SUPREME COURT OF FLORIDA

PEDRO GARCIA, as Property Appraiser of Miami-Dade County, Florida, et al.

Petitioners,

v.

DAVID ANDONIE, et. al.,

Respondents.
_____/

Case No.: SC11-554
L.T. No.: 3D09-3427

***AMICUS CURIAE* BRIEF OF BILL DONEGAN, ORANGE COUNTY PROPERTY APPRAISER**

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Identity of Amicus Curiae, Bill Donegan, and His Interest in this Case

Bill Donegan is the duly-elected Property Appraiser of Orange County, Florida, and is, therefore, a constitutional officer. One of Mr. Donegan's fundamental duties as Property Appraiser is to determine taxpayers' entitlement to the homestead exemption afforded by Article VII, Section 6(a), of the Florida Constitution ("Art. VII, § 6(a)"). The Third District Court of Appeal's ("Third DCA") decision below in *de la Mora v. Andonie*, 51 So.3d 517 (3rd DCA 2010) (the "Opinion") is, and the Court's decision in this proceeding will be, binding on Mr. Donegan's office when carrying out this important duty. Thus, Mr. Donegan has a very real and serious interest in this case's outcome.

Summary of Argument

In Florida, children cannot legally contract, vote, sue or be sued, or serve on a jury. Paradoxically, however, the Third DCA's Opinion authorizes children to secure a homestead exemption on their parents' behalf even though the parents themselves are not entitled to one. Respectfully, such an unreasonable result is the product of the Third DCA's incorrect interpretation of Art. VII, § 6(a).

In reaching its erroneous conclusion, the Third DCA disregarded Florida statutes, administrative code rules, an Attorney General's opinion, and a 100+ year old common-law doctrine, all of which establish that the homestead of an unmarried minor subject to the disabilities of non-age is, **a matter of law**, the same

as his or her parents. The Third DCA attempted to justify its admitted disregard of these authorities by asserting, without explanation, that they conflict with Art. VII, § 6(a). That assertion is incorrect because the governing statutes and administrative rules properly supplement and clarify Art. VII, § 6(a), while the Attorney General opinion and common-law doctrine are entirely consistent with it. This Court should properly apply those authorities, reverse the Third DCA's erroneous Opinion, and uphold the Miami-Dade County Property Appraiser's correct determination that the Andonies' condominium is not entitled to a homestead exemption.

Argument

I. FOR PURPOSES OF DETERMINING ENTITLEMENT TO A HOMESTEAD EXEMPTION, A CHILD'S RESIDENCE IS, AS A MATER OF LAW, THE SAME AS HIS OR HER PARENTS.

Mr. and Mrs. David Andonie are citizens of Honduras who are indisputably not entitled to the requested homestead exemption on their condominium. *De la Mora*, 51 So.2d at 519. This is because as of January 1, 2006, they were present in the United States on a temporary visa, which, as a matter of law, precludes them from proving that they permanently reside at the condominium for purposes of the homestead exemption. *Juarrero v. McNayr*, 157 So.2d 79 (Fla. 1963); *deQuervain v. Desguin*, 927 So.2d 232 (Fla. 2d DCA 2006).

Nonetheless, the Third DCA's Opinion incorrectly holds that Mr. and Mrs. Andonie can legally establish, and have in fact proven, entitlement to the homestead exemption based on their assertion that the condominium is the permanent residence of their unmarried, unemancipated children, ages 7, 12, and 14. Setting aside the obvious issues regarding the genuineness of the Andonies' claim that their young children have a permanent residence different from their own, the governing statutes and administrative-code provisions plainly prohibit such an outcome. Pursuant to these authorities, unmarried children who have not had their disabilities of non-age removed are deemed, **as matter of law**, to permanently reside with their parents for purposes of the homestead exemption.

Art. VII, § 6(a), provides for a homestead exemption from property taxes and states in pertinent part as follows:

> (a) Every person who has the legal or equitable title to real estate **and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner,** shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law.

(emphasis supplied) Art. VII, § 6(a), does not define "permanent residence." Most importantly for this case, Art. VII, § 6(a), also does **not** explain the circumstances under which an owner's dependent will be deemed to permanently reside on the

subject property when the exemption is sought on those grounds.[1] One must therefore look to the relevant Florida statutes and administrative-code rules for guidance on these issues.

