

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

SALLY A. MCQUISTON

Plaintiff,

Case No.: 2013CA017685XXXXMB AN

vs.

GARY R. NIKOLITS, as Property Appraiser  
of Palm Beach County, MARSHALL STRANBURG  
as Executive Director of the Florida Department of Revenue  
and ANNE GANNON as the Tax Collector of Palm Beach County

Defendants.

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**AMENDED COMPLAINT**

Plaintiff, SALLY A. MCQUISTON, by and through undersigned counsel, sues Defendants, GARY R. NIKOLITS, as Property Appraiser of Palm Beach County, MARSHALL STRANBURG as Executive Director of the Florida Department of Revenue, ANNE GANNON as the Tax Collector of Palm Beach County and states:

1. Plaintiff, SALLY A. MCQUISTON is an individual who owns property located in Palm Beach County, Florida.
2. Defendant GARY R. NIKOLITS is the property appraiser for Palm Beach County.
3. Defendant MARSHALL STRANBURG is the executive director of the Florida Department of Revenue.
4. Defendant ANNE GANNON is the tax collector for Palm Beach County.
5. This is an action for declaratory relief concerning the denial of a homestead exemption on property located in Palm Beach County.
6. All conditions precedent to the bringing of this action have been performed or have been excused.

**FACTUAL ALLEGATIONS**

7. Sally and Keith McQuiston applied for a homestead exemption for the property located at 1440 NE 4<sup>th</sup> Ct., Boca Raton, Fl 33432 in 1966. In 1982 Keith McQuiston passed away.

8. Debbie McQuiston Sherman, Sally McQuiston's daughter, has lived at the property continually from 1966 to the present.

9. In 1988 Ralph D'Auria married Sally McQuiston.

10. An Antenuptial Agreement was entered into between Ralph D'Auria and Sally McQuiston on August 5, 1988 which states that the others property shall remain their sole and separate property. Section 8 of this Agreement specifically addresses the separate homestead properties and clearly states that Plaintiff has no homestead right in Ralph D'Auria's property:

**HOMESTEAD.** Each party releases any claim, demand, right or interest that the party may acquire because of the marriage in any real property of the other because of the homestead property provisions of the Florida Constitution or any Florida statute concerning the property as homestead.

11. Although Sally McQuiston has primarily resided at Ralph D'Auria's Coral Springs property since the marriage she has continued to maintain the Boca Raton property as the permanent residence of her daughter Debbie and her children who have been dependent upon her for this support.

12. Ralph D'Auria is the sole owner of his property in Coral Springs and Sally McQuiston is the sole owner of her property in Boca Raton. Neither of them contributes to the expenses and maintenance for the others property. Each of them has released any interest or rights under homestead property provisions in the others property.

13. Throughout the years Debbie has had problems with drug addiction and as a result of this situation as well as her related felony arrest record and conviction has not been able to maintain employment to a degree that would provide her with a place to live without the assistance of Sally McQuiston. Sally McQuiston maintains her property as the permanent residence for Debbie and her children. The Plaintiff does not own any other property or claim any other homestead besides the property in question.

14. Sally McQuiston was denied her homestead exemption for 2013 for the Boca Raton property and tax liens were assessed for the years 2003-2012 based upon the fact that she currently resides at the Coral Springs property owned by Ralph D'Auria. (Exhibit A) On or about December 6, 2013 a Notice of Tax Lien for unpaid taxes, penalties and interest was recorded against the property by the Palm Beach County Property Appraiser. In accordance with Fl. Stat. 194.171 (3)

Plaintiff has previously filed the tax receipt for her good faith payment of the 2013 taxes. (Exhibit B).

#### LAW

15. Florida Stat. §196.031 (1)(a) "Exemption of homesteads" provides that every person who, on January 1, has the legal title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, **or the permanent residence of another or others legally or naturally dependent on such person**, is entitled to an exemption..... (emphasis added)

16. The Supreme Court of Florida has recently stated that, "Where a property owner claims a homestead tax exemption based on the owners act of maintaining the permanent residence of his or her dependents on the property, **the owner need not also prove that he or she is residing on the property**, permanently or otherwise, because the two textual means by which entitlement to the exemption may be established under the constitution are stated independently and as alternatives to one another. (emphasis added). See art. VII, § 6(a), Fla. Const.; see also § 196.031 (6)." Garcia v Andonie, 101 So.3d 339, 344 (Fla. 2012). The plain language of article VII, § 6(a), permits every owner of Florida real property to apply for and receive ad valorem tax relief where it is sufficiently demonstrated that the owner has maintained on that property the permanent residence of another legally or naturally dependent on the owner. Garcia v Andonie at 351. The Palm Beach County Property Appraiser's denial of Plaintiff's homestead exemption based solely upon the fact that she does not reside at the property was legally incorrect.

