



**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**MISSOURI STATE CONFERENCE OF
THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED
PEOPLE, LEAGUE OF WOMEN
VOTERS OF MISSOURI, and
CHRISTINE DRAGONETTE,**

Appellants,

v.

**STATE OF MISSOURI and JOHN R.
ASHCROFT, IN HIS OFFICIAL
CAPACITY AS MISSOURI
SECRETARY OF STATE,**

Respondents.

WD84028

**OPINION FILED:
September 28, 2021**

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge**

Before Division Three: Edward R. Ardini, Jr., Presiding Judge, and
Mark D. Pfeiffer and W. Douglas Thomson, Judges

The Missouri State Conference of the National Association for the Advancement of Colored People (“MoNAACP”), the League of Women Voters of Missouri (“MoLWV”), and Ms. Christine Dragonette (“Dragonette”) (collectively, “Appellants”) appeal from the judgment entered by the Circuit Court of Cole County, Missouri (“trial court”), in favor of the State of

Missouri (“State”) and John R. Ashcroft, in his official capacity as Missouri Secretary of State (“Secretary of State”) (collectively, “Respondents”). Appellants assert that because the trial court dismissed their claims on the grounds of standing, ripeness, and mootness, the trial court erred in dismissing the claims “with prejudice.” We agree and enter the judgment the trial court should have entered.

Factual and Procedural Background¹

In 2016, the Missouri General Assembly passed House Bill No. 1631, which repealed and replaced section 115.427 of the Missouri Revised Statutes with new text (“Voter ID Law”). The Voter ID Law required persons seeking to vote in a public election to establish their identity and eligibility to vote at the polling place by presenting one of a number of specified forms of personal identification: photo identification, a statutorily specified affidavit and authorized form of non-photo identification, or a conditional provisional ballot. The Voter ID Law also imposed obligations upon the Secretary of State, the Department of Revenue, and other government agencies and entities. The Secretary of State was required to “provide advance notice of the personal identification requirements . . . in a manner calculated to inform the public generally of the requirement for forms of personal identification as provided in this section.” The Voter ID Law went into effect on June 1, 2017.

On June 8, 2017, MoNAACP and MoLWV filed a petition for declaratory and injunctive relief against the State and state officials alleging that the newly effective statute was unenforceable because the state legislature did not appropriate sufficient funds from the general revenue for the purpose of paying the costs associated with its implementation. Subsequently,

¹ We incorporate portions of the factual and procedural background from our opinion in *State Conference of National Association for Advancement of Colored People v. State*, 563 S.W.3d 138, 142-46 (Mo. App. W.D. 2018), without further attribution.

Appellants filed a first amended petition, which the trial court dismissed without prejudice. The trial court granted Appellants leave to file their second amended petition. The Secretary of State and the State each filed answers and moved for judgment on the pleadings. Thereafter, the trial court dismissed Appellants' second amended petition without prejudice. Appellants appealed, and this Court reversed the trial court's grant of dismissal and judgment on the pleadings and remanded the cause.

The trial court reopened the case on November 21, 2018. Thereafter, Appellants moved for leave to file a third amended petition. The trial court granted the motion, and Appellants filed a Third Amended Petition for Injunctive and Declaratory Relief on June 18, 2019. In Count I of the Third Amended Petition, Appellants asserted that subsection 115.427.1 could not be enforced pursuant to subsection 115.427.6(3) because "[t]here have not been sufficient appropriations of state funds from the general revenue of this state for the purpose of paying the costs associated with Section 115.427." Appellants requested relief from the trial court, including requests to enter a declaratory judgment that the identification requirements of subsection 115.427.1 may not be enforced, and to issue a permanent injunction prohibiting Respondents and anyone acting in concert with them from enforcing subsection 115.427.1. In Count II, Appellants asserted that the Secretary of State misled the public in violation of the requirement in subsection 115.427.5 that the Secretary of State provide advance notice "in a manner calculated to inform the public generally" about the Voter ID Law. Appellants requested relief from the trial court, including requests to:

