

No.

IN THE
SUPREME COURT OF THE UNITED STATES

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.

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

PETITION FOR WRIT OF CERTIORARI

APPENDIX

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

TABLE OF CONTENTS

	Page
Denial of transfer by Missouri Supreme Court-Appendix A	1a
Missouri Court of Appeals Eastern District Order dated March 28, 2017- Reported at 524 S.W. 3d 90 Appendix B	3a
Memorandum Supplementing Order Affirming Judgment pursuant to Rule 84.16(b)-Appendix C	6a
Motion for rehearing, or in the alternative transfer dated April 10, 2017-Appendix D	31a
Denial of Rehearing/or transfer May 16, 2017, Reported at 524 S.W. 3d 90 Appendix E	63a

TABLE OF CONTENTS CONTINUES

	Page
Circuit Court Judge's hand written Judgment dated June 24, 2016-Appendix F	64a
28 U. S. Code §1257-State courts; Certiorari -G	66a
Grant of Extension of time to File Petitioner for a Writ of Certiorari-Appendix H	67a
Missouri Constitution Article 1, §10-Appendix I	69a
Constitutional Amendment X1V-Appendix J	70a
Twenty-Second Judicial Circuit Court in the City of St. Louis, Missouri Local Court Rule 37.1.1-Appendix K	71a
Missouri Rules of Civil Procedure, Rule 74.03-Appendix L	72a
Hand written motion by defendant Kashflo, Inc.'s attorney Appendix M	73a

1a
Supreme Court of Missouri

en banc

SC96492

ED104699

May Session, 2017

Lonnie Snelling,

Appellant,

vs. (TRANSFER)

Jesse Woodfin Remodeling,

Jesse Woodfin, John Doe, Jane Doe,

John Doe and Jane Doe,

Defendants,

and

Kashflo, Inc.,

Respondent.

Now at this day, on consideration of the Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Eastern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Betsy AuBuchon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session, 2017, and on the 22nd day of August, 2017, in the above-entitled cause.



IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court, at my office in the City of Jefferson, this 22nd day of August, 2017.

Betsy AuBuchon, Clerk

Christina Turner, Deputy Clerk



In the Missouri Court of Appeals
Eastern District

DIVISION THREE

LONNIE SNELLING,

Appellant,

vs.

JESSE WOODFIN REMODELING,
JESSE WOODFIN, JOHN DOE, JANE DOE,
JOHN DOE AND JANE DOE,

Defendants,

and

KASHFLO, INC.,

Respondent.

No. ED104699

Appeal from the Circuit Court of
the City of St. Louis

Honorable Bryan L. Hettenbach

Filed: March 28, 2017

Before Angela T. Quigless, P.J., Robert G. Dowd, Jr., J., Lisa S. Van Amburg, J.

PER CURIAM.

ORDER

Lopnie Snelling ("Snelling") appeals the circuit court's dismissal of the underlying action, without prejudice for failure to prosecute. Snelling contends the circuit court abused its discretion in dismissing the case because (1) he was actively prosecuting the cause of action, and counsel for Defendant Kashflo, Inc. ("Kashflo") had entered his appearance and filed a motion to dismiss, and (2) he was not given adequate notice of the pending dismissal, which denied him of his due process rights. We have reviewed the briefs of the parties and the record on appeal, and we find the circuit

court did not clearly err. An extended opinion would have no jurisprudential purpose. We have, however, provided a memorandum setting forth the reasons for our decision to the parties for their use only. We affirm the judgment pursuant to MO. R. CIV. P. 84.16(b) (2015).



In the Missouri Court of Appeals
Eastern District
DIVISION THREE

LONNIE SNELLING,
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JESSE WOODFIN, JOHN DOE, JANE DOE,
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Honorable Bryan L. Hettenbach

Filed: March 28, 2017

Before Angela T. Quigless, P.J., Robert G. Dowd, Jr., J., Lisa S. Van Amburg, J.

PER CURIAM.

MEMORANDUM SUPPLEMENTING ORDER
AFFIRMING JUDGMENT PURSUANT TO RULE 84.16(b)¹

This memorandum is for the information of the parties and sets forth the reasons for our order affirming the judgment.

