IN THE SUPREME COURT OF FLORIDA
Case Number SC11-554
Lower Tribunal Case Nos. 3D09-3427, 07-39805

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

Petitioner,

v.

DAVID ANDONIE and ANA L. ANDONIE; and
LISA ECHEVERRI, as Executive Director of the
State of Florida Department of Revenue,

Respondents.

ANSWER BRIEF ON THE MERITS OF RESPONDENT TAXPAYERS DAVID ANDONIE AND ANA L. ANDONIE

ON PETITION FOR DISCRETIONARY REVIEW FROM A DECISION OF THE THIRD DISTRICT COURT OF APPEAL

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INTRODUCTION

This answer brief is submitted *pro bono publico* on behalf of Respondent Taxpayers ANA L. ANDONIE and DAVID ANDONIE. This answer brief responds to the initial brief of the Miami-Dade County Property Appraiser, PEDRO J. GARCIA, and the briefs in support of Mr. Garcia submitted by *amici curiae* the Property Appraisers' Association of Florida, Inc. (PAAF), William Donegan, Orange County Property Appraiser (Donegan), and the Florida Association of Property Appraisers (FAPA). Collectively, all the County Property Appraisers will be referred in this brief to as the "Property Appraisers".

The Respondent Department of Revenue (DOR) has filed its own brief. DOR is the State agency responsible for the overall supervision of assessment and collection of taxes throughout the State of Florida. §§195.027, 195.0012, 213.05, Fla. Stat. It is the express responsibility of DOR to prescribe rules and regulations intended to ensure the uniform, just and compliant application by all county property appraisers with the requirements of general law and the Constitution. §195.027(1), Fla. Stat.

David and Ana Andonie adopt *in toto* the Answer Brief of Respondent Department of Revenue with the notable exception of DOR's "Conclusion", in which DOR expressly takes no position on the validity of

the Third District's decision and opinion below approving homestead property tax exemption for David and Ana L. Andonie. DOR Ans. Br. at 13. Self-evidently, David and Ana believe they are entitled to homestead exemption and that DOR should have said so.

PRELIMINARY STATEMENT

References to the record are designated "R.", followed by page number. References to the Property Appraiser's Initial Brief are designated "PA Br.", followed by page number. All emphasis in this brief is supplied by undersigned counsel, unless otherwise indicated.

STATEMENT OF UNDISPUTED FACTS AND UNDISPUTED STATEMENT OF THE CASE

This is an appeal and a petition for discretionary review of a unanimous 15-page panel decision and opinion of the Third District Court of Appeal affirming the granting of a final summary judgment and homestead exemption from *ad valorem* taxation to David and Ana Andonie as owners of residential real estate in Miami-Dade County. The Property Appraiser's motion for rehearing was denied. The basis for granting homestead exemption is that the property is the "permanent residence" of the minor children of the title holders (the Andonies), and that the minor

children are "legally or naturally dependent" upon their parents within the meaning of article VII, section 6(a) of the Florida Constitution. Slip op.

The homeowners in this case, David and Ana Andonie, are citizens of Honduras, lawfully residing in the United States pursuant to temporary visas issued by the United States Department of Homeland Security. In 2003, the Andonies purchased a condominium in Key Biscayne, Florida, which they occupy together with their three minor children, ages 7, 12, and 14. (R.33). The children are United States citizens. (R.33). Prior to January 1, 2006, Mr. and Mrs. Andonie timely filed an application for homestead exemption from real estate taxes on the property, pursuant to article VII, section 6(a), of the Florida Constitution, for the 2006 ad valorem taxing year. (R.33). See art. VII, § 4(d), Fla. Const. Born in South Florida, each of the three Andonie children is by operation of the 14th Amendment of the U.S. Constitution both a United States citizen and a citizen of Florida.[1]

[1] The Fourteenth Amendment of the United States Constitution begins with the following words:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

On the homestead exemption application form, David Andonie stated under oath: "My children are U.S. citizens, aged 7, 12, and 14 living at this address and are legally and naturally dependent on me, thereby qualifying for the homestead exemption." (R. 30, 33-34.) It is undisputed that David and Ana Andonie are legally incapable of qualifying as "permanent residents" of Miami-Dade County. See *Juarrero v. McNayr, 157 So. 2d 79, 81 (Fla. 1963)* (finding that a non-citizen present in the United States under a temporary visa "cannot `legally,' rightfully' or in 'good faith' make or declare [himself]" a "permanent resident" of this state for purposes of article VII, section 6(a)); *DeQuervain v. Desguin, 927 So. 2d 232, 235 (Fla. 2d DCA 2006)*; *Alcime v. Bystrom, 451 So. 2d 1037, 1037 (Fla. 3d DCA 1984)*.

