

STATE OF MICHIGAN
COURT OF APPEALS

TOMMY JOE BARROW,

Plaintiff-Appellant,

FOR PUBLICATION
November 9, 2010
9:10 a.m.

V

No. 298128
Wayne Circuit Court
LC No. 10-003994-AW

MAYOR OF DETROIT, CITY OF DETROIT,
DETROIT BOARD OF CANVASSERS,
DETROIT ELECTIONS COMMISSION,
DETROIT CITY CLERK, DANIEL BAXTER,
DOROTHY BURRELL, EDWARD
HARTOUNIAN, WALTER KOPPY, EDWIN
UKAGBU, GEORGE AZZUZ, WAYNE
COUNTY BOARD OF CANVASSERS, KRISTA
HARTOUNIAN, CAROL LARKIN, JOSEPH
XUEREB, and JOHN DOE #2,

Defendants-Appellees.

Before: SERVITTO, P.J. and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Plaintiff, Tommy Joe Barrow, appeals as of right from an opinion and order denying his emergency application for leave to file a complaint for quo warranto. Plaintiff filed this action for quo warranto in order to challenge the outcome of the November 2009 election of defendant Dave Bing as mayor of the city of Detroit. Because the trial court did not err in denying plaintiff's application for leave for the reason that plaintiff failed to allege specific facts warranting further inquiry by quo warranto, we affirm.

I

This action arises out of the November 3, 2009, general election in which both plaintiff and Dave Bing appeared on the ballot as candidates for mayor of the city of Detroit. On November 16, 2009, the board of city canvassers declared that plaintiff received 50,785 votes while Bing received 70,166 votes in the mayoral election, and certified Mayor Bing as the winner. On November 20, 2009, plaintiff filed a recount petition alleging "fraud, deliberate mistake and electronic manipulation" of the ballots cast in the election. At a meeting on November 23, 2009, the Wayne County Board of Canvassers approved plaintiff's recount

petition. Thereafter, the Wayne County Board of Canvassers informed plaintiff that the recount would commence on December 9, 2009.

Prior to the recount date, on November 24, 2009, plaintiff sent a letter to the county clerk requesting that she secure the ballots pending the recount alleging that the ballots were “under the sole control of the building janitor.” On the same day, the Wayne County Board of Canvasser’s, through its attorney, sent plaintiff an email informing him that Michigan election law contained procedures for ballot security pending a recount and that, “[a]bsent a court order, the statutory procedures will be followed.” It is undisputed that plaintiff did not seek a court order.

The recount was held on December 9, 2009 as scheduled. Following the recount, the Wayne County Board of Canvassers met and addressed plaintiff’s various challenges at a series of meetings on December 11, 15, 18, 22, and 23, 2009. On December 23, 2009, the Wayne County Board of Canvassers approved a motion to certify the election, despite plaintiff’s assertion “that there were 49,386 votes that were not recountable.” The Wayne County Board of Canvassers certification of the results of the recount as 47,062 votes for plaintiff and 65,946 votes for Mayor Bing was filed on December 24, 2009.

On December 30, 2009, plaintiff wrote letters of complaint to the Wayne County Prosecutor, the Michigan Attorney General, and the Michigan Secretary of State, elections department asking each to initiate an investigation. On January 5, 2010, plaintiff again wrote to the Attorney General asking him to initiate quo warranto proceedings. On January 15, 2010, the prosecutor declined to proceed. On February 9, 2010, the Attorney General informed plaintiff via letter that it had routed his letter to the criminal division for review and that review of the plaintiff’s complaint materials was complete. In the letter, the Attorney General explained that there was a “lack of evidence of criminal intent to defraud” contrary to plaintiff’s allegations, and declined to take further action at that time. On February 23, 2010, the Attorney General also declined to seek a writ of quo warranto. On February 23, 2010, the Secretary of State issued a letter informing plaintiff that it had conducted an inquiry into plaintiff’s complaint, that the investigation revealed “no evidence to indicate or suggest that any type of fraudulent vote manipulation occurred during or after the administration of the election,” and thus, the investigation was concluded.

