E-FILED
Monday, 12 December, 2016 11:29:09 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

KENNETH POLK,	)	
	)	
Plaintiff,	)	
v.	)	**Case No. 15-CV-2160**
	)	
JULIE BOUDREAU,	)	
	)	
Defendant.	)	

ORDER

Plaintiff, Kenneth Polk, filed a Complaint in the Circuit Court of Kankakee County pursuant to 42 U.S.C. § 1983, alleging that Defendant Julie Boudreau, Director of the Kankakee County Animal Control Department (KCAD), unreasonably seized eleven horses from his property without a warrant in violation of the United States Constitution's Fourth Amendment and without a pre-deprivation hearing, in violation of the Fourteenth Amendment. Defendant removed the case to federal court on July 31, 2015. Defendant filed this Motion for Summary Judgment (#19) on October 13, 2016. Plaintiff filed his Response (#27) on November 7, 2016, followed by Defendant's Reply (#30) on November 15, 2016. For the following reasons, Defendant's Motion for Summary Judgment (#19) is GRANTED in full.

BACKGROUND[1]

---

[1]The background section is taken from Defendant's Undisputed Statement of Material Facts contained in her Motion for Summary Judgment (#19) and from Plaintiff's Additional Undisputed Facts listed in his Response (#27). Plaintiff's Response also included an attempt to dispute many of Defendant's material facts, but Plaintiff did not support his claims of dispute with any citation to evidentiary

Plaintiff was and is a resident of the city of Chicago. He claims that several horses were unlawfully seized from his property in violation of the Fourth Amendment, and were seized without the opportunity for a pre-seizure hearing in violation of the Due Process Clause of the Fourteenth Amendment. Defendant has served as director of KCAD for the past sixteen years. Plaintiff alleges that Defendant "caused" KCAD to seize the horses. Plaintiff alleges that one horse was seized on July 10, 2013, nine horses were seized on January 8, 2014, and that a final horse was seized on January 13, 2014.

Plaintiff, the Pembroke Township Premises, and the Horses

The horses at issue were kept on the premises located at 15242B East 4500 Road South, in Pembroke Township, Kankakee County, Illinois. The Pembroke Township Premises is divided into two parcels, identified by tax PIN ID numbers "10-19-26-300-022" and "10-19-26-300-009." The larger of the two parcels is undeveloped pasture, and the other parcel is partially developed. Plaintiff does not own the parcels located south of County Highway 2, in-between Parcel No. 10-19-26-300-022 and the highway. These parcels are identified by tax PIN ID numbers 10-19-26-300-018 and 10-19-26-300-023,

---

documentation in the record, in violation of Central District of Illinois Local Rule 7.1(D)(2)(b). The court further agrees with Defendant that many of Plaintiff's listed reasons for dispute are a "hodge-podge of legal conclusions, argument, or rank speculation." The court is not required to "wade through improper denials and legal argument in search of a genuinely disputed fact[,]" and a "mere disagreement with the movant's asserted facts is inadequate if made without reference to specific supporting material." *Smith v. Lamz*, 321 F.3d 680, 683 (7th Cir. 2003). Defendant's Undisputed Statement of Material Facts will be admitted in its entirety.

respectively.

Pembroke Township is located in a rural portion of the southeastern-most part of Kankakee County. At all relevant times, the Pembroke Township Premises is zoned pursuant to the Kankakee County Zoning Ordinance, and the northern portion is classified as C2-General-Commercial. The southern portion of the Pembroke Township Premises is classified as R1-Residential. The keeping of horses is not listed as a permitted or special use for C2 or R1 districts in Kankakee County. The keeping of horses is an accepted accessory use for any zoning classification, so long as it meets the acreage, width, and setback requirements. The keeping of horses on the Pembroke Township Premises is not permitted based on the applicable zoning ordinances. At no time has Plaintiff ever sought a special or accessory use permit for the Pembroke Township Premises.

At all relevant times, no one resided on the Pembroke Township Premises. Plaintiff has never been the recorded owner of the Premises, nor has he ever been in possession of a deed to the Premises. At all relevant times, the recorded property owner of the Premises was a person named Brenda Bobo. Plaintiff signed a written agreement with Bobo and a man named James Murray related to the Pembroke Township Premises on November 10, 2010. At his first deposition (March 16, 2016), Plaintiff stated he had not completed payments on the Premises. Plaintiff, as of his later deposition (April 8, 2016), stated he was "through" paying Bobo. Plaintiff does not know if the agreement or the Pembroke Township Premises is subject to any mortgage,

note, or collateral. He has not insured the Premises, does not collect rent on it, and does not receive the tax bill for it. Instead, he redeems the taxes after they become delinquent.

