Res Judi-can't-a: Can't a Plaintiff Get a Hearing on the Merits?

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The Kansas Supreme Court's interpretation of res judicata in Stanfield v. Osborne Industries *resulted in Kansas plaintiffs' being denied their proverbial day in court. The court held that once a federal court dismisses state law claims without prejudice by declining to exercise supplemental jurisdiction over them, res judicata bars those claims from any subsequent lawsuit in a state court. Although such a scenario is not common, the* Stanfield *rule has shuttered courtroom doors to plaintiffs whose state law claims never received a hearing on the merits. Kansas should return to conventional principles of res judicata and permit plaintiffs to go forward with their state law claims in state court after a federal court dismisses them without adjudicating them on the merits.*

I. INTRODUCTION

Kansans have the constitutional right to have their injuries remedied "by due course of law, and justice administered without delay."[1] But when a federal court declines to hear a Kansan's state law claim on the merits, Kansas courts are unable to redress those injuries.

Sometimes, a person's injuries create both state and federal causes of action. When this occurs, an injured plaintiff may choose to initiate her lawsuit in federal court. The federal court, having original jurisdiction over the federal law claims, may exercise jurisdiction over the state law claims under supplemental jurisdiction.[2] However, if the federal court dismisses all the federal law claims, then the federal court has discretion to dismiss any remaining state law claims.[3] An injured plaintiff, her state law claims having not been heard on the merits, may then refile them in state court. That is, unless that injured plaintiff sues in Kansas.[4] In Kansas, once a federal court has dismissed a state law claim by declining

1. KAN. CONST. BILL OF RTS. § 18.

2. *See* 28 U.S.C. § 1367(a). For supplemental jurisdiction to be exercised by a federal court, the state law claims must be so substantially related to the federal law claims that they "form part of the same case or controversy . . . ." *Id.*

3. 28 U.S.C. § 1367(c)(3).

4. *See generally* Herington v. City of Wichita, 479 P.3d 482 (Kan. Ct. App. 2020) (per curiam).

to exercise supplemental jurisdiction, res judicata bars an injured plaintiff from bringing her state law claims in state court.[5] This means injured plaintiffs in Kansas are denied their proverbial day in court for injuries arising under state law. This Comment argues that the Kansas Supreme Court should depart from its precedent and hold that res judicata does not bar the subsequent filing of state law claims in state court after a federal court, declining to exercise supplemental jurisdiction, dismisses them.

II. BACKGROUND

A. Herington v. City of Wichita

A police officer in Wichita, Kansas, fatally shot a man after pursuing him in a high-speed car chase and then on foot.[6] The man's mother sued both the officer in his individual capacity and the City of Wichita for damages in federal court alleging both federal and state law claims.[7] Both the officer and the City of Wichita moved for summary judgment.[8] The federal district court granted summary judgment to each defendant on the federal law claims.[9] With only the state law claims left to litigate, the federal district court dismissed them, declining to exercise supplemental jurisdiction.[10] The federal district court did not rule on the merits of the state law claims, so its dismissal of them was without prejudice.[11]

The man's mother then refiled the state law claims in Sedgwick County District Court.[12] The state district court applied the doctrine of res judicata and granted summary judgment in favor of the officer and the City of Wichita.[13] Kansas's theory of res judicata prohibited the injured mother from pursuing her state law claims in state court once a federal court had declined to exercise supplement jurisdiction "in conjunction with entering a judgment on the merits for the defendant on all of the federal [law] claims."[14] Effectively, the court denied the mother her day

5. *Id.*; Stanfield v. Osborne Indus., Inc., 949 P.2d 602, 612–13 (Kan. 1997).

6. *Herington*, 479 P.3d at 483.

7. *Id.* The exact circumstances surrounding the pursuit have no consequence to the issue on appeal or the argument of this Comment, so they will not be addressed.

8. *See id.*

9. *Id.*; Herington v. City of Wichita, No. 6:14-cv-0194-JTM, 2017 WL 76930, at *13 (D. Kan. Jan. 9, 2017).