On April 2, 2010, plaintiff filed an “Emergency Application for Leave to File a Quo Warranto Action” in the circuit court, alleging that various election law errors, mistakes, and violations were committed that undermined any confidence in the outcome of the election. The Wayne County defendants¹ filed an answer on April 7, 2010, denying plaintiff’s allegations that Mayor Bing usurped the office of mayor and was not entitled to the office of mayor based on the election of November 3, 2009. On April 8, 2010, the Wayne County defendants filed a brief in support of their answer, arguing that plaintiff had failed to make out a prima facie case of fraud

¹ The Wayne County defendants consist of the Wayne County Board of Canvassers and its members Krista Hartounian, Carol Larkin, Joseph Xuereb, and John Doe #2.

or error, or to show that he was entitled to the mayor's position. They also argued that plaintiff's application was time-barred or barred by laches.

Mayor Bing filed an answer to the application, denying plaintiff's allegations on April 9, 2010. On May 3, 2010, Mayor Bing filed a brief in support, arguing that plaintiff failed to show factual support for his allegations. The city of Detroit defendants² filed an appearance on May 4, 2010, but did not file an answer or a brief in opposition to plaintiff's application. On May 7, 2010, plaintiff filed a reply brief in support of his application arguing that a "monumental number of irregularities which may have indeed derived from fraud or gross errors" justified inquiry by quo warranto. Plaintiff also denied that his application was time-barred or barred by laches, or would cause harm or undue expense to the public.

At a hearing on May 10, 2010, plaintiff argued that the trial court should grant his request for leave to proceed in quo warranto due to defendants' failure to comply with mandatory provisions concerning ballot container seals and calibration of clocks in the voting machines, resulting in 59,135 ballots not being recounted, which was more than enough to change the outcome of the election. Plaintiff maintained that he was not asserting material fraud or error, which would be subject to a 30-day limitations period.

The county defendants countered that, because propositions B and S were on the same ballot as the mayor's race, the statutory subsection dealing with material fraud or error applied, and plaintiff's application was time-barred. The county defendants argued that if the election was declared invalid, a new election would be required, including a new primary, at substantial public cost. The county defendants argued that plaintiff had failed to plead specific facts necessary for the court to conclude that fraud or irregularities existed and, instead, had simply promised to develop supporting evidence at a later date. Further, the county defendants argued that plaintiff's allegations were unsupported because the Attorney General and the Secretary of State had both investigated the matter and neither had found evidence of fraud or vote manipulation.

Mayor Bing adopted the county defendants' arguments. He also noted that plaintiff stated in his reply brief that he observed numerous irregularities that "may have indeed derived from fraud or gross errors," and that such speculation was insufficient to meet the required specificity standard. Mayor Bing then summarized the substantive allegations of plaintiff's petition and argued the plaintiff had failed to make allegations that were factually specific enough to justify further inquiry by quo warranto. Mayor Bing noted that approximately 80 out of 100 absentee precincts were counted before those ballots were deemed unrecountable and that the results of that recount (before it was halted) agreed with the original results. Further, there was no evidence that polls were open less hours than required by law, so those 9,649 ballots

² The city of Detroit defendants consist of (1) the city of Detroit; (2) the Detroit Board of Canvassers and its members Dorothy Burrell, Edward Hartounian, and Walter Kroppy; and (3) the Detroit Elections Commission and its members Daniel Baxter, Edwin Ukagbu, and George Azzuz.

(while unrecountable) were unremarkable. Moreover, Michigan election law requires that, where precincts are deemed unrecountable due to seal issues, the original results stand.

The city defendants adopted the arguments made by the other attorneys, adding that holding a new election would cost approximately \$2 million and would cause “extreme” financial hardship. In reply, plaintiff’s counsel admitted that “we don’t know how they [the irregularities] happened. Could have been inadvertence, incompetence, could have been any number of reasons,” so “We didn’t plead that.” The trial court took the matter under advisement.

