

IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO.: 1D19-1772

DOAH NO.: 18-4474

LOUIS DEL FAVERO ORCHIDS, INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF HEALTH and
BILL'S NURSERY, INC.,

Appellees.

_____ /

NOTICE OF FILING

Appellee Bill's Nursery, Inc. ("Appellee" or "Bill's Nursery"), hereby gives notice of filing their Response in Opposition to Appellant's Motion to Consolidate and Expedite Appeals dated June 12, 2019 in this Court's Case Number 1D19-1784.

A copy of the Response is attached hereto.

Dated June 12, 2019

Respectfully submitted,

s/ Velvel (Devin) Freedman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the First DCA Clerk of Court and served by E-Mail on counsel listed below this 12th day of June, 2019.

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IN THE FIRST DISTRICT COURT OF APPEAL
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CASE NO.: 1D19-1784

DOAH NO.: 18-4474

LOUIS DEL FAVERO ORCHIDS, INC.,

Appellant,

v.

FLORIDA DEPARTMENT OF HEALTH and
BILL'S NURSERY, INC.,

Appellees.

**RESPONSE IN OPPOSITION TO APPELLANT'S
MOTION TO CONSOLIDATE AND EXPEDITE APPEALS**

Appellee Bill's Nursey, Inc. ("Appellee" or "Bill's Nursery"), pursuant to Florida Rule of Appellate Procedure 9.300, files its Response in Opposition to Appellant Louis Del Favero Orchids, Inc.'s ("Appellant" or "Del Favero") Motion to Consolidate and Expedite Appeals, and states:

I. INTRODUCTION

Del Favero moves to expedite and consolidate for all purposes the above-styled appeal with the appeals pending before this Court in *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Dewar Nurseries, Inc.*, Case No.

1D19-1777; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and DeLeon's Bromeliads, Inc.*, Case No. 1D19-1778; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Hart's Plant Nursery, Inc.*, Case No. 1D19-1780; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Perkins Nursery, Inc.*, Case No. 1D19-1781; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Redland Nursery, Inc.*, Case No. 1D19-1782; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Tree King-Tree Farm, Inc.*, Case No. 1D19-1783; and *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Spring Oak Greenhouses, Inc.*, Case No. 1D19-1772.

Bill's Nursery instituted an administrative action seeking a medical marijuana treatment center license pursuant to section 381.986(8)(a), Florida Statutes, in the lower tribunal case styled *Bill's Nursery v. Department of Health*, DOAH Case No. 18-4474. Del Favero moved to intervene in the administrative proceedings below, but its motion was not granted, and Del Favero was not a party or intervenor in the proceeding below. The administrative proceeding resulted in a Final Order, issued on April 19, 2019, licensing Bill's Nursey as a medical marijuana treatment center.

Although it was not a party or intervenor in the proceeding below, Del Favero filed a Notice of Appeal of the Final Order on May 15, 2019. Del Favero now belatedly

seeks to consolidate the instant appeal with the eight other appeals referenced above. As explained in greater detail below, Del Favero’s Motion should be denied.¹

II. MEMORANDUM OF LAW

A. Del Favero’s request to consolidate is procedurally improper and should be denied.

The Florida Rules of Appellate Procedure do not contain an express provision authorizing the consolidation of appellate proceedings. However, this Court has set forth certain standards that govern the consolidation of appellate proceedings—which Del Favero has not complied with.

First, in violation of Bill’s Nursery’s right to due process and notice, Del Favero did not file the Motion in *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Bill's Nursery, Inc.*, Case No. 1D19-1784. *See J.M.B. v. State*, 776 So. 2d 353, 354 n.1 (Fla. 1st DCA 2001) (“When a party seeks consolidation of cases, separate motions should be filed in each case involved.”).

Second, while Del Favero’s purported basis for consolidation was apparent at the time it filed its Notice of Appeal, it delayed seeking consolidation for approximately two (2) weeks from the date it filed its Notice of Appeal. *See generally In re Genova*, 472 So. 2d 478, 480-81 (Fla. 4th DCA 1985) (recognizing

¹ Contemporaneous with this filing, and because Del Favero failed to separately file its Motion in this matter as required, Bill’s Nursery is also filing a copy of its Response in the case styled *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Spring Oak Greenhouses, Inc.*, Case No. 1D19-1772.

that a party should file its motion to consolidate as soon as the need becomes apparent). By unreasonably delaying in seeking consolidation, some of the appeals that Del Favero seeks to consolidate are now at different procedural postures, which renders consolidation difficult and unworkable. *See* Appellee’s Mot. to Dismiss, *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Hart’s Plant Nursery, Inc.*, Case No. 19-1780 (June 10, 2019); Appellee’s Mot. to Dismiss, *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Redland Nursery, Inc.*, Case No. 19-1782 (June 10, 2019).²

Nevertheless, to the extent the Court deems some form of consolidation to be warranted, Bill’s Nursery respectfully requests that the *Hart’s* and *Redland* appeals be excluded from consolidation, and that consolidation for the remaining cases only be ordered “for purposes of the record” and to “travel together.” *J.M.B.*, 776 So. 2d at 354. This approach would serve the interests of judicial economy while permitting Bill’s Nursery, and the other appellees, to maintain their respective attorney-client privileges, work product protection, and the autonomy to brief the issues as they best see fit.

