IN THE SUPREME COURT OF FLORIDA
CASE NO. 88,218

LAKE COUNTY, FLORIDA, et al.,

Petitioners,

v.

WATER OAK MANAGEMENT CORPORATION, et al,,

Respondents.
_____/

REPLY BRIEF OF PETITIONER, LAKE COUNTY, FLORIDA

On Appeal from the Fifth District Court of Appeal
Case No. 94-02729

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Florida Constitution

Florida Statutes

Ordinances and Resolutions

ARGUMENT

I. THE RESPONDENTS' ARGUMENT THAT VALID SPECIAL ASSESSMENTS REQUIRE "UNIQUE BENEFITS" PROVIDES NO ASSISTANCE IN EVALUATING SPECIAL ASSESSMENTS AND ACTUALLY ALTERS THE FLORIDA CASE LAW STANDARDS DEFINING VALID SPECIAL ASSESSMENTS.

The Respondents' challenge to the judicially-created logical relationship standard for special benefits is unhelpful and lacks case law support. Primarily, the terms "special benefit" and "unique benefit" are synonymous and provide no assistance in determining special assessment validity. In addition, no court has ever required that a valid special assessment provide a "unique" benefit to property. Rather, on many occasions, this Court has concluded that special benefits are those which bear a logical relationship to the use and enjoyment of property. See Crowder v. Phillips, 1 So. 2d 629 (Fla. 1941); Whisnant v. Stringfellow, 50 So. 2d 885 (Fla. 1951); and State v. Halifax Hospital District, 159 so. 2d 231 (Fla. 1963). Thus, the Respondents' new analysis of special benefit as "unique benefit" blurs the division between services and improvements which may be the basis of a special assessment and those which must be funded through general tax revenue.

In fact, the logical relationship standard was articulated by this Court immediately after the 1938 homestead revision to Article X, section 7, Florida Constitution. This revision changed the description of charges not prohibited by the homestead exemption from "special assessments for benefits" to "assessments for special benefits." With this 1938 revision a need arose to divide between those services and improvements providing the requisite special

benefit, capable of special assessment funding, and those general governmental services and improvements, required to be funded by general taxes. In response, the courts constructed the logical relationship standard to create a constitutional line for determining special assessment validity. The cases of Crowder, Whisnant, and Halifax, as cited above, were all decided after the 1938 constitutional change. Furthermore, each of these cases involved homestead property and the attempt to impose a special assessment on that property. However, not one of these three cases implied, much less, declared that special assessments could be imposed on homestead property only if they provided "unique" benefits.

A. Special Benefits Are Present When A Logical Relationship Exists Between The Special Assessment Program And The Use And Enjoyment Of Property.

The Respondents cannot escape the Supreme Court's clear language in Crowder v. Phillips, 1 So. 2d 629 (Fla. 1941), which concluded that no special benefit was conferred by the hospital construction because "no logical relationship [existed] between the construction and maintenance of a hospital, . . . and the improvement of real estate." Id. at 631 (emphasis added). Nor can the Respondents escape the consistent language in the later decision of Whisnant v. Strinsfellow, 50 So. 2d 885 (Fla. 1951), declaring that "an improvement for which an '[assessment] for special benefits' is made must bear some logical relationship to . . . the real estate." Id. at 885 (emphasis added). While the Respondents challenge the County's recital of this established

rule, they never articulate why the Crowder and Whisnant cases do not provide the correct standard for a special benefit determination. Answer Brief at 19, 34. In fact, these cases and others in line with them not only established the logical relationship standard but they did so while recognizing the same homestead arguments that the Respondents assert in this case.

In 1934, Article X, section 7, was added to the Florida Constitution. This provision protected homesteads from taxation up to $5,000 of assessed value but not from "special assessments for benefits." Under this language, homestead property was liable for ad valorem taxes levied merely to fund particular projects or purposes. State ex rel. Ginsberg v. Dreka, 185 So. 616 (Fla. 1938). In State v. Dreka, the "special assessments" at issue were ad valorem taxes levied to fund the maintenance of roads and provide hospital operations. Homestead property owners challenged the "special assessments" arguing that their properties were insulated from a portion of these ad valorem taxes because the charge imposed did not qualify as a "special assessment[] for benefits." The Supreme Court, however, rejected this argument, holding:

> If taxes can be imposed on homesteads to make improvements for the benefit of the district or districts, we think it must necessarily follow that any and all legitimate expenses of supporting and maintaining these improvements must also be paid for by assessments on homestead and non homestead property alike.