On May 11, 2010, the trial court issued an opinion and order denying plaintiff’s application. The trial court stated that, in determining whether to grant leave, it was required to determine “whether the application discloses sufficient apparent merit to justify further inquiry by *quo warranto* proceedings.” The trial court found that plaintiff’s essential claim was that “Detroit election officials had made such numerous errors, and mistakes, and had engaged in such numerous violations of Michigan election law that the number of ballots deemed not recountable or tainted was more than six (6) times the number necessary to alter the outcome of the city’s general election for mayor.” The trial court observed that plaintiff claimed in particular that: 41,485 absentee ballots and 8,001 other ballots were deemed unrecountable; another 9,649 ballots had dates and times calling into question whether the precincts were open during the hours required by law; a total of 59,135 ballots (47.4 percent of the total vote) were found to be unrecountable; “an additional unknown number of countable ballots have likely been tampered with and manipulated, further eliminating any reasonable certainty as to the true outcome of the election”; and thus, “there exists no reasonable certainty that any winner could be determined accurately and with the required legal certainty.”

The trial court specifically found:

As the aforementioned portions of Plaintiff’s application illustrate, Plaintiff has failed to allege any specific facts establishing that ballots were tampered with and/or manipulated, or that Defendants engaged in unlawful acts. Even assuming that Plaintiff’s action is premised on irregularities as opposed to actual ballot tampering or other illegal acts, he has failed to state facts sufficient to support an inquiry into whether Bing usurped the office of mayor on the basis of those irregularities. Specifically, Plaintiff has failed to allege facts in support of his conclusion that any ballots which were not recounted were not valid as cast. He has also failed to provide factual support for his allegations that the Detroit Board of Canvassers “repeatedly violated statute election law and procedures.”

The trial court concluded that plaintiff had failed to show that his application had “sufficient apparent merit to justify further inquiry by quo warranto” proceedings into Mayor Bing’s title as mayor of the city of Detroit and denied plaintiff’s application for leave. This appeal followed.³

II

Plaintiff’s sole argument on appeal is that the trial court erred in denying his petition for leave to file for quo warranto because the application disclosed sufficient merit to justify further inquiry by quo warranto proceedings. Plaintiff asserts that he proceeded under MCL 600.4505 and alleged usurpation due to the massive number of irregularities (i.e., errors, mistakes, and violations of Michigan election laws). Plaintiff maintains that his petition is based on the 59,135 irregular ballots resulting from numerous election law violations that were disclosed by the December 2009 recount and that he did *not* allege election fraud, and did *not* seek to set aside the entire November 2009 election.

The county defendants, the city defendants, and Mayor Bing all respond that the trial court correctly held that plaintiff failed to allege specific facts warranting further inquiry by quo warranto and, for that reason, properly denied plaintiff’s petition. The county defendants argue that case law requires plaintiff to offer “critical facts” in support of his application for leave to file for quo warranto, showing a prima facie case of usurpation and that he did not do so. The county defendants contend that the trial court could not determine from the face of plaintiff’s application that fraud or errors were committed. Additionally, the county defendants assert that plaintiff failed to include allegations showing his entitlement to the office of mayor, not mere uncertainty concerning the true outcome.

The city defendants argue that plaintiff’s application for leave to proceed by quo warranto alleged no facts to support his claims that ballots were tainted, that the winner of the election could not be ascertained, that errors and mistakes were made, or that Detroit election officials engaged in numerous election law violations. Similarly, Mayor Bing asserts that plaintiff failed to allege, much less offer proof of, any actual facts that would warrant further investigation by quo warranto. Mayor Bing contends that plaintiff has offered speculation rather than any facts tending to show that the election was improper and simply complains that various authorities failed to take the steps he requested concerning his various concerns.

III

A court’s decision whether to grant or deny an application for leave to proceed by quo warranto is reviewed for an abuse of discretion. *Shoemaker v City of Southgate*, 24 Mich App

³ On June 16, 2010, this Court denied plaintiff’s motion for preemptory reversal. *Barrow v Mayor of Detroit*, unpublished order of the Court of Appeals, entered June 16, 2010 (Docket No. 298128). On June 18, 2010, this Court granted in part the city of Detroit’s motion to expedite this appeal. *Barrow v Mayor of Detroit*, unpublished order of the Court of Appeals, entered June 18, 2010 (Docket No. 298128).

