

*This opinion is nonprecedential except as provided by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
A22-0092**

In the Matter of: Kathryn Marie Larson, on behalf of Minor Child, petitioner,
Respondent,

vs.

Keith Norman Marohn,
Appellant.

**Filed September 6, 2022
Affirmed
Reyes, Judge**

Isanti County District Court
File No. 30-FA-19-139

Leigh J. Klaenhammer, Hennek Klaenhammer Law, P.L.L.C., Roseville, Minnesota (for respondent)

Keith Norman Marohn, North Branch, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Self-represented appellant challenges the district court's extension of an order for protection (OFP) against him, arguing that (1) Minn. Stat. § 518B.01 (2020) is an unconstitutional bill of attainder; (2) he is entitled to a retraction of defective service by publication; (3) the district court erred by holding an unscheduled evidentiary hearing

before deciding his motion for in-camera review of minor child E.A.M.'s counseling records; (4) the district court abused its discretion by admitting hearsay statements into evidence; and (5) the district court's findings are unsupported by the record. We affirm.

FACTS

In 2019, respondent Kathryn Marie Larson petitioned on behalf of minor child E.A.M. for an OFP against E.A.M.'s father, appellant Keith Norman Marohn. Larson alleged that Marohn became frustrated with E.A.M. for playing with her phone and grabbed E.A.M.'s arm, forcibly took the phone, kicked her knee, and pulled her upstairs while holding her by her wrists. In September 2019, the district court found that Marohn committed acts of domestic abuse against E.A.M. and issued a two-year OFP (the 2019 OFP). The 2019 OFP required Marohn to participate in "[f]amily therapy with [therapist]." It also prohibited Marohn from having contact with E.A.M., with one exception: "E.A.M.[] and [Marohn] may participate in family therapy with [therapist]." Marohn appealed. We affirmed the district court. *Larson v. Marohn*, No. A19-1831, 2020 WL 3494306, at *1 (Minn. App. June 29, 2020).

In August 2021, Larson, on behalf of E.A.M., petitioned to extend the 2019 OFP, alleging that: (1) Marohn violated the 2019 OFP and (2) E.A.M. is reasonably in fear of physical harm from Marohn. The district court scheduled a hearing for September 1, 2021. Isanti County Sheriff's Office attempted to serve Marohn with notice of the hearing but failed because Marohn did not live at the address Larson provided. The district court continued the OFP-extension hearing until October 18 to allow Larson to serve Marohn by

publication. Publication of a notice of the proceeding in a local newspaper occurred on September 23.

On September 24, 2021, an Isanti County deputy served Marohn with the notice of hearing and OFP-extension petition. Shortly after, Marohn submitted requests to the district court for subpoenas for (1) Isanti County Family Services records regarding the events underlying the 2019 OFP and (2) E.A.M.'s therapy records. The district court granted Marohn's subpoena requests. The agency providing E.A.M.'s therapy then wrote to the district court, requesting that it quash the subpoena for E.A.M.'s therapy records. In response, Marohn moved the district court to compel production of E.A.M.'s therapy records and complete an in-camera review of those records "for issues relat[ing] to the severity and causes of [E.A.M.'s] fear over the past 48 months."

Both Larson and Marohn appeared at the October 18, 2021 hearing.¹ Because Larson had not received Marohn's motion, the district court again continued the hearing to allow Marohn to refile and properly serve his motion. The district court set the next hearing for November 24, 2021, to address Marohn's motion for in-camera review. It also appointed a guardian ad litem (GAL) to prepare a report with a recommendation as to whether the OFP should be extended. Marohn then refiled and served his motion. He also asked the district court to "[p]ublish a full retraction of the notice of publication."

At the November 24, 2021 hearing, the district court noted that Marohn's motion to obtain E.A.M.'s counseling records was set for hearing but directed the parties to first

¹ Counsel represented Larson throughout the OFP-extension proceedings at the district court. Marohn represented himself.

address whether Marohn violated the 2019 OFP. Marohn objected, but the district court confirmed that it would first address whether Marohn violated the 2019 OFP. Larson then testified to her understanding that Marohn had not attended any therapy. When the district court asked Marohn if he wanted to offer any evidence on whether he participated in therapy, Marohn said that he did not.

The district court next allowed Marohn to argue his motion for in-camera review of E.A.M.'s counseling records. Then, over Marohn's objection, the district court accepted the GAL's report into evidence and allowed the GAL to testify. The GAL recommended extending the OFP. After the GAL testified, the district court asked if the parties had any other witnesses. Marohn said that he needed to subpoena his witnesses to testify but did not clarify which witnesses he intended to call or explicitly ask the district court to continue the hearing. The district court then granted the OFP extension.