Plaintiff arranged for two homeless people, "Mike and Sara," to live on the Pembroke Township Premises in order to help take care of the horses between January and April 2013. A friend of Plaintiff's, Dave Clayton, who does not reside on the premises, and is not Plaintiff's employee, has unfettered access to the Pembroke Township Premises to take care of the horses. Plaintiff is not familiar with Kankakee, does not know the property address of the Pembroke Township Premises, does not know if the Premises is zoned, and has never sought a variation, accessory, or special use for the Premises. Plaintiff does not know the neighbors to north, east, or west of the Premises, but does know the property owner of the northernmost parcel, abutting County Highway 2, as "Red Boy." Plaintiff visits the Premises at least once per week, with his visits varying depending on his schedule.

The horses that are the subject of Plaintiff's suit were on the Pembroke Township Premises when he entered into the agreement with Bobo and Murray. He had a "side deal" with Bobo and Murray to take the horses and claims they "came with the land." However, Plaintiff has no records or paperwork related to his purchase of the horses or for his care or feeding of the horses. Plaintiff intended the Premises to be a "rescue ranch" for horses, but did not have a license and had not achieved any of the goals in his business plan developed in 2011. Plaintiff could not recall a time where he had

repaired the perimeter fence. The horses could be viewed in the pasture from off the Premises.

Plaintiff's 2010 Chapter 13 Bankruptcy

Plaintiff filed for Chapter 13 bankruptcy protection on December 23, 2010. Plaintiff twice amended his property schedules, once on March 4, 2011, and once on March 7, 2011. Plaintiff's Chapter 13 plan was confirmed on March 10, 2011. Plaintiff moved to voluntarily dismiss his case on September 21, 2012, and the court dismissed his bankruptcy petition on September 27, 2012. Plaintiff's bankruptcy was closed on April 22, 2013. Plaintiff never disclosed the Pembroke Township Premises, the agreement related to the Premises, or the ownership of any horses during his bankruptcy proceeding. He omitted this information from his Chapter 13 Bankruptcy on the advice of his then-attorney. He considers the horses to be assets, and believes the horses to be worth $20,000 ($1.5 million in emotional value).

The April 2013 Fire, Investigation, and Related Criminal Proceedings

On or about April 28, 2013, a fire broke out on the Pembroke Township Premises, consuming a barn and a mobile home. Fire rescue personnel were dispatched, and the fire department notified KCAD that there were multiple horses on the premises, and that some had been burnt in the barn fire. KCAD Officer Brian Taylor went to the property on April 29, 2013, to investigate the condition of the horses. Taylor observed two horses in enclosed pens, one horse enclosed next to a concrete structure, and several horses in the pasture. The enclosures had no gates, and were instead secured by

fastened plywood with nails. Two of the enclosed horses appeared to be burned and there was no evidence of available food or water for the horses. Taylor reported his observations to Defendant. On April 30, 2013, Taylor and Defendant returned to the Premises, finding the horses in the same condition as the previous day. The three enclosed horses were impounded based upon the lack of adequate food, shelter, and water.

On May 14, 2013, Plaintiff was charged with violating owner's duties in violation of 510 Ill.Comp.Stat. 70/3 (West 2012). An amended charge was filed on March 20, 2014. Plaintiff was charged with three counts of animal cruelty and nine counts of violating owner's duties for failure to provide adequate food, water, and shelter for the horses. Plaintiff filed a motion to suppress based on an alleged violation of his Fourth Amendment rights and the seizure of the three horses, but the court denied his motion. On March 11, 2016, Plaintiff was found guilty by a jury of six counts of animal neglect in violation of an owner's duties. Plaintiff's post-trial motion was denied, and Plaintiff was sentenced to one year of probation on three merged counts of violating owner's duties, and was prohibited from having horses on the Pembroke Township Premises for six months from the sentencing date.

The July 10, 2013 Seizure

On July 10, 2013, Officer Taylor investigated a report of a horse running loose near 4500 S and 15000 E, Pembroke Township, in Kankakee County, Illinois. Near the reported area, on County Highway 2, Taylor observed an Appaloosa mare on the south

side of County Highway 2, in the northwest entryway to the driveway leading to the property to the north of the Pembroke Township Premises. Taylor photographed the horse and a neighbor identified the horse to him as originating from the Pembroke Township Premises. The horse was not enclosed by a fence, pen, or stable. The horse was not restrained by any halters, ropes, or harnesses. It was also not constrained in any manner. It was not on the Pembroke Township Premises. Based on the horse's location, and Taylor's prior experience on the Premises, he knew the horse was off the property. He knew the horse was associated with the Premises. He called KCAD to arrange transportation for the horse, and impounded the horse for running at large in violation of a Kankakee County ordinance and Illinois state law prohibition on domestic animals running at large. He had the statutory authority to impound the animal for running at large under the ordinance, and state law, and chose to do so.

