

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1242**

Deutsche Bank National Trust Company, as Trustee in
Trust for the Benefit of the Certificate Holders for
Ameriquest Mortgage Securities Trust 2006-R1,
Asset-Backed pass Through Certificates, Series 2006-R1,
Respondent,

vs.

Tracee A. Beecroft, et al.,
Appellants.

**Filed March 4, 2013
Affirmed
Halbrooks, Judge**

Kandiyohi County District Court
File No. 34-CV-11-352

David R. Mortensen, Wilford, Geske & Cook, P.A., Woodbury, Minnesota (for
respondent)

John E. Mack, Mack & Daby P.A., New London, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this third appeal between these parties regarding the foreclosure of the home of
appellants Tracee and Barry Beecroft, the Beecrofts challenge the district court's

dismissal of their counterclaims against respondent Deutsche Bank National Trust Company. We affirm.

FACTS

The underlying facts of the dispute between these two parties are recited in our most recent opinion. *Beecroft v. Deutsche Bank Nat'l Trust Co.*, 2012 WL 3641296 (Minn. App. Aug. 27, 2012), *review denied* (Minn. Nov. 20, 2012). The first two appeals stemmed from a quiet-title action initiated by the Beecrofts against Deutsche Bank after Deutsche Bank foreclosed on their home. *Id.* at *1. (The quiet-title action will be referred to as *Beecroft I.*) The crux of the Beecrofts' previous argument was that the assignment of their mortgage to Deutsche Bank was "a fraud and a sham." *Id.* The district court granted Deutsche Bank's summary-judgment motion. On appeal, this court remanded in part. *Id.* But we affirmed the district court's conclusion that the assignment had been validly signed by "Linda Green and Tywana Thomas." *Id.*

Shortly after this court's decision in the first appeal, Deutsche Bank filed a complaint against the Beecrofts seeking a judgment declaring the assignment of the Beecrofts' mortgage to Deutsche Bank null and void. *Id.* (*Beecroft II*). In that complaint, Deutsche Bank stated that the assignment "was not in fact executed by Linda Green and Tywana Thomas, but rather executed by surrogate third parties." *Id.* Deutsche Bank voluntarily dismissed these claims, asserting that the complaint was "inadvertently filed," but not before the Beecrofts answered and counterclaimed. *Id.* The parties stipulated to a consolidation of their actions, but the district court declined to consolidate the cases, and this court affirmed that decision. *Id.* at *1, *3.

After dismissing its claims in the inadvertently filed lawsuit, Deutsche Bank moved for summary judgment, seeking dismissal of Beecrofts' counterclaims. The district court concluded that all of the Beecrofts' counterclaims are barred by res judicata and collateral estoppel. The district court alternatively concluded that "[e]ven if the Beecrofts' claims were not resolved and barred by the doctrines of collateral estoppel and res judicata there are no genuine issues of material fact that prevent the Court from granting summary judgment in favor of Deutsche Bank." This appeal follows.

D E C I S I O N

As an initial matter, we note that the Beecrofts failed to make any argument in their principal brief as to why their counterclaims should not be barred by res judicata and collateral estoppel. Issues not briefed on appeal are waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). While the Beecrofts attempt to revive the issue in their reply brief, issues not raised or argued in an appellant's brief cannot be revived in a reply brief. *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). Nevertheless, Minn. R. Civ. App. P. 103.04 provides that appellate courts may address issues as justice requires. In this instance, in the interest of justice, we address the district court's conclusion that the Beecrofts' claims are barred by res judicata.

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

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; and (4) the estopped party had a full and fair opportunity to litigate the matter.

Id. (footnote omitted). “All four prongs must be met for res judicata to apply.” *Id.* (quotation omitted).

The Beecrofts’ counterclaims are all related to the fact that Deutsche Bank foreclosed the mortgage on their home after they stopped making payments. Their counterclaims therefore arise out of the same set of factual circumstances as did their original claims against Deutsche Bank. There is similarly no question that the earlier claim involved the same parties. The determination of whether res judicata bars the Beecrofts’ counterclaims therefore comes down to whether there was a final judgment on the merits and whether the Beecrofts had a full and fair opportunity to litigate the matter.

“[A] judgment becomes final when it is entered in the district court and it remains final, despite a pending appeal, until it is reversed, vacated or otherwise modified.” *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 221 (Minn. 2007). Here, at the time that the district court concluded that the Beecrofts’ counterclaims were barred by res judicata, the district court had ordered summary judgment for Deutsche Bank on the remanded issue. Therefore, despite the fact that the Beecrofts’ second appeal was pending when the district court entered judgment against the Beecrofts, there was a final judgment on the merits for purposes of res judicata.

The question of whether a party had a full and fair opportunity to litigate a matter generally focuses on whether there were significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate

fully the issue, or whether effective litigation was limited by the nature or relationship of the parties.

State v. Joseph, 636 N.W.2d 322, 328 (Minn. 2001) (quotation omitted). “Moreover, a litigant’s disagreement with a legal ruling does not necessarily mean that the court denied the litigant a full and fair opportunity to litigate a matter.” *Id.* at 329. The Beecrofts appear to argue that because *Beecroft II* was not considered simultaneously with *Beecroft I*, they were not able to fully litigate the issues. They claim that their most recent appeal “could not be fairly decided” because “the critical fact that Deutsche Bank itself claimed that its foreclosure action was irregular was not before the Court.” But this misstates the record. *Beecroft II* had been inadvertently filed before the district court heard *Beecroft I* on remand, and the district court’s decision not to consolidate the two cases has already been heard by this court on appeal.

The Beecrofts seek to know why Deutsche Bank asserted in its “inadvertently filed” complaint that Linda Green and Tywana Thomas did not, in fact, sign the assignment of their mortgage. But the Beecrofts have had a full and fair opportunity to prove that the mortgage held by Deutsche Bank was not validly assigned, and their attempt to re-litigate those claims as counterclaims is barred by res judicata.

Affirmed.