IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY GENERAL CIVIL DIVISION

DENISE E. PALMER,
Plaintiff,

CASE ID: 08-CA-28411

v.

ROB TURNER, as Property Appraiser,
DOUG BELDEN, as Tax Collector,
LISA ECHEVERRI, as Executive Director of the Florida Department of Revenue,
Defendants.
_____/

DIVISION: I

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER is before the Court on reciprocal dispositive motions for summary judgment filed by Plaintiff and by Defendant Rob Turner, Property Appraiser of Hillsborough County. The Court, after considering the motions, the argument of counsel at the hearing on the motions, which was held on January 4, 2010, and record, finds as follows:

Plaintiff seeks declaratory relief and a finding by this Court that she is entitled to claim homestead exemption from ad valorem taxation for 2008 on the property she owns at 4606 W Beach Park Drive, Tampa, FL 33609 (Folio No.: 113793-0100). The Property Appraiser previously disapproved her timely-filed application for this exemption.

The parties agree to the facts necessary for the resolution of the motions. They are as follows. Plaintiff and her husband, Gregory Palmer, are in a congenial marriage. Plaintiff is a permanent resident of Florida and the owner, in tenancy by the entireties with her husband, of the Tampa property. Plaintiff pays the taxes, mortgage, utilities, and incidental expenses of the property from her own resources. Plaintiff is solely liable for the note on the mortgage of the

Tampa property. Plaintiff deposits her earnings and makes the payments related to the Tampa property from an account at Bank of America.

Plaintiff's husband is a permanent resident of Illinois and resides in Chicago in a condominium owned in tenancy by the entireties with Plaintiff. Plaintiff's husband pays the taxes, mortgage, utilities, and incidental expenses of the Chicago property from his own resources. Plaintiff's husband receives a homeowner's exemption on the Chicago property which is similar in all material respects to Florida's homestead exemption. Mr. Palmer deposits his earnings into an account at Harris Bank and makes the payments related to the Chicago property from this account and an investment account at William Blair & Company.

In addition to the joint ownership they share in these two properties, plaintiff and her husband have joint property interests in an automobile, a vacant lot in Cape Coral, Florida, and the Bank of America and Harris Bank accounts. Both Plaintiff and her husband are liable on the note for the mortgage on the Chicago property. The Palmers share credit card liabilities, and each one has more than one insurance policy naming the other as beneficiary. They also file their federal personal income taxes jointly. The Palmers have made certain of these arrangements for estate planning purposes.

In 2008, Plaintiff's husband visited Plaintiff at the Tampa property approximately thirty-six times for a total of about seventy days. During that same year, Plaintiff visited her husband at the Chicago property approximately four times for a total of about thirteen days. They also spent time together that year in two other Florida locales, California, and France.

Plaintiff has applied for, and been disapproved of, homestead exemption from ad valorem taxation in 2006, 2007, and 2008. In 2006, the Property Appraiser notified Plaintiff that her application was incomplete and asked for additional information about her spouse, including his social security number. Plaintiff failed to comply with the request for additional information. In 2008, the Office of the Property Appraiser notified her that her request was declined because she

did not meet certain statutory criteria, to wit, she "was not a permanent resident on January 1, 2008." Her application for 2008 also shows that she again failed to disclose her husband's social security number.

In his motion for summary judgment, Defendant Turner argues that Plaintiff and her husband are a single family unit as that term is used in Art. VII, s. 6(b), Florida Constitution, which states that "not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit." He argues that because the Palmers enjoy homestead exemption on the Chicago property, Plaintiff is not entitled to a second exemption on the Tampa property. Defendant Turner also states that Plaintiff failed to disclose her husband's social security number on her application for homestead exemption. He argues that this constitutes a waiver of her entitlement to the exemption under section 196.011(1)(b), Florida Statutes.

In her motion for summary judgment, Plaintiff states that she owns the Tampa property, she is a permanent resident at the Tampa property, and that she and her husband are separate family units. She argues that she is thus entitled to a homestead exemption on the Tampa property. She further states that she timely filed her 2008 application for homestead exemption. She argues that her failure to disclose her husband's social security number in that application is excusable because the Property Appraiser failed to timely notify her of such failure. She argues that the Property Appraiser had a duty to notify her of the specific defects in the application so that she might file a complete application by the deadline as described in section 196.011(1)(b). Because he failed to so notify her, she argues that he should be estopped from arguing her waiver of the exemption for 2008 in these proceedings.