17. If it is determined by the property appraiser that separate permanent residences and separate "family units" have been established by the husband and wife, and they are otherwise qualified, each may be granted homestead exemption from ad valorem taxation under Article VII, Section 6, 1968 State Constitution. Wells v Haldeos, 48 So.3d 85, 87 (Fla.2<sup>nd</sup> DCA 2010).

18. In determining whether a person is entitled to a homestead exemption a property appraiser is required to follow rule 12D-7.007 (7): "The Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and such rules and regulations shall be followed by the property appraisers, tax collectors, clerks of the circuit courts, and value adjustment boards."§195.027 (1), Fla. Stat. (2009); Wells v Haldeos, supra at 87. The Florida Department of Revenue has specifically enacted a rule instructing property appraisers that

married couples may be considered separate "family units" in certain circumstances. Florida Administrative Code Rule 12D-7.007 (7).

19. The Supreme Court of Florida has previously stated that even though a married woman was living congenially with her husband, nonetheless, it is legally possible for "a married woman, in good faith, to claim a permanent home in Florida property even though her husband is legally domiciled elsewhere." A showing of necessity to establish the separate abode is not essential to a showing of good faith under Article X, Section 7. Judd v Schooley, 158 So.2d 514, 517 (Fla. 1963). Also, a spouse may validly waive his or her homestead rights through a prenuptial agreement. Hartwell v Blasingame, 564 So.2d 543, (Fla. 2<sup>nd</sup> DCA 1990).

20. The words "naturally dependent" have been interpreted as persons related by blood to the owner of the property who otherwise qualify with the requirements set forth by the Supreme Court of Florida in the case of Duval v. Hunt, 34 Fla. 85, 15 So. 876 (Fla. 1894). A person is naturally dependent when they are subject to a disability of a physical or mental incapacity coupled with a lack of property means which makes them dependent in fact on another for support. Willens v Garcia, 53 So.3d 1113, 1118 (Fla. 3d DCA 2011)

21. The Americans with Disabilities Act (ADA) provides protections to former drug addicts because addiction may be considered as a substantially limiting impairment. Qualified individuals under the ADA include those who have successfully rehabilitated or are in the process of rehabilitating and are no longer engaged in the illegal use of drugs. 42 U.S.C. § 12114(b) (1994).

22. Under the ADA a former drug addiction is acknowledged as being a substantially limiting impairment. See EEOC Technical Assistance Manual on the ADA § 8.5. In our situation one of the consequences of drug addiction for this family has been that Debbie has been dependent upon Sally McQuiston.

#### COUNT I

#### DECLARATORY RELIEF

#### PLAINTIFF IS ENTITLED TO HOMESTEAD EXEMPTION PURSUANT TO THE PLAIN LANGUAGE OF THE FLORIDA CONSTITUTION

23. Paragraphs 1 through 22 are realleged and incorporated by reference as if fully set forth herein.

24. This is an action for a declaratory judgment.

25. This Court has jurisdiction pursuant to Section 86.011 Fla. Stat.

26. Plaintiff is requesting the Court to render a declaratory judgment on her rights to the ad valorem tax exemption on her Palm Beach County property and overturning the denial of the exemption.

27. If a declaratory judgment is not granted Plaintiff will suffer a loss.

28. Defendants may have or claim an interest which would be affected by the declaration.

29. Historically, the purpose of the homestead provision was to protect the family, to "provide it a refuge from the stresses and strains of misfortune." Collins v Collins, 7 So.2d 443,444 (1942); City Nat'l Bank v Tescher, 578 So.2d 701, 702 (Fla. 1991); Law v Law, 738 So.2d 522, 524 (Fla. 4<sup>th</sup> DCA 1999). As a matter of public policy, the purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune ..... Law v Law, supra.

30. In this case, Sally McQuiston has at all times continued to maintain the Boca Raton property as the permanent residence of her daughter Debbie and her children who have been dependent upon her for this support. During this time Debbie has had problems with drug addiction and as a result of this situation as well as her related arrest record and conviction has not been able to maintain employment to a degree that would provide her with a place to live without the assistance of Sally McQuiston.

