

SUPREME COURT OF FLORIDA

CASE NO. SC-10-1220

NORTH PORT ROAD AND DRAINAGE
DISTRICT, a dependent special district
of the State of Florida,

Lower Tribunal No. 09-2221

Appellant,

v.

WEST VILLAGES IMPROVEMENT
DISTRICT, an independent special
district of the State of Florida,

Appellee.

APPELLANT'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal,
Second District, State of Florida
Case No. 09-2221

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TABLE OF CONTENTS

	<u>Page</u>
CITATIONS OF AUTHORITIES	ii-iii
I. INTRODUCTION	1
II. STATEMENT OF THE CASE AND OF THE FACTS	2
III. SUMMARY OF THE ARGUMENT	5
IV. ARGUMENT	6
V. CONCLUSION.....	9
CERTIFICATE OF SERVICE	10
CERTIFICATE OF COMPLIANCE.....	11

CITATIONS OF AUTHORITIES

STATE CASES

CASE LAW

Page

<i>Bailey v. Hough</i> , 441 So. 2d 614 (Fla. 1983)	7
<i>Blake v. City of Tampa</i> , 156 So. 97 (Fla. 1934)	4, 5
<i>City of Boca Raton v. State</i> , 595 So. 2d 25 (Fla. 1992)	3, 4, 5, 6
<i>Clark v. State</i> , 783 So. 2d 967 (Fla. 2001)	6, 7
<i>Hannewacker v. City of Jacksonville Beach</i> , 419 So. 2d 308 (Fla. 1982)	7
<i>Harmon v. Williams</i> , 615 So. 2d 681 (Fla. 1993)	7
<i>Remington Community Development District v. Education Foundation of Osceola</i> , 941 So. 2d 15 (Fla. 5 th DCA 2006)	2, 3, 4, 6, 7, 8
<i>S.R. v. State</i> , 346 So. 2d 1018 (Fla. 1977)	7
<i>West Villages Improvement District v. North Port Road and Drainage District</i> , 2010 WL 2145479 (Fla. 2d DCA 2010)	1, 8

RULES

Fla. R. App. P. 9.030.....	6, 9
Fla. R. App. P. 9.030(a)(2)(A)(v)	1
Fla. R. App. P. 9.030(a)(2)(A)(vi)	1, 6, 9
Fla. R. App. P. 9.210(a)(2).....	11
Fla. R. App. P. 9.120(d)	1

STATUTES

Chapter 165, Florida Statutes.....2
Section 166.021, Florida Statutes5
Chapter 189, Florida Statutes.....2
Chapter 298, Florida Statutes.....2

CONSTITUTION

Article V, Section 3, Fla. Const.6, 9
Article V, Section 3 (b)(3), Fla. Const.6, 9
Article VIII, Section 2(b), Fla. Const.5

MISCELLANEOUS

Article III, Sections 66-47 through 66-65, of the City of North
Port’s Code of Ordinances2

INTRODUCTION

As set forth in the Notice of Invoking Discretionary Jurisdiction filed in this matter on June 22, 2010, discretionary jurisdiction of the Florida Supreme Court is being sought by the Appellant on two grounds, pursuant to Rules 9.030(a)(2)(A)(v) and 9.030(a)(2)(A)(vi), Florida Rules of Appellate Procedure. Specifically, the opinion and decision of the Florida Second District Court of Appeal rendered on May 28, 2010, certified conflict with a decision of another district court of appeal and certified the following question to be of great public importance:

MAY A MUNICIPAL DEPENDENT SPECIAL DISTRICT,
PURSUANT TO MUNICIPAL HOME RULE POWER, IMPOSE A
NON-AD VALOREM SPECIAL ASSESSMENT UPON REAL
PROPERTY OWNED BY A STATE GOVERNMENTAL ENTITY,
IN THE ABSENCE OF EXPRESS OR NECESSARILY IMPLIED
LEGISLATIVE AUTHORITY?

Because questions certified as being of “great public importance” do not require a jurisdictional brief, this issue will not be further raised in this brief. See, Fla. R. App. P. 9.120(d).

This jurisdictional brief shall relate solely to the issue of conflict as certified by the Second District Court of Appeal with regard to its decision in West Villages Improvement District v. North Port Road and Drainage District, 2010 WL 2145479 (Fla. 2d DCA 2010) and the decision of the Fifth District Court of Appeal in

Remington Community Development District v. Education Foundation of Osceola,
941 So. 2d 15 (Fla. 5th DCA 2006).

STATEMENT OF THE CASE AND OF THE FACTS

For purposes of this jurisdictional brief, this case concerns the issue of the authority of a municipal dependent district, the North Port Road and Drainage District (“Drainage District”), to levy non-ad valorem assessments against real property owned by an independent special district, the West Villages Improvement District (“WVID”). WVID was created by special act of the Florida Legislature and is provided supplemental authority under general law in Chapters 189 and 298, Florida Statutes.

