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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1154, A18-1155**

Grace Elizabeth Miller,  
Respondent,

vs.

Brock Fredin,  
Appellant

**Filed July 22, 2019  
Affirmed  
Schellhas, Judge**

Ramsey County District Court  
File No. 62-HR-CV-16-46

Karmen M. McQuitty, Minneapolis, Minnesota (for respondent)

Brock Fredin, Hudson, Wisconsin (pro se appellant)

Considered and decided by Schellhas, Presiding Judge; Hooten, Judge; and Tracy  
M. Smith, Judge.

**UNPUBLISHED OPINION**

**SCHELLHAS, Judge**

In these consolidated appeals from a district court's orders finding appellant in contempt of court for violating a harassment restraining order (HRO) and granting respondent's petition for a 50-year HRO, appellant argues that (1) the record does not

support the grant of a 50-year HRO; (2) the 50-year HRO, as applied to him, violates the prohibition against ex post facto punishment; (3) the district court did not have “jurisdiction” to require him to remove content from the internet; and (4) the HRO statute is unconstitutionally vague and violates the First Amendment. We affirm.

## **FACTS**

In September 2015, appellant Brock Fredin and respondent Grace Miller began dating after meeting through a dating website. About a month later, Miller “broke things off” and told Fredin that they “could still be friends” and go on an “occasional date,” but that she “didn’t feel comfortable with a committed relationship at that point.” According to Miller, she then continued to periodically see and communicate with Fredin, mostly electronically, until early December 2015, when she attempted “to cut off contact [with him] all together.” Miller claimed that Fredin continued to send her electronic messages, despite her communication to Fredin that if he continued to contact her, she would call the police.

After Fredin e-mailed Miller twice on January 24, 2016, and sent her an unsolicited \$50 via PayPal with a message stating, “Thank you for everything,” Miller petitioned for a HRO against Fredin. The district court granted the HRO on March 21, 2016, finding that there were reasonable grounds to believe that Fredin had engaged in harassment of Miller by making “repeated, unwanted contact with [Miller] by continuing to communicate with [Miller] despite being asked to stop all contact, having the Facebook account blocked and two separate telephone numbers blocked.” The HRO, which was effective through March 21, 2018, restricted Fredin from “direct or indirect contact” with Miller, “including any

visits to or phone calls” to Miller, and “contact via electronic means such as email or social networking sites.” Fredin appealed from the HRO, and this court affirmed. *Miller v. Fredin*, No. A16-0613 (Minn. App. Jan. 23, 2017).

In the meantime, in September 2016, Miller moved for civil contempt against Fredin after finding posts about her on Facebook and DatingPsychos.com and sought an order prohibiting Fredin from posting about her on any form of social media. Although Miller withdrew her motion before the hearing because all posts regarding her had been removed, she filed another motion in early December 2017, seeking to modify the HRO. Specifically, Miller sought an order requiring Fredin to remove the [www.majorgracemiller.com](http://www.majorgracemiller.com) website. The district court granted Miller’s request for temporary relief and scheduled a hearing. Before the hearing, Miller again moved for civil contempt, requesting that the court make findings regarding Fredin’s acts and again sought an order for removal of content about her from the internet. Miller also requested that the court modify the prohibitory language of the 2016 HRO to more specifically preclude certain postings by Fredin about her. Later, Miller filed a new petition for a 50-year HRO, based on the same conduct underlying her contempt motion.

The district court temporarily granted Miller’s request for a 50-year HRO, and set an evidentiary hearing for a permanent HRO for April 9, 2018. In an order on July 9, 2018, the court found that Fredin violated the 2016 HRO at least three times by creating and placing content about Miller on the internet, found Fredin “in contempt of court for violating the 2016 HRO,” and directed that a copy of the order be “delivered to the St. Paul

City Attorney’s Office for appropriate review.” The court also granted Miller’s request for a 50-year HRO.