10. *See Herington*, 479 P.3d at 483; *Herington*, 2017 WL 76930, at *13 (citing 28 U.S.C. § 1367(a)) (noting that a federal court should decline to exercise supplemental jurisdiction if it dismisses the federal claim before trial).

11. *Herington*, 479 P.3d at 483; *Herington*, 2017 WL 76930, at *13 (citing Brooks v. Gaenzle, 614 F.3d 1213, 1229 (10th Cir. 2010)) (noting that when a federal court declines to exercise supplemental jurisdiction, its dismissal of state law claims should be without prejudice).

12. *Herington*, 479 P.3d at 483.

13. *Id.*

14. *See id.* at 483–84.

in court, because no court held a hearing on the merits of her state law claims.[15]

The mother appealed the decision of the Sedgwick County District Court to the Kansas Court of Appeals.[16] Bound by Kansas Supreme Court precedent, the Kansas Court of Appeals reluctantly affirmed the district court's grant of summary judgment in favor of the defendants.[17]

B. Legal Background

1. The Doctrine of Res Judicata

Res judicata is a judicially created doctrine.[18] The doctrine promotes judicial efficiency and finality of judgments by barring plaintiffs from re-litigating claims that the plaintiff could or should have brought in a single action.[19] Res judicata has three elements. First, the previous lawsuit must have "proceeded to final judgment on the merits."[20] Second, the parties in the subsequent lawsuit must be identical to, or in privity with, those in the first lawsuit.[21] Third, the same claim must be the basis for both lawsuits.[22]

For res judicata to bar a subsequent claim, the prior claim must have been disposed of by a final judgment on the merits.[23] A final judgment on the merits disposes of the substantive causes of action raised by a plaintiff and leaves no remaining issue of law or fact for the court to adjudicate.[24] Before a court can consider the merits of a case, it must first establish that it has jurisdiction. Similarly, before a federal court can consider the merits of a state law claim, it must first exercise supplemental jurisdiction over them.[25] So, if a federal court dismisses a cause of action for lack of jurisdiction or declines to exercise supplemental jurisdiction over state law claims, then it never makes a determination on the merits.[26] For res

15. *See id.* at 484; *Herington*, 2017 WL 76930, at *13.

16. *See Herington*, 479 P.3d at 483–84.

17. *Id.* The court stressed its obligation to apply the *Stanfield* rule, but observed that the rule is unique to Kansas. *Id.* The court further noted that the *Stanfield* rule "effectively deprives [plaintiffs] of a hearing on the merits of the state law claims [they] pursue[] . . . merely because [a] federal court declined to consider them at all." *Id.* at 484.

18. *Id.* at 485 (Atcheson, J., concurring).

19. *Id.* at 485–86; *see also* Stanfield v. Osborne Indus., Inc., 949 P.2d 602, 608 (Kan. 1997).

20. *Stanfield*, 949 P.2d at 609 (quoting Clark v. Haas Grp., Inc., 953 F.2d 1235, 1236 (10th Cir. 1992)).

21. *Id.*

22. *Id.*

23. *Id.*

24. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 13 cmt. a–b (AM. L. INST. 1982).

25. *See* 28 U.S.C. § 1367.

26. *See* RESTATEMENT (SECOND) OF JUDGMENTS §§ 13 cmt. d, 20(1) (AM. L. INST. 1982); Herington v. City of Wichita, No. 6:14-cv-0194-JTM, 2017 WL 76930, at *13 (D. Kan. Jan. 9, 2017)

judicata, there is a distinction between a final judgment and a final judgment on the merits. The federal court could make a final judgment on the state law claims—by declining to exercise supplemental jurisdiction over them—but not a final judgment *on the merits*, so res judicata would not bar any subsequent lawsuit in state court.[27]