The City of North Port (hereinafter “City”) is a municipal corporation of the State of Florida, as defined by Chapter 165, Florida Statutes. The City created and operates the Drainage District pursuant to Article III, Sections 66-47 through 66-65, of the City’s Code of Ordinances (“Enabling Ordinance”). The Drainage District’s boundaries are coterminous with the City’s jurisdictional boundaries, and the Drainage District’s governing body is the City Commission. Pursuant to the Enabling Ordinance, the Drainage District is authorized to levy non-ad valorem assessments on specially benefited real property for public road and drainage maintenance services throughout the Drainage District.

On July 28, 2008, the Drainage District’s Enabling Ordinance was amended

to authorize the levy and collection of non-ad valorem assessments against all specially benefited real property within its jurisdictional boundaries irrespective of whether the real property was government or privately owned. The amendment further authorized the Drainage District to assess all governmental properties that were not exempt or immune from non-ad-valorem assessments.

WVID owns nine parcels of real property subject to the Drainage District's levy of non-ad valorem assessments. WVID timely objected to the levy of the non-ad valorem assessments and filed an initial Petition for Writ of Certiorari in the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County (hereinafter "initial Petition") challenging the assessments on various grounds including the Drainage District's authority to levy the assessments. The Circuit Court by Order dated November 14, 2008, denied WVID's Initial Petition on all grounds, and made the following finding in its Order:

A dependent special district in this case has the authority to levy non-ad valorem assessments on specially benefited properties pursuant to both their home rule authority and statutory authority. City of Boca Raton v. State, 595 So. 2d 25.

In addition to the Drainage District's reliance on the City of Boca, the Drainage District also directed the Circuit Court's attention to a recent decision out of the Fifth District Court of Appeal, Remington Community Development District v. Education Foundation of Osceola, 941 So. 2d 15 (Fla. 5th DCA 2006), that permitted the levy of a special assessment by a special district against another

governmental entity in the absence of a clear statutory exemption preventing the levy.

On May 13, 2009, WVID filed a second tier Petition for Writ of Certiorari with the Florida Second District Court of Appeal challenging the Circuit Court Judge's denial of its initial Petition for Writ of Certiorari on various grounds, but raising the issue that the Circuit Court Judge applied the incorrect law to its entire review of WVID's initial Petition. Among other arguments raised by WVID, WVID asserted that the Circuit Court Judge's finding regarding the dependent district's home rule authority and reliance on City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992), was an incorrect application of the law. WVID argued that Blake v. City of Tampa, 156 So. 97 (Fla. 1934), is the correct, controlling precedent on how local government may levy non-ad valorem assessments against other local governments, and that such levies require specific authorization by the legislature.

On May 28, 2010, the Florida Second District Court of Appeal rendered its opinion that the Circuit Court departed from the essential requirements of law by failing to apply Blake, and certified a question of great public importance relating thereto. Additionally, the Second District Court of Appeal also recognized that its opinion conflicted with the opinion from the Fifth District Court of Appeal, in Remington, 941 So. 2d at 15, and certified the conflict between the district courts

of appeal. The issue of conflict between the decisions of the district courts of appeal relates to whether a special district may levy non-ad valorem assessments against property owned by another local government entity when there is no statutory exemption to prevent such a levy.

SUMMARY OF THE ARGUMENT

WVID has asserted that the only way a dependant special district can levy non-ad valorem assessments against other government property occurs when there is explicit or implied legislative authority for such assessments and WVID has relied upon the decision in Blake, 156 So. 2d at 97. The Drainage District's position is that the decision in Blake was rendered prior to the 1968 revisions to Article VIII, Section 2(b), of the Florida Constitution and the enactment of Section 166.021, Florida Statutes, both of which conferred broad home rule powers to municipalities.

It is the Drainage District's position that the holding in the City of Boca, as opposed to the decision in Blake, is controlling. The City of Boca decision reaffirmed municipal authority to levy non-ad valorem assessments on specially benefited properties pursuant to both their home rule authority and statutory authority. City of Boca, 595 So. 2d at 30. Given the broad power to levy special assessments, municipalities and their dependent districts may levy non-ad valorem assessments on all non-exempt, specially benefited government property. In

support of this position, the Drainage District has also relied upon the Remington decision that held that a charter school was not exempt from a special district's non-ad valorem assessments because there was not a specific statutory exemption excluding the charter school from the levy. Remington, 941 So. 2d at 17. Construing the Remington and City of Boca decisions together, a dependant special district may levy non-ad valorem assessments for a special benefit conferred to non-exempt government property as long as there is no express prohibition restricting the assessment. City of Boca, 595 So. 2d at 30; Remington, 941 So. 2d at 17.