This appeal follows.<sup>1</sup>

## DECISION

### I.

This court reviews a district court’s issuance of an HRO for an abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). “A district court’s findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court’s opportunity to judge the credibility of witnesses.” *Id.* at 843–44. But we will reverse the issuance of a restraining order if it is not supported by sufficient evidence. *Id.* at 844.

A district court may grant an HRO if it “finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3) (2018). Harassment includes “repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another.” *Id.*, subd. 1(a)(1) (2018). Normally, an HRO is granted “for a fixed period of not more than two years.” *Id.*, subd. 5(b) (2018). But if “the petitioner has had two or more previous restraining orders in

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<sup>1</sup> The district court’s July 9, 2018 order resolved Miller’s contempt motion in district court file number 62-HR-CV-16-46, as well as and resolved her petition for a 50-year HRO in district court file number 62-HR-CV-18-202. The order was filed was filed in both cases, and Fredin filed a notice of appeal in each case, seeking review of the July 9, 2018 order. On July 30, we consolidated both appeals brought by Fredin.

effect against the same respondent or the respondent has violated a prior or existing restraining order on two or more occasions, relief granted by the restraining order may be for a period of up to 50 years.” *Id.*

Fredin argues that the record lacks sufficient evidentiary support for the issuance of the 50-year HRO. We disagree. The record contains evidence of three specific incidents of harassment by Fredin that occurred while the March 2016 HRO was in effect. First, Miller testified that in December 2017, she found a website about herself that she believed Fredin had created. According to Miller, the website contained “details of [her] personal life” that she “never told anybody else” and were “grossly exaggerated.” And in addition to Miller’s testimony, the district court received copies of the content of the website.

Second, Miller testified that in the fall of 2017, she discovered memes about her on the internet. Miller described the memes, and the district court received copies of the memes. The memes contained Miller’s name and military unit, as well as statements that she “ENDORSES REVENGE PORN AND HARASSMENT OF MEN. MAKES DEATH THREATS.” And another meme stated that Miller “DESTROYS MEN. STALKS MEN. CONSPIRES TO DESTROY MEN WITH OTHER WOMEN. DATING THIS WOMAN WILL END IN DISASTER. HIRING THIS WOMAN WILL CORRUPT YOUR ORGANIZATION.” Miller stated that she believed Fredin created the memes because “he is the only person who has ever lashed out at me like this.”

Third, Miller testified about a “datingpsychos” online post that she discovered in June 2016, and a printed copy of the website was admitted into evidence. The website references Miller as a “Certified piece of sh-t,” and contains statements indicating that

Miller is a “Total bully, stalker, harassment, threatened to kill me, and complete narcissist. Has mild PTSD from military deployments and constantly overacts, intimidates.” Miller testified that she believed Fredin created the website as “[r]etaliatio[n]” and because “he used the first person in the website, said harassed me, versus saying this person is responsible for harassing Brock Fredin, and one of the iterations on the website also included a Dropbox link about - - he put messages between the two of us.”

The incidents of harassment support the district court’s imposition of the 50-year HRO. *See* Minn. Stat. § 609.748, subd. 5(b) (allowing district court to grant HRO for “up to 50 years” if “the respondent has violated a prior or existing restraining order on two or more occasions”). Although Fredin claims that Miller “openly lied” at trial, and challenges the credibility of the exhibits, determining the weight to give the evidence and assessing witness credibility is in the exclusive province of the factfinder. *See Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996) (stating that a reviewing court “traditionally accord[s] great deference to a [district] court’s findings of fact because it has the advantage of hearing the testimony, assessing relative credibility of witnesses and acquiring a thorough understanding of the circumstances unique to the matter before it”). The court weighed Miller’s evidence in her favor and credited her testimony, and we defer to the court’s assessment of the evidentiary weight and credibility of the witness testimony. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating appellate courts defer to district court’s credibility determinations). We conclude that the evidence is sufficient to support the court’s imposition of a 50-year HRO.

