

IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA
Case No. 1D19-1772

LOUIS DEL FAVERO ORCHIDS, INC.,

Appellant,

vs.

FLORIDA DEPARTMENT OF HEALTH and
SPRING OAKS GREENHOUSES, INC.,

Appellees,

_____ /

**PERKINS NURSERY, INC.’S RESPONSE TO APPELLANT’S MOTION
TO CONSOLIDATE AND EXPEDITE APPEALS**

Perkins Nursery, Inc. (“Perkins”)¹ responds in opposition to Appellant, Louis Del Favero Orchids, Inc.’s (“Del Favero”), motion 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. 19-1777; *Louis Del Favero Orchids, Inc. v. Florida*

¹ Perkins is not a party to the above-styled appeal, but is an appellee in *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Perkins Nursery, Inc.*, Case No. 19-1781, which Appellant seeks to consolidate with the above-styled appeal. However, Del Favero did not file its Motion to Consolidate and Expedite Appeals in Case No. 19-1781, or any of the above referenced cases, as required. *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.”). Nevertheless, Perkins files this response in Case No. 19-1772, in addition to Case No. 19-1781, in an abundance of caution to preserve its rights.

RECEIVED, 06/12/2019 03:29:29 PM, Clerk, First District Court of Appeal

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. 19-1780; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Perkins Nursery, Inc.*, Case No. 19-1781; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Redland Nursery, Inc.*, Case No. 19-1782; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Tree King-Tree Farm, Inc.*, Case No. 19-1783; and *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Bill's Nursery, Inc.*, Case No. 19-1784 (collectively the “Eight Appeals”).

I. Procedural Background.

Perkins instituted an administrative action seeking a medical marijuana treatment center license pursuant to section 381.986(8)(a), Florida Statutes. *Perkins Nursery v. Department of Health*, DOAH Case No. 18-4473. Del Favero moved to intervene in the administrative proceedings below, but its motion was not granted and Del Favero was not a party to the proceeding below. The administrative proceeding resulted in a Final Order, issued on April 19, 2019, licensing Perkins as a medical marijuana treatment center. Although it was not a party to the proceeding below, Del Favero filed a notice of appeal of the Final Order on May 15, 2019, currently pending before this Court as *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Perkins Nursery, Inc.*, Case No. 19-1781.

II. The Consolidation Requested by Appellant is Not Appropriate.

Del Favero seeks an order from this Court consolidating eight separate appeals, each involving a different Department of Health Final Order, and each involving at least one different party. Consolidation of the Eight Appeals referenced by Appellant is not appropriate here, as the Eight Appeals are not in the same procedural posture.

First, it should be noted that Del Favero was not a party to the administrative proceedings in *any* of the Eight Appeals. Second, while Del Favero did attempt to intervene in six of the administrative proceedings below, including the Perkins proceeding, Appellant did not even attempt to intervene in the administrative proceedings below that gave rise to *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Hart's Plant Nursery, Inc.*, Case No. 19-1780 (“Hart’s appeal”), and *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Redland Nursery, Inc.*, Case No. 19-1782 (“Redland appeal”). Separate final orders were entered in each of the eight administrative proceedings that resulted in the Eight Appeals, including the Hart’s and Redland proceedings. Accordingly, it is clear that Appellant was not a party to either the Hart’s or Redland administrative proceedings below and Del Favero clearly had no legal right to appeal either proceeding. Indeed motions to dismiss have been filed in both the Hart’s and Redland appeals on this

very basis, and this Court has issued Orders to Show Cause to Del Favero as to why the motions should not be granted.²

Because the Hart's and Redland appeals are in a different procedural posture than the Perkins appeal, consolidation of such cases with the Perkins appeal is inappropriate. If the Court is inclined to consolidate the remaining six appeals – *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Dewar Nurseries, Inc.*, Case No. 19-1777; *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 Perkins Nursery, Inc.*, Case No. 19-1781; *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Tree King-Tree Farm, Inc.*, Case No. 19-1783; and *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Bill's Nursery, Inc.*, Case No. 19-1784, Perkins respectfully suggests that consolidation of these six appeals should be ordered solely “for purposes of the record” or “travelling together” with the same panel. *See J.M.B.*, 776 So. 2d at 354 (describing the ways in which appellate courts may consolidate appeals).

² Perkins likewise intends to move to dismiss the appeal filed by Del Favero in *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Perkins Nursery, Inc.*, Case No. 19-1781 on the basis that Del Favero lacked standing to file the appeal, and lacks standing to prosecute the appeal.

