs alleging a government taking of their property "are within the class of plaintiffs entitled to recover if a takings claim is established," and the court has jurisdiction over those claims. Id. Since Jenkins has alleged a government takings claim under a money-mandating source, this court has jurisdiction over that claim regardless of whether Jenkins will ultimately succeed on the merits of that claim. Thus, the United States has waived its sovereign immunity as to that claim.

B. Merits of Fifth Amendment Claim

The United States contends Jenkins cannot maintain a takings claim under the Fifth Amendment, asserting (1) the government did not take his vehicles for public use, (2) Jenkins does not have a valid property interest in the vehicles, and (3) a third-party impound lot sold the vehicles.[4] (Doc. 40, pp. 12-13). As discussed above, in deciding a

[4] The government also contends, to the extent Jenkins makes a claim for wrongful detention of the vehicles, Kosak v. United States, 465 U.S. 848 (1984), bars that claim. Because Jenkins has not made a claim for wrongful detention of the vehicles, the court need not address the argument.

motion under Rule 12(b)(1), the merits of Jenkins' claim are not relevant to whether this court has jurisdiction.

The government argues Steward v. United States, 80 Fed. Cl. 540 (Fed. Cl. 2008), is squarely on point with this case. (Doc. 55, p. 7). In Steward, the Court of Federal Claims dismissed the pro se plaintiffs' takings claims for lack of jurisdiction and for failure to state a claim because property seized from the plaintiffs pursuant to lawful criminal proceedings was not taken for public use. 80 Fed. Cl. at 543. In determining the court lacked jurisdiction, Steward relied on Moden v. United States, 404 F.3d 1335 (Fed. Cir. 2005), and stated that, under Moden, the court has jurisdiction only over "non-frivolous takings claims against the United States." 80 Fed. Cl. at 543. However, the majority in Jan's Helicopter, decided by the Federal Circuit Court of Appeals shortly after Steward, declined to read Moden in the same way as the Steward court and the dissent in Jan's Helicopter. The Jan's Helicopter majority explained:

> The dissent urges that our decision here, and presumably our decisions in In re United States[, 463 F.3d 1328 (Fed. Cir. 2006)] and Greenlee [Cnty., Ariz. v. United States, 487 F.3d 871 (Fed. Cir. 2007)] are inconsistent with Moden v. United States, 404 F.3d 1335 (Fed. Cir. 2005). In light of our en banc decision in Fisher [v. United States, 402 F.3d 1167 (Fed. Cir. 2005)], we decline to read Moden, as the dissent does, as determining that a plaintiff's claim as a whole must be nonfrivolous to establish Tucker Act jurisdiction. Consistent with Fisher, we read Moden as holding that the plaintiff must make a nonfrivolous allegation that it is within the class of plaintiffs entitled to recover under the money-mandating source of law.
>
> In any event, the court's statements, quoted at page 4 of the dissent, are dicta, and we are not bound by them, because the court did not consider the possibility that under Fisher a nonfrivolous allegation on the merits of the claim was not required. . . . Indeed, the opinion's failure to consider this issue is not surprising, because the government did not raise it, but simply argued that the plaintiffs' inability to make out a successful inverse condemnation claim on the merits deprived the Court of Federal Claims of jurisdiction.

Jan's Helicopter, 525 F.3d at 1308 n.9. After the Court of Federal Claims decided Steward, the Federal Circuit Court of Appeals made clear in Jan's Helicopter that a court should not determine the merits of a claim when deciding if it has jurisdiction under the Little Tucker Act. Thus, whether Jenkins has stated a meritorious claim under the Fifth Amendment has no bearing on this court's jurisdiction.

C. Due Process

The United States also asserts Jenkins cannot maintain a due process claim under the Fifth Amendment, contending the United States had no duty to notify Jenkins about the vehicles because (1) Jenkins was not the registered owner of the vehicles, (2) the United States did not hold the vehicles, (3) the United States did not sell the vehicles, and (4) the impound lot sent notice letters to Buchanan. (Doc. 40, p. 15). Again, the inquiry into whether the court has jurisdiction over Jenkins' claims does not include a review of the merits of those claims, including whether the United States owed any duty to Jenkins.

