

No. 19-5285

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SUPREME COURT OF THE UNITED STATES OF AMERICA

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Daniel Luke Meier,  
*Petitioner,*

vs.

Amanda Megan Berger and Allstate Property and Casualty  
Insurance Corporation,  
*Respondents.*

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On Petition for a Writ of Certiorari to  
the Michigan Supreme Court

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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I. QUESTION PRESENTED FOR REVIEW

Should the Supreme Court of the United States of America deny the Petition for Writ of Certiorari where the Michigan state courts have determined, under adequate state grounds, that res judicata bars the Petitioner's instant lawsuit, as his previous lawsuit, which raised exactly the same issues, was dismissed on the merits as a matter of law?

## II. LIST OF ALL PARTIES

All parties' names, Plaintiff/Petitioner, DANIEL LUKE MEIER, ("Mr. Meier"); Defendant/Respondent, AMANDA MEGAN BERGER, ("Ms. Berger"); and Defendant/Respondent, ALLSTATE INSURANCE PROPERTY AND CASUALTY INSURANCE COMPANY, ("Allstate"), appear in the caption of the case.

## III. LIST OF ALL PROCEEDINGS

- Mr. Meier filed his original lawsuit related to this motor vehicle accident in the Wayne County Circuit Court on October 15, 2013.<sup>1</sup>
- On September 8, 2015, the Wayne County Circuit Court granted Ms. Berger's motion for summary disposition pursuant to M.C.R. 2.116(C)(10).<sup>2</sup>
- On September 30, 2015, the Wayne County Circuit Court denied Mr. Meier's motion for reconsideration.<sup>3</sup>
- On November 18, 2015, the Court of Appeals of the State of Michigan, ("Court of Appeals"), dismissed Mr. Meier's claim of appeal.<sup>4</sup>
- On May 26, 2016, Mr. Meier filed the instant Complaint in the Wayne County Circuit Court.<sup>5</sup>

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<sup>1</sup> *Meier v. Berger*, No. 13-0134260-NI (Wayne Cnty. Cir. Ct. Oct. 15, 2013). A copy of this complaint is attached as Exhibit 1.

<sup>2</sup> *Meier v. Berger*, No. 13-0134260-NI (Wayne Cnty. Cir. Ct. Sept. 8, 2015). A copy of this order is attached as Exhibit 2.

<sup>3</sup> *Meier v. Berger*, No. 13-0134260-NI (Wayne Cnty. Cir. Ct. Sept. 30, 2015). A copy of this order is attached as Exhibit 3.

<sup>4</sup> *Meier v. Berger*, No. 329799 (Mich. Ct. App. Nov. 18, 2015). A copy of this opinion is attached as Exhibit 4.

<sup>5</sup> *Meier v. Berger, et. al.*, No. 16-006718-NI (Wayne Cnty. Cir. Ct. May 26, 2016). A copy of this complaint is attached as Exhibit 5.

- On August 15, 2016, Mr. Meier filed a Claim of Appeal with the Court of Appeals. This appeal is not at issue here.
- On August 19, 2016, a hearing was held on Ms. Berger's Motion for Summary Disposition Pursuant to M.C.R. 2.116(C)(7).<sup>6</sup>
- On August 22, 2016, the Wayne County Circuit Court granted Ms. Berger's Motion for Summary Disposition Pursuant to M.C.R. 2.116(C)(7).<sup>7</sup>
- On August 23, 2016, the Court of Appeals dismissed Mr. Meier's Claim of Appeal for lack of jurisdiction.<sup>8</sup> This appeal is not at issue.
- On September 8, 2016, Mr. Meier filed another Claim of Appeal with the Court of Appeals. This appeal is not at issue.
- On September 20, 2016, the Court of Appeals dismissed Mr. Meier's Claim of appeal for lack of jurisdiction.<sup>9</sup> This appeal is not at issue.
- The Court of Appeals of the State of Michigan affirmed the Wayne County Circuit Court's grant of Ms. Berger's Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) on September 27, 2018.<sup>10</sup>

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<sup>6</sup> A copy of this transcript is attached as Exhibit 6.

<sup>7</sup> *Meier v. Berger, et. al.*, No. 13-0134260-NI (Wayne Cnty. Cir. Ct. Aug. 22, 2016). A copy of this order is attached as Exhibit 7.

