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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

GAIL BENNETT-WOFFORD et al.,

Plaintiffs and Appellants,

v.

COUNTY OF LAKE et al.,

Defendants and Respondents.

A147997

(Lake County  
Super. Ct. No. CV 414598)

Plaintiffs filed an amended complaint against the County of Lake (county) and several of its law enforcement officers alleging illegal destruction of a marijuana crop. The court sustained a demurrer without leave to amend and entered judgment for defendants. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs, who are self-represented, appeal upon a single contention. They maintain they sufficiently stated a claim that the crop destruction constituted a taking of property without just compensation. We shall affirm the judgment.

**Statement of Facts**

The statement of facts is based on the first amended complaint and documents for which the trial court properly took judicial notice.<sup>1</sup>

<sup>1</sup> We treat a demurrer “as admitting all material facts properly pleaded” and also consider matters that may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Defendants contend that declarations plaintiffs filed with their pleading contain inconsistent statements that may be considered on demurrer. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604-605; contra *Garcia v. Sterling*

Gail Bennett-Wofford owns rural property in Lake County. She alleges that the land, “while open[,] was and is considered curtilage” to her “adjacent” residential property. The land is fenced, gated, locked and posted with a “no trespassing” sign. Bennett-Wofford made the land “available to immediate family members” for their “collective cultivation” of medical marijuana.

The county conducted aerial surveillance and, on May 30, 2014, sheriff deputies climbed over a locked gate and entered the property. Bennett-Wofford’s husband, Dana Wofford, asked the deputies for a warrant. They said they did not need one because the marijuana was being grown illegally on vacant land. One of the deputies asked Wofford to whom the marijuana belonged and he “indicated he was the wrong person to ask.” The deputies destroyed the crop. The deputies left a form “receipt for property.” The receipt described the property as “70 marijuana plants (destroyed)” and a box was checked listing the property as “evidence [of a] crime,” citing Health and Safety Code section 11358 prohibiting marijuana cultivation and a local ordinance making marijuana cultivation on vacant lots with no approved residential use a misdemeanor and public nuisance.

In December 2014, Bennett-Wofford and doe plaintiffs filed a complaint against the county and its sheriff seeking damages for destruction of the marijuana plants. It was alleged the doe plaintiffs were “medical marijuana patients” and that the “raid culminated with the destruction of a number of medical cannabis plants relied upon by various family members” of Bennett-Wofford. Defendants demurred on several grounds. The court sustained the demurrer with leave to amend, finding, among other things, that Bennett-Wofford lacked standing to assert damages claims because she did not own the marijuana and the plant owners could not proceed anonymously as doe plaintiffs.

A first amended complaint was filed in June 2015 by plaintiffs Bennett-Wofford, her husband Dana Wofford, her daughter Jessica Wofford and her sister-in-law Kelly

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(1985) 176 Cal.App.3d 17, 22.) We need not reach that issue but limit our review to the pleading itself and documents for which all parties requested judicial notice.

Rodarmel. Plaintiffs alleged that Bennett-Wofford owned the land and that the marijuana plants were owned by the remaining plaintiffs and Bennett-Wofford's mother who were "qualified medical marijuana patients." Plaintiffs pleaded seven causes of action, including a taking of property without just compensation and added as defendants the county undersheriff and four deputy sheriffs.<sup>2</sup>

Two days after filing the first amended complaint, Bennett-Wofford filed a motion to act as successor in interest to her recently deceased mother who owned some of the marijuana plants that were destroyed. Defendants opposed substitution, arguing that the mother had no viable damages claim because the mother, who died in February 2015, did not file a government tort claim within six-months of the crop's destruction in May 2014. (Gov. Code, §§ 911.2, 945.4, 950.2.) Bennett-Wofford filed a tort claim on her own behalf within days of the marijuana's destruction but did so without naming other family members. The court denied Bennett-Wofford's motion for substitution, finding that the mother failed to file a government tort claim and, thus, had no viable claim for damages to which Bennett-Wofford could succeed.

Defendants demurred to the first amended complaint on several grounds, including the failure of all plaintiffs but Bennett-Wofford to file a government tort claim and Bennett-Wofford's lack of standing. Defendants argued that a claim is required for all actions except a taking of property without just compensation, and that the police action in destroying the marijuana crop was not a taking of property for public use.

Plaintiffs voluntarily dismissed all causes of action except those seeking damages for an uncompensated taking of property and declaratory and injunctive relief for trespass. The court sustained a demurrer to those remaining causes of action and entered judgment for defendants. Plaintiffs filed a timely notice of appeal and contest only the dismissal of their takings claim.

