IN THE SUPREME COURT OF FLORIDA

BILL FURST, as Property Appraiser of
Sarasota County, Florida,

Petitioner,

v.

Case No. SC19-701
Dist. Ct. Case No. 2D17-3973

SUSAN K. DEFRANCES,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM THE
SECOND DISTRICT COURT OF APPEAL

BRIEF ON JURISDICTION
OF RESPONDENT SUSAN K. DEFRANCES

SHERRI L. JOHNSON
Florida Bar No. 0134775
JOHNSON LEGAL OF FLORIDA, P.L.
P.O. Box 20998
Sarasota, FL 34276
(941) 926-1155
sjohnson@johnsonlegalfl.com
Attorney for Respondent Susan K. DeFrances

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES

CONSTITUTION AND STATUTES

STATEMENT OF THE CASE AND FACTS

Respondent Susan K. DeFrances is the holder of a life estate in real property located at 7326 Captain Kidd Ave. in Sarasota County [hereinafter "the Property"]. In 2014, Petitioner Bill Furst, as Property Appraiser of Sarasota County, Florida, assessed the Property at $302,400.00. Upon receiving her 2014 tax bill, Ms. DeFrances paid the 2014 taxes in full. In 2015, Property Appraiser discovered that, due to a clerical error regarding the size of the property, the 2014 assessed value was incorrect. The Property Appraiser thus corrected the tax roll to reflect a 2014 assessed value of $4,920,600, and back assessed Ms. DeFrances for an additional $26,254.30 in taxes for the 2014 tax year.

Ms. DeFrances filed an action to challenge the Property Appraiser's 2014 back assessment. In Count I of the Complaint, which is the subject of this petition, she contended that the 2014 back assessment was unlawful because the Property did not escape taxation in 2014. The evidence indicated that the Property Appraiser had made a clerical error regarding the size of the land in 2014. However, the Property Appraiser acknowledged in his Answers to Interrogatories that "there is no specific, defined area of land that escaped taxation since the land was valued as a whole." The trial court granted summary judgment in favor of the Property Appraiser, and Ms. DeFrances filed an appeal to the Second District Court of Appeal.

The Second District reversed and remanded with directions to enter summary judgment in favor of Ms. DeFrances on Count 1 of the Complaint. *DeFrances v. Furst*, 267 So. 3d 525, 530 (Fla. 2d DCA 2019). The court held that the Property Appraiser's back assessment was not authorized by section 193.092, Florida Statutes because no portion of the Property had escaped taxation. *See id.* The court noted that:

> Ms. DeFrances's property was not missed, overlooked or forgotten – the entire parcel as well as the improvements were assessed and included on the tax roll. . . . Rather, the property was undervalued as the result of an error.

Id. at 528. Thus, the court held that, while the Property Appraiser could correct the clerical error in his records, he could not back assess Ms. DeFrances's property, as it had already been assessed. *Id.* at 530.

In so holding, the court distinguished the instant case from the case of *Korash v. Mills*, 263 So. 2d 579, 580 (Fla. 1972), in which an entire motel was accidentally omitted from the tax roll. The court also noted that this Court's decision in *Korash* expressly differentiates between situations where property is under-valued, and situations where an improvement is completely omitted, quoting the following language from *Korash*, wherein this Court explained the flaw in the lower court's reasoning:

> If it Were only for the purpose of an increase in the valuation of the total property then we would agree with the chancellor, for it has been consistently so held. It will be seen however that in these prior cases

> the increase has been an attempted increase in Amount only (after an assessment of the improvement for a total lesser Amount) and not instances where the entire improvement was skipped and failed to be noted at all for taxation because of error or oversight as in the present case.

Id. at 529 (quoting *Korash*, 263 So. 2d at 580-81). The Second District also quoted the following language from *Korash*, noting that "the [Supreme Court of Florida] takes pains to distinguish between property that has not been assessed at all and property that has been assessed but undervalued due to an error:

> We must keep in mind the distinction between changes and "miscalculations" by the assessor which "up" the amount previously assessed after tax roll certification, and the situation here where there has been no billing at all on the improvement (or it could be a separate, "overlooked" parcel of land) which has been completely excluded from the tax roll."