THIS STATEMENT DOES NOT CONSTITUTE A FORMAL OPINION OF THIS COURT.

IT IS NOT UNIFORMLY AVAILABLE. IT SHALL NOT BE REPORTED, CITED, OR

OTHERWISE USED IN UNRELATED CASES BEFORE THIS COURT OR ANY OTHER

COURT. IN THE EVENT OF THE FILING OF A MOTION TO REHEAR OR TRANSFER

TO THE SUPREME COURT, A COPY OF THIS MEMORANDUM SHALL BE ATTACHED

TO ANY SUCH MOTION.

¹ All rule references are to Missouri Supreme Court Rules (2015) unless otherwise indicated.

Introduction

Lonnie Snelling ("Snelling") appeals the circuit court's dismissal of the underlying action without prejudice for failure to prosecute. Snelling contends the circuit court abused its discretion in dismissing the case because (1) he was actively prosecuting the cause of action, and counsel for Defendant Kashflo, Inc. ("Kashflo") had entered his appearance and filed a motion to dismiss, and (2) he was not given adequate notice of the pending dismissal, which denied him of his due process rights. We affirm the judgment.

Factual and Procedural History

The facts are derived from the limited record provided in Snelling's appellate brief and legal file.² Kashflo did not supplement the facts. Snelling owns residential rental property at 5039 Kensington Avenue in the City of St. Louis. Kashflo owns adjacent property at 5041-43 Kensington Avenue. In March 2008, Jesse Woodfin, owner of Jesse Woodfin Remodeling, entered into a roofing construction agreement with Kashflo for roofing work on 5041-43 Kensington Avenue. Snelling alleges that, during the construction, Woodfin took "accumulated debris" from Kashflo's roof and deposited it "on the roof-top and in the gang-way" of Snelling's property. Snelling contends the depositing of debris caused holes to develop in his roof, allowing water to enter the property and causing damage to the ceilings, walls, and floors. Snelling also alleges the dumping of the debris in the "gang-way" of his property caused damage to the concrete walkway, and, as a result, he received a summons for building code violations from the City of St. Louis.

² Although it is the appellant's duty under Rule 81.12(a) to provide an adequate record that contains all the evidence necessary to determine the questions raised on appeal, *Boyer v. City of Potosi*, 77 S.W.3d 62, 66 (Mo. App. E.D. 2002), we proceed to address the merits of Snelling's appeal.

On March 8, 2013, Snelling filed a petition against Jesse Woodfin Remodeling and Jesse Woodfin, John and Jane Does, and John and Jane Doe-Minors.³ On June 13, 2014, the court dismissed the case without prejudice for failure to prosecute.

On June 12, 2015, Snelling refiled his lawsuit, this time naming Jesse Woodfin Remodeling and Jesse Woodfin, John and Jane Does, and John and Jane Does-Owner⁴ as defendants. On June 16, 2015, summons was issued for Jesse Woodfin and Jesse Woodfin Remodeling. However, the summons was returned "non-est," and the record reflects no service was ever made. On September 10, 2015, Snelling filed a Motion to Substitute Party and Amended Petition, which the court granted. On October 13, 2015, Snelling filed an amended petition and substituted Kashflo for "John and Jane Does-Owner." Snelling requested an alias summons for Kashflo, which was issued on October 19, 2015; however, the summons was returned "non-est" on November 21, 2015. The matter was placed on the court's dismissal docket per Rule 37.1.⁵ On March 28, 2016, a dismissal hearing was scheduled for May 24, 2016, and Snelling received notice. In the interim, on April 19, 2016, pluries summons was issued for Kashflo and served on May 5, 2016. On May 24, 2016, the court rescheduled the dismissal hearing for June 24, 2016, and Snelling received notice.

Thereafter, counsel for Kashflo entered his appearance and filed Defendant's Motion to Dismiss on June 13, 2016. The motion was mailed to Snelling on June 14, 2016 to both addresses

³ Snelling's first petition (Cause No. 1322-AC03483) alleged that "John and Jane Doe defendants" were Woodfin's employees, and "he had control over their activities while at 5041-43 Kensington Ave."

