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,

Petitioner,

vs.

DAVID ANDONIE AND ANA L. ANDONIE,

Respondents.

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

JURISDICTIONAL BRIEF OF PETITIONER

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INTRODUCTION

This Jurisdictional Brief is filed by Petitioner Miami-Dade County Property Appraiser ("Property Appraiser").[1] Petitioner has filed a combined Notice of Appeal and Notice to Invoke Discretionary Jurisdiction of Supreme Court. Based on Supreme Court Manual of Internal Operating Procedures, Section II (B) (6), a Notice of Appeal and Notice to Invoke Discretionary Jurisdiction shall be treated as consolidated for purposes of jurisdictional review and "treated in the same manner as a discretionary review case…." Therefore, Petitioner includes in this Jurisdictional Brief argument as to why appellate jurisdiction is proper.

STATEMENT OF THE CASE AND OF THE FACTS

The factual recitation in the Third District's decision ("Opinion") sets forth the pertinent background matters, and Petitioner summarizes them here. Respondents, citizens of Honduras lawfully residing in the United States pursuant to temporary visas, applied for a homestead exemption from ad valorem taxation for the 2006 tax year. On the application was the handwritten statement: "[m]y children are US Citizens, aged 7, 12 and 14 living at this address and are legally and naturally dependent on me, thereby qualifying the property for the homestead exemption."

[1] The current Miami-Dade County Property Appraiser is Pedro J. Garcia.

Property Appraiser denied the Andonies' application for homestead exemption on the ground that neither they nor their minor children satisfied the "permanent residence" requirement of Section 196.031, Florida Statutes. The Miami-Dade County Value Adjustment Board overturned the Property Appraiser's denial; Petitioner filed suit in the circuit court seeking its reinstatement. The trial court granted summary judgment in favor of Respondents, and Property Appraiser appealed the final order.

The Third District affirmed, holding that even though the Respondents, as the property owners, could not establish that they were permanent residents, they could establish that their property was the permanent residence of their minor children and therefore obtain a homestead exemption from ad valorem taxation. Property Appraiser timely filed a Motion for Certification of a question of great public importance, and of direct conflict with decisions of other district courts of appeal. The Third District denied the Motion for Certification, and Property Appraiser timely filed the combined Notice of Appeal and Notice to Invoke Discretionary Jurisdiction of the Supreme Court.

SUMMARY OF ARGUMENT

The Third District, in ruling that a property appraiser may not condition the receipt of a homestead exemption on the immigration status of a homeowner where the homeowner's minor children reside on the property, has created confusion in

how ad valorem tax laws relating to the homestead exemption should be administered by Florida's sixty-seven county property appraisers, each of whom is a constitutional officer and all of whom are charged with providing for uniform assessments throughout the state. The Opinion: a) invalidates the actual residency requirement of Section 196.031, Florida Statutes; b) rejects the applicability of settled case law regarding the domicile of a minor, and c) ignores the significance of the constitutional requirement that the homestead exemption from ad valorem taxation be implemented by legislation.

Moreover, it is difficult to discern whether the district court intends that the Opinion go beyond the underlying facts of the case – homeowners who are not permanent residents, but are otherwise legally in the United States; minor children who are United States citizens. This Court's interpretation of ad valorem tax law in the situation presented here is necessary so that consistent applications of the law result.

ARGUMENT

I. Opinion Invalidates a Portion of the Ad Valorem Taxation Homestead Exemption Statute.

The Third District opined, although the issue had not been raised by the parties, that the requirement in Section 196.031, Florida Statutes, that applicants for the homestead exemption "reside" on the real property was an unenforceable vestige of past language "…probably inadvertently carried forward into the

modern statutory scheme…." after the passage of amendments to the Florida Constitution in 1968. Opinion at 5-6. [2] In declaring this requirement invalid, the district court dispenses with a criterion that has remained as part of the homestead exemption statute through many amendments since the constitutional revision.[3] The language has survived as well, without attention or criticism, in the various appellate decisions since 1968 that have involved the homestead exemption.

This portion of the homestead exemption statute is consistent with the required implementing legislation. More specifically, the constitutional requirement that the exemption applicant "maintain thereon" a permanent residence dovetails with the statutory requirement that the property appraiser consider whether the applicant or dependent "resides thereon." *See Greater Loretta Improvement Ass'n v. State ex rel. Boone*, 234 So. 2d 665, 670 (Fla. 1970) ("The courts should not and must not annul, as contrary to the Constitution, a statute passed by the Legislature, unless it can be said of the statute that it positively and certainly is opposed to the Constitution. This is elementary.")

