IN THE SUPREME COURT OF FLORIDA
Case No. SC11-_____
Lower Tribunal Case No. 3D09-3427

MARCUS SAIZ DE LA MORA, as Property Appraiser of Miami-Dade County, Florida,

Petitioner,

v.

DAVID ANDONIE and ANA L. ANDONIE,

Respondents.

_____/

RESPONDENT-TAXPAYERS' ANSWER BRIEF ON JURISDICTION

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INTRODUCTION

The Property Appraiser's petition cites three grounds for discretionary jurisdiction. These will be addressed *seriatim* in the "Argument" section of this brief, *infra* 3-10. The Property Appraiser has argued also jurisdiction over his appeal as of right. Property Appraiser Br. (hereinafter "Br.") 3-6. Such argument is improper and constitutes an abuse of Supreme Court process, since jurisdictional briefs are to be filed only in the four situations presented in rule 9.030(a)(2)(A)(i), (ii),(iii)and(iv), governing discretionary--not appeal as of right--jurisdiction.[1] Fla.R.App.P. 9.210, Committee Note to 1980 Amendment.[2]

Because this is an answer brief on discretionary jurisdiction, the Respondent-Taxpayers present no response to the Property Appraiser's improper argument that the

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[1] All emphasis in this brief is supplied by undersigned counsel.

[2] Indeed, the Property Appraiser's initial brief on the merits of his direct appeal was due to be served within 20 days of filing the notice of appeal, Fla.R.App.P. 9.110(j), i.e., no later March 15. The "equal and opposite remedy", *County of Monroe v. West,* 373 So.2d 83, 88 (Fla. 3d DCA 1979), for the Property Appraiser's violation of the appellate rules is to dismiss the appeal, which in any event is devoid of merit. Compare *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214, 215 (Fla.1989). See taxpayers' motion to strike notice of appeal and dismiss appeal. App. G.

district court decision declared invalid a state statute, which is a matter for appeal as of right, not discretionary jurisdiction. Br. 3-6.

STATEMENT OF THE CASE AND OF THE FACTS

This is the fifth time the Respondent-Taxpayer Andonies' homestead exemption has been presented for determination. Only the Property Appraiser denied homestead exemption to the Andonies. Each judicial or quasi-judicial impartial decisionmaker granted homestead exemption to the Andonie family: the Miami-Dade County Value Adjustment Board, the circuit court, and the district court of appeal. Slip op. at 2-3, 15. App.A. In his fourth attempt to countermand the homestead exemption, the Property Appraiser[3] here invokes the discretionary jurisdiction of this Court, seeking to overturn the district court's decision and fifteen-page opinion. App.A.

ARGUMENT

[3] Conspicuous by its absence in this proceeding is the State of Florida Department of Revenue ("DOR"). The posture of the DOR in the appeal below was duly commented upon by the district court in its order denying motion to certify its decision as an issue of great public importance. App. B.

I. This Court should deny discretionary jurisdiction based on express involvement of a constitutional officer.

Undoubtedly, a county property appraiser is a constitutional officer within the ambit of article V, section 3(b)(3), Florida Constitution. *Bystrom v. Whitman*, 488 So.2d 520, 520 (Fla.1986); *Spradley v. State,* 293 So.2d 697, 701 (Fla. 1974); art. VIII, § 1 (d), Fla. Const. This Court should deny discretionary jurisdiction on that ground in this particular case based on the following briefly-stated analysis.

The absence of the DOR as a petitioner supports denial of the Property Appraiser's petition. DOR is responsible for the overall supervision of assessment and collection of taxes in the State of Florida, §§ 195.002, 195.027, 213.05, Fla. Stat., including property taxes. DOR is responsible for statewide uniformity in the assessment of property taxes. § 195.0012, Fla. Stat. DOR speaks forcefully by its absence that it has no justiciable concern about uniform application of the decision below by the 67 county property appraisers in Florida. (Considering the clarity and strength of the opinion below, DOR's evident lack of concern is well justified.)

