IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2009-CA-6270-XXXX-MA
DIVISION: CV-C

BRYAN S. GOWDY and BARBARA GOWDY,

Plaintiffs,

vs.

JAMES OVERTON, in his official capacity as the Property Appraiser of Duval County; MIKE HOGAN, in his official capacity as the Tax Collector of Duval County; and LISA ECHEVERRI, in her official capacity as Executive Director of the Florida Department of Revenue,

Defendants.
_____/

ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

This matter came to be heard on March 8, 2010 upon the Plaintiffs' Motion for Summary Judgment. The Court, having heard argument of counsel and considered the motion, the response in opposition thereto, the pleadings, exhibits, affidavits, and relevant authority, and being otherwise fully advised, makes the following findings of fact and conclusions of law:

1. In their Motion, Plaintiffs ask the Court to determine: that the 2008 assessment of their current homestead was inaccurately calculated; that they are entitled to contest the 2007 just value of their prior homestead; and that, upon the Court's determination of the actual 2007 just value of the prior homestead, that value be used in calculating the 2008 assessment of their current homestead, under the "portability amendment" (Art. VII, § 4(c)(8)a.1., Fla. Const.). (Mot. Summ.

J. at 19.) Plaintiffs argue that statutory prohibitions against a taxpayer's challenge to the just, assessed, or taxable value of a previous homestead to not apply to them, because both their previous and current homesteads are located in the same county. Alternatively, Plaintiffs argue that those statutory prohibitions are unconstitutional, because they thwart the will of the people expressed in the portability amendment, and because they deprive Plaintiffs of due process.

2. Section 193.155, Florida Statutes, is entitled "Homestead assessments." Subsection (8) provides for the assessment of homestead property at less than just value. Section 193.155(8)(h)1. requires property appraisers to communicate when a taxpayer's new and previous homesteads are located in different counties. Sections 193.155(8)(h)2., 3., 4., 6., 7., 9., 10., 11., and 12. speak in terms of the property appraiser in the county where the previous homestead is located and the property appraiser in the county where the new homestead is located. That language allows for the possibility of the new and previous homesteads being located in different counties, but may also be applied where the two homesteads are located in the same county; the legislature has simply written the statute with built-in flexibility, so that either situation (new and previous homesteads in different counties, or in the same county) is addressed. Section 193.155(8)(h)8. provides, "This subsection does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead property." The subsection containing that sentence is 193.155(8). The Court also concludes that the words "section" and "subsection" are used correctly, not interchangeably, in section 193.155(8), Florida Statutes. The first sentence begins, "Property assessed under this section shall be assessed at less than just value . . . ." The section is 193.155, governing homestead assessments, which provides that, normally, homestead property is assessed at just value. Subsection (8) of section 193.155 provides an exception to that rule; therefore, when

section 193.155(8) uses the word "subsection" in its last sentence, it correctly refers to that subsection's exception to the homestead-property-is-assessed-at-just-value rule: "The assessed value of the newly established homestead shall be determined as provided in this subsection." Therefore, it is the whole of section 193.155(8) which "does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead property[,]" whether or not the previous and new homesteads are located in the same county. See Escambia Mid-County Dev. Corp. v. State, Dep't of Commerce, 356 So. 2d 855, 857 (Fla. 1st DCA 1978)(distinguishing sections from subsections in Florida Statutes); see also Preface, Florida Statutes (explaining the numbering system).

3. Section 194.011(6), Florida Statutes, applies "to petitions to the value adjustment board concerning the assessment of homestead property at less than just value under s. 193.155(8) . . . ." It is consistent with section 193.155(8)(h)8., and expressly prohibits Plaintiffs from attacking the just value of their previous homestead assessed by the property appraiser: "[T]he taxpayer may not petition to have the just, assessed, or taxable value of the previous homestead changed." § 194.011(6)(b), Fla. Stat. (2009). The use of the phrases, "county where the previous homestead property was located" and "county where the new homestead property is located" in subsection (6) of section 194.011 accommodates situations where the previous and new homestead properties are located in different counties, or in the same county. It in no way limits its application to situations in which the previous and new homestead properties are located in different counties.

4. Moreover, the Department of Revenue has promulgated a rule which echoes section 194.011(6)(b), Florida Statutes: "No adjustment to the just, assessed or taxable value of the previous homestead parcel may be made pursuant to a petition under this rule." Rule 12D-9.028(1), Fla.

Admin. Code. Subsequent subsections of that rule set forth procedures for petitions regarding the transfer of "portability" assessment difference, using language which applies whether the previous and new homestead properties are located in the same county or in different counties.

5. The Court concludes that the will of the people as expressed in the portability amendment is not thwarted by the statutes at issue in this case. The statute's requirement of using the previous homestead's just value as of January 1 of the year in which it is abandoned (instead of immediately after abandonment, when the actual sale price might well result in a higher valuation) is, in fact, the requirement of the constitutional amendment. Art. VII, § 4(c)(8)a.1., Fla. Const.

6. Plaintiffs correctly state that due process requires both reasonable notice and a meaningful opportunity to be heard. N.C. v. Anderson, 882 So. 2d 990, 993 (Fla. 2004). It is also readily apparent that, of the variables involved in the assessment of homestead property at less than just value under the portability amendment, the just value of the previous homestead is the one which, if successfully challenged, would result in the greatest benefit to Plaintiffs. However, Plaintiffs have failed to demonstrate that due process requires that they be allowed to challenge each of the variables involved in the calculation.

Based on the above, it is **ORDERED AND ADJUDGED** that the Plaintiffs' Motion for Summary Judgment is hereby **DENIED**.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this _____ day of _____, 2010.

ORDER ENTERED

MAY 06 2010

/s/ L. HALDANE TAYLOR

Circuit Judge

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