

IN THE SUPREME COURT OF THE STATE OF FLORIDA
Case No. SC09-1796
First DCA Case No. 1D07-6564

Upon Petition for Discretionary Review
Of A Decision Of The First District Court of Appeal

JEROME K. LANNING and JOYCE A. LANNING, husband and wife;
and ANN C. REESE, as personal representative of the estate of Marlow Reese,
individually and as representatives of similarly-situated persons,

Petitioners,

v.

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; WALTON COUNTY, FLORIDA, a political subdivision of the
State of Florida; the WALTON COUNTY SCHOOL BOARD; et al.,

Respondents.

RESPONSE OF RESPONDENTS, OKALOOSA COUNTY, OKALOOSA
COUNTY SCHOOL BOARD, WALTON COUNTY, AND WALTON COUNTY
SCHOOL BOARD, TO PETITIONERS' AMENDED BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND OF THE FACTS

This matter comes before the Court on Petitioners' Petition for discretionary review of the decision of the First District Court of Appeal. (App. A to Pet. Amended Brief on Jurisdiction). In its opinion below, the First District affirmed the final order of the trial court, upholding the constitutional validity of Article VII, section 4(c), Florida Constitution, commonly known as the Save Our Homes Amendment (SOHA). Before the First District, Petitioners, non-resident owners of Florida secondary and vacation homes, argued that the SOHA violates their rights under various provisions of the United States Constitution, principally the Equal Protection Clause, the Privileges and Immunities Clause, and the dormant Commerce Clause. In its analysis of the constitutional claims, the First District concluded that the challenges had previously been rejected, and cited the U. S. Supreme Court decision in Nordlinger v. Hahn, 505 U.S. 1 (1992), and the First District's earlier decision in Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000). The court ruled that any tax benefit is based on the way the property is used, and not the status of the landowner as a resident or nonresident. (App. A to Pet. Amended Brief on Jurisdiction at 5-6).

A cross-appeal was also brought in the First District, in which certain Appellees challenged the portion of the trial court's final order rejecting the argument that the court lacked subject matter jurisdiction to consider Petitioners'

constitutional challenges, as Petitioners did not assert their claims within sixty days of the date of their property assessments. The First District also affirmed the trial court's determination on this issue. (App. A to Pet. Amended Brief on Jurisdiction at 3).¹

¹ Appellees Counties and School Boards did not join in this cross-appeal. Accordingly, the issue on cross-appeal is not addressed in the Argument section of this Brief.

SUMMARY OF THE ARGUMENT

In its decision below, the First District Court of Appeal upheld the constitutionality of Article VII, section 4(c), Florida Constitution. However, the decision followed established law, and did not explain, define, or eliminate existing doubts. Additionally, the decision does not expressly affect a class of constitutional officers, and therefore, this argument does not lend any support for Petitioners' arguments on jurisdiction.

In any event, it is not necessary or helpful for the Court to exercise its discretionary jurisdiction in this case. The underlying constitutional issues in this case have been considered and rejected previously by the First District. Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000). Although the Court had the opportunity to review the decision in Reinish, it chose not to do so. 790 So. 2d 1107 (Fla. 2001). In addition, the U.S. Supreme Court has ruled contrary to Petitioners' constitutional claims in the analogous case of Nordlinger v. Hahn, 505 U.S. 1 (1992). The constitutional issues brought by Petitioners in this case have been considered and uniformly rejected by the courts.

STANDARD OF REVIEW

The Petitioners ask this Court to exercise its discretionary jurisdiction under Article V, section 3(b)(3), Florida Constitution, to review a decision of the district court that expressly construes a provision of the state constitution, and also to review a decision of a district court that expressly affects a class of constitutional or state officers. Even where the Court has the discretion to review the decision of a district court, it has no obligation to do so, and may exercise its discretion by declining to review the decision.

ARGUMENT

The Petitioners ask this Court to exercise its discretionary jurisdiction under Article V, section 3(b)(3), Florida Constitution, to review a decision of the district court that expressly construes a provision of the state constitution, and also to review a decision of a district court that expressly affects a class of constitutional or state officers.

First, Petitioners argue that this Court has discretion to review the decision of the First District below, as it expressly construes a provision of the state constitution. In order to sustain jurisdiction in this case on that basis, the lower court must have explained, defined, or otherwise eliminated existing doubts arising from the language or terms of the constitutional provision. Armstrong v. City of Tampa, 106 So. 2d 407 (Fla. 1958); see also; Dykman v. State, 294 So. 2d 633 (Fla. 1973); Ogle v. Pepin, 273 So. 2d 391 (Fla. 1973). In this case, clearly the First District below upheld the constitutionality of Article VII, section 4(c), Florida Constitution. However, in doing so, the First District simply followed its prior decision in Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000), and the U.S. Supreme Court's decision in Nordlinger v. Hahn, 505 U.S. 1 (1992). The First District did nothing more than follow well reasoned precedent in rendering its decision, and therefore did not address any existing doubts.