<sup>8</sup> *Meier v. Berger, et. al.*, No. 334399 (Mich. Ct. App. Aug 23, 2016). A copy of this order is attached as Exhibit 8. The Court of Appeals also denied Mr. Meier's motion for reconsideration. *Meier v Berger*, No. 334399 (Mich. Ct. App. Sept. 28, 2016). (Exhibit 8)

<sup>9</sup> *Meier v. Berger, et. al.*, No. 334399 (Mich. Ct. App. Sept. 20, 2016). A copy of this order is attached as Exhibit 9. This order was amended on September 22, 2016. (Exhibit 9)

<sup>10</sup> *Meier v. Berger, et al*, No. 336946 (Mich. Ct. App. Sept. 27, 2018). A copy of this unpublished opinion is attached as Exhibit 10.

- On November 13, 2018, the Court of Appeals denied Mr. Meier's Motion for Reconsideration.<sup>11</sup>
- On April 30, 2019, the Michigan Supreme Court denied Mr. Meier's Application for Leave to Appeal.<sup>12</sup>

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<sup>11</sup> *Meier v. Berger, et. al.*, No. 336946 (Mich. Ct. App. Nov. 13, 2018). A copy of this unpublished opinion is attached as Exhibit 11.

<sup>12</sup> *Meier v. Berger, et. al.*, No. 158857 (Mich. April 30, 2019). A copy of this order is attached as Exhibit 12.

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VI. CITATIONS OF THE OFFICIAL and UNOFFICIAL REPORTS OF  
OPINIONS AND ORDERS

The decision of the Michigan Supreme Court denying Mr. Meier's Application for Leave to Appeal is reported as *Meier v. Berger, et. al.*, No. 158857 (Mich. April 30, 2019). A copy of this Order is attached as Exhibit 12. The Court of Appeals' opinion affirming the trial court's grant of Ms. Berger's Motion for Summary Disposition is reported as *Meier v. Berger, et al*, No. 336946 (Mich. Ct. App. Sept. 27, 2018). A copy of this Opinion is attached as Exhibit 10.

VII. STATEMENT OF THE BASIS FOR JURISDICTION

Mr. Meier's Application for Leave to Appeal to the Michigan Supreme was denied on April 30, 2019. Mr. Meier invokes this Court's jurisdiction under 28 U.S.C. § 1257, having filed this petition for writ of certiorari within ninety days of the Michigan Supreme Court's denial of his Application.

VIII. CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES  
and REGULATIONS INVOLVED IN THIS CASE

Mich. Comp. Laws. § 500.3135, generally, abolishes tort liability for noneconomic loss resulting from the negligent operation of a motor vehicle unless the "the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. A complete copy of this statute is attached as Exhibit 13.

M.C.R. 2.116(C)(7), entitles a party to a civil action to summary judgment as a matter of law, in pertinent part, if there was a prior judgment (*res judicata*). A complete copy of this court rule is attached as Exhibit 14.

MCR 2.116(C)(10) allows a party to a civil action to move for summary judgment if “except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” (Exhibit 14)

## IX. STATEMENT OF FACTS

### Introduction

This Petition for Writ of Certiorari arises out of the second lawsuit filed by Mr. Meier against Ms. Berger related to a June 13, 2013, motor vehicle accident. The first lawsuit was dismissed pursuant to M.C.R. 2.116(C)(10), as the trial court ruled that Mr. Meier failed to create a genuine issue of material fact as to whether he surmounted the tort threshold of serious impairment, as required under Mich. Comp. Laws §500.3135. Although Mr. Meier appealed that decision to the Court of Appeals, he abandoned this earlier appeal, and the Court of Appeals dismissed it.

Rather than prosecute the appeal in the first litigation, Mr. Meier instead brought the instant action, raising the exact same allegations against Ms. Berger related to the subject accident as he did in the first litigation. The trial court recognized that the instant lawsuit – which included the same claims against Ms.

Berger as the first lawsuit – was inappropriate, pursuant to M.C.R. 2.116(C)(7). The trial court granted Ms. Berger’s dispositive motion.

The Court of Appeals affirmed that decision and denied Mr. Meier’s subsequent Motion for Reconsideration. Mr. Meier then applied for leave to the Michigan Supreme Court, which denied his application. This Petition for Writ of Certiorari follows.

Mr. Meier has presented no facts or legal argument that would support this Court granting his Petition for Writ of Certiorari. His “arguments” are nothing more than misrepresentations of facts, misinterpretations of legal authority, and mischaracterizations of the courts and counsel in this case. Because of this, this Court must deny Mr. Meier’s petition.

