

No.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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LONNIE SNELLING,

Petitioner.

v.

JESSE WOODFIN REMODELING (DEFUNCT),  
JESSE WOODFIN-AS OWNER AND  
INDIVIDUALLY (DECEASED), KASHFLO,  
INC-OWNER, JOHN AND JANE DOES, ET AL.,

Respondents.

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On Petition for a Writ of Certiorari to the  
Missouri Court of Appeals, Eastern District

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PETITION FOR WRIT OF CERTIORARI

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Lonnie Snelling  
1518-79<sup>th</sup> Street  
St. Louis, Mo. 63130  
(314) 341-4609  
Petitioner-Pro se

i.

**QUESTIONS PRESENTED FOR REVIEW:**

1. Did the Missouri Court of Appeals, Eastern District acquire subject matter jurisdiction to adjudicate petitioner's interest in his state law torts claims in favor of a dead person?
2. Is a State's Local Court Rule that allows what the Fourteenth Amendment to the United States Constitution prohibits, Constitutional?

# LIST OF PARTIES

All parties to the proceeding in the circuit court whose judgment is the subject of this petition is as follows

## Petitioner:

Lonnie Snelling  
1518-79<sup>th</sup> Street  
St. Louis, Mo. 63130

## Attorney

Pro se

## Respondents:

Jesse Woodfin Remodeling  
(Defunct)

Unserved

Jesse Woodfin-As Owner  
and Individually (Deceased)  
8257 Morganford  
St. Louis, Mo. 63123  
11111444

Unserved

John Doe

Unserved

Jane Doe

Unserved

Kashflo, Inc.-Owner  
1141 Hodiamont Ave.  
St. Louis, Mo. 53112

Robert C. Withington  
Attorney for Respondent  
P.O. Box 50351  
St. Louis, Mo. 63105

## CORPORATE DISCLOSURE STATEMENT

Petitioner is a private individual, thus, no corporate statement is required.

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1. Review is warranted to determine whether the Order of the Missouri Court of Appeals, Eastern District entered on March 28, 2017, is Void as a matter of law?

(a). State appellate court was without jurisdiction to affirm dismissal in favor of dead person!

2. Review is warranted to determine whether the language within Missouri's Local Court Rule 37.1.1 conflicts with decisions of this Court and other Missouri Court of Appeals on the issue of notice by publication?

(a). The State's Local Court Rule 37.1.1. on Its face is contrary to the issue of publication of notice and rights to be heard as held in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), Eastin v. Franklin, 806 S.W. 2d 57, 60 (Mo. App. S.D. 1991); and the Due Process Clause!

(c). State appellate court affirming the dismissal of cause of action, deprived petitioner of Constitutional Protected Property Rights.

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**ORDERS, JUDGMENT AND DECISION BELOW**

The order of the Missouri Supreme Court denying Application for transfer dated August 22, 2017, is unreported but, appears as Appendix A.

The Order of the Missouri Court of Appeals, Eastern District in Snelling v. Jesse Woodfin Remodeling, et al., ED104699, dated March 28, 2017, is reported at 524 S.W. 3d 90; and appears as Appendix B.

The Memorandum Supplementing Order in ED104699, dated March 28, 2017, is unreported but, appears as Appendix C.

The Order of the Missouri Court of Appeals, Eastern District denying Motion for rehearing is reported at 524 S.W. 3d 90; and appears as Appendix E.

The unpublished hand written ORDER/JUDGMENT/ MEMORANDUM of the Circuit Court Judge for Missouri Circuit Court, Twenty Second Judicial Circuit (City of St. Louis) dated 6-24-2016, is unreported but, appears as Appendix F.

## JURISDICTIONAL STATEMENT

The Order of the Missouri Court of Appeals, Eastern District entered March 28, 2017, is reported at 524 S.W. 3d 90, and a copy appears at Appendix B. A timely motion for rehearing, or in the Alternative for transfer to the Missouri Supreme Court was filed on April 10, 2017, and denied on May 16, 2017, a copy appears at Appendix D/E.

The date on which the Missouri Supreme Court denied petitioner's application for transfer was the 22<sup>nd</sup> day of August, 2017, a copy appears at Appendix A.

The jurisdiction of this Court is invoked under Title 28 U.S.C. §1257(a), a copy appears at Appendix G.