Taylor reported back to Defendant at KCAD that a horse was being impounded for running at large, and Defendant arranged transportation and shelter for the horse. Taylor left a notice of impoundment for Plaintiff at the Pembroke Township Premises. The mare seized on July 10, 2013, was examined by veterinarian Dr. Daniel McKay. Dr. McKay found the animal to be underweight, to have multiple skin wounds, a body score of 3 out of 9 on the Henneke Body Scoring Scale, and missing teeth. The mare was discovered to be pregnant after it was seized. The mare's pregnancy interfered with treating it for other conditions. On February 9, 2014, the mare prematurely gave birth to a colt, which died hours after the birth.

The Colt

The Appaloosa mare seized on July 10, 2013, was the mother of another colt that remained on the Pembroke Township Premises. Defendant was let on to the Premises on or about July 12, 2013, by Dave Clayton, at the instruction and with the permission of Plaintiff, to reunite the seized mare with its colt. Plaintiff understood that it was in the best interests of the colt to be with its mother.

The January 8, 2014 Seizures

On January 3, 2014, around 4 pm, KCAD received a report of loose horses near 4500 S and 15000 E, Pembroke Township, Kankakee County. Upon arrival, Officer Taylor observed several horses off the Pembroke Township Premises, but the combination of the late hour, inclement weather, and inability to house any horses at the time made it impossible to secure the horses. The weather on January 3, 2014, was snowy, windy, with temperatures in the low teens, and wind chills as low as -15 degrees Fahrenheit. The next day, Officer Christopher Mailhiot and Kelly Blume, the KCAD shelter manager, investigated the area where the horses had been seen the day before. Officer Mailhiot and Blume did not observe the horses, but observed hoof prints in the snow. The horses had returned to the Pembroke Township Premises.

On January 8, 2014, KCAD Officers Mailhiot and Taylor were dispatched to the area near 4500 S, 15000 E, Pembroke Township, for a report of several horses running at large. The weather that day was bitterly cold and snowy, with temperatures in the teens and wind chills in the single digits. Snow was on the ground and blew in large

drifts. The complaining witnesses indicated that one of the horses may have been struck by a vehicle. Mailhiot and Taylor observed eight horses standing in a field west of the Pembroke Township Premises, just south of County Highway 2. The horses were not on the Premises. The eight horses were not enclosed by a fence, pen, or stable, and were not constrained in any manner nor were they restrained by any halters, ropes, or harnesses. Taylor contacted KCAD and requested transportation be arranged for the horses discovered at 15116 East 4500 Road South.

Taylor and Mailhiot walked east of the horses, across a field, to the Pembroke Township Premises to locate the source of where the animals were escaping containment. The officers came to the western fenced edge of the Pembroke Township Premises and observed a ninth horse, a brown male that appeared to be thin and injured, on the Premises' side of the fence. Taylor observed that the horse had a yellowish abscess on its right rear leg. The injury appeared to be discharging yellow pus. Taylor observed the horse's injury from the other side of the fence. Taylor climbed over the fence, onto the Pembroke Township Premises, to investigate the horse's condition. The officers documented their investigation with photographs. They were unable to locate any accessible food, water, or adequate shelter for the horses on the Premises. The water troughs appeared to be dry, as only snow remained in the troughs, with no ice underneath. Taylor did not notice any changes made to the condition of the Pembroke Township Premises from his prior contact with the property in April. Taylor was aware of the pending neglect charges against Plaintiff. The officers followed the

horse tracks on the Pembroke Township Premises to a gap in the fence large enough for a horse to fit through on the western edge of the fence line.

The perimeter fence surrounding the Premises was in disrepair. The officers elected to seize the horse based upon the animal's injury and body condition, the inclement weather, the lack of available food, water, and shelter for the animal, and the fact that the horse was enclosed behind a dilapidated fence from which at least eight other horses had escaped. The horse was secured with a lead rope, and led off the Pembroke Township Premises through the hole in the fence found by the officers. The injured horse and seven of the eight horses located off the Premises were impounded. One horse escaped from the officers, and could not be corralled. The officers broke off pursuing the horse based upon the loss of daylight and the inclement weather.