The parties agree that Plaintiff was a permanent resident on and owner of the Tampa property in 2008 and that her application for homestead exemption from taxation was timely filed, although incomplete. The parties dispute whether Plaintiff and her husband constitute a single family unit or two family units for the purpose of Art. VII, s. 6(b) of the Florida

Constitution. 'Family unit' is a term which is not expressly defined in the constitution, its related statutes[1], or case law.

Each of the parties argued that certain opinions of the Attorney General establish a definition favoring their own position.[2] The Court notes that while the opinions of the Attorney General "are not legally binding upon the courts of this State, they are entitled to great weight in construing the laws of this State." *See Beverly v. Division of Beverage of Dept. of Business Regulation*, 282 So. 2d 657, 660 (Fla. 1st DCA 1973).

In his 1975 opinion, the Attorney General opined that where a husband and wife establish "separate, bona fide permanent residences" that they may then also establish separate family units such that they are entitled to separate homestead exemption under Art. VII, s. 6(b), even where they own each property jointly as tenants by the entireties. The context of the opinion involved a married couple who were separated. The Attorney General further opined that the property owners need not show 'impelling reasons' or 'just grounds' for establishing separate permanent residences. The opinion did not elaborate on what steps should or must be taken for such property owners to establish separate family units; however the Attorney General did suggest that if one spouse maintained the home of the other by contributing to its financial upkeep then separate family units were not established.

This opinion issued in response to a question by the Sarasota Property Appraiser, but also to clarify a potential misinterpretation of a prior opinion, Op. Att'y. Gen. Fla. 64-5 (1964), in light of a Florida supreme court opinion rendered in *Judd v. Schooley*, 158 So. 2d 514 (Fla. 1963).[3] In *Judd*, the supreme court held that, in order for a wife in a congenial marriage to show

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[1] Art. VII, s. 6 is incorporated into the Florida Statutes in chapter 196.
[2] The parties relied primarily on Op. Att'y. Gen. Fla. 75-146 (1975) and Op. Att'y. Gen. Fla. 05-60 (2005).
[3] It is noteworthy that the 1964 opinion of the Attorney General and the opinion of the supreme court in *Judd* were interpretations of Art. X, s. 7, Fla. Constitution (1885), which did not include the 'family unit' language. In the 1968 revision to the constitution, the homestead exemption from taxation provision was renumbered as Art. VII, s. 6 and the 'family unit' language was added to subsection 6(b).

good faith in establishing a permanent residence apart from her husband she had no need to show that the separate domiciles were established out of some necessity. In the 1964 opinion, the Attorney General had opined that the partners to a congenial marriage, who owned two residences and moved frequently between them, should not be allowed two homestead exemptions because they could not show a permanent residence at both locations. The 1975 opinion clarified that the 1964 opinion should not be construed to imply that the basis for the denial of the exemption in those circumstances was due to a failure to show impelling reasons for the separate residences.

In his 2005 opinion, the Attorney General was asked for an opinion on whether to grant homestead exemptions to each applicant when they are partners to a congenial marriage who own separate residences within easy driving distance of one another in the same county. The Attorney General reviewed his prior opinions on the issue, specifically the 1964 and 1975 opinions discussed above, and advised the Property Appraiser for Volusia County that two exemptions may properly issue in such circumstances if the applicants establish the right thereto under the applicable law, emphasizing, as ever, that "the burden is on the applicants to demonstrate that they have established separate family units."

The Court finds that none of these opinions of the Attorney General is dispositive of the issue whether the Palmers constitute a single family unit. The opinions which issued prior to the 1968 revision of the state constitution do not address the concept of a family unit. The 1975 opinion states essentially that if one spouse makes payments on the other's separate residence, then they are a single family unit. Because the parties in the present case agree that neither Plaintiff nor her husband contribute to the financial maintenance of the other's home, one cannot establish whether they are a single family unit from this opinion. The 2005 opinion is derivative of the 1975 opinion.