185 So. 2d at 617 (emphasis added). Thus, under the 1934 Florida Constitution, homesteads were not protected from ad valorem taxes levied merely for particular purposes because such taxes were

included in the phrase "special assessments for benefits." In response, Article X, section 7 was amended in 1938 to substitute the phrase "assessments for special benefits" for the phrase "special assessments for benefits."[1]

Recognizing the 1938 change in the constitutional homestead language, the Supreme Court in State v. Halifax Hospital District, 159 so. 2d 231 (Fla. 1963), defined the extent of homestead liability under the new constitutional language for the same ad valorem tax imposed for the same hospital district operations at issue in State ex rel. Ginsbers v. Dreka, 185 So. 616 (Fla. 1938).[2] With the change in the constitutional language, the Court reevaluated its standards for charges imposed on homestead property.

In State v. Dreka, the Supreme Court had held "that the hospital operating tax was in the nature of a special assessment for benefits to all of the property in the District." 159 So. 2d 231, 234 (emphasis added). However, in State v. Halifax Hospital District the Supreme Court noted that " [slubsequent to Dreka, . . .

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[1] This 1938 language, defining the scope of the homestead protection exclusion, remains in the current Florida Constitution in Article VII, section 6.

[2] The Supreme Court in State v. Halifax Hospital District noted:

> Appellee points to the decision in State ex rel. Ginsberg v. Dreka, 135 Fla. 463, 185 So. 616. . . . More vitally, however, was the time and posture in which the case reached the court . It was a successful effort to compel the assessment of this same hospital operating tax against homesteads in the District.

159 so. 2d at 233 (emphasis added).

the Court in Crowder v. Phillips [cit. omitted], reached a substantially different conclusion in the light of the 1938 amendment to Article X, Section 7[.]" 159 so. 2d at 234. The Supreme court, in State v. Halifax Hospital District, then acknowledged its initial declaration of the logical relationship to property standard declared in Crowder v. Phillips as the distinction between a valid special assessment and a tax:

> It should be noted that the original language permitted "special assessments for benefits," the latter amendment was much more restrictive, and permitted only "assessments for special benefits."
>
> Thus it was that when the problem recurred in 1941, in Crowder v. Phillips, supra, a Leon County Hospital District case, the Court held:
>
> "It is clear that the tax to be imposed under the provisions of the law under attack is ad valorem on all real and personal property as distinguished from assessments for special benefits to the real property located in the district. That a hospital is a distinct advantage to the entire community because of its availability to any person who may be injured or stricken with disease cannot be gainsaid, but there is no logical relationship between the construction and maintenance of a hospital, important as it is, and the improvement of real estate situated in the district. * * *"

159 So. 2d 234 (emphasis added) (quoting Crowder v. Phillips, 1 So. 2d 629, 631 (Fla. 1941)).[3]

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[3] This logical relationship standard also finds some definition in Fisher v. Board of County Commissioners of Dade County 84 So. 2d 572 (Fla. 1956). Again, recognizing the 1938 homestead constitutional amendment, the Supreme Court stated:

> [T]he framers of the [1938] constitutional exemption and the people who approved it manifestly intended that an imposition based on assessed valuation whether for local improvement or general government is one from

Thus, this court incorporated the logical relationship to property standard into the requirements for a valid special assessment decades ago, when a line between taxes and special assessments was constitutionally required to protect the homestead exemption. As the constitutional language defining the exception to the homestead ad valorem exemptions is still the same **as** the 1938 revision -- "assessments for special benefits" -- the logical relationship to property standard also remains the legal standard for distinguishing those services capable of special assessment funding from those services required to be funded through taxes.

B. A Common Sense Application Of The Logical Relationship Test Prevents Special Assessments From Being Used To Fund General Governmental Purposes.

A reasoned application of the logical relationship to property standard indicates that both fire/rescue services and solid waste disposal facilities are capable of providing special benefits to property. This Court has consistently found that consolidated fire and rescue services can provide a special benefit to property. Fire District No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969) ; South Trail Fire Control Dist., Sarasota County v. State, 273 So. 2d 380 (Fla. 1973). Common sense recognizes that these services protect property, the improvements on property, and the anticipated occupants of such improvements. Consolidated fire

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> which homesteads are exempt, while an assessment bearing a logical relation to direct "special benefits" is one to which homesteads may be subjected. [cits. omitted].