676, 680-681; 180 NW2d 815 (1970); *McDonald v Jackson*, 3 Mich App 287, 288-290; 142 NW2d 42 (1966). An abuse of discretion occurs only when the trial court's decision falls outside the range of "reasonable and principled outcome[s]." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

IV

"Quo warranto" literally means "by what authority." Black's Law Dictionary (8th ed), p 1285. It is "[a] common-law writ used to inquire into the authority by which a public office is held or a franchise is claimed." *Id.* MCR 3.306 governs actions for quo warranto. The rule provides, in pertinent part:

(A) Jurisdiction.

(1) An action for quo warranto against a person who usurps, intrudes into, or unlawfully holds or exercises a state office, or against a state officer who does or suffers an act that by law works a forfeiture of the office, must be brought in the Court of Appeals.

(2) All other actions for quo warranto must be brought in the circuit court.

(B) Parties.

(1) Actions by Attorney General. An action for quo warranto is to be brought by the Attorney General when the action is against:

(a) a person specified in subrule (A)(1);

(b) *a person who usurps, intrudes into, or wrongfully holds or exercises an office in a public corporation created by this statute's authority;*

* * *

(3) Application to Attorney General.

(a) A person may apply to the Attorney General to have the Attorney General bring an action specified in subrule (B)(1). The Attorney General may require the person to give security to indemnify the state against all costs and expenses of the action. The person making the application, and any other person having the proper interest, may be joined as parties plaintiff.

(b) *If, on proper application and offer of security, the Attorney General refuses to bring the action, the person may apply to the appropriate court for leave to bring the action himself or herself.*

(C) Person Alleged to be Entitled to Office. *If the action is brought against the defendant for usurping an office, the complaint may name the person*

rightfully entitled to the office, with an allegation of his or her right to it, and that person may be made a party. [Emphasis added.]

MCL 600.4501 echoes the court rule's provision allowing a private party to bring an action for quo warranto by leave of court, if the Attorney General refuses to act. A quo warranto action may be brought under MCL 600.4505, which provides:

(1) Determination. In actions brought *against persons for usurpation of office*, the judgment may determine the right of the defendant to hold the office. If a party plaintiff alleges that he is entitled to the office, the court may decide which of the parties is entitled to hold the office.

(2) Judgment for relator [private plaintiff]; proceedings. If judgment is rendered in favor of a party who is averred to be entitled to the office, he is entitled, after taking the oath of office, and executing any official bond which is required by law, to take the office. Such party shall be given all the books and papers in the custody of the defendant, or within his power, belonging to the office. [Emphasis added.]

An action under MCL 600.4505 is appropriate where the plaintiff seeks to challenge the defendant's right to hold office, but fraud or error is not alleged. See *People ex rel Wexford Prosecuting Attorney v Kearney*, 345 Mich 680, 692; 77 NW2d 115 (1956). A plaintiff can prevail under MCL 600.4505 only by showing "his own good title" to the office. *Ebright v Buck*, 326 Mich 208, 212; 40 NW2d 122 (1949); see also *Marian v Beard*, 259 Mich 183, 185-187; 242 NW 880 (1932).

"[A]ny damages sustained because of the usurpation" can be recovered under MCL 600.4511, and such a claim may be asserted independently, or as part of the plaintiff's action for quo warranto. Additionally, under MCL 600.4515, a court may award costs and may fine a defendant "found or adjudged guilty of usurping or intruding into or unlawfully holding or exercising any office"

An action in the nature of quo warranto may be brought under MCL 600.4545, which provides:

(1) Jurisdiction. An action may be brought in the circuit court of any county of this state whenever it appears that *material fraud or error has been committed at any election* in such county at which there has been submitted any constitutional amendment, question, or proposition to the electors of the state or any county, township, or municipality thereof.

(2) Time for filing action, plaintiffs, defendant. Such action *shall be brought within 30 days* after such election by the attorney general or the prosecuting attorney of the proper county on his own relation, or on the relation of any citizen of said county without leave of the court, or by any citizen of the county by special leave of the court or a judge thereof. *Such action shall be*

brought against the municipality wherein such fraud or error is alleged to have been committed.

(3) Procedure. *After such action is brought the procedure shall conform as near as may be to that provided by law for actions for quo warranto.* [Emphasis added.]

