Government Entities Must Pay 298 Drainage District Assessments

by Seth Behn and Chris Lyon [1]

Government agencies often grapple with the questions of overlapping jurisdiction. For example, when a government entity owns real property within the boundaries of another entity, it leads to ambiguities surrounding permissible use, zoning authority, and taxation. For special districts, a common question is, "can we assess the properties that are within our boundaries and receiving a special benefit, but are owned by another government entity?"

That exact question was recently answered by the Fourth District Court of Appeals in Hobe-St. Lucie Conservancy District v. Martin County, et al. (Case No. 4D20-2036, Fla. 4th DCA, 2021).

Generally, public property is subject to special assessments only if authorized by the legislature.[2] However, the legislature's intent is not always clear, as was the case for Hobe-St. Lucie Conservancy District ("Hobe-St. Lucie CD"). This district is a water control district in Martin County, Florida, organized under Florida Statute Chapter 298. As a "298 Drainage District," Hobe-St. Lucie CD is authorized to assess properties within its boundaries that receive a special benefit from the district, in this case the provision of stormwater and drainage services.

Both Martin County and the South Florida Water Management District ("SFWMD") own real estate within the boundaries of the Hobe-St. Lucie CD totaling nearly 3,000 acres. For twenty years both Martin County and SFWMD paid the non-ad valorem assessments levied by Hobe-St. Lucie CD without complaint. But in 2016, SFWMD's executive director ordered the payments cease. Subsequently, Martin County likewise discontinued paying the assessment.

Hoping to clear the County from the shadow of liability, Martin County instituted an action for declaratory relief seeking a judicial determination that it was not subject to the non-ad valorem assessments, and SFWMD intervened in the suit aligned with Martin County, as a co-plaintiff. Together they argued that

[1] This summary was prepared by Seth Behn, Esq. and M. Christopher Lyon, Esq., with Lewis, Longman & Walker, P.A.; Mr. Lyon submitted an *Amicus Curiae* brief to the District Court in this matter on behalf of the Florida Association of Special Districts, Inc.

[2] *See City of Gainesville v. State,* 863 So. 2d 138, 142 n.3 (Fla. 2003).

they were exempt from the assessments, relying on language in Section 298.36(1), Florida Statutes (2016), which states:

> The benefits, and all lands in said district belonging to the state, shall be assessed to, and the taxes thereon shall be paid by, the state out of funds on hand, or which may hereafter be obtained, derived from the sale of lands belonging to the state.

Martin County and the SFWMD argued that this passage made only state-owned lands subject to the special assessments, and that accordingly, their entities were exempt. The trial court agreed with the Plaintiffs, finding that "the legislature did not expressly waive sovereign immunity" for other governmental entities, and thus they did not have to pay the assessments. Hobe-St. Lucie CD appealed this decision to the Fourth District Court of Appeals.

The District Court looked at several sections of Chapter 298, and ultimately concluded that the trial court was incorrect, and determined that the County and SFWMD must continue to pay the assessments. The Courts decision relied on the statutory interpretation principal known as "in pari materia", which requires that different sections of a statute that address the same topic be read together to determine their full meaning.

Specifically, the District Court quoted Section 298.305(1), Florida Statutes (2016), which states:

> (1) [T]he board of supervisors **shall levy a non-ad valorem assessment** as approved by the board **on all lands in the district** to which benefits have been assessed . . . . The assessment must be apportioned to and **levied on each assessable tract of land in the district.** (Emphasis supplied by District Court.)

The District Court found that in light of this passage, the statutory section relied upon by the trial court either must "include political subdivisions and water management districts or refer to the 'state lands' for the limited purpose of explaining how assessments against 'state lands' are to be paid." With either of those possible interpretations, the District Court concluded Martin County and SFWMD are obligated to pay the Hobe-St. Lucie CD assessment.

This decision is limited in its direct application to the narrow instance of government-owned property within "298 Drainage Districts." However, it furthers the notion that when the legislature grants authority for a special district to levy non-ad valorem assessments against real property gaining a special benefit, lands owned by a government agency may not be automatically exempted.

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