If the parties named in the previous lawsuit are identical to those named in the subsequent lawsuit, the second element of res judicata is met.[28] If the parties are not identical, then the named parties in the subsequent lawsuit must be in privity with those in the previous lawsuit for res judicata to apply.[29] Like res judicata, "privity is an equitable determination grounded in principles of fundamental fairness and sound public policy."[30] For privity to exist, there must be a showing that the parties in the subsequent action are "really and substantially in interest" the same as the parties in the previous lawsuit.[31] The non-party in the previous lawsuit is bound by the prior adjudication if there is privity.[32]

Finally, the court must find that the same claim is the basis for both lawsuits.[33] A claim is a "common nucleus of operative fact" or "transaction" which gives rise to legal causes of action.[34] Both federal and Kansas courts look at multiple factors to determine whether the facts of two lawsuits are so interwoven as to constitute one claim.[35] The most relevant factor is whether the facts are so related that they create a convenient unit for trial.[36] If there is substantial overlap between the facts and elements of the trials, such as witnesses, exhibits, and experts, then the subsequent lawsuit is usually barred.[37]

(noting that when a federal court declines to exercise supplemental jurisdiction, its dismissal of state law claims should be without prejudice). The U.S. Supreme Court in *Semtek* held that an "'adjudication [on] the merits' is the opposite of a 'dismissal without prejudice.'" Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 505 (2001) (quoting FED. R. CIV. P. 41). Therefore, there was no adjudication on the merits in Herington's federal lawsuit. *See Herington*, 2017 WL 76930, at *13.

27. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 20(1) (AM. L. INST. 1982). The federal district court in *Herington* dismissed the state law claims without prejudice, so it should not be a final judgment on the merits for purposes of res judicata. *See Herington*, 2017 WL 76930, at *13.

28. *See Stanfield*, 949 P.2d at 609 (quoting Clark v. Haas Grp., Inc., 953 F.2d 1235, 1236 (10th Cir. 1992)).

29. *See id.*

30. Cain v. Jacox, 354 P.3d 1196, 1200 (Kan. 2015).

31. *Id.* at 1201 (quoting Lowell Staats Min. Co. v. Phila. Elec. Co., 878 F.2d 1271, 1275 (10th Cir. 1989)).

32. *See id.*

33. *See Stanfield*, 949 P.2d at 609 (quoting Clark v. Haas Grp., Inc., 953 F.2d 1235, 1236 (10th Cir. 1992)).

34. *Id.*at 611; RESTATEMENT (SECOND) OF JUDGMENTS §§ 24, 25 (AM. L. INST. 1982).

35. *Stanfield*, 949 P.2d at 611.

36. *Id.*; RESTATEMENT (SECOND) OF JUDGMENTS §§ 24, 25 (AM. L. INST. 1982).

37. *See Stanfield*, 949 P.2d at 611.

The primary purposes of res judicata are judicial economy, consistency of judgments, and finality of judgments.[38] While plaintiffs should have their day in court, they get one bite at the apple and cannot bring lawsuit after lawsuit against a defendant—to allow otherwise would tax the defendant as an individual and the judicial system as a whole. However, the doctrine of res judicata should only apply after an injured plaintiff has been heard on the merits of her claim—any earlier and the principles of fundamental fairness are negated.

2. Relevant Kansas Precedent

i. The First: Stanfield v. Osborne Industries, Inc.

The Kansas Supreme Court first confronted whether preclusive effect should be given to state law claims that were originally part of a federal lawsuit but never heard on the merits in *Stanfield v. Osborne Industries*, Inc.[39] The procedural underpinnings of *Stanfield* are nearly indistinguishable from *Herington*.[40] In both, an injured plaintiff sued in the U.S. District Court for the District of Kansas claiming damages for both federal and state law claims, and the federal district court exercised supplemental jurisdiction over the state law claims.[41] As in *Herington*, the defendants in *Stanfield* moved for summary judgment on the federal law claims.[42]

In *Stanfield*, the federal district court granted the defendants' motions for summary judgment on the federal law claims.[43] Disposing of the federal law claims on the merits, all that remained to litigate were the state law claims.[44] Pursuant to its authority in 28 U.S.C. § 1367(c)(3), the federal district court declined to exercise supplemental jurisdiction after dismissing all federal claims over which it had original jurisdiction.[45]

