STATE OF MICHIGAN

COURT OF APPEALS

JEROME GRAHAM,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee,

and

MELANIE DEAN MIDGETT,

Defendant.

UNPUBLISHED
February 18, 2014

No. 313214
Oakland Circuit Court
LC No. 2011-120280-NF

Before: GLEICHER, P.J., and SAAD and FORT HOOD, JJ.

PER CURIAM.

The circuit court summarily dismissed plaintiff Jerome Graham's 2011 action seeking uninsured motorist (UM) benefits from his no-fault insurer, defendant State Farm Mutual Automobile Insurance Company. Despite his claimed "lack of convenience," Graham could have brought his UM claims in his 2010 action for first-party personal protection injury (PIP) benefits. Instead, Graham dismissed his 2010 suit against State Farm with prejudice. Because a dismissal with prejudice is deemed a decision on the merits, and Graham's UM claims could have been added to and resolved in the first-party PIP action, the circuit court correctly dismissed the 2011 action pursuant to MCR 2.116(C)(7) (claim barred by res judicata) and MCR 2.203(A) (compulsory joinder of all claims against a party). We affirm.

I. BACKGROUND

On January 22, 2009, Melanie Midgett rear ended a vehicle driven by Graham. Graham was insured by State Farm. In 2010, Graham brought a first-party PIP action against State Farm, alleging that the insurer had not reimbursed him for all medical services and household assistance he required as a result of his injuries. Graham also raised negligence claims against Midgett. In the course of the 2010 action, Graham learned that Midgett was actually uninsured at the time of the accident because her policy had lapsed due to nonpayment. Graham then

settled his first-party PIP claim with State Farm and dismissed those claims with prejudice. He dismissed the action against Midgett without prejudice only one month later.[1]

In 2011, Graham brought this second action against State Farm, raising a claim for UM benefits in connection with the same automobile accident involving Midgett. State Farm moved for summary disposition and argued that the present action was barred because Graham should have brought the UM claim in the 2010 action. The circuit court agreed with State Farm that res judicata and the compulsory joinder rule, MCR 2.203(A), entitled State Farm to judgment in its favor and dismissed the action.

II. ANALYSIS

Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred "because of . . . prior judgment . . . or other disposition of the claim before commencement of the action." This Court reviews de novo both a circuit court's decision regarding a motion for summary disposition pursuant to MCR 2.116(C)(7) and questions of law, including the application of a legal doctrine such as res judicata. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

Res judicata "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." *Id.* at 418 (quotation marks and citation omitted). "The doctrine bars all matters that with due diligence should have been raised in the earlier action." *Estes v Titus*, 481 Mich 573, 585; 751 NW2d 493 (2008).

The parties do not dispute that Graham's 2010 action against State Farm was dismissed with prejudice. A voluntary dismissal with prejudice is deemed an adjudication on the merits for res judicata purposes.[2] *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 395-396; 573 NW2d 336 (1997); *Mitchell v Dahlberg*, 215 Mich App 718, 724; 547 NW2d 74 (1996). Graham does not contest the second element of res judicata; the 2010 and 2011 actions clearly involve the same parties.

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[1] Based on counsel's comments at the summary disposition hearing in the 2011 suit, Graham intentionally dismissed his claims against State Farm with prejudice despite dismissing his claims against Midgett without. It appears from the record that Graham did not appreciate the eventual consequences of this choice.

[2] Although Graham observes that a voluntary dismissal without prejudice is generally not an adjudication on the merits, *The Mable Cleary Trust v The Edward-Marlah Muzyl Trust*, 262 Mich App 485, 509-510; 686 NW2d 770 (2004), overruled in part on other grounds, *Titan Ins Co v Hyten*, 491 Mich 547, 555 n 4; 817 NW2d 562 (2012), and emphasizes that the prior action was dismissed without prejudice with respect to Midgett, Graham fails to explain how that dismissal is relevant to the analysis of res judicata as applied to State Farm.

With respect to the third element, Michigan courts have employed two alternative approaches for determining whether the matter in the second action could have, with the exercise of reasonable diligence, been brought in the first action: the "same evidence" and the "same transaction" (or "transactional") tests. *Adair v Michigan*, 470 Mich 105, 123-125; 680 NW2d 386 (2004). In *Adair*, the Court clarified that it had accepted "the broader transactional test." *Id*. at 124. See also *Washington*, 478 Mich at 420.

"The transactional test provides that the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief." *Adair*, 470 Mich at 124 (quotation marks and citation 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[.]" *Id*. at 125 (citation omitted). The fact that the evidence to prove the second case is different that needed in the first "may have some relevance, [but] the determinative question is whether the claims in the instant case arose as part of the same transaction as did the claims in [the prior action.]" *Id*.

This Court's decision in *Begin v Mich Bell Tel Co*, 284 Mich App 581, 599; 773 NW2d 271 (2009), overruled in part on other grounds, *Admire v Auto-Owners Ins Co*, 494 Mich 10; 831 NW2d 849 (2013), is instructive with respect to the application of the transactional test. In that case, the plaintiff was injured while working for the defendant. In 2007, the plaintiff, the defendant, and the defendant's insurer entered into a consent judgment for payment of $25,000 for a van as an allowable expense under the no-fault act. *Id.* at 585. After entry of the consent judgment, the plaintiff filed a complaint against the defendant asserting several theories of liability arising from the defendant's handling of the plaintiff's claims for worker's compensation and no-fault benefits. *Id*. at 598. These theories included intentional infliction of emotional distress, promissory estoppel, and breach of contract. The defendant argued that the claims were barred by res judicata. *Id.* Applying the transactional test, this Court agreed. This Court concluded that even the tort claim was

> related in time, space, origin, and motivation, and would form a convenient trial unit with plaintiff's claims for no-fault benefits arising from his injuries in the motor vehicle accident. In fact, the factual basis of plaintiff's claim that defendant intentionally inflicted emotional distress is inextricably interwoven with his claims for benefits and defendant's response to the claims. As such, this claim is part of a pragmatic factual grouping that constitutes a "transaction" for purposes of res judicata. Because plaintiff, had he exercised reasonable diligence, could have raised this claim in his first lawsuit, it is now barred by res judicata. [*Id.* at 604 (citations omitted).]

Although Graham contends that the facts of a UM claim are completely different from those related to a PIP claim, whether the same evidence would support the two claims is not dispositive. A PIP claim and a UM claim arising from the same collision and involving the same insurer and insured are more related in time, space, origin, and motivation than the claims in

Begin for payment of no-fault benefits and a tort claim arising from the insurer's handling of the claims. The PIP and UM claims involved here likewise meet the same transaction test.[3]

Graham's reliance on *Kaiser v Smith*, 188 Mich App 495; 470 NW2d 88 (1991), and *JAM Corp v AARO Disposal, Inc*, 461 Mich 161; 600 NW2d 617 (1999), are misplaced because those decisions involved statutory provisions that precluded giving res judicata effect to specific types of judgments. No comparable provision is applicable here.

Although Graham invites this Court to adopt a narrow application of res judicata, this Court is bound to follow our Supreme Court's decisions mandating a broader application. Accordingly, the circuit court did not err in granting State Farm's motion for summary disposition on res judicata grounds.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Henry William Saad
/s/ Karen M. Fort Hood

[3] Furthermore, we note that Graham made no effort to amend the complaint in the original first-party case to add a claim for UM benefits after learning that Midgett was uninsured.