

IN THE SUPREME COURT OF FLORIDA

ERVIN A. HIGGS, as Property Appraiser
of Monroe County, Florida,

Petitioner,

v.

WILLIAM LEO WARRICK,
as Trustee,

Respondent.

CASE NO. SC08-2389

Lower Tribunals:

Third District Court of Appeal

Case No.: 3D08-564

Sixteenth Judicial Circuit Court

Case No. 2007-CA-000470-K

ON DISCRETIONARY REVIEW FROM THE
THIRD DISTRICT COURT OF APPEAL
MIAMI, FLORIDA

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Petitioner, Ervin A. Higgs, as Monroe County Property Appraiser, filed an action to overturn the decision of the Value Adjustment Board (VAB) granting a homestead exemption to Respondent, William Leo Warrick (Warrick) for the 2005 tax year.

It is undisputed that on April 27, 1995, the Respondent, Warrick, created an irrevocable trust known as the “William Leo Warrick Grantor Retained Income Trust No. 1” or the “Warrick Qualified Personal Residence Trust Agreement” (QPRT). The res of the trust was the property at issue, a residence located at 54 Pine Tree Lane, Sugarloaf Key, Florida, which is located in Monroe County, Florida. The only beneficiary of the trust prior to April 27, 2005, was Warrick who claimed and was granted a homestead exemption while he was the beneficiary of the trust.

Pursuant to the terms of the trust, Warrick’s status as beneficiary changed on April 27, 2005, when his “interest in the Trust Estate . . . cease[d].” On that date in 2005, Warrick’s heirs became beneficiaries of the trust and equitable title-holders of the property at issue. Warrick no longer had any interest in the trust or the property of the trust; thus, after April 27, 2005, Warrick no longer held any entitlement to homestead exemption for the property.

Prior to the termination of his status as beneficiary, as trustee of the trust, Warrick entered into a lease agreement in which Warrick himself was named tenant of the property. The lease term was for 99 years and provided that Warrick was to pay \$25,000 per month to the trust as rent. The property at issue is a single family residence. It is not a condominium or co-op, and Warrick is an individual, not a corporation.

For the 2005 tax year, Warrick applied for a homestead exemption on the property, upon which he continued to reside, as lessee. The Property Appraiser for Monroe County, Florida, Petitioner, Ervin A. Higgs (the Property Appraiser), denied the homestead exemption. Warrick filed a petition with the VAB, which was granted.

The Property Appraiser filed an action in circuit court challenging the VAB's decision to grant the homestead exemption, arguing that the VAB misinterpreted and misapplied section 196.041, Florida Statutes (2005). The Property Appraiser moved for summary judgment, which the trial judge denied. In denying the motion, the trial court did not address the merits of the motion, but found that despite the Property Appraiser's argument otherwise, the Property Appraiser's claim was a challenge to the validity of a statute, and the Property Appraiser had no standing to raise such a challenge. Because the trial court's ruling effectively ended the litigation in the trial court, the Property Appraiser

moved and was granted a final appealable order, which was then appealed to the Third District Court of Appeal.

The Third DCA affirmed the trial court's decision. The Third DCA analyzed the statutory provisions at issue, Sections 196.031 and 196.041, and concluded that "a 98-plus-year lessee of a residential parcel permanently occupied as a residence qualifies for a homestead exemption." To the extent that this ruling conflicts with it, the Third DCA certified conflict with *Prewitt Management Corp. v. Nikolits*, 795 So. 2d 1001 (Fla. 4th DCA 2001).

The Property Appraiser has thus filed a Notice to invoke the discretionary jurisdiction of this Court.

SUMMARY OF ARGUMENT

The instant case expressly and directly conflicts with a decision of the Fourth District Court of Appeal, in which that court interpreted Sections 196.031 and 196.041, Florida Statutes (2005) to allow the homestead exemption for a lessee with a 98-plus-year lease for condominium and cooperative apartment property only. The Fourth DCA analyzed the statutes and the Florida Constitution and ultimately concluded that the Florida Legislature, in the lease language found in Section 196.041, intended to allow a homestead for permanent residents of a leased condominiums and cooperative apartments only, and no one else. Warrick falls into the "no one else" category because the property at issue owned by his

heirs is a single family residence. The Third District recognized the conflict and so certified in its opinion.

In addition, the instant case expressly affects the Property Appraisers of the State of Florida, who must determine whether individuals qualify for the homestead exemption. The instant case suggests that any individual who enters into a long-term lease for residential property can claim a homestead exemption even if the individual's interest is not described in the authorizing section of the Florida Constitution, Article VII, Section 6. Thus, the decision will directly impact all Property Appraisers in the State, as each Property Appraiser must determine whether applicants for homestead exemption are qualified.

ARGUMENT

I. THE THIRD DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN *PREWITT MANAGEMENT CORP. V. NIKOLITS*, 795 SO.2D 1001 (FLA. 4TH DCA 2001).