The plaintiff then timely filed his state law claims in Osborne County District Court.[46] Again, the defendants moved for summary judgment, this time on the theory that the doctrine of res judicata barred the plaintiff's lawsuit.[47] The state district court granted the defendants'

38. DEFENSE AGAINST A PRIMA FACIE CASE *Res Judicata* § 1:5, Westlaw (database updated June 2021).

39. Stanfield v. Osborne Indus., Inc., 949 P.2d 602 (Kan. 1997).

40. *Compare Stanfield*, 949 P.2d at 607, *with* Herington v. City of Wichita, 479 P.3d 482, 483 (Kan. Ct. App. 2020) (per curiam).

41. *Stanfield*, 949 P.2d at 605; *Herington*, 479 P.3d at 483.

42. *Stanfield*, 949 P.2d at 606–07; *See Herington*, 479 P.3d at 483.

43. *Stanfield*, 949 P.2d at 606–07.

44. *See id.*

45. *Id.* at 607.

46. *Id.*

47. *Id.*

motions for summary judgment and concluded that the plaintiff already had his day in court.[48] The plaintiff filed a timely appeal which was transferred to the Kansas Supreme Court, bypassing the Kansas Court of Appeals.[49]

Easily finding that the case met the first two elements of res judicata, the Kansas Supreme Court only had to decide whether the same cause of action comprised both the federal lawsuit and the state lawsuits.[50] Relying on the Restatement (Second) of Judgments, the court determined that the state lawsuit and federal lawsuit arose out of the same transaction, as the facts in each were related in time and origin, and the witnesses and proof necessary for a state trial substantially overlapped with what would have been necessary in federal court.[51]

The plaintiff argued that the federal district court's ruling did not satisfy the first element of res judicata because the federal court never considered the merits of his state law claims before dismissing them.[52] Absent a final judgment on the merits, the plaintiff argued that res judicata should not bar his state lawsuit—but the court was unpersuaded.[53] Thus, the court held that the mere fact that a federal district court does not consider a plaintiff's state law claims—and, therefore, does not rule on their merits—does not preclude res judicata from applying to the subsequent state lawsuit because the two lawsuits are based on the same claims.[54]

ii. Stare Decisis: Rhoten v. Dickson

The *Stanfield* rule went unchallenged for over a decade until *Rhoten v. Dickson*.[55] Thirteen years after the Kansas Supreme Court's decision in *Stanfield*, it faced the nearly identical issue in *Rhoten*.[56] In fact, the plaintiff in *Rhoten* invited the Kansas Supreme Court to overrule

48. *Id.* at 605.
49. *Id.* at 608.
50. *Id.* at 610. The plaintiff raised the argument that because his state law claims were dismissed for lack of jurisdiction, there was no final judgment on the merits of the state law claims. *Id.* The Kansas Supreme Court rejected this argument. The court declined to separate the federal and state law claims, simply finding that federal courts treat summary judgment as a judgment on the merits, so there was a final judgment on the merits in the previous lawsuit. *Id.*
51. *Id.* at 611.
52. *Id.* at 610, 612.
53. *Id.*
54. *Id.* at 612–13.
55. Rhoten v. Dickson, 223 P.3d 786 (Kan. 2010).
56. *Compare Rhoten*, 223 P.3d at 791, *with Stanfield*, 949 P.2d at 607.