As discussed above, the primary jurisdictional issue is whether the Fifth Amendment's Due Process Clause is money-mandating. It is well settled that it is not. May v. United States, 104 Fed. Cl. 278, 283-84 (Fed. Cl. 2012)[5] (citing LeBlanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir. 1995)) (holding, in part, the Due Process Clause of the Fifth Amendment does not provide "a sufficient basis for jurisdiction [under the

[5] While the May court dismissed the plaintiff's Fifth Amendment due process claim for lack of jurisdiction, it dismissed the plaintiff's Fifth Amendment takings claim for failure to state a claim, rather than for lack of jurisdiction, because plaintiff had not alleged a governmental taking of a cognizable property interest. May, 104 Fed. Cl. at 287.

Tucker Act] because [it does] not mandate payment of money by the government").[6] Thus, the United States has not waived its sovereign immunity as to Jenkins' due process claim, that claim is therefore not redressable, and Jenkins lacks standing to assert that claim. In short, the court lacks jurisdiction over Jenkins's Fifth Amendment due process claim.

Conclusion

The United States moves to dismiss Jenkins' complaint for lack of jurisdiction. As discussed above, under the Little Tucker Act, the court has jurisdiction over Jenkins' Fifth Amendment takings claim but does not have jurisdiction over his Fifth Amendment due process claim. The United States' motion, (Doc. 39), is therefore **GRANTED IN PART** and **DENIED IN PART**.

IT IS SO ORDERED.

Dated this 22nd day of June, 2021.

/s/ Alice R. Senechal
Alice R. Senechal
United States Magistrate Judge

[6] The Tucker Act and the Little Tucker Act are companion statutes, and their jurisdictional provisions are similarly interpreted. United States v. Bormes, 568 U.S. 6, 10 (2012).

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Defendant.	)	

Plaintiff Brodrick Jamar Jenkins filed a complaint asserting unconstitutional takings and due process claims against the United States under the Little Tucker Act, 28 U.S.C. § 1346(a).[1] Jenkins seeks to recover compensation for two vehicles seized and allegedly sold without proper notice. Because the vehicles were seized pursuant to governmental police power rather than for public use, Jenkins' complaint will be dismissed.

Background

Jenkins asserts the government seized two vehicles—a 1987 Oldsmobile Cutlass and a 2001 Chevrolet Tahoe—pursuant to a search warrant, the government failed to inform him when the vehicles were no longer needed as evidence and could be returned to him, and an impound lot later sold the vehicles at an auction. Jenkins contends he is entitled to money damages in an amount less than $10,000. Previously, the United States moved to dismiss, asserting the court lacked subject matter jurisdiction because

[1] The Little Tucker Act gives district courts jurisdiction over civil actions against the United States for claims not exceeding $10,000 based on the Constitution, a federal statute or regulation, or any express or implied contract with the United States. 28 U.S.C. § 1346(a)(2).

Jenkins did not have standing to bring his claims and because his claims are barred by sovereign immunity. An order of June 22, 2021 denied the motion as to Jenkins' Fifth Amendment takings claim but granted the motion as to Jenkins' Fifth Amendment due process claim. (Doc. 60).

The United States now moves for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) or alternatively for summary judgment pursuant to Federal Rule of Civil Procedure 56 on Jenkins' remaining claim. The United States contends Jenkins cannot recover under the Fifth Amendment takings clause because the vehicles were seized pursuant to the government's police power rather than taken for public use. (Doc. 67). Jenkins does not contest the original seizure of the vehicles was proper under the government's police power. Rather, he argues the seizure amounted to a taking when the government failed to return the vehicles and allowed them to be sold at auction. (Doc. 71, p. 7).