Section 196.031, Florida Statutes ("§ 196.031"), is the primary implementing statute for Art. VII, § 6(a). This statute essentially tracks the language of its constitutional counterpart:

> Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her **permanent residence**, **or the permanent residence of another or others legally or naturally dependent upon such person**, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $25,000 on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution.

§ 196.031 (1)(a), Fla. Stat. (emphasis supplied). Moreover, the Legislature has expressly defined the term "permanent residence" as used in § 196.031(1)(a):

> "Permanent residence" means that place where a person has his or her **true**, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. **A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a**

[1] This fact renders it impossible for the Art. VII, § 6(a) to conflict with Rule 12D-7.014(2), *Beekman*, *Chisolm*, and Attorney General Advisory Opinion No. 82-27, as the Third DCA erroneously concluded. *See infra* pp. 13-15.

change has occurred.[2]

§ 196.012(18), Fla. Stat. (emphasis supplied).

The Florida Administrative Code provides additional standards for determining whether a foreign citizen is entitled to a homestead exemption on Florida property. Consistent with the holdings of *Juarrero* and *deQuervain*, Rule 12D-7.007(3) of the Code explains that "(a) person in this country under a temporary visa cannot meet the requirement of permanent residence or home and, therefore, cannot claim homestead exemption." Particularly germane to the instant case is Rule 12D-7.014(2), which clearly states: "**An unmarried minor whose disabilities of non-age have not been removed may not maintain a permanent home away from his parents such as to entitle him or her to homestead exemption.**" (emphasis supplied) The Legislature ordered the Department of Revenue to prescribe these rules in compliance with the Florida Constitution, and they are binding on property appraisers:

> The Department of Revenue **shall prescribe** reasonable rules and regulations for the assessing and collecting of taxes, and such rules and regulations **shall be followed by the property appraisers**, tax collectors, clerks of the circuit court, and value adjustment boards. It is hereby declared to be the legislative intent that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and the administration will be uniform, just,

[2] The Third DCA's Opinion quotes this statute. *de la Mora*, 51 So.3d at 520. The Opinion, however, highlights and erroneously focuses exclusively on the statute's first sentence while disregarding the second one, even though the latter focuses specifically on the residency of citizens of foreign countries.

> and otherwise **in compliance with the requirements of** the general law and **the constitution**.

§ 195.027(a), Fla. Stat. (emphasis supplied).

The above-quoted statutes and rules clearly establish that Mr. and Mrs. Andonie cannot secure a homestead exemption by claiming that their children permanently reside in their Miami-Dade County condominium. Pursuant to 196.031(1)(a) and Rule 12D-7.007(3), Mr. and Mrs. Andonie are disqualified from seeking the exemption on their own behalf because they are in the United States on a temporary visa, and, therefore, their permanent residence is deemed to be in Honduras. *See also Juarrero* and *deQuervain, supra* p. 2. Pursuant to the unambiguous and explicit language of Rule 12D-7.014(2), the Andonie children are deemed, as a matter of law, to permanently reside with their parents in Honduras, not in the Florida condominium, because they are "unmarried minor(s) whose disabilities of non-age have not been removed."[3] For all intents and purposes, the analysis stops here, and the Andonies are not entitled to a homestead exemption. An examination of other relevant Florida authorities, however, further demonstrates the accuracy of this conclusion and the standard set forth in Rule

[3] Section 743.015, Florida Statutes, grants circuit courts jurisdiction to remove the disabilities of non-age of a minor **age 16 or older** upon proper petition. § 743.015(1), Fla. Stat. Since none of the Andonie had reached the age of 16 as of January 1, 2006, none of them was yet eligible for removal of their disabilities of non-age.

12D-7.014(2).

First, Rule 12D-7.014(2) cites *Beekman v. Beekman*, 43 So. 923 (Fla. 1907) in support of its dictate that "unmarried minor(s) whose disabilities of non-age have not been removed" must be found to reside with their parents. In *Beekman*, this Court explained: "Under the laws of Florida the domicile of the father is the domicile of his minor children, and such minors are incapable in Florida of making choice of a domicile here independently of the domicile of their father, and such disability continues here with all minors, be they male or female, until they arrive at the age of 21 years." *Beekman*, 43 So. at 923. *See also Chisolm v. Chisolm*, 125 So. 694, 702 (Fla. 1929) (quoting this same holding from *Beekman*). *Beekman* (and *Chisolm*) has never been overruled. *Beekman* is also in accord with the common-sense notion that minors who are wholly dependent on their parents for care and support reside in the same permanent household as them. Thus, any contrary conclusion contravenes both common sense and this 100+ year old jurisprudence.