Stanfield—an invitation the court declined to accept.[57] The procedural underpinnings of *Rhoten* are nearly indistinguishable from *Stanfield*.[58]

In *Rhoten*, the plaintiff filed a suit in the U.S. District Court for the District of Kansas, alleging both federal and state law claims.[59] Properly exercising supplemental jurisdiction, the federal district court agreed to hear the state law claims alongside the federal claims.[60] Then, the defendant moved for summary judgment on the federal law claims.[61] The federal district court granted the defendant's motion for summary judgment, leaving only the plaintiff's state law claims to be adjudicated.[62] The federal district court exercised its power pursuant to 28 U.S.C. § 1367(c)(3) and dismissed the state law claims.[63] The plaintiff subsequently filed the state law claims in state court, but the court, following the *Stanfield* rule, dismissed the lawsuit.[64]

The *Rhoten* court reexamined the decision in *Stanfield* but ultimately upheld its rule under the doctrine of *stare decisis*.[65] The Kansas Supreme Court will overturn its own precedent only if it is "clearly convinced the rule was originally erroneous or is no longer sound because of changing conditions and more good than harm will come by departing from precedent."[66] The *Rhoten* court determined there was no persuasive reason to abandon its decision in *Stanfield*.[67]

III. COURT'S DECISION

In December 2020, the Kansas Court of Appeals heard *Herington v. Wichita* on the same procedural underpinnings as the Kansas Supreme Court heard *Stanfield* and *Rhoten*.[68] In a per curiam opinion, the Kansas Court of Appeals followed the *Stanfield* rule and affirmed the dismissal of the plaintiff's state lawsuit.[69] Unless there is a clear indication that the Kansas Supreme Court is departing from its precedent, the Kansas Court of Appeals is obligated to apply the law as interpreted by the Kansas

57. *Rhoten*, 223 P.3d at 793.
58. *Compare Rhoten*, 223 P.3d at 791–92, *with Stanfield*, 949 P.2d at 607.
59. *Rhoten*, 223 P.3d at 791.
60. *Id.*
61. *See id.*
62. *Id.*
63. *See id.*
64. *Id.* at 791–92.
65. *Id.* at 800.
66. *Id.*
67. *Id.*
68. *Compare* Stanfield v. Osborne Indus., Inc., 949 P.2d 602, 607 (Kan. 1997), *and Rhoten*, 223 P.3d 791–92, *with* Herington v. City of Wichita, 479 P.3d 482, 483 (Kan. Ct. App. 2020) (per curiam).
69. *Herington*, 479 P.3d at 483–84.

Supreme Court.[70] There was no clear indication that the Kansas Supreme Court was departing from the *Stanfield* rule, so the Kansas Court of Appeals obeyed its obligation to apply the doctrine of res judicata as formulated in *Stanfield*.[71]

The Kansas Court of Appeals noted that the *Stanfield* rule is unique to Kansas and admitted that it deprived the injured plaintiff of her day in court.[72] Further, the Kansas Court of Appeals, in dicta, suggested that "[c]onventional res judicata principles would have permitted [the plaintiff] to go forward with [her state law] claims in this case, since the federal court dismissed them without adjudicating their merits."[73] However, recognizing its place in the hierarchy of state courts, the Kansas Court of Appeals reluctantly upheld the dismissal of the plaintiff's state lawsuit.[74]

In his concurrence, Judge Atcheson called upon the Kansas Supreme Court to overrule *Stanfield*—not to form an exception to the rule—but to overrule it as bad law and reformulate the doctrine of res judicata to align with conventional principles.[75] He called the rule in Kansas "eccentric and exceedingly unfair."[76] The *Stanfield* rule was particularly troubling to Judge Atcheson because judicially created doctrines—like res judicata—"should be shaped by considerations of basic fairness."[77] Judge Atcheson walked through the faulty legal reasoning behind *Stanfield*, strongly

70. *See id.* at 483.

71. *Id.* at 483–84.

72. *Id.* at 484. In *Stanfield*, the Kansas Supreme Court determined that federal principles of res judicata were controlling because the case originated in federal court. *See Stanfield*, 949 P.2d at 608. The court went on to discuss how Kansas law does not "differ significantly" from federal principles of res judicata, so it is curious that the *Stanfield* rule is so out of step with conventional principles of res judicata. *See id.* (noting that whether state or federal principles of res judicata applies is usually a moot point because there is no significant difference); *see also Herington*, 479 P.3d at 492 (Kan. Ct. App. 2020) (Atcheson, J., concurring) (per curiam) (noting that no federal authority or case cites *Stanfield* favorably). If the court had followed federal principles of res judicata in *Stanfield*, it likely would have reached the opposite conclusion. *See* United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726–27 (1966) (holding that "state claims may be dismissed without prejudice and left for resolution to state tribunals" when the federal claims which supplied original jurisdiction are dismissed before trial commences).

