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IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

SARASOTA COUNTY,
Petitioner,

vs.

Case No. 84,414
DCA No. 93-01902

SARASOTA CHURCH OF CHRIST,
INC., et al.,

Respondents.

REQUEST FOR REVIEW FROM A DECISION
OF THE SECOND DISTRICT COURT OF APPEAL

**JURISDICTIONAL BRIEF
OF PETITIONER, SARASOTA COUNTY**

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STATEMENT OF THE CASE AND OF THE FACTS

The Second District Court of Appeal rendered its decision in this case on September 6, 1994.¹ The decision affirmed the Trial Court's final judgment in a class action lawsuit.² The Trial Court's final judgment declared invalid a special assessment for funding the stormwater utility of Petitioner, Sarasota County (hereinafter "SARASOTA") and ordered a refund to all class members. SARASOTA's stormwater utility and special assessment were created by SARASOTA ordinance number 89-117.³ The ordinance was adopted in reliance on Sections 403.0893 and 403.031(17), Florida Statutes, which provide for the funding of stormwater utilities by special assessments based on a property owner's contribution to the need of the stormwater system.

The Second District Court of Appeal decision adopted, with certain minor modifications, the Trial Court's final judgment as its decision.⁴ (Appendix, Item #1, p. 2). SARASOTA duly filed a Notice to invoke the discretionary jurisdiction of this Court pursuant to Florida Rules of Appellate Procedure

¹ A copy of the decision is attached to the Appendix as Item #1.

² The class consists of religious organizations or entities owning real property within Sarasota County and used exclusively for religious purposes.

³ A copy of ordinance number 89-117 is attached to the Appendix as Item #2.

⁴ A copy of the Trial Court's final judgment is attached to the Appendix as Item #3.

9.030(a)(2)(A)(iv).

The Second District Court of Appeal makes specific findings on which the decision is based. Neither the decision nor the Trial Court's final judgment makes a finding of arbitrary action or a plain abuse by SARASOTA as required by this Court's decision in South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380, 383 (Fla. 1973). The decision simply finds that in the Court's opinion that there was no special benefit and that the special assessment is therefore invalid.

The Second District Court of Appeal decision relies on and cites to a Circuit Court opinion filed in Foxx v. Madison County, etc., case #90-161-CA, Third Judicial Circuit in and for Madison County, Florida.⁵ (Appendix, Item #1, p. 7). The Foxx case was reversed in part by the First District Court of Appeal in Madison County v. Foxx, 636 So.2d 39 (Fla. 1st DCA 1994). The part reversed in the Foxx case was the same part relied on by the Second District Court of Appeal in reaching its decision.

The Second District Court of Appeal decision does not just invalidate the special assessment. The decision goes on to direct that revenue to fund SARASOTA's stormwater utility "should be raised through the taxation method." (Appendix - Item 1, page 8).

⁵ A copy of the Circuit Court opinion is attached to the Appendix as Item #4.

SUMMARY OF ARGUMENT

The decision of the Second District Court of Appeal directly and expressly conflicts with this Court's decision in South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380 (Fla. 1973) since the Second District's decision eliminates the requirement of a clear and full showing of arbitrary action or a plain abuse by the legislative body before a court can find that there is no special benefit to sustain a special assessment. The decision of the Second District also directly and expressly conflicts with the First District's decision in Madison County v. Foxx, 636 So.2d 39 (Fla. 1st DCA 1994) on the same basis.

The decision of the Second District conflicts with this Court's decisions on the separation of powers doctrine. The Second District's drawing of a "proverbial line in the sand" and its directive that SARASOTA collect revenues for stormwater services through the general taxation method is an encroachment by the judiciary into the legislative branch of government and is a violation of the separation of powers doctrine. As a result of such violation, the Second District's decision conflicts with this Court's decisions in Chiles v. Children A, B, C, D, E and F, 589 So.2d 260 (Fla. 1991) and Pepper v. Pepper, 66 So.2d 280 (Fla. 1953).

This Court should accept jurisdiction over this case pursuant to Article V, Section 3(b)(3) of the Florida Constitution.

