**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 0002
CONSOLIDATED WITH
2018 CA 0003

IN THE MATTER OF THE
SUCCESSION OF WAYNE EDMOND BREEN

Judgment Rendered: DEC 13 2018

* * * * * * *

APPEALED FROM THE 22nd JUDICIAL DISTRICT COURT
ST. TAMMANY PARISH, LOUISIANA
DOCKET NUMBER 2015-30176 c/w 2015-12925

HONORABLE SCOTT GARDNER, JUDGE

* * * * * * *

Richard Ducote
Covington, Louisiana

Attorney for Appellant
Kacie Magee Breen

Barbara L. Irwin
Timothy E. Pujol
Gonzales, Louisiana

Attorneys for Appellee
Alyce B. Landry, Independent
Administrator of the Succession
of Wayne E. Breen

**BEFORE: McDONALD, CRAIN, and HOLDRIDGE, JJ.**

Crain, J. concurs and assigns reasons

**McDONALD, J.**

In this appeal, the surviving spouse of a testator challenges a judgment awarding compensation to the former independent administrator of the testator's succession. Recognizing our lack of appellate jurisdiction, we dismiss the appeal.

## FACTUAL AND PROCEDURAL BACKGROUND

Dr. Warren E. Breen died testate on March 1, 2015, survived by his spouse, Kacie Magee Breen; their minor son; five adult children from a previous marriage (Breen adult children); and one adult son from a previous extra-marital relationship. In the highly contentious succession proceeding that followed, the trial court signed a consent order on July 28, 2015, appointing Alyce B. Landry, an attorney and certified public accountant, as independent administrator of Dr. Breen's succession. Mrs. Breen and the Breen adult children agreed to Ms. Landry's appointment, and their attorneys signed an engagement letter acknowledging and agreeing to certain terms of her appointment, including her hourly rate of pay.

In November 2016, Ms. Landry filed a motion for an interim payment of $87,762.86 in independent administrator fees and $30,795.46 in attorney fees, totaling $118,558.32, representing amounts billed through October 2016. Mrs. Breen opposed the motion, contending Ms. Landry's requested compensation was unreasonable. Ms. Landry supplemented her motion multiple times to add additional billing through January 2017. After a hearing, the trial court signed a judgment on March 14, 2017: (1) granting Ms. Landry's motion in part and finding her entitled to $115,675.82 in administrator and attorney fees; and (2) relieving Ms. Landry of her responsibilities as independent administrator, with no mention of an effective date.

Three days later, on March 17, 2017, and on Mrs. Breen's motion, the trial court stayed that part of the March 14th judgment terminating Ms. Landry's appointment, pending completion of an imminent trial in related federal court litigation involving two of Dr. Breen's life insurance policies naming Mrs. Breen as beneficiary. Ms. Landry, representing Dr. Breen's estate, was a party to the federal litigation, wherein she and the Breen adult children opposed Mrs. Breen's receipt of the life insurance proceeds. After the federal trial, the federal district court rendered judgment in late June 2017, in

Mrs. Breen's favor, as claimant to the proceeds of the life insurance policies. *Pruco Life Insurance Company v. Kacie Breen & The Estate of Wayne Edmond Breen*, 289 F.Supp.3d 777, 798-99 (E.D. La. 2017), *aff'd*, 734 F. Appx. 302 (5th Cir. 2018) (per curiam).

In May 2017, Mrs. Breen filed a motion for appeal from the March 14th judgment's administrator/attorney fee award to Ms. Landry. (Notably, the trial court's prior stay of the March 14th judgment did not include a stay of the administrator/attorney fee award.) In August 2017, after the federal court judgment was rendered, Ms. Landry filed a motion in this suit to lift the stay of the March 14th judgment and to dismiss Mrs. Breen's appeal for failure to pay the appeal costs. The trial court held a hearing on the motion, and then on November 13, 2017, signed a judgment: (1) granting Ms. Landry's motion to lift the stay, and terminating her appointment and obligations as independent administrator of Dr. Breen's succession, effective October 26, 2017 (the date of the motion hearing); and (2) denying her motion to dismiss the appeal. The trial court's November 13th judgment made no reference to the March 14th judgment's administrator/attorney fee award.

In her appeal from the March 14th judgment's administrator/attorney fee award to Ms. Landry, Mrs. Breen contends the trial court erred in denying her attorney the opportunity to cross examine Ms. Landry on the reasonableness of her compensation. Because we dismiss this appeal, we do not reach the merits of this argument.

**DISCUSSION**

A judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled. LSA-C.C.P. art. 1841. A judgment may be final or interlocutory. *Id.* A final judgment is one that determines the merits, in whole or in part, and an interlocutory judgment is one that does not determine the merits but only preliminary matters in the course of the action. *Id.* A final judgment is appealable in all causes in which appeals are given by law, and an interlocutory judgment is appealable only when expressly provided by law. LSA-C.C.P. art. 2083.