Accordingly, the 30-day limit applies only where the plaintiff alleges material fraud or error under MCL 600.4545. *Kearney*, 345 Mich at 692. Under MCL 600.4545, “material fraud or error” means fraud or error “which might have affected the outcome of the election.” *St Joseph Twp v City of St Joseph*, 373 Mich 1, 6; 127 NW2d 858 (1964). While a “but for” showing is not necessary, the plaintiff’s “proofs must be sufficient to support a fact finding that enough votes were tainted by the alleged fraud to affect the outcome.” *Id.*

A traditional quo warranto action under MCL 600.4545 seeks to “try title” to the disputed office. *Risk v Lincoln Twp Bd of Trustees*, 279 Mich App 389, 390 n 1; 760 NW2d 510 (2008). An action in the nature of quo warranto is brought to challenge the validity of the election itself. *Id.* MCL 600.4545 “does not apply to quo warranto actions to try title to a particular office, but only to test the validity of an election with regard to a constitutional amendment, question or proposition.” *Stokes v Clerk of the Bd of Canvassers of Monroe Co*, 29 Mich App 80, 84; 184 NW2d 746 (1971). “[H]owever, . . . actions in the nature of quo warranto . . . are functionally equivalent to traditional quo warranto actions and are consequently reviewable in the same manner.” *Risk*, 279 Mich App at 390 n 1.

MCR 3.301(A)(1)(d) and (2) “govern the procedure for seeking the writs or relief formerly obtained by the writs,” including a writ of quo warranto. In that regard, MCR 3.301(A)(3) provides that “[t]he general rules of procedure apply except as otherwise provided in this subchapter.” MCR 2.111(A)(1) requires that allegations made in a pleading be clear, concise, and direct. MCR 2.112(B)(1) requires that fraud and mistake be pleaded with particularity. Other matters, including malice, intent, and knowledge, can be pleaded generally under MCR 2.112(B)(2). MCR 3.300 does not otherwise contain pleading requirements for a petition for leave to proceed by quo warranto. Nonetheless, our Supreme Court has held that a petition for leave to seek a writ of quo warranto “should be so clear and positive in its statement of facts, as to make out a clear case of right; and should be so framed as to sustain a charge of perjury if any material allegation is false.” *Boucha v Alger Circuit Judge*, 159 Mich 610, 611; 124 NW 532 (1910), citing *Cain v Brown*, 111 Mich 657, 660; 70 NW 337 (1897); see also *Vrooman v Michie*, 69 Mich 42, 46; 36 NW 749 (1888).

Vrooman was “the first instance of [quo warranto] proceedings by a private relator.” *Vrooman*, 69 Mich at 43-46. On appeal, the Supreme Court found that the trial court properly dismissed the action because, as supervisor, the plaintiff was disqualified from holding the appointed office in question. *Id.* at 45-46. Nonetheless, the Supreme Court found it “proper to remark on some peculiarities of the present record.” *Id.* at 46. In dicta, the *Vrooman* Court stated that leave had been improperly granted by the trial court because the statute “does not contemplate that leave shall be granted without some showing, as it was in this case.” *Id.* at 46. The Court stated that where leave of the court is required for a given action, “[c]ourts can never

act unless upon some responsible showing, and, as it is contrary to public policy to allow persons to be needlessly annoyed by vexatious claims, the statute . . . does not, as construed, permit a relator to proceed without exacting a very precise and positive showing.” *Id.* The Court observed that “a chief object in requiring leave is to prevent vexatious prosecutions; and the rule is inflexible that there must be affidavits so full and positive from persons knowing the facts as to make out a clear case of right in such a way that perjury may be brought if any material allegation is false.” *Id.* The Court stated that “the relator is not allowed to proceed without showing, not merely a good case in law against respondent, but also that public policy will be subserved by the proceeding.” *Id.* at 46-47. The Court stated that “[a]s no showing was made to obtain leave to file the information in the present case, leave should not have been granted.”⁴ *Id.* at 47.