#### Statement of Facts and Procedural History

Mr. Meier filed the first action,<sup>13</sup> (“First Action”), on October 15, 2013. In that complaint, Mr. Meier alleged that Ms. Berger was the cause of the subject motor vehicle accident, in which Ms. Berger was operating a motor vehicle and Mr. Meier was operating a scooter.<sup>14</sup> Following case evaluation,<sup>15</sup> pursuant to M.C.R. 2.403, Ms. Berger moved for summary disposition. On September 8, 2015, the trial court

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<sup>13</sup> *Meier v. Berger*, No. 13-0134260-NI (Wayne Cnty. Cir. Ct. Oct. 15, 2013). See Exhibit 1.

<sup>14</sup> *Id.*

<sup>15</sup> M.C.R. 2.403 provides that, in cases in which the relief sought is primarily money damages, the case may be submitted to a panel of three attorneys who issue an “award” reflecting the settlement value of the case. The parties then have the option of “accepting” the award; in the event of mutual acceptance, the case then settles for the amount of the award. Mr. Meier argues that, because a unanimous award was issued by a “tribunal”, referring to the case evaluation panel, the trial court was precluded from granting summary disposition.

granted her motion, dismissing the case.<sup>16</sup> The dismissal was based on Mr. Meier's failure to create a genuine issue of material fact as to whether he surmounted the tort threshold of serious impairment. Mich. Comp. Laws § 500.3135.<sup>17</sup> Mr. Meier moved for reconsideration, which was also denied.<sup>18</sup>

Following the dismissal, Mr. Meier appealed to the Court of Appeals. This appeal was dismissed based on his failure to properly pursue the case in conformity with the court rules.<sup>19</sup> No further appeals were attempted with regard to the First Action.

The instant action was filed on or about May 26, 2016.<sup>20</sup> The complaint alleges the same third-party negligence claims against Ms. Berger, related to the same motor vehicle accident.<sup>21</sup> Mr. Meier also brought first-party no-fault claims against Ms. Berger's no-fault carrier, Allstate.<sup>22</sup> In lieu of filing an answer to Mr. Meier's complaint, Ms. Berger filed a motion for summary disposition pursuant to M.C.R. 2.116(C)(7)<sup>23</sup>. Ms. Berger contended that the instant complaint filed by Mr. Meier was barred under the doctrine of *res judicata*.

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<sup>16</sup> *Meier v. Berger*, No. 13-0134260-NI (Wayne Cnty. Cir. Ct. Sept. 8, 2015). A copy of this order is attached as Exhibit 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Meier v. Berger*, No. 13-0134260-NI (Wayne Cnty. Cir. Ct. Sept. 30, 2015). (Exhibit 3.)

<sup>19</sup> *Meier v. Berger*, No. 329799 (Mich. Ct. App. Nov. 18, 2015). (Exhibit 4)

<sup>20</sup> *Meier v. Berger, et. al.*, No. 16-006718-NI (Wayne Cnty. Cir. Ct. May 26, 2016). (Exhibit 5)

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Pursuant to M.C.R. 2.108(C), a party is entitled to file a motion for summary disposition in lieu of an answer. Mr. Meier incorrectly contends that, by failing to file an answer, Ms. Berger has admitted all of his allegations as true.

The trial court agreed with Ms. Berger, and dismissed Mr. Meier's complaint. The Court of Appeals affirmed this ruling. The Michigan Supreme Court rejected Mr. Meier's application for leave to appeal.

## X. REASONS FOR DENYING THE WRIT

### Introduction

Ms. Berger urges the Supreme Court of the United States to deny Mr. Meier's Petition for Writ of Certiorari on the grounds that the state court judgment appealed from features a pure resolution of Michigan Law that is not a proper vehicle for review in the Supreme Court of the United States under Article III of the United States Constitution or 28 U.S.C. § 1257. The dismissal of the Mr. Meier's state court negligence claim by the Michigan trial court -- which was ultimately affirmed by the Michigan Court of Appeals and which was rejected for review by the Michigan Supreme Court -- was based on his improper refiling of claims raised in an earlier case which had been dismissed based on the merits. This dismissal of the instant case, was based on well-established rules of civil procedure under Michigan law. *Res judicata* bars relitigating issues that have been decided, or could have been decided, in a prior action. [*Abbott v. Mich.* 474 F.3d 330 (6th Cr 2007)]. The trial court's opinion dismissing the instant case was decided on "adequate state grounds," no federal question having even been decided by the state courts. Accordingly, this Court is without jurisdiction to review this issue of Michigan law. See, for example, *Coleman v. Thompson*, 501 U.S. 722, 729 (1991) (holding that this Court lacks jurisdiction to review determinations of state law).