Id. at 579 (emphasis added).

protect ion and rescue services are delivered to specific parcels and the scope of the service delivery is governed by the'nature of the property and the improvements located on that property. Consequently, the manner in which property is used and enjoyed creates the need for these services and the services logically relate to that use. For example, the County in this case recognized that using property for agricultural purposes creates needs for fire and rescue services that are different from the needs of property used for commercial purposes. Thus, the County calculated the amount of the special assessment for these two property uses differently because the nature of the services delivered was different depending on how property was used and enjoyed. See Fire & Rescue Non-Ad Valorem Rate Schedule, Resol. No. 1992-155, R. at 1790.[4]

Likewise, solid waste disposal facilities are logically related to the use and enjoyment of property. Property use generates solid waste creating a burden which requires comprehensive solid waste management services.[5] The courts in Florida have, on several occasions, recognized the special benefit, and thus the logical relationship, between the use and enjoyment of

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[4] This Rate Schedule reflects that residential property pays $35 per residential unit; institutional property pays .06¢ per square foot; religious institutions pay .02¢ per square foot; commercial pays .06¢ per square foot; industrial pays .06¢ per square foot; agricultural pays .10¢ per acre; timber pays .10¢ per acre; vacant platted lot pays $5.00 per vacant platted lot; vacant parcels pay $5.00 per parcel; and other structures pay .02¢ per square foot.

[5] The Florida Legislature has mandated that all counties provide solid waste disposal facilities adequate to dispose of solid waste generated by all property in both the unincorporated and incorporated areas. § 403.706(1), Fla. Stat.

property and solid waste services. See Harris v. Wilson, 656 So. 2d 512 (Fla. 1st DCA 1995); Charlotte County v. Fiske, 350 So. 2d 578 (Fla. 2d DCA 1977). Furthermore, this Court used solid waste management services as an analogous service providing special benefits to property when it upheld special assessments for stormwater management services. See Sarasota County v. Sarasota Church of Christ, 667 So. 2d 180, 186 (Fla. 1995) ("This special benefit to developed property [of stormwater management services] is similar to the special benefit received from the collection and disposal of solid waste."). As recognized in Sarasota County v. Sarasota Church of Christ, the special benefit concept includes the elimination of a burden caused by property use. Thus, common sense dictates the conclusion that the construction and maintenance of solid waste disposal facilities has a logical relationship to the use and enjoyment of improved property in controlling the anticipated waste burden generated by property use.

On the other side of the logical relationship to property line are those services and improvements which provide only a general governmental benefit to the public good. These services and improvements must be paid by taxes because they possess no logical relationship to property use. The only benefit to which the taxpayer is entitled is the privilege of living in an organized society.[6] For example, in Crowder v. Phillips, 1 So. 2d 629 (Fla. 1941), the general governmental improvement was the construction and maintenance of a county hospital. In Whisnant v. Strinsfellow,

[6] See Dressel v. Dade County, 219 So. 2d 716 (Fla. 3d DCA 1969), cert. den'd, 226 So. 2d 402 (Fla. 1969); see also County's Initial Brief at 23.

50 so. 2d 885 (Fla. 1951), the general governmental improvement was a county health unit, Both a hospital and a county health unit provided general governmental benefits to all citizens and were thus required by this Court to be funded by taxes. Neither possessed a logical relationship to the use and enjoyment of the assessed property to permit special assessment financing.

The Respondents assert that the County's listing, in its enabling ordinance of all the services enumerated in section 125.01(1)(q), Florida Statutes, proves that the logical relationship to property test "is but a thinly disguised device to decimate the Constitution's taxpayer protections." Answer Brief at 23. The Respondents then assert that the logical relationship to property test depends on or arises out of "denser population accompanying improved property." Id. This argument distorts the common sense application of Florida's logical relationship to property standard. Whether a service bears a logical relationship to property sufficient to permit special assessment financing is not influenced by the degree of improvements, the density of the population, nor the rural or urban nature of the area. Common sense dictates that general governmental services such as general law enforcement, indigent health care, and the provision of courts -- like a hospital and county public health unit -- do not possess a logical relationship to the use and enjoyment of property, These services are provided to all citizens for the community good regardless of any property relationship; thus, they are beyond the line created by the logical relationship to property standard and must be funded by taxes.