73. *Herington*, 479 P.3d at 484.

74. *Id.* at 483–84.

75. *Id.* at 484–85 (Atcheson, J., concurring). Judge Atcheson concurred in the opinion only because of his obligation to follow Kansas Supreme Court precedent, but he wrote that he does so unhappily. *Id.* at 485. Plaintiff, Dawn Herington filed a petition for review to the Kansas Supreme Court on February 4, 2021. Herington v. Wichita, No. 120329 (Kan. filed Feb. 4, 2021). The Kansas Supreme Court granted Herington's petition for review on March 29, 2021). Herington v. Wichita, No. 120329 (Kan. 2021) (order granting petition for review). The filing history in *Herington* is available at: https://pittsreporting.kscourts.org/Appellate/CaseDetails?caseNumber=120329 [https://perma.cc/29AD
-HS5W].

76. *Id.* at 484.

77. *Id.* Judge Atcheson explained that he agreed with the basic premise that injured plaintiffs should only get one bite at the apple, but he highlighted that the bite must be a "full and fair bite." *Id.* at 486 (emphasis omitted).

urging the Kansas Supreme Court to disregard *stare decisis* and abandon a rule that is not anchored in law.[78]

IV. COMMENTARY

The rule set forth in *Stanfield* should be abolished. Instead, it should be replaced with a more conventional interpretation of res judicata: if a plaintiff's state law claims are dismissed by a federal court declining to exercise supplemental jurisdiction, then the plaintiff should not be barred from subsequently filing the state law claims in the appropriate state court. *Stanfield* should be overruled because: (1) it bars injured plaintiffs whose claims have not been heard on the merits; (2) it bars litigation that does not assert new claims that could or should have been brought in the original lawsuit; and (3) it does more harm than good.

To be barred by res judicata, the claims in a prior lawsuit must have been decided on the merits.[79] Dismissal based on declining to exercise supplemental jurisdiction is not a final judgment on the merits.[80] When dismissal of a claim is "based on a threshold determination" such as jurisdiction, it has no preclusive effect.[81] If a court does not have jurisdiction to hear a case, then it has no need to make any ruling on the merits of that case. Similarly, when a federal court dismisses all federal law claims that gave rise to original jurisdiction, it may then decline to exercise supplemental jurisdiction over the state law claims.[82] For the sake of judicial economy, a court in such a position should not opine as to the merits of a claim and should allow the plaintiff to refile in the proper state court.

Next, conventional principles of res judicata bar *new* claims that could or should have been brought in an earlier action.[83] When a plaintiff subsequently files its state claims in state court, it is not alleging *new*

78. *See id.* at 489–91. The Kansas Supreme Court in *Stanfield* relied on the Restatement (Second) of Judgments and a case from the California Court of Appeals. *Id.* In relying on the Restatement, the Kansas Supreme Court overlooked an exception in another section of the Restatement that did not extinguish claims when dismissed for lack of jurisdiction. *Id.* According to Judge Atcheson, recognizing the exception would have resulted in *Stanfield* coming out more in line with conventional principles of res judicata. *Id.* He also materially distinguished the California case from the Kansas cases. *Id.* at 490. The California plaintiff had essentially abandoned his state law claims by voluntarily electing to split the case into separate courts and then not diligently pursuing his state law claims. *Id.* In Kansas, each plaintiff diligently pursued their state law claims, timely filing them in the appropriate state court after they were dismissed in federal court. *Id.*

79. DEFENSE AGAINST A PRIMA FACIE CASE *Res Judicata* § 1:5, Westlaw (database updated June 2021); *Herington*, 479 P.3d at 486 (Atcheson, J., concurring); *see also* Stanfield v. Osborne Indus., Inc., 949 P.2d 602, 608 (Kan. 1997).

80. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 13, cmt. d (AM. L. INST. 1982).

81. RESTATEMENT (SECOND) OF JUDGMENTS § 20, cmt. d (AM. L. INST. 1982).

82. *See* 28 U.S.C. § 1367(c)(3).

83. *See Herington*, 479 P.3d at 493 (Atcheson, J., concurring).

claims that could or should have brought in federal court.[84] The plaintiff is merely continuing litigation of the same claims in a new forum.[85] In *Herington*, the injured plaintiff did, in fact, bring the state law claims in the first lawsuit; they just happened to be dismissed when the federal court no longer had original jurisdiction.[86] The *Stanfield* rule is unfair because it is not the plaintiff who decides whether to exercise discretion to adjudicate the state claims or to dismiss them pursuant to 28 U.S.C. § 1367(c)(3)—this discretion rests solely with the federal court.[87]

Finally, *stare decisis* should not preclude the Kansas Supreme Court from abolishing the *Stanfield* rule. While *stare decisis* is a cornerstone of the judicial system because it "promote[s] system-wide stability and continuity," it cannot be an inescapable command.[88] A court should depart from precedent when it is persuaded either that the law at issue was erroneously decided or is no longer sound due to changing conditions, and that departing from precedent will do more good than harm.[89]

Such a situation has been established here. First, *Stanfield* was an erroneous decision. The Kansas Supreme Court relied on an incomplete interpretation of the Restatement (Second) of Judgments and persuasive authority that was materially distinguishable.[90] Additionally, departing from *Stanfield* will do more good than harm.[91] Not only will adopting a more mainstream approach to res judicata create a better rule—but it will also create a fairer rule. Plaintiffs will finally be able to have their cases heard on the merits. *Stare decisis* should yield, and the Kansas Supreme Court should depart from *Stanfield*.

V. CONCLUSION

When a person is injured, she has a right to her day in court.[92] This means being heard on the merits of her claim, whether in state or federal court. The fundamental purpose of the civil judicial process is for injured persons to have a forum for the redress of their injuries.[93] The *Stanfield*

84. *Id.* Such claims are new only to the forum, not to the litigation between the parties. *See id.*

85. *Id.*

86. *Id.* at 483.

87. *See* 28 U.S.C. § 1367.

88. Crist v. Hunan Palace Inc., 89 P.3d 573, 579 (Kan. 2004) (quoting Samsel v. Wheeler Transport Servs. Inc., 789 P.2d 541, 554 (Kan. 1990), *rev'd on other grounds* Bair v. Peck, 811 P.2d 1176, 1191 (Kan. 1991)); State v. Spencer Gifts, LLC, 374 P.3d 680, 689 (Kan. 2016). Courts should avoid continuing to apply "an incorrect interpretation of the law." *Spencer Gifts*, 374 P.3d at 689.

89. McCullough v. Wilson, 426 P.3d 494, Syl. ¶ 5 (Kan. 2018).

90. *See Herington*, 479 P.3d at 490–91 (Atcheson, J., concurring).

91. *See id*. at 493–94. Plaintiffs will get their day in court, and defendants face no additional burden. Defendants simply have to continue litigating the lawsuit, just in a different forum. *Id.*

92. KAN. CONST. BILL OF RTS. § 18.

93. *Herington*, 479 P.3d at 493 (Atcheson, J., concurring).

rule runs afoul of this fundamental purpose. If an injured person is shut out of the courtroom by a supposedly equitable judicial doctrine like res judicata, how can any injured persons trust that there is a place for them to be made whole again? Instead of applying conventional concepts of res judicata, Kansas has created its own interpretation—injured plaintiffs may not seek redress of their injuries in state court after having their state claims dismissed in federal court, even without the claims being heard on the merits.[94] After nearly a quarter of a century of shutting injured plaintiffs out of the courtroom, it is time for Kansas to overrule *Stanfield* and give plaintiffs their day in court.

94. *Id.* at 483–84.