

# **Third District Court of Appeal**

**State of Florida, January Term, A.D. 2010**

Opinion filed January 27, 2010.

Not final until disposition of timely filed motion for rehearing.

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No. 3D09-330

Lower Tribunal No. 00-29271

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**Department of Agriculture and Consumer Services,**  
Appellant,

vs.

**Brian P. Patchen, et al.,**  
Appellees.

An appeal from a non-final order from the Circuit Court for Miami-Dade County, David C. Miller, Judge.

Adorno & Yoss, Wesley R. Parsons and Jack R. Reiter, for appellant.

Alters Boldt Brown Rash & Culmo and Robert C. Gilbert; Weiss Serota Helfman Pastoriza Cole & Boniske and Joseph H. Serota, for appellees.

Before WELLS, SHEPHERD, and CORTIÑAS, JJ.

SHEPHERD, J.

In this case, the Florida Department of Agriculture and Consumer Services seeks review of a non-final order granting a stay of an individually filed inverse condemnation action, for the destruction of citrus canker exposed trees, pending a decision of the Fourth District Court of Appeal in a related class action on which it appears the briefing recently has been completed. The Department characterizes the order under review as “in the nature of an injunction” and therefore seeks to invoke the jurisdiction of this Court under section 9.130(a)(3)(B) of the Florida Rules of Appellate Procedure. We treat the appeal as a petition for certiorari but deny the relief sought.<sup>1</sup>

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<sup>1</sup> Although there has been some sentiment expressed by this Court that orders granting or denying a stay of proceedings before the entry of final judgment should be treated as an appeal from a non-final order granting or denying an injunction, see Klein v. Royale Group, Ltd., 524 So. 2d 1061, 1063 (Fla. 3d DCA 1988), the law of this district appears to remain that certiorari is the appropriate procedure by which to seek review of such orders. See Pilevsky v. Morgans Hotel Group Mgmt., LLC, 961 So. 2d 1032, 1033 (Fla. 3d DCA 2007); Transcontinental Realty Corp. v. Ezell, 365 So. 2d 404, 404 (Fla. 3d DCA 1979).