Ordinarily, the compensation of a succession representative shall be due upon the homologation of her final account. LSA-C.C.P. art. 3351. The court may, however,

allow an administrator or executor an advance upon her compensation at any time during the administration. *Id.* The March 14th judgment from which Mrs. Breen appeals awarded Ms. Landry interim compensation for her services as the independent administrator of Dr. Breen's succession, as authorized by LSA-C.C.P. art. 3351, but the judgment does not state the time period for which the award is made. Considering that the trial court stayed the March 14th judgment during the pendency of the federal litigation, and Ms. Landry continued to represent the Breen estate through October 26, 2017, it appears that Ms. Landry has outstanding fees that have not been paid, and the March 14th judgment does not award her compensation for her full tenure as the Breen succession administrator.[1] Thus, the March 14th judgment's administrator/attorney fee award to Ms. Landry was an advance upon her compensation during the administration of Dr. Breen's estate and constitutes an interlocutory judgment, which is appealable only when expressly provided by law. LSA-C.C.P. arts. 1841 and 2083. We have found no express law, in the succession provisions or otherwise, nor has Mrs. Breen referenced such, that allows an appeal from such an interlocutory judgment. *Generally, see* LSA-C.C.P. art. 1915; *Succession of Jaga*, 16-1291 (La. App. 1 Cir. 9/1/17), 227 So.3d 325, 327-28. Thus, we do not have appellate jurisdiction to review this interlocutory judgment.[2]

Although this court has discretion to convert an appeal to an application for supervisory writs, it may only do so if the appeal would have been timely had it been filed as a supervisory writ application. A party applying to this court for a supervisory writ shall give notice of such intention by requesting a return date from the trial court, which shall not exceed 30 days from the date of the notice of the judgment. *See* Uniform Rules – Courts of Appeal, Rules 4-2 and 4-3. In this case, notice of the March 14th judgment was forwarded to the parties on March 15, 2017, and the motion for appeal was filed on May 19, 2017. Because the appeal was not filed within 30 days of

---

[1] In her appellate brief, Ms. Landry claims the award only covers compensation due to her through January 2017 and that outstanding amounts are owed to her through October 26, 2017, the effective date of her termination as the Breen succession administrator.

[2] As noted, the March 14th judgment also terminated Ms. Landry's appointment as independent administrator of Dr. Breen's estate. Although a judgment removing a succession representative is appealable, Mrs. Breen did not appeal that part of the judgment. *See Succession of LeBouef*, 13-0209 (La. App. 1 Cir. 9/9/14), 153 So.3d 527, 533 *(en banc)*.

the notice of the judgment, the motion for appeal cannot be considered a timely filed application for supervisory writs under Uniform Rules – Courts of Appeal, Rule 4-3. Accordingly, we do not convert the appeal to an application for supervisory writs. *See Succession of Jaga*, 227 So.3d at 327-28.

**CONCLUSION**

This appeal is dismissed for lack of subject matter jurisdiction. The matter is remanded to the trial court for further proceedings. We assess appeal costs to Kacie Magee Breen.

**APPEAL DISMISSED; REMANDED.**

**IN THE MATTER OF THE SUCCESSION OF WAYNE EDMOND BREEN**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NO. 2018 CA 0002 C/W 2018 CA 0003**

**CRAIN, J., concurring.**

I agree the March 14, 2017 judgment, which awarded the administratrix payment of costs and expenses pursuant to her motion for approval of an "interim accounting," cannot be construed to homologate a final account. Therefore, the judgment is interlocutory and not independently appealable. *See* La. Code Civ. Pro. arts. 3337 and 3396.19. The same judgment contained an order terminating the administratrix's appointment, which would constitute a final judgment, the appeal of which would allow the appellant to seek review of adverse interlocutory rulings. *See MACWCP II LLC v. Williams*, 17-0004 (La. App. 1 Cir. 9/15/17), 231 So. 3d 665, 672, *writ denied*, 17-1750 (La. 12/5/17), 231 So. 3d 624; *In re Succession of LeBouef*, 13-0209 (La. App. 1 Cir. 9/9/14), 153 So. 3d 527, 533 (*en banc*). However, the trial court granted a new trial on that issue when it granted the motion to stay then rendered its November 13, 2017 judgment terminating the administratrix's appointment. *See Labarre v. Occidental Chemical Co.*, 17-1370 (La. App. 1 Cir. 6/4/18), 251 So. 3d 1092, 1096 n.5 (regardless of its caption, a pleading filed within the delays applicable to a motion for new trial that requests a substantive modification of the judgment constitutes a motion for new trial). The motion for appeal specifically identifies the interim accounting award made in the March 14, 2017 judgment as the sole judgment appealed. Since no final appealable judgment is before us, I concur in dismissing the appeal.