In *Boucha*, 159 Mich at 610-611, the petition stated that the election board failed to count 11 votes in the plaintiff’s favor, allegedly because the ballots contained distinguishing marks when in fact they did not, that the real reason the election board refused to count those votes was that a majority of the board opposed the plaintiff’s election as township supervisor, and that the board illegally counted “between one and ten ballots” for the plaintiff’s rival even though those ballots contained distinguishing marks and were therefore illegal. The *Boucha* Court stated that “[t]he law requires a precise and positive showing before the court will interfere” in the results of an election. *Id.* at 611. It also stated that an application for leave to file a complaint for quo warranto must “make a showing sufficiently clear and definite as to facts, to make out a prima facie case.” *Id.* The Court also observed that leave should not be granted where the applicant “swears to a conclusion only.” *Id.*

In *Penn Sch Dist No 7 v Bd of Ed of Lewis-Cass Intermediate Sch Dist*, 14 Mich App 109, 117; 165 NW2d 464 (1969), this Court stated that *Vrooman* and *Boucha*, among others, did not apply to actions brought under MCL 600.4545. In that case, however, the Court was discussing standing, not pleading requirements, and accordingly concluded that, unlike in a MCL 600.4545 action, a plaintiff in a MCL 600.4545 action need not show a special interest in, or entitlement to, the position in question. *Id.* at 117-118. However, the Court agreed with *Vrooman* and *Boucha* that the controlling considerations in determining whether to grant leave are whether the plaintiff made the appropriate request to the Attorney General, and “whether the application discloses sufficient apparent merit to justify further inquiry by quo warranto proceedings.” *Id.* at 118.

In sum, leave to file an action for quo warranto is properly denied (as futile) when the application fails to disclose sufficient facts and grounds, and sufficient apparent merit, to justify further inquiry by quo warranto proceedings. 4 Longhofer & McKenna, Michigan Court Rules

⁴ The Court also observed that in the “information” filed after being granted leave of court, the plaintiff did “not point out the defect supposed to exist in respondent’s title, but simply denies its validity.” *Id.* at 43. The plaintiff also “does not claim to hold title himself to the office, except as asserting a right to hold over under an old appointment” *Id.*

Practice (5th ed), pp 444-445; *City of Grand Rapids v Harper*, 32 Mich App 324, 329; 188 NW2d 668 (1971).

V

In the present case, plaintiff's application alleges that Mayor Bing usurped the office of mayor. Plaintiff requested leave to file an action for quo warranto under MCL 600.4505, based on the Attorney General's refusal to proceed. As far as his own entitlement to the office, plaintiff alleged that "[t]here is a *likelihood* that Plaintiff was in fact elected and Defendant David Bing has usurped the office." (Emphasis added.) Plaintiff alleged that prior to the primary election he "suspected" that ballot tampering would occur at the primary, and that authorities refused to act on those concerns before or after the primary. Plaintiff also alleged in his application that before the general election he was "concern[ed]" that "computer manipulation and ballot tampering" would occur at the general election, but authorities again refused to act before the election. After the general election, plaintiff sought a recount "based on computer manipulation and absentee ballot tampering," and his request for a recount was approved.

Plaintiff further alleged in his application, in particular:

8. The facts of this case and the evidence *to be developed* will show that:

* * *

e. Upon being granted the recount, Plaintiff immediately requested, in writing, that the county impound and secure the ballots as he believed that absentee and other voter ballot tampering would occur before the recount could begin. The county refused to act upon his request.

f. During the recount conducted by the Wayne County Board of Canvassers it was revealed that Detroit election officials had made such numerous errors, and mistakes, and had engaged in such numerous violations of Michigan election law that the number of ballots deemed not to be recountable and or tainted was more than six (6) times than [sic] the number necessary to alter the outcome of the city's General election for mayor.

g. The recount also revealed that Detroit election officials had failed to perform and enforce numerous procedures and requirements set forth by the State of Michigan designed to ensure the integrity of elections.

h. As a direct and proximate result, the Wayne County Board of Canvassers determined:

i. that 100% of the city's 41,485 absentee voter ballots were not recountable.

ii. that an additional 8,001 of the city's polling precincts' voter ballots were not recountable.

iii. that no less than an additional 9,649 precinct polling voter ballots had dates and times for which it could not be determined with certainty that they had been cast in compliance with the state law requiring polls to remain open from 7am until 8pm.

iv. [t]hat the total number of ballots tainted and or deemed not recountable by the Board of Canvassers was 59,135. [Emphasis added.]

