

IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

LOUIS DEL FAVERO ORCHIDS, INC.,

Appellant,

v.

Case No. 1D19-1772
Lt. Nos. DOAH 18-4471
DOH 18-0172

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

Appellees.

_____ /

**REDLAND NURSERY, INC.’S RESPONSE IN OPPOSITION TO
APPELLANT’S MOTION TO CONSOLIDATE
AND EXPEDITE APPEALS**

Pursuant to Florida Rule of Appellate Procedure 9.300, Redland Nursery, Inc. (“Redland”)¹, files this response to Louis Del Favero Orchids, Inc.’s (“Del Favero”), Motion to Consolidate and Expedite Appeals, and states the following:

I. Del Favero’s request to consolidate the eight appeals should be denied.

On May 28, 2019, Del Favero filed a Motion to Consolidate and Expedite Appeals, seeking to consolidate the above-styled appeal with seven other appeals²

_____ ¹ Redland is not a party to the above-styled appeal. Redland is an appellee in case number 1D19-1782, which Del Favero seeks to consolidate with the above-styled appeal and six other appeals. Del Favero only filed its Motion to Consolidate and Expedite Appeals in this case. Thus, Redland is filing its response in this case.

² The cases Appellant seeks to consolidate are: *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 Dewar*

RECEIVED, 06/12/2019 04:40:32 PM, Clerk, First District Court of Appeal

pending before the court. The Florida Rules of Appellate Procedure do not contain an express provision authorizing consolidation of appellate proceedings.

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 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 that a party should file its motion to consolidate as soon as the need becomes apparent). By unreasonably delaying its request to consolidate, 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 Redland Nursery, Inc.*, Case No. 1D19-1782 (June 10, 2019); *Appellee's Mot. to Dismiss, Louis Del Favero Orchids, Inc. v. Florida Department of Health and Hart's Plant Nursery, Inc.*, Case No. 1D19-1780 (June 10, 2019).

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 Tree King-Tree Farm, Inc.*, Case No. 1D19-1783; and *Louis Del Favero Orchids, Inc. v. Florida Department of Health and Bill's Nursery, Inc.*, Case No. 1D19-1784.

Additionally, Del Favero was not a named party in the Redland or Hart's Plant Nursery, Inc. ("Hart's") administrative proceedings before the Department, nor did it ever seek to intervene. Pursuant to Florida law, Del Favero does not have standing to invoke this Court's jurisdiction to review the Final Order in these matters. *See Sierra Club, Inc. v. State of Fla.*, Case No. 1D08-4881 (Fla. 1st DCA Sept 9, 2009) (granting motion to dismiss appeal for lack of standing where appellant had failed to achieve party status in the administrative action below); *White v. Fla. Dep't of Env'tl. Protection*, 1D18-3282 (Fla. 1st DCA Jan 14, 2019) (same). Consolidation of *Redland* (Case No. 1D19-1782) and *Hart's* (Case No. 1D19-1780), with the remaining appeals is inappropriate because Del Favero failed to intervene in Redland's and Hart's administrative proceedings and has no legal right to appeal either proceeding. Thus, Del Favero's request to consolidate *Redland* with the seven other appeals should be denied.

II. Del Favero's request to expedite this appeal is not warranted.

Del Favero has not provided any legitimate basis for expediting the appeals and its request should be denied. This case is not such that "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). *Muniz* was cited on 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 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.”).

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 *Shrader v. Florida Keys Aqueduct Auth.*, 840 So.2d 1050 (Fla. 2003). *Shrader* 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 water 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 the industries of statewide importance such as tourism and seafood.”). Del Favero cannot truly contend that its desire to be registered as an 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. 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 assertion that the instant matter should be expedited.

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 these exigent circumstances are present here.

Many of the cases that involve expedited appeals are those which involve the placement and best interest of children – such as dependency or termination of

parental rights cases. Additional cases are criminal cases that involve time sensitive matters surrounding sentencing.

Del Favero has not explained why expedited treatment of this case is warranted. In fact, Del Favero's own actions suggest that expedited review is not warranted. Del Favero did not file its notice of appeal until 25 days after the final order was issued and it did not request expedited review until 14 days after filing its notice of appeal. Del Favero allowed nearly 40 days to pass after the issuance of the final order before deciding that this case is urgent. This suggest that Del Favero's request to expedite the appeal is less about the "justice of the cause" and more about gamesmanship.

WHEREFORE, based on the foregoing reasons, Redland respectfully requests that this Court enter an order denying Del Favero's request to consolidate and expedite the appeals.

/s/ Thomas J. Morton
John M. Lockwood
Florida Bar No. 28056
Thomas J. Morton
Florida Bar No. 13771
Devon Nunneley
Florida Bar No. 46234
Angela Chiang
Florida Bar No. 121392
THE LOCKWOOD LAW FIRM
106 East College Avenue, Suite 810
Tallahassee, Florida 32301
Tel: 850.727.5009
Fax: 850.270.2610

john@lockwoodlawfirm.com
tj@lockwoodlawfirm.com
devon@lockwoodlawfirm.com
angela@lockwoodlawfirm.com

Counsel for Redland Nursery, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via the Florida Courts e-Filing Portal system and emailed to the following on this 12th day of June 2019:

<p>Seann M. Frazier Marc Ito Kristen Bond 215 South Monroe Street, Suite 750 Tallahassee Florida 32301 (850) 681-0191 sfrazier@phrd.com mito@phrd.com kbond@phrd.com <i>Counsel for Appellant Louis Del Favero Orchids, Inc.</i></p> <p>Daniel R. Russell William Hall Dean Mead 215 South Monroe Street, Suite 130 Tallahassee, Florida 32301 drussell@deanmead.com whall@deanmead.com <i>Counsel for Dewar Nurseries, Inc.</i></p>	<p>Eduardo S. Lombard Radey Law Firm 301 S. Bronough Street, Suite 200 Tallahassee, Florida 32301 elombard@radeylaw.com <i>Counsel for Department of Health</i></p> <p>Louise R. Wilhite-St. Laurent 4052 Bald Cypress Way Bin A02 Tallahassee, FL 32399 louise.stlaurent@flhealth.gov <i>Counsel for Department of Health</i></p> <p>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 <i>Counsel for Hart's Plant Nursery, Inc.</i></p>
--	--

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.

James A. McKee
Foley & Lardner LLP
106 E. College Avenue, Suite 900
Tallahassee, FL 32301
jmckee@foley.com
mlong@foley.com
*Counsel for Perkins Nursery, Inc. &
DeLeon's Bromeliads, Inc.*

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

/s/ Thomas J. Morton
Thomas J. Morton