IN THE SUPREME COURT
OF THE STATE OF FLORIDA

SARASOTA COUNTY,

Petitioner,

vs.

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

SARASOTA CHURCH OF CHRIST, INC. et al.,

Respondents.

RESPONDENTS' RESPONSE TO PETITIONER'S REQUEST FOR REVIEW FROM A DECISION OF THE SECOND DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE AND OF THE FACTS

The Respondents would supplement the Petitioner's Statement of the Case and of the Facts as follows:

The Second District Court of Appeal decision[1] which is the subject of Petitioner's request for Supreme Court review was in fact a near word for word recital of the Trial Court's final judgment.[2] To that extent, the decision is akin to a per curiam affirmed appellate ruling.

The Second District Court of Appeal stated in the opening paragraph of its opinion, referring to the final judgment on appeal:

> In affirming the judgment as amended, we quote extensively from it and, with certain minor modifications, approve and adopt it as our own... (Petitioner's Appendix Item #1 Page 2).

The minor modifications referenced by the Second District were the introduction in two locations of the opinion the bracketed words: "[as planned and funded pursuant to Sarasota County Ordinance No. 89-117]" (Petitioner's Appendix, Item #1, pages 7,8). These bracketed insertions by the Second District were made in each instance where the Trial Court's opinion referenced a finding or ruling regarding stormwater management services, thus limiting the scope of such findings and rulings to the facts of the instant case and the subject ordinance.

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[1] A copy of the decision is attached to the Petitioner's Appendix as Item #1.

[2] A copy of the Trial Court's final judgment is attached to Petitioner's Appendix as Item #3.

SUMMARY OF ARGUMENT

There exists in the decision of the Second District Court of Appeal no reference, language, or legal discussion sufficient to create an express and direct conflict with any decision by this Court or any district court of appeal. In fact, the ruling by the Second District is consistent with the cases cited by Petitioner, in that the lack of any special benefit supporting a special assessment is the basis for judicial declaration of the invalidity of special assessments, notwithstanding legislative pronouncements to the contrary.

Language in the Second District decision which is nothing more than obiter dictum recognizing the limitations of governmental fundraising is insufficient as a basis for conflict with case law supporting the constitutional doctrine of separation of powers.

This Court should deny discretionary jurisdiction of this case.

ARGUMENT

I. THERE EXISTS NO EXPRESS AND DIRECT CONFLICT BETWEEN THE SECOND DISTRICT'S DECISION AND SOUTH TRAIL FIRE CONTROL DISTRICT, SARASOTA COUNTY V. STATE AND, IN FACT, THE OPINION OF THE SECOND DISTRICT IS CONSISTENT WITH THE SOUTH TRAIL DECISION.

In response to Petitioner's argument for discretionary review, Respondents would show that such review is only appropriate when there is a specific ruling by the court of appeal in its opinion which expressly and directly conflicts with the opinion of another district court of appeal or of the supreme court on the same question of law. Florida Rules of Appellate Procedure 9.030(a)(2)(A)(iv.).

This Court has already ruled that it lacks jurisdiction to review per curiam affirmed decisions, Jenkins v. State, 385 So.2d 1356 (Fla. 1980). Further, in order for an opinion to contain an express and direct conflict sufficient for review (without specific district court reference to the conflict in its opinion), this Court has ruled that at the very least a discussion of legal principals by the district court of appeal is necessary. Ford Motor Co. v. Kikis, 401 So.2d 1341 (Fla. 1981).

The Petitioner chooses as its focus of conflict this Court's opinion in South Trail Fire Control District, Sarasota County v. State, 273 So.2d 380 (Fla. 1973). The portion of the South Trail opinion in which the Petitioner cites conflict is a discussion of the minimum requirement for judicial declaration

that a legislative declaration of benefits, supporting a special assessment, is invalid.

The Respondents would argue that there is no conflict because the Second District in the instant case rendered no discussion of such legal issue, nor did its ruling conflict with the ruling of this Court in South Trail on such point of law.

The opinion of the Second District makes no reference to any issue of the capricious or arbitrary determination of benefits by the legislative entity. This absence is not cause for conflict. If anything, such an absence precludes any express or direct conflict.

The Petitioner argues that the failure to address such an issue, combined with a ruling against the County, impliedly conflicts with South Trail. However, this Court has made it clear that discretionary conflict jurisdiction must be based upon express and direct conflict, not inherent or implied conflict. Department of Health and Rehabilitative Services v. National Adoption Counselling, 498 So.2d 888 (Fla. 1986).

Further, the Second District decision to invalidate the special assessment in the instant case is consistent with South Trail, as well as other cases which discuss the minimum requirements for judicial invalidation of special assessments. For example, South Trail references a need for "arbitrary action or plain abuse" (supra page 383). In a discussion in the earlier Supreme Court case of Atlantic Coast Line R. Co. v. City of Gainesville, 91 So.2d 118 (Fla. 1992), this Court referenced

a standard of "arbitrary and unwarranted exercise of legislative power" at page 122.

However, in both South Trail and Atlantic Coast Line the Supreme Court recognized that such findings would ultimately be based on the fact that there existed no special benefit to property owners, despite what the legislative entity had determined:

> It [the legislature] cannot by its fiat make a local improvement of that which in its essence is not such an improvement, and it cannot by its fiat make a special benefit to sustain a special assessment where there is no benefit.