⁴ Snelling's second petition (Cause No. 1522-CC09885), however, alleged that "defendants Does" were owners of the property at 5041-43 Kensington Avenue rather than Woodfin's employees.

⁵ Local Rule 37.1 provides, in relevant part:

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 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 of such docket, as herein provided, shall be deemed and taken as grounds for dismissal of the cause or appeal for failure to prosecute.

provided by Snelling: 5039A Kensington Avenue, St. Louis, MO 63108, and 1518 79th Street, St. Louis, MO 63130. The record also reflects that on June 17, 2016, counsel filed a notice of hearing on the motion for June 24, 2016, and mailed the notice to Snelling at the above two addresses. Snelling did not file a response to the motion to dismiss.

On June 24, 2016, the court called the dismissal docket and the motion to dismiss. Snelling failed to appear. The court dismissed the case without prejudice for failure to prosecute. Snelling did not file a motion to set aside the dismissal. Snelling appeals.

Points Relied On

Snelling raises two points on appeal. In Point I, Snelling argues the circuit court abused its discretion when it dismissed his cause of action because the case was being actively prosecuted by Snelling, and counsel for Defendant Kashflo had entered his appearance and filed a motion to dismiss. In Point II, Snelling argues the circuit court abused its discretion in dismissing his cause of action because the entry in the court record that Snelling received actual notice of the pendency of a dismissal does not comply with the Due Process Clause. Snelling argues the dismissal of his cause of action denied him of his constitutionally protected property rights in his state law torts claims.

Standard of Review

A dismissal for failure to prosecute is within the trial court's discretion. *Snelling v. Beck*, 207 S.W.3d 202, 203 (Mo. App. E.D. 2006). We give great deference to the trial court, and its dismissal will not be disturbed unless we find an abuse of discretion. *Shirrell v. Missouri Edison Co.*, 535 S.W.2d 446, 448 (Mo. banc 1976). A trial court abuses its discretion when its "ruling is clearly against the logic of the circumstances then before the court and is so unreasonable and

arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration.”

Hancock v. Shook, 100 S.W.3d 786, 795 (Mo. banc 2003).

Discussion

As a preliminary matter, we must address Respondent’s contention that this Court lacks jurisdiction to hear Snelling’s appeal. Respondent argues that because the circuit court dismissed Snelling’s case without prejudice, the appeal is premature and should be dismissed. We disagree.

The general rule is that a dismissal without prejudice is not a final judgment and, therefore, is not appealable. *Hutcheson v. Elec. Data Access Techs.*, 327 S.W.3d 622, 625 (Mo. App. E.D. 2010). Ordinarily, when an action is dismissed without prejudice, a plaintiff may cure the dismissal by filing another lawsuit in the same court. *Id.* An exception to this general rule is that an appeal can be taken where the dismissal has the practical effect of terminating the litigation in the form cast by the plaintiff. *Doe v. Visionaire Corp.*, 13 S.W.3d 674, 676 (Mo. App. E.D. 2000).

Section 516.120 RSMo (2000) provides that the following actions must be taken within five years of the date they accrue:

- (1) All actions upon contracts, obligations or liability, express or implied . . . ;
- (2) An action upon a liability created by a statute other than a penalty or forfeiture;
- (3) An action for trespass on real estate;
- (4) An action for taking, detaining or injuring any goods or chattels, including actions for the recovery of specific personal property, or for any other injury to the person or rights of another, not arising on contract and not herein otherwise enumerated.

Here, Snelling timely filed his first petition on March 8, 2013, within the five-year statute of limitations. Thereafter, on June 13, 2014, the circuit court involuntarily dismissed the case without prejudice for failure to prosecute. On June 12, 2015, Snelling timely refiled his action pursuant to the Missouri Savings Statute, section 516.230, which allows the plaintiff the benefit of a one-year grace period for actions that are timely filed and are dismissed without prejudice. *Zinke v. Orskog*,