² On June 12, 2019, this Court entered Orders to Show Cause as to why the motions to dismiss in both the *Hart’s* and *Redlands* appeals should not be granted. This is further evidence that the varying procedural postures of these appeals makes consolidation inappropriate.

B. Del Favero's belated request to expedite this appeal should be denied.

Del Favero's request to expedite this appeal is untimely and should be denied. While the Motion is largely silent as to the expedited relief Del Favero seeks, it appears to be an improper attempt to truncate Bill's Nursery's time to file an Answer Brief, while reserving itself the full allotment of time to file its own Initial Brief. The Court should not countenance such gamesmanship.

This is not a case where "justice of the cause" requires an expedited briefing schedule. *Muniz v. Muniz*, 789 So. 2d 370, 373 n.2 (Fla. 3d DCA 2001) (Sorondo, J., concurring). The *Muniz* case was cited at page 6 of Del Favero's Motion. Del Favero conspicuously failed to cite the remainder of footnote 2 which establishes the untimeliness of its request to expedite. *Muniz*, 789 So. 2d at 373 n.2 ("Such a motion [to expedite appeal] is reasonably expected to be filed *immediately after the filing of the notice of appeal.*") (emphasis added). Here, Del Favero's request to expedite was filed *approximately two (2) weeks* after its Notice of Appeal and only *after* the expiration of a considerable portion of the allotted time to file its Initial Brief. *Id.* (noting it would be "grossly unfair" for a party to use its fully amounted briefing time, "then 'expedite' (pronounced 'squeeze'), [its] opponent to file an immediate response."). Given its own lack of urgency, Del Favero's belated request to expedite is not well-taken.

Moreover, the cases cited by Del Favero as support for why the instant appeal

should be expedited are wholly inapposite. Notably, Del Favero's appeal seeks relief that is purely personal and readily distinguishable from the facts of *Schrader v. Florida Keys Aqueduct Auth.*, 840 So. 2d 1050 (Fla. 2003) which involved a challenge to local "authority to enact stricter regulations regarding the treatment of wastewater in order to protect a vital natural resource of the state: the nearshore waters of the Florida Keys." *Id.* at 1056 (recognizing the law at issue involved a "natural resource . . . of statewide importance, as evidenced by not only the designation of the area as one of critical state concern but also by its direct relationship with industries of statewide importance such as tourism and seafood."). Del Favero cannot truly contend that its desire to be registered as a MMTC necessitates the same expedited treatment as an action to preserve a vital natural resource.

Del Favero's reliance on *Perez v. Perez*, 769 So. 2d 389 (Fla. 3d DCA 1999) is similarly misplaced as those proceedings were expedited due to a custody battle involving a minor child, and one parent's attempt to relocate the minor child from Florida to Utah. *Id.* at 392. The facts of *Perez* are wholly distinguishable and provide no support for Del Favero's contention that the instant matter should be expedited.

Indeed, appellate proceedings that have been expedited generally share a common theme of involving a matter affecting a large portion of the public, or other exigent circumstances. *See, e.g., Keys Citizens for Responsible Gov't, Inc. v. Fla.*

Keys Aqueduct Auth., 795 So. 2d 940, 944 (Fla. 2001) (motion to expedite appeal and waive oral argument granted in public bond validation appeal where \$4 million in federal funds were at risk); *Moore v. Smith-Snagg*, 793 So. 2d 1000, 1002 (Fla. 5th DCA 2001) (appeal expedited where appellants were “elderly and in poor health.”); *Shaw v. Shaw*, 696 So. 2d 391, 392 & n.1 (Fla. 4th DCA 1997) (appeal expedited to review *ex parte* order allowing parent to relocate minor child out of state); *Carter v. State*, 512 So. 2d 1079 (Fla. 1st DCA 1987) (appeal expedited where appellant risked serving his entire sentence of incarceration before appeal was resolved). None of those exigent circumstances are present here.

Accordingly, for the foregoing reasons, Bill’s Nursery respectfully requests that the Court deny Del Favero’s Motion to Consolidate and Expedite Appeals.

Dated June 12, 2019

Respectfully submitted,

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