III. Expedited Treatment is Not Warranted.

In addition, Del Favero has not presented a sufficient basis for expediting the Eight Appeals, instead asserting only that “the justice of the cause” requires expediting of the appeal. Justice does not, however, require expediting the Eight Appeals, and there exists no urgency requiring expediting in this case. First, the Department of Health has already issued the Medical Marijuana Treatment Center licenses at issue, and it is unclear what Del Favero will gain by the referenced appeals being expedited, or what imminent harm will be avoided. Second, although it claims resolution of the Eight Appeals is urgent, Del Favero inexplicably delayed filing its request to expedite until almost two weeks after it filed its notices of appeal. As the Third District noted, “a motion [to expedite appeal] is reasonably expected to be filed *immediately after the filing of the notice of appeal.*” *Muniz v. Muniz*, 789 So. 2d 370, 373 n.2 (Fla. 3d DCA 2001). Third, Del Favero waited a full 26 days from the date the final orders were entered to file its notices of appeal. Given its own lack of urgency, any suggestion at this point by Del Favero that resolution of the Eight Appeals is urgent is disingenuous.

CONCLUSION

For the foregoing reasons, Perkins respectfully requests that this Court deny Appellant’s motion to consolidate and expedite the Eight Appeals. If the Court is inclined to consolidate the six appeals that are in a consistent procedural posture,

Perkins requests that such cases be consolidated solely for purposes of the record and to travel together. Additionally, Perkins requests that Del Favero's request to expedite the appeals be denied, as no appropriate reason to expedite such appeals has been presented.

Respectfully submitted this 12th day of June, 2019,

/s/ JAMES A. MCKEE

James A. McKee, Fla. Bar No. 638218

Primary: jmckee@foley.com

Secondary: mlong@foley.com

Benjamin J. Grossman, Fla. Bar No. 92426

Primary: bjgrossman@foley.com

Secondary: cforjet@foley.com

Nicholas J.P. Meros, Fla. Bar No. 120270

Primary: nmeros@foley.com

Secondary: bhurn@foley.com

Foley & Lardner LLP

106 E. College Avenue, Suite 900

Tallahassee, FL 32301

Telephone: 850-222-6100

Facsimile: 850-561-6475

Counsel for Perkins Nursery, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 12, 2019, a copy of the foregoing was furnished via e-mail to the following:

Devin (Velvel) Freedman
Bois Schiller Flexner LLP
100 SE 2nd Street, Suite 2800
Miami, Florida 33131
vfreedman@bsflfp.com
nbermond@bsflfp.com
Counsel for Bill's Nursery, Inc.

Gary V. Perko
D. Kent Safriet
Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
garyp@hgslaw.com
kents@hgslaw.com
Counsel for Tree King-Tree Farm, Inc.

John Lockwood
Thomas J. Morton
Devon Nunneley
The Lockwood Law Firm
106 East College Avenue, Suite 810
Tallahassee, Florida 32301
John@lockwoodlawfirm.com
TJ@lockwoodlawfirm.com
devon@lockwoodlawfirm.com
*Counsel for Redland Nursery, Inc. and
Spring Oaks Greenhouses, Inc.*

Seann M. Frazier
Marc Ito
Kristen Bond
Parker, Hudson, Rainer, & Dobbs, LLP
215 South Monroe Street, Suite 750
Tallahassee, Florida 32301
(850) 681-0191
smf@phrd.com
mito@phrd.com
kbond@phrd.com
*Counsel for Louis Del Favero Orchids,
Inc.*

David C. Ashburn
Lorence Jon Bielby
M. Hope Keating
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, Florida 32301
AshburnD@gtlaw.com
KeatingM@gtlaw.com
BielbyL@gtlaw.com
Counsel for Hart's Plant Nursery, Inc.

Daniel R. Russell
William Hall
Dean Mead
215 South Monroe Street, Suite 130
Tallahassee, Florida 32301
drussell@deanmead.com
whall@deanmead.com
Counsel for Dewar Nurseries, Inc.

Eduardo S. Lombard
Radey Law Firm
301 S. Bronough Street, Suite 200
Tallahassee, Florida 32301
Elombard@radeylaw.com
Counsel for the Department of Health

Louise R. Wilhite-St. Laurent
4052 Bald Cypress Way Bin A02
Tallahassee, FL 32399
louise.stlaurent@flhealth.gov
Counsel for the Department of Health

/s/ James A. McKee