

No. 34423 - Stone Brooke Limited Partnership v. Sisinni, *et al.*

No. 34424 - Heathermoor Limited Partnership v. Alongi, *et al.*

and

No. 34863 - Pine Haven Limited Partnership, *et al.*v. Adkins, *et al.*

FILED
December 22,
2009

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Benjamin, Chief Justice, concurring:

As I did earlier this year in *In re: Tax Assessment Against Purple Turtle, LLC, et al. v. Gooden*, 223 W.Va. 755, 679 S.E.2d 587 (2009) (No. 34276) (C.J. Benjamin, dissenting), I again write separately to underscore my belief that the disparity regarding the proof burdens of the State and of its citizens in property tax assessment cases in West Virginia is constitutionally impermissible. Herein, as stated in Syllabus Points 5 and 6, the majority again establishes the taxpayer’s burden in tax assessment challenges to be by “clear and convincing” proof – a standard far more difficult to meet than the mere “preponderancy” burden which the majority establishes for the State. See *In re Tax Assessment of Foster Foundation’s Woodlands Retirement Community*, 223 W.Va. 14, 672 S.E.2d 150 (2008) (J. Benjamin, dissenting); See also, *Mountain America, LLC v. Huffman*, ___ W.Va. ___, ___ S.E.2d ___ (2009) (No. 34426) (2009 WL 4110951) , at footnote 18.

In this case, however, I conclude that even applying the lesser preponderancy burden to these taxpayers would not cause a different result from that set forth in the majority opinion. Therefore, because I believe that these taxpayers did not meet their burden of

proving that the assessments resulting from the appraisals at issue were wrong by a preponderance of the evidence, I believe the majority's conclusion to be correct and I concur in its result.