

STATE OF MICHIGAN
COURT OF APPEALS

JAMES T. MacDONALD,

UNPUBLISHED
May 3, 1996

Plaintiff-Appellant,

v

No. 177112
LC No. 94-475312

SECRETARY OF STATE, DIRECTOR OF
ELECTIONS, BOARD OF STATE CANVASSERS,
COUNTY OF OAKLAND, OAKLAND COUNTY
CLERK, OAKLAND COUNTY ELECTION
COMMISSION,

Defendant-Appellees.

Before: Griffin, P.J., and Smolenski and L. P. Borrello,* JJ.

MEMORANDUM.

Plaintiff appeals as of right an order of the circuit court denying plaintiff's application for leave to file an action for quo warranto. We affirm.

Plaintiff applied to the circuit court for leave to file a quo warranto action that would nullify the result of the March 15, 1994, special election which ratified an amendment to the Michigan Constitution. Plaintiff's proposed complaint alleges that the special election violated several constitutional, statutory, and judicial mandates. The circuit court denied plaintiff's application for leave to pursue the quo warranto action.

On appeal, plaintiff contends that the trial court abused its discretion in refusing to grant plaintiff's application for leave to file an action for quo warranto. We disagree. First, the circuit court lacks jurisdiction over a quo warranto action brought against state officers. MCR 3.306(A)(1). Accordingly, the circuit court correctly denied the portion of plaintiff's application that was directed

* Circuit judge, sitting on the Court of Appeals by assignment.

against state officials. Second, to the extent plaintiff had a claim against Oakland County officials, plaintiff has no right to file a quo warranto action absent leave of the circuit court. MCR 3.306(B)(2). As with other discretionary matters where leave may be denied when the circuit court determines that the action would be futile, see, e.g., *Noyd v Claxton, Morgan*, 186 Mich App 333, 340; 463 NW2d 268 (1990); *Burse v Wayne Medical Examiner*, 151 Mich App 761, 767-768; 391 NW2d 479 (1986), a circuit court may consider “whether the application discloses sufficient apparent merit to justify inquiry by quo warranto proceedings.” Martin, Dean & Webster, Michigan Court Rules Practice, p 443. Here, we find that proposed quo warranto action against Oakland County officials would be futile. Therefore, we conclude that the circuit court properly exercised its discretion in denying plaintiff leave to file the action for quo warranto. See *Shoemaker v City of Southgate*, 24 Mich App 676, 680-681; 180 NW2d 815 (1970); *McDonald v Jackson*, 3 Mich App 287, 289; 142 NW2d 42 (1966).

Affirmed.

/s/ Richard Allen Griffin
/s/ Michael R. Smolenski
/s/ Leopold P. Borrello