The Miami-Dade County Property Appraiser administratively denied the Andonies' homestead exemption application, but that decision was overturned upon petition to the Miami-Dade County Value Adjustment Board. In due course, the Property Appraiser filed suit in the Eleventh Judicial Circuit Court. See §194.171(1), Fla. Stat. (2006). On cross-motions for summary judgment, the trial court found the Andonies were entitled to the homestead exemption.

PROCEDURAL POSTURE

Doctrinally, Florida County Property Appraisers generally--indeed, almost uniformly--take up the cudgels against the granting of any exemption which presents as a matter of first impression. Through this automatic knee-jerk exemption rejection, the Property Appraisers secure the opportunity for judicial review of every exemption case of first impression, irrespective of the clarity, validity or unassailability of the taxpayers' claim of entitlement to property tax exemption.

In counterpoint to the Property Appraiser 's doctrinal abdication of his decision making authority stands his statutory duty to "carefully consider" each homestead exemption application in the first instance. Section 196.151, Fla. Stat. Notably, but for the Property Appraiser, each decision maker has granted the Andonies' claim of entitlement to homestead property tax exemption in this case in accordance with the mandatory plain language of article VII, section 6(a) of the Florida Constitution. Granting the exemption to the Andonies have been:

a. Miami-Dade County Value Adjustment Board, adopting the Conclusions of Law, Findings of Fact, and Recommendations of its Legal Special Master, former Circuit Judge John Gale;

b. trial court of the Eleventh Judicial Circuit; and

c. Third District Court of Appeal.

SUMMARY OF THE ARGUMENT

The controlling constitutional mandate in this appeal is contained in article VII, section 6(a), Florida Constitution (1968). It provides in pertinent part 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 …upon establishment of the right thereto in the manner prescribed by law." Art. VII, §6(a), Fla. Const. (1968).

The issue of the Andonies' entitlement to homestead exemption is resolved by the plain language of the Constitution quoted above. The Taxpayers, David and Ana Andonie, are undisputedly persons who have

> the legal or equitable title to real estate and maintain thereon the permanent residence of…another legally or naturally dependent upon the owner.

Consequently, the property is entitled to homestead exemption.

In lucid clarion terms, the framers of the Florida Constitution have conferred homestead exemption in two separate circumstances. The first circumstance is where the owner is a permanent resident of the property. The second circumstance is where the owner is not a permanent resident of

the property, but someone naturally or legally dependent on the owner is a permanent resident of the property.

The present case deals not with the first circumstance but with the second. The Property Appraiser's reading of the Constitution conflates the two separate provisions, and makes them conjunctive instead of disjunctive. In so doing, the Property Appraiser collapses the two separate provisions and destroys their two independent spheres of operation. Indeed, as explained below, if, as the Property Appraiser argues with a straight face, infra beginning at 27, the property owner is required to be a permanent resident of the property in order to qualify it for homestead exemption, the question of permanent resident *vel non* of another person legally or naturally dependent upon the owner never arises because it is redundant, moot, meaningless, devoid of legal significance, otherwise jejune, and renders the entire second prong of article VII, section 6(a) superfluous.

ARGUMENT

THIS IS A ONE-ISSUE CASE. THE ISSUE IS WHETHER THE HOMESTEAD PROPERTY TAX PROVISION OF THE FLORIDA CONSTITUTION MEANS WHAT IT SAYS. THE THIRD DISTRICT CORRECTLY RULED THAT IT DOES MEAN WHAT IT SAYS.

The controlling constitutional mandate in this case is contained in article VII, section 6(a), Florida Constitution (1968). It begins with the following mandate:

> "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…upon establishment of right thereto in the manner prescribed by law."

Article VII, §6(a), Fla. Const. (1968).

The issue of entitlement to homestead exemption is resolved by application of the plain language of the Constitution quoted above to the undisputed facts in this case, without more. The Appellee-Taxpayers, David and Ana Andonie, are undisputedly persons who have

> the legal or equitable to real estate and maintain thereon the permanent residence of…another legally or naturally dependent upon the owner[.]

Consequently, the property is entitled to homestead exemption. Language of a statute is conclusive, absent expressed legislative intent to the contrary. *In re Louis S. St. Laurent, II v. Ambrose*, 991 F. 2d 672, 678 (11th Cir. 1993).

In lucid clarion terms, the framers of the Florida Constitution, i.e., the people of the State of Florida themselves, have conferred homestead exemption in two separate circumstances. The first circumstance is where

the owner is a permanent resident of the property. The second circumstance is where the owner is not a permanent resident of the property, but someone naturally or legally dependent on the owner is a permanent resident of the property.

