

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DEPARTMENT OF REVENUE,)
)
Appellant,)
)
v.)
)
TERI ANN BELL, BOB HENRIQUEZ, as)
the Hillsborough County Property)
Appraiser, and DOUG BELDEN, as the)
Hillsborough County Tax Collector,)
)
Appellees.)
_____)

Case No. 2D18-3134

Opinion filed February 19, 2020.

Appeal from the Circuit Court for
Hillsborough County; Richard A. Nielsen,
Judge.

Ashley Moody, Attorney General,
Tallahassee, and Timothy E. Dennis,
Chief Assistant Attorney General,
Tallahassee, for Appellant.

Adam R. Alae, Lawrence J. Dougherty,
and Christopher L. Griffin of Foley &
Lardner LLP, Tampa, for Appellee Teri
Ann Bell.

No Appearance for Remaining Appellees.

CASANUEVA, Judge.

This appeal presents the issue of whether section 196.081(4), Florida Statutes (2013), enacted to implement article VII, section 6(f)(1), of the Florida Constitution, is constitutional. The trial court granted final summary judgment in favor of the plaintiff, Teri Ann Bell, concluding that the permanent residency requirement set forth in section 196.081(4) is invalid and unenforceable because that "substantive requirement" materially limited the class of persons eligible for the benefit provided by the Florida Constitution. We agree and therefore affirm the final summary judgment.

I. FACTS

The parties agree upon the material facts. Ms. Bell is an un-remarried widow who owns and resides on real property located in Hillsborough County, Florida. She was married to a member of the United States Army who was killed in action in Iraq in March of 2007.

In 2013, Ms. Bell filed her application to receive the ad valorem tax relief provided for in article VII, section 6(f)(1), of the Florida Constitution and implemented by section 196.081(4). Her application for the tax exemption was denied by the Hillsborough County Property Appraiser solely on the basis that Ms. Bell's husband was not a Florida resident as of January 1, 2007, the year he was killed in action, as required by the language of the implementing statute. After administrative appeals provided no relief, Ms. Bell commenced the instant action.

Relevant Provisions

The focus of this appeal is the interplay between a constitutional provision, article VII, section 6(f)(1), and a legislative enactment intended to implement the

constitutional provision, section 196.081(4). First, in 2012, the citizens of this State voted to add a provision to the Florida Constitution, article VII, section 6(f)(1), which provides:

(f) By general law and subject to conditions and limitations specified therein, the Legislature may provide ad valorem tax relief equal to the total amount or a portion of the ad valorem tax otherwise owed on homestead property to:

(1) The surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces.

The Florida Legislature then amended section 196.081 in an effort to implement the new constitutional provision. See ch. 2012-54, Laws of Fla. Section 196.081 provides, in pertinent part:

(4) Any real estate that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran who died from service-connected causes while on active duty is exempt from taxation if the veteran was a permanent resident of this state on January 1 of the year in which the veteran died.

In this case, we consider whether section 196.081(4) violates "the express pronouncements of [the supreme] court that '[e]xpress or implied provisions of the Constitution cannot be altered, contracted or enlarged by legislative enactments.' " Sparkman v. State, 58 So. 2d 431, 432 (Fla. 1952) (quoting State v. Butler, 69 So. 771, 777 (Fla. 1915)).

II. DISCUSSION

Because the issue before this court is one of constitutional interpretation and application, our review of the circuit court's constitutional determination is de novo. See Zingale v. Powell, 885 So. 2d 277, 280 (Fla. 2004). "[T]he polestar of constitutional construction is voter intent. 'We are obligated to give effect to [the] language [of a Constitutional amendment] according to its meaning and what the people must have understood it to mean when they approved it.' " Benjamin v. Tandem Healthcare, Inc., 998 So. 2d 566, 570 (Fla. 2008) (second and third alterations in original) (citation omitted) (quoting City of St. Petersburg v. Briley, Wild & Assocs., Inc., 239 So. 2d 817, 822 (Fla. 1970)).¹ And "[w]here the language of the Constitution 'is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written,' as the 'constitutional language must be allowed to "speak for itself." ' " Israel v. Desantis, 269 So. 3d 491, 495 (Fla. 2019) (quoting Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n, 489 So. 2d 1118, 1119 (Fla. 1986)); see also Pleus v. Crist, 14 So. 3d 941, 944 (Fla. 2009) ("If that language is clear, unambiguous, and addresses the matter in issue, then it must be enforced as written." (quoting Lawnwood Med. Ctr., Inc. v. Seeger, 990 So. 2d 503, 511 (Fla. 2008))). Thus, we begin our analysis with the plain language of the applicable constitutional provision, article VII, section 6(f)(1), of the Florida Constitution. See Israel, 269 So. 3d at 495; see also Benjamin, 998 So. 2d at 570 ("In

¹Among the truths declared by our founders "to be self-evident" is the Lockean theory that a government's powers are derived "from the consent of the governed." Declaration of Independence, para. 2 (U.S. 1776). Here, the governed are the people of the State of Florida.

interpreting a constitutional amendment, we begin with the amendment's plain language"); Oliva v. Fla. Wildlife Fed'n, Inc., 281 So. 3d 531, 537 (Fla. 1st DCA 2019).