422 S.W.3d 422, 425 (Mo. App. W.D. 2013). On June 24, 2016, the circuit court again involuntarily dismissed the case without prejudice for failure to prosecute. Because both the five-year statute of limitations and the one-year grace period have run, Snelling is time barred from refileing his lawsuit. As such, the circuit court's dismissal without prejudice effectively acts as a dismissal *with* prejudice. See *Hutcheson*, 327 S.W.3d at 625. A dismissal with prejudice operates as an adjudication on the merits and "bars the assertion of the same cause of action or claim against the same party." Rule 67.01; see also *Abney v. Niswonger*, 823 S.W.2d 31, 32 (Mo. App. E.D. 1991). "Because a dismissal with prejudice finally disposes of a cause of action, it is appealable even though it is not a judgment upon the merits for all purposes." *Id.*

Accordingly, this Court has jurisdiction to hear Snelling's appeal because the circuit court's dismissal was a final, appealable judgment.

A. Point II—Notice of Dismissal Hearing

For ease of our analysis, we will first address Point II. In Point II, Snelling argues the circuit court abused its discretion in dismissing his cause of action because the entry in the court record that Snelling received actual notice of the pendency of a dismissal does not comply with the Due Process Clause. Snelling argues the dismissal of his cause of action denied him of his constitutionally protected property rights in his state law torts claims. We disagree.

Because we determined above that the circuit court's involuntary dismissal acted as a dismissal *with* prejudice, Snelling was entitled to "notice and an opportunity to be heard before the dismissal [was] made." *State ex rel. Willens v. Gray*, 757 S.W.2d 656, 658 (Mo. App. W.D. 1988). "Due process requires that a party be informed of any proceeding which is to be accorded finality either by actual notice or by notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their

objections.” *Cody v. Old Republic Title Co.*, 156 S.W.3d 782, 784 (Mo. App. E.D. 2004) (internal quotations and citations omitted).

On appeal, Snelling asserts he was deprived of notice because the court’s docket entry does not comply with the notice requirement, and “the assignment judge, through his clerk, knew appellant [sic] address and phone number of record.” We find no merit in this assertion. First, a review of the legal file submitted by Snelling reflects that he received actual notice of the dismissal hearing on May 24. Snelling was aware that service was returned “non-est” on Jesse Woodfin and Jesse Woodfin Remodeling as well as on Kashflo, and his claim was subject to dismissal for failure to prosecute, similar to his original petition. Further, the record reflects that Snelling was aware that the court rescheduled the dismissal hearing for June 24. Moreover, Kashflo’s motion to dismiss and notice of hearing were filed *and* served upon Snelling at both addresses—5039A Kensington Avenue, St. Louis, MO 63108, and 1518 79th Street, St. Louis, MO 63130—notifying him of the hearing on June 24. Accordingly, Snelling had adequate notice or, at the very least, notice reasonably calculated to apprise him of the pending dismissal hearing. *See Warren v. Associated Farmers, Inc.*, 825 S.W.2d 901, 905 (Mo. App. S.D. 1992) (holding that when a party receives notice of a dismissal in sufficient time to attack it, the party is afforded due process of law).

Furthermore, “A party has a continuing duty to monitor a case from the filing of the case until final judgment.” *Vilsick v. Fibreboard Corp.*, 861 S.W.2d 659, 664 (Mo. App. E.D. 1993); *Love v. Piatchek*, 503 S.W.3d 318, 322 (Mo. App. E.D. 2016). As Snelling concedes, he was aware of the court’s docket entry providing the date of the dismissal hearing. The docket sheet contains an entry on March 28, 2016, indicating “Dismissal Hearing Scheduled,” hearing set for May 24. Then, on May 24, *another* entry was made, indicating “Dismissal Hearing Scheduled,” *hearing*

rescheduled for June 24. Snelling was afforded due process in that he received notice and was afforded an opportunity to object, but he failed to appear. Therefore, we find the circuit court did not abuse its discretion. Point II is denied.

B. Point I—Failure to Prosecute

In Point I, Snelling argues the circuit court abused its discretion when it dismissed his cause of action because the case was being actively prosecuted by Snelling, and counsel for Defendant Kashflo had entered his appearance and filed a motion to dismiss. We disagree.

“[T]he trial judge may rely on inherent authority [under existing Rule 37.1] to dismiss a cause of action for failure to prosecute, providing there is notice and opportunity for hearing.”

