NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

WEST VILLAGES IMPROVEMENT DISTRICT, an independent special district of the State of Florida, Petitioner, v. NORTH PORT ROAD AND DRAINAGE DISTRICT, a dependent special district of the State of Florida, Respondent.	)	Case No. 2D09-2221

Opinion filed May 28, 2010.

Petition for Writ of Certiorari to the Circuit Court for Sarasota County; Charles E. Williams, Judge.

Margaret E. Wood of Caldwell Pacetti Edwards Schoech & Viator, LLP, West Palm Beach, for Petitioner.

Maggie D. Mooney-Portale and Terry E. Lewis of Lewis, Longman, & Walker, P.A., Bradenton, and Robert K. Robinson and Jackson C. Kracht of Nelson Hesse, L.L.P., Sarasota, for Respondent.

MORRIS, Judge.

In this second-tier certiorari proceeding, West Villages Improvement District seeks to quash the circuit court's order which upheld non-ad valorem special assessments imposed by the North Port Road and Drainage District (NPRDD) upon real property owned by West Villages. We conclude that the circuit court departed from the essential requirements of law by failing to apply the principle espoused in Blake v. City of Tampa, 156 So. 97 (Fla. 1934), and therefore, we grant certiorari.

I. Background

West Villages is an independent special district of the State of Florida, located in Sarasota County. NPRDD is a municipal dependent special district wholly contained within the city of North Port. West Villages owns nine parcels of real property located within the city of North Port upon which NPRDD imposed the non-ad valorem assessments.

In mid-2008, NPRDD amended its enabling ordinance to provide that NPRDD would levy non-ad valorem assessments against real property owned by governmental entities. NPRDD then published a notice of public hearing to address the adoption of the non-ad valorem assessment roll for the 2008-2009 fiscal year. Thereafter, West Villages received notices of the proposed assessments for each of the nine parcels in question. West Villages timely filed written objections to the proposed assessments arguing, in relevant part, that there was no explicit or necessarily implied legislative authorization for NPRDD to impose the non-ad valorem assessments upon

any property owned by West Villages, as such property constituted public property.[1]

At the public hearing, West Villages objected not only verbally but also in writing to the proposed assessments, raising the same arguments which it previously made. Despite West Villages' objections, NPRDD passed a resolution which established the non-ad valorem assessment rates and which adopted the proposed non-ad valorem assessment roll.

Thereafter, West Villages filed appeals to address the imposition of the non-ad valorem assessments for each of the nine parcels. Again, West Villages asserted there was no legal basis for NPRDD to impose the non-ad valorem assessments upon the parcels in question. On October 17, 2008, the district director for NPRDD issued a letter to West Villages denying the appeals.

On November 14, 2008, West Villages filed its petition for writ of certiorari in the circuit court. In its order denying West Villages' petition, the circuit court cited City of Boca Raton v. State, 595 So. 2d 25 (Fla. 1992), and determined, in relevant part, that "[a] dependent special district . . . has the authority to levy non-ad valorem assessments on specially benefited properties pursuant to both their home rule authority and statutory authority." It is this conclusion which we have determined warrants certiorari relief.

II. Analysis

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[1]West Villages also challenged the imposition of the non-ad valorem assessments on the bases that: (1) the parcels in question were exempt because they constituted common elements within residential subdivisions; (2) the parcels would not receive any benefits from the services provided by the NPRDD; and (3) NPRDD failed to comply with section 197.3632, Florida Statutes (2008), when it provided notice of the proposed assessments. However, because we have determined that the circuit court departed from the essential requirements of law by failing to apply Blake, these additional bases need not be addressed.

"[C]ertiorari should not be used to grant a second appeal but, instead, is limited to those instances in which the lower court did not afford procedural due process or departed from the essential requirements of the law." Housing Auth. of Tampa v. Burton, 874 So. 2d 6, 8 (Fla. 2d DCA 2004).

> The departure from the essential requirements of the law necessary for the issuance of a writ of certiorari is something more than a simple legal error. There must be a violation of a clearly established principle of law resulting in a miscarriage of justice. Ivey v. Allstate Ins. Co., 774 So. 2d 679, 682 (Fla. 2000). A failure to observe "the essential requirements of law" has been held synonymous with a failure to apply "the correct law." [Haines City Cmty. Dev. v.] Heggs, 658 So. 2d [523,] 530 [(Fla. 1995)]. The district courts of appeal "should not be as concerned with the mere existence of legal error as much as with the seriousness of the error." Id. at 528 (quoting Combs v. State, 436 So. 2d 93, 95 (Fla. 1983)). In the context of certiorari review of a circuit court's decision sitting in its appellate capacity, certiorari relief may be granted when the circuit court's legal error in applying the incorrect law is sufficiently egregious or fundamental. Bottcher v. Walsh, 834 So. 2d 183, 184-85 (Fla. 2d DCA 2002).

Id.

West Villages contends that pursuant to Blake, NPRDD could not lawfully impose the non-ad valorem assessments without statutory authority and that the circuit court therefore departed from the essential requirements of law by failing to apply Blake and grant certiorari relief to West Villages.