## II.

Fredin contends that the district court abused its discretion by granting Miller a 50-year HRO because the “extended fifty-year HRO as applied to this case is an excessive and criminal penalty.” But Fredin failed to notify the attorney general of his challenge to the constitutionality of the HRO statute as required by Minn. R. Civ. App. P. 144. While lack of notice to the attorney general is not an absolute bar to this court’s consideration of constitutional issues, we will only consider the constitutionality of statutes as applied, and only if the issues have been adequately raised and considered at the district court and the appellate record is sufficient for review. *See Elwell v. County of Hennepin*, 221 N.W.2d 538, 545 (Minn. 1974) (holding that lack of notice to attorney general does not absolutely bar reviewing court from considering constitutional issue); *Welsh v. Johnson*, 508 N.W.2d 212, 215 n.1 (Minn. App. 1993) (stating that failure to notify attorney general limits constitutional challenge to “as applied challenge”).

Here, the record reflects that Fredin’s argument was neither raised before, nor decided by, the district court. Moreover, Fredin’s argument is ambiguous; although he appears to be challenging the HRO on constitutional grounds, he fails to identify whether the HRO violates the United States or Minnesota Constitution. Fredin also fails to identify a constitutional provision or fundamental right that he asserts was violated. Because Fredin’s argument was neither adequately briefed, nor raised below, it is not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court.” (quotation omitted)); *see also State Dep’t of Labor &*

*Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (stating that appellate courts generally decline to reach issues in absence of adequate briefing). We therefore need not address Fredin’s argument that the 50-year HRO is an excessive criminal penalty.

Finally, even if we were to address Fredin’s argument on the merits, we would conclude that his argument fails. The United States and Minnesota Constitutions both prohibit the imposition of ex post facto laws. U.S. Const., art. I, § 10; Minn. Const. art. I, § 11. The prohibition is meant to “assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed” and to “restrict[] governmental power by restraining arbitrary and potentially vindictive legislation.” *Carmell v. Texas*, 529 U.S. 513, 566, 120 S. Ct. 1620, 1650 (2000) (quotations and footnote omitted). “To qualify as an ex post facto law, a statute must be a criminal or penal law, it must not be merely procedural, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it.” *Rew v. Bergstrom*, 845 N.W.2d 764, 790 (Minn. 2014) (quotations omitted).

Fredin appears to argue that the imposition of the 50-year HRO violates the provision against ex post facto punishment. But the record before us does not indicate that when the district court granted the 50-year HRO to Miller, it relied on facts that predated the effective date of Minn. Stat. § 609.748, subd. 5(b). The statute allowing a court to grant a 50-year HRO was in effect at the time Miller was granted the first HRO against Fredin in March 2016, and none of the facts relied upon by the court in granting the 50-year HRO predated the effective date of Minn. Stat. § 609.748, subd. 5(b). Minn. Stat.

§ 609.748, subd. 5(b), therefore does not qualify as an ex post facto law because its application to Fredin did not apply to events occurring before its enactment. *See Rew*, 845 N.W.2d at 790 (discussing requirements for law to qualify as ex post facto law).

Moreover, in *Rew*, the supreme court considered the legality of a district court's extension for up to 50 years of an order for protection (OFP) in favor of a victim of domestic abuse and her minor children. *Id.* at 771. Specifically, Bergstrom challenged the constitutionality of the extended OFP on several grounds, including ex post facto grounds. *Id.* at 774. The supreme court concluded that because “an extended OFP is a civil remedy,” there was no violation in that case of either the United States or Minnesota Constitutions’ prohibition on ex post facto laws. *Id.* at 794–95.

Although not identical, the 50-year provision in the OFP statute is similar to the 50-year provision in the HRO statute at issue in this case. And because the supreme court in *Rew* held that “an extended OFP is a civil remedy,” we conclude that the extended HRO would also constitute a civil remedy. *See id.* at 774. We conclude that, by analogy to *Rew*, the 50-year provision in the HRO statute does not violate either the United States or Minnesota Constitutions’ prohibition on ex post facto laws.

