

FLORIDA SUPREME COURT

CASE NO: SC09-1796

ORIGINAL

JEROME K. LANNING and
JOYCE A. LANNING, husband
and wife, et al.,

District Court Case No. 1D07-6564

L.T. Case No: 37-2007-CA-000582

Petitioners,

vs.

PATRICK P. PILCHER, individually
and in his official capacity as Property
Appraiser of Walton County, Florida;
RHONDA SKIPPER, individually and
in her official capacity as Tax Collector
of Walton County, Florida; et al.,

Respondents.

_____ /

**RESPONDENTS', PATRICK P. PILCHER,
WALTON COUNTY PROPERTY APPRAISER, AND RHONDA
SKIPPER, WALTON COUNTY TAX COLLECTOR,
BRIEF ON JURISDICTION**

Larry E. Levy
Fla. Bar No. 047019
The Levy Law Firm
1828 Riggins Lane
Tallahassee, Florida 32308
Telephone: 850/219-0220

Counsel for Respondents Patrick P.
Pilcher and Rhonda Skipper

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PRELIMINARY STATEMENT

There are numerous respondents involved in this appeal and, accordingly, there will be several briefs filed on behalf of the various respondents. This brief on jurisdiction is submitted on behalf of Patrick P. Pilcher, Walton County Property Appraiser, and Rhonda Skipper, Walton County Tax Collector.

Petitioners, Jerome K. Lanning, Joyce A. Lanning, and Ann C. Reese, as personal representative of the estate of Marlow Reese, individually and as representatives of similarly situated persons, will be referred to collectively herein as the “petitioners.” Respondent, Patrick P. Pilcher, Walton County Property Appraiser, will be referred to herein as the “property appraiser.” Respondent, Rhonda Skipper, Walton County Tax Collector, will be referred to herein as the “tax collector.” All other respondents will be referred to herein by their respective names and titles.

A Cross Notice to Invoke Discretionary Jurisdiction was filed herein by respondents/cross-petitioners Timothy Smith, Chris Hughes, and the City of Destin. The property appraiser and tax collector did not join in said cross notice, and do not intend to file a response to the Jurisdiction Brief of the Cross-Petitioners unless directed by this Court to do so.

STATEMENT OF THE CASE AND OF THE FACTS

The property appraiser and tax collector do not dispute the Statement of the Case and Facts as set forth by the petitioners in their amended brief on jurisdiction.

SUMMARY OF ARGUMENT

The property appraiser and tax collector do not agree that this Court should exercise its discretionary jurisdiction under article V, section 3(b)(3), Florida Constitution. Jurisdiction under said provision is discretionary and is not generally exercised unless there is an absence of judicial precedent addressing the issues sought to be reviewed, or where the decision sought to be reviewed is not founded on established judicial precedent addressing the basic issue sought to be reviewed.

In the case at bar, the district court's decision is firmly based on the First District Court of Appeal's previous decision in Reinish v. Clark, 765 So.2d 197 (Fla. 1st DCA 2000), review denied, 790 So.2d 1107 (Fla. 2001), cert. denied, 534 U.S. 993 (2001). Although this Court's review denial does not necessarily constitute agreement with the First District Court's decision in Reinish, some implication arises that this Court felt the principles controlling the decision to be well established. Prior to the decision in Reinish, the United States Supreme Court issued its decision in Nordlinger v. Hahn, 505 U.S. 1, 112 S.Ct. 2326 (1992),

which upheld California's constitutional provision limiting property tax increases to two percent (2%) absent a change of ownership against a challenge based on equal protection of law violations, one of the bases of the challenge at bar, and both Florida jurisprudence and Federal jurisprudence have rejected challenges similar to those of the petitioners. And, although petitioners also assert claims of violations of the Privileges and Immunities and Commerce Clauses, no infringement is factually demonstrated by the pleadings since non-Florida residents and Florida residents are treated the same insofar as multiple residences are concerned. Only one homestead receives the benefit of the tax advantage offered by the Save Our Homes' constitutional amendment, article VII, section 4(c)(1), Florida Constitution. Such alleged violations of the Privileges and Immunities and Commerce clauses are, at best, ephemeral.

ARGUMENT

The petitioners assert jurisdiction under article V, section 3(b)(3), Florida Constitution. Under this provision, review is discretionary and not as a matter of right.

I.A. Zingale v. Powell, 885 So.2d 277 (Fla. 2004), does not require this Court to exercise its discretionary jurisdiction under article V, section 3(b)(3), Florida Constitution.