In a gesture of support to its constituent member, the Property Appraisers' Association of Florida (PAAF) has filed a notice of intent to file an *amicus* brief on the merits, should the Court take jurisdiction. Where, as here, none of the 67 county property appraisers has raised any issue since the enactment in 1994 of statutory language mirroring the constitutional provision here at issue, the PAAF's support of the Property Appraiser rings hollow.[4]

II. This Court should deny discretionary jurisdiction based on express construction of a provision of the State Constitution.

The decision of the Third District expressly construes the homestead exemption provision of article VII, section 6(a). This Court should deny discretionary review because The Property Appraiser's argument on this issue does not even address the substance of the homestead exemption. Instead, petitioner quibbles with the characterization of

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[4] § 193.155(3)(a)4, Fla.Stat. (There is no change of ownership for homestead exemption purposes if "[u]pon the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent upon the owner."), adopted by ch. 94-353, § 62, Laws of Fla. See also Op. Att'y Gen. Fla. 02-28 (2002); DOR Advisement Letters ADV OP 04-003 (2004), OPN 01-007 (2001), OPN 99-0006 (1999), cited App.D at 8-9.

the homestead provision as "self-executing." Br. 6-7. The Property Appraiser's cavil addresses a matter of adjective (not substantive) law which this Court need not address for yet a third time.[5]

As if to emphasize his own departure from any issue of constitutional dimension, the Property Appraiser has wholly omitted from his brief the very provision which is the gravamen of this case, and which he contends was expressly construed below. Br. 6-7. Article VII, section 6(a) of the Florida Constitution 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. Slip op. at 5-7, 8, 10, 12, 13-15. App.A.

The district court decision rests on the second alternative qualifying-use prong of article VII, section 6(a), *viz.*, the "permanent residence" of persons "naturally or legally dependent upon the owner" test.

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[5] 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).

The Miami-Dade County Property Appraiser contends that he is confused about the scope and validity of the ad valorem homestead property tax exemption in the Constitution. This Court, however, has previously held that the Florida Constitution means what its plain language unambiguously states when it expands the homestead exemption. *Public Health Trust of Dade County v. Lopez*, 531 So.2d 946, 949 (Fla. 1988) (addressing expanded scope of 1985 amendment to art. X, § 4, Fla. Const., homestead exemption from forced sale, distinguished from but related to art. VII, § 6(a) homestead property tax exemption, slip op. at 3-4, App.A).

III. The decision of the district court is not in express and direct conflict with a decision of another district court or of this Court on the same question of law.

The discretionary jurisdiction of this Court may be sought to review decisions of the district courts of appeal that are in express and direct conflict with decisions of other district courts of appeal or of this Court on the same question of law. Art. V, § 3(b) (3), Fla.Const., Fla.R.App.P. 9.030(a)(2)(A)(iv). The Property Appraiser dilutes the applicable standard, claiming that the "opinion" below is in conflict with "decisions" of other district courts of appeal or of this Court. Br. 8.

The Property Appraiser's articulation of an incorrect jurisdictional standard is more than a mere terminological inexactitude. Instead, it underscores the fact that the Property Appraiser relies on *dicta* conflict, rather than on express and direct conflict of decisions.[6] Suffice it to say that the decision below does not conflict with any holding or *ratio decidendi* of any other district court of appeal or of this Court. Petitioner evidently recognizes this, since he acknowledges that the decision below is one of first impression. Br.8. Petitioner's claim of express and direct conflict on the issue of whether or not the constitutional homestead provision is self-executing is quickly dispatched by reference to footnote 5, *supra*, at 5.

Equally devoid of merit is the Property Appraiser's contention that the "Opinion" below conflicts with *Beekman v. Beekman,* 43 So. 923, 924 (Fla.1907). Br.9. The *Beekman* Court held that because the petitioning wife moved to Florida after June 15, 1904, she did not meet the statutory two-year residency requirement when she filed for divorce

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[6] See *State v. Speights,* 417 So.2d 1168, 1169 n.1 (Fla.1st DCA 1982) (noting that this Court has not resolved the question whether conflict may be found on the basis of *dicta*). The Property Appraiser's claims of express and direct conflict, at most, rest entirely on *dicta* conflict, and do not justify the exercise of discretionary jurisdiction.