The present case deals not with the first circumstance but with the second. The Property Appraiser's reading of the Constitution conflates the two separate provisions, and makes them conjunctive instead of disjunctive. In so doing, the Property Appraiser collapses the two separate provisions and destroys their two independent spheres of operation.

The provision of the Florida Constitution at issue is the following:

> "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 …upon establishment of the right thereto in the manner prescribed by law."

Article VII, §6(a), Fla. Const. (1968).

The Property Appraiser baldly asserts that the foregoing provision doesn't mean "every" person, but only "every" person other than one whom the Property Appraiser may deign to carve out due to his immigration status. For the benefit of the misguided Property Appraiser, the DOR has helpfully promulgated rule 12D-7.007(4) of the Florida Administrative Code. In pertinent part, 12D-7.007(4) provides as follows:

"Homestead Exemptions - Residence Requirement"

*** * ***

> "(4) A person not residing in a taxing unit but owning real property therein may claim such property as tax exempt under Section 6, Article VII of the State Constitution by reason of residence on the property of natural or legal dependents provided he can prove to the satisfaction of the property appraiser that he claims no other homestead tax exemption in Florida for himself or for others legally or naturally dependent upon him for support. It must also be affirmatively shown that the natural or legal dependents residing on the property which is claimed to be exempt by reason of a homestead are entirely or largely dependent upon the landowner for support and maintenance."

ANALYSIS

The Florida Constitution protects Florida homesteads in three distinct ways. *Snyder v. Davis, 699 So. 2d 999, 1001-02 (Fla. 1992).*[2] Article VII, section 6(a) of the Florida Constitution provides homesteads with an exemption from taxes. Id. This case concerns this, the first of these protections.

The current article VII, section 6(a) homestead property tax entitlement provision reads in pertinent part as follows:

---

[2] The other two homestead-type protections are as follows. Article X, sections 4(a) and 4(b) afford qualifying homestead property life-time and death-time exemptions from forced sale. Id. Article X, section 4(c) imposes restrictions on the devise of homestead property for the benefit of a surviving spouse or minor child. Id.

> SECTION 6. Homestead exemptions —
>
> (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.

Art. VII, §6(a), Fla. Const. (emphasis added by Third District). The plain language of article VII, section 6(a) provides that an owner of residential real estate in Florida is constitutionally entitled to an exemption from *ad valorem* taxation--more accurately, a reduction in the assessed value--under either of the following two separate and independent scenarios:

1. Where the owner of the property is a permanent resident on the property,

or

2. Where someone legally or naturally dependent on the owner is a permanent resident on the subject property.

See id.

Section 196.012, Florida Statutes (2006), defines "permanent residence" for purposes of this provision as follows:

> (18) "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 change has occurred.

(Emphasis added by the Third District).[3]

In support of his motion for summary judgment in the trial court, David Andonie swore by affidavit to the following:

AFFIDAVIT OF DAVID ANDONIE

> The following affidavit of David Andonie is made for the purpose of supporting his application for homestead exemption from property taxation for 2006 for property identified by property tax folio number 24-4232-016-2730 ("subject property"):
>
> 1. My wife Ana and I bought a condominium for ourselves and our children in April, 2003. The condominium unit is located . . . .
>
> 2. I filed a homestead exemption application with respect to the subject property as of January 1, 2006. To the exclusion of all others, this is our home where in good faith we live. It is the

[3] Chapter 196 of the Florida Statutes exists for the purpose of enabling those exemptions authorized by the Florida Constitution to be implemented by general law and providing guidance for the administration of exemptions from taxation. See, e.g., art. VII, § 3(a), Fla. Const.

residence of my wife and myself, and the permanent residence of our three U.S.-born children.

3. In this present summary judgment proceedings, my wife and I do not claim the right to homestead exemption based on our permanent residence at this location, but upon the fact that our three minor children, who are naturally and legally dependent upon my wife and me, live here on the subject property, which we as their parents and natural and legal guardians, make their home. For our children, this home is their permanent residence, where they live along with their mother and me.

* * *

7. Because our three children are U.S.-born and are U.S. citizens, no one can lawfully tell them that they do not have the right to remain permanently in the United States. The subject property is the permanent residence of each of our three children, Nicholas, Luisa, and Kristen.

* * *

9. I claim no other homestead tax exemption in Florida for myself nor for others naturally or legally dependent on me for support. All three of my children were, as of January 1, 2006, and through today, are entirely dependent on my wife and me for support and maintenance, living and permanently residing on the subject property. (R.34).

There is no evidence contradicting the factual assertions made by David Andonie in his affidavit, nor is there any evidence in the record from which the trial court or the Third District could conclude the affidavit was made other than in good faith.