The officers had the statutory authority to impound the seven horses found off the Premises for running at large in violation of the County ordinance and Illinois law, and chose to do so. The officers reported back to Defendant that seven horses were being impounded for running at large, and one horse for neglect, health, and safety reasons. Defendant arranged transport and shelter for the animals with a civilian volunteer, Jeffrey Montalta. A notice of impoundment was left for Plaintiff at the front gate of the Pembroke Township Premises, and a notice of apparent violation was left for Plaintiff regarding the seized horses.

The January 13, 2014 Seizure

Taylor and KCAD volunteer Jeffrey Montalta returned to the Pembroke

Township Premises on January 10 and 11, 2014, to secure the remaining horse that had been running at large back on January 8. That horse had returned to the Premises, but Taylor and Montalta were unsuccessful in securing it. Taylor was successful in securing the horse on January 13, 2014, and the horse was impounded for running at large back on January 8. Defendant was unavailable to arrange transportation for the last horse, which Taylor had to arrange with Montalta. Taylor completed another impound notice for the remaining horse.

Plaintiff arrived back at the Pembroke Township Premises on January 13, 2014, prior to the impoundment of the remaining horse. Taylor removed the notices from the fence and hand-delivered them to Plaintiff. Dr. McKay examined the nine horses on January 14 and 21, 2014, finding that seven of the nine had a Henneke body score of three or less and that two were pregnant. Dr. McKay believed the poor condition of the horses seized to be the result of inadequate care.

Post Seizure Proceedings

The horses were housed at the expense of KCAD while the Kankakee County State's Attorney deliberated whether to press charges. Defendant informed Plaintiff on or about May 30, 2014, that the State's Attorney would not bring charges, and that in order to have the horses returned, the Pembroke Township Premises must be properly zoned. Defendant had inquired with the County Planner, who was of the opinion that the Pembroke Township Premises could not lawfully have horses on the Premises. No arrangements were made to return the horses to the Premises.

Pursuant to Section 1.2 of the Illinois Domestic Animals Running at Large statute, on June 9, 2014, Defendant had a notice published in the Kankakee Daily Journal, a publication with county-wide circulation stating that the seized horses would be placed for adoption or euthanized on June 19, 2014. At no time did Plaintiff offer to pay the impoundment fees for return of the horses as indicated on the impound notices given to Plaintiff. The horses were placed with a rescue organization on or about June 19, 2014. On July 21, 2014, Plaintiff sued KCAD and Defendant in an action under the Illinois Administrative Review Act. KCAD moved to dismiss the complaint, and Plaintiff ultimately withdrew the complaint on January 16, 2015, prior to a finding on the timeliness of the complaint.

Defendant's Personal Involvement

Defendant was not present for any of the horse seizures, and did not authorize the impoundment of the horses. Similarly, no such authorization was sought or required. Defendant did arrange for transportation and housing of the seized horses on July 10, 2013, and January 8, 2014.

Procedural History of This Case

Plaintiff filed his Complaint in Kankakee County Circuit Court. The Complaint alleges that Defendant caused the horses to be seized without a warrant in violation of the Fourth Amendment. Plaintiff also alleged that the horses could only be seized without a warrant under the Illinois Humane Care of Animals Act if there was prior authorization by the Illinois Department of Agriculture, which Defendant did not

obtain. The Complaint alleged that to justify warrantless seizure of animals, exigent circumstances had to exist. Because no exigent circumstances existed, Plaintiff alleges that a pre-deprivation hearing was required, which Defendant did not provide, in violation of Plaintiff's Fourteenth Amendment due process rights. Defendant removed the case to this court on July 31, 2015.

ANALYSIS

Defendant makes the following arguments in support of summary judgment: (1) Plaintiff lacks standing to contest the seizure of the horses because (a) the doctrine of judicial estoppel precludes Plaintiff from claiming an interest in the Pembroke Township Premises or the seized horses because Plaintiff concealed those assets in his 2010 bankruptcy; (b) he does not own the Pembroke Township Premises or the horses; (c) he had no reasonable expectation of privacy in the Premises; and (d) the Premises are "open fields" not shielded by the Fourth Amendment; (2) Defendant lacked sufficient personal involvement to be liable under § 1983; (3) the seizure of the horses did not violate the Fourth Amendment; (4) the seizure did not violate the Fourteenth Amendment Due Process Clause; and (5) Defendant is entitled to qualified immunity.

Summary Judgment Standard

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In ruling on a motion for summary judgment, a district court "has one task and one task

only: to decide, based on the evidence of record, whether there is any material dispute of fact that requires a trial." *Waldridge v. Am. Hoechst Corp.*, 24 F.3d 918, 920 (7th Cir. 1994). In making this determination, the court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in favor of that party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Singer v. Raemisch*, 593 F.3d 529, 533 (7th Cir. 2010). However, a court's favor toward the nonmoving party does not extend to drawing inferences which are only supported by speculation or conjecture. See *Singer*, 593 F.3d at 533. In addition, this court "need not accept as true a plaintiff's characterization of the facts or a plaintiff's legal conclusion." *Nuzzi v. St. George Cmty. Consol. Sch. Dist. No. 258*, 688 F. Supp. 2d 815, 835 (C.D. 2010) (emphasis in original).

