

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

IN THE MATTER OF THE
SUCCESSION OF ELEANOR ANN
GRUCE BORTNICK

NO. 2013 CW 2240

APR 09 2014

In Re: Diane Marie Bortnick Bardwell, applying for
supervisory writs, 19th Judicial District Court,
Parish of East Baton Rouge, No. 90745.

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

WRIT NOT CONSIDERED. Relator has failed to comply with Uniform Rules of Louisiana Courts of Appeal, Rules 4-2 and 4-3. The writ application does not contain the signed notice of intent to file the writ application, in violation of Uniform Rules of Louisiana Courts of Appeal, Rule 4-2, and a return date order signed by the trial court, in violation of Uniform Rules of Louisiana Courts of Appeal, Rule 4-3. Supplementation of this writ application and/or an application for rehearing will not be considered. Rules 4-9 and 2-18.7, Uniform Rules of Louisiana Courts of Appeal. Any future filing on the issues presented in this writ application should include the entire contents of this application, the missing items noted above, and a copy of this ruling. In the event relator elects to file a new application with this Court, the application shall be filed on or before April 25, 2014.

EGD
JMG

Parro, J., dissents and would grant the writ and vacate the district court's November 21, 2013 judgment appointing Jo Ann Lea Whittington as administratrix of the succession. Louisiana Code of Civil Procedure article 3083 governs the district court's appointment of a dative testamentary executor. According to Comment (c) of the Official Revision Comments to Article 3083, under a testament naming alternate executors, the district court is not authorized to appoint a dative testamentary executor unless the person named as executor and all alternates are deceased or disqualified, or have declined the trust. Accordingly, prior to naming a dative testamentary executor, the district court should first determine whether the decedent's last will and testament names an alternate executor and if so, whether the alternate executor is deceased or disqualified, or has declined the trust.

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DEPUTY CLERK OF COURT
FOR THE COURT