DOMICILE OF MINORS UNDER CURRENT FLORIDA AND U.S. LAW

Section 744.301, the Florida Guardianship Law, has, since 1974, conferred upon mother and father jointly the right to make decisions as the "natural guardians" of their own children and of their adopted children, during minority, for all purposes, including those issues so essential to the survival, present and future well-being, health, safety, welfare, and education of the child as:

a. settlement of any claim or cause of action for damages to property or person, §744.301(2)(a);

b. collection, receipt, management, disposition of proceeds of any such settlement, §744.301(2)(b);

c. collection, receipt, management, disposition of any real or personal property distributed from an estate or trust, §744.301(2)(c).

Not without legal significance for the purpose of the present proceeding, a natural guardian is authorized to act for the benefit of the ward and to bind the ward by instrument so stating. §744.301(4), Fla. Stat. Self-evidently, a declaration of domicile to the effect that Mr. and Mrs. Andonie's three minor children born, living in, and citizens of Key

Biscayne, Florida, and the United States, falls squarely within the ambit of the Florida Guardianship Law.

Such decisions as the above-enumerated are crucial to all who act *in loco parentis*, whether they are co-parents, godparents, surrogates, guardians, guardians *ad litem*, legal residents or timed-out residents subject to possible deportation, or whether they are lawful or unlawful residents subject to leaving the country on short notice or otherwise, while their children, as lawful residents, citizens, permanent residents lawful state-school scholarship winners, or who for other reasons may be minors entitled to remain in this country permanently or temporarily, while their parents may not enjoy that same right, for any one of a host of reasons.

In dissenting on dismissal of a petition to this Court as improvidently granted in *Dade County Property Appraiser v. Lisboa*, 737 So. 2d 1078 (Fla. 1999), Senior Justice Overton wrote as follows:

> "I dissent. The district court of appeal certified the following question:
>
> Can an alien residing in the United States pending his application for political asylum, satisfy the residency requirements contained within *article VII, section 6 of the Florida Constitution* and *section 196.031(1)* [*3] Florida

Statutes, in order to qualify for Florida's homestead tax exemption?

In this instance, the property appraiser, while recognizing that a lawfully admitted permanent resident alien is entitled to a homestead exemption, determined that this alien who was lawfully in the country was not entitled to a homestead exemption because he was an alien who had a pending application for political asylum.

I believe it is a significant statewide issue for this Court to decide whether an appraiser can unilaterally decide which aliens who are lawfully in this country are entitled to the homestead exemption and which ones are not. Accordingly, I would accept jurisdiction."

Dade County Property Appraiser v. Lisboa, 737 So.2d at 1078.

While it is entirely clear that Lisboa implicated various interrelated features of federal immigration law, it is equally clear that article VII,

section 6(a) of the Florida Constitution contains no such complexification, is written in plain English, and does not call upon the 67 county property appraisers or the DOR – or former Justice Overton -- to weigh in on their opinion of public policy involving immigration.

Applying Florida law, whether of the statutory variety or an ordinary and customary usage standard, it cannot be gainsaid that the Honduran parents Mr. and Mrs. Andonie have adequately declared that whatever may become of their ability to remain in the United States in the future, they fully plan and intend for their U.S.-born children to "permanently resid[e]" in the United States.

THE PROPERTY APPRAISER'S ANTEDILUVIAN AND OTHERWISE UNLAWFUL NOTIONS OF CHILDREN'S DOMICILES

As demonstrated above beyond peradventure, it has been established without even a scintilla of factual dispute that the Andonies have declared their Florida residence the domicile and "permanent residence" of their three minor children. The law firmly establishes the Andonies' right to do so.

Despite the Andonies' sworn assertions, the Property Appraiser asserts in these situations that the taxpayer-parents still cannot maintain an exemption through their children. The argument appears to be comprised of two thrusts. First, the Property Appraiser asserts the minor children's

domicile is dependent upon the domicile of the father, who is a non-Florida resident. Secondly, the Property Appraiser relies on the term "who resides thereon," as found in section 196.031(1)(a), to argue the statute requires the title owner to reside on the property permanently. As discussed by the Third District, neither argument has merit.

The Property Appraiser does not have the authority to adjudge in contravention of the declared intent of the parents and natural guardians, §744.301, Florida Guardianship Law, of Nicholas, Luisa and Kristen that the permanent residence of the Andonies' Florida-born minor children is not Key Biscayne. To the contrary, Mr. and Mrs. Andonie possess legal authority to declare Florida the permanent residence of their Florida-born children, based on the following discussion of parental authority – i.e., parental authority law of the 21st century – not of 1907.

