D45 w/app

IN THE SUPREME COURT OF FLORIDA

BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, etc., et al.,

Petitioners

v.

DEPARTMENT OF COMMUNITY AFFAIRS, State of Florida,

Respondent

No. 80,158

JURISDICTIONAL BRIEF

FOR THE RESPONDENT

On Petition from the District Court of Appeal for the First District

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STATEMENT OF THE CASE AND FACTS

Although the Department agrees with the recital of the facts by the County in its Brief, there are other facts the Court should consider.

Hernando County had three special districts with taxing powers: the Istachatta-Nobleton Recreational District; the Springhill Fire District; and the Township 22 Fire District. Because the Department had classified all three districts as dependent, the County petitioned it to declare the districts independent so that ad valorem taxes levied by the districts would not come out of the ten-mill limit on "county purposes" taxes.[1] Hernando County contended that mixing special district millage with county millage was unconstitutional.

While this case was pending in the First District, the County converted Springhill to an independent special district. Hernando Co. Ordinance No. 91-26 (A. 1). In addition, the County established municipal services taxing units with boundaries and functions identical to those of Township 22 and Istachatta-Nobleton. Hernando Co. Ordinance No. 91-28 (A. 11); Hernando Co. Ordinance No. 91-29 (A. 17). By virtue of Section 200.071(3), Fla. Stat. (1991), such taxing units operate within a ten-mill limit which is separate from the limit for counties.

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[1] Under the Special Districts Information Program, the Department classifies special districts as independent or dependent according to the variables in Section 189.403(2), Fla. Stat. (1991). The importance of this distinction is that ad valorem taxes levied by dependent special districts and county ad valorem taxes together cannot exceed the ten-mill rate allowed for "county purposes." Section 200.001(8)(d), Fla. Stat. (1991). Ad valorem taxes levied by independent special districts are are not subject to the ten-mill limitation. Id.

SUMMARY OF ARGUMENT

Hernando County has no standing to challenge the validity of the very laws it administers. Besides, the County has converted one of the special districts from a dependent district to an independent one, and has established municipal service taxing units to take over the functions of both the others. Converting one district to independent status and forming taxing units to replace the others has mooted this case, because the County is no longer being harmed by Section 200.001(8)(d), if indeed it ever was.

Moreover, this case presents no substantial issues for plenary consideration by this Court.[2] First, nothing in Section 189.403(2) or Section 200.001(8)(d) affects the taxing powers of the County. There is nothing in Article VII, Section 9(b) which limits the authority of the Legislature to place conditions on taxation by special districts. Even if there were, under Section 189.4035(6), Fla. Stat. (1991), the County can make most districts independent, so that district levies will not deplete county millage. Last, the Legislature considered special district millage a component of county millage when the Constitution of 1968 was ratified. For these reasons, the First District was correct in holding Section 200.001(8)(d) constitutional.

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[2] Hernando County also argues that Section 200.001(8)(d) is an unconstitutional transfer of governmental authority without the consent of the voters. See Fla. Const. Art. VIII, Section 4. This argument is untenable for a number of reasons. In addition, the County takes the position that Section 200.001(8)(d) sets up improper classifications in violation of the Constitution. See Fla. Const. Art. III, Section 3(b). This prohibition is not even applicable to general laws.

ARGUMENT

Under the Constitution, this Court should interpose its judgment only in those cases ripe for adjudication. Even then, it should do so only at the instance of parties who have standing to sue. This case satisfies neither condition.