In Blake, the city of Tampa sought to foreclose a special assessment lien against a special tax school district in Hillsborough County. 156 So. at 98. The school district's motion to dismiss the complaint was denied. Id. The Florida Supreme Court was ultimately asked to determine whether property acquired and used for public school purposes could be sold to pay a special assessment. Id. The court determined that it

could not. Id. at 100. However, in reaching that decision, the court explained how special assessments could be validly applied to public property:

> [I]t is recognized by the weight of authority in the United States that with the exception of property of the general government, such as may be used for a custom house, post office, or other public building, all other public property is assessable if so provided by legislation, for it is unquestionably competent for the lawmaking power to authorize lands of the state, or public property belonging either to municipal corporations or to other public quasi corporations, or to political subdivisions, to be subjected to special assessments. But public property will not be deemed to be so included unless by special enactment or necessary implication.

Id. at 99 (emphasis added). This discussion in Blake leads this court to conclude that legislative authorization—whether express or necessarily implied—is required before a special assessment can be imposed upon public property.

However, NPRDD maintains that the City of Boca Raton case recognized that legislative authorization is no longer required for the imposition of special assessments by municipal districts. The circuit court was apparently persuaded by this argument as it cited City of Boca Raton in denying certiorari relief below.

In that case, the Florida Supreme Court was asked to determine whether the city of Boca Raton could lawfully impose special assessments in order to fund improvement bonds without having been given a specific grant of authority from the legislature. 595 So. 2d at 26. In finding that the city of Boca Raton could lawfully impose the special assessments, the Florida Supreme Court recited the history of municipal powers, specifically recognizing that under the 1885 version of the Florida Constitution, municipal powers were dependent upon specific grants of authority by general or special act. Id. at 27. The court went on to describe how municipalities were

afforded broad home rule powers when the constitution was amended in 1968 and again in the Municipal Home Rule Powers Act of 1973. Id. at 27-28. Thus, according to the court, municipalities can "now exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law." Id. at 28.

Our interpretation of the holding in City of Boca Raton is that municipalities' broad home rule powers encompass the ability to *generally* impose special assessments even absent specific legislative authority. Those general powers do not, however, permit municipalities to impose special assessments on public property in violation of the principle espoused in Blake. We find it significant that the City of Boca Raton case did not even mention the Blake decision, much less explicitly overrule it. And it is well settled that the supreme court does not overrule itself by implication. See Puryear v. State, 810 So. 2d 901, 905 (Fla. 2002). We also note that the City of Boca Raton case did not separately address whether public property would be subject to special assessments in the absence of specific legislative authority. We thus believe that the special exception for public property described in Blake survived not only the constitutional amendment in 1968, but also the enactment of the Municipal Home Rule Powers Act.

We find support for our decision in City of Gainesville v. State, Department of Transportation, 778 So. 2d 519 (Fla. 1st DCA 2001). In that case, the First District acknowledged that "legislative intent to sanction special assessments on state property must 'clearly appear [] from the statute.' " Id. at 522 (alteration in original) (quoting Edwards v. City of Ocala, 50 So. 421, 422 (Fla. 1909)). We recognize that City of Gainesville is limited in application because there the city of Gainesville did not argue

that state property was subject to special assessment. Yet we find it noteworthy that the exception for public property was still being recognized nine years after City of Boca Raton was decided.

Further supporting our decision is the fact that upon review of the City of Gainesville case, the Florida Supreme Court commented that: "As a state agency, . . . DOT would be exempt from special assessments absent a statute specially authorizing, either explicitly or 'by necessary implication,' special assessments on state property." City of Gainesville v. State, 863 So. 2d 138, 143 n.3 (Fla. 2003). We interpret this comment to mean that in relation to the imposition of special assessments, the exception for public property is still alive and well according to the Florida Supreme Court.[2]

NPRDD argues that Remington Community Development District v. Education Foundation of Osceola, 941 So. 2d 15 (Fla. 5th DCA 2006), supports its position that it may impose the non-ad valorem assessments, even without express or necessarily implied legislative authority. In Remington, the Remington Community Development District challenged a summary judgment which had been entered in favor of the Education Foundation of Osceola (the charter school). Id. at 15. In granting summary judgment, the trial court determined that the charter school was exempt from paying special assessments levied by Remington because of the charter school's statutory status as a public school. Id. at 16.

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[2]The Florida Attorney General's Office agrees with our conclusion. See Op. Att'y Gen. Fla. 90-85 (1990) (opining that "[s]tate-owned lands are subject to special assessment by local government only when such liability is clearly provided by statute" and that "in the absence of a statute expressly so providing, state-owned land is not subject to such assessment").

We hold that the circuit court departed from the essential requirements of the law by failing to apply Blake. We therefore grant certiorari and quash the order under review. We also certify the following question as one of great public importance, pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v):

> MAY A MUNICIPAL DEPENDENT SPECIAL DISTRICT, PURSUANT TO MUNICIPAL HOME RULE POWER, IMPOSE A NON-AD VALOREM SPECIAL ASSESSMENT UPON REAL PROPERTY OWNED BY A STATE GOVERNMENTAL ENTITY, IN THE ABSENCE OF EXPRESS OR NECESSARILY IMPLIED LEGISLATIVE AUTHORITY?
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> Certiorari granted, conflict certified, and question certified.

ALTENBERND and CRENSHAW, JJ., Concur.