The June 22, 2021 order described relevant factual background:

> On April 10, 2013, Jenkins pleaded guilty to a drug conspiracy charge and was subsequently sentenced to 252 months of imprisonment. Jenkins, proceeding pro se, moved for return of property seized in connection with the criminal case, and the United States responded that it would return certain property, including the two vehicles, if there were no other claims to the property. In light of the United States' response, the court found Jenkins' motions moot.
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> Jenkins moved for reconsideration of the court's order, requesting, in part, that he not be held responsible for any vehicle towing or storage fees. Alternatively, in the event the United States was unable to locate his property, he requested monetary compensation. The court appointed the Federal Public Defender to represent Jenkins in the criminal case. After learning the vehicles had been sold by an impound lot, Jenkins filed a settlement proposal captioned as a motion. After briefing, the court denied Jenkins' motion, concluding that because Jenkins' claim was, at that time, for an amount in excess of $10,000, the United States Court of Federal

Claims had exclusive jurisdiction. Thereafter, Jenkins filed this civil action under the Little Tucker Act.

In support of his complaint, Jenkins submitted copies of an October 23, 2012 search warrant authorizing the search of the vehicles, inventory receipts listing property seized, and a September 15, 2017 Drug Enforcement Agency (DEA) report of investigation regarding the seized vehicles. That report, prepared by DEA Task Force Officer (TFO) Orie Oksendahl, states law enforcement seized the vehicles at Jenkins' residence in St. Paul, Minnesota, on October 11, 2012, Twin Cities Transport and Recovery then towed the vehicles to its impound lot in Oakdale, Minnesota, law enforcement put "a hold" on the vehicles while it obtained a search warrant for the vehicles, and the search warrant was executed on October 24, 2012. TFO Oksendahl reported that, at the request of the United States Attorney's Office, she contacted Twin Cities Transport and Recovery on September 15, 2017, to ascertain the status of the vehicles and was informed that pursuant to company policy, the vehicles were sold in May 2014. There is no evidence the vehicles were forfeited to the United States through an administrative proceeding.

Along with its motion to dismiss, the United States submitted an affidavit of Renee Gardas, the owner and manager of Twin Cities Transport and Recovery. Gardas stated that on October 21, 2013, the Minnesota Bureau of Criminal Apprehension "released holds" on the vehicles and Twin Cities Transport and Recovery sent letters to Stephanie Buchanan, the registered owner of the vehicles, notifying her that each of the vehicles could be reclaimed upon payment of towing and storage charges. Gardas stated that on February 2, 2014, Twin Cities Transport and Recovery sent Buchanan, via certified mail, a "Final Notice" explaining the vehicles would be sold if they were not reclaimed. Gardas further stated that no one reclaimed the vehicles so the 2001 Tahoe was sold on May 9, 2014, and the 1987 Cutlass was sold on May 12, 2014. Documents attached to Gardas' affidavit show the letters were mailed to Buchanan in Minneapolis, Minnesota, at an address associated with her as the owner of the vehicles, according to motor vehicle registration queries.

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> he "was never advised of the location of either vehicle until [he] received information from the Federal Public Defenders Office that [his] vehicles had been held by Twin Cities Transport and Recovery and were sold in 2014" and "at no time did [his] mother advise [him] of the location of either vehicle."
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> Buchanan's affidavit is consistent with Jenkins' affidavit. Buchanan stated she was aware that Jenkins had purchased the vehicles, he asked that the titles be transferred to her and she agreed, and "it was understood between [her] son and [she] that he was the owner of the vehicle[s] and exclusive user of the vehicle[s]." She stated she never received notice that either vehicle could be retrieved or that either vehicle would be sold or auctioned. She explained that because she surrendered for service of a sentence in the District of Minnesota on November 18, 2013, she did not live at the Minneapolis address when the notice letters were mailed and "no other family members or others known to [her] resided at that address after [her] incarceration."

