IN THE SUPREME COURT OF FLORIDA

JIM SMITH, PROPERTY APPRAISER, PINELLAS COUNTY, FLORIDA, AND JAMES ZINGALE AS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE, STATE OF FLORIDA,

Petitioners,

vs.

Case No. SC05-488

Second District Court of Appeal Case No. 2D04-514

STEPHEN KROSSCHELL,

L.T. Case No. 01-9288-CI-21

Respondent.

PETITIONERS' JOINT REPLY BRIEF

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PRELIMINARY STATEMENT

The Petitioners adopt the designations and abbreviations as set forth in their Joint Initial Brief.

STATEMENT OF CASE AND FACTS

The Petitioners adopt the Statement of the Facts as set forth in their Joint Initial Brief.

REPLY ARGUMENT

The Petitioners would assert that the Respondent's arguments are based upon a foundation that simply does not exist under the clear facts of the case. It is readily seen that the data entry error made by the Property Appraiser's office caused the accidental removal of the entire 3,746 square foot house from the property rolls, which lowered the assessed value of the Respondent's property. R. 26 The Respondent knows the Property Appraiser incorrectly under assessed his property by $100,000. Yet the Respondent completely ignores this fact.

Respondent argues as if the Property Appraiser's mistake concerned the valuation of the complete property, not the assessment of the land without the house. This fact undermines the Respondent's total argument. Respondent is seeking a permanent, unwarranted, under valuation of his property in order to avoid the taxes that should be justly assessed against his

house. This would result in a shift of the tax burden to others in the community.

The Legislature foresaw errors occurring. There is no evidence in the legislative record that support the Respondent's position that a correction would not be allowed. The Legislature passed the corrective language in the 2001 amendment to section 193.155(8)(a), Florida Statutes, to ensure that fairness and equity among taxpayers existed.

The Respondent's arguments are further undercut by the very nature and process of the homestead exemption. As pointed out by this Court in Zingale v. Powell, 885 So. 2d 277, 285 (Fla. 2004), Article VII homestead exemption (section 6), and Save Our Homes (section 4(c)), are not self executing constitutional provisions and depend upon implementing statutes to give them effect.

Section 196.031, Florida Statutes, codifies Article VII, section 6, Florida Constitution, and contains the basic ad valorem taxation homestead exemption. This statute requires that on January 1st of any particular year, a person with legal or equitable title, who resides on that property making it their

permanent residence[1] is entitled to a partial exemption from ad valorem taxation.[2] Section 193.155, Florida Statutes, implements the Save Our Homes provision and requires that homestead property be assessed at just value as of January 1 of the year 2000 before the Save Our Homes Cap on ad valorem tax increases be applied.

Clearly this cannot occur in this case. How can the Respondent claim that his property has been properly assessed when it is undisputed that the house Respondent is living is was not captured in the initial assessment. The "just value" of the Respondent's property can only occur when the value of the 3,746 square foot of the house is part of the total assessment. Under the facts here, the subject property was not assessed at just value in its "base year" nor will future years' assessments catch up to just value as long as Respondent owns this property and/or the reassessment provisions of this statute are not

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[1] Section 196.031(1), Florida Statutes, also provides that homestead exemption can be claimed if the property is the permanent residence of another or others legally or naturally dependent upon the title holder.

[2] Homestead exemption is not an absolute right but may be granted upon establishment of right in the manner prescribed by law. Horne v. Markham, 288 So. 2d 196, 199 (Fla. 1973)(timely application); Zingale v. Powell,(obtaining homestead exemption before Save Our Homes protection can apply).

triggered.

Therefore, Respondent's position does not comply with the Legislature's intent or the statutory requirements as required by Horne v. Markham, 288 So. 2d 196 (Fla. 1973), and continuing through this Court's Zingale decision.

I. THIS COURT HAS JURISDICTION TO RESOLVE THE EXPRESS AND DIRECT CONFLICT BETWEEN THE SECOND AND THIRD DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW.