South Trail, supra at page 383 (emphasis provided)

> This [the subject ordinance] resulted in a local tax being levied in grossly unequal proportions, and it is neither excuse nor defense to invoke the legislative authority.

Atlantic Coast Line, supra at page 123

In the instant case the Petitioner continues to attempt to invoke "legislative authority" as excuse or defense, despite the direct and specific finding of the Trial Court, affirmed by the Second District, that the stormwater services as planned and funded by the Sarasota County ordinance "provided no direct benefit, special benefit, increase in market value or proportionate benefit regarding the amount paid by any particular land owner." (Petitioner's Appendix, Item #1, page 7).

The Trial Court found and the Second District Court of Appeal affirmed the finding that

No evidence was presented of any direct or special

benefit to any of the church properties involved in this lawsuit. (Petitioner's Appendix, Item #1, page 7).

The above are uncontroverted findings of fact made by the Trial Court, after a full evidentiary trial, and affirmed by the Second District after a complete review of the record. Respondents herein submit that once the court has found no evidence of any special benefit, the legislative declaration of benefit could not have been anything other than arbitrary and unwarranted, and such additional findings are superfluous. The mere fact that the District Court did not specifically address an issue that is otherwise presumed or patently obvious cannot be a basis for express and direct conflict sufficient to authorize discretionary conflict review.

II. THERE EXISTS NO EXPRESS AND DIRECT CONFLICT BETWEEN THE SECOND DISTRICT'S DECISION AND THE FIRST DISTRICT COURT OF APPEAL'S DECISION IN MADISON COUNTY V. FOXX.

With respect to the Petitioner's argument that the Second District opinion is in conflict with the case of Madison County v. Foxx, 636 So.2d 39 (Fla. 1 DCA 1994), the lack of express or direct conflict is even less apparent.

It is true that the Second District referenced in its opinion language of Circuit Judge John W. Peach in his Circuit Court opinion, which opinion was ultimately reversed by the First District Court of Appeal. Madison County v. Foxx, supra. However, the sentiments of the Peach quote were not the subject of the Foxx reversal.

At the circuit level, Judge Peach granted a summary

judgment in favor of the property owners on the issue of special benefits. Foxx, supra at page 41. The First District in Foxx properly found that the issue of whether certain services confer special benefits upon property assessed presents a mixed question of law and fact, and therefore Judge Peach's summary judgment was premature. Foxx supra at page 49.

In the instant case, this Court is not dealing with a summary judgment, but rather a trial court's findings after trial that there existed no benefits relating to services funded by virtue of a special assessment. To the extent such issue is a question of fact and law, it has been determined both at trial and on appeal. The Second District Court's opinion herein presents no express and direct conflict with Madison County v. Foxx.

III. THE SECOND DISTRICT'S DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THIS COURT'S DECISIONS RECOGNIZING THE DOCTRINE OF SEPARATION OF POWERS.

As its third basis for conflict the Petitioner cites language by the Second District Court of Appeal, which suggests that revenues for stormwater management services should be raised through the taxation method, as conflicting with the constitutionally recognized doctrine of separation of powers and case law supporting same.

Initially, it must be recognized that judicial declarations of invalidity of special assessments are appropriate when there exists no special benefit to support such special assessment. South Trail Fire Control District, Sarasota County v. State, 273

So.2d 380 (Fla. 1973) and Atlantic Coast Line R. Co. v. City of Gainesville, 91 So.2d 118 (Fla. 1992).

To the extent the judicial declaration of invalidity of a special assessment impliedly leaves the government with no choice but to collect revenues through taxation cannot be said to be violative of the separation of powers. Rather, it merely recognizes the limited methods by which government can raise revenues combined with the responsibility of the judiciary to assure the citizenry against unwarranted government action.

The Second District Court of Appeal made no ruling that Sarasota County shall henceforth, without exception, raise its stormwater management revenues from general taxation.

Having recognized earlier in its finding that stormwater revenues in Sarasota County had been previously raised through taxation (Petitioner's Appendix, Item #1, page 6), when the Second District subsequently ruled the special assessment ordinance invalid it merely spoke the obvious: that such revenues (that is, those revenues inappropriately raised through invalid special assessment) should be raised through the taxation method. (Petitioner's Appendix, Item #1, page 7).

Removing what the Petitioner claims is the offending language of the opinion would not change the opinion or the decision of the Second District in any way, shape or form. Thus, such language clearly falls within the definition of "obiter dictum", from Black's Law Dictionary, Revised Fourth Edition (1968), as follows:

> Words of a prior opinion entirely unnecessary for the decision of the case...
> Statements in opinions wherein courts indulged in generalities that had no actual bearing on issues involved...

Thus, the language the Petitioner argues as conflicting is neither a finding of law or even a discussion of legal principals sufficient to invoke discretionary conflict jurisdiction of the Florida Supreme Court.

CONCLUSION

There exists no express and direct conflict between the Second District's decision and the decisions of this Court or any Florida District Court of Appeal. This Court should deny jurisdiction of this case.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished to **MICHAEL S. DREWS, ESQ.**, of 2070 Ringling Boulevard, Sarasota, Florida 34237 by U.S. Mail this 20 day of OCTOBER, 1994.

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