The special assessments in this case are imposed to fund consolidated fire and rescue services and solid waste disposal facilities. Many of the services enumerated in the County's enabling ordinance would fail to meet the logical relationship to property standard and thus are not eligible for special assessment funding. Furthermore, those general governmental services are not before this Court in this case.

II. WHILE THE MILLAGE LIMITATIONS ON AD VALOREM TAXES WERE NEW TO THE 1968 CONSTITUTIONAL REVISION, THEY ARE UNCONNECTED TO THE HISTORIC?& CONSTITUTIONAL PROTECTION OF HOMESTEADS.

The Respondents attempt to use the millage limitations in the Florida Constitution to support their argument against the imposition of service special assessments on homestead property. For example, the Respondents try to distinguish the case of Fire District No. 1 of Polk County v. Jenkins, 221 So. 2d 740 (Fla. 1969), a case of this Court upholding fire protection special assessments because "[t]he issue of whether funding fire service by special assessment circumvents constitutional millage caps could not have been raised in Jenkins . . . [because] Jenkins arose before the adoption of the 1968 . . . cap on millage[.]" Answer Brief at 25-26. In addition, the Respondents try to distinguish the case of South Trail Fire Control Dist., Sarasota Countv v. State, 273 So. 2d 380 (Fla. 1973), another case of this Court upholding fire and ambulance special assessments because the issue of millage caps was not commented on by this Court. The Respondents assert, "They could have raised the issue that a fire protection special assessment circumvents the millage cap

provisions . . . but they d d not." Answer Brief at 27. why not? Because the millage caps in the Florida Constitution never have been and should not be incorporated in the analysis for valid special assessments.

The millage limitations of Article VII, section 9, Florida Constitution, were novel concepts to the 1968 revision. The framers placed a ceiling on ad valorem taxes as a general governmental source of taxation unless electors approved an increase of the ad valorem taxing capacity. These constitutional limits on ad valorem taxing capacity benefit all taxable property. For example, commercial property is the constitutional beneficiary of ad valorem taxing limitations just as homestead property benefits from the caps on millage rates,

How the constitutional ad valorem millage limitation effects the analysis of whether a particular service or improvement qualifies as a valid special assessment is puzzling. Despite the Respondents' continued protests, the constitutional millage limitations in the 1968 revision are unrelated to the judicial determination of whether a local government charge is an "assessment for special benefits."

If a local government chooses to fund an improvement or service by a special assessment, and the funding decision is consistent with the requirements for a valid special assessment,[7] such legislative funding decision does not implicate or disturb

[7] Special assessments must confer special benefits on the assessed properties and the assessments must be fairly and reasonably apportioned among the benefited properties. City of Boca Raton v. State, 595 So. 2d 25, 29 (Fla. 1992).

constitutional ad valorem millage limitations. The Respondents acknowledge:

> The county has levied only a 5.13 mils (sic) of the permissible 10 mils (sic) of ad valorem tax . . . for county purposes. . . . [and] also has an additional 10 mils (sic) of permissible and un-levied ad valorem tax which may be used to fund the cost of fire protection and solid waste management.

Answer Brief at 7. Granted, the County could use ad valorem taxes as a funding option. However, the Board of County Commissioners, within its legislative discretion, chose to use special assessments as a partial funding mechanism for fire and rescue and solid waste services. This legislative decision is entitled to judicial deference' and is totally unconnected to any protection granted to property owners by constitutional ad valorem millage limitations. As to property entitled to the homestead protection, the issue after the 1938 constitutional revision remains the same. Solid waste disposal and integrated fire protection are the types of services that have a logical relationship to the use and enjoyment of property and thus meet the special benefit test for valid "assessments for special benefits."

III. THE RESPONDENTS' MISUNDERSTANDING OF THE FACTS IN THIS CASE CREATES AN ISSUE OF ALLEGED UNLAWFUL DELEGATION OF AUTHORITY WHEN NO SUCH ISSUE EXISTS.

The Respondents' Answer Brief uses the assertion that the County's solid waste assessment is imposed "only . . . against

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[8] See State v. Dade County, 142 So. 2d 79 (Fla. 1962); Town of Medley v. State, 162 So. 2d 257 (Fla. 1964); DeSha v. City of Waldo, 444 so. 2d 16 (Fla. 1984); and Partridge v. St. Lucie County, 539 So. 2d 472 (Fla. 1989).

parcels of real property whose owners fail to contract with a franchised waste hauler" as the basis for their theory that the County has unlawfully delegated its authority. See, e.g., Answer Brief at 42. This factual reference is not entirely correct and thus creates an issue where none exists.