Henningsen v. Indep. Petrochemical Corp., 875 S.W.2d 117, 120 (Mo. App. E.D. 1994). Local Rule 37.1 provides, in relevant part:

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 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 of such docket, as herein provided, shall be deemed and taken as grounds for dismissal of the cause or appeal for failure to prosecute.*

(emphasis added). “The rule requires publication notice in advance of a dismissal docket and an actual docket call. It also provides a manner of determining that the plaintiffs are responsible for failure to prosecute the cause of action, a failure to appear creates that presumption.” *Id.* at 119.

Here, Snelling was provided adequate notice of the dismissal hearing, as discussed *supra* in Point II, and the case was placed on the dismissal docket and called. Despite receiving notice of the pending hearing, Snelling failed to appear in person or by attorney. There is no evidence in the record that the court failed to comply with Rule 37.1. Thus, the court had the authority to dismiss the action for failure to prosecute. Snelling argues the case was being “actively” prosecuted

because Kashflo's counsel had entered his appearance and filed a motion to dismiss. Notably, however, Snelling neither responded to the motion, appeared for the dismissal hearing, nor filed a motion to set aside the dismissal. Accordingly, we find the trial court did not abuse its discretion. Point I is denied.

Conclusion

We affirm the judgment.



In the Missouri Court of Appeals
Eastern District

DIVISION THREE

LONNIE SNELLING,

Appellant,

vs.

JESSE WOODFIN REMODELING,
JESSE WOODFIN, JOHN DOE, JANE DOE,
JOHN DOE AND JANE DOE,

Defendants,

and

KASHFLO, INC.,

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No. ED104699

Appeal from the Circuit Court of
the City of St. Louis

Honorable Bryan L. Hettenbach

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Before Angela T. Quigless, P.J., Robert G. Dowd, Jr., J., Lisa S. Van Amburg, J.

PER CURIAM.

ORDER

Lonnie Snelling ("Snelling") appeals the circuit court's dismissal of the underlying action, without prejudice for failure to prosecute. Snelling contends the circuit court abused its discretion in dismissing the case because (1) he was actively prosecuting the cause of action, and counsel for Defendant Kashflo, Inc. ("Kashflo") had entered his appearance and filed a motion to dismiss, and (2) he was not given adequate notice of the pending dismissal, which denied him of his due process rights. We have reviewed the briefs of the parties and the record on appeal, and we find the circuit

court did not clearly err. An extended opinion would have no jurisprudential purpose. We have, however, provided a memorandum setting forth the reasons for our decision to the parties for their use only. We affirm the judgment pursuant to Mo. R. Crv. P. 84.16(b) (2015).



**In the Missouri Court of Appeals
Eastern District
DIVISION THREE**

LONNIE SNELLING,	)	No. ED104699
Appellant,	)	
	)	
vs.	)	
	)	
JESSE WOODFIN REMODELING,	)	Appeal from the Circuit Court of
JESSE WOODFIN, JOHN DOE, JANE DOE,	)	the City of St. Louis
JOHN DOE AND JANE DOE,	)	
Defendants,	)	
	)	
and	)	Honorable Bryan L. Hettenbach
	)	
KASHFLO, INC.,	)	
Respondent.	)	Filed: March 28, 2017

Before Angela T. Quigless, P.J., Robert G. Dowd, Jr., J., Lisa S. Van Amburg, J.
PER CURIAM.

MEMORANDUM SUPPLEMENTING ORDER
AFFIRMING JUDGMENT PURSUANT TO RULE 84.16(b)¹

This memorandum is for the information of the parties and sets forth the reasons for our order affirming the judgment.

THIS STATEMENT DOES NOT CONSTITUTE A FORMAL OPINION OF THIS COURT.
IT IS NOT UNIFORMLY AVAILABLE. IT SHALL NOT BE REPORTED, CITED, OR
OTHERWISE USED IN UNRELATED CASES BEFORE THIS COURT OR ANY OTHER
COURT. IN THE EVENT OF THE FILING OF A MOTION TO REHEAR OR TRANSFER
TO THE SUPREME COURT, A COPY OF THIS MEMORANDUM SHALL BE ATTACHED
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Introduction

Lonnie Snelling (“Snelling”) appeals the circuit court’s dismissal of the underlying action without prejudice for failure to prosecute. Snelling contends the circuit court abused its discretion in dismissing the case because (1) he was actively prosecuting the cause of action, and counsel for Defendant Kashflo, Inc. (“Kashflo”) had entered his appearance and filed a motion to dismiss, and (2) he was not given adequate notice of the pending dismissal, which denied him of his due process rights. We affirm the judgment.