Plaintiff also alleged that the official results of the election were 71,166 votes for Mayor Bing and 50,785 votes for plaintiff, a difference of 19,381 votes. Plaintiff further specifically alleged:

11. While the Board of Canvassers determined that 59,135 ballots were deemed not recountable and or tainted (47.4% of the total cast for mayor), Plaintiff believed and continues to believe that an additional unknown number of the countable ballots have likely been tampered with and manipulated, further eliminating any reasonable certainty as to the true outcome of the election.

12. The actual number of ballots necessary to change and alter the outcome of the election was only 9,692 (19,381 divided by 2 plus 1).

13. Had a full County canvass resulted in a deduction of 9,692 ballots from Defendant and, of necessity, an addition of 9,692 ballots to Plaintiff, it would have altered the outcome of the election.

14. Insofar as 59,135 ballots were deemed not recountable or tainted, there exists no reasonable certainty that any winner could be determined accurately and with the required legal certainty.

15. Defendant Wayne County Board of Canvassers erred, breached its duty and abused its authority and discretion when despite having 59,135 out of a total of 124,802 (Defendant's 70,166, Plaintiff's 50,785, all others 3,851) ballots cast being tainted at [sic] which only 9,692 ballots separated Defendant from Plaintiff, it issued a certificate of election to the Defendant.

16. Defendant Detroit Board of canvassers similarly erred, breached its duty and abused its authority and discretion when it repeatedly violated state election law and procedures in furtherance of the errors and irregularities.

17. As a direct and proximate result of the foregoing, there exists no reasonable certainty as to which candidate received the greatest number of legitimate, valid, and legal votes and thus remediation is required.

Finally, plaintiff alleged that the trial court had the authority to “see that this challenge to title is heard and resolved.”

Our review of the record reveals that the only specific facts alleged by plaintiff were the number of ballots deemed unrecountable, the number of votes in the original election, and the number of votes it would take to change the outcome. Plaintiff “suspected” that ballot tampering occurred in the general election, but did not allege that it did. Plaintiff alleged that Detroit election officials committed “numerous errors and mistakes,” and engaged in such “numerous violations of Michigan election law,” but did not state what those errors, mistakes, or violations were, or whether they were committed before, during, or after the election. Plaintiff further alleged that, after the election, Detroit election officials “failed to perform and enforce numerous procedures and requirements” to ensure the integrity of the ballots, but did not specify what protocols were violated or how. Plaintiff alleged that 59,135 ballots were found to be “tainted and or deemed not recountable,” but did not state how or why. Plaintiff expressed his belief that “an additional unknown number of the countable ballots have likely been tampered with and manipulated,” but again failed to state how or when.

Plaintiff alleged that, given the number of unrecountable ballots, there was no certainty concerning the outcome. He alleged that, given such uncertainty, the county board of canvassers erred, breached its duty, and abused its authority and discretion in certifying Mayor Bing as the winner. Plaintiff alleged that the Detroit board of canvassers similarly erred, breached its duty, and abused its authority and discretion when it repeatedly violated state election laws and procedures in furtherance of the errors and irregularities, but again failed to state what those errors or violations were, or when and how they occurred.

Since filing his application, plaintiff has made some effort to specify the particular errors and violations of law of which he complains and discusses them at length on appeal. However, plaintiff never attempted to amend his application to add any specific, precise, definite, or clear and positive factual allegations. Thus, we conclude that the trial court correctly found that plaintiff’s application failed to disclose sufficient facts and grounds, and sufficient apparent merit, to justify further inquiry by quo warranto proceedings. Plaintiff’s conclusory allegations that mistakes, errors, and election law violations occurred are simply insufficient to justify granting leave to file an action for quo warranto.

VI

We conclude that the trial court correctly held that plaintiff failed to allege specific facts warranting further inquiry by quo warranto and properly denied plaintiff’s petition. For this reason, we need not reach any of the remaining issues raised by plaintiff—none of which the trial court decided. Nonetheless, the irregularities plaintiff alleges do not tend to show that any unrecountable ballots were not valid as originally cast or that Mayor Bing usurped the office of

mayor.

Affirmed. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto

/s/ Brian K. Zahra

/s/ Pat M. Donofrio