- A. Issue an injunction barring the Secretary of State from telling the public that there is a photo ID requirement and/or from instructing poll workers to ask for photo IDs when voters come to the polls;
- B. Issue an injunction directing the Secretary of State to provide public notice that there is no photo ID required for voting in Missouri;

C. Issue an injunction directing the Secretary of State to provide correct information to the public about the non-photo options;

D. Issue an injunction directing the Secretary of State to take down misleading advertisements that are still being used or made available to the public[.]

Respondents filed an Answer to the Third Amended Petition, denying Appellants' standing allegations and including as affirmative defenses that Appellants' lacked standing to assert their claims, their claims were not ripe for judicial determination, and their claims are or may become moot.

The trial court held a bench trial from August 19-23, 2019, hearing evidence from more than a dozen witnesses. On January 15, 2020, the trial court requested counsel to advise the court by memorandum as to the effect, if any, of the Missouri Supreme Court's opinion issued the day before in *Priorities USA v. State*, 591 S.W.3d 448 (Mo. banc 2020). In *Priorities USA*, the Missouri Supreme Court affirmed the circuit court's judgment declaring the Voter ID Law's affidavit requirement unconstitutional. The Court also upheld the circuit court's injunctions, which enjoined the State from requiring individuals who vote under the non-photo identification option to execute an affidavit and from disseminating materials indicating photo identification is required to vote. *Id.* at 461.

Appellants argued that the *Priorities USA* decision did not moot Count I because the decision did not grant the relief requested in Count I—to enjoin poll workers from asking voters to present photo identification at the polls. Appellants also argued that the *Priorities USA* relief, enjoining Respondents' misleading advance notice campaign, did not require Respondents to correct the existing misinformation they created, the relief Appellants sought in Count II in order to redress voters' ongoing injuries. Respondents argued that *Priorities USA* granted the only relief sought by Appellants—a declaration and injunction directing that the Voter ID Law's personal

identification requirements cannot be enforced—rendering Appellants’ Count I moot. Respondents also argued that *Priorities USA* mooted Count II in that the *Priorities USA* decision enjoined the Secretary of State from disseminating misleading material regarding personal identification requirements.

On April 20, 2020, the trial court entered its Judgment, dismissing Count I “with prejudice” for lack of standing or mootness, and dismissing Count II “with prejudice” as either being moot or not ripe. The trial court found that “[w]hile Plaintiffs have alleged facts which if true, would establish an insufficient appropriation thus precluding the enforcement of the photo ID requirement, they lack standing to bring those claims.” The trial court based its dismissals for mootness on the Missouri Supreme Court’s decision in *Priorities USA*, finding that “[t]he prohibitory injunctions of *Priorities USA* essentially [are] the same as prayed for in this case and to that extent those claims are moot.” On May 19, 2020, Appellants moved the trial court to modify its Judgment to dismissals “without prejudice,” contending that because dismissals on mootness, ripeness, and standing grounds implicate the justiciability of a claim and deprive courts of their subject matter jurisdiction to reach the merits of a dispute, dismissals on those grounds should be entered “without prejudice.” The trial court refused to modify its judgment and this appeal ensues.

On appeal, Appellants do not challenge the trial court’s decision to dismiss their claims on the basis that those claims were moot, not ripe, or that Appellants lacked standing to assert them. Instead, in this appeal, Appellants challenge only the trial court’s denomination of the dismissal as being “with prejudice.”

Justiciability vs. Jurisdiction

As a threshold matter, Appellants argue on appeal that where the trial court dismisses a case for lack of standing, for mootness, or for ripeness, it ought to do so “without prejudice”

because standing, mootness, and ripeness are “jurisdictional requirement[s] that go[] to the circuit court’s subject matter jurisdiction.” Though it does not change the result of our ruling today, we note that Appellants have improperly conflated a circuit court’s *authority* with its *jurisdiction*.