On November 30, 2017, on Petitioner's corrected motion for extension of time to file Petition for a Writ of Certiorari, extension was granted, extending time to January 19, 2018, a copy appears at Appendix H.

**CONSTITUTIONAL, STATUTORY PROVISIONS  
AND RULES INVOLVED**

Pursuant to Supreme Court Rule 14(f), the following United States Constitutional Amendment; Missouri Constitution, Statutory Provisions, Missouri Rules of Civil Procedure are quoted in pertinent parts verbatim within this Petition.:

**CONSTITUTIONAL AMENDMENT**

[XIV]

70a

MISSOURI CONSTITUTIONAL ARTICLE 1,

§10

69a

MISSOURI RULES OF CIVIL PROCEDURE

Rule 74.03

72a

TWENTY-SECOND JUDICIAL CIRCUIT COURT  
IN THE CITY OF ST. LOUIS, MISSOURI LOCAL  
COURT RULE

37.1.1 Civil Jury Docket

71a

STATUTORY PROVISIONS

28 U.S.C. §12.57(a)

66a

STATEMENT OF CASE

I. STATUTORY BACKGROUND:

To understand how Counts I, II, III, IV and V of Cause #1522-CC09885 came about, a short procedural history of the prior case #1322-AC03483 is a must since the Missouri Court of Appeals, based a portion of its "Order" thereon!

Petitioner will not restate the entire procedural history of Cause #1322-AC03483, only the essential undisputed facts:

Petitioner first filed his claims in the Twenty-Second Judicial Circuit Court's Associate Division #27 in the City of St. Louis, State of Missouri, in a petition on March 13, 2008, naming as party defendants Jesse Woodfin Remodeling and Jesse Woodfin-as Owner and Individually, John and Jane Does, John and Jane Doe-Minors.

During the hearing on petitioner's Motion to certify cause to the Circuit Court, the associate circuit judge on Jan. 21, 2014, denied petitioner's motion to certify Cause of Action 1322-AC03483 to the circuit court. On the associate circuit judge's own motion. dismissed served named defendants August

Reed, Cecilia Little and Betty Warren.<sup>1</sup> On June 13, 2014, the judge dismissed Cause of Action 1322-AC03483 without prejudice for failure to prosecute (LF-p. #9).

**PROCEEDINGS IN THE CIRCUIT COURT:**

Petitioner refiled his Action on June 12, 2015, pursuant to RSMo. §516.230, naming as defendants, Jesse Woodfin Remodeling, Jesse Woodfin-as Owner and Individually, John and Jane Does, John and Jane Does-Owner. The Action was assigned Cause

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<sup>1</sup> This dismissal of Betty Warren, Cecilia Little and August Reed by the associate circuit judge on Jan. 21, 2014, does not appear on the face of the court's minutes of Cause #1322-AC03483! (LF-p. #5-8).

#1522-CC09885 (LF-p. #10-11). On Sept. 12, 2015, petitioner filed his motion for leave to substitute Kashflo, Inc. and Mohsin Barwa for One of the John Does and grant of thirty (30) days to file First Amended Petition, matter was taken under submission (LF-p. #15). On Sept. 10, 2015, the Honorable Joan L. Moriarty-Circuit Court Judge, granted petitioner's motion to substitute Kashflo, Inc. and Mashsin Bajwa for one of the John Doe defendants named in his petition and leave to file Amended Petition (LF-p. #16).

#### STATEMENT OF FACTS:

On Oct. 13, 2015, petitioner filed his First Amended Petition (LF-p. #17-30), and

attaching Exhibit #3 to the Petition (LF-p. #31). named as party defendants, Jesse Woodfin Remodeling, Jesse Woodfin-as Owner and Individually, & Kashflo, Inc., and John and Jane Does. The Petition contained Six (6) independent claims!

Counts I Through VII was directed toward named defendants Jesse Woodfin Remodeling, and the John Does (LF-p. #19-25); Counts IV and V was directed toward named defendants Kashflo, Inc.-as Owner and individually also, (LF-p. #25-29). On Oct. 13, 2015, petitioner requested issue of Summons for "Kashflo, Inc. to be served upon Mohsin Bajwa-agent (LF-p. #32), by Special Process Server William L.