All parties before this Court agree that this Court should accept jurisdiction over this appeal. See Respondent's Answer Brief Pt. I. However, Respondent incorrectly maintains that the Third District's opinion in Robbins v. Kornfield, 834 So. 2d 955 (Fla. 3rd DCA 2003), appeal voluntarily dismissed, 868 So. 2d 523 (Fla. 2004)("Kornfield"), did not adequately address the issue of whether the 2001 amendment to section 193.155, Florida Statutes, was intended by the Legislature to be applied retroactively to the "base year" of each homestead property owner, should a mistake in the just value assessment for that property be made.

In its decision below, the Second District certified conflict with Kornfield. The Second District, like the Third District in Kornfield, had before it the application and interpretation of section 193.155(8)(a), Florida Statutes

(2001). This statute was amended in 2001 by the Florida Legislature and the amendment was the Legislature's response to this Court's decision in Smith v. Welton, 729 So. 2d 371 (Fla. 1999)("Welton").

In Welton this Court had before it the question of whether a property appraiser could "retroactively" correct an error to the base year's assessment. This Court held that section 193.155(8)(a), Florida Statutes (1995), did not provide the authority for the property appraiser to make changes to the base year just value assessment, pursuant to its interpretation of the plain language of the statute. Welton, 729 So. 2d, at 373. Specifically, this Court held that:

> The statute by its plain language refers to errors in the "annual assessment" (i.e., the value that is ascribed to a homestead each year after the "just value" has been determined in the base year), not errors in the base year "just value" assessment. Nowhere in section 193.155(8)(a) is the base year "just value" assessment even mentioned." Id.

In response to this interpretation and holding by the Court, the Legislature amended then section 193.155(8)(a), Florida Statutes (1995), in 2001 to state as follows:

> Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption. ~~Thereafter, determination of the assessed value of the property is subject to the following provisions:~~

* * *

> (8) Erroneous assessments of homestead property assessed under this section may be corrected in the following manner:
>
> (a) If errors are made in arriving at any ~~annual~~ assessment under this section due to a material mistake of fact concerning an essential characteristic of the property, the just value and assessed value ~~assessment~~ must be recalculated for every such year, including the year in which the mistake occurred.

See Chapter 2001-137, section 5, p. 1128, 1130, Laws of Florida. This amendment became effective on July 1, 2001. See Chapter 2001-137, section 12, p. 1135, Laws of Florida.

II. THE LEGISLATURE ONLY PASSES MEANINGFUL LAWS; THE PLAIN LANGUAGE OF SECTION 193.155(8)(a), FLORIDA STATUTES (2001), MUST BE FOLLOWED.

The question before this Court, as applied to section 193.155(8)(a), Florida Statutes (2001), is one of statutory construction. On March 10 ,2005, this Court issued its opinion in Daniels v. Florida Dep't of Health, __ So. __, 30 Fla. Law Weekly S143 (Fla. March 10, 2005). In that decision, this Court restated the controlling principles of statutory construction.

> In construing a statute we are to give effect to the Legislature's intent. *See State v. J.M.*, 824 So. 2d 105, 109 (Fla. 2002). In attempting to discern legislative intent, we first look to the actual language used in the statute. *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000); *accord BellSouth Telecomms., Inc. v. Meeks*, 863 So. 2d 287, 289 (Fla. 2003). When the statute is clear and unambiguous, courts will not look behind the statute's

> plain language for legislative intent or resort to rules of statutory construction to ascertain intent. *See Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002). In such instance, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.

Several maxims guide our interpretation of the subject amendment and they include the rule that the legislature is presumed not to pass meaningless legislation, nor are courts to presume that a given statute employs "useless language." See Smith v. Piezo Technology and Professional Administrators, 427 So. 2d 182, 184 (Fla. 1983); Piper Aircraft Corporation v. Schwendmann, 564 So. 2d 546, 547 (Fla. 3rd DCA 1990).