To clarify, “[a]rticle V, section 14 [of the Missouri Constitution] sets forth the subject matter jurisdiction of Missouri’s circuit courts in plenary terms, providing that the circuit court shall have original jurisdiction over all cases and matters, civil and criminal.” *Ground Freight Expeditors, LLC v. Binder*, 359 S.W.3d 123, 126 (Mo. App. W.D. 2011) (internal quotation marks omitted). “Prior to the 2009 case of *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009), standing was often referred to in terms of jurisdiction or, more specifically, subject matter jurisdiction.” *Bray v. Lee*, 620 S.W.3d 278, 281 (Mo. App. E.D. 2021) (citing *Schweich v. Nixon*, 408 S.W.3d 769, 774 n.5 (Mo. banc 2013)). “However, in *Webb*, the Missouri Supreme Court explained that the concept of standing is better understood as a matter of justiciability, that is, of a court’s authority to address a particular issue when the party suing has no justiciable interest in the subject matter of the action.” *Id.*

Conversely, “[j]usticiability is a ‘prudential’ rather than a jurisdictional doctrine and, prior to addressing the substantive issues [of a case], [a court] must determine whether a case meets the requirements for a justiciable controversy.” *Id.* at 281-82. “‘A justiciable controversy exists where (1) the plaintiff has a legally protectable interest, (2) a substantial controversy exists between genuinely adverse parties, and (3) that controversy is ripe for judicial determination.’” *Id.* at 282 (quoting *Schweich*, 408 S.W.3d at 773). The first two elements encompass the concept of standing. *Id.* The third element of justiciability is ripeness. *Ameren Transmission Co. of Ill. v. Pub. Serv. Comm’n*, 467 S.W.3d 875, 879-80 (Mo. App. W.D. 2015). Standing is usually addressed first, and the ripeness issue is reached only if the standing requirements are satisfied, as “there is no point in

reaching the hypothetical issue whether the action would be timely if it could have been brought” if the party is unable to show that it has standing to bring the action. *Schweich*, 408 S.W.3d at 774-75.

Furthermore, “[m]ootness . . . implicates the justiciability of a controversy.” *Norton v. McDonald*, 590 S.W.3d 450, 452 (Mo. App. W.D. 2020). ““When an event occurs that makes a court’s decision unnecessary or makes granting effectual relief by the court impossible, the case is moot and generally should be dismissed.”” *Id.* (quoting *D.C.M. v. Pemiscot Cnty. Juv. Off.*, 578 S.W.3d 776, 780 (Mo. banc 2019)).

With this preliminary discussion, we now proceed to the substantive merits of Appellants’ complaint on appeal.

Analysis

Appellants assert three points on appeal, contending that the trial court erred in dismissing “with” prejudice (*i.e.*, instead of “without” prejudice): (1) Count I for lack of standing; (2) Counts I and II for mootness; and (3) Count II based on ripeness. As discussed below, there is a plethora of Missouri precedent requiring the remedy sought by Appellants. Thus, we agree with Appellants’ position on appeal and order the modification to be made to the underlying judgment.

Prior to addressing the merits of a case, a court must determine whether a case meets the requirements for a justiciable controversy. Standing and ripeness are elements of justiciability and mootness implicates justiciability. If a court disposes of a case on the grounds of standing, ripeness, or mootness, it cannot reach the merits. *See Borges v. Mo. Pub. Entity Risk Mgmt. Fund*, 358 S.W.3d 177, 183 (Mo. App. W.D. 2012). However, “[a] dismissal with prejudice operates as an adjudication upon the merits.” § 510.150. Rule 67.01 provides that “[a] dismissal with

prejudice bars the assertion of the same cause of action or claim against the same party.”² “Missouri courts have held that the purpose of Rule 67.01, as revised in 1973, is to extend res judicata principles to cases which are dismissed with prejudice but where the merits were not reached.” *Boehlein v. Crawford*, 605 S.W.3d 135, 142 (Mo. App. E.D. 2020) (footnote omitted) (citing *Williams v. Rape*, 990 S.W.2d 55, 61 (Mo. App. W.D. 1999)).