By holding that a "98-year-plus lessee of a residential parcel permanently occupied as a residence qualifies for a homestead exemption," when the lease does not involve a condominium or cooperative apartment, the Third District Court of Appeal opinion in the instant case expressly and directly conflicts with the Fourth DCA's holding in *Prewitt Management Corp. v. Nikolits*, 795 So. 2d 1001 (Fla. 4th DCA 2001). In *Prewitt*, the Fourth DCA analyzed Sections 196.031 and

196.041 in depth to determine that a wholly owned corporation which qualifies as an “S” corporation under the Internal Revenue Code, “owning” a residence cannot claim a homestead exemption on the residence. Specifically, the Fourth DCA acknowledged that the Florida Attorney General and the Florida Department of Revenue agree that Sections 196.031 and 196.041 “demonstrate that the Legislature purposed the additional extension of the homestead tax exemption only to owners of condominium and cooperative apartments and no others.” *Id. at* 1004. After determining that the statutes do not conflict with Article VII, section 6 of the Florida Constitution, the Fourth DCA went on to interpret the plain meaning of the statutes stating the following: “[a]pplying these rules of statutory construction to the applicable statutes leads this court to the inescapable conclusion that the legislature intended to extend the homestead exemption *only to owners of condominium and cooperative apartments and no others.*” *Id. at* 1005 (emphasis added).

Thus, the Fourth DCA’s decision went further than merely concluding that an “S” corporation “owning” a residence cannot qualify for the homestead exemption; the Fourth DCA held after evaluating the Florida Constitution and the applicable statutes, that the lease language in Section 196.041 allows a homestead exemption only for owners of condominiums and cooperative apartments. It is undisputed that no condominiums or cooperative apartments are at issue in the

instant case. In fact, it is undisputed that Warrick is the lessee of a single-family residence.

Thus by expanding the scope of Section 196.041 to grant a homestead exemption for any long-term lease, ignoring the context within which that Section was amended and the specific purpose of the lease language in the statute relating only to condos and co-ops, the Third DCA's decision expressly and directly conflicts with the decision of the Fourth DCA in *Prewitt*.

II. THE THIRD DISTRICT CERTIFIED CONFLICT WITH THE FOURTH DISTRICT COURT OF APPEAL'S DECISION IN *PREWITT MANAGEMENT CORP. V. NIKOLITS*, 795 SO.2D 1001 (FLA. 4TH DCA 2001).

In the Third District Court of Appeal's decision, the Third DCA certified conflict with *Prewitt*. The conflict, which involves the scope of applicable Florida Statutes and the homestead exemption, which is described in detail in Section I of this brief, is apparent from the four corners of the Third District Court of Appeal opinion in the instant case, and conflict review is appropriate. *See Reaves v. State*, 485 So. 2d 829 (Fla. 1986) (Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision.); *cf Ford Motor Co. v. Kikis*, 401 So. 2d 1341 (Fla. 1981) (A basis for conflict jurisdiction exists even if there is no reference to a specific citation or case in conflict but

instead the opinion contains a discussion of legal principles the court applied which are in conflict.)

III. THE THIRD DISTRICT COURT OF APPEAL'S DECISION EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OFFICERS; SPECIFICALLY, THE PROPERTY APPRAISERS OF ALL COUNTIES IN THE STATE OF FLORIDA.

The Property Appraisers of the State of Florida are charged with determining which applicants are qualified for the homestead exemption from ad valorem taxation under Florida law. The homestead exemption is authorized by Article VII, section 6 of the Florida Constitution, and is further described in Sections 196.031 and 196.041, Florida Statutes (2005), which have been interpreted two different ways.

In the instant case, the Third DCA has expanded the application of the homestead exemption to apply to any 98-year plus lease of a residential parcel permanently occupied as a residence. On the other hand, in *Prewitt*, the Fourth DCA explained that the homestead exemption was not intended to be applied to everyone, and that all of the language in the statute, including the lease language in Section 196.041, must be considered in context. In context, the lease language refers only to condos and cooperative apartments. This latter view seems to be more in harmony with the Florida Constitution and statutes, which contemplate a homestead exemption for a 98-year lease or long-term lease only in reference to

condominiums and cooperative apartments. *See* Article VII, Section 6, Florida Constitution; §§ 196.031, 195.041, Fla. Stat. (2005). However, with the state of the law as it is, the Property Appraisers cannot be sure under what circumstances the homestead exemption should apply.

CONCLUSION

WHEREFORE, Petitioner Ervin Higgs, as Property Appraiser of Monroe County, Florida, respectfully requests that this Court accept jurisdiction over this case and reverse the decision of the Third District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to John H. Pelzer, Esq., Ruden, McClosky, Smith, Schuster & Russell, P.A., Post Office Box 1900, Fort Lauderdale, Florida 33302 on this 20th day of January, 2009.

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CERTIFICATE OF COMPLIANCE

Counsel for Petitioner Ervin Higgs, as Property Appraiser of Monroe County, Florida, certifies that Petitioner's Brief on Jurisdiction, is typed in 14 point (proportionately spaced) Times New Roman font.

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APPENDIX

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1. Opinion filed by Third District Court of Appeal on November 12, 2009.