Article VII, Section 6(f)(1)

The plain language of article VII, section 6(f), grants the legislature the authority and power pursuant to "general law and subject to conditions and limitations specified therein" to "provide ad valorem tax relief equal to the total amount or a portion of the ad valorem tax otherwise owed on homestead property." Subsection (1) of article VII, section 6(f), identifies the class of individuals who may receive the tax relief as follows: "The surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces."

We conclude and hold that the plain text of the constitutional provision is clear and that it unambiguously identifies the relevant class of beneficiaries. The language of article VII, section 6(f)(1), speaks for itself and provides that, to receive the benefit, the following must be established:

1. the applicant is a surviving spouse;
2. the applicant's deceased spouse was a member of the United States Armed Forces; and
3. the decedent spouse died from service-connected causes while on active duty as a member of the United States Armed Forces.

The provision's plain text grants the legislature the authority to enact legislation to address the matter of the amount of ad valorem tax relief to be afforded the surviving

spouse,² and the legislature is also "permitted to enact laws regulating 'the manner' of establishing the right to the" tax relief. Garcia v. Andonie, 101 So. 3d 339, 345 (Fla. 2012); see also Sparkman, 58 So. 2d at 432.

In light of this unambiguous language, we have no need to employ the canons of construction. See Endsley v. Broward County, 189 So. 3d 938, 941 (Fla. 4th DCA 2016). We simply consider whether the legislative enactment intended to implement this constitutional provision is within the authority granted to the legislature, or whether the statute impermissibly alters, contracts, or enlarges the constitutional provision. See Sparkman, 58 So. 2d at 432.

Section 196.081(4)

For the narrow issue presented in this appeal, the pertinent statutory language is the permanent residency requirement. Specifically, the critical statutory language contains the following requirements:

1. the deceased veteran was a permanent resident of the State of Florida; and
2. the veteran's residency status existed on January 1 of the year of the veteran's death.

See § 196.081(4). To resolve the dispute at issue in this case, the statute's residency requirements must be measured against the constitutional provision.

Measurement

The class of beneficiaries established by the plain text of article VII, section 6(f)(1), is the surviving spouse of a veteran who died from service-connected

²We are not called upon to decide in this matter if the term "a portion" of the ad valorem tax relief must be an amount greater than zero, that is to say, no tax relief.

causes while on active duty. The text of the constitutional provision does not limit this benefit to surviving spouses whose spouse was a Florida resident on January 1 of the year of death. Clearly, however, the statutory language of section 196.081(4) does contain such a limit. The practical operation and effect of the statutory provision is to substantively limit and narrow the class of individuals eligible for the tax relief under the plain language of the constitutional provision.

Our supreme court confronted a similar provision in Garcia, 101 So. 3d at 344-45. There, the court held that the statutory provision limiting the constitutional class eligible to receive a benefit was invalid and unenforceable. Id. at 345. The court noted: "We have held that although the Legislature is permitted to enact laws regulating 'the manner' of establishing the right to the constitutional homestead tax exemption, it cannot substantively alter or materially limit the class of individuals entitled to the exemption under the plain language of the constitution." Id.

Here, we conclude that the transgression is the same. While the language of article VII, section (6)(f), grants the legislature authority to enact legislation to implement the manner of establishing the right to, and the amount of, the tax relief, the legislature cannot substantively alter or materially limit the class of individuals eligible for the exemption under the plain language of the constitution. See Garcia, 101 So. 3d at 345. ("Because the plain language of article VII, section 6(a), of the Florida Constitution permits an owner of Florida property to obtain the exemption based on the act of maintaining the permanent residence of his or her natural or legal dependents on the property—irrespective of the owner's citizenship or place of residence, requirements that were removed from the Constitution—the additional 'and who resides thereon'

requirement imposed by section 196.031(1) substantively limits and narrows the class of property owners and taxpayers eligible for the ad valorem tax exemption under the plain language of the Florida Constitution."'). The class of persons eligible under the statute is in conflict with the class eligible under the plain language of the constitutional provision, and thus the statutory provision is invalid and unenforceable.

The people of this state said that, to be eligible for this benefit, the recipient must be the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces. It is undisputed that Ms. Bell meets the requirements set forth in the constitutional provision, and the legislature was without authority to divest her of that benefit by narrowing the class of individuals eligible for the tax relief.

III. CONCLUSION

Having determined that section 196.081(4) has substantively and materially limited the class of individuals eligible for tax relief as set forth in article VII, section(6)(f)(1), we hold that the statutory provision is invalid and unenforceable, and we affirm the final summary judgment.

Affirmed.

NORTHCUTT and BADALAMENTI, JJ., Concur.