"Parental authority over decisions involving their minor children derives from the liberty interest contained in the *Fourteenth Amendment to the United States Constitution* and the guarantee of privacy in *article I, section 23 of the Florida Constitution. See Troxel v. Granville, 530 U.S. 57, 66, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)* (plurality opinion) ("In light of this extensive precedent, it cannot now be doubted that the *Due Process Clause of the Fourteenth Amendment* protects the fundamental right of

parents to make decisions concerning the care, custody, and control of their children."); *see also Beagle v. Beagle, 678 So. 2d 1271, 1275 (Fla. 1996)* ("The fundamental liberty interest in parenting is protected by both the Florida and federal constitutions. In Florida, it is specifically protected by our privacy provision."). In fact, beginning with *Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923)*, the United States Supreme Court has recognized that parents have a constitutionally protected interest in child rearing. In *Troxel*, the United States Supreme Court further pointed to a presumption that

> fit parents act in the best interests of their children….Accordingly, so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.

530 U.S. at 68-69; see also Von Eiff v. Azicri, 720 So. 2d 510, 514 (Fla. 1998) ("Neither the legislature nor the courts may properly intervene in parental decision-making absent significant harm to the child threatened by or resulting from those decisions.")." *Kirton v. Fields, 997 So. 2d 349, 352-53 (Fla. 2008).*

Under these circumstances, the Property Appraiser improperly insinuated himself into the Andonies' decision regarding the permanent

residence of their minor children. The trial court properly found the Andonies and their property entitled to the Constitutional and statutory homestead exemption. By failing to respect the two separate circumstances under which homestead exemption is mandated, the Property Appraiser's reading violently conflicts with the plain language of the Constitution and implementing statutes. Importantly, the grant or denial of homestead exemption to each applicant is an annual task for the Property Appraiser. §§192.042, 193.155, 196.011, 196.031, Fla. Stat. Consequently, the Property Appraiser has the opportunity to decide annually who is and who is not a permanent resident. See *Security Management v. Markham, 516 So.2d 959, 962 (Fla. 4th DCA 1987)*. Indeed, the recognition of annual exemption has been emphasized by the Property Appraiser in this appeal. PA Br. 34. If, as and when the dependent children leave the nest, become emancipated, or obtain permanent residence elsewhere, the homestead exempt status can be changed accordingly. The lesson of *Robbins v. Welbaum, 664 So.2d 1, 2 (Fla. 3d DCA 1995)* (sufficient that taxpayers owned beneficial title to residence during year in which they claimed exemption), is that "permanent" is not synonymous with "forever," but designates the residence as of January 1 of any given year. "Permanent residence" denotes 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. §196.012 (18), Fla. Stat.

Minors

First, relying principally on authorities that pre-date the adoption of article VII, section 6(a), the Property Appraiser advances the broadly accurate--if antiquated—proposition in the common law that "`[M]inors are incapable in Florida of making a choice of a domicile . . . independently of the domicile of their father [or other parent] . . . ,'" citing to *Beckman v. Beckman, 53 Fla. 858, 43 So. 923, 924 (Fla. 1907)*, and *Chisholm v. Chisholm, 98 Fla. 1196, 125 So. 694, 702 (Fla. 1929)*. On the strength of this common law proposition, the Property Appraiser asserts that because the domicile of the Andonies must be a place other than Florida, the domicile of their children must also be a place other than Florida. In the first instance, little girls no longer have to maintain their residence or domicile with mommy and daddy until they wed and then become the chattel of their husband upon being pronounced "man"--not "husband"--but "man" and "wife".

Even absent more than a century's progress in individual rights, civil rights, women's rights, spousal rights, even after the Arab Spring, the adoption of article VII, section 6(a) by the people of the State of Florida, and

1974 adoption of the Florida Guardianship Law leave *Beekman* and *Chisholm* with no remaining vitality and no application to the present proceeding.

From their reading of *Beekman* and *Chisholm*, it would appear that the Property Appraisers and DOR are unaware that a husband and wife may have separate permanent residences, and therefore separate homestead exemptions in Florida. Department of Revenue Regulation 12D-7.007(7), Florida Administrative Code, provides:

> "(7) A married woman and her husband may establish separate permanent residences without showing "impelling reasons" or "just ground" for doing so. If it is determined by the property appraiser that separate permanent residences and separate "family units" have been established by the husband and wife, and they are otherwise qualified, each may be granted homestead exemption from ad valorem taxation under Article VII, Section 6, 1968 State Constitution. The fact that both residences may be owned by both husband and wife as tenants by the entireties will not defeat the grant of homestead and valorem tax exemption to the permanent residence of each." See also *Wells v. Haldeos, 48 So. 3d 85, 88 (Fla. 2d DCA 2010).*

Not only is the general common law proposition of "daddy's casa es mi casa" abrogated and contravened by the constitutional provision controlling in this case, but also the Property Appraiser's reliance on these authorities is itself misplaced. A careful study of these cases--both marital dissolution cases in which the dispositive issue was whether the requisite jurisdictional residency requirement had been satisfied by the

petitioner, reveals that the petitioner either was seeking to include periods of time during her minority when she was either living in another state with her parents and "merely intended" to move to Florida, see *Beekman, 53 Fla. at 862, 43 So. at 924*, or could not prove her parents were domiciled in Florida during the relevant time period, see *Chisholm, 98 Fla. at 1219, 125 So. at 702*. In factual contrast, both the parents and the children in the Andonie case were present in Miami-Dade County on the January 1, 2006, *ad valorem* taxing date.