Although they are not determinative of the issue in the instant case, these opinions by the Attorney General are persuasive. Taken together, the opinions suggest that whether a married couple is a family unit depends on the degree to which they are financially and personally interconnected. Among partners to a marriage, simply owning an interest in one another's property is insufficient to support a finding that they constitute a single family unit, but expending financial resources on the maintenance of one another's homestead is sufficient to support such a finding. The present case lies between these two poles.

The opinions of the Attorney General establish a reasonable framework within which to analyze the issue. Another consideration in construing the meaning of the term 'family unit' arises from the nature of the provision in which it is found. Art. VII, s. 6 is a component of the Finance and Taxation portion of our state constitution, which creates certain exemptions from taxation. "While doubtful language in taxing statutes should be resolved in favor of the taxpayer, the reverse is applicable in the construction of exceptions and exemptions from taxation." *See U.S. Gypsum Co. v. Green*, 110 So. 2d 409, 413 (Fla. 1959).

It is commonly recognized that 'homestead exemption is to be construed liberally for the benefit of those whom it was designed to protect." *See e.g. Cain v. Cain*, 549 So. 2d 1161, 1163 (Fla. 4th DCA 1989) (in the context of forced sales by creditors and Art. X, s. 4, Florida Constitution (1968)); *Cutler v. Cutler*, 994 So. 2d 341 (Fla. 3d DCA 2008) (in the context of the devise of homestead property under Art. X, s. 4, Florida Constitution (1968)); *McCullogh v. Forbes*, 47 So. 2d 780, 781 (Fla. 1950) (in the context of tax exemptions under Art. X, s. 7, Florida Constitution (1885)). However, the law on homesteads for the purpose of tax exemptions differs from the law for Art. X, s. 4 purposes. *See Phillips v. Hirshon*, 958 So. 2d 425, 427 (Fla. 3d DCA 2007). Liberal construction of the homestead exemption appears to be limited to the determination whether property is in fact a homestead.

The issue in this case is not whether the Tampa property constitutes homestead property. The Property Appraiser does not dispute that Plaintiff owned the Tampa property and resided there on January 1, 2008, and that she has established a good faith intent to remain there permanently. The narrow issue before the Court is whether the Palmers constitute one or more family units for the purpose of tax exemption under Art. VII, s. 6(b). The Court therefore finds that it is appropriate to apply the principle described in *U.S. Gypsum* to construe the meaning of the term 'family unit' as used in the exemption.

While the Palmers do not contribute to the financial maintenance of one another's property, they do co-mingle their finances. They share credit card debts, they share ownership of other tangible real and personal property, and they share liability on the mortgage for the Chicago property. The Palmers name one another as beneficiaries of their insurance policies. The Palmers have joint ownership of their primary bank accounts. They file federal income taxes jointly. The have arranged their finances in conformance with an estate plan, the goals of which appear to be shared by each. Their finances are therefore substantially, though not thoroughly, co-mingled.

As for the degree of their personal connections, it is not insignificant that the Palmers are married. They spend significant amounts of time together in one another's homes as well as on vacations. They behave in a manner consistent with the common sense notion of what it means to be a family, even though they maintain separate permanent residences in furtherance of their individual career goals. Their personal interactions might be quantitatively less than that of the typical married couple, but their interactions no less conform to a familial type.

The Court finds that Plaintiff and her husband are a single family unit for the purpose of the homestead exemption from taxation. Because the family unit enjoys a homestead exemption on the Chicago property, it is not entitled to a second homestead exemption on the Tampa

property under Art. VII, s. 6(b), Florida Constitution. Having resolved this issue in favor of the Property Appraiser, the Court declines to consider whether the application for homestead exemption was detrimentally incomplete.

For the foregoing reasons, the Court grants Defendant Turner's motion for summary judgment and denies the reciprocally dispositive motion for summary judgment filed by Plaintiff.

It is therefore **ORDERED AND ADJUDGED** that Defendant Turner's Motion for Summary Judgment is hereby **GRANTED.**

It if further **ORDERED** that Plaintiff's Motion for Summary Judgment is hereby **DENIED.**

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of January, 2010.

ORIGINAL SIGNED
CONFORMED COPY
JAN 08 2010
RALPH C. STODDARD
JUDGE

RALPH C. STODDARD, Circuit Judge

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