The party opposing summary judgment may not rely on the allegations contained in the pleadings. *Waldridge*, 24 F.3d at 920. "[I]nstead, the nonmovant must present definite, competent evidence in rebuttal." *Butts v. Aurora Health Care, Inc.*, 387 F.3d 921, 924 (7th Cir. 2004). Summary judgment "is the 'put up or shut up' moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events." *Koszola v. Bd. of Educ. of City of Chicago*, 385 F.3d 1104, 1111 (7th Cir. 2004), quoting *Johnson v. Cambridge Indus., Inc.*, 325 F.3d 892, 901 (7th Cir. 2003). Specifically, to survive summary judgment, the nonmoving party "must make a sufficient showing of evidence for each essential element of its case on which it bears the burden at trial." *Kampmier v. Emeritus Corp.*, 472 F.3d 930, 936 (7th Cir. 2007),

citing *Celotex Corp.*, 477 U.S. at 322-23.

Standing

The Supreme Court has consistently held that Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted, and that the "standing" issue under the Fourth Amendment should be addressed through the substantive Fourth Amendment question of whether the person challenging the search "had a legitimate expectation of privacy in the premises he was using and therefore could claim the protection of the Fourth Amendment with respect to a governmental invasion of those premises, even though his 'interest' in those premises might not have been a recognized property interest at common law." *United States v. Carlisle*, 614 F.3d 750, 756 (7th Cir. 2010), quoting *Rakas v. Illinois*, 439 U.S. 128, 134, 143 (1978). "When considering whether an individual has a legitimate expectation of privacy, a court must consider: (1) whether the individual, by his conduct, has exhibited an actual (subjective) expectation of privacy; and (2) whether the individual's subjective expectation of privacy is one that society is prepared to recognize as reasonable." *Carlisle*, 614 F.3d at 756-57. Likewise, to demonstrate a procedural due process violation of a property right, the plaintiff must establish that there is (1) a cognizable property interest; (2) a deprivation of that property interest; and (3) a denial of due process. *Khan v. Bland*, 630 F.3d 519, 527 (7th Cir. 2010).

A. Judicial Estoppel and Bankruptcy

Defendant argues that Plaintiff does not have standing to contest the seizure of

the horses. Specifically, Defendant argues that, because Plaintiff did not list the Pembroke Township Premises or the horses as assets in his December 2010 bankruptcy petition, judicial estoppel prevents Plaintiff from now claiming that he had a privacy and property interest in the horses and the Premises. "Broadly speaking, judicial estoppel precludes a party from abandoning positions after they have prevailed on them in earlier litigation." *Williams v. Hainje*, 375 Fed.App'x. 625, 627 (7th Cir. 2010). The Seventh Circuit has stated "that a debtor in bankruptcy who denies owning an asset, including a chose in action or other legal claim, cannot realize on that concealed asset after the bankruptcy ends." *Cannon-Stokes v. Potter*, 453 F.3d 446, 448 (7th Cir. 2006). Further, as noted in *Williams*, even if a debtor does not ultimately have his debts discharged (such as the case being dismissed prior to discharge), judicial estoppel can attach so long as the debtor received some benefit from filing for bankruptcy (such as an automatic stay), a plan is approved, and the concealment of the assets is intentional. See *Williams*, 375 Fed.App'x. at 627-28.

Here, Plaintiff claims to have purchased the property in question via written agreement with Bobo and Murray on November 10, 2010. He claims he had a "side deal" with Bobo and Murray to take the horses and that the horses "came with the land." Clearly, Plaintiff should have listed the horses and Premises as assets in the bankruptcy petition he filed a month and a half later on December 23, 2010. In fact, as noted by Defendant, Plaintiff twice amended his property schedules in March 2011, yet never added the horses or Premises. The concealment of the assets was intentional, as

Plaintiff stated that he did so on the advice of his attorney. However, as noted by Defendant, bad legal advice does not relieve the client of the consequences of his own acts, as a lawyer is the client's agent, and the client is bound by the consequences of advice that the client chooses to follow. *Cannon-Stokes*, 453 F.3d at 449. Plaintiff also argues that his claim concerns the horses, not the Pembroke Township Premises. However, the horses were property that supposedly "came with the land," and thus a part of the purchase of the Premises, and therefore should have been listed as an asset in bankruptcy, and, in any event, his Fourth Amendment claim for illegal seizure necessarily also implies entering onto his property, the Premises, without a warrant, to seize a horse. The Premises themselves are inextricably intertwined with the horses.