January 20, 1906. That is the holding of *Beekman.* Thus, there is no decisional conflict between *Beekman* and the decision below.

If there were even *dicta* conflict between *Beekman* and the decision below on the issue of domicile, any such conflict was abrogated by adoption of the homestead exemption provision of the Florida Constitution of 1968.[7] Slip op. at 7-9. App.A. Notably, the Third District denied the Property Appraiser's motion to certify the purported conflict with *Beekman* to this Court as a question of great public importance. App. E.

Finally, the Property Appraiser claims that the "Opinion" below "erroneously distinguishes," Br.9, *Fla. Bd. of Regents of Dep't of Educ.*, Div. of *Univ. v. Harris*, 338 So.2d 215, 219 (Fla. 1st DCA 1976)(eligibility for in-state college tuition). Here, the Property Appraiser's retreating position reaches its nadir.[8]

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[7] See also post-*Beekman* adoption of § 744.301, Fla.Stat. (parents are natural and legal guardians of their minor children--and presumably have the power to declare the domicile of their children elsewhere than the domicile of the parents).

[8] *Harris* self-evidently narrows its holding to a specific factual situation: "A proper opinion in the case hinges upon a correct interpretation of the specific provisions of [the]…Board of Regents' Operating Manual[.]" 338 So.2d at 217. If the Property Appraiser is unhappy with the Third District's distinguishing of *Harris*, slip op. at 9 n.6, the

If the Board of Regents has authority to adopt a rule, and the legislature has authority to adopt a statute, governing residency "free of any legislatively unintended exception or modification engrafted by judicial decision," *Harris,* 338 So.2d at 218, then, assuredly, the people of the State of Florida have paramount authority to adopt a residency provision "kept unfettered" from officious intermeddling by the Property Appraiser. E.g., *Lisboa v. Dade County Property Appraiser*, 705 So.2d 704, 708 (Fla.3d DCA 1998)(reversing Property Appraiser's wrongful denial of homestead exemption to yet another class of applicants), review denied as improvidently granted, 737 So.2d 1078, 1078 (Fla.1999).

CONCLUSION

Discretionary jurisdiction exists not so much to resolve conflicts between adversary parties as to maintain

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Property Appraiser need look no further than *Harris*'s own self-distinguishing ruling that "[i]n line with the sound and equable view that a state has power to define a resident for tuition purposes, differently from a resident for other purposes,[r]elevant decisions…clearly demonstrate that a state statute or rule which reasonably classifies students as residents…should be strictly construed and kept unfettered and free of any legislatively unintended exception or modification engrafted by judicial decision." *Harris*, 338 So.2d at 218 (citations omitted).

the purity and clarity of the law in the state of Florida. The taxpayers submit that no lack of clarity attends the issue decided by the Third District below.

The Property Appraiser, particularly in light of the glaring absence of DOR from this proceeding, has provided no compelling reason for the Court to exercise its discretionary jurisdiction in this matter. Based on the foregoing argument and authorities, the petition for review should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent-Taxpayers' Answer Brief on Jurisdiction was furnished by U.S. mail to MELINDA S. THORNTON, Assistant County Attorney, Stephen P. Clark Center, 111 NW 1st Street, Suite 2810, Miami, Florida 33128, this **18th** day of **MARCH 2011.**

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CERTIFICATE OF COMPLIANCE

Undersigned counsel, pursuant to Fla. R. App. P. 9.210(a) (2), certifies that the foregoing brief complies with the font requirement of the aforecited rule by using *Courier New* 12 point font, and further certifies that the foregoing brief was electronically filed with the Clerk of the Supreme Court of Florida in Microsoft Word.

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