

Summary Order filed December 2, 2022

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2022

DEANNE MAZZOCHI,	)	Appeal from the Circuit Court
	)	of the 18th Judicial Circuit,
Plaintiff-Appellee,	)	Du Page County, Illinois,
	)	
v.	)	
	)	Circuit No. 22-CH-220
JEAN KACZMAREK, in Her Official Capacity )	)	
as Du Page County Clerk and Election Authority) )	)	Honorable
For Du Page County,	)	James D. Orel,
	)	Judge, Presiding.
Defendant-Appellant.	)	

---

JUSTICE PETERSON delivered the judgment of the court.  
Justices McDade and Hettel concurred in the judgment.

---

**SUMMARY ORDER**

Plaintiff, Deanne Mazzochi, a candidate for State House of Representatives, filed a three-count complaint for equitable relief. The count for declaratory relief sought a declaration by the court that the Election Code (10 ILCS 5/19-8(g), 19-10 (West 2020)) required that mail-in ballots be verified by comparing the signature on the mail-in ballot with the voter's registration signature and if the two signatures do not match, to reject the ballot and provide the voter notice and an opportunity to demonstrate why the ballot should be counted in accordance with article 19 of the Election Code.

The count for injunctive relief sought to enjoin defendant, Jean Kaczmarek, the Du Page County Clerk, from: (1) “verifying or certifying any vote by mail ballots, or at the very least vote by mail ballots processed between November 2-November 10 until such time as they can be properly verified as required by law;” (2) verifying any additional mail-in ballots until such time as they can be properly verified as required by law; (3) “presenting to any election judge reviewing vote-by-mail ballots any signature sample beyond those signatures that the voter used to register to vote; or reaffirm the voter’s registration status, which in turn were properly vetted using identification procedures set forth by law;” (4) destroying, discarding or otherwise failing to preserve data. The count also sought to sequester and preserve all mail-in ballots and for an order requiring Kaczmarek to instruct the election judges to verify mail-in ballots by comparing the signature on the mail-in ballot with the signature on the voter’s registration file.

The count for *mandamus* alleged that Kaczmarek violated the Election Code (*id.*) by verifying signatures on mail-in ballots with the signature on file for the vote by mail application instead of the signature on the voter’s registration record. Therefore, Mazzochi requested the court to issue a writ of *mandamus* requiring the election judges to comply with the Election Code as stated in the count for declaratory relief.

Mazzochi accompanied her complaint with an “Emergency Motion to Enforce Election Law by Temporary Restraining Order and Preliminary Injunction.” Attached to the motion are the certified declarations from three witnesses that averred that they witnessed election officials verify some voter’s signatures by comparing a voter’s mail-in ballot signature with the signature on the voter’s application for a mail-in ballot.

Kaczmarek filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619) (West 2020)). Kaczmarek argued that the complaint was premature

in that no candidate had been declared elected pursuant to section 23-20 of the Election Code (10 ILCS 5/23-20 (West 2020)). Kaczmarek contended that the court lacked jurisdiction to consider the complaint. Therefore, Kaczmarek asked the court to dismiss the complaint and deny the emergency motion for temporary restraining order and preliminary injunction.

At the beginning of the hearing, the trial court noted that it had not reviewed Kaczmarek's motion to dismiss. It, however, read the motion as the parties made their arguments. The arguments during the hearing focused primarily on Kaczmarek's motion to dismiss. Our review of the transcripts show that the trial court never explicitly denied the motion during the hearing. However, the order did state that the motion to dismiss was denied and the court found that it had jurisdiction over the matter. Additionally, the court summarily granted Mazzochi's request for a temporary restraining order and a preliminary injunction. However, it does not appear that the court held a hearing on the motion for a temporary restraining order and preliminary injunction. The parties did not have the opportunity to make arguments addressing the four elements necessary for the entry of a temporary restraining order and a preliminary injunction. Further, the appellant was not offered the opportunity to present evidence in the form of counter affidavits or live testimony.<sup>1</sup>

Kaczmarek appeals under Illinois Supreme Court Rule 307(d) (eff. Nov. 1, 2017).

On appeal, Kaczmarek argues that the trial court erred in entering a temporary restraining order and preliminary injunction. Kaczmarek contends the trial court should have granted the motion to dismiss because it lacked jurisdiction to consider Mazzochi's complaint. Because the

---

<sup>1</sup>Although appellate court decisions are split on whether an individual must establish their claim by the preponderance of the evidence (*Baal v. McDonald's Corp.*, 97 Ill. App. 3d 495, 499 (1981)) or make a *prima facie* showing (*People v. Studio 20, Inc.*, 314 Ill. App. 3d 1000, 1004 (2000)), in either case an individual must present some evidence that (1) it has a clearly ascertained right which is in need of protection; (2) it will suffer irreparable injury without that protection; (3) it has no adequate remedy at law; and (4) it is likely to be successful on the merits. *Baal*, 97 Ill. App. 3d at 499.

Election Code does not permit the filing of a complaint under the present circumstances, we find the trial court lacked jurisdiction to grant relief in favor of Mazzochi.