This Court has many times held that it will not review decisions from a state's highest court where the purported federal issue was not necessary for a proper disposition of the case or where the federal question was not actually decided. See, for example, *Lynch v. New York*, 293 U.S. 52, 54 (1934); *Lambrix v. Singletary*, 520 U.S. 518, 522-523 (1997) (holding that where "the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory.") In this case, no federal issue was ever raised, much less decided, because of Mr. Meier's failure to properly raise it, and the state courts' resolution of this case was decided strictly according to Michigan's well-established procedural rules.

In addition to the applicability of the "independent and adequate state grounds" doctrine in the context of *habeas corpus* appeals, this Court has also invoked the doctrine as grounds to decline to review decisions from state courts arising out of civil disputes such as this one. See, for example, *Fox Film Corp. v. Muller*, 296 U.S. 207 (1935) (state law civil dispute) ("our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the Judgment."); *Jankovich v. Indiana Toll Road Comm.*, 379 U.S. 487 (1965) (held that the Writ of Certiorari was improvidently granted and therefore dismissed where the state supreme court decision appealed from rested on a determination of the "just compensation" issue under the Indiana state's constitution as well as the United States Constitution); see also, *Barr v. City of Columbia*, 378 U.S. 146 (1964) (recognizing the rule in the civil context).

Simply put, the dismissal of the instant case was necessary because it rehashed the same claims previously raised in the initial action, which were dismissed as a matter of law. Mr. Meier is unable to show that the state court's treatment of his case was in any way inadequate. The basis for the dismissal of his lawsuit, M.C.R. 2.116(C)(7), applies the same legal standard for *res judicata* as applied in the federal courts. M.C.R. 2.116(C)(7) provides that a defendant is entitled to a dismissal of an action where a prior action was already addressed on the merits. As the Sixth Circuit noted in *Buck v. Thomas M. Cooley Law School*, 597 F.3d 812 (2010):

“Federal courts must give the same preclusive effect to a state-court judgment as that judgment receives in the rendering state.” *Abbot v. Mich*, 474 F.3d 330 (6<sup>th</sup> Cir. 2007) (citing 28 U.S.C. § 1738). Plaintiff's prior litigation took place in Michigan, which employs a “broad view of *res judicata*,” *In re MCI Telecommunications Complaint*, 460 Mich. 396, 431; 596 N.W.2d 164, 183 (1999), that “bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first,” *Abbott*, 474 F.3d at 331 (quoting *Adair v. State*, 470 Mich. 105, 121; 680 N.W.2d 386, 396 (Mich. 2004)). *Res judicata* bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.” *Id.* (internal quotation marks omitted). “Whether a factual grouping constitutes a transaction for purposes of *res judicata* is to be determined pragmatically, by considering whether the facts are related in *time, space, origin or motivation*, [and] whether they form a convenient trial unit.” *Adair*, 470 Mich. at 125, 680 N.W.2d at 398 (internal quotations omitted; emphasis and alteration in original). The burden of proving *res judicata* is on the party asserting it. *Abbott*, 474 F.3d at 331.

Here, the Court of Appeals determined that the prior judgment – the dismissal of the initial lawsuit on the merits – precluded Mr. Meier from filing the instant second lawsuit. The Michigan Supreme Court found no errors warranting granting Mr. Meier’s Application for Leave to Appeal. Here, because Mr. Meier cites no basis for this Court to disturb that decision, his Petition for Writ of Certiorari must be denied. To the extent that Mr. Meier takes issue with the *original* lawsuit, those issues have been waived and cannot be addressed here.

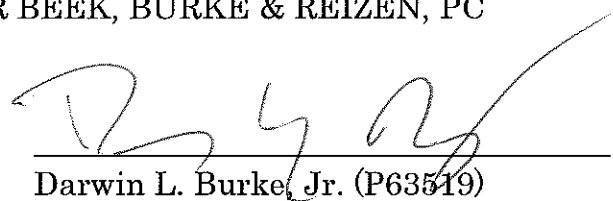
## XI. CONCLUSION

The doctrine of res judicata was intended to prevent exactly this situation: a second lawsuit alleging the same facts between the same parties as a prior lawsuit that was resolved on the merits. Mr. Meier cannot explain why he abandoned his appeal from the first action; however, that was his right and his decision. What Mr. Meier cannot do is file a second lawsuit against Ms. Berger. The trial court’s application of the doctrine of res judicata and M.C.R. 2.116(C)(7) was appropriate and must be affirmed. Ms. Berger respectfully requests that this Honorable Court deny Mr. Meier’s Petition for Writ of Certiorari.

Respectfully Submitted,

RUGGIRELLO, VELARDO, NOVARA,  
VER BEEK, BURKE & REIZEN, PC

By:

A handwritten signature in dark ink, appearing to read 'D. L. Burke, Jr.', is written over a horizontal line.

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Dated: August 14, 2019