Plaintiff, by claiming a property and privacy interest in the Premises and horses in this case, yet failing to list them as assets in his bankruptcy petition, is attempting to secure a benefit by taking inconsistent positions in two separate legal actions. By intentionally omitting the Premises and horses from his bankruptcy petition, Plaintiff represented under oath to the bankruptcy court that he did not have an interest in either. He cannot now contradict himself and claim an interest in the horses and Premises. The court agrees with Defendant that, without such an interest in the Premises unlawfully entered or the horses unlawfully seized, Plaintiff has no standing to contest their seizure. *Siebert v. Severino*, 256 F.3d 648, 655 (7th Cir. 2001). Further, if Plaintiff has no interest in the property searched and seized, he has no standing to sue for pre-deprivation due process violations under the Fourteenth Amendment. *Khan*, 630

F.3d at 527. Summary judgment is entered for Defendant.[2]

Whether the Seizure of the Horses Violated the Fourth Amendment

Defendant next argues that, assuming *arguendo* that Plaintiff did have standing to assert Fourth and Fourteenth Amendment claims, the seizure of the horses did not violate the Fourth Amendment. The removal of an animal constitutes a "seizure" for purposes of the Fourth Amendment, and thus such a seizure must meet that Amendment's constitutional requirements, and, generally, the government needs a warrant to seize property. *Siebert*, 256 F.3d at 656. However, the Seventh Circuit has permitted officers to seize animals when a criminal statute authorizes the animal's impoundment if reasonable grounds exist to believe the animal is being kept in violation of state law. See *Mahnke v. Garrigan*, 428 Fed.App'x. 630, 635 (7th Cir. 2011). Further, exigent circumstances may justify a warrantless seizure of animals. *Siebert*, 256 F.3d at 657.

Illinois has codified laws that address the circumstances that faced the KCAD officers in the instant case. First, concerning animals found running at large, the statute states:

> No person or owner of livestock shall allow livestock to run at large

[2]The court would also find that Plaintiff exhibited no expectation of privacy in the Premises, in that he never exercised his right to exclude anyone from the property. He was not a record owner of the Premises at the time of the seizures; there is no evidence in the record, besides his claim of an oral promise, that he owned the horses; nobody lives on the property; he allows Dave Clayton, who does not live there, unfettered access to the Premises to feed and care for the horses; and the fences around the Premises were in disrepair.

> in the State of Illinois. All owners of livestock shall provide the necessary restraints to prevent such livestock from so running at large and shall be liable in civil action for all damages occasioned by such animals running at large; Provided, that no owner or keeper of such animals shall be liable for damages in any civil suit for injury to the person or property of another caused by the running at large thereof, without the knowledge of such owner or keeper, when such owner or keeper can establish that he used reasonable care in restraining such animals from so running at large.
>
> 510 Ill.Comp.Stat. 55/1 (West 2016).

The statute, under Section 55/1.2, allows law enforcement officials, such as animal control officers, to "give notice and cause stray animals which trespass to be impounded." 55 Ill.Comp.Stat. 55/1.2 (West 2016). Next, the Illinois Animal Control Act, states:

> For the purpose of making inspections hereunder, the Administrator, or his or her authorized representative, or any law enforcement officer may enter upon private premises, provided that the entry shall not be made into any building that is a person's residence, to apprehend a straying dog or other animal, a dangerous or vicious dog or other animal, or an animal thought to be infected with rabies. If, after request therefor, the owner of the dog or other animal shall refuse to deliver the dog or other animal to the officer, the owner shall be in violation of this Act.
>
> 510 Ill.Comp.Stat. 5/17 (West 2016).

The Animal Control Act also, under Section 5/24, authorizes counties to prohibit animals from running at large, which Kankakee County does, in County Ordinance § 10-11(b)(1) and (b)(5). The Seventh Circuit has held (in a Wisconsin case) that, where the state law authorized warrantless entry by animal control officers to seize a straying animal, officers did not need a warrant to enter private property to seize an unlicensed

dog that had been observed running at large. *Viilo v. City of Milwaukee*, 552 F.Supp.2d 826, 837 (E.D. Wisc. 2008), citing to *Pfeil v. Rogers*, 757 F.2d 850, 865 (7th Cir. 1985).