Next, the Third DCA's Opinion cites, and then disregards, *Florida Attorney General Advisory Legal Opinion* No. 82-27. This advisory opinion examines the issue of whether parents residing out of state can claim the homestead exemption on a Florida house, in which their minor child lives while attending college. Analyzing this issue, the Attorney General reasoned:

> Thus, the availability of the exemption under your first question would appear to turn on a determination of whether the property is the permanent residence of the owner's dependent children. However, **where the child is a minor, it appears to be a general rule of law in the State of Florida that, in the absence of a divorce of the parents, or a guardianship, the permanent residence of a dependent minor is the same as his father. Therefore, if the parent's permanent residence was [sic] in another state, the permanent residence of his or her dependent minor child would also be considered to be that other state**, notwithstanding the fact that the minor child may actually live on the Florida property for substantial portions of the year.

Advisory Opinion, 82-27, p. 3 (emphasis supplied; citations omitted). Application of this reasoning to the instant case demonstrates that the Andonie children are permanent residents of Honduras, not Miami-Dade County, just like their parents. Thus, the Attorney General's advisory opinion further demonstrates the Andonies' inability, **as a matter of law**, to successfully claim a homestead exemption through their minor children.

One authority not mentioned in the Third DCA's Opinion, which is highly germane herein, is this Court's decision in *Judd v. Schooley*, 158 So.2d 514 (Fla. 1963). In *Judd*, Mrs. Judd, a married woman, applied for a homestead exemption on a Florida house while her husband resided in another state.[4] *Id.* at 514-15. As of the application date, Mrs. Judd's husband had deeded the Florida house to her

[4] Mrs. Judd sought the homestead exemption under Article X, Section of the Florida Constitution of 1885, the predecessor to Art. VII, Sec. 6(a), of the 1968 Florida Constitution.

and established a domicile in Washington, D.C., for business purposes. *Id.* at 515. Mrs. Judd continued living at the Florida house, and the couple continued living as husband and wife, with Mr. Judd returning to live with his wife in Florida for extended periods of time. *Id.*

The tax assessor denied Mrs. Judd's requested homestead exemption for her Florida residence on the asserted grounds that the domicile of the wife "follows that of (the) husband" in the absence of a divorce or legal separation. *Id.* Thereafter, the following proceedings occurred: a) the wife challenged the denial in circuit court, which agreed with her and granted the exemption; b) the tax assessor appealed to the Second District Court of Appeal ("Second DCA"), which reversed the circuit court and held Mrs. Judd was not entitled to the exemption because she could not legally establish a domicile separate from her husband;[5] and c) this Court accepted review of the Second DCA's decision. *Id.* at 515-16.

The issue for this Court was whether Mrs. Judd could legally secure a Florida homestead exemption in her own right, even though her husband maintained his domicile in Washington, D.C. The Court began its analysis by noting that the Florida Legislature had passed women's "emancipation statutes" intended to "liberate married women from most of the economic bonds which

[5] The tax assessor actually appealed directly to the Florida Supreme Court, which then transferred the case to the Second DCA. *Judd*, 158 So.2d at 515.

previously subordinated them to the control of their husbands." *Id.* at 516. The court then reasoned that under these statutes, "**a married woman may now own separate property, enter into contracts, sue and be sued, engage in business,** and otherwise conduct her affairs almost with the same absence of restraint as if she were a feme sole." *Id.* (emphasis supplied). Based on this reasoning, the Court concluded that Mrs. Judd could, as a matter of law, establish a permanent residence in Florida, separately from her husband, for purposes of securing the homestead exemption. *Id.*

The Court further determined that the Florida house was, in fact, Mrs. Judd's permanent home, and, therefore, she was entitled to the homestead exemption on it. *Id.* 516-17. In reaching its conclusions, the Court expressly distinguished its "recent opinion" in *Juarrero* holding that a foreign citizen living in Florida on a temporary visa could not, as a matter of law, establish a permanent, Florida residence for purposes of the homestead exemption: "The distinction (between *Judd* and *Juarrero*) is that in the instant case we have held that **it is legally possible** for a married woman, in good faith, to claim a permanent home in Florida property even though her husband is legally domiciled elsewhere." *Id.* at 517 (emphasis supplied). Based on the foregoing, the Court reversed the Second DCA's decision denying Mrs. Judd the homestead exemption. *Id.*