ARGUMENT

- I. THE SECOND DISTRICT DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S DECISION OF SOUTH TRAIL FIRE CONTROL DISTRICT, SARASOTA COUNTY V. STATE SINCE THERE WAS NO CLEAR AND FULL SHOWING BY THE SECOND DISTRICT OF ARBITRARY ACTION OR A PLAIN ABUSE BY SARASOTA.

The Second District Court of Appeal decision adopts, with certain minor modifications, the final judgment of the Trial Court. (Appendix, Item 1, p. 2). The Second District decision specifically sets forth the findings of the Trial Court on which the decision is based. There is no finding of arbitrary action or plain abuse by SARASOTA. The Second District decision simply finds, in its opinion, that "stormwater management services [as planned and funded by Sarasota County Ordinance No. 89-117]...are not a valid special assessment and are, in fact, services whose revenue should be raised through the taxation method." (Appendix, Item 1, p. 8).

In South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380 (Fla. 1973) this Court considered the validity of a special assessment for fire and rescue services. This Court, quoting 48 Am.Jur., Special or Local Assessments, § 29, pages 588-589, stated:

The question of the existence and extent of special benefit resulting from a public improvement for which a special assessment is made is one of fact, legislative or administrative rather than judicial in character, and the determination of such question by the legislature or by the body authorized to act in the premises is conclusive on the property owners and on the

courts, unless it is palpably arbitrary or grossly unequal and confiscatory, in which case judicial relief may be had against its enforcement. South Trail supra at 383.

This Court then stated and held as follows:

A matter of this kind [validity of the special assessment] depends largely upon opinion and judgment as to what will, or will not, prove a benefit to the district and the court should not substitute its opinion and judgment for that of the legislature in the absence of a clear and full showing of arbitrary action or a plain abuse. South Trail, supra at 383.

As set forth above, the Second District adopted the Trial Court's final judgment as its decision. The final judgment makes specific findings on which the declaration of invalidity of the special assessment is based. But, no part of the Second District decision finds, addresses or even mentions arbitrary action or plain abuse by SARASOTA. "Arbitrary" is defined in Black's Law Dictionary, revised, 4th Edition (1968) as follows:

Means in an "arbitrary" manner, as fixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic;... without fair, solid and substantial cause; that is, without cause based upon the law;...not governed by any fixed rules or standard.

See University of Miami v. Militana, 184 So.2d 701, 703 (Fla. 3rd DCA 1966) (quoting Black's Law Dictionary). The term "action" is defined in Black's Law Dictionary, supra, as "conduct; behavior; something done; the condition of acting; an act or series of acts."

"Plain" is defined as evident, clear, manifest, obvious,

conclusive, beyond question or doubt. Russell v. State, 71 So. 27, 28 (Fla. 1916). "Abuse" is defined in Webster's Ninth New Collegiate Dictionary (1988) as:

A corrupt practice or custom; improper use or treatment - misuse; a deceitful act; deception...

It is obvious from a review of the definitions of arbitrary action and plain abuse that the Second District and the Trial Court never found or determined that SARASOTA acted arbitrarily or, that it was a plain abuse by SARASOTA to collect revenues for the stormwater utility by special assessment. The Second District simply affirmed the Trial Court's opinion that there was no special benefit to property owners from the stormwater utility. This finding alone is insufficient under South Trail.

The Second District decision has adopted a new standard for determining the validity of special assessments. The new standard drops the South Trail requirement that the Court make a full and clear showing of arbitrary action or a plain abuse by the legislative body before the legislative determination can be set aside. This new standard is contrary to and inconsistent with the standard set forth in South Trail, supra. This new standard also violates the separation of powers doctrine by permitting the judiciary to encroach on the powers of the legislative branch. See Chiles v. Children, A, B, C, D, E and F, 589 So.2d 260, 263-64 (Fla. 1991). An express and direct conflict exists and this Court should accept jurisdiction to resolve the conflict.

II. THE SECOND DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIRST DISTRICT

COURT OF APPEAL'S DECISION IN MADISON COUNTY
V. FOXX.

The Second District's decision relies on and cites to an unpublished Circuit Court opinion filed in Foxx v. Madison County, case #90-161-CA, Third Judicial Circuit in and for Madison County, Florida. (Appendix, Item #4).