A. The July 10, 2013 Seizure

The undisputed facts in this case show that KCAD Officer Taylor was called out to the Premises area for reports of a horse running loose at large. Taylor arrived and, near the area, photographed the horse, which a neighbor identified to Taylor as originating from the Pembroke Township Premises. The horse was off the Premises, not enclosed by a fence, pen, or stable, and was not restrained or constrained in any way. Based on the horse's location, and Taylor's prior experience on the Premises, he knew the horse was associated with the Premises and was off the property. Taylor called KCAD to arrange transportation for the horse, and impounded the horse for running at large in violation of a Kankakee County ordinance and Illinois state law prohibition on domestic animals running at large.

It is clear that, under the Illinois Domestic Animals Running at Large Act and the Kankakee County ordinance, the horse was running at large. 510 Ill.Comp.Stat. 55/1.1 (West 2016) ("Running at large" or "run at large" means livestock that strays from confinement or restraint and from the limits of the owner.); Kankakee Cty. Ord. § 10-11(b)(1) (No owner of a dog, cat or other animal shall cause or permit the dog, cat or other animal to run at large at any time during the year in any unincorporated area of the county. All dogs, cats, and other animals kept within any unincorporated area of the county shall be confined by means of a secure leash or chain, or confined within a

fenced area in such a manner as to prevent the animals from running at large. A dog, cat or other animal shall be deemed "at large" when it is off the property of its owner and not otherwise confined.). Thus, probable cause clearly existed for Taylor to seize the horse for running at large and notify Plaintiff (the horse's custodian), of said seizure, and therefore because the horse was properly seized, no Fourth Amendment violation occurred. See *Mahnke*, 428 Fed.App'x. at 635-36.

The Seizure of the Seven Horses Located Off the Pembroke Township Premises on January 8, 2014

The undisputed facts show that Taylor was called out to the Premises again on January 3, 2014, for reports of horses running at large off the Pembroke Township Premises property. Due to the polar vortex sweeping across the Midwest (and Kankakee County), the late hour, and the inability to house the horses, Taylor was not able to secure the horses at that time. Taylor and Officer Mailhiot were called out again on January 8 for reports of horses running at large and observed eight horses standing in a field west of the Pembroke Township Premises, just south of County Highway 2. The horses were not on the Premises. The eight horses were not enclosed by a fence, pen, or stable, and were not constrained in any manner nor were they restrained by any halters, ropes, or harnesses. Taylor contacted KCAD and requested transportation be arranged for the horses discovered at 15116 East 4500 Road South.

For the same reasons in the July 10, 2013 seizure, probable cause existed for Taylor and Mailhiot to seize the horses for running at large and notify Plaintiff of said seizure, and therefore because the horse was properly seized, no Fourth Amendment

violation occurred. See *Mahnke*, 428 Fed.App'x. at 635-36.

The Seizure of the Horse Located on the Pembroke Township Premises on January 8, 2014

After arranging for the transport for the impounded horses seized for running at large off the Premises, Taylor and Mailhiot investigated the exterior of the Premises to determine the location of the gap in the fence that led to the horses running at large. They walked east of the horses, across a field, to the border to the Pembroke Township Premises. Coming to the western fenced edge of the Premises, they observed a ninth horse located just inside the Premises. The horse was a brown male that appeared to be thin and injured. Taylor, still on the other side of the fence, observed the horse to have a yellowish abscess on its rear right leg. The injury appeared to be discharging yellow pus. Seeing this, Taylor climbed over the fence to investigate further. While investigating, the officers noted that they could not locate any accessible food, water, or adequate shelter for the horses of the Premises, and Taylor further noted that there had not been any changes to the conditions of the Premises since his April 2013 visit. The officers elected to seize the horse based on the animal's injury and body condition, the inclement weather, the lack of available food, water, and shelter, and the fact that it was behind a dilapidated fence from which the other horses had escaped. The officers left a notice of impoundment for Plaintiff at the front gate of the Premises, and a notice of apparent violation regarding the seized horses.

Under the Illinois Humane Care for Animals Act, animal control officers shall aid in the Act's enforcement and have the ability to impound animals and apply for

security posting for violation of that Act. 510 Ill.Comp.Stat. 5/5(d) (West 2016). Emergency impoundment may be exercised in a life-threatening situation, obviating the need for prior authorization from the Illinois Department of Agriculture, and the subject animals shall be conveyed directly to a licensed veterinarian for medical services necessary to sustain life or to be humanely euthanized as determined by the veterinarian. 510 Ill.Comp.Stat. 70/12(b) (West 2016). Further, the Seventh Circuit has held that exigent circumstances may justify a warrantless seizure of animals. *Siebert*, 256 F.3d at 657.