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[2] The Third District characterized its opinion regarding the "who resides thereon" language as the rejection of an argument made by Property Appraiser. However, Property Appraiser's arguments were not based on the invalidated language.

[3] The Florida Statutes list as history under Section 196.031 some twenty-seven amendments to the statute since the revision relating to the 1968 constitutional amendment.

It is the "resides thereon" criterion that property appraisers consider, for instance, when dealing with the thorny ownership and actual residence issues created by various trust mechanisms. *See, e.g., Higgs v. Warrick*, 994 So. 2d 492, 493 (Fla. 3d DCA 2008); *Nolte v. White*, 784 So. 2d 493 (Fla. 4th DCA 2001). Further, Section 196.031, Florida Statutes, is not the only homestead exemption which is implemented by a statute requiring consideration of actual residence, where the authorizing constitutional language does not include such a reference. *See* Section 196.1977 (2), Florida Statutes, which provides for exemption of property used by proprietary continuing care facilities, and which requires affidavits from persons who "reside therein," although the companion constitutional provision, Article VII, Section 6 (c), Florida Constitution, has no language referring to actual residence. *See* Section 196.1977 (5), Florida Statutes.

It is not essential to the exercise of the Supreme Court's appellate jurisdiction, pursuant to Article V, Section (b) (1), Florida Constitution and Rule 9.030 (a) (1) (A) (ii), Florida Rules of Appellate Procedure, that the entirety of Section 196.031 be invalidated. It is enough that the Opinion holds that the "who resides thereon" language, an element of the homestead exemption statute, is "unenforceable." Opinion at 6. *See Dep't of Revenue v. First Union Nat'l Bank of Fla.*, 513 So. 2d 114, 120 (Fla. 1987) (reversing district court decision partially invalidating statutory franchise tax); *Simmons v. Div. of Pari-Mutuel Wagering*

Dep't of Bus. Regulation, 412 So. 2d 357, 359 (Fla. 1982) (affirming invalidation of clause of statute prohibiting racing of drugged animals.)

II. Opinion Expressly Construes the Ad Valorem Taxation Homestead Provision of Florida's Constitution.

The district court, in nullifying a portion of the homestead exemption statute by attributing significance to differences in the wording between the statute and the Constitution, expressly construed Article VII, Section 6 as "indubitably a self-executing provision…." Opinion at 6, n. 5. This characterization is critical, as it signifies that the constitutional provision "…may be determined, enjoyed or protected without the aid of legislative enactment." *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960). The Opinion infers that the legislature and the Department of Revenue (which is charged with the responsibility of promulgating rules to implement ad valorem taxation laws) have only limited authority to adopt laws and regulations affecting entitlement to the exemption.

As will be noted further, not only is Opinion's construction of the constitutional provision at odds with case law recognizing the need for implementing legislation to effectuate the homestead exemption, it is at odds with the language of the Constitution itself. As Article VII, Section 6 (a), Florida Constitution, explicitly mandates, the homestead exemption from ad valorem taxation shall only be "…upon establishment of right thereto in the manner prescribed by law." As the Supreme Court has noted, where a constitutional

provision itself requires legislative enactments in furtherance of its purposes, the provision is not self-executing. *See, e.g., Barley v. S. Fla. Water Mgmt. Dist.*, 823 So. 2d 73, 80 (Fla. 2002); *St. John Med. Plans, Inc. v. Gutman*, 721 So. 2d 717, 719-720 (Fla. 1998).

The district court's declaration that the homestead exemption is self-executing puts into doubt the validity of the many statutes which implement it, including the statutes defining "permanent residence," which are at the heart of this case. Therefore, the Supreme Court should exercise its discretionary jurisdiction, pursuant to Article V, Section (b) (3), Florida Constitution and Rule 9.030 (a) (2) (A) (ii), Florida Rules of Appellate Procedure, to clarify the nature of the constitutional provision, as it did in the case of *Zingale v. Powell*, 885 So. 2d 277, 279 (Fla. 2004), with respect to the "Save Our Homes" Amendment, Article VII, Section 4 (c), Florida Constitution.