### **III.**

Fredin also argues that the district court erred by granting Miller a 50-year HRO because the HRO statute “does not explicitly grant jurisdiction over internet content.” Although Fredin does not specify the type of jurisdiction he is challenging, he extensively cites *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D.Pa. 1997), and argues that the district court lacked “jurisdiction” under the test set forth in that case. The *Zippo*

test involves personal jurisdiction, not subject-matter jurisdiction. *See id.* at 1124 (concluding that “likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet”). Because Fredin extensively relies on the *Zippo* test to support his “jurisdictional” argument, we construe his argument to be a challenge to the court’s personal jurisdiction. But Fredin did not challenge the court’s personal jurisdiction over him in district court. Unlike subject-matter jurisdiction, parties may waive a challenge to personal jurisdiction. *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 590 (Minn. 2016) (noting that unlike a defect in a court’s subject-matter jurisdiction, parties can waive defects in personal jurisdiction); *see* Minn. R. Civ. P. 12.02 (noting that lack of personal jurisdiction is an affirmative defense); Minn. R. Civ. P. 12.08 (noting that certain defenses, including lack of personal jurisdiction, are waived if not raised by motion or pleading). Because Fredin’s challenge to the district court’s personal jurisdiction was not made below, Fredin has waived that challenge.

#### IV.

Fredin argues that Minn. Stat. § 609.748, subd. 1(a)(1), is unconstitutional under the First Amendment. The First Amendment to the United States Constitution states that “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I. “It applies to the states through the Fourteenth Amendment.” *In re Welfare of A.J.B.*, \_\_ N.W.2d \_\_, \_\_, 2019 WL 2518412, at \*2 (Minn. June 19, 2019).

As we observed above, Fredin failed to notify the attorney general of his challenge to the constitutionality of the HRO statute as required by Minn. R. Civ. App. P. 144.

Although the lack of notice to the attorney general is not an absolute bar to this court's consideration of constitutional issues, our supreme court has stated that "because of the obvious salutary reasons" for this rule, it "intend[s] to require strict compliance with [it] and will ordinarily refuse to consider constitutional questions on appeal if there is a failure to give notice pursuant to the rules unless significant reasons appear for doing otherwise." *Elwell*, 221 N.W.2d at 545. In *Elwell*, the supreme court considered a constitutional question despite the lack of notice to the attorney general as required by the rules, but only because the issue was "one of considerable public importance," that "should be promptly resolved," and because it had "been thoroughly and adequately briefed by both parties in the [district] court and this court." *Id.* (footnote omitted). In doing so, the supreme court noted that "if we are inclined in any case to hold a statute unconstitutional, it is extremely doubtful, absent the most exigent circumstances, that we would so rule if the attorney general has not been properly notified." *Id.* at 545 n.6.

Here, Fredin occasionally uses the term "as applied" in his brief. But a thorough review of his brief, which is hand-written, except for a portion that appears to have been cut-and-pasted from another document, focuses on a facial challenge to the statute. That challenge is not properly before us because Fredin failed to provide the proper notice to the attorney general as required by Minn. R. Civ. App. P. 144. *See Theorin v. Ditec Corp.*, 377 N.W.2d 437, 440 n.1 (Minn. 1985) (noting that "because employee failed to inform the attorney general of her constitutional claim, as required by Minn. R. Civ. App. P. 144, th[e] issue is not properly before this court"); *see also Welsh*, 508 N.W.2d at 215 n.1 (stating that failure to notify attorney general limits constitutional challenge to "as applied")

challenge). Moreover, not only does Fredin make no argument that his argument fits the exception described in *Elwell*, our review of his argument and this record shows that his argument does not, in fact, fit that exception. We therefore decline to consider the issue. *See Rutz v. Rutz*, 644 N.W.2d 489, 494 (Minn. App. 2002) (declining to address constitutional challenge to statute because appellant did not notify attorney general or raise issue in district court), *review denied* (Minn. July 16, 2002).

**Affirmed.**