The court finds that exigent circumstances existed so as to justify emergency impoundment for the horses. The weather, as noted, was extremely poor, coming in the middle of what was known as the polar vortex in January and February 2014, and the officers found no form of viable shelter available for the horse on the property. Further, there was no available food or water source for the horses on the property. Finally, and importantly, Taylor observed the horse to be extremely thin and with an open wound on its lower leg. Based on the conditions of the property, the weather conditions, and the condition of the horse, the court finds that such exigent circumstances existed to justify the horse's emergency impoundment under the Humane Care for Animals Act, and that therefore no Fourth Amendment violation occurred.

The court agrees with Defendant that the instant situation is distinguishable from *Siebert*, where the Seventh Circuit found that the animal control investigator's seizure was not justified by either Illinois law or exigent circumstances. In *Siebert*, the court

found that the investigator had misrepresented the true state of the seized animals' conditions. The court also found the animals had adequate food and water. Further, the court found that the owner of the horses demonstrated through testimony that she was experienced and knowledgeable about caring for the horses and meeting their needs. By comparison, the animal control investigator could not show that he had any knowledge whatsoever about appropriate care for horses. *Siebert*, 256 F.3d at 657-59.

In contrast to the factual situation in *Siebert*, Taylor's affidavit shows him to be knowledgeable and experienced in his profession. Plaintiff has provided no competent evidence to show otherwise. Plaintiff has not demonstrated or pointed to evidence in the record showing his own knowledge and expertise regarding horses. If anything, based on undisputed material facts as stated in Defendant's motion, the opposite is true. Further, unlike in *Siebert*, Plaintiff has not shown that Taylor misrepresented in any way the condition of the horses or the Premises. Unlike in *Siebert* the horse at issue was ailing, and the Premises contained no viable shelter, food, or water supply. All of these factors, combined with the polar vortex weather of extremely low temperatures, high winds, and heavy snow/ice falls, and Taylor's prior knowledge of the Premises and Plaintiff's lack of care for his horses, constituted exigent circumstances to justify seizure of the horse from inside the Premises, and no Fourth Amendment violation occurred.

The Seizure of the Horse on January 13, 2014

One of the stray horses broke away from the officers on January 8, and attempts to locate and impound that horse on January 10 and 11 were unsuccessful. On January

13, 2014, Taylor seized the horse at the Pembroke Township Premises. The Illinois Animal Control Act permits an officer to seize a straying animal on private property (510 Ill.Comp.Stat. 5/17), and the Seventh Circuit has held that where the state law authorizes warrantless entry by animal control officers to seize a straying animal, officers do not need a warrant to enter private property to seize an animal that had been observed running at large, even if a number of days have passed between the officer's first observation of an animal at large and the officer's seizure of that animal on the owner's premises. See *Pfeil*, 757 F.2d at 865-66. Taylor's seizure of the last stray horse on the Pembroke Township Premises, just five days after it was seen running at large, was justified and supported by probable cause, and thus not violative of the Fourth Amendment. The court would further note that the frequency of the horses being seen running at large, and the dilapidated condition of the fence, as attested to by Taylor, made it reasonable for the officer to conclude that the risk of the horse continuing to run at large had not abated.

Plaintiff's only argument in support of his Fourth Amendment claim in his Response is that he was not provided notice of the seizure of the horses. However, as attested by Taylor, Plaintiff did receive notice of the violations related to the horses' physical condition, lack of food, and lack of water, which were posted at Plaintiff's front gate, along with the notice of impoundment. Further, before the stray horse was impounded on January 13, Taylor observed Plaintiff on the Premises, and removed the notices from the fence and hand-delivered them to Plaintiff. Plaintiff had proper notice

of the impoundments.

Fourteenth Amendment Due Process Claim

Because the court has found that Plaintiff's Fourth Amendment rights were not violated by the seizure of the horses, Defendant's argument that he was deprived of procedural due process under the Fourteenth Amendment is foreclosed. See *Mahnke*, 428 Fed.App'x. at 636. Also, as noted above, the Fourteenth Amendment claim fails because Plaintiff does not have standing to sue based on his representations in the bankruptcy case.

Qualified Immunity

The court further finds that Defendant is entitled to qualified immunity because Plaintiff cannot show the violation of a Constitutional right.

IT IS THEREFORE ORDERED:

(1) Defendant's Motion for Summary Judgment (#19) is GRANTED in full. Judgment is entered in favor of Defendant, and against Plaintiff.

(2) The final pretrial conference scheduled for January 20, 2017, at 11:00 am, and the jury trial scheduled for January 31, 2017, are hereby VACATED.

(3) This case is terminated.

ENTERED this 12th day of December, 2016.

s/ COLIN S. BRUCE
U.S. DISTRICT JUDGE