In its subsequent order, the district court noted that Marohn refused to testify that he complied with the prior OFP by participating in the required counseling, Larson testified that she received no notice that Marohn wanted to attend therapy with E.A.M., and the GAL testified that she could find no evidence that Marohn attempted to participate in family therapy. It found "that [Marohn] failed to comply with the [OFP] in that he failed to participate in therapy with [therapist]." It also found, based on the GAL's report and testimony, that E.A.M. is still in reasonable fear of physical harm from Marohn. It extended the OFP until May 2023. The OFP prohibits Marohn from contacting E.A.M.

but permits him to attend family therapy with E.A.M. after engaging individually in family therapy. This appeal follows.²

DECISION

I. Marohn’s constitutional challenge to Minn. Stat. § 518B.01 is not properly before this court.

Marohn first argues that Minn. Stat. § 518B.01 is an unconstitutional bill of attainder and that he sufficiently preserved the issue for appeal. We decline to review his claim because it is not properly before us.

Although courts afford some leeway to self-represented parties, they “are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). On appeal, we generally consider “only those issues that the record shows were presented to and considered by” the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted); *see also Constans v. Comm’r of Pub. Safety*, 835 N.W.2d 518, 526 (Minn. App. 2013) (applying rule to constitutional issues).

At the start of the OFP-extension hearing, Marohn objected to the proceeding by stating that Minn. Stat. § 518B.01 is “unconstitutional under the Minnesota Constitution, Articles 1, Section[s] 7 and 11 and also under the U.S. Constitution, Articles 1, Sections 9 and 10.” The district court replied, “I’m denying the motion.” Marohn never clarified, either orally or by written motion, his argument that the statute is unconstitutional because

² Larson did not submit a brief in this appeal, and we ordered that this appeal proceed under Minn. R. Civ. App. 142.03.

it is a bill of attainder. And the district court consequently did not address Marohn’s argument beyond its summary oral denial. The issue is therefore not properly before this court. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 478 (Minn. App. 2007) (stating that district court’s failure to address issue “raised only in a conclusory fashion and without supporting . . . argument” is not error and reiterating that we will not address issue not properly raised before district court).

II. Marohn is not entitled to relief based on alleged service-by-publication errors.

Marohn argues that the district court erroneously allowed service by publication and that he is entitled to a “correction” or “retraction” of the notice to account for the damage to his reputation. We are not persuaded.

To prevail on appeal, a party must show both error and prejudice resulting from the error. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975); *see also* Minn. R. Civ. P. 61 (directing courts to “disregard any error” that does not affect party’s substantial rights); *Butler v. Jakes*, 977 N.W.2d 867, 872 (Minn. App. 2022) (applying harmless error rationale in OFP appeal). Even assuming that the district court erred by allowing service by publication, Marohn concedes that he was personally served on September 24, 2021. And Marohn attended and actively participated in the OFP-extension hearing. Marohn therefore fails to show prejudice resulting from the alleged defective service by publication.

Marohn argues that the published notice damaged his “honor” by “accusing [him] of domestic abuse against a child,” entitling him to a “correction.” Marohn cites no legal authority in support of this assertion. As a result, we conclude that the district court did

not err by failing to “retract” the published notice. *See Midway Ctr. Assocs.*, 237 N.W.2d at 78 (stating that appellant must affirmatively show error before we will reverse).

III. The district court did not abuse its discretion by granting the OFP extension based on Marohn violating the 2019 OFP.

Marohn argues that the district court erred by applying a presumption that he violated the 2019 OFP and that its finding that he violated the 2019 OFP is not supported by the record. We disagree.

We review a district court’s grant of an OFP for an abuse of discretion. *See Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). A district court abuses its discretion when its decision is based on “an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation omitted). We review the record in the light most favorable to the district court’s findings and reverse those findings only if “left with the definite and firm conviction that a mistake has been made.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted). We do not reconcile conflicting evidence or decide issues of witness credibility. *Aljubailah v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017).