I. THE CASE IS NONJUSTICIABLE.

Hernando County has no standing, both because it has failed to invoke its legal remedies, and because this constitutional challenge is irreconcilable with its public duties. Moreover, this case was mooted by the way the County altered the districts while the case was pending in the First District.[3]

A. Hernando County Has No Standing.

Hernando County argues that it is harmed because levies by the districts decrease its millage. Yet the County could make the districts independent if it wanted to. Section 189.4035(6), Fla. Stat. (1991). Indeed, it has done so with one. This would relieve the County of any financial pressures stemming from the aggregation of its own millage with district millage. See Section 200.001(8)(d), Fla. Stat. (1991). Yet from the first its legal position has rested on a studied avoidance of this solution. Parties who reject a legal solution which would obviate

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[3] The opinion of the First District is silent on the standing and mootness issues. These issues go to the constitutional jurisdiction of this Court, see Fla. Const. Art. V, Section 1, so the parties are free to raise them at any time. See Florida Power & Light Co. v. Canal Authority, 423 So.2d 421, 422 (Fla. 5th D.C.A. 1982), rev. denied, 434 So.2d 887 (Fla. 1983) (dictum); Waters v. State, 354 So.2d 1277, 1278 (Fla. 2d D.C.A. 1978). The standing and mootness issues may therefore be raised in this Court.

the need for a constitutional challenge have no standing to pursue that challenge. State ex rel. Utilities Operating Co. v. Mason, 172 So.2d 225, 229 (Fla. 1964); Gallie v. Wainwright, 362 So.2d 936, 939 (Fla. 1978). The only thing that has harmed Hernando County here is its own intransigence.

In addition, the County has betrayed its governmental obligations by mounting this challenge. Section 200.001(8)(d), Fla. Stat. (1991), gives the County its taxing powers, and the County must administer Section 200.001(8)(d) to exercise those powers. Governmental entities have no standing to challenge the constitutional validity of the statutes they administer. Department of Education v. Lewis, 416 So.2d 455, 458 (Fla. 1982); Barr v. Watts, 70 So.2d 347, 351 (Fla. 1953); Miller v. Higgs, 468 So.2d 371, 374 (Fla. 1st D.C.A.), rev. denied, 479 So.2d 117 (Fla. 1985). The posture of the County in this case is irreconcilable with its governmental duties.

B. The Case Is Moot.

To the extent that Hernando County applied the foregoing legal solutions while the case was pending in the First District, it mooted the case. As discussed supra, the County converted Springhill from a dependent district to an independent one. Ordinance No. 91-26 (A. 1). The taxes which Springhill levies no longer come out of the ten-mill county limit. Section 200.001(8)(d), Fla. Stat. (1991). Its taxes are now separate from those levied by the County.

The new municipal service taxing unit whose boundaries coincide with Township 22 has independent taxing powers as well.

Ordinance No. 91-28 (A. 11); Section 200.071(3), Fla. Stat. (1991). So does the taxing unit the County formed to cover Istachatta-Nobleton. Ordinance No. 91-29 (A. 17). The formation of these freestanding taxing entities cancels out any detriment the County may have suffered. This leaves the Court with no justiciable issues before it.[4]

II. THERE ARE NO ISSUES OF SUBSTANTIAL IMPORTANCE.

Even if this case were justiciable, it presents no issues warranting plenary consideration by this Court. All three of the constitutional issues the County raised are well settled. What is more, the First District was correct on all of them.

A. Article VII, Section 9(b).

The arguments by the County rest on a fundamental misconception of the role of counties under the Constitution of 1968. At the core of its argument is the notion that Article VII, Section 9(b) somehow gives the counties the unfettered right to tax at ten mills, regardless of any district levies. Yet this Court has ruled that Article VII, Section 9(b) is a limitation on the power of the Legislature itself. Bailey v. Ponce de Leon Port Authority, 398 So.2d 812, 814 (Fla. 1981). Indeed, counties in the State of Florida have no "rights" as such. See Weaver v.

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[4] The authority of these entities to impose ad valorem levies of up to ten mills derives from the separate constitutional power of counties to collect taxes of up to ten mills "for municipal purposes." Fla. Const. Article VII, Section 9(b). This millage is separate from county millage. Both the taxing units in Hernando County therefore have the authority to collect ad valorem taxes without touching the taxes Hernando County levies "for county purposes." Taxes for "county purposes" and those for "municipal" purposes" are discrete and separate levies.

