

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1699**

Gary Frodermann,
Appellant,

vs.

Chandler Feed Company,
Respondent,

Hubbard Feeds Management Company,
Respondent.

**Filed July 15, 2024
Reversed and remanded
Slieter, Judge**

Rock County District Court
File No. 67-CV-23-113

William J. Wetering, Daniel R. Wetering, Hedeem, Hughes & Wetering, Worthington,
Minnesota (for appellant)

Christopher A. Wills, Mara C. Swanson, Rajkowski Hansmeier, Ltd., St. Cloud, Minnesota
(for respondent Chandler Feed Company)

Kirsten H. Pagel, Stanley E. Siegel, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for
respondent Hubbard Feeds Management Company)

Considered and decided by Bjorkman, Presiding Judge; Smith, Tracy M., Judge;
and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the dismissal, on the grounds of *res judicata*, of his claims against respondents for negligence, negligence per se, and breach of express and implied warranties in relation to allegedly defective animal feed that appellant asserts caused the death of his calves. Because we conclude that *res judicata* does not bar appellant's lawsuit, we reverse and remand for further proceedings.

FACTS

Appellant Gary Frodermann raises cattle. This dispute arises from respondent Chandler Feed Company's delivery of allegedly defective cattle feed to Frodermann. Frodermann identified respondent Hubbard Feeds Management Company as the manufacturer of the allegedly defective feed.

During the summer of 2021, Chandler Feed delivered various batches of cattle feed to Frodermann at a cost of approximately \$9,000. This included a June 23 delivery of calf feed (Calf Krunch) with an invoice amount of \$1,530.

Frodermann alleged that after he fed the Calf Krunch to his calves, 257 of them died. Frodermann returned 21 bags of Calf Krunch to Chandler Feed and received a credit of \$378. Frodermann did not pay for any of the cattle feed deliveries during the summer of 2021.

Chandler Feed filed a conciliation court claim seeking \$9,163.17 from Frodermann for his unpaid cattle-feed bill, and the conciliation court issued an order for judgment in that amount against Frodermann. Frodermann timely removed the conciliation court case

to district court. Chandler Feed issued a credit to Frodermann for \$1,152, the remaining amount due from the June 23 Calf Krunch delivery.

Chandler Feed amended its complaint,¹ stating that “[o]n or about January 31, 2022, [Frodermann] was indebted to [Chandler Feed] in the amount of \$8,743.57.” Thus, the amount requested in Chandler Feed’s amended complaint excluded the \$1,530 invoice for the June 23, 2021 delivery of allegedly defective Calf Krunch. Chandler Feed moved for summary judgment, and Frodermann did not appear at the hearing. The district court entered judgment against Frodermann in August.

Frodermann initiated this separate lawsuit against Chandler Feed and Hubbard Feeds for the allegedly defective feed. Chandler Feed moved to dismiss the complaint, arguing that Frodermann’s claim was barred by *res judicata*. The district court granted Chandler Feed’s motion and dismissed Frodermann’s lawsuit on the basis that Frodermann had failed to raise the claim of defective feed in the earlier district court proceeding regarding the unpaid invoices.

Frodermann appeals.

DECISION

Frodermann argues that the district court erred by dismissing his lawsuit, contending that the district court erred in its analysis of *res judicata*. We agree that *res judicata* does not bar this lawsuit.

¹ Pursuant to Minn. R. Gen. Prac. 522, “[t]he pleadings in conciliation court shall constitute the pleadings in district court,” but a party can amend its statement of claim in district court by serving and filing a formal complaint that complies with the Minnesota Rules of Civil Procedure. Chandler Feed referred to its complaint as an amended complaint.

Appellate courts review *de novo* the application of *res judicata*.² *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011).

Res judicata is based on the principle that an issue determined by a court cannot be disputed in a later lawsuit between the same parties.³ *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). Also called claim preclusion, *res judicata* applies generally to a set of circumstances that gave rise to an entire lawsuit. *Id.* It applies “regardless of whether a particular issue or legal theory was actually litigated.” *Id.* at 840. There is a four-prong test for *res judicata*, and each prong must be met for it to apply. *Id.*

Res judicata applies as an absolute bar to a subsequent claim when (1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter.

Id. Frodermann challenges the district court’s determination on each prong.

Under the first prong, “[t]he common test for determining whether a former judgment is a bar to a subsequent action is to inquire whether the same evidence will sustain both actions.” *Id.* at 840-41 (quotation omitted).

² Neither party identified whether the basis upon which Chandler Feed moved to dismiss the lawsuit was pursuant to rule 12.03 (Judgment on the Pleadings) or rule 56 (Summary Judgment). In any event, because the application of *res judicata* is reviewed *de novo* this does not impact the standard of review in this case.

³ The principle is also aptly penned by Justice William B. Mitchell of the Minnesota Supreme Court in an 1881 decision: “It is founded upon two maxims of the law, one of which is that ‘a man should not be twice vexed for the same cause,’ the other that ‘it is for the public good that there be an end of litigation’” *Wisconsin v. Torinus*, 9 N.W. 725, 726 (Minn. 1881).

Chandler Feed argues that the facts of both lawsuits are the same because both lawsuits involved feed delivered during the summer of 2021 and because Frodermann could have raised the issue of defective feed in the earlier lawsuit. Chandler Feed also argues that the same evidence supports both claims because “to establish its claim in the first lawsuit, Chandler [Feed] had to show that Frodermann had no offset: that none of the feed was defective.”

The record, however, persuades us that Frodermann’s current claim involves different facts from the earlier collection action commenced by Chandler Feeds. To succeed in its claim in the lawsuit to collect for unpaid cattle feed, Chandler Feed had to prove that Frodermann had not paid for the deliveries of cattle feed for which he had been billed. And Chandler Feed, via its amended complaint in that matter, removed the charges for the allegedly defective feed from Frodermann’s bill. In other words, Chandler Feed did not seek judgment in that earlier proceeding for the June 23 delivery of allegedly defective calf feed.

In contrast, for Frodermann to prove his claim in the present lawsuit, he will have to show that Hubbard Feeds manufactured defective cattle feed and that Chandler Feed distributed the defective feed to Frodermann. The same evidence does not sustain both actions.

Furthermore, Frodermann was not required to raise the issue of defective feed in the earlier lawsuit. In a lawsuit, a party “may” raise a counterclaim “not arising out of the transaction that is the subject matter of the opposing party’s claim.” Minn. R. Civ. P. 13.02 (discussing permissive counterclaims). In contrast, a party must raise a counterclaim that

“arises out of the transaction that is the subject matter of the opposing party’s claim.” Minn. R. Civ. P. 13.01 (discussing compulsory counterclaims). As we have already explained, Chandler Feed did not seek payment for the delivery of allegedly defective feed. Frodermann, therefore, was not required to raise the defective-feed issue in the earlier lawsuit.

In short, the claims in the prior lawsuit and the current lawsuit are supported by different evidence. Because the first prong of *res judicata* is not met, and because each prong must be met, we do not consider the other three prongs. Because *res judicata* does not bar Frodermann’s lawsuit, we reverse and remand for further proceedings.⁴

Reversed and remanded.

⁴ Frodermann also argues that the district court impermissibly relied on facts from the conciliation court proceedings in its order despite its removal to district court. Because we reverse and remand on the *res judicata* issue, we do not address this argument.