The district court may extend an OFP “upon a showing” that “the respondent has violated a prior or existing order for protection.” Minn. Stat. § 518B.01, subd. 6a(b)(1). Marohn contends that the standard of proof for that showing is “clear and convincing evidence,” citing Minn. Stat. § 260C.163, subd. 1(a) (2020). But that section establishes the standard of proof for a petition alleging that a child is in need of protection or services, not for an OFP petition. Minn. Stat. § 260C.163, subd. 1(a) (stating that it applies to “all

adjudicatory proceedings regarding juvenile protection matters under this chapter”). Section 518B.01 does not specify a standard of proof for issuing or extending an OFP. But we have held that the standard of proof for obtaining an OFP is a preponderance of the evidence, *see Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015), and the same standard logically applies when a petitioner seeks to extend an OFP.

Here, Larson had the burden of showing by a preponderance of the evidence that Marohn violated the 2019 OFP. The 2019 OFP included this term: “[Marohn] *shall* participate in treatment or services as indicated below . . . *Family therapy with [therapist].* [E.A.M.] may also participate in the therapy with the family therapist.” (Emphasis added.) The district court found, and Marohn agreed, that the 2019 OFP required Marohn to engage in therapy with the specified therapist.

At the November 24 hearing, Larson testified that she understood that Marohn did not attend therapy as directed by the 2019 OFP because she had not been contacted by the therapist to involve E.A.M. in family therapy, which would have indicated that Marohn had engaged in the required initial therapy. After Larson’s testimony, the district court asked Marohn if he wanted to offer any evidence on the issue. Marohn said that he did not. The GAL then testified that she could find no evidence that Marohn attempted to participate in therapy. In its order, the district court noted this testimony and Marohn’s failure to testify regarding his therapy participation. It then found that “[Marohn] failed to comply with the [OFP] in that he failed to participate in therapy with [therapist].” This finding is supported by the record and is not clearly erroneous. *See Oberg*, 868 N.W.2d at

65 (stating that preponderance-of-evidence standard requires only that it be more probable than not that fact exists).

We also conclude from the record that the district court did not, as Marohn argues, improperly apply a presumption that Marohn violated the OFP or fail to hold Larson to her burden of proof. The district court appears to have drawn an unfavorable inference from Marohn’s failure to testify about attending therapy, but we discern no error in its decision to do so, given that Marohn was the only person who could readily produce evidence showing that he participated in the required therapy. *See Butt v. Schmidt*, 747 N.W.2d 566, 576 (Minn. 2008) (stating that when party is “in exclusive possession” of evidence and fails to produce it, “an unfavorable inference may be drawn about that party as to the relevant issue”).

Because the district court did not clearly err by finding that Marohn violated the 2019 OFP, we conclude that the district court acted within its discretion by extending the OFP. We therefore decline to address Marohn’s remaining arguments, which relate to his ability to prove that E.A.M. is not reasonably in fear of physical harm. *See Minn. Stat. § 518B.01, subd. 6a(b)(2)* (stating that district court may extend OFP upon showing that “petitioner is reasonably in fear of physical harm from the respondent”).

Marohn asserts that the district court denied him due process by converting the November 24 hearing, which was scheduled to address his motion for in-camera review, into an evidentiary hearing. The fundamental due-process requirements are notice and an opportunity to be heard. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 635 (Minn. 2012). But even if the district court failed to vindicate Marohn’s due-process rights, he must show

prejudice before we will grant relief. *See In re Welfare of Child of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008); *Midway Ctr. Assocs.*, 237 N.W.2d at 78. And here, Marohn claims that the unscheduled evidentiary hearing prejudiced him because he could not call a social worker to testify about the events underlying the 2019 OFP, which he contends would show that E.A.M.'s fear is not reasonable. But the district court acted within its discretion by extending the OFP based on Marohn's *failure to comply with the 2019 OFP*, and, on that issue, Marohn identifies no prejudice caused by the unscheduled evidentiary hearing. Marohn has therefore failed to show a due-process violation requiring reversal.

For the same reason, we decline to review Marohn's arguments that the district court erred by (1) failing to decide his motion for in-camera review of E.A.M.'s therapy records before the evidentiary hearing; (2) denying his motion for in-camera review; (3) relying on the GAL's statements regarding E.A.M.'s fear, which Marohn contends were inadmissible hearsay; and (4) finding that E.A.M. is reasonably in fear of physical harm from Marohn. Those claims relate to the district court's finding that E.A.M. is reasonably in fear of physical harm from Marohn, which is a separate and alternative ground for extending an OFP under section 518B.01, subdivision 6a(b). Because we conclude that the district court did not abuse its discretion by extending the OFP under section 518B.01, subdivision 6a(b)(1), we do not review the district court's decisions regarding E.A.M.'s fear of harm.

Affirmed.