(Doc. 60, pp. 2-5) (internal citations omitted).

Law and Discussion

The United States brings its motion under Federal Rule of Civil Procedure 12(c), which allows for entry of judgment on the pleadings "[a]fter the pleadings are closed—but early enough not to delay trial." Rule 12(c) motions are governed by the same standard as are motions brought under Rule 12(b)(6). Ginsburg v. InBev NV/SA, 623 F.3d 1229, 1233 n.3 (8th Cir 2010). Under that standard, the court views all facts pleaded by the nonmoving party as true and grants all reasonable inferences in favor of that party. In addition to the pleadings themselves, the court may consider exhibits to the pleadings and matters embraced by the pleadings. The court will grant a motion under Rule 12(c) only if there are no disputed material facts and the moving party is entitled to judgment as a matter of law. Porous Media Corp. v. Pall Corp., 186 F.3d 1077, 1079 (8th Cir. 1999); Ashokkumar v. Elbaum, 932 F. Supp. 2d 996, 1006 (D. Neb. 2013).

If the court considers materials other than those allowed under Rule 12(c), the motion is to be treated as one for summary judgment. If treated as a motion for summary judgment, the court may review additional materials on file to determine whether a genuine issue of material fact is present. Carmichael v. Mercedes-Benz USA, LLC, No. 4:09-CV-00346-TJS, 2011 WL 13228238, at *2 (S.D. Iowa Jan. 20, 2011).

When deciding the earlier Rule 12 motion challenging the factual basis of subject matter jurisdiction, consideration of affidavits was appropriate under Moss v. United States, 895 F.3d 1091, 1097 (8th Cir. 2018). In deciding the current motion, the court has considered the same affidavits and therefore issues this decision pursuant to Rule 56.

Jenkins argues the United States' motion is merely a request for reconsideration of the June 22, 2021 order denying the motion to dismiss. (Doc. 71, p. 3). In reply, the United States asserts it is now advancing an argument on Jenkins' Fifth Amendment takings claim, which was not addressed in the earlier order. (Doc. 72, p. 4). The court agrees with the position of the United States. The earlier motion to dismiss was based on standing and sovereign immunity. In analyzing whether sovereign immunity barred the court's subject matter jurisdiction, the court declined to consider the merits of Jenkins' Fifth Amendment takings claim, though the court concluded it did not have jurisdiction over Jenkins' Fifth Amendment due process claim. (Doc. 60, pp. 14-15).

The Fifth Amendment to the Constitution of the United States prohibits governmental takings of private property for public use unless the property owner receives just compensation. But if the property is not taken for "public use," the property owner does not have a right to receive just compensation. Bennis v. Michigan, 516 U.S.

442, 452 (1996). If the government takes private property under the government's police power, the property is not taken for "public use" within the meaning of the Fifth Amendment. AmeriSource Corp. v. United States, 525 F.3d 1149, 1153 (Fed. Cir. 2008); United States v. Romero, No. 1:12-CR224, 2013 WL 625338, at *5 (D.N.D. Feb. 20, 2013).

Though acknowledging seizure of the two vehicles was within the scope of the government's police power, Jenkins argues a compensable taking "occurred when the [United States] never returned the property to Jenkins, which was not subject to forfeiture and was released from custody and later sold at auction." (Doc. 71, p. 5). Citing a state statute, the United States replies that when the government's holds were released, the impound lot—not the government—had the duty to notify the vehicle owner. The cited statute provides, "When an impounded vehicle is taken into custody, the unit of government or impound lot operator taking it into custody shall give written notice of the taking within five days, excluding Saturdays, Sundays, and legal holidays, to the registered vehicle owner and any lienholders." Minn. Stat. § 168B.06. That statute goes on to specify required content of the notice and states notice must be "sent by mail to the registered owner, if any, of an impounded vehicle and to all readily identifiable lienholders of record." The United States argues section 168B.06 did not require governmental notification to the registered owner since the impound lot operator had given notice and the statute required notification only to the vehicles' registered owner and any lienholders. (Doc. 72, p. 3).