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<sup>2</sup> The causes of action are mistakenly numbered first through fifth and seventh through eighth, with no cause of action numbered sixth.

## Discussion

The United States Constitution provides that private property shall not “be taken for public use without just compensation.” (U.S. Const., 5th Amend.) The California Constitution provides similar protection. (Cal. Const., art. I, § 19.)

The takings clause has no application to the seizure and destruction of personal property by law enforcement officers, whether they are enforcing criminal or administrative law. If police action is lawful, then property is “lawfully acquired under the exercise of governmental authority other than the power of eminent domain” and no compensation is due. (*Bennis v. Michigan* (1996) 516 U.S. 442, 452.) If police action is unlawful, as alleged here, then seizure is not a proper interference with private property by government authorities and, thus, not a taking of property for a “public use.” “The takings clause only ‘requires compensation in the event of otherwise proper interference amounting to a taking.’ [Citation.] The ‘public use’ requirement ‘goes to the legitimacy of the government’s taking to begin with; if a taking is not for public use, the government has no right to complete the act of eminent domain.’ [Citation.] The unlawful seizure of property does not constitute a ‘public use.’ ” (*Mateos-Sandoval v. County of Sonoma* (N.D. Cal. 2013) 942 F.Supp.2d 890, 912.)

Plaintiffs argue their property was taken for a public use because the county’s law enforcement officers operated under an ordinance asserting the public benefit of marijuana abatement on vacant land. Equating public benefit with public use under the takings clause is an “overly simplistic” interpretation of the provision. (*Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 378.) Public use has a specialized meaning imbued by the history and aim of the constitutional provision. (*Ibid.*) All government activity operates under a claim of public benefit but only certain government action is a taking of property for a public use. “[T]he ‘just compensation’ clause is concerned, most directly, with the state’s exercise of its traditional eminent domain power, guaranteeing that when the state proposes to take private property for public use, the owner of the property promptly will receive just compensation. And, as the words suggest, an ‘inverse condemnation’ action may be pursued when the state or other public entity improperly

has taken private property for public use without following the requisite condemnation procedures—as when the state, in constructing a public project, occupies land that it has not taken by eminent domain, or when the state takes other action that effectively circumvents the constitutional requirement that just compensation be paid before private property is taken for public use.” (*Id.* at pp. 376-377, fn. omitted.) The takings clause “never was intended, and never has been interpreted, to impose a constitutional obligation upon the government to pay ‘just compensation’ whenever a governmental employee commits an act that causes loss of private property.” (*Id.* at p. 378.)

As relevant here, unlawful property damage by law enforcement officers “never has been understood to give rise to an action for inverse condemnation in California, but rather has been treated as subject to the general tort principles applicable to governmental entities.” (*Customer Co. v. City of Sacramento, supra*, 10 Cal.4th at p. 383.) Federal cases are in accord. (*Mateos-Sandoval v. County of Sonoma, supra*, 942 F.Supp.2d at pp. 895-896, 911-912 [allegedly unlawful police impoundment of a vehicle is not a taking]; *Sanchez v. City of Fresno* (E.D. Cal. 2012) 914 F.Supp.2d 1079, 1106 [allegedly unlawful destruction of homeless person’s property is not a taking].) Under these principles, the allegedly unlawful destruction of medical marijuana has been held not to support an uncompensated takings claim. (*Armstrong v. Sexson* (E.D. Cal. Aug. 7, 2007, No. Civ. S-06-2200 LKK/EFB) 2007 U.S. Dist. Lexis 60023, pp. \*16-\*20.)<sup>3</sup>

The trial court properly sustained the demurrer to plaintiffs’ takings cause of action founded on alleged illegal destruction of personal property by law enforcement officers. We should not be understood to condone defendants’ alleged conduct but if, as alleged, defendants acted unlawfully in destroying plaintiffs’ property, plaintiffs’ remedy was to pursue tort remedies.

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<sup>3</sup> Plaintiffs correctly note that an unpublished California Court of Appeal opinion may not be relied upon as precedential or persuasive. (Cal. Rules of Court, rule 8.1115.) This rule does not apply to unpublished federal cases, which may be cited and considered for their persuasive value. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18.)

**Disposition**

The judgment is affirmed.

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Pollak, J.

We concur:

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McGuinness, P.J.

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Jenkins, J.

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