Factual and Procedural History

The facts are derived from the limited record provided in Snelling’s appellate brief and legal file.² Kashflo did not supplement the facts. Snelling owns residential rental property at 5039 Kensington Avenue in the City of St. Louis. Kashflo owns adjacent property at 5041-43 Kensington Avenue. In March 2008, Jesse Woodfin, owner of Jesse Woodfin Remodeling, entered into a roofing construction agreement with Kashflo for roofing work on 5041-43 Kensington Avenue. Snelling alleges that, during the construction, Woodfin took “accumulated debris” from Kashflo’s roof and deposited it “on the roof-top and in the gang-way” of Snelling’s property. Snelling contends the depositing of debris caused holes to develop in his roof, allowing water to enter the property and causing damage to the ceilings, walls, and floors. Snelling also alleges the dumping of the debris in the “gang-way” of his property caused damage to the concrete walkway, and, as a result, he received a summons for building code violations from the City of St. Louis.

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Points Relied On

Snelling raises two points on appeal. In Point I, Snelling argues the circuit court abused its discretion when it dismissed his cause of action because the case was being actively prosecuted by Snelling, and counsel for Defendant Kashflo had entered his appearance and filed a motion to dismiss. In Point II, Snelling argues the circuit court abused its discretion in dismissing his cause of action because the entry in the court record that Snelling received actual notice of the pendency of a dismissal does not comply with the Due Process Clause. Snelling argues the dismissal of his cause of action denied him of his constitutionally protected property rights in his state law torts claims.

Standard of Review

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arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration.”

Hancock v. Shook, 100 S.W.3d 786, 795 (Mo. banc 2003).

Discussion

As a preliminary matter, we must address Respondent’s contention that this Court lacks jurisdiction to hear Snelling’s appeal. Respondent argues that because the circuit court dismissed Snelling’s case without prejudice, the appeal is premature and should be dismissed. We disagree.

The general rule is that a dismissal without prejudice is not a final judgment and, therefore, is not appealable. *Hutcheson v. Elec. Data Access Techs.*, 327 S.W.3d 622, 625 (Mo. App. E.D. 2010). Ordinarily, when an action is dismissed without prejudice, a plaintiff may cure the dismissal by filing another lawsuit in the same court. *Id.* An exception to this general rule is that an appeal can be taken where the dismissal has the practical effect of terminating the litigation in the form cast by the plaintiff. *Doe v. Visionaire Corp.*, 13 S.W.3d 674, 676 (Mo. App. E.D. 2000).

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Here, Snelling timely filed his first petition on March 8, 2013, within the five-year statute of limitations. Thereafter, on June 13, 2014, the circuit court involuntarily dismissed the case without prejudice for failure to prosecute. On June 12, 2015, Snelling timely refiled his action pursuant to the Missouri Savings Statute, section 516.230, which allows the plaintiff the benefit of a one-year grace period for actions that are timely filed and are dismissed without prejudice. *Zinke v. Orskog*,

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Accordingly, this Court has jurisdiction to hear Snelling's appeal because the circuit court's dismissal was a final, appealable judgment.

A. Point II—Notice of Dismissal Hearing

For ease of our analysis, we will first address Point II. In Point II, Snelling argues the circuit court abused its discretion in dismissing his cause of action because the entry in the court record that Snelling received actual notice of the pendency of a dismissal does not comply with the Due Process Clause. Snelling argues the dismissal of his cause of action denied him of his constitutionally protected property rights in his state law torts claims. We disagree.