Judd is highly relevant to the instant case. The key factor in the Court's

holding that Mrs. Judd could legally establish a permanent residence separate from her husband was that she had the same rights as a male (or single female) of majority age, including the right to **"**enter into contracts, sue and be sued, (and) engage in business." On the contrary, the Andonie children have no such rights because they are subject to the disabilities of non-age. Without limitation, the Andonie children cannot: a) enter into enforceable contracts;[6] b) sue or be sued;[7] c) vote;[8] d) serve on a jury;[9] or e) enlist in the armed forces.[10] Since the Andonie children suffer from the disabilities of non-age, application of *Judd* to the instant case results in the necessary conclusion that the Andonie children cannot, **as a matter of law**, establish a permanent residence separate their parents for purposes of the homestead exemption.

The *Judd* court's distinguishing of *Juarrero* further supports this conclusion. In *Juarrero*, the taxpayer was found not to permanently reside in Florida **as a matter of law** because he was foreign citizen in the United States on a temporary visa. In distinguishing *Juarrero*, the *Judd* Court held that unlike the taxpayer in *Juarrero*, it was "**legally permissible**" for Mrs. Judd to establish a permanent residence in Florida separate from her husband. These holdings demonstrate that

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[6] *E.g., Charles v. Klemick and Gampel, P.A.*, 984 So.2d 563 (Fla. 2d DCA 2008).
[7] *E.g., Cronebaugh v. Van Dyke, Jr.*, 415 So.2d 738, 741 (Fla. 5th DCA).
[8] Amendment XXVI, United States Constitution.
[9] Section 48.01, Florida Statutes.
[10] 10 USC § 505(a).

the determination of whether or not one is entitled to a homestead exemption begins with a threshold **legal analysis** (based on facts that are usually undisputed) of whether or not the person seeking the exemption can, **as a matter of law**, qualify as a permanent resident of Florida. Based on their disabilities of non-age, the Andonie children clearly cannot qualify as permanent Florida residents in their own right, separate from their parents. Respectfully, the Third DCA erred in reaching a contrary conclusion, and its Opinion should be reversed.

II. THE THIRD DCA EXPRESSLY RECOGNIZED, AND THEN INCORRECTLY DISREGARDED, THE ABOVE-DESCRIBED AUTHORITIES BASED ON ITS ERRONEOUS CONCLUSION THAT THEY CONFLICT WITH ART. VII, §6(a).

The Third DCA's Opinion expressly recognizes the existence and language of Rule 12D-7.014(2), *Beekman*, *Chisolm*, and Attorney General Advisory Opinion No. 82-27. *de la Mora,* 51 So.3d at 521-523. Indeed, the Third DCA even provides the following summary of the common-law doctrine set forth in *Beekman* and *Chisolm* and recognizes it as a "**broadly accurate proposition**:" "Minors are incapable in Florida of making a choice of a domicile independently of the domicile of their father [or other parent]." *Id.* at 521 (emphasis supplied). Nonetheless, the Third DCA disregarded the above authorities in reaching its erroneous conclusion that the Andonie children could legally claim a permanent residence in Florida separately from their parents.

The Third DCA set forth two justifications for its admitted disregard of Rule

12D-7.014(2), *Beekman*, *Chisolm*, and Attorney General Advisory Opinion No. 82-27. First, the Third DCA maintains that these authorities conflict with Art. VII, § 6(a). *De la Mora*, 51 So.3d at 521-523. Second, the Third DCA attempts to factually distinguish *Beekman* and *Chisolm* from this case and asserts that Rule 12D-7.014(2) and the Attorney General Opinion are likewise inapplicable because they are based on *Beekman* and *Chisolm*. *Id.* Respectfully, both of these assertions are incorrect.

The Third DCA's Opinion does not provide any explanation of the alleged conflict between Art. VII, § 6(a) and Rule 12D-7.014(2), *Beekman*, *Chisolm*, and the Attorney General's advisory opinion. Instead, the Opinion only makes the following conclusory statements:

> Not only is this general common law proposition (in *Beekman*) contravened by the constitutional provision we are called upon to apply in this case, but also the Property Appraiser's reliance on these authorities is misplaced.
>
> * * *
>
> Of course, this rule (Rule 12D-7.014(2)) is as much in conflict with the express language of article VII, section 6(a), as is the common law principal previously discussed, which the Property Appraiser would have us apply in contravention of the plain language of the provision – so much so, apparently, that the Department of Revenue itself makes no defense of the rule.

de la Mora, 51 So.3d at 521 & 522. These statements are the sum total of the Third DCA's analysis of the alleged conflict between Art. VII, § 6(a), and the above-listed authorities. There is, in fact, no such conflict.