Id. (quoting *Korash*, 263 So. 2d at 581). The Second District thus concluded that Ms. DeFrances's Property, which had already been assessed, albeit at a reduced valuation, did not "escape taxation," within the meaning of section 193.092, Florida Statutes, and thus there was no legal authority for the Property Appraiser's back assessment.

SUMMARY OF ARGUMENT

This Court does not have conflict jurisdiction because the Opinion of the Second District is consistent with prior rulings of this Court, including *Korash v. Mills*, 263 So. 2d 579 (Fla. 1972), which have held that, under section 193.092, Florida Statutes, back assessments are only authorized when property has escaped taxation in a prior tax year, as opposed to when the property is only mistakenly under-valued in the prior tax year. The Opinion does not expressly and directly conflict with decisions of any other district courts, as the decisions cited by the Property Appraiser are either factually distinguishable or involved the application of a different statute.

The Opinion could, in theory, affect other county property appraisers who made similar errors in their assessments. However, to the extent that this gives rise to jurisdiction, the Court should decline to review the Second District's Opinion because the Opinion is consistent with the language of section 193.092, and the prior decisions of this Court.

ARGUMENT

I. THE OPINION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH DECISIONS OF THE FLORIDA SUPREME COURT OR OTHER DISTRICT COURTS OF APPEAL.

Pursuant to Article 5, section 3 of the Florida Constitution, this Court may review any decision of a district court of appeal that "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." This Court does not have jurisdiction under this provision because the Second District's Opinion is consistent with the decisions of this Court, and did not expressly and directly conflict with decisions of any other district courts of appeal.

A. The Opinion is consistent with this Court's decision in *Korash v. Mills*.

The Second District's Opinion was consistent with the ruling of this Court in *Korash v. Mills*, 263 So. 3d 579 (Fla. 1972). While this Court upheld the back assessment in the *Korash* case, that case involved the property appraiser's accidental omission of an entire improvement (a motel). *Id.* at 580. In contrast, in the instant case, all of the Property was assessed in 2014, but at a lower value due to a clerical error regarding the size of the land. Thus, *Korash* was factually distinguishable. Where the allegedly conflicting cases are factually

distinguishable, this Court does not have jurisdiction. *See Department of Revenue v. Johnston*, 442 So. 2d 950, 951-52 (Fla. 1983).

Moreover, as discussed in the Second District's Opinion, the *Korash* case drew a clear distinction between the treatment of errors that result in property being entirely omitted from the tax roll and errors that merely result in an under-valuation of property that was included on the tax roll. *Id.* at 580-81. The *Korash* court held that, under section 193.092, the omission of an improvement could be considered a partial escape from taxation, so as to justify a back assessment. *See id.* However, the Court indicated that, had the error only resulted in an under-valuation, the Court would have agreed with the trial court's decision to void the back assessment. *See id.* at 580. Thus, the Second District's Opinion in the instant case, which involved an under-valuation due to an error in the size of the property, was consistent with this Court's ruling in *Korash*, and thus there is no conflict which would create jurisdiction.

B. The Second District's departure from its prior holding in *McNeil Barcelona Assocs., Ltd. v. Daniel* does not confer jurisdiction on this Court.

Article 5, section 3 of the Florida Constitution only confers jurisdiction on this Court where the decision below conflicts with the decision of this Court or *another* district court of appeal. An opinion that conflicts with a prior decision of the same district court of appeal does not confer jurisdiction on this Court, as the

later decision would simply overrule the prior decision. *See Little v. State*, 206 So. 2d 9, 10 (Fla. 1968) (holding that conflicting decisions within the same district court of appeal do not confer jurisdiction on the Supreme Court). Thus, in this case, to the extent that the Second District's Opinion varied from statements made in prior cases, such as *McNeil Barcelona Associates, Ltd. v. Daniel*, 486 So. 2d 628 (Fla. 2d DCA 1986), the instant case simply overruled those prior decisions.