If a trial court dismisses a petition due to lack of standing, the dismissal should be “without prejudice.” *Schweich*, 408 S.W.3d at 779 (stating that lack of standing precludes relief, and the appellate court would issue the ruling that the trial court should have entered and dismiss the claims without prejudice); *Eaton v. Doe*, 563 S.W.3d 745, 750 (Mo. App. E.D. 2018) (concluding that the trial court properly dismissed the petition due to a lack of standing, but modified the dismissal to be without prejudice, rather than with prejudice); *Borges*, 358 S.W.3d at 183-84 (concluding that because the case was disposed of for lack of standing, the trial court should have dismissed the petition without prejudice).

Likewise, if a controversy is not ripe for review, the judgment of dismissal should be “without prejudice.” *Schweich*, 408 S.W.3d at 779 (stating that relief was precluded because the requirements for ripeness were not met, and the appellate court would issue the ruling that the trial court should have entered and dismiss the claims without prejudice); *Mo. Soybean Ass’n v. Mo.*

² Prior Rule 67.03 contained the same language as section 510.150: that a dismissal with prejudice operates as an adjudication on the merits. In *Denny v. Mathieu*, 452 S.W.2d 114 (Mo. banc 1970), the Missouri Supreme Court questioned the real meaning of Rule 67.03 and its effect:

What does the rule mean when it says that a dismissal with prejudice ‘operates as an adjudication upon the merits?’ We conclude that such dismissal actually adjudicates nothing. What it really does, and what is intended by the rule, is that the dismissal with prejudice serves as a mechanism for the termination of litigation rather than adjudication of the issues therein involved.

Id. at 118. “Rule 67.03 [now Rule 67.01] was subsequently amended in 1973 to its current version[.]” which more accurately reflects the effect of the entry of a dismissal with prejudice. *Boehlein v. Crawford*, 605 S.W.3d 135, 142 n.1 (Mo. App. E.D. 2020).

Clean Water Comm’n, 102 S.W.3d 10, 29 (Mo. banc 2003) (“[B]ecause the controversy is not ripe for review, the judgment of dismissal is modified to one without prejudice.”); *Schultz v. Warren Cnty.*, 249 S.W.3d 898, 901-02 (Mo. App. E.D. 2008) (modifying the circuit court’s judgment of dismissal to explicitly state that the dismissal is due to lack of ripeness and is one without prejudice).

Finally, if a case is moot, the judgment of dismissal should generally be “without prejudice.” *Friends of the San Luis, Inc. v. Archdiocese of St. Louis*, 312 S.W.3d 476, 485 (Mo. App. E.D. 2010) (remanding the case to the circuit court with instructions to vacate its judgment and to dismiss the petition without prejudice due to the mootness of the controversy).

Accordingly, we conclude that the trial court erred in dismissing Counts I and II of Appellants’ Petition “with prejudice.”

Points I, II, and III are granted.

Conclusion

The substantive basis for the trial court’s dismissal of Counts I and II of the underlying petition has not been challenged and is, thus, affirmed. However, for the reasons stated in today’s ruling, the trial court’s decision to dismiss Counts I and II “with prejudice” was erroneous and must be modified. Pursuant to Rule 84.14, we enter such judgment as the trial court ought to have given and modify the judgment so that the dismissal below as to Counts I and II is “without prejudice.” In all other respects, the judgment is affirmed.

/s/ *Mark D. Pfeiffer*

Mark D. Pfeiffer, Judge

Edward R. Ardini, Jr., Presiding Judge, and W. Douglas Thomson, Judge, concur.