The Circuit Court's opinion in Foxx was reversed in part by the First District Court of Appeal in Madison County v. Foxx, 636 So.2d 39 (Fla. 1st DCA 1994). The part reversed in Foxx was the same part relied on by the Second District in its decision. In reaching its decision, the Second District stated:

Judge John W. Peach, in the Third Judicial Circuit, seemed to draw the proverbial "line in the sand" on this issue in his recent Opinion. The Foxx case dealt with special assessments and the homestead exemption. A pertinent portion of Judge Peach's decision states the following:

"...The charges levied actually provide only a general benefit to the community and property throughout the county as a matter of law as opposed to a special benefit to any particular property and accordingly the charges are not special assessments or assessments for special benefits as that term is used in the Constitution."
(Appendix, Item 1, p. 7-8).

The First District Court of Appeal reversed the Trial Court in Foxx, erasing the Trial Court's "line in the sand" and holding that "whether these alleged special assessments confer special benefits upon the property assessed - presents mixed questions of law and fact," citing to page 383 of this Court's South Trail decision. Madison County v. Foxx, 636 So.2d 39, 49 (Fla. 1st DCA 1994). As

set forth above, page 383 of the South Trail decision states that the determination of the existence and extent of special benefits is a question of fact, legislative not judicial, and that the determination by the legislature will only be set aside if there is a clear and full showing of arbitrary action or a plain abuse. The First District Court of Appeal decision in Foxx clearly follows South Trail. The Second District Court of Appeal decision sets a new and different standard which eliminates any requirement for a clear and full showing by the Court of arbitrary action or plain abuse by the legislative body and holds that the Court can determine the existence and extent of special benefits for special assessments as a matter of law. There exists an express and direct conflict between the Second District decision and the First District's decision of Madison County v. Foxx. This Court has jurisdiction and should resolve this express conflict concerning the standards for determining the validity of special assessments.

III. THE SECOND DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S DECISION PREVENTING THE COURTS, UNDER THE DOCTRINE OF SEPARATION OF POWERS, FROM EXERCISING LEGISLATIVE POWERS.

The Second District decision does not just declare SARASOTA's stormwater assessment invalid. The decision also draws a "proverbial line in the sand" to prevent future services to be funded by special assessments and directs SARASOTA to collect the revenues for stormwater services through general taxation. (Appendix, Item 1. p. 8). The Second District decision directly violates this Court's decisions on separation of powers. As set

forth in this Court's decision in Chiles v. Children A, B, C, D, E and F, 589 So.2d 260, 263-64 (Fla. 1991):

The separation of powers doctrine is expressly codified in the Florida Constitution in article II, § 3:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

(Emphasis added) The doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another....The second is that no branch may delegate to another branch its constitutionally assigned power.

The Second District decision presents a separation of powers violation of the first type: no branch may encroach upon the powers of another branch. As set forth in Pepper v. Pepper, 66 So.2d 280, 284 (Fla. 1953):

The courts have been diligent in striking down acts of the Legislature which encroached upon the Judicial or the Executive Departments of the Government....The Courts should be just as diligent, indeed, more so, to safeguard the powers vested in the Legislature from encroachment by the Judicial branch of the Government.

The choice of funding mechanisms to supply vital and necessary services such as stormwater services are to be determined by the legislature, not the judiciary. The judiciary cannot direct or dictate the funding mechanism to be used. The Second District's directive to draw a line in the sand and, further, for SARASOTA to collect revenue for stormwater services through the general

taxation method when other forms of collection are authorized under Sections 403.0893 and 403.031(17), Florida Statutes, is a clear violation of the separation of powers doctrine and conflicts with the decisions of this Court in Chiles and Pepper. An express and direct conflict exists between the Second District's decision and the decisions of this Court concerning violation of the separation of powers doctrine.

CONCLUSION

An express and direct conflict exists between the Second District's decision and the decisions of this Court and the First District. This Court has jurisdiction pursuant to Article V, Section 3(b)(3) of the Florida Constitution. This Court should accept jurisdiction of this case.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to Stephen F. Ellis, Esq., 1800 2nd Street, Suite 806, Sarasota, Florida 34236 and I.W. Whitesell, Jr., Esq., 1605 Main Street, Suite 705, Sarasota, Florida 34236, this 7th day of October, 1994.

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