Further, Petitioner's argument that the decision of the First District expressly affects a class of constitutional or state officers does not lend any support for jurisdiction in this case. To seek review of a decision that expressly affects a class of constitutional officers, the decision must "directly and, in some way, exclusively affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers." Spradley v. State, 293 So. 2d 697, 701 (Fla. 1974). The decision "must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state." Id. In this case, the decision does not directly and exclusively affect the official duties of the property appraisers and tax collectors, but simply rules the SOHA provision of the Florida Constitution is constitutional, in line with clear precedent on this issue. Accordingly, this does not appear to be a ground for jurisdiction in this case.

In any event, even if the Court is deemed to have jurisdiction to hear this case, it has no *obligation* to do so. Petitioners argue that this Court should exercise its discretion and review the decision of the First District because it presents constitutional issues of first impression and is the first opportunity the Court has had to pass upon these issues. On the contrary, the First District Court of Appeal has ruled upon the underlying claims in this case, and this Court has had the opportunity to review such constitutional claims, but chose to deny review.

Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000), review denied by 790 So. 2d 1107 (Fla. 2001). In addition, the U.S. Supreme Court has found constitutional an analogous tax structure in California. Nordlinger v. Hahn, 505 U.S. 1 (1992).

It is important to note that the SOHA is part of the State's coordinated ad valorem tax structure for homestead property consisting of two separate components. First, all persons having legal or equitable title to real estate and maintaining thereon a permanent residence are exempt from ad valorem taxation for the first \$25,000 of the assessed value. Art. VII, § 6, Fla. Const.² There is no durational residency requirement in order for the exemption to apply. Second, individuals who have claimed a Florida residence are entitled to a "cap" on the assessed value of their homestead property, pursuant to the SOHA. Only homeowners who have claimed a homestead exemption by January 1 are entitled to the application of the SOHA when the property is reassessed annually. Pursuant to this provision, the annual reassessment of homestead property is limited to three percent of the assessment for the prior year or the percent change in the Consumer Price Index, whichever is less. Art. VII, § 4(c)(1), Fla. Const.

The Reinish decision, which was cited by the First District below, primarily considered the constitutionality of the homestead exemption, but also considered

² SJR 2D (2007), and Amendment 1, as approved by the voters in January 2008, provides for a doubling of the homestead exemption for all taxing units except school districts.

provisions of the SOHA as an integral component of the homestead exemption. See Reinish, 765 So. 2d at 213. The application of the homestead exemption and the SOHA are both dependent on the classification or use of the property as homestead property. It is this classification based on the use of the property, and not the residency status of the property owner, which led to a rejection of the constitutional challenges both below and in Reinish.

In Reinish, review of the decision of the First District was sought in this Court, but was denied. 790 So. 2d 1107 (Fla. 2001). In addition, a petition for certiorari review was filed with the U.S. Supreme Court, but was also denied. 534 U.S. 993 (2001).

Petitioners confusingly and inaccurately assert that the classification difference arose in this case based on the residency status of the homeowner. (Pet. Amended Brief on Jurisdiction at 5). However, as the First District provided in its decision below, the homestead exemption and the SOHA only apply to property used as homestead property. Properties used as vacation or second homes, such as the properties owned by Petitioners, do not qualify for either the homestead exemption or the SOHA, regardless of the residency of the owner. Accordingly, it is not the residency status of Petitioners which leads to the denial of the homestead exemption or the denial of the application of the SOHA as to their respective Florida properties, but the use Petitioners make of their properties. This

classification based on use of the property is not discriminatory and causes no constitutional infirmities, as was held in Reinish. No evidentiary hearing was required at the trial court level because Petitioners failed to state a constitutional claim on which relief could be granted. Accordingly, there was no need for the First District to remand the case to the trial court.

In addition, the U.S. Supreme Court has also reviewed a similar tax scheme under constitutional challenge, and upheld the validity of that taxing structure. Nordlinger v. Hahn, 505 U.S. 1 (1992). In Nordlinger, the U.S. Supreme Court reviewed California's similar acquisition-value tax system set in place by Proposition 13. The Court considered the "dramatic disparities" in the taxes paid by persons owning similar pieces of property, which continue to grow over time. Id. at 6. The Court determined that Proposition 13 passed a rational basis, equal protection review and identified two legitimate state interests which were rationally furthered by the law. First, "the State has a legitimate interest in local neighborhood preservation, continuity, and stability." Second "the State legitimately can conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner." Id. at 12. The same reasoning is applicable in the present case. Both the tax exemption and SOHA "are parts of a coordinated constitutional scheme relating to taxation and have as their underlying purpose the

protection and preservation of the homestead property.” Zingale v. Powell, 885 So. 2d 277, 285 (Fla. 2004).

It is clear that the constitutional issues raised by Petitioners have been brought and rejected in analogous cases. Respectfully, this is not a case in which it would be helpful or necessary for the Court to accept review.

CONCLUSION

Based on the above argument, the County respectfully requests that this Court decline to accept jurisdiction of this case. It appears there is no basis for jurisdiction under Article V, Section 3(b)(3), Florida Constitution. In any event, no review by this Court is necessitated by the issues involved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been furnished by U.S. Mail to the attached Service List, this 10th day of November, 2009.

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