ORIGINAL

SUPREME COURT OF FLORIDA

CASE NO. SCOO-912

DAVID M. POMERANCE and
RICHARD C. POMERANCE,

Petitioners,

v.

HOMOSASSA SPECIAL WATER DISTRICT, a political subdivision of the State of Florida,

Respondent.
_____/

DISTRICT COURT OF APPEAL,
FIFTH DISTRICT - NO. 5D98-2504

FIFTH CIRCUIT COURT
CASE NO. 94-2070CA

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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RESPONDENT'S STATEMENT OF FACTS AND CASE

The facts are established in the Fifth District Court of Appeal Majority Decision attached to Petitioners' Jurisdictional Brief ("Majority Decision" or "Opinion"). The Homosassa Special Water District ("District") was "authorized to extend water service to [the Petitioners' property (the "Property")] and to assess the property therefor." Opinion at 2. The District annexed lands lying north of the Property in 1988. The Property already lay within the District. Opinion at **1-2.** The District ran waterlines to serve the newly annexed lands, as well as nearby parcels, including the Property, that already were within the District. The District specially assessed the lands abutting the waterlines, including the Property. Opinion at 2.

The Petitioners objected, principally asserting "their property [would] not be benefitted by the waterline because the property consists primarily of wetlands and cannot be developed." Opinion at 2. They also argued the enabling legislation for the annexation was void. Opinion at 2. That issue has not been appealed to this Court.

The trial court upheld the special assessment after trial. Opinion at 1, 4. The Majority Decision affirmed the trial court, in a 2- 1 panel decision. Opinion

at 5.

Principally, the Petitioners claimed the District arbitrarily used the front-foot assessment method, and the District "improperly equated the benefit obtained with the pro rata cost of bringing water to the properties." The majority stated the front-foot method is "traditional" in such assessments. Opinion at 4. They further noted the District's enabling legislation allows the use of the front-foot method. Opinion at 5. They concluded the Petitioners failed to show the use of the front-foot method to allocate the special benefit to the Property was arbitrary. Opinion at 5. The majority also refused to reweigh "conflicting expert testimony [before the trial court] regarding the amount of the Property that was wetlands and the amount of the Property that could be developed." Opinion at 4.

Judge Harris dissented. He believed the District should have taken the Property's wetlands more into account in determining the special assessment.

This appeal followed. The Petitioners seek this Court's discretionary jurisdiction under Article V, § 3(b)(3) of the Florida Constitution. Petitioners' Jurisdictional Brief at 3.

SUMMARY OF ARGUMENT

The Petitioners fail to show this Court has discretionary conflict jurisdiction under Article V, §3(b)(3), Florida Constitution, addressing the District's special assessment for extending a waterline adjacent to their Property. The Majority Decision upholding the assessment neither expressly nor directly conflicted with any decision of this Court or of any other Court of Appeal.

The Petitioners really ask this Court to do two things. First, improperly reweigh conflicting evidence regarding the benefit to the Property. Second, conclude that the front-foot assessment method is improper, even though: (a) that method is traditional in Florida for water and sewer lines, and (b) the District's enabling legislation authorizes its use. Neither of these contentions justifies invoking conflict jurisdiction,

ARGUMENT

Petitioners seek discretionary jurisdiction of this Court under Article V, §3(b)(3), Florida Constitution. The pertinent provision authorizes this Court

to accept "any decision of a District Court of Appeal that expressly and directly conflicts with a decision of another District Court of Appeal or the Supreme Court on the same question of law."

Two categories of cases justify conflict jurisdiction: (1) the decision announces a rule of law that conflicts with a previously announced rule of law by this Court or by another District Court of Appeal; or (2) the decision applies a rule of law to produce a different result involving controlling facts that are substantially similar to those in a prior case. Mancini v. State 3 12 So.2d 732 (Fla. 1975). This Court will not accept jurisdiction because it might have decided the case differently from the District Court below, but only because the District Court decision facially so collides with a prior decision of the Supreme Court or of another District Court on the same point of law that it creates an inconsistency or conflict. Nielson v. City of Sarasota, 117 So.2d 73 1, 734-35 (Fla. 1960).

The conflict must be found in the Majority Decision below. In Reaves v. State, 485 So.2d 829 (Fla. 1986), this Court held:

> Conflict between decisions must be express and direct, i.e., it must appear within the four corners of

> the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction.

485 So.2d at 830 (emphasis added). The Petitioners fail utterly. First, they almost entirely rely on "facts" and claims not found in the Majority Decision. Instead, they improperly cite numerous facts they claim are in the record below, and conclude their Argument section at pages 9-10 with an extensive quote from Judge Harris's dissent. Second, the Majority Decision is in virtual lockstep with the allegedly conflicting authority.

The Petitioners contend two aspects of the Opinion below expressly and directly conflict with binding authority. First, they allege the Majority Decision improperly refused to reweigh the trial court's fmdings regarding benefit to the Property, which resolved conflicting evidence. Related to this issue, they claim the Majority Decision improperly refused to require express fmdings of benefit to the Property by the District. Second, they assert the "frontage-foot" assessment method is improper for assessing their Property for an adjacent waterline. Both arguments fail.