Zingale was a case without judicial precedent addressing a question not previously addressed focusing on entitlement to the Save Our Homes' benefit

separate and apart from claiming and receiving homestead tax exemption. No state or federal precedent existed and this Court as the supreme policymaker on constitutional interpretation determined that the exercise of jurisdiction was called for. At that time, there had been interpretations of at least two different circuit courts in different parts of the state. The resolution of a statewide question directly affecting the duties of property appraisers, a class of constitutional officers, establishing statewide uniformity and fixing the proper constitutional interpretation of Florida's ad valorem tax laws was clearly called for.

I.B. Exercise of discretionary jurisdiction pursuant to article V, section 3(b)(3), Florida Constitution, is not required by Bystrom v. Whitman, 488 So.2d 520 (Fla. 1986), or Tyson v. Lanier, 156 So.2d 833 (Fla. 1963).

Petitioners cite Bystrom and Lanier in support of their argument that this Court has jurisdiction. Some discussion of both is in order since neither mandate an exercise of judicial discretion in the case at bar.

Bystrom involved a discovery issue not previously considered in any court in Florida and, thus, without judicial precedent. The case, while before the trial court, placed in issue discovery by the property appraiser of certain financial records of the taxpayer pertaining to its income, including personal income tax returns. The trial court ordered the production of the records and the taxpayer sought certiorari to the Third District Court of Appeal which reversed the trial

court ruling for the taxpayer. See Whitman v. Bystrom, 464 So.2d 182 (Fla. 3d DCA 1985).

In addressing the issue this Court stated:

The taxpayers concede that data concerning the income a subject property generates would normally be relevant and discoverable. *Walter v. Schuler*, 176 So.2d 81 (Fla.1965); *Bystrom*, 416 So.2d at 1138. Indeed, in light of the language in section 193.011(7), Florida Statutes (1979), which specifically orders the property appraiser to consider the income generated by a given piece of property when arriving at its just valuation, any contention to the contrary would be frivolous. *Straughn*, 354 So.2d at 371; § 193.011(7), Fla.Stat. (1979). The taxpayers argue, however, that the instant case represents an exception to that general rule. We disagree and find the district court erred in so holding.

Bystrom, 488 So.2d at 522. In addition to addressing a discovery question involved in tax cases never before addressed even obliquely, this Court had to focus on the Third District Court's interpretation of section 195.027(3), Florida Statutes (1979), which it found erroneous. That statute had never been addressed in any prior case in that context. It is noteworthy that Bystrom cites no case which had addressed either of the discovery issues presented which were (1) entitlement to financial records where the taxpayer will agree to the hypothetical income used, and (2) the proper interpretation of section 195.027(3).

While the Save Our Homes' amendment was not directly addressed in Reinish, the fundamental underlying lynchpin for Save Our Homes' entitlement was entitlement to homestead tax exemption, which Reinish did address. See Zingale. Thus, Reinish had clearly addressed the underlying lynchpin attack that petitioners present at bar—that is, homestead tax exemption validity.

This Court did not accept jurisdiction in Lanier solely on the basis of discretionary certiorari jurisdiction. It stated that it had both appellate and discretionary jurisdiction. In addressing its appellate jurisdiction, it explained:

Petitioners, who are also appellants, seek review by appeal on the theory that the district court of appeal initially passed upon the validity of § 193.11(3), Florida Statutes, F.S.A., and further that it initially construed Section 1, Article IX, Florida Constitution, F.S.A., so as to vitiate the clear meaning of 193.11(3), Florida Statutes, F.S.A. Petitioners have also filed a petition for writ of certiorari in which they contend that this court has jurisdiction by virtue of the fact that the decision of the district court of appeal is in direct conflict with a decision of the Supreme Court on the same point of law and that said decision affects a class of constitutional officers, to wit, all county tax assessors.

Lanier, 156 So.2d at 834 (emphasis added). Continuing it is stated:

Section 4(2), Article V, Florida Constitution, with limitations clothes this court with jurisdiction where the constitutionality of an act is brought in question. Does Section 4(2), Article V, Florida Constitution, vest us with jurisdiction of this cause? Respondents, who are appellees also, deny that any constitutional question is presented, despite the fact that a large portion of the opinion of the district court of appeal is directed to this

point and in our discussion of the act as applied to the facts of this case, we have not avoided the constitutional aspect, as will be later shown.

Id. Thereafter, this Court stated:

It is true that the effect of the opinion of the district court of appeal was to render the circuit court's interpretation of § 193.11(3), Florida Statutes, F.S.A., of 'doubtful constitutionality.' Consequently, the district court gave said statute a different interpretation so as to render it valid. From this and other reasons later pointed out, it appears to us that the validity of § 193.11(3), Florida Statutes, F.S.A., was not a mere abstract or shadowy issue but a real one before the district court of appeal. *Evans v. Carroll*, Fla.1958, 104 So.2d 375.