III. Opinion Expressly Affects this State's Property Appraisers, a Class of Constitutional Officers.

Florida's system of ad valorem taxation is designed to "provide for a uniform assessment as between property within each county and property in every other county or taxing district." Section 195.0012, Florida Statutes. Article VIII, Section 1 (d), Florida Constitution, establishes property appraisers as constitutional officers within their respective counties. These property appraisers comprise a "class" of constitutional officers, in that a decision which affects one property

appraiser can affect each property appraiser throughout the state. *Fla. State Bd. of Health v. Lewis*, 149 So. 2d 41, 42-43 (Fla. 1963).

The Opinion is one of first impression. Therefore, as noted in *Sys. Components Corp. v. Fla. Dep't of Transp*., 14 So. 3d 967, 973, n. 4 (Fla. 2009), "In the absence of inter-district conflict or contrary precedent from this Court, it is absolutely clear that the decision of a district court of appeal is binding precedent *throughout Florida.*" (emphasis in original).

Given the uncertain scope of the Opinion, it is especially appropriate that the Supreme Court exercise its discretionary jurisdiction, pursuant to Article V, Section (b) (3), Florida Constitution and Rule 9.030 (a) (2) (A) (iii), Florida Rules of Appellate Procedure, to consider the Opinion, as it has in other cases affecting property appraisers. *See, e.g., Bystrom v. Whitman*, 488 So. 2d 520 (Fla. 1986).

IV. Opinion Expressly and Directly Conflicts with Decisions of Florida's Supreme Court and Other District Courts of Appeal.

As noted above, the district court has declared that the homestead exemption provision in Florida's Constitution is self-executing. However, the Opinion itself notes, by its "*but see*" citation, a conflict with *Haddock v. Carmody*, 1 So. 3d 1133, 1135-36 (Fla. 1st DCA 2009), which held that Article VII, Section 6 (a) is not self-executing, as it "conditions exemption upon establishment of the right in accordance with the manner prescribed by law. *Horne v. Markham*, 288 So. 2d 196, 199 (Fla. 1973)."

The Court's Opinion also conflicts with *Beekman v. Beekman*, 53 Fla. 858, 43 So. 923, 924 (Fla. 1907), which confirms the common law rule that "…minors are incapable in Florida of making a choice of domicile … independently of the domicile of their father …." In rejecting *Beekman* as applicable to ad valorem taxation cases, the Court expressly and gratuitously invalidated Fla. Admin. Code R. 12D-7.014 (providing that a minor may not maintain a permanent home away from his parents) and Op. Att'y Gen. Fla 82-27 (1982) (discussing that a non-resident parent cannot receive a homestead exemption of the residence of a minor college student). Based upon its rejection of *Beekman*, the Opinion also erroneously distinguishes *Fla. Bd. of Regents of Dep't of Educ., Div. of Univ. v. Harris*, 338 So. 2d 215, 219 (Fla. 1st DCA 1976), which relies on *Beekman* in a context (eligibility for in-state college tuition) similar to the exemption at issue in this case.

The Opinion throws into doubt the ability of property appraisers throughout Florida to consider the regulation and the Attorney General's opinion in their determinations of homestead exemption applications. Given the complexity of scenarios which arise surrounding entitlement to homestead exemption from ad valorem taxation, it is critically important that property appraisers have uniform direction. Therefore, Petitioner requests that the Supreme Court exercise its discretionary jurisdiction, pursuant to Article V, Section (b) (3), Florida

Constitution and Rule 9.030 (a) (2) (A) (iv), Florida Rules of Appellate Procedure, to review the Opinion.

CONCLUSION

Based on the arguments above, the Supreme Court should accept jurisdiction of this matter on behalf of Florida's property appraisers, who are responsible for fairly and uniformly implementing the ad valorem taxations laws governing the granting of homestead exemptions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Jurisdictional Brief of Petitioner Miami-Dade County Property Appraiser* has been sent by U.S. Mail on this_____ day of March, 2011 to: **DANIEL A. WEISS, ESQ.**, Tannebaum Weiss, PL, Museum Tower, 150 West Flagler Street, PH 2850, Miami, FL 33130; and **JOSEPH C. MELLICHAMP, III., ESQ.**, Chief, Revenue Litigation Bureau, Office of the Attorney General, PL-01, The Capitol, Tallahassee, FL 32399-1050.

By:_____
Assistant County Attorney

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief has been generated in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a) of the Florida Rules of Appellate Procedure.

_____
Assistant County Attorney