31. The Florida Constitution clearly allows a married couple to establish separate permanent residences and separate "family units" while continuing to qualify for a homestead exemption. Also, the Supreme Court of Florida has specifically stated that the plain language of article VII, § 6(a), permits every owner of Florida real property to apply for and receive ad valorem tax relief where it is sufficiently demonstrated that the owner has maintained on that property the permanent residence of another legally or naturally dependent on the owner. Garcia v Andonie, supra at 351.

32. The legitimate homestead exemption on the subject property has been continuous and has never been abandoned by the owner or her family. The public policy purpose of the exemption has been promoted by the maintenance of this legitimate "family unit" which in turn has assisted the homeowner in protecting her family from difficult circumstances which would have been far more difficult without the exemption.

WHEREFORE, Plaintiff requests a declaratory judgment declaring her rights to the ad valorem tax exemption on her Palm Beach County property and overturning the denial of the exemption, removing the lien from her property, and for costs and attorneys fees.

## COUNT II

### DECLARATORY RELIEF

#### FL. STATUTES §196.031 (1) (a) AND §196.011 (9) (a) AS APPLIED VIOLATE

#### PLAINTIFF'S CONSTITUTIONAL DUE PROCESS RIGHTS

33. Paragraphs I through 32 are realleged and incorporated by reference as if fully set forth herein.

34. Florida Stat. §196.031 (1) (a) "Exemption of homesteads" provides that every person who, on January 1, has the legal title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent on such person, is entitled to an exemption..... (emphasis added)

35. Plaintiff is a person who has legal title to property which she in good faith has made the permanent residence of her natural dependent daughter in accordance with the plain meaning of Florida Stat. §196.031 (1) (a).

36. In spite of the plain meaning of the statutory language, the Palm Beach County Property Appraiser has recorded a lien against Plaintiff's property alleging that she has "illegally or improperly received the exemption" as provided in Fl. Stat. 196.011 (9) (a).

37. Plaintiff has been subjected to substantial back taxes, penalties and interest as a result of the lien on her property.

38. Any statute employing terms or words so vague that men and women of common intelligence must guess as to its meaning and differ as to its application violates the first essential of due process of law.

39. Subjecting Plaintiff to the penalties under Fl. Stat. 196.011 (9) (a) in light of the facts of this case and her good faith reliance on her rights to claim the homestead exemption on her property is basically unfair as the unclear construction of the language in Florida Stat. §196.031 (1) (a) required her to act at her own peril, thus denying her due process under Article I, Section IX of the Florida Constitution and the Fourteenth Amendment of the United States Constitution.

WHEREFORE, Plaintiff requests a declaratory judgment declaring Florida Stat. §196.031 (1) (a) and 196.011 (9) (a) unconstitutional as applied to her, declaring her rights to the ad valorem tax exemption on her Palm Beach County property and overturning the denial of the exemption, removing the lien from her property, and for costs and attorneys fees.

### COUNT III

#### DECLARATORY RELIEF

#### FL. STATUTES §196.031 (1) (a) AND §196.011 (9) (a) AS APPLIED VIOLATE

#### PLAINTIFF'S CONSTITUTIONAL RIGHT TO EQUAL PROTECTION

40. Paragraphs 1 through 37 are realleged and incorporated by reference as if fully set forth herein.

41. The arbitrary and discriminatory application of the law in this case which denies Plaintiff her homestead exemption for property where she has made the permanent residence of her natural dependent daughter constitutes disparate treatment from other homeowners granted the exemption for property which they have made a permanent residence for their natural dependents.

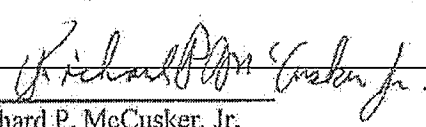
42. The disparate tax treatment of Plaintiff bears no rational basis to any legitimate state interest, does not promote the public policy purpose of the exemption and is unconstitutional under the equal protection clause of article I, section 2 of the Florida Constitution and the Fourteenth Amendment of the United States Constitution.

WHEREFORE, Plaintiff requests a declaratory judgment declaring Florida Stat. §196.031 (1) (a) and 196.011 (9) (a) unconstitutional as applied to her, declaring her rights to the ad valorem tax exemption on her Palm Beach County property and overturning the denial of the exemption, removing the lien from her property, and for costs and attorneys fees.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by e-service to Jeffrey M. Clyman, Esq., [jclyman@pbegov.org](mailto:jclyman@pbegov.org), c/o Property Appraisers Office, 301 North Olive Avenue, 5<sup>th</sup> Floor, West Palm Beach, Florida 33401 this 27<sup>th</sup> day of January, 2014.

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