

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

RLI LIVE OAK, LLC,

Appellant,

v.

Case No. 5D11-2329

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT,

Appellee.

Opinion filed July 18, 2014.

Appeal from the Circuit Court
for Osceola County,
Margaret T. Waller, Judge.

Kenneth G. Oertel and M. Christopher
Bryant of Oertel, Fernandez, Bryant &
Atkinson, P.A., Tallahassee, for Appellant.

Jack Chisolm, Deputy General Counsel,
And Teresa L. Mussetto, Chief Appellate
Counsel, Florida Department of
Environmental Protection, Tallahassee,
Amicus Curiae, for Florida Department of
Environmental Protection.

Carolyn S. Ansay, General Counsel, Ruth A.
Holmes and Alison L. Kelly, West Palm
Beach, for Appellee.

ON CERTIFIED QUESTION TO THE FLORIDA SUPREME COURT

PER CURIAM.

We consider this case on remand from the Florida Supreme Court after it
reversed our decision in RLI Live Oak, LLC v. South Florida Water Management

District, 99 So. 3d 560 (Fla. 5th DCA 2012). S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC, 39 Fla. L. Weekly S345 (Fla. May 22, 2014) (holding that when "the Legislature statutorily authorizes a state governmental agency to recover a 'civil penalty' in a 'court of competent jurisdiction' but does not specify the agency's burden of proof, the agency is not required under [Dep't of Banking & Fin. Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996)], to prove the alleged violation by clear and convincing evidence, but rather by a preponderance of the evidence"). Because the trial court correctly applied the preponderance of the evidence standard, we now affirm the trial court's judgment imposing civil penalties.

AFFIRMED.

PALMER, LAWSON, and WALLIS, JJ., concur.