

SUPREME COURT OF LOUISIANA

NO. 98-C-2675

JOHN T. KILLEEN, JR.

V.

BRYANT JENKINS, DORIS JENKINS PETTIT,
CHARLOTTE TAMMANY INVESTMENTS,
J. STANLEY MIDDLETON, GREG MIDDLETON,
AND MARGIE YATES JENKINS, TESTAMENTARY
EXECUTRIX OF THE SUCCESSION OF BRYANT JENKINS

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF ST. TAMMANY

TRAYLOR, J., dissenting.

I disagree with the majority's finding of an "irreconcilable conflict between La. Code Civ. P. art. 2124 and La. Code Civ. P. art. 3612." Although it admits that two conflicting statutes should be harmonized if possible, the majority opinion ignores the well established rule of statutory interpretation providing that when two statutes deal with the same subject matter, the statute "specifically directed to the matter at issue must prevail as an exception to the statute more general in character." *LeBreton v. Rabito*, 97-2221 (La. 7/8/98), 714 So. 2d 1226, 1229 (citations omitted).

La. Code Civ. P. art. 3612, which is specifically directed to appeals from injunctions, contains clear and unambiguous language providing that an appeal from a preliminary injunction "must be taken and a bond furnished within fifteen days from the date of the order or judgment." That article does not distinguish suspensive from devolutive appeals. Although the legislature may have intended to eliminate the requirement of posting a bond for a devolutive appeal from a preliminary injunction when it later enacted La. Code Civ. P. art. 2124, it is not for this court to second guess that intent when the language of the more specific art. 3612 is clear and unambiguous. La. Civ. Code art. 9.

For these reasons, I respectfully dissent.