Heidtman, 245 So.2d 295, 296 (Fla. 1st D.C.A. 1971). As with Weaver, this case "is not a contest between a private citizen and the sovereign but . . . between the sovereign and its child. The respective counties of this State do not possess any indicia of sovereignty; they are creatures of the legislature . . . ." Weaver v. Heidtman, supra, 245 So.2d at 296. Counties are not sovereignties, and neither are special districts.

Counties have only as much taxing authority as the Legislature has allowed. See Gallant v. Stephens, 358 So.2d 536, 539 (Fla. 1978); Tucker v. Underdown, 356 So.2d 251, 253 (Fla. 1978). Like the Court in Tucker, we well may wonder "why a multiplicity of taxing units within a county would be any less consistent with the Constitution than would one unit for the entire unincorporated area of the county." Id. at 253. By logical inference, if the Legislature can permit the establishment of dependent special districts, a fortiori it can allocate the taxes between them and the counties.[5]

Hernando County relies on the deletion of the phrase "including special taxing districts lying wholly within a county" from what became Article VII, Section 9(b) as evidence that the

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[5] As authority contra, see Department of Education v. Glasser, ____ So.2d ____ (Fla. 2d D.C.A. 1992), cited, Brief on Jurisdiction at 5. In the Glasser case the Second District ruled that Section 236.25(1), Fla. Stat. (1991), worked an infringement on the taxing powers of school districts in violation of Article VII, Section 9(b) because it lowered the taxes which could be levied for local education. Glasser has no bearing here, because even if we were to agree arguendo with the reading of Article VII, Section 9(b) by the Second District, the present case does not raise that issue. Section 200.071(1) gives local government the whole measure of taxing power allowed by the Constitution, and Section 236.25(1) does not.

framers of the Constitution of 1968 intended to segregate special district millage from county millage. Its argument is flawed in several respects. Implicit in the argument is the notion that Article VII, Section 9(b) empowers counties to tax for "county purposes" outside the ten-mill limit by using special districts as surrogates. The suggestion that the County may achieve indirectly that which the Constitution prohibits it from doing directly is abhorrent to reasoned constitutional jurisprudence.[6]

Moreover, there is historical evidence that taxes levied by special districts for county purposes were mixed in with the ten mills allowed for counties at the time the Constitution of 1968 was ratified. At that time, Section 193.321, Fla. Stat. (1967), forbade "counties and districts" from taxing "in excess of ten mills." Id. (emphasis added). Section 193.321 was renumbered as Section 200.071(1), Fla. Stat. (1969), but the restriction remained. What is more, Section 200.091, Fla.Stat. (1969), addressed increases in "[t]he millage authorized . . . in Section 200.071 for county purposes, including districts therein . . . ." Id. (emphasis added). It is unlikely that the Legislature would have passed laws transgressing the very Constitution it was sub-

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[6] As authority for the deletion of language from a statute as evidence of intent, the County cites a case turning upon the interpretation of Section 440.205(1), Fla. Stat. (1981). See Piezo Technology and Professional Administrators, Inc. v. Smith, 413 So.2d 121 (Fla. 1st D.C.A. 1982), affirmed, 427 So.2d 182 (Fla. 1983), cited, Brief on Jurisdiction at 4. Its reliance on Piezo Technology is mystifying, because there the First District ruled that the mere deletion of language from what became Section 440.205(1) without the substitution of contrary wording, was not evidence that the Legislature had intended to reverse its meaning. 423 So.2d at 123. Applying the Piezo Technology test is meaningless here.

mitting to the voters for ratification.