In 1993, the County enacted Ordinance No. 1993-11, authorizing the imposition of a solid waste management and disposal assessment against all improved property within the unincorporated area which does not have a contract with a franchised hauler.' Thus, the County imposed solid waste disposal special assessments on those properties without contractual hauler service. These properties, however, are not the only ones obligated to pay the County for the cost of providing solid waste disposal facilities. Those properties with a franchised hauler contract either pay the cost of disposal directly to the County or to the hauler, which, in turn, pays the cost of disposal to the County.[10]

Thus, under the County's structure, all improved residential property in the unincorporated area is subject to paying the cost of the County's providing solid waste disposal facilities. What

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[9] However, under Resolution Nos. 1993-130 and 1993-223, the County only imposed these assessments on improved residential property.

[10] Actually, when the cost of disposal is paid directly to the County, the property owner pays less than when the cost of disposal is paid through the hauler because the hauler includes in his collection fee not only an equivalent disposal charge but an additional administrative cost.

differs, depending on contracting circumstances, is merely how but not whether, the disposal cost obligation is paid.[11]

The law clearly does not require that all property within a given jurisdiction be subject to the same assessment. A governmental body has wide legislative discretion to determine how a service to particular property will be funded, subject to those differences in the property. In this case, a property owner's paying the cost of disposal to the hauler is a recognized alternative collection process and a reasonable distinction for the imposition of the assessment. For example, in both Charlotte County v. Fiske, 350 So. 2d 578 (Fla. 2d DCA 1977), and Harris v. Wilson, 656 So. 2d 512 (Fla. 1st DCA 1995), rev. pending, 666 So. 2d 143 (Fla. 1995), an issue was raised as to whether all property must be subject to the solid waste special assessment. In those cases, commercial property was not subject to the assessment; it paid the cost of solid waste services through the use of contract haulers. Both courts recognized the validity of this distinction. Likewise, the existence of payment options in this case does not mean that a particular property is not paying the cost of the disposal nor contributing its fair share. The options merely indicate that particular property is paying through an alternative means.

The Respondents rely heavily on the case of Cassadv v. Consolidated Naval Stores Co., 119 So. 2d 35 (Fla. 1960). However, Cassadv does not apply to this case. In Cassady, whether a

[11] Furthermore, the cost of providing the solid waste disposal is allocated among the properties according to the volume of solid waste generated by each classification of customers.

particular tax on mineral rights was imposed depended solely on whether the property owner filed a written request for a tax assessment. The Supreme Court held that such a decision was an improper delegation because no assurance was made that any tax would be paid. Contrary to the circumstances presented in Cassady, property is not subject to an enforced special assessment in this case only if the property owner has already entered into an arrangement which would provide the cost of solid waste disposal through a contract with the hauler. Thus, no property owner escapes paying his fair share and no property owner is required to pay twice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to DANIEL C. BROWN, ESQUIRE, Katz, Kutter, Haigler, Alderman, Davis, Marks, Bryant & Yon, P.A., Highpoint Center, Suite 1200, 106 East College Avenue, Tallahassee, Florida 32301; LARRY E. LEVY, ESQUIRE, Post Office Box 10583, Tallahassee, Florida 32302; DAVID G. TUCKER, ESQUIRE and NANCY STUPARICH, ESQUIRE, Escambia County, 14 West Government Street, Suite 411, Pensacola, Florida 32501; GAYLORD WOOD, ESQUIRE, wood & Stuart, 304 Southwest 12th Street, Fort Lauderdale, Florida 33315-1549; WILLIAM J. ROBERTS, ESQUIRE, Florida Association of Counties, Post Office Box 549, Tallahassee, Florida 32302; HARRY "CHIP" MORRISON, ESQUIRE and KRAIG CONN, ESQUIRE, Florida League of Cities, Inc., 201 West Park Avenue, Tallahassee, Florida 32302; and JORGE L. FERNANDEZ, ESQUIRE; Florida Association of County Attorneys, Office of the County Attorney, Sarasota County, 1660 Ringling Boulevard, 2nd Floor, Sarasota, Florida 34236 this 27th day of September, 1996.

ROBERT L. NABORS

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