

IN THE FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

LOUIS DEL FAVERO ORCHIDS, INC.,

Appellant,

v.

Case No. 1D19-1783

FLORIDA DEPARTMENT OF HEALTH  
and TREE KING-TREE FARM, INC.,

Appellees.

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**APPELLEE TREE KING-TREE FARM, INC.’S RESPONSE  
TO APPELLANTS’ MOTION TO CONSOLIDATE  
AND EXPEDITE APPEALS**

Appellee Tree King-Tree Farm, Inc. (“Tree King”), pursuant to Florida Rule of Appellate Procedure 9.300, hereby responds to Appellant Louis Del Favero Orchids, Inc.’s (“Del Favero’s”) motion to consolidate and expedite appeals.

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

Del Favero’s request to consolidate fails to satisfy established standards governing the consolidation of appellate proceedings and, therefore, should be denied. First, Del Favero did not file the Motion in *this* docket in contravention of this Court’s direction in *J.M.B. v. State*, 776 So. 2d 353, 354 n.1 (Fla. 1st DCA 2001), which advised that “[w]hen a party seeks consolidation of cases, separate motions should be filed in each case involved.” Second, while Del Favero’s

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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 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). Nevertheless, to the extent the Court deems some form of consolidation to be warranted, Tree King respectfully requests that consolidation 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 Tree King and the other appellees to brief the issues as they best see fit.

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

Del Favero's request to expedite should be denied as untimely and without basis. This is not a case where "justice of the cause" requires an expedited briefing

schedule. *See Muniz v. Muniz*, 789 So. 2d 370, 373 n.2 (Fla. 3d DCA 2001) (Sorondo, J., concurring). Although Del Favero cited *Muniz* at page 6 its motion, it conspicuously failed to cite the remainder of footnote 2 which states that “[s]uch a motion [to expedite appeal] is reasonably expected to be filed *immediately after the filing of the notice of appeal.*” *Id.* (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. *See d.* (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.”).

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.

Likewise, Del Favero’s citation to the order expediting the appeal in *Fla. Dep’t of Health, Office of Med. Marijuana Use v. Florigrown, LLC*, Case No. 1D18-4471 is unavailing. As this Court is well aware, *Florigrown* involved a circuit court order declaring a state statute unconstitutional, as well as a dispute over the resulting automatic stay pending appeal. Neither of those unusual circumstances are involved in these otherwise unremarkable administrative appeals.

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.

### **CONCLUSION**

For the foregoing reasons, Tree King respectfully requests that the Court deny Del Favero’s Motion to Consolidate and Expedite Appeals.

Respectfully submitted, this 12th day of June, 2019.

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing has been furnished by electronic mail to the following counsel of record on June 12, 2019:

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