

**IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA**

**Case No. 1D19-1781**

Lower Tribunal Case Nos.: DOAH 18-4473; DOH 18-0174

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**LOUIS DEL FAVERO ORCHIDS, INC.,**

Appellant,

v.

**FLORIDA DEPARTMENT OF HEALTH,  
and PERKINS NURSERY, INC.,**

Appellees.

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**APPELLEE FLORIDA DEPARTMENT OF HEALTH'S  
RESPONSE TO APPELLANT'S MOTION TO CONSOLIDATE**

Appellee Florida Department of Health opposes, in part, Appellant's *Motion to Consolidate and Expedite Appeals*. In short, the Department opposes the consolidation of all eight cases on appeal; however, the Department takes no position on whether the cases should be expedited.

**Procedural Background**

Eight parties (Spring Oaks Greenhouses, Inc. (Spring Oaks); Redland Nursery, Inc. (Redland); Dewar Nurseries, Inc. (Dewar); Tree King-Tree Farm, Inc. (Tree King); Perkins Nursery, Inc. (Perkins); Bill's Nursery, Inc. (Bill's); DeLeon's Bromeliads, Inc. (DeLeon's); and Hart's Plant Nursery, Inc. (Hart's)) each filed an

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application to become a Dispensing Organization pursuant to section 381.986, Florida Statutes (2015). Each party's application was denied.

Pursuant to a change in the law in 2017, six of the parties (Spring Oaks, Dewar, Tree King, Perkins, Bill's, and DeLeon) requested licensure under the new law. The requests were denied by the Department between July 13, 2018, and July 31, 2018. Each of these six parties filed petitions for an administrative hearing in August of 2018, challenging the denial of licensure. Those six petitions were forwarded to the Division of Administrative Hearings (DOAH) for a formal hearing.<sup>1</sup>

Appellant Louis Del Favero Orchids, Inc. (Del Favero) filed a motion to intervene in each of the cases. The Administrative Law Judge (ALJ) deferred ruling on Del Favero's motion to intervene, and not long after, a Leon County circuit court judge issued a temporary injunction, enjoining the Department from issuing licenses under the statute that the circuit court judge found to be unconstitutional. *See Florigrown v. Department of Health*, Case No. 2017-CA-2549; *Florida Department of Health v. Florigrown*, Case No. 1D18-4471. As a result of that temporary injunction, the ALJ relinquished jurisdiction, and the petitions were returned to the Department for further proceedings.

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<sup>1</sup> The DOAH case numbers are as follows: Spring Oaks, 18-4471; Dewar, 18-4463; Tree King, 18-4472; Perkins, 18-4473; Bill's, 18-4474; and DeLeon, 18-4698.

After the ALJ relinquished jurisdiction to the Department, two other entities, Redland and Hart's, also filed requests for licensure under the 2017 law. Those requests were denied. Redland and Hart's then each filed a petition for administrative hearing, contesting the denial of their requests for licensure. The Redland and Hart's petitions were not sent to DOAH, as the ALJ had already relinquished jurisdiction in the other related cases. Del Favero did *not* file a motion to intervene in either the Redland and Hart's proceeding.

The Department then entered into a global settlement with all eight of the applicants/petitioners and issued final orders for each proceeding, accepting the settlement agreement. These final orders are the subject of the eight (8) appeals.<sup>2</sup>

### **Argument**

The appeals of the final orders in Spring Oaks, 1D19-1772; Dewar, 1D19-1777; Tree King, 1D19-1783; Perkins, 1D19-1781; Bill's, 1D19-1784; DeLeon, 1D19-1778 (the Six Appeals) should not be consolidated with the appeals of the final orders in the Redland (1D19-1782) and Hart's (1D19-1780) appeals.

The Department opposes the consolidation because the Redland and Hart's appeals are subject to dismissal, as Del Favero was not a party below. Co-appellees

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<sup>2</sup> The cases have been assigned the following numbers on appeal: Spring Oaks, 1D19-1772; Dewar, 1D19-1777; Tree King, 1D19-1783; Perkins, 1D19-1781; Bill's, 1D19-1784; DeLeon, 1D19-1778; Redland, 1D19-1782; and Hart's, 1D19-1780.

Redland and Hart’s have filed motions to dismiss on that basis. And this Court has issued orders to show cause why those motions should not be granted.

A person who is not a party in the lower tribunal proceeding cannot appeal the lower tribunal’s final order. *See Morrell v. Nat’l Health Investors, Inc.*, 876 So. 2d 580, 580 (Fla. 1st DCA 2004) (“Appellate review is limited to the parties in the lower tribunal.”). In the Redland and Hart’s appeals, Del Favero did not attempt to become a party below and was not a party. The Redland and Hart’s appeals should not be consolidated with the Six Appeals, as the threshold issue of standing will need to be addressed in the Redland and Hart’s appeal before the parties ever reach the merits of the cases.<sup>3</sup> *See McCarty v. Meyers*, 125 So. 3d 333, 336 (Fla. 1st DCA 2013) (“Standing presents ‘a threshold inquiry’ that must be made at the commencement of the case.”) (quoting *Olen Props. Corp. v. Moss*, 981 So. 2d 515, 517 (Fla. 4th DCA 2008)).

### **Conclusion**

The Department requests that this Court deny the Motion to Consolidate. Specifically, the Department requests that the appeals involving Redland (1D19-1782) and Hart’s (1D19-1780) not be consolidated with the Six Appeals (Bills, 1D19-1784; DeLeon, 1D19-1778; Dewar, 1D19-1777; Perkins, 1D19-1781; Springs

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<sup>3</sup> The Department reserves the right to contest Del Favero’s standing in the Six Appeals.

Oaks, 1D19-1772; and Tree King, 1D19-1783). The Department takes no position on expediting the appeals.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on July 2, 2019, this document was filed through the Court's electronic filing system, which shall serve a copy by email to the following counsel of record, constituting compliance with the service requirements of Fla. R. Jud. Admin. 2.516(b)(1) and Fla. R. App. P. 9.420:

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