Stage, Jr. (LF-p. #33). Alias Summons was issued for service by Special Process Server. William L. Stage, Jr. (LF-p. #34); and Summons returned Non-Est (LF-p. #35). On April 14, 2016, petitioner request to clerk to issue Summons to be served by the Sheriff of St. Louis, City (LF-p. #38), plaintiff's payment to Sheriff of St. Louis City to serve Summons and Petition (LF-p. #39). St. Louis City deputy's returned Summons as personally serviced on Kashflo, Inc., through its registered agent Mohsin Bajwa (LF-p. #40); Defendant Kashflo, Inc.'s through counsel, E-Filed its motion to dismiss on or about June 13, 2016 (LF-p. #41-48); and set its motion to

dismiss for hearing on June 24, 2016 (LF-p.#49). After communication with petitioner, defendant Kashflo, Inc., through its attorney, filed a withdrawal of its motion to dismiss (LF-p. #50). On June 24, 2016, on his own motion, the Honorable Bryan L. Hettenbach-presiding Circuit Court Judge and assignment judge over Div. #1, had entered an "Order" upon the court's Minutes, dismissal of petitioner's Cause of Action Without Prejudice for failure to prosecute (LF-p. #11) <sup>2</sup>

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<sup>2</sup> Petitioner timely raised his Constitutional Claims at the first opportunity in his Notice of Appeal because the assignment judge did not rule on the dead man issue (LF-p. #60)

## REASONS FOR GRANTING THE WRIT

1. Review is warranted to determine whether the Order of the Missouri Court of Appeals, Eastern District entered on March 28, 2017, is Void as a matter of law?

(a). State appellate court was without jurisdiction to affirm dismissal in favor of dead person!

On or about Dec. 01, 2016, respondent Kashflo, Inc., through its attorney of record, challenged the appellate court's jurisdiction over appeal ED104699 because, the dismissal was without prejudice. Petitioner filed his response on Dec. 05, 2016. On this issue of the appellate court's jurisdiction over the dismissal without prejudice. Petitioner remained the court and respondent

Kashflo, Inc.'s attorney that, the exception to the rule applied in this case and the appellate court agreed with petitioner.

Nevertheless, although the appellate court panel agreed that it had appellate jurisdiction over the dismissal without prejudice, the appellate court panel did not address the dismissal with prejudice of petitioner claims against defendants Jesse Woodfin-as Owner and Individually-Deceased. Under Missouri Law, Maurer v. Clark, 727 S. W. 2d 210 (Mo. App. 1987), defendants Jesse Woodfin Remodeling and Jesse Woodfin-Individually, was named as defendants on the heading, within the body and in Counts

I, II, III, IV, V and VI of petitioner's First Amended Petition. In Maurer, at 211, the Court held "party to an action is a person whose is designated on record as plaintiff or defendant." Petitioner further contends that, on June 24, 2016, the circuit court had notice that, Jesse Woodfin-individually was deceased, whether there were an executor to his estate remains unanswered:

The rule of law in the Eastern District is stated by the Missouri Court of Appeals, Eastern District in Garner v. Mercantile Bank of Memphis, 764 S.W. 2d 166 (Mo. App. 1989), Quoting therefrom, "A trial court is without jurisdiction to enter judgment for or against

a deceased party. Howard v. Hollins, 462 S.W. 2d 765, 766 (Mo. 1971). The Eastern District Court of Appeals further held that support petitioner's position in Richie By and Through Richis v. Laususe, 892 S.W. 2d 746, 748 (Mo. App. 1994) "If the trial court lack jurisdiction, we likewise lack jurisdiction and must dismiss the appeal. The Missouri Supreme court states "The decision of an appellate court, issued after the death of a party to the appeal, is of no legal effect. Metropolitan St. Louis Sewer Dist. v. Holloran, 751 S.W. 2d 749, (Mo. banc 1988). Therefore, any purported adjudication, including dismissal, of an action after the

death of a party where no substitution has been effected is a nullity. Schleifer by and through Wehrs v. Shuler, 699 S.W.2d 794, 795 (Mo.App.1985). On the face of the hand written decision of the assignment judge, the judge does not address the issue of the dead party Jesse Woodfin, Nor does the Missouri Court of Appeals, Eastern District panel in it's order of March 28, 2017. Nevertheless, the highest Missouri Court ruling that the "Order of Dismissal" entered on June 24, 2016, whether denominated an "Order" or "Judgment" is Void as a matter of Law, and the "Order" of the Missouri Court of Appeals, Eastern District relying thereon is Void also.