Further, a change of language contained in an amendment to a statute often evinces a clarification of legislative intent or a change in the original intent of the statute. State ex rel. Szabo Food Services Inc., of North Carolina v. Dickinson, 286 So. 2d 529, 531 (Fla. 1974). This is especially true where the Legislature has enacted an amendment shortly after a judicial decision the Legislature believed was contrary to its initial intent. See Crescent Miami Center LLC v. Florida Dep't of Revenue, __ So. 2d __, 30 Fla. Law Weekly S366, S368 (Fla. May 19, 2005), (citing, Wood v. Fraser, 677 So. 2d 15, 18 (Fla. 2nd DCA 1996), (quoting Collins Inv. Co. v. Metro. Dade County, 164

So. 2d 806, 809 (Fla. 1964))). This is precisely the situation in the present case.

Applying the foregoing principles of construction to section 193.155(8)(a), Florida Statutes (2001), this Court should reverse the decision of the Second District below and adopt the decision of the Third District as the proper application of section 193.155(8)(a).

III. THE SECOND DISTRICT'S DECISION IGNORES THE PLAIN LANGUAGE OF SECTION 193.155(8)(a), FLORIDA STATUTES (2001).

In its decision below, the Second District incorrectly affirmed the trial court's Final Judgment and Order Granting Krosschell's Motion for Summary Judgment and Denying the Motion of the Property Appraiser on April 7, 2003. R. 82. In so doing, the Second District relied on this Court's decision in Welton. It is the Petitioners' position that this Court's Welton decision was directly addressed by the Legislature and the result of that case was negated by the amendment of section 193.155(8)(a), Florida Statutes, in 2001.

IV. PETITIONERS' CORRECTION OF RESPONDENT'S ERRORS.

A. STANDARD OF REVIEW

Respondent's Answer Brief contains several major errors. The first point involves the appropriate standard of review.

Krosschel has criticized the Petitioners for failing to set forth the proper standard of review. See Answer Brief, at 8-10. What Respondent sets out as the standard of review is, in fact, the general rule for construction of the forced sale homestead exemption statutes under Article X, section 4, Florida Constitution, not an appellate standard.

In this case, the lower courts construed the 2001 amendment to section 193.155(8)(a), Florida Statutes. Therefore, the standard of review before this Court is de novo. As this Court stated in Zingale v. Powell, 885 So. 2d 277, 281 (Fla. 2004), "[A]lthough we take into consideration the district court's analysis on the issue, constitutional interpretation, like statutory interpretation, is performed *de novo.* Cf. BellSouth Telecomm., Inc. v. Meeks,863 So. 2d 287, 288 (Fla. 2003)" (Statutory interpretation is a question of law subject to *de novo* review.) See also American Federation of Labor and Congress of Industrial Organizations v. Hood, 885 So. 2d 373, 374 (Fla. 2004), citing City of Miami v. McGrath, 824 So. 2d 143, 146 (Fla. 2002).

B. VESTED RIGHT TO HOMESTEAD.

Respondent also contends that the 2001 amendment to section 193.155(8)(a), Florida Statutes, cannot be applied

retroactively. Krosschell maintains that the amendment fails both parts of a two part test for retroactivity in that there is no clear legislative intent and that it impairs a vested right. See Respondent's Answer Brief, at 27. Respondent's argument fails.

Krosschell alleges that the Third District's Kornfield decision does not support retroactive application of section 193.155(8)(a), Florida Statutes, as amended in 2001. Specifically, Krosschell asserts that the Kornfield court did not consider the issue of retroactivity, and therefore, that decision was not binding on the trial court on this issue. This argument is without merit. The Kornfield Court retroactively applied this amended statute to factually similar circumstances, and presumably would not have done so without consideration of this issue. That court gave a detailed analysis of the amendment and specifically found it to represent an intent by the legislature "to allow for adjustments to be made to correct errors in the calculation of a property's just value." Kornfield, 834 So. 2d, at 957. Thus, the Third District clearly determined that section 193.155(8)(a) was to be applied retroactively in its application to correct errors in the calculation of a property's just value. Id.