In further support of the first argument, the Property Appraiser seeks to invoke Florida Administrative Code Rule 12D-7.014, a rule of the Florida Department of Revenue entitled "Civil Rights," which decrees (one might argue, oxymoronically) that "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," citing, coincidentally, Beekman, which we already have fully discredited as applicable to the interpretive issue in this case. Of course, this rule is as much in conflict with the express language of article VII, section 6(a), as is the common law principle 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 ruler' The express will of the people, as articulated by them in their constitution, may not be altered, contracted or enlarged by legislative or executive branch enactments or rules. See *Sparkman v. State ex rel. Scott, 58 So. 2d 431, 432 (Fla. 1952)* (holding that a statute imposing a one-year residency requirement on entitlement to an exemption from ad valorem taxation under article X, section 7 [now article VII, section 6(a)] of the Florida Constitution was invalid because it was materially different from the constitutional provision and attempted to restrict it). The Andonies seek to obtain an exemption from ad valorem taxation under article VII, section 6(a), based upon the permanent residence of their natural children. The Property Appraiser may not condition this benefit on the legal status of the Andonies in the United States.

In a final attempt to demonstrate that a minor cannot maintain a permanent residence separate from their parents, the Property Appraiser invokes opinion 82-27, in which the attorney general opined that an out-of-state parent could not receive the benefit of the ad valorem taxation exemption on real property in Florida, which was claimed to be the permanent residence of a minor child attending college in Florida.

This specious position is directly contradicted not only by the unequivocal edict of the Florida Constitution but also by the Property

Appraiser's own 30-year Chief Supervisor of Homestead Exemptions Angela Neumann, who directly gave the following sown testimony, elicited by undersigned counsel, on March 18, 2008 (R.169-170):

"MR. WEISS: So what we're saying -- to conclude, Ms. Neumann, will you please -- I'm concluding it -- Ms. Neumann, will you please tell [Value Adjustment Board Special Magistrate] Mr. Eddy what you told us last year about what you have done where you have a resident of another state who is not a permanent resident of the state of Florida and who has a minor child living on property that he has the title to here.

MS. NEUMANN: Usually they are not minor children, they are students at the university and they do have -- they're adults, they have homestead -- the owner -- the property is owned by their parents residing in Michigan or, you know --

MS. THORNTON: In the (inaudible) appropriate but, again as I mentioned in the very beginning, the distinction between that is if the homeowner were here, he would be able to qualify for homestead.

Again, we're saying a minor child can't have greater rights than the parent would have and that is a distinguishing kind of situation.

MR. WEISS: Ms. Neumann, you don't deny that you testified last year at the same hearing on September 11th that in the case of a minor child as for example, a 17-year-olds, residing on the property under the circumstances I described, which is a nonresident of Florida that you grant those, you have granted those; isn't that correct?

MS. NEUMANN: For the Florida statue [sic] -- I mean, for the Florida attorney general's opinion 82.27, it is liable to grant an exemption to that child, that student, that's here to conduct their college education.

MR. WEISS: Even the 17 year olds, correct?

MS. NEUMANN; Yes.

MR. WEISS: There is your answer. This is the way the -- and I told you you would hear this testimony, this is the way the property appraiser applies the law. Now here the attorney is arguing disability of nonage, here the person is actually responsible for the decision-making saying, yes, even though they're minor children, and by the way – " (R.169-170).

The Attorney General's erroneous analysis was rejected by the Third District. This sinks. is sufficient to destroy Op. Att'y Gen. Fla. 82-27 (1982), even as the slender reed for the purpose for which the Property Appraiser proffers it. Because the AGO is based upon the faulty application

of Beekman and Chisholm, as previously demonstrated, the Attorney General's opinion is unavailing to the Property Appraisers.

"WHO RESIDES THEREON"/"THE PROPERTY APPRAISER'S NEW CLOTHES"

The Property Appraiser's second argument is that in addition to holding either legal or equitable title, as required by article VII, section 6(a), the person claiming the exemption--David and Ana Andonie in this case--must also permanently "reside thereon."

