

*This opinion is nonprecedential except as provided by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
A22-1077**

In re the Matter of:
Briley Ann Hale,
Appellant,

vs.

Steve Ryan Berke,
Respondent.

**Filed April 17, 2023
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-DA-FA-19-4049

Amanda R. Cefalu, Reinhart Boerner Van Dueren S.C., Minneapolis, Minnesota (for appellant)

Steve Berke, North Miami Beach, Florida (pro se respondent)

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

The district court granted Briley Hale’s application for a 50-year extension of a preexisting order for protection against Steve Berke based on Hale’s allegations that he stole her dog, violated the order for protection by contacting her on social media, and attempted to coerce her with money to cancel her impending wedding to another man. The

district court granted Hale's application at a hearing 13 days after Hale served Berke by mail. Berke moved to vacate the extended order for protection, and the district court granted his motion. Because service by mail is ineffective until 14 days after mailing under the Minnesota Domestic Abuse Act, Hale's service was not effective at the time of the hearing on her extension application. The district court therefore appropriately granted Berke's motion to vacate the extension, and we affirm.

FACTS

The district court issued an *ex parte* order for protection (OFP) in June 2019, barring respondent Steve Berke from contact with appellant Briley Hale after Hale alleged that Berke assaulted Hale's boyfriend and tried to steal her dog. Hale applied in March 2021 to extend the OFP for 50 years, alleging that Berke stole her dog while she was on vacation, contacted her on social media, and contacted her mother by email with an offer to pay Hale and her mother \$500,000 if Hale cancelled her upcoming wedding to another man.

The district court scheduled a hearing for March 2021 and continued the existing OFP through the hearing date. Because Hale indicated she was having difficulty personally serving Berke with the petition and temporary order, the district court twice continued the hearing to allow Hale to complete service or petition for service by alternate means. Hale filed an affidavit stating that she served Berke by mail on April 28. The district court held the extension hearing on May 11. Berke did not appear, and the district court issued an order in his absence extending the OFP 50 years.

Berke moved the district court on November 23, 2021 to reopen the matter and vacate the extended OFP, reporting that airport security had detained him based on the

OFP. He asserted that he had never been properly served and therefore was denied the opportunity to defend himself against Hale’s accusations. The district court conducted a hearing and concluded that, when it had conducted the extension hearing only 13 days after Hale served her application on Berke by mail, the court had lacked personal jurisdiction based on the Minnesota Domestic Abuse Act’s 14-day timeline for service by mail to become effective. It held the extension order void. Hale appeals.

DECISION

Hale challenges the district court’s decision to vacate the 50-year OFP-extension order under Minnesota Rule of Civil Procedure 60.02(d), which allows the court to relieve a party from a final judgment or order when the judgment is void. We generally review the district court’s decision to vacate an order under the rule for an abuse of discretion, *Galbreath v. Coleman*, 596 N.W.2d 689, 691 (Minn. App. 1999), and we will reverse if the district court’s decision rests on a misapplication of law or on unsupported facts, *Northland Temporaries, Inc. v. Turpin*, 744 N.W.2d 398, 402–03 (Minn. App. 2008), *rev. denied* (Minn. Apr. 29, 2008). But motions seeking to vacate a judgment under Minnesota Rule of Civil Procedure 60.02(d) on grounds that the judgment is void for lack of personal jurisdiction do not involve the exercise of discretion. *Hengel v. Hyatt*, 252 N.W.2d 105, 106 (Minn. 1977). For the following reasons, we hold that the district court properly applied Rule 60.02(d). Although Hale also raises an argument under Minnesota Rule of Civil Procedure 60.02(a), we need not address that argument given our decision as to Rule 60.02(d).

Hale argues that the district court misapplied the Minnesota Domestic Abuse Act, Minnesota Statutes section 518B.01 (2022), to vacate the 50-year order by concluding that it lacked personal jurisdiction due to ineffective service. The Minnesota Domestic Abuse Act authorizes a district court to grant an *ex parte* OFP when an applicant alleges she faces immediate and present danger of domestic abuse. Minn. Stat. § 518B.01, subd. 7(a). The court may extend an OFP issued under the act for up to 50 years if the petitioner meets the statutory criteria. *Id.*, subd. 6a. But the act requires personal service on the respondent of “[t]he petition and any order issued under th[e] section other than orders for dismissal.” *Id.*, subd. 8(a). And if the district court orders service by alternate means, service is complete 14 days after mailing. *Id.*, subd. 8(c). This appeal turns on whether Hale met the act’s requirements.

Because Hale had difficulty serving Berke by other means, the district court extending the OFP allowed her to perform service by mail. Hale mailed Berke her application, the order for service by alternate means, her affidavit and exhibits, and the court’s temporary OFP-extension order on April 28, 2021, which was only 13 days before the scheduled hearing. The district court correctly determined that service was ineffective under the 14-day deadline. If a court lacks personal jurisdiction over a party through a failure of service, the resulting judgment of the court is void. *Ayala v. Ayala*, 749 N.W.2d 817, 820 (Minn. App. 2008); *see also Galbreath*, 596 N.W.2d at 691 (“Generally, a valid judgment cannot be entered against a party absent lawful service of process on that party.”). The district court’s inadequate-service finding and its voidness decision are therefore proper.

We are not persuaded by Hale’s argument that the extension filings were not the originating documents for the proceeding and that, therefore, the act’s service requirements in subdivision 8(c) do not apply. Hale maintains that *Ayala*, which the district court relied on, does not apply here. In *Ayala*, we determined that service of an OFP by publication was invalid under the Minnesota Domestic Abuse Act because the petitioner failed to comply with the act’s requirement that she first attempt personal service through law enforcement before requesting service by publication. 749 N.W.2d at 819. We observed that the petitioner’s affidavit failed to allege attempted personal service by law enforcement and that the district court therefore lacked personal jurisdiction. *Id.* at 821–22. Hale contends that, because Berke was validly subject to the original *ex parte* OFP issued in June 2019, *Ayala* is distinguished because it analyzed only the impact of a failure of service as to an originating order—the *ex parte* OFP—and not a subsequent, extension petition and order. Hale’s argument fails because the act’s personal-service requirement applies to “[t]he petition and *any* order issued under this section other than orders for dismissal.” Minn. Stat. § 518B.01, subd. 8(a) (emphasis added). Because Hale filed a new application and the district court scheduled a hearing, Hale was required to personally serve Berke with her application and the temporary extension order. We will not read Hale’s proffered exception into the statute.

Hale alternatively asks us to apply subdivision 5(d) of the act instead of 8(c). Subdivision 5(d) directs that “[s]ervice of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing” when the respondent requests a hearing after an *ex parte* OFP. Minn. Stat. § 518B.01, subd. 5(d). This paragraph governs

service of the notice of hearing, not service of the application and order, and it applies only when the respondent requests a hearing. The subdivision does not apply.

The district court understandably expressed its concern that its personal-jurisdiction decision “may be construed as unduly technical in nature.” But it rightly applied the law because the record establishes that Hale did not properly serve Berke before the hearing when the district court received evidence and extended the OFP for 50 years. The issues decided in this appeal bear only on the district court’s lack of personal jurisdiction to extend the OFP and should not be construed as limiting any party’s right to seek an OFP in the future.

Affirmed.