The Third District further found that the 2001 amendment superceded this Court's decision in Welton because it removed the specific language this Court had interpreted as disallowing a retroactive change to the base year value. Id. As Kornfield was factually similar to the case at bar, and was the only case interpreting section 193.155(8)(a), Florida Statutes, since its amendment in 2001, the trial court improperly disregarded it. The decision of the Third District in Kornfield is the only appellate decision that has decided this issue. See Pardo v. State, 596 So. 2d 665, 666-667 (Fla. 1992)

It is well established that every taxpayer is deemed to have constructive notice of the possibility of remedial or procedural changes in the provisions of existing tax laws. "Nobody has a vested right in the rate of taxation." Cohan v. Commissioner, 39 F.2d 540, 545 (2d Cir. 1930). The tax "system being already in operation," the taxpayer "must be prepared for such possibilities." Bannerman v. Catts, 80 Fla. 170, 85 So. 336, 344 (1920). Each tax year must be judged on its own basis. See generally Keith Investments v. James, 220 So. 2d 695, 697 (Fla. 4th DCA 1969)(each tax year stands or falls on its own validity, unconnected with any prior or subsequent year).

In addition, the Respondent takes the position that the

2001 amendment creates a new obligation and/or impacts a vested right. See Respondent's Answer Brief, at 19-21. Specifically, Respondent argues that Pinellas County was attempting to extract additional taxes from him that it was not originally authorized to assess and collect. This argument is clearly incorrect because the Property Appraiser would have assessed Krosschell's house, in addition to the land upon which it sits, had it not been for the error which caused the valuation for the improvements on this parcel to have been reduced. The record contains no challenge to the correctness of the improvement valuation ($100,000). The Property Appraiser was only attempting to correct the base year assessment to accurately reflect the property's just value, which it is clearly authorized to do. It makes no sense to argue that Respondent is entitled to have this clearly incorrect, low valuation locked in.

A statute enacted to correct horrendous errors that this Court could not do in Welton is purely remedial and procedural in nature. Remedial statutes themselves, cannot normally be invalid as retrospective, and no one can properly be said to have a vested right in any particular remedy. National Bank of Jacksonville v. Williams, 35 Fla. 305, 314, 20 So. 931, 933

(1896). The National Bank of Jacksonville case holds that the Legislature may, without violating the constitution, take away a remedy that it has created in derogation of the common law and that until perfected by proceedings whereby rights in the property it seeks to subject have become vested, such remedy is in the control of the Legislature. Id., 20 So., at 934.

The remedial nature of section 193.155(8)(a), Florida Statutes (2001), equates to its equitable nature. In Florida tax matters have traditionally been heard in equity. See Section 3 Property Corp. v. Robbins, 632 So. 2d 596 (Fla. 1994)(citing, Powell v. Kelly, 223 So. 2d 305, 307 (Fla. 1969); Day v. City of St. Augustine, 104 Fla. 261, 139 So. 880, 883 (1932)).[3]

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[3] Prior to the merger of law and equity, equitable demands were enforced in the courts of chancery without a jury. See Pompano Horse Club v. State, 93 Fla. 415, 111 So. 801 (1927). In 1967, when the revised Florida Rules of Civil Procedure consolidated law and chancery, the rule eliminating the distinctions between them for procedural purposes was not intended to abolish the substantive distinction. Adams v. Citizens Bank of Brevard, 248 So. 2d 682, 683 (Fla. 4th DCA 1971). Since 1967, Florida Courts have continued to observe and strictly enforce the pleading requirements for law and equity. State Farm Mutual Auto Ins. Co. v. Green, 579 So. 2d 402 (Fla. 5th DCA 1991). The merger of law and equity was for procedural purposes, however, the distinction between law and equity for substantive purposes remains intact. The purpose at equity is to remedy defects in the law. 22 Fla. Jur. 2d, Equity § 2 (1998). It is competent for the Legislature to modify or

Contrary to Krosschell's assertions, the 2001 amendment to section 193.155(8)(a), Florida Statutes, is clearly intended to be retroactively applied and does not interfere with any vested rights or impose an added tax burden that was not already applicable. Even the Save Our Homes provision was not intended to go into effect until after the property was assessed at just value.

