

STATE OF MICHIGAN
COURT OF APPEALS

MARK JANER and STEVEN J. JACOBS,

Plaintiffs-Appellants,

v

JENNIFER CASS BARNES, SECRETARY OF
STATE, DEPARTMENT OF STATE BUREAU
OF ELECTIONS, and BAY COUNTY CLERK,

Defendants-Appellees.

FOR PUBLICATION

June 17, 2010

9:00 a.m.

No. 298401

Bay Circuit Court

LC No. 10-003352-AW

Advance Sheets Version

Before: O'CONNELL, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order denying their request for a declaratory judgment, mandamus, and injunctive relief in this election case. We affirm.

In April 2010, plaintiffs and defendant Jennifer Cass Barnes timely filed nominating petitions to become candidates on the ballot for the position of 74th District Court Judge in the August 3, 2010, primary election. The position was designated a nonincumbent position, because incumbent Judge Scott J. Newcombe had announced his intention to resign on May 31, 2010. On April 23, 2010, Governor Jennifer M. Granholm appointed Barnes to replace Judge Newcombe and serve the remainder of his term. Barnes assumed the duties of her office on June 1, 2010.

Plaintiffs filed a complaint for a declaratory judgment, seeking a writ of mandamus and injunctive relief to prevent Barnes from receiving an incumbency designation on the primary election ballot. They argued that because Barnes filed nominating petitions to access the ballot as a nonincumbent, and because her appointment occurred after the deadline for incumbent judges to access the ballot, she is not entitled to the incumbency designation on the ballot. The trial court denied the requested relief, ruled that Barnes will have the incumbency designation on the August primary election ballot, and dismissed the complaint with prejudice.

This Court reviews de novo a trial court's ruling in a declaratory judgment action. *Toll Northville Ltd v Northville Twp*, 480 Mich 6, 10; 743 NW2d 902 (2008). This Court also reviews de novo issues of constitutional and statutory law. *Wayne Co v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004).

Incumbent judges must be given the incumbency designation on the ballot as a matter of constitutional and statutory law. Const 1963, art 6, § 24, provides: “There shall be printed upon the ballot under the name of each incumbent justice or judge who is a candidate for nomination or election to the same office the designation of that office.” The Legislature codified this provision to require the incumbency designation on the ballot for incumbent district court judges: “There shall be printed upon the ballot under the name of each incumbent district judge who is a candidate for nomination or election to the same office the designation of that office.” MCL 168.467c(2). The word “shall” . . . denotes mandatory conduct. See *Hughes v Almena Twp*, 284 Mich App 50, 62; 771 NW2d 453 (2009) (“The word ‘shall’ as used in a statute is considered to require mandatory conduct.”); *Goldstone v Bloomfield Twp Pub Library*, 268 Mich App 642, 657; 708 NW2d 740 (2005) (“[T]he term ‘shall’ is universally recognized as requiring mandatory adherence.”), *aff’d* 479 Mich 554 (2007).

Const 1963, art 6, § 24, and MCL 168.467c(2) are unqualified mandates. They do not impose a time within which an incumbent candidate must act in order to qualify for the incumbency designation. Because the language is clear and unambiguous, judicial interpretation is not permitted, and the provisions must be enforced as written. *Huggett v Dep’t of Natural Resources*, 464 Mich 711, 717; 629 NW2d 915 (2001). The only requirement for the incumbency designation on the ballot is the incumbent status of the judge, which it is undisputed that Barnes attained on June 1, 2010. Accordingly, she is entitled to the incumbency designation.

Lastly, we note that our affirmance of the trial court’s decision in this matter does not alter the ballot language and, accordingly, the issues presented by defendant Bay County Clerk are moot.

Affirmed. No costs are to be assessed, a public question being involved. This opinion shall have immediate effect pursuant to MCR 7.215(F)(2).

/s/ Peter D. O’Connell

/s/ Donald S. Owens

/s/ Stephen L. Borrello