To reiterate, the pertinent language of the Article VII, § 6(a), reads as follows: "Every person who has the legal or equitable title to real estate and maintains thereon **the permanent residence of** the owner, or **another legally or naturally dependent upon the owner,** shall be exempt from taxation thereon." Art. VII, § 6(a) of Fla. Const. (1968)(emphasis supplied). There is **absolutely no language** in this provision that either: a) provides standards for determining whether or not a dependent minor genuinely makes his or her "permanent residence" at the subject house for purposes of the homestead exemption; or b) prohibits a legal standard establishing that unmarried, unemancipated minors subject to the disabilities of non-age permanently reside with their parents for such purposes. Art. VII, § 6(a), is completely **silent** on these issues.

Accordingly, one cannot properly conclude that Art. VII, § 6(a), conflicts with Rule 12D-7.014(2), *Beekman*, *Chisolm,* or the Attorney General's advisory opinion. The constitutional provision is devoid of standards, while the latter authorities fill that vacuum by providing standards for determining the permanent residence of dependent, minor children subject to the disabilities of non-age for purposes of the homestead exemption. Thus, Rule 12D-7.014(2), *Beekman*, *Chisolm*, and the Attorney General's advisory opinion **supplement and clarify**

Art. VII, § 6(a); they do not conflict with it.[11]

Finally, the Third DCA fails in its attempt to factually distinguish *Beekman* and *Chisolm*. Whatever **factual** differences exist between *Beekman* and *Chisolm* and the instant case, the former opinions set forth the "broadly accurate" **legal doctrine** that: "Minors are incapable in Florida of making a choice of a domicile independently of the domicile of their father [or other parent]." Such a legal conclusion is entirely consistent with the other disabilities of non-age imposed on minors in this state. There is simply no basis for applying a different legal rule in the context of an application for homestead exemption, when the rule is "broadly accurate" and applicable to other situations involving a minor's legal right to act independently of his or her parents. Doing so injects substantial uncertainty into the law – a most undesirable result.

In sum, this Court should reject the Third DCA's effort to avoid the legal holding of *Beekman* and *Chisolm*, which governs the instant case along with Rule 12D-7.014(2). Since these authorities do not conflict with Art. VII, § 6(c), and are not materially distinguishable from this case, the Third DCA erred in refusing to

[11] In support of its position on conflict, the Third DCA's Opinion contains a substantial discussion advocating that Art. VII, § 6(a), is a self-executing constitutional provision. *de la Mora*, 51 So.3d at 522, n. 5. Since there is no conflict between that constitutional provision and the subject statutory, administrative, and common law authorities, however, the issue of whether or not Art. VII, § 6(c), is self-executing is moot.

apply them to the Andonie's request for a homestead exemption.

Conclusion

Based on all of the foregoing, Amicus Curiae, Bill Donegan, respectfully requests the Court to: a) reverse the Third DCA's Opinion below in *de la Mora*; b) direct the circuit court to enter judgment in favor of the Miami-Dade County Property Appraiser in the Andonies' lawsuit challenging the denial of the homestead exemption for their Miami-Dade County condominium; and c) grant any such other relief the Court deems necessary and proper.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of this Brief was served by U.S. Mail on this 24th day of August 2011 to: MELINDA S. THORNTON, Assistant County Attorneys, Office of Miami-Dade County Attorney, 111 N.W. 1st Street, Suite 2819, Miami, Florida 33128-1930; JOSEPH C. MELLICHAMP, III, Chief Assistant Attorney General, Revenue Litigation Bureau, PL 01 – The Capitol, Tallahassee, Florida 32399-1050; DANIEL A. WEISS, Tannenbaum Weiss, PL, Museum Tower, Suite 2850, 150 West Flagler Street, Miami, Florida 33130-1534; THOMAS M. FINDLEY, Messer Caparello & Self, P.A., Post Office Box 15579, Tallahassee, Florida 32317; and LOREN E. LEVY, Esquire, and ANA C. TORRES, Esquire, The Levy Law Firm, 1828 Riggins Lane, Tallahassee, Florida 32308.

Certificate of Compliance with Font Requirements

I HEREBY CERTIFY that the foregoing Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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