Because we determined above that the circuit court's involuntary dismissal acted as a dismissal *with* prejudice, Snelling was entitled to "notice and an opportunity to be heard before the dismissal [was] made." *State ex rel. Willens v. Gray*, 757 S.W.2d 656, 658 (Mo. App. W.D. 1988). "Due process requires that a party be informed of any proceeding which is to be accorded finality either by actual notice or by notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their

objections.” *Cody v. Old Republic Title Co.*, 156 S.W.3d 782, 784 (Mo. App. E.D. 2004) (internal quotations and citations omitted).

On appeal, Snelling asserts he was deprived of notice because the court’s docket entry does not comply with the notice requirement, and “the assignment judge, through his clerk, knew appellant [sic] address and phone number of record.” We find no merit in this assertion. First, a review of the legal file submitted by Snelling reflects that he received actual notice of the dismissal hearing on May 24. Snelling was aware that service was returned “non-est” on Jesse Woodfin and Jesse Woodfin Remodeling as well as on Kashflo, and his claim was subject to dismissal for failure to prosecute, similar to his original petition. Further, the record reflects that Snelling was aware that the court rescheduled the dismissal hearing for June 24. Moreover, Kashflo’s motion to dismiss and notice of hearing were filed *and* served upon Snelling at both addresses—5039A Kensington Avenue, St. Louis, MO 63108, and 1518 79th Street, St. Louis, MO 63130—notifying him of the hearing on June 24. Accordingly, Snelling had adequate notice or, at the very least, notice reasonably calculated to apprise him of the pending dismissal hearing. *See Warren v. Associated Farmers, Inc.*, 825 S.W.2d 901, 905 (Mo. App. S.D. 1992) (holding that when a party receives notice of a dismissal in sufficient time to attack it, the party is afforded due process of law).

Furthermore, “A party has a continuing duty to monitor a case from the filing of the case until final judgment.” *Vilsick v. Fibreboard Corp.*, 861 S.W.2d 659, 664 (Mo. App. E.D. 1993); *Love v. Piathek*, 503 S.W.3d 318, 322 (Mo. App. E.D. 2016). As Snelling concedes, he was aware of the court’s docket entry providing the date of the dismissal hearing. The docket sheet contains an entry on March 28, 2016, indicating “Dismissal Hearing Scheduled,” hearing set for May 24. Then, on May 24, *another* entry was made, indicating “Dismissal Hearing Scheduled,” *hearing*

rescheduled for June 24. Snelling was afforded due process in that he received notice and was afforded an opportunity to object, but he failed to appear. Therefore, we find the circuit court did not abuse its discretion. Point II is denied.

B. Point I—Failure to Prosecute

In Point I, Snelling argues the circuit court abused its discretion when it dismissed his cause of action because the case was being actively prosecuted by Snelling, and counsel for Defendant Kashflo had entered his appearance and filed a motion to dismiss. We disagree.

“[T]he trial judge may rely on inherent authority [under existing Rule 37.1] to dismiss a cause of action for failure to prosecute, providing there is notice and opportunity for hearing.”

Henningsen v. Indep. Petrochemical Corp., 875 S.W.2d 117, 120 (Mo. App. E.D. 1994). Local Rule 37.1 provides, in relevant part:

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 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 of such docket, as herein provided, shall be deemed and taken as grounds for dismissal of the cause or appeal for failure to prosecute.*

(emphasis added). “The rule requires publication notice in advance of a dismissal docket and an actual docket call. It also provides a manner of determining that the plaintiffs are responsible for failure to prosecute the cause of action, a failure to appear creates that presumption.” *Id.* at 119.

Here, Snelling was provided adequate notice of the dismissal hearing, as discussed *supra* in Point II, and the case was placed on the dismissal docket and called. Despite receiving notice of the pending hearing, Snelling failed to appear in person or by attorney. There is no evidence in the record that the court failed to comply with Rule 37.1. Thus, the court had the authority to dismiss the action for failure to prosecute. Snelling argues the case was being “actively” prosecuted

because Kashflo's counsel had entered his appearance and filed a motion to dismiss. Notably, however, Snelling neither responded to the motion, appeared for the dismissal hearing, nor filed a motion to set aside the dismissal. Accordingly, we find the trial court did not abuse its discretion.

Point I is denied.

Conclusion

We affirm the judgment.