At this point, the Property Appraiser then invokes section 196.031(1)(a) of the Florida Statutes in support of this argument. The provision reads:

> (1)(a) 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. (2006) (emphasis added). A review of the history of the emphasized phrase reveals that it is a vestige of the past, demonstrably inadvertently carried forward into the modern statutory scheme relating to section 196.031, and thus, legally ineffective.[4]

[4] Moreover, as pointed out above, the Property Appraiser's argument regarding article VII, section 6(a) establishes the logical nadir of the Property Appraiser's entire house of cards. If the applicant/owner already

Article VII, section 6 [then article X, section 7] of the Florida Constitution was initially added to the Florida Constitution by the people in a General Election held on November 6, 1934. As then adopted, the provision initially did not contain a requirement that the exemption claimant "reside upon" the homestead property:

> Section 7. There shall be exempted from all taxation, other than special assessments for benefits, to every head of a family who is a citizen of and resides in the State of Florida, the homestead as defined in Article X of the Constitution of the State of Florida up to the valuation of $5,000.00; provided, however, that the title to said homestead may be vested in such head of a family or in his lawful wife residing upon such homestead or in both.

Art. X, § 7, Fla. Const. (1885) (amended 1934).

Two years later, the Florida Legislature passed Chapter 17060 Acts of the 1935 Session of the Legislature, now section 196.031 of the Florida Statutes, which included the language "who resides thereon" in the proviso. The statute read as follows:

> Section 2. Every person who is a citizen and resident of the State of Florida and who has legal or beneficial title in equity to real property in the State of Florida, including vendees in possession under bona fide contracts to purchase and such instruments by and under which such title is claimed are recorded with the Clerk of the Circuit. Court of the County in

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permanently resides thereon, then the second prong of article VII, section 6(a) is meaningless, surplusage, of no force or effect, a nullity.

> which said homestead property lies and who resides thereon and in good faith makes the same his or her permanent home shall be deemed to the head of a family and entitled to an exemption from all taxation except for special assessments for benefits, up to the assessed valuation of Five Thousand Dollars on said homestead.

Ch. 17060, Laws of Fla. (1935).

Because there was some doubt at the time concerning whether the 1935 statutory exemptions were covered by the 1934 amendment to article X, see Op. Att'y Gen. Fla. 0-10 (1939) at 441, the constitutional provision was amended by the people at the General Election of November 8, 1938, to read as follows:

> Section 7. Every person who has 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 home, or the permanent home of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed value of Five Thousand Dollars on the said home and contiguous real property for the year 1938 and thereafter.

Art. X, § 7, Fla. Const. (1885) (amended 1938) (emphasis added).

In the revisions made to the Florida Constitution in 1968, article X, section 7, was amended and renumbered to article VII, section 6. The amendment also eliminated the language "who resides thereon" and added

condominiums and cooperatives to the list of qualifying homestead property. The 1968 provision read in pertinent part:

> SECTION 6. Homestead exemptions--
>
> (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.

Art. VII, §6(a), Fla. Const. (1968). Thereafter, the correlative statute, section 196.031, was updated to incorporate the 1968 additions to article VII, section 6i.e., the addition of condominiums and cooperatives. However, the statutory draftsmen did not remove the phrase "who resides thereon," as clearly should have occurred. See supra at n. 4. Despite having been removed from the constitutional provision in 1968, the phrase remains in the statutory provision today. See Ch. 67339, at 1079, Laws of Fla. For many of the same reasons previously discussed, we find this appendage to section 196.031 to be unenforceable and thus, we decline to be guided by the statute.

Finally, it is noteworthy that both during and after the appearance of this phrase in article X, section 7 [now article VII, section 61 of the Florida Constitution, it was not interpreted by the enforcing authorities as literally as one might think should have been. Compare Op. Att'y Gen. Fla. 0-10 (1939) at 443 (defining "resides thereon" as a requirement that there be a dwelling house upon the land in question) with Op. Att'y Gen. Fla. 82-27 (1982) (opining that interpretation of "resides thereon" as a separate residence requirement would be contrary to the constitutional provision) and Fla. Admin. Code R. 12D-7.007 (4) (2006) (stating that a person not residing in a taxing unit but owning property therein may claim such property as tax exempt by reason of residence on the property of natural or legal dependents). Courts are not at liberty to add words to statutes that were not placed there by the Legislature. *Seagrave v. State*, 802 So. 2d 281, 287 (Fla. 2001).

III. ARTICLE VII, SECTION 6(a), FLORIDA CONSTITUTION, WHICH ESTABLISHES THE RIGHT TO THE HOMESTEAD EXEMPTION FROM *AD VALOREM* TAXATION, IS SELF-EXECUTING.

