

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

FRANK VISCONI

APPELLANT,

v.

CHARLES SHANTAG, ET AL.

RESPONDENTS.

DOCKET NUMBER WD74341
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: August 14, 2012

Appeal From:

Nodaway County Circuit Court

The Honorable Roger Martin Prokes, Judge

Appellate Judges:

Division Three: James M. Smart, Jr., P.J., Victor C. Howard and James E. Welsh, JJ.

Attorneys:

Frank Visconi, Appellant Pro Se.

Jeffrey David Hanslick, Kansas City, MO, and Samuel Killeffer, Respondent Pro Se, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

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APPELLANT,

v.

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No. WD74341

Nodaway County

Before Division Three: James M. Smart, Jr., P.J., Victor C. Howard and James E. Welsh, JJ.

Frank J. Visconi appeals the judgment of the circuit court dismissing without prejudice his petition against Charles and Mary Shantag, *et al.*, in which he purported to assert claims of defamation, intentional infliction of emotional distress, and invasion of privacy. The defendants moved to dismiss Visconi's petition based on pleading deficiencies. The circuit court granted the motion and issued an "order of dismissal without prejudice." When Visconi appealed, the appellate court told him that the order appealed from was not a final, reviewable judgment and gave him several weeks to obtain a final judgment or explain why the appeal should not be dismissed. Visconi then filed a motion in circuit court for modification of the dismissal order by denominating it a "judgment." The circuit court entered an order entitled "corrected judgment of dismissal." In the meantime, the appeal was dismissed for lack of a final judgment. Visconi filed a motion to reinstate the appeal, arguing that the "corrected judgment of dismissal" authorized his appeal. The appellate court reinstated the appeal. The respondents filed a motion to dismiss the appeal for lack of a final judgment, which was taken with the case.

DISMISSED.

Division Three holds: The circuit court's initial order and subsequent "judgment of dismissal" both were expressly *without* prejudice and operated only to dismiss the pleading subject to a right to replead the cause. Regardless of the trial court's reference to the dismissal as a "judgment," it was not a final judgment appealable under section 512.020 and Rule 74.01. In its dismissal, the trial court was not attempting to address the merits of plaintiff's claims, but only the pleading deficiencies. Because Mr. Visconi has attempted to appeal a ruling that is not a final judgment, and fails to demonstrate why the appeal should not be dismissed, the appeal is dismissed.

August 14, 2012

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