The Majority Decision cited, inter alia, this Court's decision in City of

Treasure Island v. Strong, 215 So.2d 473 (Fla. 1968), in concluding that it is not necessary to determine the benefit as to each property "when, as in the instant case, there is an inherent and obvious legislative determination in the enabling provision that the benefits flowing from a particular improvement are of the kind as would usually accrue to Property." Id., cited in Opinion at 2-3. As the Majority Decision stated: '"The burden is on the property owner to overcome the duel presumptions that a [water or] sewer system improvement is of special benefit to those in proximity to it, and that the legislative determination of special benefit is correct." Opinion at 3 [cit. om.]. The Majority Decision cited ACORN v. City of Florida City, 444 So.2d 37, 38-39 (Fla. 3d DCA 1983), rev. denied, 45 1 So.2d 847 (Fla. 1984). ACORN in turn cited three decisions of this Court in support of that standard. Id. The Majority Decision concluded the Petitioners had to rebut the presumption the adjacent waterline would benefit the Property. They failed.

Additionally, the Majority Decision cited ACORN in stating: "The factual conclusions of the lower court should not be disturbed when the judgment is supported by sufficient evidence in the record, and when both

parties had the opportunity to present evidence and expert testimony to the trial court." The majority properly refused to reweigh findings of benefit to the Property. See also, Mancini, 3 12 So.2d at 733 (fmding no conflict in decision based on sufficient evidence).

The Majority Decision followed the allegedly "conflicting" cases. The Court below cited City of Boca Raton v. State, 595 So.2d 25, 3 1 (Fla. 1992), in holding that the front-foot methodology is one of the two "more traditional" methods of assessing for a pipeline project. Moreover, the Court below stated that the District's enabling legislation expressly authorizes the front-foot method. The Petitioners therefore cannot show the front-foot method was arbitrary, let alone that there was an express and direct conflict. See also, Mever v. City of Oakland Park, 219 So.2d 417,419 (Fla. 1969) (referring to "specific [legislative] authorization'for, inter alia front-foot assessments of abutting specially benefitted property).

The Majority Decision further comported with Lake County v. Water Oak Mgmt. Corp., 695 So.2d 667 (Fla. 1997). This Court in Lake Countv stated that a special assessment is only proper where there is a "logical

relationship" between the governmental service and the benefit to real property. The assessment must be "properly apportioned" based on the special benefits. The cases cited above establish a presumption that abutting properties specially benefit from water and sewer lines. The Majority Decision cited multiple authorities holding that the frontage-foot allocation method is presumed proper in this State.

South Trail Fire Control District v. State, 273 So.2d 380 (Fla. 1973), also directly supports the Majority Decision. This Court held that a reviewing court "should not substitute its opinion and judgment for that of the Legislature [or, presumably, any legislative body (see Opinion at 5, citing Sarasota County v Sarasota Church of Christ, 667 So.2d 180, 184 (Fla. 1995)] in the absence of a clear and full showing of arbitrary action or a plain abuse." 273 So.2d at 383. The South Trail Court also extensively relied on Meyer, 219 So.2d 417, which granted great deference to assessments for sewerage line extensions. In Meyer, this Court upheld the lower court's determination of benefit, despite the property owner's conflicting evidence that the assessment would "be a financial detriment rather than a benefit to the property assessed." 219 So.2d

at 419.

The Petitioners' reliance on Sarasota County is similarly baseless. This Court in Sarasota County gave great deference to the assessing authority, clarifying Meyer, South Trail and Boca Raton in concluding: "[T]he legislative determination as to the existence of special benefits and as to the apportionment of the costs of those benefits should be upheld unless the determination is arbitrary." 667 So.2d at 184.

While the Petitioners baldly assert the decision below conflicts with Collier County v. State, 733 So.2d 1012 (Fla. 1999), they merely mention Collier in a "See also" reference at page 9. fail to show any conflict with Collier. Regardless, the Majority Decision below followed this Court's standards as elucidated in Collier.

Finally, the District objects to the Petitioners' claim at page 9 that the Majority Decision conflicted with the Lake County standard regarding their burden. As noted both at page 3 and in footnote 1 of the Opinion, the Petitioners asserted that the waterline provided no benefit to their property. Their brief nowhere challenges that conclusion. Under the issues the Majority

Decision facially and unequivocally states the Petitioners framed, their burden was to prove no benefit. See Reaves, 485 So.2d at 830 (conflict review is limited to "the four corners of the majority decision"). Regardless, even if, arguendo, the Majority Decision might have used a different standard, it expressly concluded the front-foot method adequately allocated the special benefit to the Property. Opinion at 3-5.

CONCLUSION

The Petitioners utterly fail to show this Court has §3(b)(3) conflict jurisdiction. First, the Majority Decision announced rules of law that followed previously announced rules of law by this Court and other District Courts of Appeal. Second, the Majority Decision applied rules of law to produce results consistent with precedent involving controlling facts. See, e.g., Mancini, 3 12 So.2d 732. The Majority Decision is in lockstep with the authority the Petitioners cited. The Petitioners' request for discretionary conflict review is therefore baseless. The District respectfully requests this Court to refuse to invoke discretionary jurisdiction.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this Respondent's Answer Brief on Jurisdiction is 14 point proportionately spaced Times New Roman, in accordance with this Court's administrative order dated July 13, 1998.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail service to KAREN 0. GAFFNEY, Karen 0. Gaffiey, P.A., 221 West Main Street, Suite D, Inverness, Florida 34450, Attorney for Petitioners, this 12 day of June, 2000.

Sidney F. Ansbacher