The Petitioners recognize that Kornfield is only persuasive authority on this Court. However, Petitioners urge this Court to allow the correction of the material mistake of fact in accord with the reasoning set forth by the Third District Court of Appeal in the Kornfield decision.

C. THIS COURT DID NOT APPROVE THE REASONING OF THE FIRST DISTRICT IN ITS WELTON DECISION.

At page 40 of Respondent's Answer Brief, Krosschell states that this Court affirmed the First District's decision in Welton and did not reject the First District's analysis, which is clearly incorrect. Further, the Petitioners disagree that the

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expand the powers of equity as to its entire field of recognized jurisdiction. Hawkins v. Rellim Inv. Co., 92 Fla. 784, 787, 110 S. 350, 351 (1926). Remedying a mistake is a special ground for equitable jurisdiction. Hedges v. Lysek, 84 So. 2d 28, 31 (Fla. 1955). Section 193.155(8)(a), Florida Statutes (2001), provides a remedy for correcting such a mistake. Since the statute is solely a remedy to correct a mistake, it should be applied

First District Court of Appeal opinion in Smith v. Welton, 710 So. 2d 135 (Fla. 1st DCA 1998), finding section 193.155 unconstitutional, is still good law. See, Answer Brief, at 40. In Welton, when this Court affirmed the First District's decision on other grounds it clearly rejected the First District's analysis and replaced it with its own reasoning based upon its interpretation of the plain language of the statute. See Welton, 729 So. 2d, at 373. It is improbable that this Court would interpret the plain language of a statute and issue an opinion based upon that interpretation, if it felt that the statute itself was unconstitutional.

D. THE PROPERTY APPRAISER'S NOVEMBER 2000 CORRECTION TO RESPONDENT'S PROPERTY ASSESSMENT WAS MADE WITH STATUTORY AUTHORITY.

At page 13 of Respondent's Answer Brief, Krosschell incorrectly states that the Property Appraiser concedes that he was without authority to correct the assessment in November of 2000.

The Property Appraiser issued a Certificate of Correction of the Tax Roll as soon as he discovered that Krosschell's property had not been valued at just value because the assessment was missing the entire base area of the property due

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retroactively.

to a clerical error. The only reason the correction was rescinded and held until 2001, was because Krosschell had not been provided with the notice of the increase and an opportunity to appeal the increase to the VAB, as required by Fla. Admin. Code R. 12D-8.021(10). Krosschell specifically elected to petition the increased assessed value for 2000 to the 2001 VAB, and was told that the correction would be placed on the 2001 tax roll. R. 63. The Property Appraiser rescinded the correction of November 10, 2000, not because he believed he lacked authority to make such a correction to the base year at all, but because he did not have the authority where Krosschell had not been given the right to appeal the value increase to the 2000 Value Adjustment Board. The Property Appraiser properly took those steps necessary to carry out his duty to ensure the subject property was assessed at just value.

CONCLUSION

Petitioners request that this Court accept jurisdiction of this case, resolve the conflict between the Districts, approve the Third District's decision in Kornfield, and disapprove the Second District's decision in Smith v. Krosschell, No. 2D04-514, (Fla. 2nd DCA January 12, 2005).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Reply Brief has been furnished by U.S. Mail this

_____ day of June 2005, to: **Stephen Krosschell**, 2907 Cedar Trace, Tarpon Springs, FL 34688.

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Mark T. Aliff
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CERTIFICATE OF COMPLIANCE

I hereby certify that Petitioners' Joint Reply Brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210(a)(2), in that this Brief uses Courier New 12-point font.

_____
Mark T. Aliff
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