The Second District Court of Appeal's opinion in this matter that a non-ad valorem assessment has to be specifically authorized before an assessment can be imposed upon public property cannot be reconciled with the Remington decision.

ARGUMENT

THE CHALLENGED DECISION DIRECTLY AND EXPRESSLY CONFLICTS WITH A DECISION FROM ANOTHER DISTRICT COURT OF APPEAL

Article V § 3 of the Florida Constitution and Rule 9.030 (a)(2)(vi), Florida Rules of Appellate Procedure, provides the Florida Supreme Court with discretionary jurisdiction to hear issues of express and direct conflict with decisions of district courts of appeal on the same question of law. Art. V § 3 (b)(3), Fla. Const.; Fla. R. App. P. 9.030. The Florida Supreme Court has jurisdiction to consider certified conflicts between decisions of the district courts of

appeal. Clark v. State, 783 So. 2d 967, 967 (Fla. 2001); Harmon v. Williams, 615 So. 2d 681, 681 (Fla. 1993); Bailey v. Hough, 441 So. 2d 614 (Fla. 1983); Hannewacker v. City of Jacksonville Beach, 419 So. 2d 308. 308 (Fla. 1982); S.R. v. State, 346 So. 2d 1018 (Fla. 1977).

The decision of the Florida Second District Court of Appeal in this matter expressly and directly conflicts with the decision of the Fifth District Court of Appeal in Remington, 941 So. 2d at 17, and therefore, the Second District Court certified the conflict in its opinion.

In Remington, the Fifth District Court of Appeal considered whether a charter school was exempt from the levy of a non-ad valorem assessment by a special district (a community development district). Remington, 941 So. 2d at 15. The charter school, attempting to avoid the obligation to pay the assessment, asserted that the Florida legislature conferred upon it status analogous to that of a public school, and by virtue of that similarity was exempt from taxation, fees and special assessments. Id. at 16. The Court concluded that the charter school was not exempt from the non-ad valorem assessment, even though it was part of the public school system, because the legislature did not establish a specific statutory exemption from non-ad valorem assessments for charter schools. Id.

The decision by the Second District Court of Appeal holds that as a matter of law, a dependant special district cannot levy non-ad valorem assessments

against other local governments unless there is specific statutory provision that authorizes such a power. West Villages Improvement District v. North Port Road and Drainage District, 2010 WL 2145479, *4 (Fla. 2d DCA 2010). This decision directly conflicts with the Remington decision that found that a special district could levy a special assessment against another recognized local government entity unless a statutory exemption was applicable. Remington, 941 So. 2d at 16. Remington did not require the special district to have a specific delegation of authority to levy against another governmental entity. Id. This decision of the Second District Court of Appeal and Fifth District Court of Appeal cannot be reconciled.

If the two conflicting decisions from the Second District Court of Appeal and Fifth District Court of Appeal are permitted to stand without the Florida Supreme Court accepting jurisdiction, the result will be inequitable and contradictory legal principles governing who local governments (municipalities and independent and dependent special districts) may levy non-ad valorem assessments against. Local governments located on the northeastern and central area of the state can interpret the Remington decision as authorizing the levy of assessments against other local governments unless there is a clear exemption, while local governments on the west coast of Florida are prohibited from levying assessments against any local governments without specific statutory authorization.

CONCLUSION

Pursuant to Article V § 3 of the Florida Constitution and Rule 9.030 (a)(2)(vi), Florida Rules of Appellate Procedure, this Court has jurisdiction to hear issues of conflict between district courts of appeal on the same question of law. Art. V § 3 (b)(3), Fla. Const.; Fla. R. App. P. 9.030. For all of the above stated reasons, the City of North Port's Road and Drainage District respectfully requests this Court exercise its discretionary jurisdiction and consider the merits of the Appellant, North Port Road and Drainage District's arguments on its authority to levy non-ad valorem assessments against the Appellee, the West Villages Improvement District.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **Margaret E. Wood, Esquire**, Caldwell Pacetti Edwards Schoech & Viator, LLP, One Clearlake Center, 250 South Australian Avenue, Suite 600, West Palm Beach, FL 33401; **Jon P. Tasso, Esquire**, Bricklemyer Smolker & Bolves, P.A., 500 East Kennedy Boulevard, Suite 200, Tampa, Florida 33602; and **Robert K. Robinson, Esquire** and **Jackson Kracht, Esquire**, Nelson Hesse, LLP, 2070 Ringling Boulevard, Sarasota, Florida 34237, by *U.S. First Class Mail* on this 9th day of July, 2010.

CERTIFICATE OF COMPLIANCE

Counsel for Appellant, North Port Road and Drainage District, certifies that this brief has been prepared in Times New Roman, 14-point font, in compliance with the requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2).

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