Therefore, the 'Order of Dismissal' and or judgment concerning Jesse Woodfin-Individually (deceased), and any defense relying on his testimony as to Counts I through VI of petitioner's First Amended Petition must be reversed and declared Void as a matter of law!

2. Review is warranted to determine whether the language within Missouri's Local Court Rule 37.1.1 conflicts with decisions of this Court and other Missouri Court of Appeals on the issue of notice by publication and rights to be heard?

(a). The State's Local Court Rule 37.1.1. on Its face is contrary to the issue of publication of notice and rights to be heard as held in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), Eastin v. Franklin, 806 S.W. 2d 57, 60 (Mo. App. S.D. 1991); and the Due Process Clause!

The Missouri Court of Appeals, Eastern District in its Memorandum Supplementing Order, cites some Summons returned non-est, some entries upon the circuit court's minutes. as actual notice of a pending dismissal. The appellate court panel for the first time, cites Local Court Rule 37.1.1 and the circuit court's discretion authorized therein.<sup>3</sup> (Memo p. #3).

Local Court Rule 37.1.1 states:

37.1.1. Civil Jury Docket. The presiding Judge shall, whenever the judge deems it advisable, upon not less than ten days' notice published in the St. Louis Daily Record, call

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<sup>3</sup> The appellate Court panel did not rule on the dead man issue! Therefore, petitioner timely raised the Constitutionality of Local Rule 37.1.1 in his motion for rehearing:

such of the causes then pending in the judge's division as the judge shall select. Upon such call, any cause shall, in the discretion of the judge, be continued or dismissed, and the failure of the plaintiff to respond in person, or by attorney, at the call docket, as herein provided, shall be deemed and taken as grounds for dismissal of the cause or appeal for failure to prosecute.

The appellate panel held that when the assignment judge followed his authority granted by Local Rule 37.1.1. to publish notice in the St. Louis Daily paper, petitioner received all the process due. In the above rule, and the appellate panel's holdings, there are two important words "notice published in the St. Louis Daily Record" and the "discretion of the judge" both turn on the Due Process Clause of the Fourteenth Amendment to the

United States Constitution. First, "notice published in the St. Louis Daily Record." This Court's decision in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), settled the publication issue, wherein it is held that, "notice by publication is not sufficient under the Fourteenth Amendment as a basis for adjudication depriving of substantial property rights of known persons whose whereabouts are also known, since it is not impracticable to make serious efforts to notify them at least by ordinary mail to their addresses on record with the trust company." Id. at 318-320. In Eastin v. Franklin, 806 S.W. 2d 57, 60 (Mo. App. S.D. 1991), relying of the

dicta of this court in Greene v. Lindsey, 456 U.S. 444 (1982), in which this Court reiterated the long standing principle that the “fundamental requisite of due process of law is the opportunity to be heard.” Id. at 449. If the right to be heard is to be more than illusory, a party must be informed of “any proceeding which is to be accorded finality” either by actual notice or by some “notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Id. at 449-50.

It is not in dispute that neither Mullane, Eastin, or Greene, concerned Local Rule

37.1.1. but, each affirmed the fundamental requirement of due process of law "notice and rights to be heard"! The language in Local Rule 37.1.1 that "permits the presiding judge and the appellate court to dismiss a cause or appeal after "notice published in the St. Louis Daily Record" without more, is contrary to the Constitutional Guarantee of Due Process of Law guarantee that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States! Because petitioner is a Negro, the appellate panel seem to be have accessed petitioner rights to seek

redress in the court to that in the Dred Scott decision of 1857.