Additionally, the United States contends Jenkins is actually asserting a procedural due process claim even though his procedural due process claims were

dismissed in the court's earlier order. In the view of the United States, the taking ended when holds on the vehicles were released. At that time, the vehicles were no longer under governmental control, and the impound lot operator sent immediate notice to the registered owner. Id. at 5-6.

Jenkins cites a case involving investigation of cruelty to animals. A representative of the Pennsylvania Society for the Prevention of Cruelty to Animals (SCPA), who had no court order to do so, took possession of "Lilly," the plaintiff's thoroughbred mare. A few days later and pursuant to a search warrant, the SPCA representative seized several other animals from the plaintiff. The animals that had been seized pursuant to the search warrant were later returned to the plaintiff. Included in the plaintiffs' multiple claims was a claimed violation of the Fifth Amendment takings clause. On that claim, the court concluded there had been no taking of the property that was seized pursuant to a valid search warrant, held during a criminal investigation, and later returned. But because the allegedly unreturned mare, Lilly, had not been seized pursuant to a search warrant, the court allowed the Fifth Amendment takings claim to proceed as to Lilly. Ritzel v. Penn. Soc. for the Prevention of Cruelty to Animals (SPCA), No. 04-2757, 2005 WL 331518 (E.D. Pa. Feb. 9, 2005). Ritzel is easily distinguishable from this case because Lilly had not been seized pursuant to a valid search warrant.

The United States cites several cases holding a compensable taking does not occur when property is seized pursuant to a valid search warrant and returned after conclusion of a criminal investigation. In Bennis v. Michigan, the Supreme Court stated, "The government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the

power of eminent domain." 516 U.S. 442, 452 (1996). Amerisource Corp. addressed a Fifth Amendment takings claim brought by a company whose pharmaceuticals were seized pursuant to a search warrant involving a criminal investigation of third parties. 525 F.3d at 1150. The plaintiff was not accused of any wrongful act. When the drugs were eventually returned, they were worthless because their expiration dates had passed. Though noting seeming unfairness, because the drugs had been seized pursuant to governmental police power, the court held there was no Fifth Amendment taking. The court stated, "As expansive as the police power may be, it is not without limit. The limits, however, are largely imposed by the Due Process Clause." Id. at 1154.

In Brisbane v. Milano, a vehicle was seized during a criminal investigation but later returned, although damaged. The plaintiff argued he was entitled to just compensation for depreciation in value of the vehicle. The court held the vehicle was never "taken" within the meaning of the Fifth Amendment and the decrease in the vehicle's value while in police custody did not constitute a taking within the meaning of the Fifth Amendment. No. 3:08-cv-1328, 2010 WL 3000975 (D. Conn. July 27, 2010).

Jenkins has cited no case recognizing a Fifth Amendment taking under similar facts, and this court's research has identified none. Jenkins' claim, in essence, is that the United States did not follow proper procedure in releasing the vehicles from governmental custody and allowing them to be sold. Though seemingly inequitable, the law does not allow a remedy against the United States for Jenkins' loss of the vehicles.

Conclusion

The Fifth Amendment takings clause does not encompass a claim for just compensation for property seized under governmental police power under the facts of

this case. There is no genuine dispute as to any material fact and the United States is entitled to judgment as a matter of law. It is **ORDERED** that the United States' alternative motion for summary judgment, (Doc. 66), is **GRANTED** and Jenkins' complaint, (Doc. 6), is **DISMISSED**. Because any appeal would not be frivolous, it is further **ORDERED** that any appeal may be taken in forma pauperis.

JUDGMENT SHALL BE ENTERED ACCORDINGLY.

Dated this 2nd day of November, 2021.

/s/ Alice R. Senechal
Alice R. Senechal
United States Magistrate Judge