It is well established that a court has no jurisdiction over an election contest unless a statute applies. See, e.g., *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 14; *Pullen v. Mulligan*, 138 Ill. 2d 21, 32 (1990); *Young v. Mikva*, 66 Ill. 2d 579, 582 (1977). When a court exercises special statutory jurisdiction, that jurisdiction is limited to the language of the act conferring it, and the court has no powers from any other source. *Bettis*, 2014 IL 117050, ¶ 14 (citing *Fredman Brothers Furniture Co. v. Department of Revenue*, 109 Ill. 2d 202, 210 (1985)). In the exercise of special statutory jurisdiction, if the mode of procedure prescribed by statute is not strictly pursued, no jurisdiction is conferred on the circuit court. *Id.*

The case law makes clear that any election contest must be brought pursuant to the provisions of the Election Code. See *Young*, 66 Ill. 2d at 582; *Breslin v. Warren*, 45 Ill. App. 3d 450, 453 (1977); *Pullen*, 138 Ill. 2d at 32; *Boyer v. Geisen*, 66 Ill. App. 3d 1044, 1084 (1978). The Election Code sets forth a process for individuals seeking to challenge the election of any member declared duly elected to a seat in the senate or house of representatives. See 10 ILCS 5/23-12, 23-13 (West 2020). For example, in *Pullen*, the trial court had jurisdiction under the Election Code to consider an unsuccessful primary candidate for the house of representative's complaint for an election contest, which included challenges to uninitialed absentee ballots, ballots lacking precinct numbers, ballots with the wrong precinct designation, ballot applications lacking the voter's signature, numbered ballots, allegedly lost ballots, and partially punctured ballots. *Pullen*, 138 Ill. 2d at 47-85. Similarly, here, Mazzochi seeks to challenge the counting of mail-in ballots. This challenge must be brought pursuant to the provisions of the Election Code. Mazzochi failed to cite to any provision of the Election Code that permits the complaint she filed in this case; nor has our

research uncovered any such authority. Given that there is no statutory authority under the Election Code for the trial court to hear the case, it erred when it concluded that it had jurisdiction.

Our conclusion is also supported by the fact that our courts “ ‘have no jurisdiction to enjoin the holding of an election.’ ” *Sachen v. Illinois State Board of Elections*, 2022 IL App (4th) 220470, ¶ 19 (quoting *Fletcher v. City of Paris*, 377 Ill. 89, 92 (1941)). The relief sought here directly interferes with the holding of the election by delaying the process of counting votes. Mazzochi had relief available to her under the Election Code. She cannot bypass this process by filing suit directly in the trial court.

Mazzochi does not dispute that there is no provision in the Election Code that permits her to file the complaint in this case. Instead, she contends that this case did not involve an “election contest” that would trigger the trial court’s special statutory jurisdiction. She notes that the relief she sought did not require the counting (or not counting) of a particular vote. Rather, Mazzochi contends the trial court had general jurisdiction over her complaint for equitable relief to enforce compliance with the Election Code’s provisions regarding the verification of mail-in ballot signatures. We find this to be a distinction without significance. Mazzochi’s complaint seeks to challenge the way votes were counted by Kaczmarek and, by implication, the result of the election. This is an election contest and the Election Code’s provisions governing election contests apply.

In reaching this conclusion, we reject Mazzochi’s reliance on *Quinn v. Board of Election Commissioners for City of Chicago Electoral Board*, 2018 IL App (1st) 182087.<sup>2</sup> We find *Quinn* distinguishable. *Quinn* involved the administrative review of the decision of an electoral board pursuant to section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2020)). The question

---

<sup>2</sup>We note that the First District considered the same arguments again in a subsequent appeal and reached the same result. See *Quinn v. Board of Election Commissioners for City of Chicago Electoral Board*, 2019 IL App (1st) 190189.

there was whether the trial court had authority to issue *mandamus* on administrative review from a decision of the Electoral Board. *Quinn* decided that *mandamus* relief was available on administrative review. It did not, however, hold that *mandamus* relief is available in all cases as an alternative to the provisions of the Election Code. In other words, *Quinn* does not hold that equitable relief is available as a way to bypass the requirements of the Election Code. In sum, none of the bases asserted by Mazzochi conferred jurisdiction upon the circuit court in this case, including the declaratory judgment statute, which was the basis alleged in count I.

Consequently, we vacate the trial court's order granting the temporary restraining order and preliminary injunction. In so holding, we note that we do not make any judgment as to whether the trial court correctly concluded mail-in ballot signatures must be verified only against the voter's registration record. We express no opinion on the merits of this issue. Instead, that issue may be decided once it is brought under the correct provisions of the Election Code. We acknowledge that the procedures set forth in the Election Code may be slower, more expensive, and less practical by not involving the courts in the first instance. However, this is how our legislature drafted the Election Code and we are bound to follow it. *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, ¶ 28 (“[W]hether a statute is wise and whether it is the best means to achieve the desired result are matters for the legislature, not the courts.”).

The part of the order of the circuit court of Du Page County granting the temporary restraining order and preliminary injunction is hereby vacated and the case is remanded for further proceedings consistent with this order. This matter is before the court for interlocutory appeal based on Supreme Court Rule 307(d) (eff. Nov. 1, 2017). Consequently, this court can only address the order granting the temporary restraining order and preliminary injunction. This decision is issued in accordance with Illinois Supreme Court Rule 23(c)(2) (eff. Jan. 1, 2021).

Vacated in part and remanded for further proceedings consistent with this order.

RETRIEVED FROM DEMOCRACYDOCKET.COM