C. The Opinion does not expressly and directly conflict with the decisions of the First District in *Straughn v. Thompson* or the Third District in *Robbins v. First Nat'l Bank*.

The Opinion is distinguishable from the First District's decision in *Straughn v. Thompson,* 354 So. 2d 948 (Fla. 1st DCA 1978) because the *Straughn* case involved the application of section 197.056, Florida Statutes, which has since been repealed, while the instant case involved the interpretation and application of section 193.092(1), Florida Statutes. Thus, the Opinion does not conflict with the *Straughn* case.

In *Robbins v. First National Bank of South Miami*, 651 So. 2d 184, the Third District reached a contrary result, based in part on its reliance on the Second District's decision in *McNeil Barcelona*, which has now been overruled. However, the facts in *Robbins*, which involved a clerical error in the entry of the final assessed value were somewhat different than the facts in the instant case, which

involved an error in the size of the property. Thus, the cases are not necessarily in direct conflict.

II. WHILE THE OPINION COULD AFFECT THE STATE'S PROPERTY APPRAISERS, THIS COURT SHOULD DECLINE REVIEW, AS THE OPINION IS CONSISTENT WITH THE LANGUAGE OF THE STATUTE AND PRIOR DECISIONS OF THIS COURT.

Pursuant to Article 5, section 3 of the Florida Constitution, this Court may review any decision of a district court of appeal that expressly affects a class of constitutional or state officers. The Petitioner is a constitutional officer and, in theory, the Opinion could affect other Property Appraisers who make similar errors in their assessments. However, if applied that broadly, this Court would arguably have discretionary jurisdiction over all property tax cases in which an appellate court renders a decision, and it seems unlikely that this provision was intended to be construed so broadly. Regardless, the Court should decline to review this case, as the Second District's Opinion was completely in line with previous decisions of this Court, as discussed *supra*.

CONCLUSION

WHEREFORE, Respondent Susan K. DeFrances respectfully requests that this Court decline to review the Opinion of the Second District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to J. Geoffrey Pflugner at jpflugner@icardmerrill.com and dmartin@icardmerrill.com, Jason A. Lessinger at jlessinger@icardmerrill.com, thashem@icardmerrill.com, and lkarpova@icardmerrill.com, and Anthony Manganiello at amanganiello@icardmerrill.com, thashem@icardmerrill.com, and lkarpova@icardmerrill.com, Bora S. Kayan at bkayan@scgov.net and lcroft@scgov.net, and Robert P. Elson at robert.elson@myfloridalegal.com, jon.annette@myfloridalegal.com, and lisa.ryder@myfloridalegal.com on this 3rd day of June 2019.

JOHNSON LEGAL OF FLORIDA, P.L.
2937 Bee Ridge Rd. Suite 1
P.O. Box 20998
Sarasota, FL 34276
Phone: (941) 926-1155
Fax: (941) 926-1160
sjohnson@johnsonlegalfl.com
Attorney for Respondent Susan K. DeFrances

/s/ Sherri L. Johnson
SHERRI L. JOHNSON
Florida Bar No. 0134775

CERTIFICATE OF COMPLIANCE

Counsel for Respondent Susan K. DeFrances certifies that Appellant's Initial Brief is typed in 14 point (proportionately spaced) Times New Roman font.

JOHNSON LEGAL OF FLORIDA, P.L.
2937 Bee Ridge Rd. Suite 1
P.O. Box 20998
Sarasota, FL 34276
Phone: (941) 926-1155
Fax: (941) 926-1160
sjohnson@johnsonlegalfl.com
Attorney for Appellant Susan K. DeFrances

/s/ Sherri L. Johnson
SHERRI L. JOHNSON
Florida Bar No. 0134775