Section 200.001(8)(d) comes before this Court with a presumption of validity. Gallant v. Stephens, supra, 358 So.2d at 540; Holley v. Adams, 238 So.2d 401, 404-05 (Fla. 1970); Knight & Wall Co. v. Bryant, 178 So.2d 5, 8 (Fla. 1965), cert. denied, 383 U.S. 958, 86 S.Ct. 1223, 16 L.Ed.2d 301 (1966); Miller v. Higgs, supra, 468 So.2d at 375. Under that presumption, if there is any reasonable interpretation of the statute agreeable to the Constitution, the statute is valid. Holley v. Adams, supra, 238 So.2d at 404. Hernando County has offered nothing to overcome that presumption.[7]

B. Article VIII, Section 4.

Hernando County takes the further position that Section 200.001(8)(d) accomplishes a transfer of governmental power without the consent of the voters in violation of Fla. Const. Article VIII, Section 4. See Sarasota County v. Town of Longboat Key, 355 So.2d 1197 (Fla. 1978). Hernando County cites Town of Longboat Key for the sweeping proposition that any transfer of governmental functions requires voter approval. Brief on Jurisdic-

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[7] Hernando County cites earlier cases from this Court holding that even de minimis constitutional infringements may invalidate a statute. See Dewberry v. Auto-Owners Insurance Co., 363 So.2d 1077 (Fla. 1978); Pinellas County v. Banks, 19 So.2d 1 (1944), cited, Brief on Jurisdiction at 3. Both of these cases were between private parties and governmental entities. In both, the issue was whether an intervening statute worked an impairment of contract. Banks arose under Section 192.21, Fla. Stat. (1943), pertaining to the redemption of tax certificates. 19 So.2d at 2-3. The issue in Dewberry was the validity of Section 627.4132, Fla. Stat. (1976 Supp.), as applied to insurance policies issued before Section 627.4132 went into effect. 363 So.2d at 1078-79. Neither Banks nor Dewberry had anything to do with the allocation of authority between the counties and the State.

tion at 7.

The pivotal fact in Town of Longboat Key was the irrevocable character of the transfer. Twice this Court has ruled that a revocable transfer of governmental functions in which the transferor entity retained ultimate authority over those functions did not violate Article VIII, Section 4. Miami Dolphins, Ltd. v. Dade County, 394 So.2d 981, 984-85 (Fla. 1981); City of Palm Beach Gardens v. Barnes, 390 So.2d 1188, 1189 (Fla. 1980); see also Broward County v. City of Fort Lauderdale, 480 So.2d 631, 634-35 (Fla. 1985). Sections 200.001(8)(d) and 200.071(1) merely state that if the County wishes to use one of its dependent special districts to tax for county purposes, the millage it levies must come out of the ten-mill cap.[8]

C. Article III, Section 11(b).

Last, the County argues that the classification scheme for special districts violates Article III, Section 11(b). This argument is likewise untenable. See Eastern Air Lines, Inc. v. Department of Revenue, 455 So.2d 311, 314 (Fla. 1984), dismissed, 474 U.S. 892, 106 S.Ct. 213, 88 L.Ed.2d 214 (1985). It is quite logical for the Legislature to aggregate the taxes levied by such a district with those assessed by the parent city or county, so the classification is reasonable.

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[8] In the Miami Dolphins case the Court ruled that the reallocation to Dade County of tax revenues for a specified purpose was not a transfer of power at all, so that Article VIII, Section 4 did not even come into play. 394 So.2d at 985. Miami Dolphins is additional authority here, because it indicates that a mere reallocation of taxes does not divest Hernando County of its authority over the districts.

CONCLUSION

For the foregoing reasons, the Court should decline to take jurisdiction. Respectfully submitted,

ALFRED O. BRAGG, III

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served copies of the foregoing Jurisdictional Brief for Respondent by sending the same by U.S. Mail to Robert L. Nabors, Esq., Sarah M. Bleakley, Esq. and Thomas H. Duffy, Esq., Nabors, Giblin & Nickerson, P.A., 315 South Calhoun Street, Tallahassee, Florida 32302; and to Robert Bruce Snow, Esq., County Attorney, Hernando County, 112 North Orange Avenue, Brooksville, Florida 34601 this October 1, 1992.

ALFRED O. BRAGG, III