The appellate court panel in its Memorandum Supplementing Order at p. 3, create illusion in two accounts by asserting (1). "On March 28, 2016, a dismissal hearing was scheduled for May 24, 2016, and Snelling received notice." and (2) "On May 24, 2016, the court rescheduled the dismissal hearing for June 24, 2016, and Snelling received notice." The appellate court panel does not direct petitioner or this court to any writing on the face of the circuit court's record that states, "plaintiff notified of scheduled hearing by?" The appellate court panel, cited in their Memorandum

Supplementing Order as though the judge and his clerk Patrick Thomasson did not know petitioner's address and phone number, that can be found on every document filed in the courts by petitioner and had the appellate panel not denied petitioner's Motion for Rehearing, they would have discovered that, on p. #10 of that Motion, petitioner identified March 08, 2016, when he filed an official change of address in circuit court divisions 1, 4, 17 and 31! In most of the courts in Missouri, the word is "fact pleading State" not the type of distorting of the issue and facts employed by the appellate panel in appeal #ED104699.

The appellate panel in its Standard of Review cites the discretion of the circuit court and case law to the effect (Memo. at p. #4). In petitioner's opinion, the appellate is holding that, the discretion of the circuit court judge, override petitioner's rights as provided under the Fourteenth Amendment.

In this case, there is other issues the appellate panel ignored about the rights to be informed, Rule 74.03, which states:

Immediately upon the entry of an order or judgment, the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 43.01 upon each party who is not in default for failure to appear and who was not present in court in person or by attorney at the time of the entry of the order or judgment. If such notice is not given, the

order or judgment shall be set aside for good cause shown upon written motion filed within six months from the entry of the order or judgment. This Rule 74.03 shall not preclude relief under Rule 74.06.

There is nothing in the above language of Rule 74.03 mandate, that authorize circuit court judge's discretion to comply with for notice of an order or judgment by publication.

Also, the appellate panel, failed to look at the legal file in an objective point of view, its would have discovered that, Respondent Kashflo, Inc. through its attorney Robert C. Withington, filed a withdrawal of the motion to dismiss file stamped June 24, 2016; and aware the court that defendant Jesse Woodfin

was believed to be deceased (LF-p. #50).<sup>4</sup>

There were no logical or legal reason for the cause to be placed upon a dismissal docket, where the cause was active.

Missouri's Local Rule 37.1.1 must be ruled Unconstitutional; and the Order entered by the Missouri Court of Appeals, Eastern relying thereon March 28, 2017, should be reversed and Cause remanded.

(c). State appellate court affirming the dismissal of cause of action, deprived petitioner of Constitutional Protected Property Rights.

The Due Process Clause of the

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<sup>4</sup> The hand-written memorandum of the circuit court

judge that "no parties appeared" questionable.

Fourteenth Amendment guarantees that no state will “deprive any person of life, liberty, or property without due process of law.” Similar commands are set forth in Article 1, §10 of the Missouri Constitution, which provides “That no person shall be deprived of life, liberty, or property without due process of law.” When engaged in addressing a due process argument, the first question to be answered is “whether the plaintiff have a protected interest at stake, and if so, what process is due. Schneider v. United States, 27 F. 3d 1327, 1333 (8<sup>th</sup> Cir. 1994). In

Chesterfield Village, Inc. v. City of Chesterfield, 64 S.W. 3d 315, 318

(Mo. banc 2002). The court held that A cause of action is “a group of operative facts giving rise to one or more bases to suing.” In the instant case, the operative facts that give raise to plaintiff’s protected property interest is the State Torts Actions is found at paragraphs number 8 through 50 in Counts I through VI. Whether such is property and constitutionally protected, were decided in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), that “a cause of action is a species of property protected by the 14<sup>th</sup>

Amendment Due Process Clause.” Id. at 313. Finding that plaintiff had a constitutional protected property interest at stake, the next question to be answered is, what process was Petitioner due? rights of notice and to be heard: See Armstrong v. Manzo, 95 S. Ct. 1187 (1965). It is not in dispute that, the Missouri Court of Appeals, Eastern District appellate panel distorted and misrepresented the court’s records before the panel; and the Missouri Supreme Court adopted those distortions and Misrepresented issued on appeal, by summarily denying petitioner a fair hearing on the merits on the correct issues.

Therefore, the "Order" of the Missouri Court of Appeals, Eastern District, should be reversed, remanded with direction to conduct discovery to uncover whether named defendant Jesse Woodfin-individually is (deceased), and whether an executor was appointed, so a substitute can be made.

### CONCLUSION

The petition for a writ of Certiorari should be granted.

Respectfully Submitted By,

*Lonnie Snelling*

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