Finally, article VII, section 6 (a) is self-executing.

> 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..upon establishment of the right

> thereto in the manner prescribed by law. Slip op. at 5-7, 8, 10, 12, 13-15.

The Property Appraiser has confused "self-executing" with "self-implementing." Br. 6-7. This Court suffers from no such confusion. See *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960) and compare with *Barley v. S. Fla. Water Management Dist.*, 823 So. 2d 73, 80 (Fla. 2002); *St. John Med. Plans, Inc. v. Gutman*, 721 So. 2d 717, 719 (Fla. 1998).

Does article VII, section 6(a) prescribe that the entitlement to homestead exemption shall be granted "upon establishment of the right thereto in the manner prescribed by law?" Yes.

Does article VII, section 6(a) confer and bestow by its own language--without more--an entitlement to homestead exemption, under the circumstances prescribed by the Constitution. That is what self-executing means. It means that the Property Appraisers cannot add by executive fiat, gloss of counsel, or legislative adoption, any additional requirement--such as physical occupancy, a durational residency requirement, or a "resides thereon" requirement for the titleholder of record.

"Self-executing" is not the same as "self-implementing". Does the Legislature have to set a deadline of, say, March 1 annually to provide for orderly filing, receipt and processing of homestead exemption applications annually? Yes. Does this mean that article VII, section 6 (a) is not self-implementing? No.

The subject article VII, section 6(a) is indubitably a self-executing provision of the Florida Constitution, See *Gray v. Bryant, 125 So. 2d 846, 851 (Fla. 1960)* (defining a self-executing provision of the Florida Constitution as one which "lays down a sufficient rule by means of which the right…may be determined, enjoyed or protected without the aid of legislative enactment"); Op. Att'y Gen. Fla. 0-10 (1939) at 441 (opining that the provision as originally adopted by the people in 1938 to be self-executing); but see *Haddock v. Carmody, 1 So. 3d 1133, 1135-36 (Fla. 1st DCA 2009)*. As such, it vests only the concomitant limited authority in the legislature and rule-making bodies to adopt laws and regulations affecting it. See *Smith v. Coal. to Reduce Class Size, 827 So. 2d 959, 962 (Fla. 2002)* (overruled on other grounds); see also *Browning v. Fla. Hometown Democracy, Inc., PAC, 29 So. 3d 1053 (Fla. 2010)*. As a matter of principle, the same limitations on legislative authority should inform the judicial branch in its approach to interpreting statutes

regulating article VII, section 6 of the Florida Constitution. Cf. Op. Att'y Gen. Fla. 0-10 (1939) at 442 ("[L]egislation may be desirable by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and not in any particular attempt to narrow or embarrass it.").

CONCLUSION

For all of the foregoing reasons, and based on the foregoing argument and authorities, David and Ana Andonie are entitled to the benefit of the self-executing homestead ad valorem tax exemption of article VII, section 6(a) of the Florida Constitution. The Third District decision and opinion is not only correct, but is an intellectual *tour de force*, and an exegetical masterpiece. It should be branded as such by this Court and affirmed.

Alternatively, the Property Appraiser's petition for discretionary jurisdiction and appeal should be dismissed for lack of jurisdiction, with costs and fees taxed in favor of David and Ana L. Andonie, to the fullest extent permitted by law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief on the Merits of Respondent Taxpayers DAVID ANDONIE and ANA L. ANDONIE was furnished by email and U.S. mail to MELINDA S. THORNTON, Assistant County Attorney, Stephen P. Clark Center, 111 NW 1st Street, Suite 2810, Miami, Florida 33128; and by U.S. Mail to Joseph C. Mellichamp, III, Esq., Chief Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, The Capitol – PL-01, Tallahassee, FL 32399-1050; Kenneth P. Hazouri, Esq., Jeffrey S. Elkins, Esq., de Beaubien, Knight, Simmons, Mantzaris & Neal, LLP, 332 North Magnolia Avenue, P. O. Box 87, Orlando, FL 32802-0087; Loren E. Levy, Esq., Ana C. Torres, Esq., The Levy Law Firm, 1828 Riggins Lane, Tallahassee, FL 32308; and Thomas M. Findley, Esq., Robert J. Telfer, III, Esq., Messer, Caparello & Self, P.A., P. O. Box 15579, Tallahassee, FL 32317 this **19th day of OCTOBER 2011.**

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), counsel for Respondent Taxpayers DAVID ANDONIE and ANA L. ANDONIE certifies that the Answer Brief of Respondent Taxpayers was prepared using *Times New Roman* 14-point font.

It is further certified that the foregoing Answer Brief of Respondent Taxpayers was electronically filed with the Clerk of the Florida Supreme Court in Microsoft Word.

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