Lanier, 156 So.2d at 835. Further therein, it is stated:

In his final decree the chancellor found in terms that no constitutional question was involved. The district court of appeal found that the chancellor's interpretation of the act was of 'doubtful constitutionality' and in his dissenting opinion Judge White said that 'despite protests to the contrary, the majority interpretation of the act is composed squarely in constitutional perspective because there are constitutional aspects that cannot be avoided.' We do not discuss these views except to say that they leave the law in a state that needs clarifying. In the main we think the interpretation of the act by the chancellor was correct and the interpretation of the district court of appeal was wrong in part but account of the confused state in which they leave the law, tax assessors over the state would not know how to perform the duties imposed on them. It does seem that if there ever were a case which requires this court to assume jurisdiction and clarify the law, this is it.

Id. (emphasis added).

At bar, there could hardly be any confusion among property appraisers concerning the administration of the Save Our Homes' constitutional provision in light of Reinish and Zingale. Favored tax treatment of homestead owners in Florida is of ancient origin (since 1934), and well established as the rule of law in Florida. No Florida court, nor federal court, has suggested otherwise. Thus, clarification for assessing officers is fundamentally not necessary or called for. It's settled.

II. The constitutional issues presented are no longer substantive in light of Reinish and Nordlinger.

Petitioners further contend under their Point II of their brief that this Court should accept jurisdiction because there are compelling constitutional issues presented. No such basis exists in article V, section 3(b). The Save Our Homes' amendment simply provides continuing homestead ad valorem tax advantages for one's permanent residency helping Florida residents and their families. The requested evidentiary hearing purportedly to disclose the burden on the Interstate Commerce Clause by the Save Our Homes' amendment's financial impact of favored tax treatment for homestead owners in Florida is unnecessary because the tax advantages are obvious on its face, and all commercial endeavors are treated the same and all purchasers of good and services in Florida would be treated the same whether homestead residential owners, non-homestead residential or non-Florida residential property owners.

CONCLUSION

Respondents, Patrick Pilcher, Walton County Property Appraiser, and Rhonda Skipper, Walton County Tax Collector, by and through their undersigned counsel, respectfully submit that the petitioners have not demonstrated a basis for the exercise of discretionary jurisdiction and, accordingly, this Court should deny the petitioners' request to exercise its discretionary jurisdiction.

Respectfully submitted,

Larry E. Levy
Fla. Bar No. 0047019
The Levy Law Firm
1828 Riggins Lane
Tallahassee, Florida 32308
Telephone: 850/219-0220
Facsimile: 850/219-0177

Counsel for Respondents Patrick P.
Pilcher and Rhonda Skipper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this the **9th** day of November 2009, to the following addressees:

William C. Owen, Esquire
William C. Owen, LLC
241 Pinewood Drive
Tallahassee, Florida 32303

James G. Feiber, Jr., Esquire
Salter, Feiber, Murphy, et al.
Post Office Box 357399
Gainesville, Florida 32635

Douglas S. Lyons, Esquire
Lyons & Farrar
325 N. Calhoun Street
Tallahassee, Florida 32301

William M. Slaughter, Esquire
Haskell, Slaughter, et al.
1400 Park Place Tower
2001 Park Place N.
Birmingham, Alabama 35203

Susan L. Kelsey, Esquire
Kelsey Appellate Law Firm, P.A.
115 N. Calhoun Street
Tallahassee, Florida 32301

Jarrell L. Murchison, Esquire
Joseph C. Mellichamp, III, Esquire
Office of the Attorney General
Revenue Litigation Bureau
The Capitol – PL 01
Tallahassee, Florida 32399-1050

Gregory T. Stewart, Esquire
Harry F. Chiles, Esquire
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308

John R. Dowd, Esquire
Okaloosa County Attorney
Post Office Box 404
Shalimar, Florida 32579

Michael S. Burke, Esquire
Interim Walton County Attorney
161 East Sloss Avenue
DeFuniak Springs, Florida 32433

Ben L. Holley, Esquire
Walton Co. School Board Attorney
Post Office Box 1238
Crestview, Florida 32536

C. Jeffrey McInnis, Esquire
Okaloosa Co. School Board Attorney
909 Mar Walt Drive, Suite 1014
Fort Walton Beach, Florida 32547

John C. Dent, Jr., Esquire
R. Laine Wilson, Esquire
Dent & Johnson, Chartered
Post Office Box 3259
Sarasota, Florida 34230

Larry E. Levy

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the respondents certifies that the font size and style used in the foregoing jurisdictional brief is 14 Times New Roman and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a).

Larry E. Levy